



PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA

ANNUAL REPORT  
OF THE PUBLIC DEFENDER  
OF GEORGIA

THE SITUATION OF  
HUMAN RIGHTS AND  
FREEDOMS IN GEORGIA

2018





ევროკავშირი  
საქართველოსთვის  
The European Union for Georgia



PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA

This publication has been produced with the assistance of the European Union.  
The contents of this publication are the sole responsibility of the author and can in no way  
be taken to reflect the views of the European Union.

ANNUAL REPORT  
OF THE PUBLIC DEFENDER  
OF GEORGIA

THE SITUATION  
OF HUMAN RIGHTS AND  
FREEDOMS IN GEORGIA

2018



[www.ombudsman.ge](http://www.ombudsman.ge)



**OFFICE OF PUBLIC DEFENDER OF GEORGIA**

6, Ramishvili str, 0179, Tbilisi, Georgia

Tel: +995 32 2913814; +995 32 2913815

Fax: +995 32 2913841

E-mail: [info@ombudsman.ge](mailto:info@ombudsman.ge)

<b>INTRODUCTION</b> .....	13
<b>1. FULFILMENT OF THE RECOMMENDATIONS MADE BY THE PUBLIC DEFENDER OF GEORGIA IN THE 2017 PARLIAMENTARY REPORT</b> .....	19
<b>2. RIGHT TO LIFE</b> .....	28
2.1. CASE OF TEMIRLAN MACHALIKASHVILI .....	21
2.2. MURDER OF JUVENILES ON KHORAVA STREET .....	29
2.3. OUTCOMES OF THE STUDY OF THE CASE-FILES OF THE INVESTIGATION CONDUCTED ON THE ALLEGED MURDER OF ZVIAD GAMSAKHURDIA, THE FIRST PRESIDENT OF GEORGIA.....	30
2.4. PROPORTIONALITY OF SENTENCES IMPOSED ON THE OFFENDERS CONVICTED FOR THE DEPRIVATION OF LEVAN KORTAVA'S LIFE IN A PENITENTIARY ESTABLISHMENT .....	31
2.5. NECESSITY OF THE PUBLIC DEFENDER HAVING ACCESS TO THE CASE-FILES OF INVESTIGATIONS OF ILL-TREATMENT AND/OR DEPRIVATION OF LIFE .....	32
<b>3. PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT</b> .....	34
<b>THE PENITENTIARY SYSTEM</b> .....	34
3.1. PROCEDURAL AND INSTITUTIONAL SAFEGUARDS AGAINST ILL-TREATMENT.....	35
3.2. LARGE PENITENTIARY ESTABLISHMENTS .....	37
3.3. ORDER AND SECURITY.....	37
3.4. RISK ASSESSMENT AND CLASSIFICATION OF CONVICTED PERSONS.....	38
3.5. ABSENCE OF APPROACH CONDUCIVE TO CONVICTED PERSONS' RISK REDUCTION .....	40
3.6. PRISONERS' REHABILITATION AND RESOCIALISATION.....	40
3.7. PHYSICAL ENVIRONMENT .....	41
3.8. MEDICAL CARE .....	42
3.9. CONTACT WITH THE OUTSIDE WORLD .....	43

3.10. EQUALITY .....	44
3.11. PERSONNEL OF PENITENTIARY ESTABLISHMENTS.....	44
<i>SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS</i> .....	48
3.12. ILL-TREATMENT BY POLICE OFFICERS .....	49
3.13. SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT.....	51
3.14. TEMPORARY DETENTION ISOLATORS .....	57
<i>PSYCHIATRIC FACILITIES</i> .....	59
3.15. PHYSICAL AND CHEMICAL RESTRAINT .....	60
3.16. FORCED MEDICAL TREATMENT OF PATIENTS FORMALLY PLACED VOLUNTARILY IN INPATIENT FACILITIES AND THE USE OF PHYSICAL RESTRAINT.....	61
3.17. VIOLENCE AMONG PRISONERS .....	61
3.18. SOMATIC (PHYSICAL) HEALTH.....	61
3.19. LEGAL SAFEGUARDS .....	62
3.20. PROBLEM OF LENGTHY HOSPITALISATION .....	63
3.21. PSYCHOSOCIAL REHABILITATION.....	64
<b>4. INVESTIGATION OF TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT.....</b>	<b>67</b>
4.1. POSTPONING THE ENFORCEMENT OF THE LAW OF GEORGIA ON THE OFFICE OF THE STATE INSPECTOR .....	67
4.2. REFORM OF THE PROSECUTOR'S OFFICE .....	68
4.3. EFFECTIVE INVESTIGATION OF TORTURE AND OTHER ILL-TREATMENT.....	70
<b>5. RIGHT TO LIBERTY AND SECURITY .....</b>	<b>74</b>
5.1. ARREST OF CITIZENS IN BREACH OF STATUTORY REQUIREMENTS.....	74
5.2. SHORTCOMINGS IDENTIFIED IN POLICE OFFICERS' ACTIONS.....	75
5.3. UNJUSTIFIED RESTRICTION OF THE FREEDOM OF MOVEMENT .....	76
5.4. CASE OF IVANE MERABISHVILI.....	76
<b>6. RIGHT TO A FAIR TRIAL .....</b>	<b>78</b>
6.1. INSTITUTIONAL PROBLEMS IN THE JUDICIARY .....	78
6.2. ELECTING SUPREME COURT JUDGES .....	79

6.3.	EXAMINING CASES WITHIN A REASONABLE TIME.....	83
6.4.	PERMANENCE OF THE COMPOSITION OF THE BENCH.....	85
6.5.	PRESUMPTION OF INNOCENCE.....	85
6.6.	PRINCIPLE OF LEGAL CERTAINTY.....	86
6.7.	IMPORTANCE OF A PUBLIC AND ORAL HEARING.....	86
6.8.	USE OF INADMISSIBLE EVIDENCE.....	87
6.9.	INVESTIGATION OF EXERTING INFLUENCE ON A JURY.....	87
6.10.	RIGHT TO KEEP A DOCUMENT IN PENITENTIARY ESTABLISHMENTS.....	88
6.11.	SHORTCOMINGS OF THE CODE OF ADMINISTRATIVE VIOLATIONS.....	88
6.12.	ENFORCEMENT OF A COURT DECISION.....	91
<b>7.</b>	<b>RIGHT TO RESPECT FOR PRIVATE LIFE.....</b>	<b>94</b>
7.1.	INVESTIGATION OF THE CRIME AND PUBLISHING STATISTICAL DATA.....	94
7.2.	THE PUBLIC DEFENDER'S CONSTITUTIONAL CLAIM CONCERNING THE CONSTITUTIONALITY OF THE PROCEDURE FOR CARRYING OUT COVERT SURVEILLANCE.....	95
7.3.	USE OF PUBLIC DEFENDER'S HOTLINE IN PENITENTIARY ESTABLISHMENTS....	96
<b>8.</b>	<b>RIGHT TO EQUALITY.....</b>	<b>98</b>
8.1.	EQUALITY OF WOMEN.....	98
8.2.	DISCRIMINATION BASED ON DISABILITY.....	100
8.3.	DISCRIMINATION OF MINORS.....	100
8.4.	DISCRIMINATION BASED ON NATIONALITY.....	101
8.5.	EQUALITY OF LGBT+ PERSONS.....	101
8.6.	DISCRIMINATION IN LABOUR RELATIONS.....	102
8.7.	DISCRIMINATION IN RECEIVING SOCIAL BENEFITS.....	103
8.8.	DISCRIMINATION BASED ON CITIZENSHIP.....	104
8.9.	INCITING DISCRIMINATION.....	104
<b>9.</b>	<b>GENDER EQUALITY.....</b>	<b>107</b>
9.1.	PARTICIPATION OF WOMEN IN DECISION-MAKING PROCESS.....	107
9.2.	WOMEN'S ECONOMIC ACTIVITY AND LABOUR RIGHTS.....	109



9.3.	WOMEN, PEACE AND SECURITY .....	1 10
9.4.	WOMEN'S REPRODUCTIVE HEALTH AND RIGHTS.....	1 11
9.5.	HUMAN TRAFFICKING.....	1 12
9.6.	VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE.....	1 13
9.7.	EARLY MARRIAGE.....	1 17
9.8.	LGBT+ PERSONS' RIGHTS .....	1 18
9.9.	PROTECTING RIGHTS OF FEMALE AND LGBT+ RIGHTS DEFENDERS.....	120
<b>10.</b>	<b>FREEDOM OF RELIGION AND BELIEF .....</b>	<b>124</b>
10.1.	OFFENCES COMMITTED ON THE GROUND OF RELIGIOUS INTOLERANCE .....	125
10.2.	LEGISLATION AND THE 2018 JUDGMENTS OF THE CONSTITUTIONAL COURT .....	126
10.3.	PROBLEMS RELATED TO RELIGIOUS ASSOCIATIONS' PROPERTY .....	126
10.4.	PROBLEMS RELATED TO OBTAINING CONSTRUCTION PERMITS .....	128
10.5.	OBSTACLE FACED BY JEHOVAH'S WITNESSES WHEN RECEIVING MEDICAL TREATMENT.....	129
<b>11.</b>	<b>FREEDOM OF EXPRESSION.....</b>	<b>132</b>
11.1.	MEDIA ENVIRONMENT.....	132
11.2.	CASE OF AFGAN MUKHTARLI.....	134
11.3.	THE CASE OF AIISA AND ALLEGED UNLAWFUL RESTRICTION OF FREEDOM OF EXPRESSION .....	134
<b>12.</b>	<b>FREEDOM OF ASSEMBLY AND MANIFESTATION.....</b>	<b>136</b>
12.1.	POSSIBILITY TO ERECT NON-PERMANENT CONSTRUCTIONS DURING MANIFESTATION.....	136
12.2.	COUNTER-DEMONSTRATION OF MAY 13 .....	137
12.3.	MANIFESTATION PLANNED IN PARALLEL TO THE PRESIDENT'S INAUGURATION.....	138
12.4.	BLOCKING OF THE PASSAGE OF THE TRANSPORT DURING SPONTANEOUS ASSEMBLY.....	139
<b>13.</b>	<b>FREEDOM OF ASSOCIATION AND HUMAN RIGHTS DEFENDERS .....</b>	<b>141</b>
<b>14.</b>	<b>THE RIGHT TO LIVE IN HEALTHY ENVIRONMENT .....</b>	<b>145</b>
14.1.	RIGHT TO CLEAN AIR – QUALITY OF AMBIENT AIR.....	146

14.2. HARM CAUSED TO THE ENVIRONMENT – INEFFECTIVE LEGISLATION AND ALARMING STATISTICS .....	147
14.3. SAFETY TO UTILIZE NATURAL GAS .....	150
14.4. DECISIONS ON CONSTRUCTING HYDRO POWER PLANTS.....	152
14.5. LEGISLATION IN CONSTRUCTION INDUSTRY .....	153
14.6. PUBLIC INTEREST TO PRESERVE RECREATIONAL AREA .....	155
14.7. ENVIRONMENTAL ISSUES CAUSED BY ENTREPRENEURIAL ACTIVITIES AND RESPONSE MECHANISMS OF THE STATE .....	155
<b>15. RIGHT TO WORK.....</b>	<b>159</b>
15.1. SAFE WORKING ENVIRONMENT .....	159
15.2. LABOR RIGHTS AT THE OFFICES OF SPECIFIC OPERATING CONDITIONS .....	161
<b>16. RIGHT TO HEALTH CARE.....</b>	<b>166</b>
16.1. PATIENTS’ RIGHTS.....	166
16.2. RIGHTS OF ONCOLOGICAL PATIENTS.....	167
16.3. QUALIFIED MEDICAL PERSONNEL .....	168
16.4. STATE PROGRAM: VILLAGE DOCTOR .....	169
16.5. ENFORCEMENT OF LEGISLATION ON TOBACCO CONTROL .....	169
16.6. DRUG POLICY .....	170
<b>17. RIGHT TO SOCIAL SECURITY.....</b>	<b>173</b>
17.1. SHORTCOMINGS OF THE SUBSISTENCE ALLOWANCE PROGRAM.....	173
17.2. THE RIGHT TO ADEQUATE FOOD.....	175
<b>18. RIGHT TO ADEQUATE HOUSING.....</b>	<b>177</b>
18.1. HUMAN RIGHTS CONDITIONS OF HOMELESS PERSONS IN TBILISI .....	177
<b>19. RIGHT TO PROPERTY .....</b>	<b>180</b>
19.1. FULFILMENT OF COMMITMENTS REGARDING INTERNAL PUBLIC DEBT.....	180
19.2. IMPACT OF CONSTRUCTION ACTIVITIES ON DILAPIDATING BUILDINGS AND CONSTRUCTIONS .....	181
19.3. RIGHT TO PROPERTY IN CRIMINAL CASES .....	182

<b>20. ELECTORAL RIGHTS</b> .....	185
20.1. HATE SPEECH .....	186
20.2. VIOLENT INCIDENTS.....	186
20.3. INCIDENTS OF ALLEGED BRIBING VOTERS .....	189
20.4. PROTECTION OF PERSONAL DATA AND IMPACT ON THE WILL OF VOTERS .....	191
20.5. ALLEGED FALSIFICATION OF ELECTORAL BALLOT PAPERS.....	192
20.6. TRANSPARENCY OF FINANCES .....	193
20.7. MEDIA ENVIRONMENT .....	194
20.8. DISMISSAL OF DIRECTORS OF KINDERGARTENS AND SCHOOLS IN THE ELECTION PERIOD .....	195
<b>21. RIGHT TO PROTECT CULTURAL HERITAGE</b> .....	198
21.1. GAPS IN LEGISLATIVE GUARANTEES.....	198
21.2. CARE AND MAINTENANCE OF MONUMENTS IN PRIVATE OWNERSHIP.....	199
21.3. MONUMENTS BELONGING TO RELIGIOUS CONFESSIONS .....	200
21.4. DATABASE OF MONUMENTS/SITES .....	201
<b>22. HUMAN RIGHTS EDUCATION</b> .....	202
22.1. STATE POLICY IN THE FIELD OF HUMAN RIGHTS EDUCATION .....	202
22.2. ANALYSIS OF NATIONAL LEGISLATION .....	203
22.3. PRINCIPLE OF CONTINUES HUMAN RIGHTS EDUCATION .....	205
22.4. COMPONENT OF HUMAN RIGHTS EDUCATION IN THE TRAINING PROGRAMME OF TEACHERS.....	206
<b>23. RIGHTS OF THE CHILD</b> .....	208
23.1. RIGHT TO LIFE.....	208
23.2. RIGHTS OF CHILDREN IN ALTERNATIVE CARE .....	209
23.3. RIGHT TO EDUCATION .....	212
23.4. POVERTY AND INADEQUATE LIVING STANDARD.....	216
23.5. CHILD LABOR .....	217
23.6. VIOLENCE AGAINST CHILDREN.....	217
<b>24. PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES</b> .....	223

24.1. RIGHT TO EDUCATION .....	224
24.2. ACCESSIBILITY .....	226
24.3. EMPLOYMENT OF PERSONS WITH DISABILITIES .....	227
24.4. VIOLENCE AGAINST PERSONS WITH DISABILITIES .....	228
24.5. MENTAL HEALTH.....	230
24.6. HABILITATION/REHABILITATION/MANAGEMENT OF BEHAVIOURAL PROBLEMS OF PWDS.....	232
24.7. SETTING UP/MAKING OPERATIONAL COUNCILS WORKING ON PWD ISSUES AT REGIONAL AND LOCAL LEVELS.....	234
<b>25. THE RIGHTS OF ELDERLY PERSONS.....</b>	<b>239</b>
25.1. VIOLENCE AGAINST ELDERLY PERSONS.....	239
25.2. PROGRESS OF FULFILLMENT OF MEASURES UNDER THE NATIONAL ACTION PLAN ON AGING.....	240
25.3. SOCIAL WELL-BEING OF ELDERLY ON THE LOCAL LEVEL .....	241
25.4. HUMAN RIGHTS SITUATION OF ELDERLY AT RESIDENTIAL CARE HOMES .....	241
<b>26. PROTECTION AND CIVIC INTEGRATION OF NATIONAL MINORITIES.....</b>	<b>244</b>
26.1. PARTICIPATION OF NATIONAL MINORITIES IN DECISION-MAKING PROCESS.....	244
26.2. ACCESS TO EDUCATION .....	245
26.3. TEACHING AND POPULARISING THE STATE LANGUAGE .....	247
26.4. TEACHING NATIVE LANGUAGE TO SMALL ETHNIC GROUPS.....	248
26.5. CULTURAL HERITAGE OF GEORGIA LINKED TO NATIONAL MINORITIES.....	248
26.6. SITUATION IN TERMS OF HUMAN RIGHTS PROTECTION AND INTEGRATION IN THE PANKISI GORGE .....	249
26.7. PROTECTION OF ROMA AND THEIR INTEGRATION.....	250
26.8. ALLEGED CRIMES COMMITTED ON ETHNIC AND RACIAL GROUNDS.....	251
<b>27. PROTECTION OF HUMAN RIGHTS IN THE DEFENCE FIELD .....</b>	<b>254</b>
27.1. THE MINISTRY OF DEFENCE OF GEORGIA.....	254
27.2. THE DIVISION OF SECURITY OF DIPLOMATIC REPRESENTATIONS AND NATIONAL TREASURY OF THE SECURITY POLICE DEPARTMENT OF THE MINISTRY OF INTERNAL AFFAIRS.....	255
27.3. ARBITRARY AND COLLECTIVE PUNISHMENT.....	255

27.4. INCIDENTS INVOLVING DEATHS IN MILITARY UNITS.....	256
27.5. PROTECTION OF RIGHTS OF VETERANS .....	256
<b>28. PROTECTION OF RIGHTS OF CONFLICT-AFFECTED POPULATION .....</b>	<b>259</b>
28.1. RIGHT TO LIFE AND SECURITY .....	259
28.2. DOCUMENTS AND MOVEMENT ON THE OCCUPATION LINES .....	261
28.3. FREEDOM OF EXPRESSION .....	263
28.4. SOCIAL RIGHTS .....	264
28.5. ECONOMIC SITUATION .....	267
28.6. RIGHTS OF PERSONS LIVING IN THE VILLAGES ALONG THE OCCUPATION LINE .....	268
<b>29. PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS .....</b>	<b>270</b>
29.1. LONG-TERM RESETTLEMENT OF IDPS .....	270
29.2. RESETTLEMENT OF IDPS FROM BUILDINGS POSING INCREASED THREAT TO LIFE AND LIMB .....	271
29.3. LEGISLATIVE AMENDMENTS .....	272
29.4. PROBLEMS REGARDING REGISTERING IMMOVABLE PROPERTY ON OCCUPIED TERRITORIES .....	272
<b>30. PROTECTION OF THE RIGHTS OF ECOMIGRANTS .....</b>	<b>274</b>
30.1. RESETTLEMENT OF ECOMIGRANTS.....	274
30.2. PREVENTING ECOMIGRATION.....	275
<b>31. PROTECTION OF THE RIGHTS OF FOREIGNERS IN GEORGIA.....</b>	<b>277</b>
31.1 PROTECTION OF RIGHTS OF ASYLUM SEEKERS AND PERSONS GRANTED INTERNATIONAL PROTECTION .....	277
31.2 LEGAL STATUS OF MIGRANTS.....	280
<b>32. PROTECTION OF THE RIGHTS OF STATELESS PERSONS .....</b>	<b>282</b>
32.1 PROCEDURES FOR DETERMINING THE STATUS OF A STATELESS PERSON .....	282
32.2 LEGISLATIVE CHANGES .....	283
32.3 EXERCISE OF SOCIAL RIGHTS BY STATELESS PERSONS .....	283

# INTRODUCTION

This report by the Public Defender of Georgia has been developed under Article 35 of the Constitution of Georgia, Article 22 of the Organic Law of Georgia on the Public Defender and Article 163 of the Rules of Procedure of the Parliament of Georgia. The report presents challenges and progress in terms of protection of constitutional rights and freedoms in 2018 and discusses the situation in terms of compliance with the recommendations/proposals made by the Public Defender.

The reporting period mainly covers 2018, however, the report also analyses those problems that originated in the previous reporting period and continued to persist in the present reporting period as well.

In 2018, 8,480 applications were lodged with the Office of the Public Defender<sup>1</sup> and relevant legal responses were provided. During 2018, the Public Defender's hotline was open and 6,063 calls were registered. As a result of the examination of individual applications, 107 recommendations/proposals were made. During 2018, the Public Defender submitted *amicus curiae* briefs on 11 occasions, *inter alia*, concerning two cases before the Constitutional Court. Furthermore, 2 constitutional complaints were filed with the Constitutional Court of Georgia; 11 special reports were prepared in 2018.

Throughout the year, within the scope of the competences determined by the Organic Law on the Public Defender, in order to examine the cases initiated based on applications or the Public Defender's initiative, the Public Defender's Office requested respective information from various state agencies, conducted monitoring of closed institutions, received explanations from public officials, studied criminal, civil and administrative cases, and conducted independent studies and analyses of legislations. In parallel, the Public Defender of Georgia actively studied researches and recommendations made by human rights NGOs and in certain cases took their findings onboard.

General assessments made in each chapter of the Public Defender's parliamentary report are based on the information gathered as a result of these methods.

## THE REPORT COVERS THE FOLLOWING TOPICS:

The 2018 Parliamentary Report by the Public Defender of Georgia starts with the discussion around the right to life. In the first place, the report discusses the progress made in the investigation of the proportionality of the use of force against Temirlan Machalikashvili. Throughout the year, the Public Defender's Office was trying to obtain information about the investigation of this case. However, unfortunately, the answers given by the prosecutor's office did not enable us to accurately assess how diligently the investigation was conducted or what other additional actions were necessary. In the Public Defender's opinion, the Parliament of Georgia should employ all possible supervisory levers for establishing the truth in a timely manner about the circumstances surrounding Temirlan Machalikashvili's death.

The report discusses the effectiveness of the investigation of the murder that took place on Khorava Street. In the Public Defender's opinion, it is possible that the investigative tactic did not serve the public interest of identifying all individuals involved in the crime. Accordingly, it was requested to institute investigation on a crime committed by public officials. This recommendation, unfortunately, was not fulfilled and the prosecutor's

<sup>1</sup> 6,640 applications were admitted.

office only started an official examination. The Public Defender calls upon the prosecutor's office once again to inform the public about the results of the official inquiry.

In terms of the right to life, the report discusses the essential shortcomings in the investigation of the murder of the first President of Georgia, Zviad Gamsakhurdia. These shortcomings concern belated investigative actions conducted and the failure to conduct investigative actions of essential nature. The report also addresses disproportionately lenient sentences imposed on the individuals convicted for deprivation of Levan Kortava's life in a penitentiary establishment.

Concerning the right to life and prohibition of ill-treatment, the Public Defender calls for legislative amendment and extension of the mandate to obtain access to the case-files of pending investigations in order to assess and reach a finding concerning the effectiveness of investigations into crimes involving deprivation of life and ill-treatment.

**Effective fight against ill-treatment**, similar to previous years, remains one of the key challenges in the country. In 2018, the Public Defender issued 7 proposals concerning incidents of ill-treatment; however, alleged perpetrators have not been identified to date. While the Parliament adopted the Law of Georgia on the Office of the Inspector General in July 2018, by the end of March 2019, relevant financial resources still have not been allocated to operate the office. This agency should become instrumental in investigating incidents of ill-treatment in future. During 2018, we studied up to 40 closed criminal cases where victims complained about ill-treatment. As a result, problems of investigation were identified in terms of incorrect qualification of crimes, victims' involvement as well as timely, comprehensive and impartial investigation.

The Public Defender of Georgia, as the **National Preventive Mechanism** (hereinafter the "NPM"), annually assesses situation in closed establishments and submits recommendations to the state for improving preventive measures against ill-treatment. We focus on penitentiary establishments, agencies of the Ministry of Internal Affairs and psychiatric facilities. The report discusses challenges and progress in terms of all three directions. There are recommendations made at the end of each chapter to be fulfilled in the long and short run.

Many systemic recommendations made concerning penitentiary establishment are still unfulfilled. We, however, hope that the strategy and the action plan adopted by the Ministry of Justice on 22 February 2019 will have a positive effect in this regard. This report discusses and analyses the practice of placing inmates in de-escalation rooms for a long time; the failure to conduct medical examination in accordance with the Istanbul protocol; application of security measures without adequate reasoning; the lack of rehabilitative measures; difficulties associated with psychological assistance and social work; the problems of the physical infrastructure of various establishments (hygiene, ventilation and minimum living space in cells) and shortcomings in the penitentiary health care. A separate subchapter is dedicated to the condition of the rights of the staff of penitentiary establishments. The report positively assesses the plan of dividing large penitentiary establishments into smaller facilities and the steps made and planned in this regard.

The Ministry of Internal Affairs, in 2018, cooperated with the NPM rather actively. Based on a special methodology, the preventive group assessed statistical data and analysed numerous written documents. While the number of applications filed with the Public Defender concerning police violence has decreased, the indicator of those injuries sustained by arrested persons after their arrest has almost doubled throughout Georgia. It should be mentioned that in Ajara, compared to 2017, the number of incidents involving injuries after arrest increased almost by 9 times in 2018. The adequate and continuous respect for requisite safeguards (notification of family members, lawyer, consulate as well as notification of rights, etc) is deemed by the NPM as crucial for the prevention of ill-treatment. We also deem it necessary for preventing ill-treatment to have all those working spaces equipped with video cameras in which arrested persons are present. Furthermore, for greater respect for procedural safeguards, the Public Defender recommended to the ministry to implement several additional measures in pilot mode (taking an arrested person straight to a temporary detention isolator and ensuring video recording of interrogation).

Psychiatric facilities also fall within the mandate of the NPM. Repair works carried out in the Surami Psychiatric Clinic should be positively mentioned. However, despite the above-mentioned, in our assessment, psychiatric health care remains one of the most important challenges in the country and needs significant fundamental reforms. Similar to the previous years, there are still serious problems in the country in terms of the conditions in large facilities. The conditions and therapeutic environment of 10 large psychiatric facilities which are currently operational do not ensure respect for patients' dignity and protection of their rights. The report discusses physical and chemical restraint of patients; the condition of the rights of formally voluntary patients and the necessity for provision of quality medication. Similar to the previous years, there are problems concerning long-term hospitalisation of patients. Despite the fact that often patients do not need active treatment, they cannot leave the hospital as they have nowhere to go or their family avoids taking them back.

One chapter of the report is dedicated to the **right to liberty and security**. The chapter discusses illegal arrests as well as shortcomings concerning the use of body cameras during the 12 May special operation. The same chapter discusses those incidents, when persons, despite the absence of legal grounds, were not allowed to cross the state border and leave Georgia. The report addresses the investigation of the removal of Ivane Merabishvili from his cell and the fulfilment of obligations determined by the Committee of Ministers of the Council of Europe in this regard.

One chapter of the report is about the **right to a fair trial** and identified shortcomings in this regard. The report discusses institutional problems in the system and draws particular attention to the process of nomination of judicial candidates of the Supreme Court of Georgia. In this context, the report analyses the draft law adopted by the Parliament of Georgia by the first hearing. Furthermore, the report discusses the breach of the requirement of examination of cases within a reasonable time, violation of presumption of innocence, human rights violations in court proceedings and shortcomings of the Code of Administrative Offences of Georgia.

**Protection of the right to equality** remains to be a serious challenge. The Public Defender's practice shows that on many occasions discrimination is caused by stereotypes and wrong perceptions that exist in the public about vulnerable groups. However, the state hardly takes any adequate measures to overcome them.

In the reporting period, the Public Defender's Office examined 158 incidents of alleged discrimination and issued recommendations on 16 occasions and general proposals on 6 occasions. Similar to the previous year, in the reporting period the highest number of applications filed with the Public Defender about alleged discrimination is related to public sector (69%). In terms of the protection of the right to equality, the following remain to be the most vulnerable groups: women, persons with disabilities, and representatives of LGBT+ community. During the reporting period, representatives of religious minorities actively applied to the Public Defender concerning discriminatory crimes against them.

**Achieving gender equality** also remains a challenge in Georgia. According to the Global Gender Gap Index 2018,<sup>2</sup> based on the political empowerment and women in parliament, Georgia is ranked 119 among 149 countries. Based on women's economic empowerment and improvement of labour rights, the situation has not changed substantially. There is a difference between average indicators of estimated earned income of sexes. A male's estimated annual income is double to that of a female's.<sup>3</sup> The challenges existing in terms of reproductive health care and effective realisation of rights are also negatively reflected on the condition of the rights of women and gender equality indicator.

According to the data of the Prosecutor's Office of Georgia, in 2018, 22 murders of women were identified, among them, 7 involved the elements of domestic violence. During the same period, 18 incidents involving attempted murder of women were identified, among them 11 incidents involved domestic violence and 10 incidents involved attempted murder of the wife by the husband.

<sup>2</sup> Information available at: <https://bit.ly/2SGVdqQ>, (accessed 21.03.2019).

<sup>3</sup> Male – USD 14,491; female – USD 7,234.



In 2018, the **condition of the rights of LGBT+ persons** has not changed substantially in the country. Homophobia and influence of anti-gender groups are still rampant and therefore LGBT+ persons still suffer from oppression, discrimination and fall victims to violence.

Despite significant changes, the situation **in terms of freedom of religion** still faces challenges. For years the following problems have not been solved: returning historical property, violations and unequal environment in educational field, obstacles related to religious communities' constructions, and effective and timely investigation of crimes motivated by religious bias. Furthermore, acute intolerance and hate rhetoric against persons with different religious or non-religious convictions are expressed in the political context, media and social networks. For religious minorities usage of public space and media is mostly inaccessible.

In 2018, existence of healthy media environment remained a challenge in terms of **exercise of the freedom of expression** in the country. It is alarming that the state has not investigated the disappearance of an Azerbaijani journalist, Afgan Mukhtarli, to this day.

In terms of **exercise of the freedom of assembly**, the restrictions introduced illegally by law-enforcement authorities concerning placing temporary constructions during demonstrations as well as ineffective management of counter-demonstrations constituted the major problematic issues.

Along with the freedom of expression and the freedom of assembly, **the right to association is one of the fundamental rights in a democratic society**. This freedom ensures self-realisation of an individual together with other individuals, and social and public groups. A strong democracy is based on the very existence of diverse democratic institutions, among which are political parties, non-governmental organizations, religious organizations, trade unions, etc. On account of the attempt by some representatives of state agencies to discredit the activities of non-governmental organisations in the current year, in this report, the Public Defender addresses in a separate chapter the exercise of the right to association in Georgia.

Similar to the previous years, **ecology-related issues remain to be one of the major challenges** in the country, along with the difficult socio-economic situation. Problems related to air pollution are particularly relevant; ineffective legislative regulations and the large-scale data on damage to environment resulting from the violation of legal norms established by law over the years are alarming; environmental and socio-economic issues that resulted from the decisions on the construction of hydro power plants are problematic; the faulty regulations governing constructions are intact and they endanger citizens' right to live in a healthy and safe environment.

Ineffective legislative regulation **in the field of labour safety** has been one of the most acute problems in the country for years and it was assessed by the Public Defender in this reporting period as well. At the same time, the Public Defender's attention was drawn to the working conditions and protection of labour rights of individuals employed in state governed institutions of special importance. From the examples of the staff of the **Emergency Medical Centre, Emergency Management Service, Patrol Police Department and the LEPL 112**, it is clear that the persons employed in establishments with special working regimes constantly endanger their health and the labour legislation of Georgia does not determine the limits of the amount of daily working and overtime hours.

**Ineffective protection of patients' rights** and the inaccessibility of quality services are other important challenges that the Public Defender focuses on in the 2018 report. Despite social security policies, *inter alia*, positive steps made towards provision of the population below the poverty line with subsistence allowance, fight against homelessness and starvation, challenges still remain. These challenges are methodological shortcomings of granting of target benefits, also the lack of uniform and consistent activities of the municipalities concerning homeless persons and providing food to them.

Similar to the previous years, **introduction of effective legislative safeguards for the protection of monuments of cultural heritage** and taking appropriate efficient measures by the state remain problematic.

2018 was significant in terms of exercise of the **right to elections**. During the 2018 presidential elections, the country elected the President of Georgia through direct suffrage for the last time. These elections, unlike the experience of the past few years, were conducted against the background of a particularly virulent campaign, grave accusations and counteraccusations, and extreme political polarisation. The election period was punctuated by various violent incidents; there were more occasions of resorting to hate speech on the part of electoral subjects and representatives of political parties. In the Public Defender's opinion, such an election environment negatively reflects on conducting free, equal and peaceful elections, which in its turn significantly damages the democratic development of the country.

Even after ten years since the 2008 war, the situation in terms of human rights protection is difficult **in the occupied territories**. In this regard, the violation of Archil Tatumashvili's right to life in the occupied region of Tskhinvali was the gravest event in 2018. This case prompted the Georgian authorities to lodge the third interstate application against the Russian Federation with the European Court of Human Rights. The situation concerning the violation of Georgian citizens' right to life, right to security, right to education and children's rights, breach of the freedom of movement and discrimination based on ethnicity is similarly difficult in the occupied territories and along lines of occupation.

The Public Defender's parliamentary report contains a **chapter on teaching human rights** for the first time. The report analyses the state policy and the relevant strategic documents in this regard; the report presents the analysis of the legislation in force in the context of preschool and general education. At the end of the subchapter, relevant recommendations are given concerning changes to be made to various normative acts.

The Public Defender's practice shows that the ineffective public policy **for the protection of the child's rights** led the state system of child care to a state of crisis. The state does not allocate enough resources for maintaining and reinforcing the systemic changes introduced in the field.<sup>4</sup> The state does not have the appropriate vision for empowering the families finding themselves in crisis. The death of four-year old N.Z. demonstrated the ineffectiveness of response to the incidents of domestic violence and the failure of the childcare system. A minor lived without a legal ground with her biological family, whereas the competent authorities did not adequately respond to the information about violence against the child.

Despite numerous recommendations made by the Public Defender, the concept and relevant service for the rehabilitation of children and victims of sexual violence have not been introduced to this day.<sup>5</sup> The indicator of leaving schools is high; children leaving and working in streets, marrying at young age and involved in labour are particularly vulnerable. The care provided by the state for children placed in boarding schools under religious organisations remains problematic.

Similar to the previous years, there are numerous challenges in terms of equal and effective realisation of the **rights of persons with disabilities**. No significant steps have been taken for the implementation of the Convention on the Rights of Persons with Disabilities. No state agency has been determined to be in charge of the coordination of this process.

The following issues are identified as particularly problematic: inaccessibility of the environment, information and services as well as the quality of inclusive education, the low indicator of employment of persons with disabilities,<sup>6</sup> protection of the rights of persons with mental health problems, lack and ineffectiveness of the programme for the habilitation/rehabilitation of disabled children and adults. There seems to be no progress in terms of the development of services based on social integration and rehabilitation. Despite the positive

4 The number of state psychologists and social workers is critically low and their working conditions require substantial improvement.

5 In 2018, investigation was instituted in 331 incidents involving the violation of the sexual integrity and freedom of those under 18.

6 In 2018, only 99 persons with disabilities were employed within the framework of employment promotion programme, whereas 6,073 persons expressed their wish to be employed and registered at [www.worknet.gov.ge](http://www.worknet.gov.ge).

tendency in the increase of the budget allocated for the state programme of mental healthcare,<sup>7</sup> adequate development of this field remains to be a serious challenge for the country.

The Public Defender discusses annually the problems existing in terms of the **condition of the rights of elderly persons** in the country and also makes numerous recommendations to relevant agencies. However, unfortunately, it must be said that the state does not take effective measures for the improvement of the situation of the elderly. The following issues are among systemic problems: discrimination of the elderly based on age, violence, including domestic violence, dire socio-economic and living conditions, risks of poverty and homelessness, problem of accessibility to the physical environment, lack of long-term strategy on comprehensive care for the elderly, ineffectiveness of social services, insufficient targeted programmes, the lack of measures taken for the welfare of the elderly at local level, etc.

In terms of the **protection and civic integration of national minorities**, education, teaching the state language, protection of cultural heritage, participation in decision-making process and many other important issues involving national minorities remain relevant. To this day, no efficient measures have been taken for facilitating the participation of national minorities in decision-making process.

The Public Defender's practice shows that ethnic and racial intolerance remains to be an acute problem in the country. In this regard, the murder of Vitali Safarov motivated by xenophobia was a particularly alarming incident. According to the circumstances depicted in the case-file, the victim sustained lethal injuries in a bar. One of the reasons leading to the altercation and subsequent murder was that Safarov was not speaking in Georgian to customers in the bar.

The Public Defender pays particular attention to the **protection of human rights in the defence field**. This year, for the first time, the working conditions of diplomatic representations' security service of the Security Police Department of the Ministry of Internal Affairs were examined. Employees have to stay in small booths, with no WC and air conditioning or refrigerator. The report pays particular attention to the practice of arbitrary punishments and investigation of deaths in military units. The Public Defender also discusses the need for improving veterans' condition of the rights and makes a recommendation about the necessity of increasing the relevant tax cuts.

The Public Defender, similar to the previous years, also actively studied the **the condition of the rights of IDPs** who are faced with various problems, *inter alia*, living in crumbling buildings. Unfortunately, the measures taken by the state in 2018 were not sufficient and most of the IDPs continue to live in buildings that pose danger to life.

**The condition of the rights of foreigners** and protection of their rights, similar to the previous years, forms an integral part of the Public Defender's annual parliamentary report. However, apart from the aforementioned, this year, for the first time, the Public Defender focused on the condition of the rights of stateless persons.

**In conclusion, the Public Defender hopes that the fulfilment of the recommendations reflected in the report will be a priority for all the respective agencies, which in turn will improve the situation of protection of human rights and freedoms in Georgia.**

---

<sup>7</sup> The programme budget for 2018 was set at GEL 20,550.7; in 2017 – GEL 15,803.9; in 2019 – GEL 24,000.0.

# 1. FULFILMENT OF THE RECOMMENDATIONS MADE BY THE PUBLIC DEFENDER OF GEORGIA IN THE 2017 PARLIAMENTARY REPORT

The annual parliamentary report by the Public Defender contains general assessments, findings and recommendations concerning protection of human rights and freedoms in the country.

The recommendations aim at improving the situation of human rights protection in a particular field and eliminating the violations and shortcomings existing in legislation and practice. In the 2017 parliamentary report, the Public Defender made 344 recommendations for the notice of the legislature and various agencies in the executive. Out of them, 235 recommendations were reflected in the resolution of the Parliament of Georgia.<sup>8</sup> This chapter aims at discussing the key recommendations contained in the 2017 parliamentary recommendations and the progress of their fulfilment. Recommendations have been selected based on their importance in terms of systemic and large-scale nature, and the degree of influence they have on certain rights. Additional information about the issues these recommendations concern is given in the respective thematic chapters of the report.

As a summary, it should be noted that the situation regarding the fulfilment of the Public Defender's key recommendations is not satisfactory. The recommendations that are made for years are often unfulfilled. There are positive examples that are commendable; however, based on quantitative indicators, they do not create a strong positive trend. The decision-making process is in some cases considerably time-consuming and, given the centralisation, cumbersome. Among others, those recommendations that do not require raising financial resources are not fulfilled. There are more difficulties in terms of the realisation of social rights. Several initiatives with social implications that were voiced during pre-election period did not change the picture radically and remained as isolated measures. In terms of the fulfilment of the Public Defender's recommendations, the Ministry of Internal Affairs should be highlighted as a positive example, which showed good results through the newly set up Human Rights Department. The efforts of the Ministry of Justice are also noteworthy in terms of the steps made towards the penitentiary system. Compared with other agencies, the work done by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia is negative. In this case, one of the reasons could be its responsibility for a very wide range of issues, commitments and duties all brought together within one system. This causes paying less attention to certain problems and working on them without prioritization taking into account existing strong centralisation and need for political decisions.

The Public Defender expresses readiness – through close cooperation and communication with all agencies, the use of expertise and experience of the National Human Rights Institution – to make it possible to a maximum degree that substantive changes are made in all fields of human rights protection. The effective effort by all branches of the power towards the timely solution of the problems existing for many years or, where appropriate, for the development of the long-term plan for their solution as well as strict adherence to the developed plans is important. The status of fulfilment of the key recommendations made by the Public Defender in her parliamentary report of 2017 is represented below according to institutions, rights and disadvantaged groups.

<sup>8</sup> Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018 on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia.

## THE COURT SYSTEM

In the 2017 parliamentary report, the Public Defender made key recommendations for the resolution of the systemic problems existing in the judiciary since the existing challenges clearly indicated the need for systemic legislative reform. The following issues were among the recommendations: reforming the process of selection and appointment of judges; laying down objective criteria on ensuring transparency; reforming the legislation governing the High School of Justice and ensuring its institutional independence; reforming the procedure of electing presidents of court (section, chamber) and vesting individual judges with the power to elect presidents; determining by law the clear and foreseeable grounds for disciplinary responsibility of judges, etc. However, none of these recommendations has been fulfilled. The Public Defender of Georgia also requested adoption of the new Code of Administrative Offences that would fully comply with international and constitutional standards of human rights. However, no steps were taken in this regard. It is noteworthy that it is planned to initiate the above draft code at the current spring session of the parliament.<sup>9</sup>

## THE PROSECUTORIAL SYSTEM

As the Office of the State Inspector has yet to become operational, it still falls within the competence of the prosecutor's office to investigate incidents of ill-treatment. Unfortunately, to this day, the number of persons identified as responsible for the incidents of alleged ill-treatment as a result of investigation instituted based on the proposals of the Public Defender is zero. Therefore, our attention is focused on monitoring pending investigations into incidents of ill-treatment. One of the recommendations made to the prosecutor's office in the 2017 parliamentary report was as follows: to supply to the Public Defender, when she expressed her interest, detailed information (with reference to respective dates) regarding investigative and procedural actions conducted within the framework of investigation of ill-treatment. The Parliament of Georgia accepted this recommendation and reflected it in the respective resolution. However, despite numerous attempts by the Public Defender's Office, the relevant detailed information is not supplied. This excludes any possibility of effective supervision on protection of human rights.

The key recommendations made in the Public Defender's parliamentary report of 2017 concerns the case of Temirlan Machalikashvili. The recommendation given to the prosecutor's office suggests to finalize the investigation on proportionality of the force used; to ensure that the family members of the deceased were informed about the progress of the investigation and to release relevant documentation to them. The investigation has not been finalised to this day and the recommendation in this regard remains unfulfilled. The prosecutor's office informed the family of Temirlan Machalikashvili concerning the progress of the investigation and released relevant documentation to them. This is considered as partial fulfilment of the recommendation since the Public Defender implies not one-time but periodic fulfilment of this obligation.

The Public Defender's request to the prosecutor's office to process statistical information on complying with the duty to terminate or suspend covert investigative acts in cases laid down by law was fulfilled. According to the information imparted by the agency, since 1 January 2019, processing information concerning termination and suspension of telephone tapping has started.

Regarding labour safety, the recommendation fulfilled by the Prosecutor's Office of Georgia is important. The agency published on its website the statistics on the outcomes of investigations conducted in incidents involving injuries and deaths at workplaces.<sup>10</sup>

<sup>9</sup> See the short-term plan of the legislative activities of the Government of Georgia for the 2019 spring hearing of the Parliament of Georgia, available at: <https://bit.ly/2CJRVdc>, (Accessed 19 March 2018).

<sup>10</sup> Information available at: <https://goo.gl/u97fkA>.

## THE PENITENTIARY SYSTEM

It is commendable that, following the Public Defender's recommendation, the Ministry of Justice developed a strategy for dividing large penitentiary establishments into smaller facilities and setting up a balanced infrastructure.<sup>11</sup> The Public Defender welcomes the fulfilment of the recommendation and the implementation of the rehabilitation programmes implemented in 2017 in low-risk prison facilities in semi-open prison facilities in 2018; also the implementation of some of the rehabilitation programmes of the semi-open prison facilities this time in the closed-type prison facilities. Among other efforts, the implementation of several programmes implemented in 2017 in the closed-type prison facilities this time in the special-risk prison facilities are positively assessed.<sup>12</sup> The Public Defender deems the respective recommendation to be partially fulfilled.

## PSYCHIATRIC FACILITIES

The Public Defender made a recommendation to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to ensure the study of the needs of patients placed in psychiatric facilities for more than 6 months so that they can be discharged or referred to receive community services and to elaborate the plan for setting up a shelter based on the number of future beneficiaries. Unfortunately, these recommendations have not been fulfilled. According to the agency,<sup>13</sup> efforts are underway to develop standards of mental health services and effective assessment mechanisms. One of the directions in this regard is to develop long-term inpatient service standards with clear standards of patient referrals. These standards will be approved in the near future.

The Public Defender's another recommendation to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia concerned assessing the state supervision over psychiatric assistance and effectiveness of the patients' rights monitoring system by independent experts and developing recommendations. Unfortunately, this recommendation has not been fulfilled.

## SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS

For years, the Public Defender has been recommending the Ministry of Internal Affairs to statutorily determine the duty of police officers to record communication with citizens as well as the procedure and terms of storing the recordings. This recommendation has been partially fulfilled. In particular, in accordance with the change made to the relevant order,<sup>14</sup> a patrolling inspector is obliged to place the recordings, obtained through a body camera attached to the uniform, on the special server where the recordings will be stored for 30 days. Unfortunately, this change did not apply to duties of patrolling police officers and under the wording in force a patrolling police officer has the right to carry out recording with the use of technical means as established by law.<sup>15</sup> Stemming from their official duties, apart from patrolling inspectors, officers of the Central Criminal

11 The Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020 was approved by Order no. 385 of the Minister of Justice of Georgia of 22 February 2019 according to which the design and construction of new small facilities was one of the strategic goals of the order.

12 3 activities implemented in 2017 in closed-type prison facilities were implemented in special risk facilities in 2018.

13 Report on the implementation of the recommendations made with respect to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia in accordance with Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018 on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia.

14 On 26 December 2018, Order no. 1210 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia was amended. Order no. 1210 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 14.1:

“1. A patrolling police officer shall have the following rights: e) For the purpose of response to the breach of public order and public security, protection of the rights of a citizen and a police officer, conducting full and impartial enquiry to carry out video and audio recording with the use of technical means in accordance with the procedure established by law. The Patrol Police Department shall ensure storage and use of the data obtained through video and audio recording in accordance with the procedure established by law.”

Police Department and territorial agencies also have communication with citizens. Apart from the fact that they do not have the duty to record their communication with citizens, and as this falls within the discretion of an officer, the provisions on the procedure and terms of storing the recording do not apply to them.

It is commendable that patrol police officers have been equipped with body cameras with better specifications since May 2018. The new equipment has longer working and recording capabilities and centralised control and data storage capacity. As regards police officers of territorial agencies, according to the information supplied by the Ministry of Internal Affairs, inspector-investigators and senior inspector-investigators use body cameras when performing official duties, except for the Kakheti Police Department units. During the monitoring, the Special Preventive Group established that police officers of territorial agencies had been given the old cameras previously used by patrol-inspectors, the technical capacities of which in terms of recording are weak. Accordingly, police officers of territorial agencies are not equipped with body cameras with modern and improved specifications. Therefore, the Public Defender deems the recommendation concerned as partially fulfilled.

According to the Public Defender's recommendation, the Ministry of Internal Affairs should install video surveillance cameras in police departments, divisions and stations, and at all places where an arrested person, a witness or a person volunteering for an interview stay. This recommendation is only partially fulfilled. According to the Ministry of Internal Affairs,<sup>16</sup> contract no. 614 was concluded on 10 September 2018 for equipping with surveillance system and updating the existing system, within which standardisation of surveillance systems of 219 units under the Police Department is underway throughout Georgia. At this stage, the respective works have been completed in 107 divisions and the rest of the units will have been equipped with surveillance systems by the end of March 2019. Furthermore, stemming from the contract term, the recorder of the surveillance system will have the capacity to store recording for the term recommended by the Public Defender of Georgia.

According to the assessment of the Public Defender's Special Preventive Group, in 2018, adequate coverage of internal and external premises of police divisions by video cameras remained a problem. There are no video cameras installed either on internal or external premises in some of the district divisions. Furthermore, it should be noted that in the majority of those police divisions where surveillance is conducted in the internal premises, the cameras are mostly installed at the building entrance, in front of the space allocated for an officer on duty. In this context, it is crucial to have video cameras installed in interrogation rooms. Video/audio recording of arrested persons' interrogation is a well-established standard of the European Committee for the Prevention of Torture.

## THE CONDITION OF THE RIGHTS OF CHILDREN

The absence of rehabilitation mechanism for children who are victims of sexual violence has been a problem for years. In the 2017 parliamentary report, the Public Defender recommended to the Government of Georgia to set up such a mechanism and develop the concept of a special rehabilitation facility to work on these issues. However, the recommendation has not been fulfilled to date. The systemic shortcomings in the LEPL Social Service Agency remain problematic and this particularly negatively affects the sphere of child care. The Public Defender's recommendation to the Government of Georgia concerning increasing the number of social workers/psychologists and increasing the financial component for logistical/technical provision of this service was not fulfilled. While the Public Defender positively assesses the process of deinstitutionalisation, the protection of the rights of children in large religious boarding schools remains problematic in the country. The Public Defender recommended to the Social Service Agency to continue working in this regard and where

<sup>16</sup> Report on the implementation of the recommendations made with respect to the Ministry of Internal Affairs of Georgia in accordance with Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018 on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia.

appropriate to supply information concerning licensing and the processes existing in the boarding schools. However, the functioning of large boarding schools where the state still does not have an effective control remains a challenge to this day.

## THE RIGHTS OF PERSONS WITH DISABILITIES

In 2018, no effective steps were made towards the fulfilment of the Public Defender’s key recommendations on the exercise of the rights of persons with disabilities (hereinafter “PwD”). The source of the problems existing in this regard is the absence of the mechanism in charge of coordinating the implementation of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the “CRPD”). Despite the recommendations made for years, on the 5<sup>th</sup> anniversary of the ratification of the convention, the authorities could not designate a concrete state agency that would coordinate issues related to the implementation of the convention in various fields and sectors. Accordingly, the country does not have a uniform vision concerning the practical implementation of this major international convention concerning the rights of PwD. Sporadic measures implemented by various agencies cannot ensure equal realisation of the rights of PwD and improvement of their living standards.

The recommendation concerning the ratification of the Optional Protocol to the CRPD has also not been fulfilled. Due to this failure, persons with disabilities are still unable to have access to the mechanism whereby communications from individuals on human rights violations are sent to the United Nations Committee on the Rights of Persons with Disabilities.

No substantial changes have been made towards harmonisation of the domestic legislation with the requirements under the CRPD. The Draft Law on the Rights of the Persons with Disabilities prepared by the Ministry of Justice of Georgia has not been registered in the Parliament of Georgia to this day.

## THE RIGHTS OF ELDERLY PERSONS

The significant recommendations issued concerning the protection of the rights of elderly persons were also not fulfilled in the reporting period. No targeted state programmes tailored to the needs of the elderly, *inter alia*, home care programme, with due account for geographic accessibility have been developed.

There are no positive trends in Georgia’s municipalities concerning developing targeted state programmes tailored to the needs of the elderly. The initiatives of self-government authorities in this regard are still implemented without the prior assessment of needs; they are mostly limited to one-time allowances and do not serve preventive purposes.

## GENDER EQUALITY

In terms of gender equality, the Minister of Internal Affairs of Georgia complied with the Public Defender’s recommendation and developed a risk assessment instrument for violence against woman and domestic violence which is a crucial safeguard for ensuring victims’ safety and preventing repeated violence.

It is noteworthy that the recommendation by the Public Defender of Georgia concerning maintaining statistics and analysis of violence against women and domestic violence was partially fulfilled. It is commendable that the Ministry of Internal Affairs of Georgia analyses the notifications reported to the LEPL 112 concerning possible incidents of domestic violence and domestic conflicts. The Ministry of Internal Affairs also analyses the data concerning criminal cases and restraining orders. However, there is no uniform methodological



standard concerning gathering and processing statistical data on incidents involving violence against women and domestic violence.

The recommendation concerning introducing prompt, transparent and accessible procedure for reflecting gender identity in all major documents issued by state and non-state agencies for transgender persons has not been fulfilled.

## **SOCIAL AND ECONOMIC RIGHTS**

For years, the Public Defender has been discussing the significant shortcomings of the programme of providing a subsistence allowance to population below the poverty line. It should be positively noted that in the beginning of the current year, in accordance with changes made to the normative acts governing subsistence allowance, beneficiaries will maintain subsistence allowance for a certain period in case of getting employment. However, there are still procedural shortcomings related to allocating subsistence allowance and it is necessary to make requisite changes to address them.

The fulfilment of the recommendation of the Public Defender concerning homelessness is commendable.

The adoption of the Organic Law of Georgia on Labour Safety in February 2019 was a major positive change. In accordance with the law, the labour safety standards will apply to all fields of economic activities from September 2019. Furthermore, the Ministry of Foreign Affairs of Georgia was supposed to carry out activities to institute a ratification procedure with regard to the following international agreements adopted by the International Labour Organisation (hereinafter referred to as the “ILO”): the Convention concerning Labour Inspection in Industry and Commerce (no. 81); the Convention concerning Labour Inspection in Agriculture (no. 129); the Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (no. 131); and Convention concerning Occupational Safety and Health and the Working Environment (no. 155). The above recommendation has not been fulfilled despite the fact that the European Union/Georgia Association Agreement has addressed the ratification of the ILO conventions since 1 September 2014, and as of today, the legislation of Georgia in terms of labour safety is mostly compatible with the standards established by the conventions, which should make their ratification easier.

One recommendation has been only partially fulfilled. According to the recommendation, in the process of long-term resettlement of IDPs in 2018, the priority had to be given to the settlement of IDPs from those densely settled buildings that were breaking down and posed serious threat to life and health. While the ministry refers to the resettlement of the crumbling buildings as the priority, the efforts made in this regard are not enough for the resolution of the problem. In 2018, 1,409 families were resettled and out of them only 337 families are resettled from buildings posing serious threat, which constitutes approximately 24% of the number of resettled IDPs.

The steps taken by the state towards the fulfilment of the Public Defender’s recommendation in the pharmaceutical field are positively assessed. The recommendation concerned development and improvement of the terms of pharmaceutical activities, their supervision, manufacturing pharmaceutical products, their distribution, storage and placement and terms of use. The recommendation aimed at protecting patients’ rights remains unfulfilled and this remains a challenge in the field of health care.

When working on social rights, the Public Defender further invokes the Non-Discrimination Law. In the context of the right to equality, the recommendations made to the Government of Georgia are particularly noteworthy. These recommendations concern providing a social package to individuals with significantly and moderately expressed disability and employed in public office.<sup>17</sup> These recommendations also concern the

---

<sup>17</sup> Social benefits under Resolution no. 279 of the Government of Georgia of 23 July 2012 on Determining Social Package.

accessibility of existing social and healthcare state programmes for persons with residence permit on equal footing with citizens of Georgia. Unfortunately, neither of these recommendations has been complied with to this day.

The recommendation made to the government that all persons having a veteran status should benefit from subsistence allowance is not fulfilled.<sup>18</sup> Since discussing this issue in the annual reports for years and the use of the parliamentary forum have been proved futile, the Public Defender lodged a constitutional complaint with the Constitutional Court of Georgia. The problem concerning provision of food and transportation costs for those doing mandatory military service in the Facilities Protection Department and the Escort Department of penitentiary establishments have not been dealt with.

## THE CONDITION OF THE RIGHTS OF PERSONS AFFECTED BY CONFLICT

The Public Defender's recommendation concerning rehabilitation of houses on the territory controlled by Georgia, damaged as a result of hostilities, and/or reimbursement of damages suffered remained unfulfilled. The temporary governmental commission for responding to the needs of the conflict-affected population in the villages located along the occupation line regularly examined this issue for the past 5 years, including at the hearing held in 2018. However, rehabilitation of houses damaged as a result of the war and/or reimbursement of damages inflicted have not taken place to this day.

One of the recommendations the Public Defender made to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia was to increase financial allowances for the medical personnel working on the occupied territories. Unfortunately, neither the personnel of emergency assistance nor the personnel of outpatient facilities in the Gali district had their financial allowances increased and it is significantly lower than the remuneration of medical professionals working on the territory controlled by Georgia.

For the past few years, economic situation has become harder on the territory of Abkhazia, especially in the Gali district. In 2017 report, the Public Defender made a recommendation to the Government of Georgia to discuss and instruct relevant authorities to develop a social security programme for persons living on the occupied territories. According to the information supplied by the Government of Georgia, during 2018, the government did not even discuss this issue. Considering the dire social situation in the occupied territories, it is important that there should be active measures taken by the Government of Georgia for the development of this programme.

## FREEDOM OF BELIEF AND RELIGION

In 2017, numerous recommendations were made concerning the freedom of belief and religion. Most of them concern the systemic problems that have been left without redress for years.

Investigation of crimes motivated by religious bias is one of the main challenges. Investigation of alleged persecutions based on religion and incidents of obstruction of religious worship committed against Muslims in various Geographic areas of Georgia in 2012-2014 are still pending without any results in some cases; investigation is discontinued in other cases.

While there is an improvement in terms of law-enforcement authorities adequately categorising crimes motivated by religious bias that had been problematic for years, effective and timely response to such crimes

<sup>18</sup> To this end, changes were to be made to Resolution no. 4 of the Government of Georgia of 11 January 2007 on Monetisation of Social Benefits.

remains to be a significant challenge. Jehovah's Witnesses are the most vulnerable group in terms of alleged hate crimes. They often become victims of aggression from various individuals. Furthermore, there are problematic issues related to delaying the study of the cases and maintaining adequate communication with alleged victims by investigative authorities.

The Public Defender and the Council of Religions under the Public Defender have been demanding for years the abolition of those unequal provisions of the legislation that create a discriminatory environment for non-dominant religious groups. The Parliament of Georgia has not made any efforts to eradicate discriminatory provisions towards religious associations laid down in the Tax Code and the Law of Georgia on State Property.

The recommendations concerning the restitution of the buildings of worship seized during the Soviet period are significant. Similar to the previous years, the state did not take any measures to study and return the property to historical owners. The policy of partial compensation for religious associations over damages suffered in the Soviet totalitarian period is still discriminatory; the respective governmental resolution that provides for such compensation only for 4 religious associations has not been amended.

The recommendations made to the Ministry of Education, Science, Culture and Sport of Georgia concerning respect for religious neutrality and following the requirements of the Law of Georgia on Secondary Education in public schools were not fulfilled. The ministry has not worked towards setting up groups of special monitoring and response that would proactively monitor the implementation of requirements of the Law of Georgia on Secondary Education in public schools and respond in case of breaches. No special action plan has been developed to establish religious neutrality and culture of tolerance in schools.

Respect for religious neutrality by local self-government authorities remains to be problematic. Like previous years, in 2018 too, the local Muslim community was not issued with a construction permit to build a new mosque in Batumi.

## **PROTECTION AND CIVIC INTEGRATION OF NATIONAL MINORITIES**

The 2017 parliamentary report covered the following issues: participation of national minorities in decision-making process; access to information on current events in the country; facilitation of preschool, secondary, higher and vocational education; protection of cultural heritage; enhancement of learning the state language and other important issues. According to the information received from state agencies, some recommendations have been complied with; other recommendations are inadequately fulfilled or have not been fulfilled at all.

Despite numerous recommendations, no effective steps have been made to facilitate enhancing the participation of national minorities in decisions-making process. Participation of national minorities in the activities of *Samgeoba* and *Sakrebulo* of Marneuli municipality (which is densely populated by national minorities) is minimal. There are no national minorities represented in the central government, city hall and *Sakrebulo* of the capital. It is noteworthy that participation of national minorities in decision making process on the issues related to national minorities is also very minimal.

During 2018, certain steps were made to protect cultural heritage monuments linked to national minorities. However, these measures only cover a very small portion of cultural heritage monuments. Accordingly, the recommendation concerning the protection of cultural heritage monuments of national minorities has not been completely fulfilled.

## FREEDOM OF INFORMATION

By the resolution of 19 July 2018, the Parliament of Georgia accepted the recommendations made by the Public Defender in the 2017 report and instructed the Ministry of Foreign Affairs to finalise the domestic procedures for submitting the Council of Europe Convention on Access to Official Documents of 18 June 2009 to the Parliament for its ratification in 2018.<sup>19</sup> The parliament also laid down the obligation of the Government of Georgia to initiate the Draft Law of Georgia on Freedom of Information in a timely manner.<sup>20</sup> Paragraph 63 of the short-term plan of the legislative activities of the Government of Georgia for the 2019 spring hearing of the Parliament of Georgia provides for the elaboration of Draft Law on Freedom of Information. However, it has not been initiated to date. Unfortunately, the domestic procedures for submitting the Council of Europe Convention on Access to Official Documents of 18 June 2009 to be ratified by the parliament have not been finalised.<sup>21</sup>

## PROTECTION OF MIGRANTS FROM ILL-TREATMENT

Introduction of procedures for destroying expired medication in temporary placement centres for migrants, following the Public Defender's recommendations, is commendable. The steps made towards provision of migrants in temporary placement centres with cards, following the Public Defender's recommendation, are also positively assessed. This will enable migrants to buy food with their own money at the catering room located on the premises of the centre and designated for the centre's employees.

## THE CONDITION OF THE RIGHTS OF ASYLUM SEEKERS AND PERSONS GRANTED INTERNATIONAL PROTECTION

The Public Defender requested improvement and extension of the integration programmes for persons granted international protection through the Integration Centre so that more persons granted either the refugee status or international protection benefited from these programmes. This recommendation has not been fulfilled. According to the information supplied by the Integration Centre,<sup>22</sup> the project aimed at facilitating integration of persons granted with international protection was terminated in August 2018, due to the governmental changes.

Another recommendation made by the Public Defender concerned making Georgian language courses accessible for asylum seekers, which has not been fulfilled. Only persons with humanitarian and refugee status are eligible for Georgian language courses. These courses were inaccessible for asylum seekers in the reporting period.

19 Resolution of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017, para. 9.b).

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

21 Letter no. 01/5592 of the Ministry of Internal Affairs of Georgia, dated 11 February 2019.

22 The activities were conducted by the NGO, Public Advocacy within the project funded by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and UNHCR until the governmental changes in July 2018.

## 2. RIGHT TO LIFE

In 2018, serious challenges were again identified in terms of performance of investigative authorities with regard to the protection of the right to life.<sup>23</sup>

The question of how proportionate the use of force against Temirlan Machalikashvili during the special operation was remains unanswered. Furthermore, according to the court judgment, the outcomes of the analysis made by the Public Defender and the results of the temporary investigative commission of the parliament, it was confirmed that the investigation conducted regarding the crime committed on Khorava Street had not been comprehensive and that the significant shortcomings of the initial stage of investigation had not been redeemed.

The context of the protection of the right to life exposed very well the limited nature of the Public Defender's mandate in terms of access to criminal case-files of pending investigations. To address this shortcoming, the Public Defender submitted to the parliament a proposal concerning a legislative amendment and requested extension of the mandate to obtain access to the case-files of pending investigations into crimes involving deprivation of life and ill-treatment.

### 2.1. CASE OF TEMIRLAN MACHALIKASHVILI

The Public Defender's Office examined Temirlan Machalikashvili's case from several aspects.

The issue of proportionality of the force used against Temirlan Machalikashvili is central in this case. Since 2017, investigation on this issue has been pending but unfortunately the Office of the Public Defender of Georgia is not familiar with its details. Stemming from the legislative framework in force, the Public Defender of Georgia can have access to case-files of pending investigations only with the consent of investigative authorities. Despite our numerous public and written requests, the Office of the Chief Prosecutor of Georgia did not give us access to the files of this criminal case.<sup>24</sup> The Public Defender only receives formulaic answers which do not allow assessment of how diligently the investigation is conducted or what other additional actions are necessary.<sup>25</sup> Accordingly, the issue of how effectively investigation is conducted or how well those that are established by the European Court of Human Rights for such investigations, are upheld is unfortunately beyond the reach of the Public Defender and cannot be assessed.

It is also to be mentioned that any member of Machalikashvili's family is not given the indirect victim's status due to which they are not able to have full access to the case-files. For ensuring transparency and accountability of investigation as well as fulfilling the positive obligation to protect the right to life, it is essential to recognize a close relative as an indirect victim in this process.

23 It is noteworthy that a report of the Human Rights Watch also addresses the Khorava Street tragedy involving minors as well as alleged use of disproportionate force against Temirlan Machalikashvili; available at: <https://goo.gl/JddMFR>, p. 243.

24 Letter no. 13/81363 of the Office of the Chief Prosecutor of Georgia, dated 24 October 2018.

25 In the 2017 parliamentary report the Office of the Public Defender of Georgia, it is recommended that the Office of the Chief Prosecutor informed the Public Defender's Office in detail about the investigative and procedural acts (indicating respective dates) carried out. Unfortunately, this recommendation has not been fulfilled even though it was reflected in the resolution of the Parliament of Georgia. In this report, the Public Defender reiterates the recommendation and further refers to this obligation in the context of investigation of other cases involving deprivation of life.

Considering that investigation has been pending for more than one year and its results are unknown to the public and the family of the deceased, we believe that the Prosecutor General, within the report submitted based on Article 172 of the Rules of the Parliament of Georgia, in the context of fulfilling the positive obligations of the right to life, should inform the public concerning the effectiveness of the investigation, obstacles faced and other relevant issues. **In case of failure to fulfil this obligation and/or failing to impart sufficient information, in the Public Defender's opinion, the Parliament of Georgia should employ all possible supervisory leverages for establishing the truth about the circumstances surrounding Temirlan Machalikashvili's death in a timely manner.**

In the same case, the Office of the Public Defender of Georgia, in 2018, with the consent of the State Security Service of Georgia<sup>26</sup> studied the case-files of the investigation conducted by the service and case-files before the court. Furthermore, in order to assess the adequacy of medical treatment provided for Temirlan Machalikashvili, the Public Defender applied to the Agency of State Regulation of Medical Activity and submitted the respective medical documentation. According to the results of the examination of the case-files and the agency's communication, no violation of substantive rights has been found in this regard.

## 2.2. MURDER OF JUVENILES ON KHORAVA STREET

The sentence adopted by the Tbilisi City Court in June 2018, in the case of juvenile murder on Khorava Street, confirmed that the investigation had failed to identify all perpetrators. The Public Defender's Office decided to study the case-files. The study of the case-files made it clear that investigation had been ineffective in various regards; also, multiple shortcomings were identified.

Along with the full study of the case-files, the Public Defender also heard the questioning of the prosecutors and investigators by the parliament's investigative commission. As a result of the joint analysis of the investigative activities that were not conducted or were conducted belatedly and answers given at the commission's hearing concerning the investigative methods undertaken by the competent authorities in charge of the investigation, the Public Defender concluded that it was possible that the investigative tactics were not aimed at the public interest of identifying perpetrators.

The Public Defender found that the group of persons in charge of the investigation failed to provide substantiated answers to the following questions at the commissions' hearing: why the competent officials did not conduct particular investigative actions or why did they not conduct particular investigative actions in a timely manner; why the investigative authorities did not conduct certain investigative actions with regard to the main persons of interest, which were conducted with regard to other persons who were relatively less significant actors involved in the case. It was unclear for the Public Defender's Office which specific strategy and legitimate aim caused passivity of actions on the part of the investigative authorities in several directions.

As a result of the scrutiny by the Public Defender's Office, it was established that either or both elements of the crime committed by public officials was present, viz., **official negligence or abuse of official authority**. This depends on the action behind *mens rea*; was it a purposefully ineffective investigation or negligence, unprofessional attitude and/or superficial approach towards the discharge of their duties. The Public Defender recommended an investigation in this regard.<sup>27</sup>

<sup>26</sup> The Public Defender's Office welcomes such cooperation between investigative authorities (in this case, the State Security Service) and the Public Defender's Office when investigation of deprivation of life is at stake.

<sup>27</sup> Letter no. 15-11/9172 of the Public Defender, dated 11 July 2018, sent to the Prosecutor's Office of Georgia. The letter contained a proposal requesting the institution of investigation.

It is noteworthy that the Public Defender's Office submitted a recommendation to the parliament as well<sup>28</sup> indicating the importance of incorporating the following recommendations made as a result of the temporary investigative commission's work into the resolution of the parliament: (1) instituting investigation on the crime committed by public officials (which by its content is the same as the request given in the Public Defender's proposal concerning institution of investigation); and (2) charging the individuals involved in the crime in the commission of murder by a group.

Later, after the completion of the work by the parliament's investigative commission, when the parliament voted for the resolution and submitted respective recommendations to the prosecutor's office, the Public Defender again requested access to study the case-files of the pending investigation in order to assess what additional investigative actions were conducted with regard to all the persons involved in the murder of D.S. **However, the Ministry of Internal Affairs, unlike other approaches taken earlier, refused to allow access to the case-files invoking the relevant legislative provision.**<sup>29</sup>

Unfortunately, the prosecutor's office failed to comply with the Public Defender's proposals and recommendations at any stage and only instituted official inquiry on the substantive mistakes made during the investigation since it was deemed that the shortcomings, despite their outcomes, did not constitute a crime. The official inquiry is still pending and is not finalised yet.<sup>30</sup> The Public Defender of Georgia made a public statement on 1 December 2018 urging to make public the outcomes of the inquiry and allowing the Public Defender's Office to study the case-files; however, unfortunately, this recommendation has also not been complied with.

It is noteworthy that the prosecutor's office demonstrated a non-uniform approach towards ineffective investigation of a crime involving death – either murder or deprivation of life. For example, in another instance, where investigation of deprivation of life was not conducted in an effective manner, the prosecutor's office instituted investigation on official negligence by law-enforcement officers.<sup>31</sup>

In this case, on 9 September 2014, the European Court of Human Rights, by its decision<sup>32</sup> struck the case of *Zhana Džebniauri against Georgia* out of the list of cases. In accordance with the decision, the government's declaration provided that, along with other circumstances, having regard to certain deficiencies observed in the course of the criminal investigation of case no. 07051275, the government acknowledges a breach of the state's positive obligations under Article 2 of the Convention. It is noteworthy that, despite an investigation being instituted, in this case too, the prosecutor's office failed to identify perpetrators that committed a crime by conducting ineffective investigation.

### 2.3. OUTCOMES OF THE STUDY OF THE CASE-FILES OF THE INVESTIGATION CONDUCTED ON THE ALLEGED MURDER OF ZVIAD GAMSAKHURDIA, THE FIRST PRESIDENT OF GEORGIA

In September-November 2018, the Public Defender studied the 16-volume case-files in the pending criminal case of Zviad Gamsakhurdia's death, among them the finding of the parliament's commission, and presented the outcomes of the examination to the public on 26 December 2018. The full case-files contained the results of the investigation conducted from 5 January 1994 until November 2018 and the findings reached by the

28 Letter no. 15/12007 of the Public Defender, dated 19 September 2018, sent to the Parliament of Georgia. The letter contained the recommendation.

29 Letter no. 1 18 03127725 of the Ministry of Internal Affairs of Georgia, dated 27 December 2018.

30 Letter no. 13/9877 of the Prosecutor's Office of Georgia, dated 11 February 2019.

31 Letter no. 13/72508 of the Prosecutor's Office of Georgia, dated 24 September 2018.

32 Available at: <http://hudoc.echr.coe.int/eng?i=001-146983>, (accessed 4 March 2019).

parliament's temporary commission set up to study Zviad Gamsakhurdia's death. It was possible to study the above case-files with the consent of the prosecutor's office.

The study of the case-files show that the investigation failed to present the full picture of Zviad Gamsakhurdia's death; obtain relevant and key pieces of evidence; impose the possible conspirator, perpetrators and accessories to the crime and impose criminal responsibility on them. Unfortunately, investigative actions were not conducted or were conducted belatedly or in an incomprehensive manner.

It is also noteworthy that the law-enforcement authorities were not interested in the reason behind the failure to conduct investigative actions; investigation was not instituted to reveal/establish possible political pressure and possible obstruction of investigation, destruction of evidence and other criminal actions.

The Public Defender of Georgia positively assessed the legislative amendment made by the Parliament of Georgia under which the statutory limitation of the crime was extended and the investigation was enabled to conduct additional investigative/procedural actions.<sup>33</sup>

## 2.4. PROPORTIONALITY OF SENTENCES IMPOSED ON THE OFFENDERS CONVICTED FOR THE DEPRIVATION OF LEVAN KORTAVA'S LIFE IN A PENITENTIARY ESTABLISHMENT

The Office of the Public Defender of Georgia examined the sentence delivered by the Kutaisi City Court on 16 December 2018 regarding the deprivation of Levan Kortava's life.<sup>34</sup>

The state's positive obligations under the right to life imply the use of proportionate punishment against those persons that are convicted of murder. The European Court of Human Rights finds violation in the cases of manifest disproportion between the gravity of the act and the punishment imposed.<sup>35</sup> **Not only** the severity of the sentences but also the manner of their subsequent implementation is relevant in this assessment.<sup>36</sup>

In the present case, the court found 6 employees of penitentiary establishment no. 14 guilty of concealment of crime and abuse of official power. It was established by the judgment that Levan Kortava, placed in establishment no. 14, had been tortured by prisoners placed in different cells, after which he died. This incident was not prevented by the employees of this establishment who had the official duty to do so. Under the judgment of the Kutaisi City Court of 16 December 2018, the following sentences were imposed on the former officers of the penitentiary establishment:

- The director of the establishment, M.Z. was convicted of concealment of crime. Despite the fact that he avoided appearing before the court and that the committed crime also was punished by deprivation of liberty up to 3 years, the court imposed only a fine as a form of punishment;
- Two individuals out of the 6 offenders that were charged with abuse of official power (maximum sanction is deprivation of liberty for 3 years) along with concealment of crime, namely, I. Sh. and I.G. were only imposed a fine and deprivation of the right to hold public office for one year;
- 2 individuals, out of the 6 offenders that were charged with only abuse of official power, were only given a fine and deprivation of the right to hold public office for one year; and the sixth person charged with concealment of crime was given a conditional sentence of deprivation of liberty for one year with a probation period of one year.

33 The Law of Georgia of 27 December 2018 on Amending the Criminal Code of Georgia.

34 In this case a separate judgment is adopted in the criminal case against the prisoners whose action was resulted in the victim's death.

35 *Enukidze and Girgvlani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights 26 April 2011, para. 268.

36 *Ibid.*, para. 269.



The judgment of the Kutaisi City Court of 16 December 2018 does not refer to the mitigating circumstances regarding the convicted persons.

Despite the fact that the above officials were not directly responsible for the torture and murder of the prisoner, it was their duty to ensure his security in the penitentiary establishment and to prevent deprivation of his life. After the death of the prisoner, it was their duty to facilitate an investigation. Based on these very considerations, their actions should be assessed in the light of Article 2 of the European Convention on Human Rights, which implies effective investigation and adequacy of imposed punishment. Each public official should be aware that such grave violation of human rights will entail strict response from the state authorities. The Public Defender of Georgia hopes that the approach of the courts of Georgia in this case and similar crimes will be strict and the imposed sentence will comply with the requirement of proportionate punishment.

## 2.5. NECESSITY OF THE PUBLIC DEFENDER HAVING ACCESS TO THE CASE-FILES OF INVESTIGATIONS OF ILL-TREATMENT AND/OR DEPRIVATION OF LIFE

On 29 November 2018, the Public Defender of Georgia applied to the Parliament of Georgia to be vested with the authority to study case-files of certain categories of criminal cases until the end of investigation. The Office of the Public Defender of Georgia examined numerous applications which showed that alleged violations of human rights could not be comprehensively assessed without studying case-files. **There are numerous cases involving deprivation of life and ill-treatment that were committed years ago wherein investigations are still pending and perpetrators are yet to be identified. Nobody knows what investigative actions are conducted and how timely and comprehensively various procedural actions were conducted.**

Under the legislation in force, the Public Defender of Georgia studies criminal case-files after proceedings are over; this is when investigation or criminal prosecution is over or the court delivers a judgment. Due to this restriction, the Public Defender's Office is unable to study such cases which involve, for instance, ill-treatment or deprivation of life and investigation of which continues for years.

In the past, the Public Defender's Office paid particular interest to those cases which attracted public interest in terms of rule of law, human rights protection and concerned the state's procedural obligations regarding effective investigation. These cases were studied only on those isolated occasions when the consent was issued and it demonstrated the effectiveness of this mechanism.

In 2018, the Prosecutor's Office of Georgia did not give consent regarding two out of three cases involving deprivation of life: (1) Temirlan Machalikhshvili's case; and (2) murder of K.A. where the applicant alleged destruction of evidence.<sup>37</sup> These cases clearly showed the necessity of extending the scope of the Public Defender's powers in terms of access to case-files of pending investigations.

It is noteworthy that such authorities are vested with many European Ombudspersons (e.g., Finland, Sweden, Denmark, Estonia and Lithuania) and fully compatible with the principle of separation of powers.<sup>38</sup> Vesting the Public Defender with this kind of authority would be an additional means for ensuring democratic accountability of the Prosecutor General of Georgia.

<sup>37</sup> Letter no. 13/58364 from the Prosecutor's Office of Georgia, dated 1 August 2018.

<sup>38</sup> Letter no. 15-1/14789 of the Public Defender, 29 November 2018, sent to the Parliament of Georgia. The letter contained a proposal requesting "vesting the Public Defender of Georgia with the authority of having access to case-files of particular criminal cases before the termination of investigation", p. 6.

## RECOMMENDATIONS

### To the Prosecutor's Office of Georgia:

- To conduct effective, thorough, timely and transparent investigation to assess the proportionality of the force used against Temirlan Machalikashvili;
- To inform the public by the end of month about the outcomes of official inquiry instituted on account of shortcomings identified in the investigation of the murder of juveniles on Khorava Street; to share the case-files of the inquiry with the Public Defender's Office; based on the outcomes of the official inquiry, to consider instituting investigation on account of either official negligence or abuse of official power;
- To continue the pending investigation on the possible murder of Zviad Gamsakhurdia; to conduct all investigative actions for obtaining/verifying information; to analyse information adduced by family members of the deceased and their lawyer and verify their recount of events;
- The Prosecutor General of Georgia to present opinion – submitted following Article 172 of the Rules of the Parliament of Georgia – concerning effectiveness of investigation on deprivation of life; and
- Within the framework of investigation on deprivation of life, to supply to the Office of the Public Defender of Georgia requested information regarding investigative and procedural actions, with a reference to respective dates.

### To the Parliament of Georgia:

- Within the procedure established under Article 172 of the Rules of the Parliament of Georgia, to examine the issues relevant for the investigation of alleged use of disproportionate force against Temirlan Machalikashvili and assess them appropriately;
- After the examination of the issues relevant for the investigation of alleged use of disproportionate force against Temirlan Machalikashvili, to consider the possibility of setting up a temporary investigative commission; and
- To amend the Organic Law of Georgia on the Public Defender to the end of vesting the Public Defender with the power to access case-files of cases involving ill-treatment and/or deprivation of life before the termination of investigation..

### 3. PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The task entrusted to the National Preventive Mechanism, as a part of the global system of prevention of torture, is to identify risk factors of torture and other cruel, inhuman or degrading treatment or punishment and follow up on them, and elaborate recommendations aimed at eradicating these factors.<sup>39</sup>

To this end, in 2018, the Special Preventive Group made visits to the following penitentiary establishments: 37 visits to 8 penitentiary establishments; 12 visits to 5 psychiatric facilities; 50 visits to 50 police divisions; 26 visits to 22 temporary detention isolators;<sup>40</sup> 37 visits to 37 children's homes; 2 visits to 2 homes for persons with disabilities; and 3 visits to monitor return flights of migrants from European Countries.

In the 2017 parliamentary report, the Public Defender, within the mandate of the NPM, issued 65 recommendations for the notice of the penitentiary system, the Ministry of Internal affairs and psychiatric facilities. Out of this, 10 recommendations are fulfilled, 16 recommendations are partially fulfilled and 39 recommendations are not fulfilled.<sup>41</sup>

#### THE PENITENTIARY SYSTEM

The Public Defender welcomes the fulfilment of several recommendations in 2018 and efforts aimed at improving the conditions in penitentiary establishments. The following is positively assessed: closing establishments nos. 7 and 12 and transfer of prisoners to another renovated establishment; abolishing the so-called barrack type dormitories in establishment no. 14; allowing accused and convicted persons to use a fridge;<sup>42</sup> arranging greenhouse farming and cotton-processing workshops in establishment no. 5; and providing transportation to the staff of establishments nos. 5, 6, 16 and 17.

**Despite the above mentioned positive steps, the penitentiary system needs significant fundamental reforms that will aim at developing a system that is based on human rights, positive change in the behaviour of convicted persons, their rehabilitation and their reintegration into the society.**<sup>43</sup> In this regard, the approving by the Minister of Justice of Georgia in 2019 of the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020 is commendable. The action plan importantly reflects the recommendations made by the Public Defender over the years. The Public Defender hopes that the implementation of above mentioned action plan will contribute considerably to the development of a penitentiary system based on human rights.<sup>44</sup>

39 The United Nations, the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 5 (C), twelfth session, Geneva, 15-19 November 2010, available at: [https://digitallibrary.un.org/record/699284/files/CAT\\_OP\\_12\\_6-EN.pdf](https://digitallibrary.un.org/record/699284/files/CAT_OP_12_6-EN.pdf), (accessed 19.03.2019).

40 7 focus groups were organised with lawyers for studying the legal status of detained persons.

41 See the methodology of the monitoring conducted by the National Preventive Mechanism in the 2017 parliamentary report of the Public Defender of Georgia, pp. 55-56.

42 The Order of the Minister of Justice of Georgia of 5 October 2018 made changes to the bylaws of all 15 penitentiary establishments of Georgia.

43 The Nelson Mandela Rules, Rule 4.

44 Order no. 385 of the Minister of Justice of Georgia of 22 February 2019 on Approving the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020.

The following remains to be a challenge in the penitentiary system: lack of procedural and institutional safeguards against ill-treatment; the large penitentiary establishments where it is more difficult to maintain order and security; ensuring adequate conditions of imprisonment; the problem related to providing adequate rehabilitation services; the lack of such services increases the influence of the criminal subculture and risks of ill-treatment; the existing approaches of maintaining order and security in a penitentiary establishment which are based on negative aspects of managing prisoners' behaviour<sup>45</sup> and diminishes the feeling of fair treatment and increases the likelihood of violent incidents; the legislation governing risk-assessment of convicts and the existing practice of risk-assessment which cannot ensure reduction of risks from convicted persons and not conducive to their rehabilitation: the lack of activities aimed at rehabilitation and resocialisation and lack of contact with the outside world; infrastructural conditions in penitentiary establishments; shortcomings in medical care and preventive health care; mental health care; creation of penitentiary establishments based on equality; and lack of personnel and their working conditions.

Against the background of the existing situation, managers of penitentiary establishments are tempted – in order to maintain order in penitentiary establishments – to allow informal rule of criminal subculture to a certain degree or even facilitate its existence.<sup>46</sup> Similar to the previous years,<sup>47</sup> according to the information received during the monitoring conducted in 2018 (conversation with prisoners and employees of penitentiary establishments), criminal subculture and informal rule in penitentiary establishments remain a significant challenge. In the opinion of the Special Preventive Group, it is necessary to develop a relevant strategy and carry out targeted, complex measures for overcoming the criminal subculture and informal rule.

### 3.1. PROCEDURAL AND INSTITUTIONAL SAFEGUARDS AGAINST ILL-TREATMENT

During 2018, the Public Defender's Office applied twice to the Office of the General Prosecutor of Georgia with a proposal to start investigation on alleged physical violence against a prisoner by an employee of the penitentiary system. It is noteworthy that on both occasions an investigation was launched but criminal prosecution was not instituted against anybody. Furthermore, during monitoring conducted in penitentiary establishment no. 6 in 2018, the members of the Special Preventive Group received information about alleged physical violence against one of the prisoners by prison officers.<sup>48</sup> The prevention of torture and other ill-treatment cannot be effective unless there are legal safeguards against such treatment introduced at the legislative level and implemented in practice. Unfortunately, a significant portion of the recommendations made by the Public Defender in 2017 towards enhancing procedural and institutional safeguards against torture and other ill-treatment are still unfulfilled.<sup>49</sup>

45 It implies punishing, controlling and subduing prisoners with maximum restrictions, prohibitions and discomfort, inter alia, with the use of the criminal subculture.

46 The 2015 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from in 2014. According to the report, the committee was concerned with the phenomenon of informal power structures existing within a prison, which in the committee's view, can sometimes generate risks of intimidation or extortion, and possibly contribute to inter-prisoner violence, para. 56, the report is available at: <https://goo.gl/2f5bwa>, (accessed 28 February 2019)

47 The parliamentary reports of 2015, 2016, and 2017 of the Public Defender discuss criminal subculture existing in penitentiary establishments.

48 Injuries were visible on the body of the prisoner and they were documented by the photographs taken by the members of the Special Preventive Group. The materials were sent to the Office of the Chief Prosecutor of Georgia for instituting an investigation. According to the response received from the prosecutor's office, investigation regarding this incident was launched under Article 144<sup>3</sup> of the Criminal Code of Georgia.

49 *Inter alia*, no steps have been taken towards integrating the penitentiary health care into civil health care in the context of professional independence. Unlike the Ministry of Internal Affairs, the obligation of a medical professional employed in a penitentiary establishment to notify the independent investigative agency about alleged ill-treatment has not been laid down in a legislative act.

In the opinion of the Special Preventive Group, a significant risk of ill-treatment arises from the nefarious practice<sup>50</sup> of placing prisoners in de-escalation rooms for lengthy periods.<sup>51</sup>

For the purpose of effective documenting and investigating of torture and other cruel, inhuman or degrading treatment or punishment, it is necessary to ensure that forensic examinations are conducted in the country in compliance with the Istanbul Protocol. It is noteworthy that the wording of the findings of forensic examination conducted by the LEPL Levan Samkharauli National Forensics Bureau regarding incidents of torture and other ill-treatment do not comply with the requirements under chapters V, VI and Annex 1 (Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) of Istanbul Protocol. In particular, there are questions posed by the investigative authority about whether there is any kind of injury, location and time-frame of infliction of this injury and the cause. According to the national bureau's conclusions, concrete injuries have been inflicted for instance by a solid blunt object and is of a minor nature; then the time-frame of the injury is indicated. It is clear that these conclusions fail to establish a possible link between torture and other ill-treatment, on the one hand, and physical symptoms, on the other hand. This does not comply with the guidelines of the Istanbul Protocol. Moreover, psychological state of an alleged victim is not assessed and the possible link of identified symptoms with torture and other ill-treatment is not established.

According to the assessment of the Public Defender and the Special Preventive Group, it is necessary to adopt complex measures for establishing a practice of forensic examination that would comply with the principles of the Istanbul Protocol. This could imply renovation of the logistical and technical infrastructure, retraining of staff, and revision of the legislation and development of relevant instructions. Therefore, the Government of Georgia should elaborate a plan that would be aimed at practical implementation of the guidelines of the Istanbul Protocol in forensic examinations.

The results of the monitoring conducted in 2018 show that effective identification and documentation of alleged incidents of ill-treatment is not fully ensured in penitentiary establishments. It is noteworthy that in penitentiary establishments, from 1 January to 30 September 2018, only in 8 cases injuries were documented in accordance with the new form of registering injuries;<sup>52</sup> whereas according to the information received from the Special Penitentiary Office of the Ministry of Justice of Georgia, from 1 January to 30 September 2018, 83 accused persons that were brought to penitentiary establishments sustained injuries during arrest and after arrest.<sup>53</sup>

Under the procedure of documenting injuries of accused/convicted persons, the suspicion of a health-care professional concerning possible torture and other ill-treatment of the prisoner is the ground for registering injuries. Stemming from the fact that the criteria based on which a medical professional selects suspicious injuries are not determined by law there is a risk that incidents of ill-treatment will not be fully and effectively identified. Therefore, it is necessary to statutorily determine guidelines for the criteria of selecting suspicious injuries by medical professionals.

50 The practice of placing a prisoner in a de-escalation room remains problematic. During the application of this measure, there is no multidisciplinary intervention on the part of the establishment's personnel to reduce and eradicate risks. Prisoners are prohibited from maintaining contacts with the outside world and they are not provided with clothes and items of personal hygiene. The environment and conditions in de-escalation rooms remain problematic. The rooms are not safe and not arranged in a way to reduce the risk of self-harm to the minimum.

51 Shortly after the expiry of 72-hour term (which is a maximum term), prisoners are placed in de-escalation rooms again.

52 Order no. 131 of the Minister of Corrections and Probation of Georgia on Approving the Procedure for Documenting Injuries of Accused/Convicted Persons as a Result of Alleged Torture and Other Cruel, Inhuman or Degrading Treatment in Penitentiary Establishments of the Ministry of Corrections and Probation of Georgia.

53 Letter no. 32884/01 of the Special Penitentiary Office of the Ministry of Justice of Georgia, dated 9 February 2019.

### 3.2. LARGE PENITENTIARY ESTABLISHMENTS<sup>54</sup>

It is commendable that, following the Public Defender's recommendation, the Ministry of Justice developed the strategy for dividing large penitentiary establishments into smaller establishments and setting up a balanced infrastructure.<sup>55</sup> However, the Public Defender's recommendation concerning addressing the problem of overcrowding in penitentiary establishment no. 15 was not fulfilled. The Public Defender recommended the transfer of convicted persons to another semi-open prison facility. Although according to the above strategy, it is planned to submit the plan of closing penitentiary establishment no. 15, which should also be positively noted. The Public Defender deems it necessary that, in parallel to developing the strategy of dividing the system into smaller establishments, the criminal justice policy should be aimed at the application of non-custodial measures. Furthermore, the existing system of conditional early release should be also revised since there are shortcomings in its implementation.<sup>56</sup>

### 3.3. ORDER AND SECURITY

The existing system of disciplinary proceedings remains a significant challenge in the context of ensuring order in penitentiary establishments. This system does not serve the maintenance of order and protection of the fundamental rights of persons deprived of their liberty in the penitentiary establishments. Despite the recommendations made in 2017, no steps have been taken towards introducing minimum safeguards necessary for a fair system of disciplinary responsibility.<sup>57</sup> It is also problematic that the legislation does not determine the obligation of imposition of disciplinary penalty as a last resort. Furthermore, neither legislation nor practice incorporates conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or resolve conflicts. Such mechanisms are based on trust and constructive relations among the personnel and the prisoners, aimed at establishing positive relations and thus correcting prisoners' behaviour.<sup>58</sup>

Since the Georgian legislation does not differentiate disciplinary penalties according to the seriousness of the act concerned,<sup>59</sup> there is a risk of application of disproportionate penalties. Not even minimum standards of a fair trial are upheld in disciplinary proceedings.<sup>60</sup> Usually, according to the existing practice, a disciplinary penalty is applied without an oral hearing and an order on its application is only substantiated with explanations and reports submitted by the personnel. Prisoners practically do not participate in disciplinary proceedings.<sup>61</sup>

The practice of the application of security measures in penitentiary establishments is problematic. Decisions on visual and/or electronic surveillance are not justified. The use of the above means without appropriate

54 As of December 2018, the number of convicted persons in establishment no. 15 exceeded the limit by 373. As regards establishment no. 2, the number of convicts exceeded the limit for 9 months in 2018.

55 The Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020 was approved by Order no. 385 of the Minister of Justice of Georgia of 22 February 2019 according to which one of the strategic goals of the order was the design and construction of new small facilities.

56 It is still a major problem that decisions are not justified. Also, different approaches of local councils in different cases with identical circumstances are identified, which is manifested by adopting different decisions in such cases.

57 No guidelines on imposition of disciplinary penalties have been developed; the procedure of oral hearing during disciplinary proceedings has not been introduced.

58 The Nelson Mandela Rules, Rule 38.1 and Rule 76.1.c).

59 It is noteworthy that there are two categories of disciplinary offences in penitentiary establishments of Great Britain based on the gravity of a violation: misconduct and gross misconduct; information is available at: [https://www.justice.gov.uk/downloads/offenders/psipso/psi-2010/psi\\_2010\\_06\\_conduct\\_and\\_discipline.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2010/psi_2010_06_conduct_and_discipline.doc), (accessed 16.02.19).

60 The European Prison Rules require that prison administrations should uphold minimum standards of a fair trial, Article 59.

61 The frequent use of solitary confinement cells is problematic in some establishments. The instances of use of solitary confinement cells against prisoners with mental health problems have not been eradicated. Prisoners still claim that they are provoked and then imposed with disciplinary sanctions.

justification results in interference in the right to respect for private life.<sup>62</sup> It should be also noted that the Public Defender's recommendation concerning increasing the term of surveillance recordings at least for ten days has not been fulfilled.<sup>63</sup>

The high security prisons **are based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime. Such conditions are not conducive to positive changes in inmates' behaviour, their rehabilitation and eventual social reintegration.**<sup>64</sup>

Placing prisoners in de-escalation rooms remains problematic similar to the previous years.<sup>65</sup> Furthermore, the recommendation of the Public Defender remains the same that it is necessary to store surveillance recordings from de-escalation rooms for at least one month in all cases. Full search of prisoners are carried out again routinely and are not based on the imminent risk assessment of prisoners.<sup>66</sup> Furthermore the grounds for full (strip) search and body cavity searches are not clearly stipulated.<sup>67</sup> According to the information received by the Special Preventive Group from prisoners during monitoring, full searches are still conducted in penitentiary establishments.

### 3.4. RISK ASSESSMENT AND CLASSIFICATION OF CONVICTED PERSONS

Under the legislation of Georgia, these are the following categories of risks: low, average, increased, and high. Convicted persons of low risk are placed in low risk prison facilities; convicted persons of average risk – in a semi-open prison prisons;; convicted persons of increased risk – in a closed type prison facility; and convicted persons of high risk – in high security prisons. Convicted persons' risks are assessed by the risk assessment team.

#### *Absence of Legal Safeguards in Risk Assessment Process*

The system of risk assessment of convicted persons is a significant challenge in the penitentiary system. In this regard the practice of reassessment of convicted persons and their transfer from semi-open penitentiary establishments to closed type penitentiary establishments is problematic; there are no approaches towards risk reduction and no legal safeguards for convicted persons in the risk assessment process. It is problematic in the context of legal safeguards of convicted persons in the risk assessment process that the Georgian legislation<sup>68</sup> does not lay down the obligation of penitentiary establishments to inform a prisoner during his/her first placement in an establishment about the risk assessment system.

62 Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 December 2012, para. 52, available in English at: <https://rm.coe.int/168069844d>, (accessed 10.02.2019).

63 Procedure on Surveillance and Control through Visual and/or Electronic means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35 of 19 May 2015 of the Minister of Corrections and Probation of Georgia lays down 120 hours (five days) as the minimum term of storing video recordings.

64 The 2016 Report of the National preventive Mechanism of the Office of the Public Defender of Georgia, pp. 40-45.

65 During the application of this measure, there is no multidisciplinary intervention on the part of the establishment's personnel to reduce and eradicate risks. Prisoners are prohibited from maintaining contacts with the outside world and they are not provided with clothes and items of personal hygiene. The environment and conditions in de-escalation rooms remain problematic. The rooms are not safe and not arranged in a way to reduce the risk of self-harm to the minimum. Besides, the recommendation of the Public Defender about introduction of the statutory limit of the term of placement of prisoners in de-escalation rooms to a maximum term of 24 hours has not been fulfilled.

66 **The regulations under the statutes of penitentiary establishments determine administration of full body searches in all occasions of first arrival, temporary leave and return to the penitentiary establishment. Furthermore, based on the decision of the director or another official authorised by the director, full body search can be administered in other cases as well.**

67 The 2016 Report of the National Preventive Mechanism, pp. 71-81.

68 Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015 on Approving Types of a Convicted Person's Risks, Risk Assessment Criteria, Procedure for Risk Assessment and Risk Reassessment, Terms and Procedure for Transferring A convicted Person to another Prison Facility of the Same or Other Type, Also the Procedure for Determining Activity and Authority of the Risk Assessment Team.

It is noteworthy that the decision adopted by the risk assessment team concerning the specific category of risk determines the type of a prison facility in which a convict should serve the sentence, to what extent his/her communication with the outside world and other rights should be restricted. Accordingly, the Special Preventive Group believes that it is necessary to afford the appropriate legal safeguards to convicted persons in the process of risk assessment which will ensure protection of convicted persons; rights in the process.<sup>69</sup> Furthermore, convicted persons should be informed about the specific acts and behaviour<sup>70</sup> what would be reflected positively or negatively on the decision about risk assessment.

### *The Practice of Reassessment of Risks of Convicted persons and their Transfer from Semi Open Establishments to Closed Type penitentiary establishments*

In terms of reassessment of risks of convicted persons and their transfer to another establishment, the practices of their transfer from semi open penitentiary establishments to closed type penitentiary establishments is problematic and their pre-term reassessment are problematic.

Under the legislation in force, transfer of convicted persons from one establishment to another is regulated by Order no. 104 of 26 August 2015 and Order no. 70 of 9 July 2015 of the Minister of Corrections and Probation of Georgia.<sup>71</sup> During a visit to penitentiary establishment no. 2, the group examined the case-files of those convicted persons, who, based on security considerations, in accordance with an order issued based on a letter of a penitentiary establishment's director, were transferred to (closed type) penitentiary establishment no. 2 from (semi open) penitentiary establishment no. 14 in 2018. It is noteworthy that despite the lapse of the 20-day term, the majority of convicted persons transferred were not reassessed in terms of the risks posed by them and they were convicted persons of average risk.

The examination also showed that in some cases of transfers from penitentiary establishment no. 14 to penitentiary establishment no. 2, the director applied to the risk assessment team and requested premature reassessment of risks with regard to the convicted persons concerned, after which risk was set at an increased level. It is noteworthy that the prison director failed to describe the circumstances<sup>72</sup> meriting change in the risk level by the risk assessment team.<sup>73</sup>

The abovementioned shows that, on the one hand, there is the practice of transferring low risk convicts to a closed type prison facility for a long time based on security considerations, without due justification and revision of the decision by risk assessment team and, on the other hand, the practice of risk reassessment with regard to convicts placed in penitentiary establishment no. 2 without due justification. Such practices are not conducive to the protection of convicted persons' rights.

69 Under para. 32 of Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States concerning dangerous offenders, adopted by the Committee of Ministers on 19 February 2014, "offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment." Under para. 20, "Anyone held for preventive reasons should be entitled to a written plan which provides opportunities for him or her to address the specific risk factors and other characteristics that contribute to their current classification as a dangerous offender."

70 For instance, upholding legal regime of a penitentiary establishment, participation in rehabilitation activities, etc.

71 Unlike the procedure established by Order no. 104 Order no. 70 provides significant safeguards in the case of transferring a prisoner from semi-open to a closed type prison facility. Namely, the decision of the Director of the Special Penitentiary Office is reviewed within no more than 20 day by the risk assessment team that in its turn assesses threats posing from a convict and determines the type of establishment where punishment should be served.

72 Under Article 16.5 of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015, "in special circumstances as laid down by para. 4 of this Article, risks posed by a convicted person shall be reassessed based on written referral of the prison director. In this case, the director shall be obliged to describe circumstances meriting change in the risk by the risk assessment team."

73 The examination of the case-files showed that the indicated convicted persons had not violated the order in respective penitentiary establishment, had character references, many of them were involved in rehabilitation programmes, worked in logistics and were even promoted by the prison director.



### 3.5. ABSENCE OF APPROACH CONDUCTIVE TO CONVICTED PERSONS' RISK REDUCTION

In terms of the approach that would facilitate reduction of risks posed by convicted persons, the absence of a uniform system of assessment of convicted persons' risks and needs in the penitentiary system is problematic. The same concerns the practice of artificially discouraging transfers to low risk prison facilities.

As it was established by the monitoring visit carried out by the Special Preventive Group, convicted persons' needs and risks are not assessed in penitentiary establishments by virtue of the uniform system. Therefore, during classification of convicted persons, the individual risks of convicted persons are not studied; specific needs to eliminate these risks are not identified and followed up. This would greatly influence risk reduction and convicted persons' rehabilitation.

Apart from the above mentioned, the monitoring visit carried out in penitentiary establishment no. 16 which is a low risk prison facility showed that convicted persons are obliged to go to the dining area during meal hours three times a day and be there irrespective of whether they want to eat. Moreover, establishment's management obliges convicted persons to walk from the accommodation block to the dining area and back in two lines, in synchrony. The convicted persons are obliged to clean corridors in their living blocks.<sup>74</sup>

It should be noted that, as a result of the influence of the criminal subculture existing in penitentiary establishments, for the majority of convicted persons, it is unacceptable to clean corridors and to walk in synchrony. There were cases when prisoners transferred to penitentiary establishment no. 16 refused to stay in this establishment as it was unacceptable for them to comply with the above rules. Besides, as of December 2018, in penitentiary establishment no. 16, there were 153 convicted persons whereas the limit of this penitentiary establishment is set at 856 convicted persons. These facts clearly show that the rules existing in penitentiary establishment no. 16 negatively affects the motivation of convicted persons to be transferred to low-risk establishment for serving their sentence.

**All the above-mentioned shows that the shortcomings of the legislation governing risk assessment and the existing relevant practice do not contribute to convicted persons' risk reduction and rehabilitation. Deprivation of liberty is still perceived mainly as a punishment and the care for the public safety through isolation of convicted persons from the outside world and less attention is paid to the fulfilment of the objectives of rehabilitation and resocialisation, which in its turn leads to formalistic approach to the risk assessment system.**

### 3.6. PRISONERS' REHABILITATION AND RESOCIALISATION

The activities carried out in penitentiary establishments in terms of rehabilitation and resocialisation are sporadic and are not tailored to individual needs of convicted persons. Individual sentence planning is formalistic.<sup>75</sup> Against the background where there is insufficient staff of social workers in terms of numbers<sup>76</sup>

<sup>74</sup> Under Article 32.3.d) of the statute of the Penitentiary Establishment no. 16 of the Ministry of Corrections and Probation of Georgia, a convicted person shall be obliged to maintain personal hygiene, keep his/her clothes, bed, special living space, hall, corridor, staircase and workspace neatly and cleanly.

<sup>75</sup> During 2018, examination of individual sentence planning showed that individual plans do not comprehensively reflect the work conducted by specialists after identification of the convicted person's needs; on a couple of occasions, the involvement of prisoners in activities (necessary response) are planned so that the forms of risk and needs assessment does not show what needs have been identified; after the completion of activities as stipulated in individual sentence plans the achieved results are not assessed; the activities planned according to identified needs are not sufficient.

<sup>76</sup> For instance, as of December 2018, there were 3 vacancies for social workers in establishment no. 16; 2 vacancies for social workers in establishment no. 17; 3 vacancies for social workers in establishment no. 2; a vacancy for the Head of Social Work Department and one vacancy for a social worker in penitentiary establishment no. 3.

and qualifications<sup>77</sup> (social worker must have a bachelor's degree, master's degree /equivalent to master's degree or doctorate in the field of social work or a certificate of a social worker as stipulated by law), it is impossible to determine individual needs of convicted persons. **In terms of rehabilitation and resocialisation, particularly difficult situation is in special risk penitentiary establishments.<sup>78</sup> Being locked up in cells for 23 hours without interesting and engaging activities in closed-type and high risk security prisons strengthens the feeling of protest, unfairness and hopelessness which creates additional problems in terms of the order and security.** The Public Defender's recommendations made in 2017 concerning increasing daily duration of spending time in the open air (which is one hour) and arranging appropriate conditions for physical exercise in closed-type and high risk security penitentiary establishments has not been fulfilled. At the same time, increasing prisoners' educational and employment opportunities<sup>79</sup> is noteworthy. Despite the positive changes made in 2018,<sup>80</sup> out of 15 penitentiary establishments only in four penitentiary establishments (nos. 5, 14, 15, and 16) a workshop is functioning.<sup>81</sup> In a penitentiary establishment work is not perceived as a positive aspect of the prison regime. The prisoners doing household services still have to do the jobs<sup>82</sup> that are less likely to develop or maintain the skills that would enable them to sustain themselves after release. Moreover, doing such work is associated with a strong stigma. Unfortunately, there is a situation in penitentiary establishments where prisoners responsible for household chores and doing cleaning jobs are stigmatized, isolated from the prison life and marginalised. At the same time, there is a high risk of violence against them. There is an impression that the prison officers take into account the informal prison rule and thus condone the existing situation.<sup>83</sup>

It should be noted that social workers and psychologists working in penitentiary establishments do not have appropriate workspace to work with convicted person in a peaceful and therapeutic environment.

Prisoners' participation in rehabilitation activities is also obstructed by factors such as the criminal subculture and absence of motivation among prisoners. The reasons behind refusal to be involved in rehabilitation programmes are due to informal rules and being under the influence of other prisoners as participation in such programmes is unacceptable for a certain group of prisoners. Therefore, it is important to identify such convicted persons, assess their risks and needs and provide individual consultation for them. Besides, it is important that social workers actively cooperated with prisoners to encourage and motivate them to take part in various activities. The best motivator for prisoners would be offering activities that would influence the reduction of the rest of the sentence<sup>84</sup> or commuting sentence.

### 3.7. PHYSICAL ENVIRONMENT

Despite the planned renovation works,<sup>85</sup> similar to previous years, in 2018 too, the sanitation and hygiene in cells were problematic in penitentiary establishments nos. 2, 8, 12, 14, 15, 17, 18 and 19. There are insect infes-

77 The majority of social workers employed in penitentiary establishments do not comply with the requirements under Article 42.1.c) of the Law of Georgia on Social Work.

78 In 2018, there were only 5 rehabilitation programmes implemented in penitentiary establishment no. 3; **only one rehabilitation activity was implemented in penitentiary establishment no. 6 and no rehabilitation activities were implemented in penitentiary establishment no. 7.** There is a psychologist working individually with some convicted persons in these penitentiary establishments, which is not conducted systematically.

79 These are the following employment opportunities in penitentiary establishments: 1) employment on the premises of the establishment or outside; 2) employment in workshops, and 3) enrolment in household services.

80 Greenhouse farming and cotton processing workshops with respective equipment were arranged in penitentiary establishment no. 5.

81 The United Report of 31 December 2018 on the Statistics in the Special Penitentiary Office of the Ministry of Justice of Georgia, available at: <https://goo.gl/EF9LCV>, (accessed 18.02.19).

82 For instance, distribution of food for prisoners, washing, bringing of food and other items from the shop located on the establishment's premises, cleaning, etc.

83 For more details, see the 2016 parliamentary report of the Public Defender of Georgia, pp. 229 -233.

84 The initiative voiced by the Minister of Corrections and Probation in 2017 is noteworthy in this regard implying that from 2018, the ministry would start working on introducing a new mechanism under which a convicted person working within a penitentiary establishment would have his/her sentence reduced according to the working days.

85 Works accomplished to avoid deterioration caused by wear to the infrastructure.

tations in penitentiary establishments nos. 2, 8, 15, 16, and 17. During visits, monitoring group members saw cockroaches and bed bugs in psychologists' offices, living cells and solitary confinement cells. More than one prisoner showed group members insect bites. The following were problematic in 2018: adequate ventilation,<sup>86</sup> sufficient light,<sup>87</sup> and minimum living space of 4 square metres as established by Article 15 of the Imprisonment Code for each convicted persons.<sup>88</sup> Besides, the Public Defender's recommendation made in the 2017 Parliamentary report concerning ensuring accused persons with 4 square metres as the minimum living space has not been fulfilled.<sup>89</sup> The old, so-called barrack type dormitories<sup>90</sup> are still functioning in penitentiary establishment no. 17. It is necessary to abolish them.

### 3.8. MEDICAL CARE

In terms of penitentiary health care, the following remain problematic: medical personnel's staffing<sup>91</sup> and qualification,<sup>92</sup> maintaining medical documentation in appropriate manner, respect for medical confidentiality, timely medical referral and the overall situation in the system.

Developing a screening instrument for mental disturbances in 2018 should be positively noted. According to the response from the Special Penitentiary Service,<sup>93</sup> the works for incorporating the above document into legal framework are underway and after retraining of medical personnel, it is planned to implement the instrument.

The examination of medical cards by the members of the Special Preventive Group revealed a number of problems<sup>94</sup> that affect providing timely medical care. The visits showed that there were still problems in terms of respect for medical confidentiality. Medical procedures are conducted in the presence of prison staff which breaches medical confidentiality.

Despite expediting medical referral, there are still occasions when the terms<sup>95</sup> of providing medical care<sup>96</sup> are not complied with. It is also noteworthy that **there are patients who have been registered since 2016 but as of December 2018 have not received medical treatment.**

86 Penitentiary establishments nos. 2, 3, 5, 6, 8, 9, 14, 15, and 17.

87 Penitentiary establishments nos. 3, 8, and 14.

88 Penitentiary establishments nos. 2, 8, 12, 14, 15, and 17.

89 Stemming from the presumption of innocence, accused persons should not be in more restrictive conditions compared to convicted persons.

90 In barrack type dormitories, smoking and non-smoking prisoners live in the same area; it is difficult to maintain hygiene and the risk of spreading infectious diseases is high.

91 Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 27 February 2007, according to the CPT, staffing levels should be equivalent to roughly **one medical doctor for 300 prisoners and one qualified nurse for 50 prisoners**. In large penitentiary establishments such as nos. 2, 14, 15, and 17, the ratio of prisoners and nurses is high and therefore it is necessary to provide additional medical staff. See, the Public Defender's Special Report on the Effect of Imprisonment Condition on Prisoners' Health, 2018, p. 32.

92 There are still problems in the field of continuous medical education. The training sessions conducted for medical personnel are mostly about mental health, substance abuse and protection of rights. Training sessions on specialisation are conducted rarely. Computers in medical centres can only access the website of the Ministry of Labour, health and Social Affairs of Georgia. Due to the restriction on the Internet, medical personnel is unable to obtain comprehensive, prompt information about contemporary methods of treatment and diagnostics, guidelines, protocols and medication. This, in turn, affects the quality of medical care.

93 Letter no. 3337/01 of the Special Penitentiary Service, dated 9 February 2019.

94 For instance, medical cards are not structured; records are not organised chronologically; information about the consultation and finding of medical consultants often are illegible. Overall, dynamics of a patient's health condition is not reflected in medical cards, which creates problems in terms of providing continuous medical treatment.

95 For instance, one convicted person was given a recommendation by an ophthalmologist on 17 October 2017 to have an additional consultation in an ophthalmological clinic in civil sector. The diagnosis was circulating cornea, traumatic acute cataract. On 20 October 2017, the convicted person was registered in the uniform electronic database. However, as of 21 December 2018, the prisoner was still awaiting transfer to a clinic.

96 Order no. 31 of the Minister of Corrections of Georgia of 22 April 2015 on Approving the Standards of Providing Medical Care in Penitentiary Establishments, Additional Standard of Providing Medical Care for Persons with Specific Medical Needs, Preventive Health Care Package in Penitentiary Establishments and the List of Basic Medication of the Penitentiary Health Care, Article 8.

Unfortunately, the number of deceased prisoners is higher in 2018.<sup>97</sup> Among others, the number of suicides<sup>98</sup> has increased.<sup>99</sup> The cause of death is mainly problems of somatic health.<sup>100</sup> It is important that the Medical Department analysed each death in order to plan appropriately the measures of preventive health care and to prevent complications of somatic health problems. It is important to pay particular attention to screening for non-contagious diseases and their identification<sup>101</sup> so that prisoners receive timely and adequate medical care and avoid fatal outcomes.

Supplying information to prisoners concerning preventive health care and healthcare services in general remains problematic. The majority of prisoners do not have the above information at all or have some information. Besides, no steps were taken in 2018 towards informing prisoners. Periodical screening for non-contagious diseases also remains problematic. It should be noted that medical personnel mostly respond to clinically manifested diseases and treatment is symptomatic. As regards screening for contagious diseases, it has systemic nature and accordingly the indicator of prisoners being covered by this examination is higher.

Inadequate feeding and low physical activities are significant factors affecting prisoners' health.<sup>102</sup> It should be positively noted that, for redeeming the existing shortcomings, the Special Penitentiary Service concluded a contract with a nutritionist in November 2018.<sup>103</sup> It is also important to increase the daily amount allocated for a prisoners' diet.<sup>104</sup>

### 3.9. CONTACT WITH THE OUTSIDE WORLD

Window shields in short-term visit rooms,<sup>105</sup> absence of privacy during family visits and telephone conversations remain problematic.<sup>106</sup> Despite the importance of video visits, the requisite infrastructure has not been arranged in all penitentiary establishments.<sup>107</sup> Besides, accused persons still are not entitled to long-term visits.<sup>108</sup> Convicted persons placed in special risk prison facilities are not allowed to have video visits.<sup>109</sup>

97 In 2017, 15 prisoners died in penitentiary establishments (5 of them in a civil sector hospital), whereas 21 prisoners died in 2018 (6 of them in civil sector clinics).

98 According to the statistical information posted on the official website of the Special Penitentiary Office of the Ministry of Justice of Georgia, 4 incidents of suicide were registered in 2018; see at: <http://sps.gov.ge/images/temp/2019/02/05/0c06bd21dc6cefb63b55f8c06852ac.pdf>, (accessed 12.03.2019).

99 2 incidents of suicide were registered in 2017 and 4 in 2018.

100 According to the statistical information posted on the official website of the Special Penitentiary Office of the Ministry of Justice of Georgia, the following are indicated as cause of death: sudden death, chronic respiratory and cardiovascular insufficiency, suicide, reduced blood flow to the brain, acute peritonitis, and tumour.

101 Screening for colon and prostate cancer conducted in penitentiary establishments in 2018 should be positively mentioned as well as screening for cervical cancer in female prison facilities; however, it is important to give regular and systemic nature to such measures.

102 Herbert K et al. "Prevalence of risk factors for non-communicable diseases in prison populations worldwide: A Systematic Review", 2012, 379(9830):1975–1982; available at: <https://goo.gl/UvPhVx>, (accessed 28.2.2019).

103 Stemming from the interests of accused/convicted persons, the abovementioned aims at improving significantly the existing typical menu of daily meals, calories of daily ration, nutrition regime and standards, food portion standards and medical diet; as well as developing the catalogue of recipes and food preparation rules.

104 **In 2018, the amount of money allocated for a daily diet of a prisoner without the cost of bread amounts to GEL 3.742. The cost of bread is another GEL 0.625.**

105 Direct contact and communication with family members are key elements for ensuring a prisoner's rehabilitation. Under Rule 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 a manner as possible. Due to the window shield a prisoner is devoid of all physical contact with family members during short-term visits. This shield could be a means of protection. However, despite the fact that in some cases it is important to have physical barriers, it is important that the possibility of physical contact should be the norm and any decisions limiting physical contact should be reasonable, justified and proportionate for the aim sought by such restriction.

106 Telephones are installed in duty offices at the closed-type establishments that it is impossible to make a phone call in a confidential environment

107 Only prisoners at establishments nos. 5, 8, 11, 15, 16, and 17 are allowed to have video visits.

108 The 2017 parliamentary report of the Public Defender, p. 47.

109 *Ibid.* p. 50.

### 3.10. EQUALITY

For creating a penitentiary system that would be based on the equality principle and preventing discrimination, it is necessary to identify the special needs of concrete groups and satisfy those needs. In this regard, there are certain challenges in penitentiary establishments, inter alia, stigma associated with LGBT community, psychological violence, their isolation and marginalisation from prison life. It is necessary that the state developed an appropriate strategic vision to address these problems and deal with challenges.

The following issues are also problematic: adequate rehabilitation of persons sentenced to life imprisonment is also problematic;<sup>110</sup> the restricted access of foreign prisoners to services due to linguistic barriers; the failure to take into consideration when preparing food the needs of prisoners of various religious beliefs; placing juveniles in penitentiary establishments for adults (establishments nos. 2 and 8); and placement of women prisoners with in penitentiary establishments for men (establishment no. 2 where unlike special penitentiary establishments there are no appropriate services.

In this regard, the approval by the Minister of Justice of Georgia in 2019 of the Development Strategy for Penitentiary and Crime Prevention Systems and the Action Plan for 2019-2020 is commendable. According to these documents, one of the strategic objectives, considering the needs of vulnerable groups, is to improve opportunities of employment, vocational studies, education and leisure activities for convicted persons and creation of systems and infrastructure to this end. The Public Defender hopes that, in 2019, the ministry will study the needs of LGBT prisoners, prisoners doing household and cleaning jobs and will develop an action plan based on the identified needs.

### 3.11. PERSONNEL OF PENITENTIARY ESTABLISHMENTS

The monitoring results showed that penitentiary establishments are understaffed. Due to the insufficient number of human resources, the personnel are forced to work in a busy schedule. Overtimes are not registered or remunerated in penitentiary establishments. Due to the existing situation, the majority of the penitentiary establishments' employees have to request and use only half of their vacations.<sup>111</sup> The rest of vacations are not transferred into the next year or reimbursed. While in the 2017 parliamentary report the Public Defender requested conducting a training session on professional burnout for each employee of penitentiary establishments, this recommendation has not been fulfilled to this day.

Penitentiary establishments nos. 3, 14, 15, and 19 are distanced from populated areas. Therefore, the personnel of these penitentiary establishments have to use private or municipal transportation at their own expenses. This creates certain problems for them. In this regard, the practice of penitentiary establishments nos. 5, 6, 16, and 17 is to be mentioned positively as, since 2018, the personnel of these penitentiary establishments have transportation arranged for their commuting. The Public Defender made recommendation concerning this issue also in the 2017 parliamentary report. Unfortunately, it has not been fulfilled fully.

Medical insurance is one of the most significant forms of social security. A recommendation concerning the medical insurance of employees of penitentiary establishment was made in the previous year's parliamentary report too. It should be positively noted that the majority of penitentiary establishments were given medical insurance from 2018. However, unfortunately this new development did not apply to all employees of penitentiary establishments.<sup>112</sup>

110 During 2018, 2 persons sentenced to life imprisonment did not participate in any rehabilitation activities and no rehabilitation activities were conducted at all in penitentiary establishments nos. 6 and 7.

111 Under Article 21.1 of the Labour Code, "an employee shall have the right to use paid holiday for minimum 24 working days annually."

112 Medical insurance is not provided for **those working in the administrative department, lawyers and accountants.**

Employees of penitentiary establishments stay at work for long times.<sup>113</sup> Therefore, it is important to provide them with appropriate food during working hours in order to maintain their health and productivity. Employees of penitentiary establishments have to eat dry food brought from home. It is also noteworthy that there are no canteen facilities for employees in the majority of penitentiary establishments. Therefore, personnel have to have a meal mostly at their office desks. The 2017 recommendation concerning adequate diet was followed by a promise to fulfil this recommendation. The Special Preventive Group hopes that this problem will be solved in 2019.

## PROPOSALS

### To the Parliament of Georgia:

- In 2019, to take all the measures to ensure amending the Imprisonment Code to the effect of determining the obligation of providing minimum living space of 4 m<sup>2</sup> for remand prisoners;
- In 2019, to take all the measures to ensure amending the Imprisonment Code to the effect of determining the right of remand prisoners to long visits with due account to the interests of investigation;
- In 2019, to take all the measures to ensure amending the Imprisonment Code to the effect of allowing convicted persons placed in high security prisons to have video visits;
- In 2019, to ensure amending the Imprisonment Code to the effect of determining the imposition of a disciplinary penalty as a last resort and determining at the legislation and practice levels the use of conflict prevention, mediation and other alternative dispute resolution mechanisms; and
- In 2019, to take all the measures to ensure amending the Imprisonment Code to the effect of determining categories of disciplinary offences (minor offence, grave offence and especially grave offence) and determining appropriate penalties; to introduce oral hearing in disciplinary proceedings.

## RECOMMENDATIONS

### To the Government of Georgia:

- To develop a plan aimed at practical implementation of the guidelines established by the Istanbul Protocol when forensic examinations are conducted.

### To the Ministry of Justice of Georgia

#### *Procedural and Institutional Safeguards Against Ill-Treatment*

- In 2019, to amend Order no. 131 of the Minister of Corrections of Georgia of 26 October 2016 to the end of determining the obligation of healthcare professionals employed in penitentiary establishments to notify investigative authorities about incidents of ill-treatment; and
- In 2019, to take all the measures to develop guidelines incorporating criteria based on which a medical professional selects suspicious injuries when documenting injuries of accused/convicted

113 Most of the staff members have to work in a 24-hour shift.

persons in order to ensure effective identification of incidents of torture and other ill-treatment and documenting them in an adequate manner.

### *Order and Security*

- In 2019, to ensure determining a maximum reasonable term of not exceeding 24 hours of placing in a de-escalation room; to ensure joint multidisciplinary work of a psychologist, psychiatrist, social worker, doctor and staff members of other units of the establishment towards risk reduction/elimination; to ensure safe environment in de-escalation rooms, including lining the walls and floors with soft material; to amend order no. 35 of 19 May 2015 to the end of determining archiving surveillance recordings from de-escalation rooms for a minimum period of 1 month;
- In 2019, through issuing a new sub-legislative act or amending the statutes of penitentiary establishments to determine the obligation of upholding the principle of proportionality during full body searches; to lay down the obligation of offering an alternative method of full body search (scanner) to differentiate full body search and cavity search; to establish the respective procedures for each; to ban requesting a prisoner to take off all of his/her clothes at the same time; and
- In 2019, to amend Order no. 35 of the Minister of Corrections of Georgia of 19 May 2015 to the end of determining the reasonable term of storage of video surveillance recordings (for no less than 10 days).

### *Risk Assessment and Classification of Convicted Persons*

- In 2019, to take all the measures to ensure amendment of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015 to the end of
  - Determining the obligation of informing by a penitentiary establishment of a convicted person about risk assessment criteria and procedures when bringing to a penitentiary establishment and right before the process of risk assessment starts; and
  - Determining the right of a convicted person to submit his/her position and opinion about circumstances based on which risk is being assessed.
- In 2019, to take all the measures to ensure that the Inspectorate General controls and monitors the practical implementation of the requirement under Article 14.1<sup>3</sup> of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015, which implies that in all cases of transfer of a convicted person due to security reasons from establishment of one type to an establishment of a different type within 20 days, risk of the convicted persons must be reassessed and the convicted person must be transferred to the establishment of appropriate type;
- In 2019, to take all the measures to ensure the Inspectorate General controls and monitors the practical implementation of the requirement under Article 16.5 of Order no. 70 of the Minister of Corrections and Probation of Georgia of 9 July 2015, which implies that in all cases of request of premature reassessment of risks, the director of a penitentiary establishment must indicate in detail all those circumstances based on which change in the convicted person's risk was requested; and
- In 2019, to take all the measures to ensure that through amending the statute of penitentiary establishment no. 16 the duty of convicted persons to clean corridors, staircases and other places of common use.

*Prisoners' Rehabilitation and Resocialisation*

- In 2019, to ensure that prisoners of closed-type penitentiary establishments are able to spend in the open air more than one hour a day;
- In 2019, to take all the measures to ensure that rehabilitation programmes implemented in 2018 in low risk prison facilities are implemented in the semi-open prison facilities; to ensure that rehabilitation programmes implemented in 2018 in the semi-open prison facilities are implemented in the closed type prison facilities, taking into account the infrastructure and security considerations; to ensure that rehabilitation programmes implemented in 2018 in the closed type prison facilities are implemented in high risk prisons, taking into account the infrastructure and security considerations; also to ensure that, in 2019, rehabilitation programmes in each penitentiary establishment covers more prisoners;
- To increase the number of psychologists and social workers;
- In 2019, to ensure retraining of those social workers who do not have a bachelor's degree, master's degree /equivalent to master's degree or doctorate in the field of social work;
- In 2019, to extend logistical and technical bases of the social work unit;
- To enable persons sentenced to life imprisonment and held in penitentiary establishments nos. 2, 6, and 7 to take part in rehabilitation activities similar to establishment no. 8; and
- In 2019, to start working on introducing a new mechanism under which a convicted person employed in a penitentiary establishment would have his/her sentence reduced according to the working days.

*Physical Environment*

- In 2019, to take all the measures to transfer prisoners from penitentiary establishment no. 15 to other semi-open prison facility in order to address the problem of overcrowding and to take into account prisoners' residence in this process. Similarly, in order to address the problem of overcrowding in penitentiary establishment no. 2, to transfer prisoners to another penitentiary establishment of the same type and take into account prisoners' residence in this process;
- In 2019, to take all the measures to provide for each prisoner in penitentiary establishments nos. 2, 8, 14, 15, and 17 with 4 square metres of living space; to abolish the so-called barrack type dormitories in penitentiary establishment no. 17; and
- In 2019, to take all the measures to ensure minimum living conditions for prisoners and to this end to ensure adequate sanitary and hygienic conditions in penitentiary establishments nos. 2, 5, 8, 14, 15, 17, 18, and 19; adequate light in penitentiary establishments nos. 3, 8, and 14; inadequate ventilation in penitentiary establishments nos. 2, 3, 5, 6, 8, 9, 14, 15, and 17.

*Medical Assistance*

- In 2019, to take all the measures to equip primary health centres with the requisite amount of IT technology and to provide them with the Internet;



- In 2019, to take all the measures to ensure that by the end of each year a summary/annual epicrisis<sup>114</sup> is written for redeeming shortcomings when filling in outpatient patients' medical cards; epicrisis should briefly describe the dynamics of a patient's health state, consultations conducted, referrals made, researches carried out, diagnoses made, provided care and its results;
- In 2019, to take all the measures for conducting screening for non-contagious diseases in penitentiary establishments; and
- In 2019, to take all the measures to ensure informing prisoners in penitentiary establishments about health-care services, preventive health care and healthy lifestyle by virtue of regular meetings with prisoners placed in penitentiary establishments, information campaign, including dissemination of information bulletins.

#### *Contact with the Outside World*

- In 2019, to take all the measures to ensure short-term visits without window shields in penitentiary establishments nos. 2, 3, 6, 7, 8, 9, 12, 14, 15, 17, 18, and 19; and
- In 2019, to take all the measures to ensure that telephones in closed-type penitentiary establishments are installed at such places where personnel cannot overhear prisoners' telephone conversations.

#### *Equality*

- In 2019, to ensure placing all juvenile convicts in 11 rehabilitation establishments for juveniles; and
- In 2019, to ensure assessment of needs of LGBT prisoners, prisoners doing household and cleaning jobs and development of plans based on identified needs.

#### *Personnel of the Penitentiary Establishments*

- In 2019 and 2020, to conduct training sessions on professional burn-out for each staff member of penitentiary establishments;
- In 2019, to take all the measures for remuneration of overtimes for each staff member of penitentiary establishments;
- In 2019, to take all the measures to ensure that each staff member can use holidays fully;
- In 2019, to provide insurance packages for those working in the administrative department, lawyers and accountants similar to other personnel employed in penitentiary establishments; and
- In 2019, to take all the measures for providing personnel with adequate food in penitentiary establishments; also, to arrange a meal for them in each establishment.

## **SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS**

During 2018, the Public Defender's Office maintained active communication and dialogue with representatives of the Ministry of Internal Affairs. We positively assess the ministry's practice of supplying various data in

114 Doctor's conclusion, exhaustive written explanation of origin, development, progress, treatment and outcome of the disease.

a timely manner. The readiness of the ministry to maintain constructive dialogue with the Public Defender's Office is commendable. Numerous working meetings were organised during which we discussed the fulfilment of the Public Defender's recommendations.

As a result of the fulfilment of the Public Defender's recommendations by the Ministry of Internal Affairs, today there are far more temporary detention isolators (hereinafter "TDI") in the country with medical units than in 2017.<sup>115</sup> Significant changes concerned the statutes of TDIs which determined the obligation of a doctor employed in a TDI to notify the prosecutor's office of Georgia about injuries found on the body of a person brought to TDI when she/he suspects torture or other ill-treatment. It should be positively noted that, since 1 July 2018, the Ministry of Internal Affairs has increased salaries by GEL 250 for 14, 000 employees working on operative issues.

The Public Defender's Office welcomes renovation works conducted to improve infrastructure and living conditions in TDIs in 2018. It should also be noted, however, that the conditions existing in TDIs are still unacceptable considering the enforcement of administrative detention up to 15 days. In this regard, the infrastructure renovation activities planned by the ministry in 2019, including construction of buildings for administrative detention in Tbilisi, are to be noted positively.<sup>116</sup>

In 2018, compared to 2017, the number of the Public Defender's proposals concerning institution of investigation of alleged violence by police officers is decreased.

Despite the individual positive steps made by the Ministry of Internal Affairs, citizens under police control are not guaranteed with sufficient safeguards against torture and other ill-treatment. For instance, it is important that the process of upgrading the video surveillance systems installed in agencies under the ministry has begun and patrol inspectors have been equipped with body cameras with improved technical specifications. However, surveillance cameras are mostly installed at the building entrance, in front of the space allocated for an officer on duty and not in those places where an arrested person, a witness or a person volunteering for an interview stay. It is clear that the video surveillance system cannot serve comprehensively as a safeguard against ill-treatment. Also, the equipment of patrol inspectors with body cameras cannot be considered enough to achieve the objective until it is statutorily determined that the police have a duty to video-record their communication with citizens. As of today, video recording depends on the desire of a patrol police officer. It should be also emphasised that agencies under the Ministry of Internal Affairs still do not guarantee such important means of legal protection as registering all persons brought to police stations indicating their status, the time of entering/leaving administrative buildings; registering when and who requested a call to family/consulate/lawyer and contacted family/consulate/lawyer.

### 3.12. ILL-TREATMENT BY POLICE OFFICERS

In 2018, the number of the Public Defender's proposals concerning institution of investigation on alleged violence by police officers has decreased. In particular, in 2018, the Public Defender applied to the Chief Prosecutor of Georgia with a proposal to institute investigation on alleged violence by police against citizens on 5 occasions and in 2017, on 10 occasions. Compared to 2017, the number of applications lodged with the Office of the Public Defender of Georgia concerning police ill-treatment also decreased in 2018

<sup>115</sup> As of 2018, only in 15 TDIs out of 29 had a medical centre. During 2018, medical centres opened in 8 TDIs (TDIs of Mtskheta, Poti, Sagarejo, Zestaponi, Chkhorotsku, Akhaltsikhe, Khashuri and Kvareli).

<sup>116</sup> We were informed by the Ministry of Internal Affairs about the activities concerning TDIs planned for 2019 during the 2018 presentation of Department of Temporary Detention Isolation on 7 February 2019.

According to the official statistical data available on the website of the Ministry of Internal Affairs,<sup>117</sup> in 2018, the number of complaints against police is reduced. In particular, compared to 2017, the number of claims of arrested persons alleging physical abuse by police is decreased by 27.<sup>118</sup>

As regards the timing of injuries found on the bodies of persons brought to TDIs, the indicator of injuries sustained after the arrest have almost **doubled**. According to the official statistical data of the Ministry of Internal Affairs, in 2017, there were 65 incidents when body injuries were found after arrest; in 2018, there were 116 such incidents.<sup>119</sup> It should be noted that based on the same data, 40% of incidents involving injury after arrest throughout Georgia in 2018 are registered in Ajara. **Compared to 2017, in Ajara, the number of sustaining injuries after the arrest is increased almost by 9 in 2018.** In particular, Batumi TDI has documented 47 incidents of sustaining injuries after arrest on the body of persons brought to the TDI. Whereas, in 2017, there were only 5 such cases in the same Batumi TDI. This indicator has not increased in other regions. Moreover, in some regions there is even a decrease in the numbers. Accordingly, based on the above data, it can be concluded in express terms that police treatment towards arrested persons has considerably deteriorated in Ajara.

As noted above, in TDIs, where members of the Special Preventive Group conduct monitoring, they study the case-files of all arrested persons brought to the respective TDI before the visit day and select those cases which raise suspicions about ill-treatment due to the circumstances surrounding the arrest, place, number and nature of injuries sustained. Based on this principle, in 2018, the Special Preventive Group identified 508 suspicious arrests. These cases involved arrests both in administrative and criminal proceedings. Based on analysing the data by the Special Preventive Group, it is identified that out of the above 508 cases, in 136 cases (26.8 %) individuals sustained injuries during arrest and/or after arrest in administrative proceedings. As regards the trends over the years, in 2016, individuals arrested in administrative proceedings sustained injuries during arrest and/or after arrest in 12.8% of suspicious cases studied by the Special Preventive Group; in 2017, the same indicator was 26.4%. Based on the above, the Special Preventive Group concluded that police treatment of persons arrested in administrative proceedings considerably deteriorated in 2017. In 2018, the dynamics of the previous year has not changed in this regard. In particular, the percentage of the cases where individuals arrested in administrative proceedings have body injuries during arrest and/or after arrest is 26.8%. This indicator is noteworthy, and it merits close scrutiny and appropriate response from the Ministry of Internal Affairs.

According to the data processed by the Special Preventive Group, the following trend is maintained: in approximately one third of the examined cases, (in 2018 – 27.6 %; in 2017 – 30.1%; in 2016 – 31.3 %), the detention protocol does not indicate the injury which is described in medical records made in TDIs. In such cases, there is a strong presumption that an arrested person was possibly subjected to physical violence when under police control. For the sake of fairness, it should be mentioned that the discrepancies between injuries could be partly because of the errors in description of injuries made by police officers. For instance, the administrative arrest protocol does not contain a column where a police officer should indicate injuries found on the body of an arrested person. This leads to establishing uneven standards. Some police officers enter the description of injuries in the detention protocol under the comment section and some do not. Discrepancies between the records could also be partly caused by the practice of superficial examination. In particular, police officers carry out superficial examinations and do not do full body examinations as it is done in isolators.

The Special Preventive Group finds those cases particularly suspicious where the individual brought to a TDI has injuries in the facial area and the police officer indicates in the detention protocol that the arrested

117 Information available at: <https://goo.gl/EF9LCV>, (accessed 04.03.2019).

118 In 2017, 283 arrested individuals brought into TDIs had claims concerning physical abuse by police; and 256 individuals in 2018.

119 The official statistics of the Ministry of Internal Affairs are as follows: **injuries after arrest – 41; before arrest and after arrest – 37; during arrest and after arrest – 23; before arrest, during arrest and after arrest – 15.** The total number is 116. The trend of increase is also confirmed by the Special Preventive Group according to the data processed by SPSS programme: in 2017, 13 incidents of inflicting body injuries were reported and 57 such incidents were reported in 2018.

person has no injuries. There are 19 such cases out of 508 incidents examined by the Special Preventive Group in 2018.<sup>120</sup> Similarly, there were 45 incidents<sup>121</sup> identified where, unlike the entries made in TDIs, the detention protocol had no reference to injuries in the facial area. It is clear that if a person had an injury during arrest, police officers should have noticed it and enter it into the detention protocol. Accordingly, the Special Preventive Group considers that it is necessary on the one hand to add a column to the protocol of administrative detention in which description of body injuries will be described and on the other hand to instruct police officers in express terms to document body injuries identified.

### 3.13. SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

In order to prevent ill-treatment on the part of law-enforcement authorities, it is important to ensure at legislative level that arrested persons have minimum legal safeguards. Under Georgian legislation, minimum legal safeguards are provided for arrested persons such as: the right to receive information about the reasons of arrest and procedural rights in the language understandable for the arrested person; the right to have a legal representative, access to medical care and the right to inform family/relative about arrest. These are safeguards against torture and other ill-treatment. There are also safeguards such as: the duty to register each arrested person brought to police stations, the duty to bring an arrested person before the court, to maintain audio and video recordings, among them, the process of interrogation of arrested persons, etc.

At the same time, it is equally important to ensure that arrested persons are able to practically exercise their rights established by legislation. Below is given our assessment as to how these rights are realised in practice:

**Informing about rights** – the monitoring conducted by the Special Preventive Group in the reporting period showed that, similar to the previous years, informing an arrested person by the police about his/her rights remains a problem. Despite the fact that, under Article 174 of the Criminal Procedure Code, the arresting authority is obliged to notify the arrested person in an understandable manner about his/her right to a lawyer, right to silence and not to incriminate himself and that anything he/she says may be used against him/her in a court of law. Special Preventive Group established through interviewing arrested persons that in most cases during arrest and bringing arrested persons to the police station, police does not explain these rights verbally at all or they give incomplete information. Arrested persons have their rights explained mostly when placed in a TDI where they are given a list of their duties and rights including procedural rights which they confirm with their signature. It should be noted that informing about the right to silence, right not to incriminate oneself and right to counsel is particularly important at the early stage of arrest, namely, during arrest and/or immediately upon being brought to a police station.<sup>122</sup> From a police station, arrested persons are taken to a TDI, in numerous cases with a considerable delay. **Unlike TDIs, police stations are not supplied with brochures on procedural rights of arrested persons; also, no posters are posted in police stations to inform arrested persons.**

120 Out of these 19 cases, in 15 cases a person was arrested in administrative proceedings and in 4 cases – in criminal proceedings.

121 Out of these 45 cases, a person was arrested in administrative proceedings.

122 Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 September 2016, para. 23, available at: <https://rm.coe.int/pdf/16807843ca>, (accessed 04.03.2019). The CPT called upon the Lithuanian authorities to ensure without further delay that all persons detained by the police – for whatever reason – are fully informed of their rights from the very outset of their deprivation of liberty (that is, from the very moment when they are obliged to remain with the police). This should be ensured by providing clear verbal information upon apprehension, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out the detained person's rights in a straightforward manner. This form should be made available in an appropriate range of languages. Moreover, particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 42, available at: <https://rm.coe.int/16807bf7b4>, (accessed 04.03.2019). The CPT recommended that the Cypriot authorities introduce a single form for recording the rights offered to detained persons as part of the custody records.

**Access to a lawyer and informing family** – In practice it is problematic to exercise the right to immediate access to a lawyer, whereas the arrested person is most vulnerable in the very first hours of detention in terms of pressure and ill-treatment on the part of police. According to the data processed by the Special Preventive Group by using the Statistical Program (SPSS), similar to the last year, the low indicator of involvement of a lawyer in criminal proceedings have not changed considerably in 2018.<sup>123</sup> Besides, the trend continues that persons arrested in administrative proceedings rarely use a lawyer's assistance. During the meetings organised in the regions local lawyers told the Special Preventive Group members that often police officers persuade arrested persons to waive their right to counsel and that they can reach an agreement in better terms. According to the lawyers, in some cases, they were not allowed to meet with their clients immediately. Lawyers explained it as police needing that period to exert pressure and “work” the arrested persons.

The Special Preventive Group has access to information about the involvement of lawyers in particular cases, namely, it is identifiable as to from which stage a lawyer got involved in the proceedings. However, the Special Preventive Group does not have access to such important data as to when did a detained person requested for a lawyer namely at what stage did a detained person requested to call a lawyer and within what time period after the request the lawyer was involved in the case. As mentioned above, it is crucial for a detained person to have access to a lawyer during the first hours of the detention.. Unfortunately, the information regarding the use of the right to a lawyer by detained persons is not registered in the territorial agencies of the Ministry of Internal Affairs. Therefore, we are unable to assess within the monitoring conducted as to in how many cases and when the detained persons requested to call a lawyer and whether police officers ignored this request in violation of the statutory requirements in force.

The CPT calls upon the Member States to the Council of Europe to ensure that all persons deprived of their liberty by the police, for whatever reason, be granted the right to notify a close relative or third party of their choice about their situation from the very outset of the deprivation of liberty (that is, from the moment when they are obliged to remain with the police). The exercise of this right should always be recorded in writing, with the mention of the exact time of the notification and the person who was notified.

Moreover, the CPT maintains that the **police should record in writing in the relevant registers** whether notification of custody has been carried out in each individual case, with the indication of the exact time of notification and the identity of the person who has been contacted.<sup>124</sup> The waiver of the right to legal assistance should be systematically signed by the detained person if he/she does not wish to exercise his/her right to access a lawyer so that any possibility of arbitrary registration of false information by police officers is excluded.<sup>125</sup>

Based on the above, we deem it necessary that the Ministry of Internal Affairs should study to what degree the right of an arrested person to contact his/her family/consulate and lawyer is respected by the agencies under its authority and to inform the Office of the Public Defender of Georgia regarding the outcomes of the study. The monitoring bodies such as internal monitoring bodies within the ministry and the external monitoring body – the Special Preventive Group of the Public Defender– should have the possibility to examine whether the rights guaranteed for arrested persons are illusory or practical and effective. Therefore, the Ministry of Internal Affairs should develop a concrete mechanism which will enable examination of to what degree the

123 **In 2018, in 11.9 % out of examined cases, a lawyer joined the proceedings within 24 hours and in 2017, lawyers joined the proceedings within 24 hours in 15% out of the examined cases.**

124 Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 22 March 2017, para. 16, available at: <https://rm.coe.int/16808e2a0e>, (accessed 04.03.2019). Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, para. 31, available at: <https://rm.coe.int/16807c4b74>, (accessed 04.03.2019).

125 Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 37, available at: <https://goo.gl/EF9LCV>, (accessed 04.03.2019). In this report, the CPT introduces the standard under which the waiver of the right to legal assistance should be systematically signed by the detained person if he/she does not wish to exercise his/her right to access to a lawyer.

right of arrested detained person to contact his/her family/consulate and lawyer and the right to be notified about arrest are exercised in practice.

As regards informing the family about arresting a person, it should be positively noted that according to the data processed by the Special Preventive Group, the dynamics of informing families about arrests improved in 2018. In particular, in 86.8% of the cases examined by us in 2018 and in 71% of the cases examined by us in 2017, families were notified within 3 hours after arrests.

**Access to a doctor and medical examination** – during monitoring, the members of the Special Preventive Group have not identified a single case where an arrested person was denied medical care. Medical examination in a confidential environment remains a significant challenge in this regard. The monitoring results show that TDI employees routinely attend medical examination of an arrested person which compels him/her to conceal the real causes of injuries out of fear when he/she was subjected to ill-treatment by police. It is noteworthy that the CPT also indicated this problem in its report on the visit to Georgia in 2014.<sup>126</sup>

Unfortunately, it should be noted that the medical examination of injuries on arrested persons by TDI doctors does not ensure achieving one of the major objectives of medical examination as determined by the Istanbul Protocol, i.e., assessment of the incident of alleged ill-treatment by a medical professional.<sup>127</sup>

In order to identify an incident of ill-treatment, it is most important that a medical professional establishes a link between the injuries found on an arrested person's body and the origin of those injuries based on the person's account. When describing injuries, they limit their entries to general information under which the injury was inflicted and indicating these circumstances. However, the origin of the injury and circumstances of sustaining the injury are not one and the same notions. Doctors often establish consistency between physical signs of an injury and the origins indicated by an arrested person so that they do not even have information about the specific origin of the injury.<sup>128</sup> Based on the forms of medical examination that are filled in by TDI doctors in a faulty manner, it is often revealed that doctors do not make any effort to obtain detailed and more credible information in order to ascertain whether the circumstances indicated by an arrested person could cause the injury concerned. This issue is particularly important in the context of a victim of ill-treatment. It is common knowledge that victims of alleged ill-treatment belong to a vulnerable group, who – due to the inflicted psychological trauma – are scared, helpless and not ready for a certain period to report and complain about the crime committed against them.<sup>129</sup>

Also, similar to the previous years, TDI doctors document injuries on arrested persons in a faulty manner. In particular, these are the following shortcomings found in the forms filled in based on medical examination (the form is approved by Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016 in accordance with the Istanbul Protocol): in some cases an alleged violence is not assessed despite injuries found on the body – the respective column is left empty; there are also occasions, when there are no entries regarding the origin of an injury and a doctor makes a note about the consistency of an injury with its origin, etc.

As regards photographing injuries, in some TDIs (for instance in Kutaisi and Telavi TDIs) doctors cannot take quality photographs of injuries. In general, no TDI keeps systematised photo materials.

126 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, available at: <https://rm.coe.int/16806961f8>, (accessed 04.03.2019), para. 28.

127 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), para. 105: In formulating a clinical impression for the purpose of reporting physical and psychological evidence of torture, there are [the following] important questions to ask: [...] “Are the physical and psychological findings consistent with the alleged report of torture? [...] Does the clinical picture suggest a false allegation of torture?”

128 For instance, an arrested person had injuries in the form of bruises in the facial area and it is explained that injuries were sustained during working at home. A medical professional concluded in the documentation that the described injuries and the arrested person's account are consistent. It is unclear in this case as to how the doctor assessed the link between the injuries and the origin of the injuries since there is indication as to what particular work was done by the arrested person and with what object or under what impact the injuries were sustained.

129 Istanbul Protocol, Psychological consequences of torture, available at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>, p. 46.

It should be positively pointed out that compared to 2017, there are fewer cases in 2018, when multiple injuries were found on an arrested person, including in the facial area and near eye-sockets but no notification were sent to a prosecutor.<sup>130</sup> In 2018, the Special Preventive Group identified 110 such incidents (out of studied and statistically processed 508 cases).

**Audio and video recordings** – the Committee recommends the member states to ensure continuous electronic (audio and/or video) recording of police interviews, which is one of the most important additional safeguards against torture and other ill-treatment.<sup>131</sup> The Committee Against Torture (hereinafter the “CAT”) welcomes implementation of video surveillance systems in police stations.<sup>132</sup>

According to the Georgian legislation, interrogation/interview of arrested persons in police stations is not mandatory and is within the discretion of the police.

In 2018, adequate coverage of internal and external premises of police divisions by video cameras remained a problem. There are no video cameras installed either on internal or external premises in some of the district divisions.<sup>133</sup> Furthermore, it should be noted that in the absolute majority of those police divisions where surveillance is conducted on the internal premises, the cameras are mostly installed at the building entrance, in front of the space allocated for an officer on duty. In this context, it is crucial to have video cameras installed in interrogation rooms for arrested persons. As mentioned above, video recording of arrested persons’ interrogation is a well-established standard of the European Committee for the Prevention of Torture. It should also be pointed out that installing video cameras in police stations in those places where an arrested person, a witness or a person agreeing to be interviewed voluntarily, among others, in offices, does not contradict the Georgian legislation and cannot be deemed as a breach of police officers’ right to respect for private life. In particular, under Article 12.3 of the Law of Georgia on Personal Data Protection, “A video surveillance system may be installed at a workplace only in exceptional cases if it is necessary for human security and property protection or to protect secret information and examination/tests and if these goals cannot be reached by other means.”

The security of the arrested person, his/her protection from torture and other ill-treatment is a legitimate aim which will justify installing surveillance system at such places.

The Public Defender’s Office welcomes the process of updating the video surveillance system in the agencies under the Ministry of Internal Affairs to improve their technical specifications. The ministry informed us that the respective works have been completed in all police divisions of the Tbilisi Police Department (40 units), 15 divisions in Shida Kartli, 27 divisions in Kvemo Kartli, 9 units in Mtskheta-Mtianeti and 16 division in Kakheti.

130 Percentage indicator according to years is as follows: in 2017 – 30.1%, in 2018 – 21.6%.

131 Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 9 February 2017, para. 16, available at: <https://rm.coe.int/16807bf7b4>, (accessed 04.03.2019); Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 7 June 2017, para. 41, available at: <https://rm.coe.int/16808b5ee7>, (accessed 04.03.2019); see also Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38 to the UN General Assembly, E/CN.4/2003/68, 17 December 2002, para. 26(g).

132 The concluding observations on the sixth periodic report of the Russian Federation, CAT/C/RUS/CO/6, 28.08.2018, available at: <https://goo.gl/JYvzY2>, (accessed 11.03.2019); in the concluding observations of 2018 the CAT recommended to the Russian Federation to ensure that video recordings of all interrogations are maintained and video surveillance installed in all areas of custody facilities where detainees may be present. In the concluding observations on the sixth periodic report of Spain, the CAT considered the following to be exceptions from the above rule: the possible violation of the detained person’s right to respect for private life and confidentiality of legal and medical consultation. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers. See the concluding observations on the sixth periodic report of Spain, CAT/C/ESP/CO/6, 29 May 2015, available at: <https://goo.gl/gCjR69>, (accessed 04.03.2019) The CAT made the following recommendation to Spain: “The State Party ensure the audiovisual recording of all procedures in police stations and places of detention involving persons deprived of their liberty, including those in incommunicado detention, except in cases where it might violate the right to privacy or detainees’ right to confidential consultation with their lawyer or doctor. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers.”

133 The Zhandukheri Unit of the Lentekhi District Division; the third unit of the Batumi City Division; the fourth unit of the Batumi City Division; the Borjomi District Division; Bakuriani Unit of the Borjomi District Division; the Mokhe Police Unit of the Adigheni District Division; the Aspindza District Division; the Gandzi Unit of the Ninotsminda District Division; the Gorelovka Unit of the Ninotsminda District Division.

The rest of the units will have been equipped with surveillance systems by the end of March 2019. As regards the terms of storing recordings of surveillance systems, the ministry informed us that the new recorder of the surveillance system has the capacity to store recordings for the term recommended by the Public Defender of Georgia, i.e., minimum 14 days.<sup>134</sup> It should also be pointed out that it is important to determine statutorily the term of storing video recordings of surveillances systems and we hope that the above recommendation will be fulfilled in the near future.<sup>135</sup>

Equipment of police officers with body cameras and conducting video recording of communication with citizens is a significant safeguard against ill-treatment. The Public Defender has been recommending to the Ministry of Internal Affairs for years to determine by a normative act the obligation of police officers to video record their interaction with citizens as well as the procedure and terms of storing video recordings. On 26 December 2018, Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia was amended. In particular, Article 12<sup>1</sup> was added to the order. Under Article 12<sup>1</sup>, a patrol officer is obliged to place the recordings obtained through body camera attached to the uniform on the special server where the recordings will be stored for 30 days. Unfortunately, this change did not apply to patrolling police officers and under the wording in force a patrolling police officer **has the right** to carry out recording with the use of technical means as established by law.<sup>136</sup> Accordingly, the law still does not determine the **obligation of video recording** of patrol officers' communication with citizens and video recording depends on patrolling police officers' discretion. Apart from patrol officers, officers of the Central Criminal Police Department and territorial agencies also have communication with citizens as a part of their official duties. Apart from the fact that they do not have the duty to record their communication with citizens (this falls within the discretion of an officer), there are also no provisions on the procedure and terms of storing the recording with regard to them.

It is commendable that patrol police officers have been equipped with body cameras with better specifications since May 2018. The new equipment has longer working and recording modes, centralised control and data storage capacity.<sup>137</sup> As regards police officers of territorial agencies, according to the information supplied by the Ministry of Internal Affairs, except for the Kakheti Police Department units, inspector-investigators and senior inspector-investigators of districts use body cameras when performing official duties.<sup>138</sup> During the monitoring, the Special Preventive Group established that police officers of territorial agencies had been given the old cameras previously used by patrol-inspectors, the technical capacities of which in terms of making recording are weak. Accordingly, it is important to have these old cameras gradually replaced with new ones with improved specifications in the next year.

**Duration of being under police control** – unfortunately, the recommendation made by the Public Defender's Office on numerous occasions is still unfulfilled. This recommendation concerned amending the Criminal Procedure Code to the effect of determining the obligation of the arresting authority to immediately take an arrested person to a TDI.

Under the Georgian legislation, an arresting official shall immediately take an arrested person to the nearest police station or other law-enforcement agency.<sup>139</sup> There is no statutory term determined for those cases where an arrested person is taken to a police station so that the arrestee can stay in that station before they take him/

134 Letter no. MIA 1 19 00309059 of the Chief of Administration of the Ministry of Internal Affairs of Georgia; dated 6 February 2019.

135 The recommendation made by the Public Defender to the Ministry of Internal Affairs in the 2017 report concerned amending Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data Therein and determining 14 days as the minimum term of storing video recording obtained through surveillance systems.

136 Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 concerning approving instructions On the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 14.1.

137 Letter no. MIA 1 19 00309059 of the Chief of Administration of the Ministry of Internal Affairs of Georgia; dated 6 February 2019

138 Letter no. MIA 8 18 02975975; Dated 10 December 2018. According to the letter, the units of Kakheti Police Department of the Ministry of Internal Affairs are unable to use body cameras when performing official duties due to technical problems.

139 The Criminal Procedure Code of Georgia, Article 174.2.



her to a TDI. The monitoring revealed that, in rare cases, arrested persons are kept in police stations before taking them to TDIs from 13 hours to 24 hours. Usually, the period for which arrestees are kept in police stations is 5-6 hours.

As regards, the total duration of the stay under police control which includes the period from a person's actual arrest till placing him/her into a TDI, this indicator has not changed in 2018, compared to 2017.<sup>140</sup> The Special Preventive Group requested information from police divisions and departments concerning investigative actions conducted with the participation of arrested persons in particular criminal cases. Based on the information supplied, there are cases identified where arrested persons were kept under police control before being taken to a TDI for a lengthy period without any need.<sup>141</sup> Moreover, in rare cases, there have been no investigative actions conducted with regard to arrested persons in police stations, including questioning. If the necessity to bring an arrested person to a police station is explained by drawing an arrest report and/or to have it signed by the head of a police station, we believe these activities require rather a short period of time and unreasonable delay of arrested persons at police stations cannot be justified with this argument. As regards the need to question arrested persons in police stations, we believe that it is also possible to conduct questioning in a TDI based on the respective infrastructural changes.

It is common knowledge that in case of lengthy stays under police control there is a high risk of physical violence and psychological pressure from police officers. The Public Defender's Office believes that there are strong arguments in favour of bringing arrested persons to a TDI right after arrest.

First, it should be noted that there are stronger safeguards in TDIs for arrested persons against their ill-treatment than in police stations. For instance, when an arrested person is taken to a TDI, he/she immediately undergoes medical examination in accordance with the Istanbul Protocol.

Second, unlike police stations, the TDI employees rigorously register the timestamp of bringing an arrested person in a respective logbook. If arrested persons are taken to TDIs straight after their arrest, it will enable us to ascertain the actual time of those persons' arrest, since in this case it is simpler to calculate the time needed for bringing a person to a TDI. As regards police stations, in the inspection conducted by the Special Preventive Group it was identified that, similar to the previous years, documentation about arrested persons are still erroneously maintained in the of territorial agencies. In particular, logbooks on Registering Arrested Persons and on Persons Transferred to a Jail (a TDI) are maintained in duty stations of territorial police agencies. In certain cases, the following cannot be determined from the information entered into these logbooks: when a person was arrested; the date and time when an arrested person was taken to a police station; and the time when a person was taken to a TDI and released (the respective columns are empty).

Third, in terms of material conditions (WC, rooms for meeting with a lawyer, rooms for medical examination, etc) are better in TDIs than in police stations. Fourth, a TDI is the place where an arrested person can open up more and file a complaint against his/her arresting official and report ill-treatment he/she was subjected to that in police stations, where, usually those very arresting officials are employed.

Based on the above arguments, we believe that it will be a significant step forward in terms of improving legal safeguards for arrested persons to ensure that arrestees are taken straight to a TDI immediately upon their arrest.<sup>142</sup> However, in order to ascertain whether this step will actually bring results, we find it expedient to implement this change in a pilot test in several less busy TDIs, according to regions.

140 The monitoring conducted by the Special Preventive Group in the reporting period identified cases, where an individual was held under police control for the first 18 hours, also for 21, 22 and 24 hours.

141 For instance, a person arrested by the Gori District Division was held for 11 hours until taking that person to the Khashuri TDI. During this period, the arrested person was questioned for 15 minutes and an arrest report was drawn with the arrestee's participation, which needed 53 minutes. Accordingly, the rest of the time, approximately 10 hours, that person was held under police control without any need.

142 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia A/HRC/31/57/Add.3, 06.11.2015, para. 108.

Under Article 21 of the Organic Law on Police, the police may invite a person by a notification to interview him/her at a police station. This person does not legally have any status and his/her appearance before police authorities and leaving police premises are formally voluntary. In the cases of abuse of power by police, pressure or physical violence against individuals invited by this procedure, citizens are not protected by procedural safeguards from ill-treatment. Moreover, there is no record of their entering and leaving the police station which could be used to prove that certain person indeed stayed with the police. Therefore, we believe that any person that is kept in police should enjoy procedural safeguards, irrespective of his/her status.<sup>143</sup> To this end, it is important to develop a mechanism which will enable the monitoring bodies to receive credible information about a person's status, his/her entering and leaving a police station.

**Judge's role –** A judge can play an important role in terms of avoiding incidents of ill-treatment from police. This role is acknowledged by Article 2.1 of the UN Convention Against Torture, which refers to the importance of judicial preventive measures against torture.<sup>144</sup>

The Public Defender's Office welcomes and considers it to be an important change – the amendment to the Criminal Procedure Code of Georgia that will come into force on 1 July 2019. From this date, judges of Georgia will have a legal possibility to apply to a competent investigative authority in case of suspicion concerning torture or other ill-treatment an accused/convicted person could be subjected to or when an accused/convicted person him/herself states about it before the court.<sup>145</sup>

We maintain that judges should be given such possibility also in administrative proceedings on administrative violations with regard to individuals imposed with administrative responsibility.

### 3.14. TEMPORARY DETENTION ISOLATORS

The positive changes made concerning TDIs were already discussed in the introduction. The faulty practices of examination of injuries on arrested persons by medical professionals employed in TDIs and documenting these injuries were addressed as well. This subchapter concerns the rest of the shortcomings identified during the monitoring.

One of the challenges in the reporting period was the absence of medical centres in 14 TDIs which is half of the number of TDIs under the Department of Temporary Detention Isolation of the Ministry of Internal Affairs (29 in total).

A problem of understaffing of TDIs was identified as well. It should be particularly mentioned that there are no female employees in 21 TDIs, which creates problems during personal examination of women to be placed in TDIs.

A number of Isolators are not provided with adequate systems of natural and artificial ventilation or light; sanitation and hygiene are not satisfactory; privacy of WCs in cells is not properly ensured. This is particularly problematic in multiple-occupancy cells where an arrested person attends to nature call in the presence of another person/s. Each arrested person is supplied only with dry food in isolators which is harmful to health.

143 Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 21 December 2017, CPT/Inf (2018)41, 06.09.2018, para. 29, available at: <https://rm.coe.int/16808d2c2a>, (accessed 04.03.2019).

144 "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2.1

145 The Criminal Procedure Code of Georgia, Article 191<sup>1</sup>.

## RECOMMENDATIONS

### To the Ministry of Internal Affairs of Georgia:

- The Ministry of Internal Affairs should examine whether arrested persons' right to contact their family member/relative/lawyer and the right to be informed about the arrest is respected; to develop a mechanism through which it will be possible to examine the exercise of the said rights; to inform the Public Defender's Office about the results of the examination;
- To install video surveillance cameras in police departments, divisions and units everywhere, where an arrested person, witness or a person volunteering to give a statement has to stay.
- To amend Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data Therein and determining 14 days as the minimum term for storing video recording obtained through surveillance systems installed in police departments, divisions and units;
- To continue the process of equipping police officers with body cameras with better specifications similar to patrol police; also, to equip officers of territorial agencies with body cameras with improved technical capacities;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add an additional column to the sample of a protocol approved by Annex 9 for entering the following information: the time of drawing the report; decision of injuries on an arrested person's body; the circumstances of the arrest; was there resistance to police; was any force used and in which form;
- To increase the number of those TDIs where a medical centre is functioning and to ensure documenting injuries on the persons taken to those TDIs is carried out in accordance with the procedure approved by Order no. 691 of the Minister of Internal Affairs of Georgia of 8 December 2016;
- To develop a guideline document/instruction for police officers regarding explaining rights to arrested persons;
- To ensure in a pilot mode uninterrupted video recording of questioning an arrested in several police stations;
- To ensure provision of police departments, divisions and units with brochures on the rights of an arrested person which will be handed out to arrested persons. Furthermore, to ensure that posters are posted on visible places on the walls of the police administrative buildings with the contact details of the Public Defender's hotline;
- To ensure in a pilot mode the practice of taking an arrested person straight to a temporary detention isolator immediately after arrest;
- To ensure developing a guideline with detailed instructions for medical professions employed in TDIs concerning comprehensive documentation of injuries on detained persons;
- To ensure developing detailed technical instructions for medical professionals employed in TDIs about taking quality photographs;
- To ensure laying down rules for uniform and systematised storage of photographs taken by medical professions employed in TDIs; and

- To ensure conducting training sessions for medical professions employed in TDIs about instructions on photo-recording injuries on detained persons and storing the respective photographic material.

## PSYCHIATRIC FACILITIES

The Public Defender and the Special Preventive Group welcome the steps made in 2018 to improve conditions in psychiatric establishments. In this regard, the Surami Psychiatric Clinic<sup>146</sup> should be mentioned, where in 2018, rehabilitation works aimed at renovating the infrastructure were conducted and various parts of the infrastructure were renovated. In 2018, the power supply, washing block and the patients' reception section were renovated in the Academician B. Naneishvili National Centre for Mental Health;<sup>147</sup> a new building was arranged and some of the patients were transferred there. The Public Defender and the Special Preventive Group welcome the steps taken by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. However, it should be noted that the situation in the Academician B. Naneishvili National Centre for Mental Health has improved for only a small part of patients. The majority of the patients still live in the old building. Providing quality food, personal hygiene items, clothing and linen for patients in the above facilities remains problematic.

The increase in the funding of the 2019 programme of mental health care<sup>148</sup> is to be noted positively. The budget of each component of the programme<sup>149</sup> increased accordingly. However, unfortunately, despite almost 9-% increase in the shelter component, the cost per 24 hours of a beneficiary's stay in a shelter remains the same.<sup>150</sup> Furthermore, despite the increase in the funding, the price of a bed-day for patients receiving long-term treatment has also not been changed.<sup>151</sup>

Despite the above positive steps, mental health care remains one of the most important challenges in the country and needs significant fundamental reforms. According to the existing situation, similar to the previous years, the following issues remain problematic in the Bediani Psychiatric Hospital – the Centre of Mental Health of East Georgia and the Academician B. Naneishvili National Centre for Mental Health: overcrowding in wards;<sup>152</sup> the absence of private space for patients and the failure to respect their privacy; inadequate environment for patients; the failure to uphold sanitary and hygienic norms of buildings and personal hygiene of patients; the existing practice of physical and chemical restraint; lack of access to timely and adequate treatment of somatic diseases; absence of appropriate psychosocial rehabilitation and supporting services; lengthy hospitalisation neglecting patients' will and involuntary medical intervention. In the 2015 parliamentary report, the Public Defender assessed the above as inhuman and degrading treatment of patients and the position of the Special Preventive Group remains the same in this regard.

Similar to the previous years, the situation in ten large facilities operating nowadays remains a serious challenge in the country. The conditions and therapeutic environment existing in ten large operational facilities do not ensure patients' dignified life and protection of their rights. It is important that the policy making state agencies take effective steps in the shortest possible time to contribute to deinstitutionalising the process and developing community based, among others, family-type services in mental health care.

146 Address, the city of Surami, 12, Rusia Str.

147 Address: the city of Khoni; the village of Qutiri.

148 In 2019, the budget of the programme was set at 24 million lari. In 2018, the programme budget was 20,550 million lari.

149 Community ambulance services, psychological rehabilitation; children's mental health; psychiatric crisis intervention service for adults; community based mobile team service; psychiatric inpatient services for adults with mental disorders; psychiatric inpatient services for children with mental disorders; the shelter component for disabled persons with mental disorders.

150 In 2018, the budget of the shelter component was GEL 567.3 and the cost per 24 hours of a beneficiary's stay in a shelter was GEL 17. In 2019, the budget of the shelter component is GEL 620.5 and a cost per 24 hours of a beneficiary's stay in a shelter remains GEL 17.

151 In 2019, similar to 2018, the price of a bed-day for patients receiving long-term treatment is 23 GEL.

152 Patients are not provided with the minimum standard of 8 square metres of living space as established by Order no. 385 of the Government of Georgia of 17 December 2010 on Approving the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for Inpatient Facilities, Annex 2.

### 3.15. PHYSICAL AND CHEMICAL RESTRAINT

The Special Preventive Group shares the spirit of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the “CRPD”)<sup>153</sup> and the approach of the World Health Organisation to mental health care which is rights-based and recovery oriented.<sup>154</sup> The Special Preventive Group maintains that the state should facilitate the reduction of the use of means of physical<sup>155</sup> and chemical<sup>156</sup> restraint against patients in inpatient facilities and their complete eradication. It is noteworthy that the legislation does not determine the de-escalation technique<sup>157</sup> as the alternative means to physical and chemical restraint. Therefore, the alternative method (de-escalation technique) to physical and chemical restraint is not applied in psychiatric facilities.

The approach of the state and psychiatric facilities do not ensure the reduction and elimination of the resort to physical and chemical restraint. In the opinion of the Special Preventive Group, this is caused by the following factors: the absence of legislative regulation of alternative means to physical and chemical restraint; the absence of legislative regulation of chemical restraint;<sup>158</sup> the problem related to registering the use of chemical restraint; the problem related to state monitoring on administering adequate psychiatric care and protection of patients’ rights in psychiatric facilities; and psychiatric facilities being understaffed.

In the 2017 parliamentary report, the Public Defender issued a proposal for the notice of the Parliament of Georgia to amend the Law of Georgia on Psychiatric Care with the effect of determining the following: the maximum duration of physical restraint; the duty to make an entry into a special registry (a special logbook) concerning physical restraint used against a patient, including the body injuries sustained by a patient and/or staff member in the process; the form of a special registry (a special logbook); detailed instructions concerning the direct use of physical restraint; specifications of the means to be used during physical restraint; the details of where to use physical restraint and who can attend this process; the requirements to be met by a specialised isolation ward; issues related to the use of video surveillance in the process of physical restraint; and after the use of physical restraint the duty to discuss the issue with the patient and to inform him/her about the right to appeal against physical restraint; also to introduce the definition of chemical restraint; the legal grounds and procedure of its use as an exception and to introduce the obligation of approving by an order of the Minister of Labour, Health and Social Affairs of Georgia the detailed instruction on the use of chemical restraint.

Furthermore, the Public Defender recommended to the Minister of Labour, Health and Social Affairs of Georgia to amend the Instruction on the Rules and Procedures for the use of Means of Physical Restraint Against Patients with Mental Disorders as approved by Order no. 92/N of the Minister of Labour, Health and Social Affairs of Georgia of 20 March 2007. The Public Defender recommended to determine statutorily the following: the maximum duration of physical restraint; the duty to make an entry into a special registry (a special logbook) concerning physical restraint used against a patient, including the body injuries sustained by a patient and/or staff member in the process; the form of a special registry (a special logbook); detailed instructions concerning the direct use of physical restraint; specifications of the means to be used during physical restraint; the details of where to use physical restraint and who can attend this process; the requirements to be met by a specialised isolation ward; issues related to the use of video surveillance in the process of physical restraint; and after the use of physical restraint the duty to discuss the issue with the patient and to inform him/her

153 Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, available in English at: <https://www.ohchr.org/.../GC/GuidelinesArticle14.doc>, (accessed 06.03.2019).

154 Quality Rights is WHO’s global initiative to improve the quality of care provided by mental health services and promote the human rights of people with psychosocial, intellectual and cognitive disabilities, 2017, available at: [http://www.who.int/mental\\_health/policy/quality\\_rights/en/](http://www.who.int/mental_health/policy/quality_rights/en/) (accessed 06.03.2019).

155 Under Article 16.2 of the Law of Georgia on Psychiatric Care, “Methods of physical restraint are isolation in a specialised ward and/or the physical immobilising of a patient.”

156 Chemical restraint implies forcible administration of medication for the purpose of controlling a patient’s behaviour; see the Means of restraint in psychiatric establishments for adults (Revised CPT standards), p. 2, available at: <https://rm.coe.int/16807001c3>, (accessed 11.03.2019).

157 De-escalation technique implies immediate assessment of potential crises and prompt intervention; orientation towards the solution of a problem, empathy and reassurance; possessing stress management or relaxation technique such as breathing exercises, allowing personal space; offering a choice and allowing to think.

158 Neither the legislation nor the regulations applying to facilities determine the alternative means to physical and chemical restraint.

about the right to appeal physical restraint. Unfortunately, the Public Defender's above recommendation and proposal have not been fulfilled.

### 3.16. FORCED MEDICAL TREATMENT OF PATIENTS FORMALLY PLACED VOLUNTARILY IN INPATIENT FACILITIES AND THE USE OF PHYSICAL RESTRAINT

Apart from the above problems, similar to the previous years, forced medical treatment of patients formally placed voluntarily in inpatient facilities and the use of physical restraint constituted a considerable challenge in the reporting period. This practice is against the position taken by the CPT. The CPT maintains that means of restraint should not be applied vis-à-vis formally voluntary patients. If it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status should be initiated immediately.<sup>159</sup> In the 2017 parliamentary report, the Public Defender made a proposal for the notice of the Parliament of Georgia to amend Article 16 of the Law of Georgia on Psychiatric Care with the effect of determining that, as a rule, means of restraint should not be applied vis-à-vis formally voluntary patients. However, if it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/non-voluntary) should be initiated immediately. The Parliament of Georgia has not implemented this proposal.

### 3.17. VIOLENCE AMONG PRISONERS

As a result of the monitoring conducted in 2017, it was established that there is no violence-free, safe environment in the Surami Psychiatric Clinic,<sup>160</sup> the Academician B. Naneishvili National Centre for Mental Health<sup>161</sup> and the **Republican Psycho-Neurological Clinical Hospital, LTD.**<sup>162</sup> **On frequent occasions, there have been conflicts among patients, manifested in verbal abuse and sometimes even in physical altercation. Regarding this issue, the Public Defender recommended to the Ministry of Labour, Health and Social Affairs of Georgia to establish a normative framework to prevent violence among patients and ensure their safety and govern the following issues: Introduction of an adequate system of preliminary assessment of the risks derived from specific patients by the staff; multidisciplinary work; preventive measures to be taken to protect patients from violence and ensure their safety; conducting appropriate supervision/observation of patients by personnel, proper training of staff, development of strategy for standard operating procedures and de-escalation; prompt and adequate intervention immediately the threat; documenting incidents involving violence and response made; accountability and responsibility of the staff.** Unfortunately, the indicated recommendation has not been fulfilled.

### 3.18. SOMATIC (PHYSICAL) HEALTH

In 2018, the problems were identified in terms of accessibility of somatic health-care services for the patients of psychiatric facilities<sup>163</sup> and provision of medication for somatic diseases. Beneficiaries have to purchase

<sup>159</sup> Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, para. 151.

<sup>160</sup> Address, the city of Surami, 12, Rusia Str.

<sup>161</sup> Address: the city of Khoni; the village of Qutiri.

<sup>162</sup> Address: Batumi, 36, Kakhaveri Str.

<sup>163</sup> For details the Chapter on Mental Health.

somatic medicines themselves. As regards, psychotropic medicines, they are purchased in accordance with the Law of Georgia on Public Procurement. Therefore, stemming from tender terms, usually the cheapest and low-quality medications are procured. In the 2017 parliamentary report, the Public Defender stressed the importance of quality medicines. In this regard, the Public Defender recommended to the Government of Georgia considering the priority of the quality of medicines, in accordance with Article 3.a-h) of the Law of Georgia on Public Procurement, to approve the special procedure of procuring medicines by psychiatric establishments (LTD), more than 50% of shares of which is owned by the state and to determine that these establishments are allowed to use simplified procurement of these medicines. However, unfortunately, this recommendation has not been fulfilled.

### 3.19. LEGAL SAFEGUARDS

Similar to the previous years, the practice of obtaining the patient's consent formalistically, that is without timely providing the patient with full, accurate and comprehensible information.<sup>164</sup> This is confirmed by the fact that interviewed patients do not have any information on their rights and **though some of them have signed the informed consent forms when placed in an establishment, they constantly request discharge from the inpatient facility.** Formally voluntary and actually involuntary inpatients (who are beyond judicial review) are unable to protect their rights. It is without question that if a person is placed in an inpatient facility voluntarily, he/she has the right to refuse treatment any time<sup>165</sup> and leave the inpatient facility.<sup>166</sup>

Similar to the previous years, the internal complaints and feedback procedure in psychiatric establishments can be deemed as mere formality, as patients almost never use this procedure or complaint boxes. The interviewed patients are not aware of their rights and they have no information as to whom they should address complaints. It is important to take measures to address the following issues: a) to inform patients about their rights in the language they understand; b) to establish a simple and accessible complaints procedure based on patients' needs assessment; and c) to ensure internal and external proactive monitoring. The National Preventive Mechanism also believes that, when determining terms and other procedural issues related to complaints handling, it is crucial to take into account the special needs of patients in psychiatric establishments and those practical difficulties they could face when exercising their right to appeal. Therefore, it is important to establish a simple and accessible complaints procedure concerning psychiatric assistance and human rights violations with due regard to patients' special needs; to determine the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments by adopting a normative act to that effect. The recommendation made in the 2017 parliamentary report concerning this issue is still unfulfilled.<sup>167</sup>

The Public Defender and the Special Preventive Group believe that it is necessary to ensure an assessment by independent experts of the effectiveness of the state supervision over psychiatric assistance, the monitoring system of patients' rights and to ensure development of appropriate recommendations. In this regard, we were informed by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia that with the technical assistance of the Council of Europe (hereinafter the "CoE"), efforts are underway to develop the mechanism of internal inspection and monitoring of the facilities. According to the ministry, the questionnaire of the WHO Quality Rights Toolkit<sup>168</sup> will serve as a basis for the

164 Under Article 4.b) of the Law of Georgia on A Patient's Rights, b) informed consent - consent given by a patient or, if he/she is a minor, by the patient's legal representative, to providing certain medical care after he/she is informed of: b.a) the essence and necessity of the medical care; b.b) expected consequences of the medical care; b.c) potential risks to the health and life of a patient related to the medical care; b.d) alternatives to the planned medical care and associated risks and possible benefits; b.e) expected consequences if the medical care is refused; b.f) financial and social issues related to the information specified in sub-paragraphs (b.a - b.e) of this article.

165 The Law of Georgia on A Patient's Rights, Article 23.

166 The Law of Georgia on Psychiatric Care, Article 17.3.b).

167 The 2017 Parliamentary Report by the Public Defender, p. 76.

168 In November 2018, 5 staff members of the ministry participated in the training session on the use of WHO Quality Rights Toolkit questionnaire.

development of the mechanism of internal inspection and monitoring of the facilities, which is commendable. Unfortunately, the ministry has not supplied information as to what works were accomplished with the CoE's assistance, whether the existing mechanisms were assessed, whether the relevant best practices were researched and what steps are planned to be made in the near future. Therefore, the recommendation concerning the assessment of the effectiveness of the state supervision over psychiatric assistance and the monitoring system of patients' rights by independent experts cannot be considered to have been fulfilled.

In terms of enhancing **regular, systemic and proactive** state supervision of psychiatric facilities, certain efforts by the LEPL Agency of State Regulation of Medical Activity are noteworthy. In particular, in 2018, this agency assessed 5 psychiatric facilities<sup>169</sup> in terms of the compliance of their inpatient services with the licensing terms and concluded that none of them fully met the licensing terms. Therefore, it is important to ensure strict control over redeeming the shortcomings identified in these facilities and conduct periodic examination of all psychiatric facilities.

The Special Preventive Group maintains that the examination of compliance of inpatient services with licensing terms is only one element of regular, systemic and proactive monitoring of psychiatric facilities and under this head the capacity of a facility to provide inpatient services is examined. After this, it should be proactively assessed as to what degree patients receive psychiatric care based on bio-psycho-social model<sup>170</sup> with due respect for patients' rights. In this regard, the activities carried out in 2018 cannot be considered as satisfactory. We were informed by the LEPL Agency of State Regulation of Medical Activity that, in 2018, the agency only drew 4 revision reports<sup>171</sup> with regard to 8 patients and all of those cases concerned medical assistance provided in 2017. Such work cannot be considered as either regular or systemic, since it does not allow generalising the situation.

Stemming from the above, it is important to determine by the Law of Georgia on Psychiatric Care the external supervision/monitoring grounds for supervision over psychiatric assistance and the monitoring system of patients' rights. This should be done based on the assessment of the existing system of the state supervision over psychiatric assistance and the monitoring system of patients' rights as well as the best international practices. In the opinion of the Special Preventive Group, this should, at least, incorporate regular, systemic and proactive nature of supervision and monitoring, bio-psycho-social model and human rights-based approach, as well as accountability before the public.

### 3.20. PROBLEM OF LENGTHY HOSPITALISATION

Similar to the previous years, there are also problems with regard to lengthy hospitalisation of patients. **Despite the fact that often patients do not need active treatment, they cannot leave the hospital as they have nowhere to go or their family avoids taking them back. This is caused by the lack of the support services in the community.**<sup>172</sup> In this regard, the Public Defender's recommendation – given in the 2017 parliamentary report regarding needs assessment of patients placed in psychiatric establishments for more than 6 months for discharging and referring them to community-based services – remains unfulfilled.

169 The following facilities were inspected: The Centre of Mental Health of East Georgia (incorporates the Surami and the Bediani Psychiatric Clinics); the Kutaisi Mental Health Centre; the National Centre of Mental Health (the village of Qutiri); the Senaki Inter-District Psycho-Neurological Clinic and the Rustavi Mental Health Centre.

170 Under Article 4.c) of The Law of Georgia on Psychiatric Care: "Psychiatric care - a set of measures aiming at the examination and treatment of a person with a mental disorder and the prevention of exacerbation, and the facilitation of social adaptation and community reintegration of a person with mental disorder."

171 Resolution no. 638 of the Government of Georgia of 30 December 2016 on Approving State Programmes of Health Care in 2017, Article 18.

172 During conversations with the Special Group members, some of those patients who were fully aware of their mental condition and expressed a wish to be discharged from the inpatient facility and continue treatment at home could not understand why they were not discharged without their family member's signature considering they were placed in the hospital on a voluntary basis.



**It is necessary to elaborate a plan of setting up shelters based on estimated number of potential beneficiaries. Determining the number of persons to be discharged and referred to community-based services will enable determining the required financial resources.**<sup>173</sup>

### 3.21. PSYCHOSOCIAL REHABILITATION

The monitoring conducted in psychiatric facilities showed that the volume of psychosocial rehabilitation<sup>174</sup> is still extremely limited and the existing interventions are fragmented and are not focused on needs. Conversations with patients indicate the formal nature of these interventions; family members are not involved in the process of resocialisation of patients.

Against the background understaffed<sup>175</sup> and under-qualified<sup>176</sup> personnel, which is further aggravated by hard working conditions and low remuneration, the management of mental disorders in the facilities is still based on pharmacotherapy; the bio-psycho-social approach is not implemented. According to patients, they are not occupied with any worthwhile activities during the day.<sup>177</sup>

#### PROPOSALS

##### To the Parliament of Georgia:

- To ensure amendment of the Law of Georgia on Psychiatric Care with the effect of determining in express terms the procedure of examination of complaints and external supervision/monitoring grounds for supervision over psychiatric assistance and the monitoring system of patients' rights;
- To determine in the legislation the alternative methods (de-escalation technique) to physical and chemical restraint;
- To amend the Law of Georgia on Psychiatric Assistance with the effect of defining chemical restraint, grounds for its exceptional use and procedure; to determine the obligation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to approve detailed instructions for the use of chemical restraint;
- To amend Article 16 of the Law of Georgia on Psychiatric Care with the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook); requirements to be met by a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of his/her right to appeal; and

173 It should be borne in mind that when those long-term patients are discharged, the financial resources allocated for their long-term inpatient treatment will be released and it will be possible to use these resources as patient's social benefits. In its turn, this can facilitate the families to assume the role of a social supporter and whenever families fail to do so, the existing financial resources can be spent on providing a shelter (it is the assessment of the Public Defender that the shelter component should be considered as a community service).

174 Mainly occupational therapy and art therapy.

175 During the visit to the Bediani Psychiatric Clinic on 26-28 September 2018, one position of a social worker was vacant. During the visit to the Academician B. Naneishvili National Centre for Mental Health on 6-7 March 2018, one position of a psychologist was also vacant.

176 For instance, during the visit to the Bediani Psychiatric Clinic on 26-28 September 2018, it was established that the professional qualification of a social worker employed in the Bediani Psychiatric Clinic did not comply with the requirements of Article 42.1.c) of the Law of Georgia on Social Work. In particular, the employed social worker did not have a bachelor's degree, master's degree/equivalent of master's degree or doctorate in the field of social work or a certificate of a social worker as stipulated by law.

177 No sport competitions or recreational activities are organised and psychical activity is not encouraged. Cultural activities are rare and only organised during important holidays. Only some patients participate in these events.

- To amend Article 16 of the Law of Georgia on Psychiatric Care with the effect of determining that means of restraint should not be applied *vis-à-vis* formally voluntary patients unless there is an extreme urgency of resorting to physical restraint; If it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately.

## RECOMMENDATIONS

### To the Government of Georgia:

- To ensure that, in 2019, the amount of daily expenditure for a shelter beneficiary is, at least, set equal to the cost of a bed-day for patients receiving long-term treatment in inpatient facility; and
- Considering the priority of the quality of medicines, in accordance with Article 3.a-h) of the Law of Georgia on State Procurement, to approve the special procedure of procuring medicines by psychiatric establishments (LTD), more than 50% of shares of which is owned by the state and to determine that these establishments are allowed to use simplified procurement of these medicines.

### To the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To ensure needs assessment of patients placed in psychiatric establishments for more than 6 months, for discharging and referring them to community-based services; to elaborate a plan of setting up shelters based on estimated number of potential beneficiaries;
- To ensure assessment of the effectiveness of the existing state supervision system of psychiatric assistance and monitoring system of patients' rights by independent experts;
- To ensure regular, systemic and proactive monitoring of psychiatric facilities by the LEPL the Agency of State Regulation of Medical Activity and the Agency of Social Services; to ensure the compliance of the conditions in psychiatric facilities with the standards approved by the Statute on the Procedure and Terms of Licensing Medical Activities and Issuing a Permit for Inpatient Facilities;
- To determine the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments by adopting a normative act to that effect;
- To establish simple and accessible complaints procedure concerning psychiatric assistance and human rights violations;
- For preventing violence among patients and maintaining safety, create a normative framework governing the following issues: implementation of an appropriate system of preliminary assessment of risks posed by an individual patient by personnel; multidisciplinary work, preventive measures to be taken for protecting patients from violence and ensuring security; appropriate supervision/observation of patients by personnel; adequate training of personnel; elaboration of standard operational procedures and de-escalation strategy; timely and adequate intervention immediately after a threat arises; documentation of incidents of violence and responses; and accountability and responsibility of personnel; and

- To amend Instructions for the Rules and Procedures of the Use of the Methods of Physical Restraint against Patients with Mental Disorders as approved by Order no. 29/N of the Ministry of Labour, Health and Social Security of Georgia of 20 March 2007 with the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook), including the injuries sustained in the process by a patient and/or personnel; layout of a special register (a special logbook); detailed instruction for using physical restraint; specifications of special means to be used during physical restraint; place where physical restraint should be used and who can be present during the process; requirements for a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of the right to appeal.

## 4. INVESTIGATION OF TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

Effective fight against torture and investigation of alleged crimes, similar to the previous years, remain one of the most important challenges faced by the country. Since 2014, in parallel with representatives of civil society, the Public Defender requested the establishment of an independent investigative mechanism. The model offered by the state in 2018 implies transforming the Office of the Personal Data Protection and setting up the Office of the State Inspector within it. This will be an agency in charge of investigative actions.

The Public Defender positively assessed the adoption of the said law. However, she pointed out several significant shortcomings of legal nature addressing which would be instrumental for orderly and effective functioning of the office.<sup>178</sup> Unfortunately, these issues have not been reflected in the legislation. We hope, that the process of improving the legislation governing the agency will continue in the coming years too. It should also be indicated that the enforcement of the Law of Georgia on the Office of the State Inspector of Georgia was postponed until July 2019 and by the time of developing this report (March 2019) the timely enforcement of the law is still not completely clear.

The reform of the Office of the State inspector is closely linked with the reform of the prosecutor's office. The number of institutional problems has not been eliminated thanks to the transformation of the Office of the Chief Prosecutor into the Office of the Prosecutor General. The absence of the effective mechanism of accountability and separation of the powers between the Prosecutor General and the Prosecutors' Council are particularly noteworthy.

The fight against ill-treatment in 2018 continued with the same dynamics as in 2017. In particular, conducting timely, effective investigation remains a problem; the incorrect categorisation of the action of torture or other ill-treatment under a general article as the excessive use of official power or abuse of official power remains the same old practice over and over again; the failure to recognise an alleged victim in the process of investigation still excludes reasonable involvement of the victim in the investigation. Investigations of incidents of ill-treatment instituted based on the proposals of the Public Defender mostly continue for years without any result as nobody has been recognised as a victim or an accused person in any of these cases.

### 4.1. POSTPONING THE ENFORCEMENT OF THE LAW OF GEORGIA ON THE OFFICE OF THE STATE INSPECTOR

The delay in enforcing the Law of Georgia on the Office of the State Inspector<sup>179</sup> has been criticised by the Public Defender.<sup>180</sup> The Public Defender enquired about the reasons for the delay and found out that the major

178 For instance, by default such investigative actions require court's permission. Under the procedural legislation, only prosecutors have the right to request conducting such investigative actions. It is noteworthy that, in 2018, the Ministry of Internal Affairs started the reform to separate investigative and prosecutorial functions from each other. One of the changes planned concerns conducting investigative actions and we hope that this reform will be accomplished successfully and the Office of the State Inspector will be able to conduct investigative actions independently from the prosecutor's office.

179 Originally, the office was supposed to become operational as of 1 January 2019. However, this was delayed by the amendment of 27 December 2018 until 1 July 2019.

180 The Public Defender, in her public statement of 18 December 2018, negatively assessed the delay in making the office operational.

obstacle was the finances. The failure to allocate timely funds made it ultimately impossible to make the office operational in due time.

The draft law on delaying the enforcement of the law started only two weeks before the original date of the planned enforcement – 1 January 2019.<sup>181</sup> This caused the deliberation of the issue to be conducted in expedited mode. Such unreasonable time management excluded any possibility of taking measures that could avoid the delay in the enforcement of the law.

The Public Defender requested information from the relevant agencies in order to study the reasons behind the delay in detail.<sup>182</sup> The analysis of the received information shows that the major obstacle was the timely allocation of financial resources which **were requested by the Inspector for Personal Data Protection back in October 2018 but the issue was not promptly resolved.**

According to the answer from the Office of the Inspector of Personal Data Protection, dated 26 December 2018, they were given one building in Tbilisi. However, according to the letter from the National Agency of the State Property, dated 22 October 2018, they were refused to have the building located in Kutaisi. In parallel, in order to evaluate the condition of a building in Tbilisi, for renovation works, procurement of technical infrastructure and vehicles, financial resources were requested from the Reserve Fund of the Government of Georgia on 19 October 2018, which was dismissed.

It should be noted that, immediately after the adoption of the Law of Georgia on the Office of the State Inspector, the 2019 state budget was prepared taking into account all necessary human and material resources for the functioning of the office. The budget was submitted to the Ministry of Finances of Georgia on 31 August 2018. The Office of the Inspector for Personal Data Protection also prepared drafts of normative acts and took steps towards the timely resolution of other technical problems. Unfortunately, the representatives of the Government of Georgia and executive authorities could not manage the resolution of the issue in a timely manner and allocation of budgetary funds.

Setting up an independent investigative mechanism is one of the international commitments undertaken by Georgia. Numerous organisations also recommend to Georgian authorities to introduce an institution of this type. The adoption of the law is commendable; however, its mere existence will not change anything unless it becomes operational in a timely manner and unless there are required financial resources allocated for its efficient functioning. We hope that the state agencies will create all necessary conditions to the Office of the State Inspector and the financial resources will be allocated as planned.

## 4.2. REFORM OF THE PROSECUTOR'S OFFICE

The Office of the Prosecutor General of Georgia is vested with an important role in human rights protection. Those persons who breach human rights should bear appropriate responsibility. Accordingly, the independence and due functioning of the prosecutor's office is crucial for redressing breached human rights as well as general prevention. Stemming from the above, the institutional organisation and accountability of the Office of the Prosecutor General of Georgia are those mechanisms that ensure its transparency and attract particular interest of the Public Defender.

181 On 17 December 2018, members of the Parliament of Georgia initiated a draft law in the parliament, which was adopted on 27 December 2018.

182 Letter no. NPDP 9 18 00047821 of the Office of the Inspector of Personal Data Protection, dated 26 December 2018; Letter no. GOV 7 19 00001541 of the Administration of the Government of Georgia, dated 17 January 2019; Letter no. GOV 7 19 00002333 of the Administration of the Government of Georgia, dated 23 January 2019; Letter no. GOV 7 19 00003396 of the Administration of the Government of Georgia, dated 30 January 2019; Letter no. 1282 of the Ministry of Justice of Georgia, dated 30 January 2019; Letter no. 356/4-2-1/19 of the Committee of Human Rights Protection and Civic Integration of the Parliament of Georgia, dated 22 January 2019.

The new wording of the constitution<sup>183</sup> established the Office of the Prosecutor General instead of the Office of the Chief Prosecutor of Georgia as an independent constitutional agency, unlike executive authorities. In 2018, the reform of the Office of the Prosecutor General was accomplished. The reform was aimed at ensuring institutional impartiality and independence of the prosecutor's office in conformity with the new wording of the constitution. Within the framework of the reform, an opinion was submitted by the Venice Commission with whom the Public Defender met and shared her viewpoints.

Under Article 65.2 of the Constitution of Georgia, the prosecutor's office shall be led by the Prosecutor General. In parallel, at the constitutional level, there is the Prosecutors' Council which comprises of 15 members.<sup>184</sup> In accordance with the constitution, the Prosecutors' Council shall be established to ensure the independence, transparency and efficiency of the prosecutor's office.<sup>185</sup>

The Organic Law on Prosecutor's Office was adopted on 30 November 2018. The interrelation between the Prosecutor General and the Prosecutors' Council is determined so that the Prosecutor General is the central figure in the Prosecutor's Office of Georgia and his/her authority is balanced by the powers of the Prosecutors' Council.

According to the assessment given by the Venice commission, this is an ambitious goal (to ensure the independence, transparency and efficiency of the prosecutor's office) which will be difficult to achieve with the powers granted to the Prosecutorial Council.<sup>186</sup>

The Prosecutors' Council is not unfortunately involved in the organisation of the structure and system of the prosecutor's office which implies jurisdiction or separation of competences among structural units.<sup>187</sup> It neither approves the guidelines stemming from the Criminal Law Policy<sup>188</sup> nor participates in the adoption of the normative acts governing systemic issues of the prosecutor's office.<sup>189</sup> All the issues mentioned above fall within the competence of the Prosecutor General of Georgia.

The Prosecutors' Council is responsible for the efficiency of the prosecutor's office. However, its work will not be efficient in those conditions where it has no leverage over the Prosecutor General. After the Prosecutors' Council submits the candidate for the position of the Prosecutor General to the parliament, the council is unable to carry out any supervision over the activities of the Prosecutor General. In reality, the Prosecutor General in terms of assessment of his/her activity does not have any link with the Prosecutors' Council. The deliberation or working groups that are necessary for the efficient functioning of the prosecutor's office do not fall within the competence of the Prosecutor General either.<sup>190</sup> The Venice Commission deems it necessary that additional controlling power should be attributed to the Prosecutorial Council, notably on the basis of the report of the Prosecutor General.<sup>191</sup>

The Public Defender shares the opinion expressed by the Venice Commission concerning the goal of ensuring the transparency of the prosecutor's office that there is no a provision that expressly sets out or can be interpreted to allow the fulfilment of the task provided in the new constitution.<sup>192</sup>

The presence of 8 prosecutors forming the majority of the council is also faulty. This is also confirmed by the opinion of the Venice Commission. According to the opinion of the Venice Commission, this proportion achieves professional representation and expertise, but does not sufficiently enhance public credibility of independence.

183 Came into force on 16 December 2018.

184 8 members are elected among prosecutors, 2 members by the High Council of Justice and 5 by the parliament.

185 The Constitution of Georgia, Article 65.3.

186 Opinion of the Venice Commission of 17 December 2018, CDL-AD(2018)029, para. 31.

187 The Organic Law on Prosecutor's Office, Article 7.

188 *Ibid.*, Article 15.2.

189 Opinion of the Venice Commission of 17 December 2018, CDL-AD(2018)029, para. 34.

190 *Idem.*

191 Opinion of the Venice Commission of 17 December 2018, CDL-AD(2018)029, para. 34.

192 *Ibid.*, para. 36.

The vertical nature of authority within the prosecutor's office and the professional subordination are also noteworthy. Thus, the majority representation of prosecutors in the council undermines the independence of the prosecution service. The Venice Commission also points out the fact that the majority representation of the council by prosecutors is not balanced out by the participation of civil society.<sup>193</sup>

In the light of the above, the Public Defender of Georgia calls upon the Parliament of Georgia to start the reform of the Office of the Prosecutor General of Georgia, to take into consideration the council's constitutional role and vest it with the relevant competence for ensuring the effectiveness, independence and transparency of the prosecutor's office.

It should also be pointed out in this context that the Organic Law of Georgia on the Prosecutor's Office determines various mechanisms of accountability of the prosecutor's office. Among them is the report to be submitted to the Prosecutors' Council and the report on the activities that is submitted by the Prosecutor General to the Parliament of Georgia. The possibility of submitting additional information concerning a particular criminal case is excluded in both cases.<sup>194</sup> In the light of the above, it is impossible to ensure accountability of the activity of the Prosecutor General of Georgia concerning particular cases. The Public Defender maintains that this is particularly problematic concerning those fundamental rights which entail the so-called positive obligations (including the investigation of ill-treatment). Under the current regulation in force, the Public Defender of Georgia studies criminal case-files after investigation is over. For the purpose of the effective protection of human rights and to ensure accountability of the prosecutor's office, the Public Defender deems it necessary that through legislative amendments she should be able to have access to criminal case-files in ongoing investigations. In this regard, in order to not obstruct investigative authorities in the process of effective investigative activity, it is possible to lay down certain procedural details. It is not the objective of the Public Defender's Office to conduct procedural supervision of an investigation. Our purpose is to examine and assess those cases which are pending for years, and the public is not informed about the respective investigative and procedural actions taken in this regard.

### 4.3. EFFECTIVE INVESTIGATION OF TORTURE AND OTHER ILL-TREATMENT

During 2018, the Office of the Public Defender of Georgia sent to the prosecutor's office 5 proposals concerning institution of investigation on the alleged ill-treatment by a police officer; and 2 proposals concerning institution of investigation on the alleged ill-treatment by a prison officer. The prosecutor's office started investigation on all of these cases and the investigations are still pending. However, nobody has been recognised as a victim or an accused person in any of these cases.

The Number of the Proposals Sent by the Public Defender Concerning Alleged Ill-Treatment According to Years

	2012	2013	2014	2015	2016	2017	2018	Total
<b>Involving Police Officers</b>	8	8	7	10	7	10	5	55
<b>Involving Prison Officers</b>	19	1	21	5	3	0	2	51
<b>Total</b>	27	9	28	15	10	10	7	106

<sup>193</sup> *Ibid.*, para. 33.

<sup>194</sup> Article 19.13.d), Article 68.1, and Article 68.2.

It is noteworthy that in total the number of requests to institute investigation into the alleged ill-treatment by prison officers is decreasing by years. This is naturally a positive development. As of 2012, the major focus of our proposals was on penitentiary establishments. However, starting from 2013, the situation has changed and the incidents of alleged ill-treatment by prison officers have decreased dramatically. Increase in the incidents of alleged ill-treatment by prison officers was noticeable only in 2014. In 2013, 2015, 2016, 2017, and 2018, the number of incidents of alleged ill-treatment by police officers dramatically exceeded the number of incidents of alleged ill-treatment by prison officers.

In order to examine the incidents of ill-treatment, the Public Defender's Office requested and analysed the received statistical data. As a result, there were problems identified in terms of wrong categorization, involvement of a victim and prompt, thorough and objective investigation.

In 2018, the Prosecutor's Office of Georgia instituted investigation *ex officio* (on its own motion, without the Public Defender's proposal) on the alleged incidents of torture and other ill-treatment by police officers in 367 criminal cases. Investigation started on abuse of official powers in 90% (332 cases) of the cases and only in 10% of the cases on torture and inhuman treatment. Out of the 10% of the cases, in 6% (21 cases) of the cases, investigation was instituted on alleged inhuman treatment and in 4% (14 cases) of the cases; investigation was instituted on alleged torture.<sup>195</sup> The same indicator regarding the investigation of incidents of ill-treatment allegedly committed by prison officers is the following: investigation started in 28 criminal cases and out of them in 14 cases investigation was started on alleged abuse of official powers and in other cases on alleged inhuman treatment.<sup>196</sup>

It should be noted with interest that even at the background of investigation instituted by the prosecutor's office *ex officio*, the indicator of imposing criminal responsibility and identifying offenders is low, as is the correct legal categorisation of the acts.

In the 367 cases mentioned above, where investigation was instituted against police officers, criminal responsibility was imposed only on 12 persons. In all those 12 cases, each person was charged with abuse of official powers. In those 28 cases, where investigation was instituted against prison officers, criminal responsibility was imposed on 3 persons only and all of them were charged with inhuman and degrading treatment.

Categorisation under different articles leads to different legal outcomes and due to this very reason the issue of correct categorisation is so important. In particular, as already pointed out by the Public Defender, there is a more lenient approach determined for abuse of official power and similar crimes than for torture and other ill-treatment. In case of categorisation under torture, and degrading or inhuman treatment, it is also possible to conduct covert investigative actions, which for instance is excluded with regard to crimes under Article 333.1 and Article 333.2 of the Criminal Code of Georgia. Therefore, categorisation under the *lex specialis* is important at the investigative stage for more efficiency.

Involvement of the victim is one of the key components of the effective investigation of torture and other ill-treatment. This means, in the first place, giving the possible victim the victim status in order to enable him/her to study case-files and thus be reasonably involved in the investigation. **In those cases, where investigation was started<sup>197</sup> based on 106 proposals of the Public Defender, victims were not recognised as such in any of them.**

The problem of timely investigation was identified by delayed cases. Back on 10 February 2018, the prosecutor's office notified us that out of those cases in which investigation was started in 2013-2017, based on the Public Defender's proposals, investigation was still pending as of 2018 in 46 cases out of 72 cases. Exactly after one

<sup>195</sup> Letter no. 13/6207 of the Prosecutor's Office of Georgia, dated 29 January 2019.

<sup>196</sup> Letter no. 13/6214 of the Prosecutor's Office of Georgia, dated 29 January 2019.

<sup>197</sup> In 2012-2018.



year, the investigation is still pending in those 46 cases. In particular, according to the answer received from the prosecutor's office on 13 February 2019, final decisions in those cases have not been adopted.

The final judgments show that there has been no thorough, effective and timely investigation. In particular, **perpetrators have not been established in none of those cases, the investigation of which was requested from the prosecutor's office by the Public Defender through 106 proposals in 2012-2018.**

The problem of comprehensive, effective and timely investigation is identified also as a result of examination and analysis of individual cases that have been discontinued. In 2018, the Office of the Public Defender of Georgia examined those cases that had been terminated by the Office of the Chief Prosecutor of Georgia. In total, the office examined 38 cases.<sup>198</sup> Among them, 19 cases are those cases which started to be investigated based on the Public Defender's request in 2013–2017. The other 19 cases are those cases which started to be investigated by the prosecutor's office *ex officio* independently from the Public Defender and discontinued in 2017. The outcomes of the investigation show that from 2013 until today, the problem of thorough investigation remains the same as all possible and relevant investigative actions are not conducted. Interviewing witnesses and forensic examination are those actions that are usually carried out. Interviewing witnesses is usually of superficial nature. Besides, usually not all relevant witnesses are interviewed. In some cases, there are no video recordings, material evidence, identification parade is not conducted; no covert investigative actions have been taken place, which has also been caused by incorrect legal categorisation.<sup>199</sup> Similarly, on various occasions, the contents of communications maintained through telephone or other technical means have not been verified.

Since 2013, the problem of conducting investigation in a timely manner has remained problematic and there seems to be no improvement in this regard. Investigation often starts late and investigative actions too are conducted in unreasonably long intervals.

The functions of the investigator and the prosecutor are not separated in any cases examined. Prosecutor's instructions cannot be found in the cases. Therefore, it is unclear as to what role the supervising prosecutor has in the investigation.

Since 2013 to this day, there has not been any involvement of victims in any of those terminated cases. Alleged victims have not been recognised as victims by the prosecutor's office in any of the cases examined by us. The Office of the Public Defender of Georgia is currently preparing a special report and will introduce detailed information in this regard to the public in the near future.

With regard to delays in investigation, the Public Defender, in her 2017 parliamentary report recommended to the prosecutor's office to supply requested information to the Public Defender's Office about those investigative and procedural acts, indicating respective dates, that were carried out in response to alleged ill-treatment.<sup>200</sup> This recommendation was reflected in the resolution of the Parliament of Georgia as well.<sup>201</sup> During 2018, the Public Defender's Office sent 79 letters to the prosecutor's office concerning this issue. However, we have not received comprehensive answers with detailed information about ongoing investigative actions (investigative actions and respective dates).

198 The Public Defender's Office examined 39 cases. However, one case did not involve ill-treatment and the prosecutor's office started investigating it independently from the Public Defender. Therefore, one case was deducted from the total number of the examined cases and for the purposes of the present report 38 cases are presented.

199 The fact is that conducting covert investigative actions is not allowed from the legal point of view in the *corpus delicti* of the abuse of power concerning which investigation was instituted in majority of the examined cases.

200 The 2017 report by the Public Defender of Georgia, p. 88.

201 Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018 on the 2017 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia.

## PROPOSALS

### To the Parliament of Georgia:

- To amend the Organic Law of Georgia on the Public Defender of Georgia with the effect of authorising the Public Defender to obtain access to the case-files of pending investigations into crimes involving deprivation of life and/or ill-treatment; and
- To start the reform of the Office of the Prosecutor General of Georgia, to take into consideration the council's constitutional role and vest it with the relevant competence for ensuring the effectiveness, independence and transparency of the prosecutor's office.

## RECOMMENDATIONS

### To the Office of the Prosecutor General of Georgia:

- To supply requested information to the Public Defender's Office about those investigative and procedural acts indicating respective dates that were carried out in response to alleged ill-treatment; and
- To investigate the cases involving ill-treatment based on the principles of independence and impartiality; to carry out investigative actions comprehensively and timely and ensure to the maximum degree the involvement of victims in the process; to submit detailed information regarding the above to the Parliament of Georgia within the report submitted in accordance with Article 172 of the Rules of the Parliament of Georgia, annually.

### To the Government of Georgia

- To ensure timely allocation of the financial resources required for making the Office of the State Inspector operational and for its subsequent effective functioning.

## 5. RIGHT TO LIBERTY AND SECURITY

In 2018, there were no large-scale breaches of the right to liberty and security. However, there were isolated violations, which merit to be mentioned in the report. Isolated breaches of rights and requirements under the Georgian legislation were identified in the cases examined by the Office of the Public Defender of Georgia during police arresting citizens; during police performing official duties; there were incidents involving unjustified restriction of the freedom of movement and isolated breaches of the Georgian legislation. Investigation started on these cases. However, their outcome is not known at this stage

In the 2017 parliamentary report, the Public Defender made concrete proposals and recommendations to the Parliament of Georgia, the Government of Georgia and the Prosecutor's Office of Georgia, respectively, the fulfilment of which will enhance the standards of protection of citizens' right to liberty and security and also will contribute to the fulfilment of the international commitments undertaken by Georgia in the field of human rights protection.

By virtue of the proposal made to the Parliament of Georgia, the Public Defender requested making it obligatory to provide reasoning about the purpose and grounds for carrying out special stop-and-searches in the minister's written order which is issued in each particular case. This issue is now pending before the Constitutional Court and we hope that the court will uphold the claims of the author of the constitutional complaint.

It is noteworthy that the Public Defender of Georgia, in the 2017 parliamentary report, requested the Government of Georgia and the Prosecutor's Office of Georgia to take individual and general measures for the execution of the judgment of the Grand Chamber of the European Court of Human Rights of 28 November 2017, adopted in the case of Ivane Merabishvili. The judgment has not been executed to this day and the Committee of Minister observes the process of implementing individual and general measures.

### 5.1. ARREST OF CITIZENS IN BREACH OF STATUTORY REQUIREMENTS

Under the Georgian legislation, it is impermissible to arrest a member of the Parliament of Georgia.<sup>202</sup> Despite the above, in the reporting period, police officers arrested a member of the Parliament of Georgia, Nika Melia, in administrative proceedings. The examination of the case showed that MP Nika Melia was arrested by police officers in Tbilisi, during a demonstration on Rustaveli Avenue for a violation under Article 173 of the Code of Administrative Violations of Georgia. According to the report drawn by a police officer, policemen transferred the person arrested in Tbilisi, on Rustaveli Avenue at around 15:00, by a police patrol vehicle to the Department of Patrol Police. Then the list of MPs was verified on the website of the Parliament of Georgia, his status as an MP was confirmed and he was released. The notification of police to superiors about Nika Melia's arrest was filed at 18:04. It is noteworthy that police officers needed the unreasonable time of several hours to verify the status of an incumbent member of the parliament, whereas it was possible to verify the status using the website of the parliament on the spot too and it would not be necessary to transfer the person to a police station for

<sup>202</sup> The Constitution of Georgia, Article 52.2 (as of 11 June 2018).

several hours. We believe that Nika Melia was arrested in breach of statutory requirements. It is noteworthy that arrest of a member of the parliament in administrative proceedings occurred in previous years too, namely in 2014.<sup>203</sup>

In the reporting period, there was an incident involving an actual arrest although the person was not arrested formally. On 17 May 2018, in Tbilisi, during a procession on Rustaveli Avenue, citizen G.G. was stopped by police officers and taken to a police building, restricting his free movement for a certain period. Citizen G.G. adduced before the Office of the Public Defender the video recording of his arrest by police officers. However, according to the information supplied by the Ministry of Internal Affairs of Georgia to the Public Defender's Office,<sup>204</sup> an arrest report was not drawn by the arresting police officers.

According to the information submitted to the Office of the Public Defender of Georgia by the prosecutor's office, investigation has been launched on both incidents on account of possible abuse of power by the employees of the Ministry of Internal Affairs of Georgia; however, criminal prosecution has not been instituted against concrete individuals at this stage.<sup>205</sup>

## 5.2. SHORTCOMINGS IDENTIFIED IN POLICE OFFICERS' ACTIONS

There has been no substantive or mass violation of the right to liberty. However, a number of shortcomings have been identified in police officers' actions. The manner in which a special operation was conducted in night clubs on 12 May 2018 is particularly noteworthy.

When the Office of the Public Defender of Georgia examined the case-files, it was established that the absolute majority of the body cameras attached to the police officers were not working. This was, inter alia, caused by the fact that police officers did not know how to use them. The video recordings submitted to the Public Defender's Office are not complete; they do not show the first contact of police officers and the Special Forces Squad with citizens. Also, the video recordings show that the police officers did not have instructions or a clear idea about their mission, action plan, movement on the premises and other crucial aspects.

In cases where identification of a crime and protection of the public order require a large-scale intervention, i.e., when police has to come into contact with numerous individuals, the risk of inter-violence – ill-treatment or physical resistance to a police officer increases. Both parties – the police officer and the individual – find themselves in such an environment which might lead to imposition of legal responsibility in future. Therefore, during such interventions, the police ought to have the video equipment which would allow recording their contacts with citizens to a maximum extent. This would enhance accountability of the police, its reputation and contribute to maintaining public trust in it. Despite the fact that it is impossible to equip fully all employees of the Police Department of Criminal Cases with body cameras in 2019 due to great financial burden, it is possible to procure dozens of body cameras to use them during special operations. We maintain that it is necessary to adopt a normative act that would govern this issue and this way the obligation to use body cameras during special operations would be determined by a sub-legislative act.

It should be stressed that the current regulations on administrative arrest contained in the Code of Administrative Violations poses risk to the right to liberty and security. This was clearly shown at the subsequent demonstrations organised after the special operation was conducted in the night club Basiani on 12 May. Numerous individuals were arrested during these demonstrations.

203 See illegal arrest of a member of the parliament, Levan Bezhashvili in the 2014 parliamentary report by the Public Defender, pp. 367-369.

204 Letter no. MIA11801791865 of the Ministry of Internal Affairs of Georgia, dated 16 June 2018.

205 Letters nos. 13/10469 and 13/10465 of the Office of the Prosecutor General of Georgia, dated 13 February 2019.

### 5.3. UNJUSTIFIED RESTRICTION OF THE FREEDOM OF MOVEMENT

In the reporting period, applications filed with the Public Defender of Georgia showed again<sup>206</sup> restrictions of the freedom of movement imposed by employees of the Ministry of Internal Affairs of Georgia, without a ground for certain citizens in terms of entering and leaving Georgia.

Several persons were refused (through verbal communication) from crossing the border by employees of border checkpoints without any legal grounds. It is impermissible to refuse border crossing when leaving the country (this is a prohibition applied in criminal proceedings) unless there is criminal prosecution pending against that person and there is a court order (or a prosecutor's resolution) on suspending an accused persons' passport/travel document of a citizen of Georgia that was issued in accordance with the legislation in force.

In one of the cases examined by the Public Defender's Office, it was established that, on 30 March 2018, at Sarpi Border Checkpoint, citizen D.M. was stopped and prevented from leaving the territory of Georgia by a border security officer. According to the applicant, after being stopped, they were put in touch with an investigator over the phone and the next day he was interviewed concerning a criminal case. On 24 September 2018, the Ministry of Internal Affairs informed the Public Defender's Office that within the framework of ongoing investigation on criminal case no. 010070218001, witness D.M. was stopped based on a verbal instruction issued by a supervising prosecutor by "putting the witness on operative stop and notification".<sup>207</sup> Accordingly, the fact of the breach of the applicant's right was confirmed as the legislation does not provide for the restriction of the freedom of movement on the ground of "operative stop and notification".

The Public Defender's Office also examined the cases of S.K. and Kh.A.; on 5 October 2018, the Tbilisi City Court approved plea bargain agreements with these individuals. They were ordered to pay a fine and were released from the court. However, they were not allowed to cross the state border.

An investigator of the investigative unit of the Investigative Department of the Ministry of Finances of Georgia explained to lawyers of the persons concerned that based on their instructions the individuals were not allowed to cross the state border.<sup>208</sup> This case also shows that the right to leave the country was restricted for citizens of Georgia when there was no criminal prosecution pending against them and there was no decision made about suspending their passport/neutral travelling document.

Another reported case concerned denial of entry to a citizen of Georgia. According to citizen M.Z., on 28 February 2018, they were returning to Georgia in accordance with the rules established by law. In the Tbilisi International Airport, M.Z. was met with unknown persons who introduced themselves as "employees of the division"; they put M.Z. in a vehicle against their will and took to a neutral territory of the Georgian-Armenian border. For a several-hour journey M.Z. was not allowed to call family members. After some time (several hours), the citizen was allowed to enter Georgia. Investigation has been instituted regarding this incident.

### 5.4. CASE OF IVANE MERABISHVILI

On 12 July 2018, investigation was resumed on the criminal case of abuse of official duties when removing Ivane Merabishvili from his cell. According to the prosecutor's office, a number of investigative actions were conducted in the case. However, factual circumstances are not established and therefore criminal prosecution

206 The 2015 parliamentary report by the Public Defender of Georgia, pp. 547–549.

207 According to Letter no. 13/48426 of the Office of the Chief Prosecutor of Georgia, dated 27 June 2018, no criminal prosecution was pending against D.M. and no restriction was imposed against D.M. in terms of crossing the state border.

208 According to Letter no. 13/91049 of the Prosecutor's Office of Georgia, dated 4 December 2018, there were no preventive or other measure applied against S.K. and Kh.A. that would be linked with no allowing them to leave the country.

against particular persons has not been started.<sup>209</sup> In December 2018, the CoE Committee of Ministers, at the human rights periodic meeting of the ministers' deputies, noted with interest that a new investigation has been started. The Committee of Ministers decided to resume its examination of this case in June 2019.<sup>210</sup> According to the Committee of Ministers, 1) it is necessary to conduct detailed investigation into the facts at the root of the violation of Article 18; 2) the investigation should be organised in institutionally and practically independent manner from any person implicated; 3) the investigation should be capable of establishing the identity and criminal liability of those responsible; 4) the investigation should be sufficiently broad in scope to determine whether the events had any impact on the criminal proceedings; and 5) the investigation should be completed with diligence and speed.

Considering the great public interest in this case, the accountability of the prosecutor's office is significant in this process. Accordingly, the prosecutor's office, before (June) submitting the report to the CoE Committee of Ministers about the ongoing investigation, should inform the Public Defender fully about all investigative actions conducted within the investigation on the case of Ivane Merabishvili's removal from the cell and give her access to the case-files.

## RECOMMENDATIONS

### To the Prosecutor's Office of Georgia:

- In view of the high public interest, to inform the public periodically about the outcomes of the ongoing investigation on the possible abuse of official power by employees of the Ministry of Internal Affairs when arresting Nika Melia and citizen G.G; and
- To inform the Public Defender fully about all investigative actions conducted within the investigation on the case of Ivane Merabishvili's removal from the cell and give her access to the case-files before (June) submitting the report to the CoE Committee of Ministers about the ongoing investigation.

### To the Ministry of Internal Affairs of Georgia

- In 2019, to determine by a normative act the duty of law-enforcement officers taking part in special operations to use body cameras as well as the rules of the use of body cameras during special operations; and
- In 2019, to equip law-enforcement officers taking part in special operations with body cameras.

209 Letter no. 13/154 of the Office of the Prosecutor General of Georgia, dated 3 January 2019.

210 Information is available at: <https://goo.gl/1YToSb>, (accessed 27 February 2019)

## 6. RIGHT TO A FAIR TRIAL

The right to a fair trial, which incorporates numerous components, was violated in various aspects in 2018 and systemic and individual problems were identified.

It should be pointed out that the recommendations made by the Public Defender of Georgia for the notice of the Parliament of Georgia in the 2017 parliamentary report have not been fulfilled.<sup>211</sup>

In particular, the reform of the legislation governing the High School of Justice, selection and appointment of judges have not been carried out; the clear and foreseeable grounds of disciplinary responsibility of judges have not been determined; and the new code of administrative violations have not been adopted, etc.

The following issues remain problematic in the reporting period: delay in examination of cases; sentences adopted in violation of the principle of legal certainty; the use of inadmissible evidence; the shortcoming related to the direct examination of evidence due to the breach of the principle of the court composition and denial of the right to a fair trial in the examination of administrative violations.

### 6.1. INSTITUTIONAL PROBLEMS IN THE JUDICIARY

The formation of the judiciary, its effective and independent functioning is crucial to ensure a democratic society. It is a guarantor of the rule of law and human rights. No institution under the executive will be able to commit systemic violation of human rights if the court system is independent and effectively discharges its duties.

The Public Defender's Office has received numerous applications concerning illegality and lack of reasoning of judgments. Considering our mandate, we often resort to the *amicus curiae* procedure and submit briefs to the courts. Apart from the procedural issues, the Public Defender of Georgia is concerned about institutional problems of the judiciary since they are closely related to human rights.<sup>212</sup>

The Public Defender discussed the following issues in the 2017 parliamentary report: the events unfolding in the High Council of Justice (hereinafter the "HCoJ"), confrontations between judicial and non-judicial members; conducting the HCoJ sessions in camera and the lack of publicity.<sup>213</sup> The particular concern expressed in the 2017 parliamentary report was related to the problem of court presidents and pressures exerted on a judge by virtue of replacing an assistant judge and manipulations with courtrooms.<sup>214</sup>

In the 2017 parliamentary report, the Public Defender also addressed the incidents of pressure exerted on the President of the Supreme Court. According to the President of the Supreme Court herself, she was a victim of violence from other members of the HCoJ. Unfortunately, there was no appropriate response to these

211 The 2017 parliamentary report by the Public Defender of Georgia, pp. 116-117.

212 *Citizens of Georgia Antandil Ungiadze and Giorgi Kipiani v. Parliament of Georgia*, judgment of the Constitutional Court of Georgia no. 1/3/421,422 of November 10 of 2009 II, 1.

213 P. 100.

214 P. 103.

incidents and eventually, on 2 August 2018, Nino Gvenetadze resigned from the position of the President of the Supreme Court. The real reasons behind this decision are still unknown to the public.

In 2018, the Public Defender paid particular attention to the confrontation between the NGOs and the HCoJ and the absence of any healthy dialogue. Many international documents mention the importance of NGOs. Their major task is to monitor and assess ongoing processes and advocate policy and regulatory changes. Maintaining cooperation and constructive dialogue with NGOs is crucial for any state agency and especially for judicial institutions. A judiciary that is not subject to political changes and does not have a supervisory body is still subject to democratic accountability. The performance of the judiciary is assessed by the degree of respect for the rule of law and the trust the public has in it. The assessments made by NGOs based on professionally organised methodology are significant in this regard. The judiciary, in its turn, should pay attention to these assessments and respond to them within the framework of constructive dialogue. The absence of such format will naturally compromise the public trust in the courts system and the credibility of the judiciary before local and international partners.

## 6.2. ELECTING SUPREME COURT JUDGES

It should be pointed out from the outset that the situation in the Supreme Court is difficult. Since August 2018, the position of President of the Supreme Court has been vacant in the country. Furthermore, presently there are only 2 judges in the Chamber of the Criminal Cases and the term of office of one of them has already expired. Similarly, the terms of office of another two judges will expire this year. Unfortunately, before the enforcement of the new constitution, the President of Georgia did not submit new candidacies to the parliament for the positions of the president and other judges of the Supreme Court.

Certain political disagreement between the former president and the majority of the parliament was the reason for the above failure. In any event, the Supreme Court suffered from this. In this light, the decision of the former president to not nominate to the Parliament of Georgia the candidates for the Supreme Court judgeship should be negatively assessed.

The new wording of the Constitution of Georgia came into force on 16 December 2018. It provides for another procedure for the formation of the Supreme Court.<sup>215</sup> After the constitutional amendments, it is the High Council of Justice that submits the candidacies for the positions of the president and judges of the Supreme Court to the parliament of Georgia.

5 days after the enforcement of the new wording of the Constitution, on 21 December 2018, the HCoJ scheduled a session for 24 December 2018 and determined the submission of judicial candidacies for the Supreme Court of Georgia as one of the issues to be discussed.<sup>216</sup> During the session on 24 December 2018, the Secretary to the HCoJ submitted to the council a 10-person list for approval.<sup>217</sup> It is noteworthy that this procedure was not preceded by the process and deliberation of nominating the candidates or discussing their biographies. Besides, it should be pointed out that the members on the ten-person list were incumbent judges only;<sup>218</sup> two of them were incumbent members of the HCoJ.<sup>219</sup> It is noteworthy that, several days before,

215 According to the model before 2018, the President of Georgia submitted to the Parliament of Georgia candidacies for the position of a judge of the Supreme Court.

216 Information is available at: <http://hcoj.gov.ge/ge/24-dekembers-1100-saatze-iustitsiis-umaghlesi-sabchos-skhdoma-gaimarteba/3364>, (accessed 16.03.2019).

217 Information available at: <http://hcoj.gov.ge/ge/iustitsiis-umaghlesma-sabchom-uzenaesi-sasamartlos-mosamartleta-kandidatebi-daasakhela/3368#!prettyPhoto>, (accessed 16.03.2019).

218 Mariam Tsiskadze, Nino Kadagidze, Mikheil Chinchaladze Paata Silagadze, Merab Gabinashvili, Nino Sandodze, Tamar Alania, Giorgi Tkavadze. .

219 Giorgi Mikautadze and Dimitri Gvritishvili.



one of the non-judicial members of the HCoJ proposed amending the regulations of the HCoJ with the effect of governing the process of nomination of Supreme Court judgeships and determining the competition procedure.

The process of nominating judicial candidates was followed by active and intense objection from the public. The Public Defender also made a statement<sup>220</sup> where she discussed the following problematic issues:

- HCoJ was obliged to select judicial candidates based on the principle of transiency and impartiality, especially in those circumstances where the legislation did not lay down the respective detailed regulations; and
- The Public was unaware of the criteria that the council was guided by when nominating the candidates. It was unclear as to why other incumbent judges or persons outside the judiciary had not been nominated;
- The issue of conflict of interest was particularly alarming when two incumbent members were nominated as candidates as a result of completely non-transparent procedure.

After all the above-mentioned, the Public Defender called upon the parliament to suspend the deliberations on the nominated candidates and start working immediately for adopting transparent procedures for **selecting and nominating** candidates for the judgeship of the Supreme Court.

Apart from the Public Defender, the process of nomination of the candidates for the judgeship of the Supreme Court was actively criticised by many international and local organisations, diplomatic missions, acting President of the Supreme Court and other stakeholders.

It is commendable that the parliament refused to discuss the candidates and immediately in 2019 started working on the reform that was also underway during the preparation of this report (March 2019). In the Public Defender's opinion, the reform should address the following challenges:

- Judicial candidates should be selected through an open, fair and inclusive procedure. All those persons who express their wish and meet the relevant criteria should be able to take part in the competition;
- The conflict of interest should be regulated – incumbent members of the HCoJ should not be able to nominate themselves to the Supreme Court and in case of nomination they should not take part in the vote regarding themselves and competing candidates;
- The procedure of nominating candidates by the council requires more legitimacy and credibility. Either the participation of non-judicial members in the process should be increased or to ensure credibility and pluralism in reaching the decision by the council, several candidates of a position should be nominated to the Parliament of Georgia; and
- A transparent and detailed procedure should be introduced for deliberations on judicial candidates in the Parliament of Georgia.

The common challenge of this process is the existing mistrust in the HCoJ and concentration of much power in it. For instance, according to the United States Country Reports on Human Rights Practices for 2018, prepared by the Department of State: "... there remained indications of interference in judicial independence and impartiality." And "Judges were vulnerable to political pressure from within and outside of the judiciary."<sup>221</sup> It should be noted that the Public Defender also mentioned in the 2017 parliamentary report that a lot of power was concentrated in the HCoJ.

220 The statement made on 26 December 2018.

221 "Although the constitution and law provide for an independent judiciary, there remained indications of interference in judicial independence and impartiality. Judges were vulnerable to political pressure from within and outside of the judiciary, available at: <https://goo.gl/US8rC>, p. 12.

Since 27 January 2019, several meetings presided over by the President of the Parliament of Georgia have been organised regarding reforms. The draft law prepared by the staff of the President of the Parliament were presented at these meetings.<sup>222</sup> Unfortunately, many important and fundamental concerns voiced during the discussions were not reflected in the draft law.<sup>223</sup> The Public Defender's position regarding several fundamental issues is given below. It is necessary to envisage them in the legislation in order to ensure that the procedure of electing the Supreme Court judges in future is based on the rule of law.

In the first place, it is necessary to point out that it is unacceptable to introduce such criteria for judicial candidates for the Supreme Court, aimed at narrowing down the group of potential candidates to a maximum degree. Under the draft law, apart from incumbent and former judges, a judicial candidate can be a “distinguished specialist of a branch of law, who has professional experience in the respective specialisation for no less than 5 years and has passed judicial qualification examination.”

Under the regulations currently in force,<sup>224</sup> a candidate for the position of a judge of the Supreme Court can be a person “whose professional experience shall comply with the high status of the Supreme Court” and he/she shall be exempted from judicial qualification examination.

This regulation has been in force since the adoption of the constitution. The last amendment in the said article was made on 21 July 2018 (in the process of harmonisation of the new version of the constitution).

However, the criterion was left intact and no examination requirement was introduced for candidates. Neither the Constitutional Court nor the European Court of Human Rights require candidates to pass formal examinations for higher instance courts and states still manage to assess their competence and integrity. Stemming from the fact that there was no need to narrow the circle of eligible candidates in this regard, the rationale of this wording is completely unclear. It is particularly noteworthy as the Constitution states that each citizen shall have the right to hold any public office.<sup>225</sup>

The introduction of this rule will exclude the eligibility of distinguished jurists. If it is considered to be necessary to adopt such a restrictive rule all the same, still it should not be adopted in its entirety. 20 judges of the Supreme Court have to be elected in 2019. They will be elected for the lifetime, until the age of retirement. Other experienced jurisconsults should also be given a reasonable time and opportunity to prepare for judicial examination and plan their professional career accordingly. **The current regulation in force gives a reasonable expectation to jurisconsults of recognised competence that they can become judges of the Supreme Court. If the legislature still deems it necessary to follow this restrictive approach, it should not be implemented altogether, and this kind of regulation should be enforced after a certain period of time.**

Apart from the problem related to the criteria, one of the important shortcomings of the draft law is the conflict of interests. As already mentioned, on 24 December 2018, two members of the HCoJ were nominated at the council session. This raises misgivings concerning integrity. It is therefore necessary to introduce certain limitations. The draft law initiated in the parliament provides for a three-level ballot. At the first stage, the member of the HCoJ should not participate in long-listing of candidates who applied for the Supreme Court judgeship. Later oral hearings are conducted and the council hears each candidate individually. At this stage, those members of the council who are candidates themselves are allowed to ask questions to their competitors and have access to their confidential information. At the last stage, when the council casts ballot by the 2/3 majority for judicial candidates, the member of the HCoJ does not take part in the ballot which concerns himself/herself directly. When the issue at stake does not concern the member of the HCoJ, he/she fully

222 Regarding this issue, various parliamentary groups and factions submitted two draft laws in parallel.

223 It should be mentioned that many international organizations and diplomatic missions of various countries who are usually rather tight-lipped and restrained in their assessments, openly stated their viewpoints regarding various issues. They submitted written opinions and actively participated in the working process.

224 The Organic Law on the Courts of General Jurisdiction, Article 34.4.

225 The Constitution of Georgia, Article 25.

participates and, *inter alia*, vote (or abstain from voting) against the competitors. It is necessary to change this procedure. The HCoJ members should not be allowed to be nominated for the Supreme Court judgeship whilst in office; or as an alternative, they should not be allowed to participate in interviews, pose questions and assess. Similarly, they should not be allowed to take part in voting at any stage of the procedure. Without meeting these requirements, the HCoJ will continue to give rise to mistrust and this will compromise the legitimacy of the process to a maximum degree.

The draft law provides for assessment of the judicial candidates based on the score system at one of the stages. It is followed by a **secret ballot**, which renders the score-based assessment meaningless and allows for the possibility that a member of the council supports a candidate to whom he/she previously gave a low score. It is also noteworthy that at the HCoJ all ballots are secret throughout the selection procedure of judicial candidates for the Supreme Court judgeship and the adopted decisions are not reasoned. The Public Defender maintains that the obligation to cast an open ballot should be determined by legislation.

The main challenge of the draft law is the number of votes required for nominating the candidates for the Supreme Court judgeship. This will be particularly visible through the analysis of the current situation existing in the Georgian judiciary.

Presently, one of the major challenges of the authority is the large concentration of power in the HCoJ. Independence of the judiciary certainly implies its independence from the executive and the legislature in the first place as they accumulate great powers and court's functions could cause their "natural interest and temptation" to influence. However, at the same time, if there is a concentration of power within the judiciary too, this could also create opportunities for influencing an individual judge. This is particularly problematic in the case of institutions within the judiciary since formally they too enjoy constitutional guarantees and independence standards. **Possible infringement of independence from the body in charge of ensuring independence is particularly dangerous and therefore it is necessary to decentralise the authority to a maximum degree.** Unfortunately, the United States Department of State in its Country Reports on Human Rights Practices for 2018 observed with regard to Georgia that there is a risk of vulnerability to political pressure from within the judiciary.

Stemming from the abovementioned, before the decentralization of power in the HCoJ, it is necessary to adopt certain exceptional regulations: 1) the High School of Justice should be functionally separated from the council; 2) courts should elect court presidents themselves; 3) determining by law of clear and foreseeable grounds for disciplinary responsibility of judges; and 4) the transparency of selection and appointment of judicial candidates should be ensured to a maximum degree.

Before the elimination of all these challenges, it is necessary to introduce additional safeguards for certain decisions of the HCoJ. It could imply longer terms of deliberations, additional reasoning and/or higher quorum for adopting decisions. **The principle of separation of power implies both separation of powers and checks and balances.** In those conditions where the Georgian judiciary faces great challenges, the Parliament of Georgia has the duty to create the legislative framework that would increase the public trust in the court system.

Adopting the decision on 24 December 2018, during which selection and nomination of candidates for the judgeship of the Supreme Court was conducted without transparency, has naturally given rise to an expectation that the possibility of adopting such decisions is excluded in future. The draft law initiated in the Parliament of Georgia only regulates the selection. Nominations still rest with the HCoJ, which adopts the decision with the 2/3 majority of the full composition of the council. **In order to make the decision-making process more transparent, the parliament should discuss various alternatives. Various international organisations and NGOs have the position according to which the 2/3 majority of the judicial members and 2/3 majority of non-judicial members should be needed for the selection of candidates to be nominated**

to the parliament. As an alternative, it is possible to introduce a rule to ensure pluralism under which at least 3 candidates are nominated to the parliament for each position. The Constitution of Georgia fully allows alternative regulations.

And finally, it is necessary to ensure that the process of selecting judges of the Supreme Court should be conducted in the Parliament of Georgia in an active and open manner. Under the draft law presented, the Parliament is involved only in a small portion of the procedure and there are rather short terms for deliberations. It is not indicated as to who could be a member of the working group; the functions, activities of the working group and its access to information are not determined; the information gathered by the HCoJ about candidates is not sent to the parliament; candidates are heard only at committee sessions where only members of the committees can ask questions but not the members of the working group or other members of the parliament. It should also be noted that there is no possibility of asking questions to the judicial candidates during plenary sessions.

Effective performance of the judiciary is crucial for the protection of human rights. For this very reason the events surrounding the judiciary are always meticulously scrutinised in the Public Defender's parliamentary report. It is necessary to adopt an institutional framework and mechanism that would contribute to the effective and independent functioning of the court and ensure public trust at the same time. Regulation of the procedure for electing the judges of the Supreme Court is a crucial issue on which the trust in the court depends. The public, professional and political groups should have the feeling that the procedure for electing judges is transparent to the maximum extent and aims at ensuring effectiveness and independence of the court system.

### 6.3. EXAMINING CASES WITHIN A REASONABLE TIME

#### Examining Criminal Cases Within a Reasonable Time

Delay in the examination of cases remains a problem. As of 1 January 2016,<sup>226</sup> examination of non-custodial cases in the first instance court was supposed to finish no later than 36 months.<sup>227</sup> Despite this imperative requirement of the law, 8.6% of the pending non-custodial cases (70 cases out of 808) were not finalised in 4 city /district courts within the statutory term – before 1 January 2019.<sup>228</sup> Despite adopting judgments within statutory terms, it was revealed that the Kutaisi City Court examined a case<sup>229</sup> for an unreasonably lengthy period – more than five years (from 11 November 2013 until 16 December 2018).<sup>230</sup>

The study of the examination of convicted persons' administrative claims (3 cases against the Penitentiary Office studied by the Public Defender's Office) revealed the delay of up to 5 months in the delivery of reasoned court judgments to parties.<sup>231</sup> The courts' workload and the failure to prepare a reasoned decision

226 The Criminal Procedure Code of Georgia, Article 185.6 and Article 185.7 and Article 333.7. At the material time the 24-hour term for the examination of non-custodial cases was enforced.

227 The Criminal Procedure Code of Georgia, Article 333.8.

228 Letter no 1053-1 of the Kutaisi City Court, dated 25 January 2019; Letter no. 119/G of the Rustavi City Court, dated 30 January 2019; Letter no. 54 of the Telavi District Court, dated 25 January 2019; and Letter no. 63-G/K of the Batumi City Court, dated 4 February 2019. According to letter no. 230119 of the Tbilisi City Court, dated 25 January 2019, the information requested by the Public Defender's Office was not supplied due to the absence of the statistical data.

229 Criminal case on the failure to report a crime committed by prison officers with regard to convict L.K. and abuse of official power.

230 Letter no. 11126-3 of the Kutaisi City Court, dated 28 September 2018.

231 1. Judgment of the Tbilisi City Court of 20 March 2018 (claimant: convict Sh.A.; respondent: penitentiary establishment no. 7; subject of the dispute: reimbursement of non-pecuniary damage) was handed on 21 August due to the failure to draft it on time (Letters nos. 3/8474-17 and 3/8474-16 of the Tbilisi City Court, dated 21 July 2018 and 30 August 2018, respectively); 2. Judgment of the Tbilisi City Court of 17 July 2018 (the Ministry of Justice of Georgia was ordered to reimburse non-pecuniary damage; to provide medical care for a convict and to ensure the adequate conditions) was handed to convict N.T. on 7 November; 3. Judgment of the Tbilisi Court of Appeals of 2 October 2017 under which penitentiary establishment no. 6 was ordered to examine claims of convict B.B. within one month after the judgment came into force. The judgment was handed to the parties only in March 2018. The following reasons were cited: the large number of cases and judge being on a sick leave (Letter no. 3B/2110-17.190316616001506799 of the Tbilisi Court of Appeals, dated 23 August 2018)

on time cannot be a ground for delaying the delivery of judgments and the violation of convicted persons' rights. The problem is further intensified by the legislative environment in this regard since the administrative procedural legislation does not determine specific terms for delivery of judgments to parties.

The examination of cases by appeal courts in breach of statutory terms remains problematic. A court of appeals decides about admissibility of a case within ten days of receiving an appeal and the case-files and adopts a judgment within 2 months after admitting an appeal.<sup>232</sup> In 2018, in Tbilisi Court of Appeals,<sup>233</sup> examination of 1,193 criminal cases previously admitted was finalised out of which 12% of the cases (149 cases) were adjudicated in breach of statutory terms (examination from 4 up to 10 months); in the Kutaisi Court of Appeals,<sup>234</sup> examination of 766 criminal cases was finalised out of which 13.5% of the cases (104 cases) were adjudicated in breach of statutory terms (examination from 4 up to 11 months; in 6 cases – 1 year and more).

### Examining Civil and Administrative Cases Within a Reasonable Time

The analysis of the statistical data supplied by the Tbilisi Court of Appeals and the Supreme Court of Georgia show that the examination of cases in civil and administrative proceedings within the terms established by law remains problematic.<sup>235</sup>

Under civil and administrative procedural legislation (save exceptional cases for which tighter terms are determined), city (district) and appellate courts examine cases no later than 2 months after receiving an application; in particularly complex cases, this term, based on the respective court's decision, can be extended up to 5 months. As regards the Court of Cassation, the procedural legislation determines 6 months as the term for examination of a cassation appeal.

According to the submitted information, in 2018, 3,055 appeals were registered in the Chamber of Civil Cases of the Tbilisi Court of Appeals. Out of this number, only 15% of the registered cases (451 appeals) were considered within the 2-month term (among them, 348 cases were left without consideration; 11 cases were discontinued and 2 cases were suspended); approximately 23% of the registered cases (705 appeals) were considered within the 5-month term (among them, 176 cases were left without consideration; 26 cases were discontinued). **It is established, accordingly, that the Chamber of Civil Cases of the Tbilisi Court of Appeals did not examine within the statutory terms in approximately 62% of the cases registered in 2018.**<sup>236</sup>

As regards the Administrative Chamber of the Tbilisi Court of Appeals, in 2018, 1,409 appeals were registered in total. Out of this number, 26% of the registered cases (363 appeals) were considered within the 2-month term (among them, 73 cases were left without consideration; 16 cases were discontinued and 1 case was suspended); approximately 33% of the registered cases (458 appeals) were considered within the 5-month term (among them, 35 cases were left without consideration; 11 cases were discontinued and 1 case was suspended). **It is established, accordingly, that the Chamber of Administrative Cases of the Tbilisi Court of Appeals did not examine approximately 41% of the cases registered in 2018 within the statutory terms.**

In 2018, 1,485 cassation appeals were registered in the Civil Chamber of the Supreme Court of Georgia. Out of this number, 510 appeals were not admitted for the consideration of merits. Out of this number, admissibility was examined in 344 cases within the 3-month term.<sup>237</sup> As regards Administrative Chamber of the Supreme Court of Georgia, in 2018, 1,495 cassation appeals were registered in total. Out of this number, 568

232 The Criminal Procedure Code of Georgia, Article 295.2 and Article 295.6.

233 Letter no 01/20(A) of the Kutaisi Court of Appeals, dated 30 January 2019.

234 Letter no. 98-2/10 of the Kutaisi Court of Appeals, dated 1 February 2019.

235 Letter no. 01/38A of the Tbilisi Court of Appeals, dated 8 February 2019 and Letter no. P-93-19 of the Supreme Court of Georgia, dated 20 February 2019.

236 The Civil Procedure Code of Georgia, Article 59.3.

237 The Civil Procedure Code of Georgia, Article 401.3.

appeals were not admitted for the consideration of merits. Out of this number, admissibility was examined in 355 cases within the 3-month term.<sup>238</sup>

Out of the 970 cassation appeals in civil cases admitted for the consideration of merits in the Supreme Court, within 6 months after receiving an appeal, proceedings were finalised in 32 cases, i.e., in 3% of the cases.<sup>239</sup> Out of approximately 920 cassation appeals in administrative cases lodged with the Supreme Court in 2018 and admitted for the consideration of merits in the Supreme Court, within 6 months after receiving an appeal, proceedings were finalised only in 11 cases, i.e., in 1.2% of the cases.<sup>240</sup> It should be noted that a decision about suspending proceedings was not adopted in any of the civil and administrative cassation appeals admitted in the Supreme Court in 2018 which could not be finalised within the 6-month term.

#### 6.4. PERMANENCE OF THE COMPOSITION OF THE BENCH

One of the problems reflected in the 2017 parliamentary report – violation of the principle of permanence of the bench composition of the bench in the practice of the courts of general jurisdiction<sup>241</sup> – was identified in the reporting period too while considering the merits of 58 criminal cases.<sup>242</sup> According to the amicus curiae brief submitted by the Public Defender of Georgia,<sup>243</sup> the normative connotation of the law,<sup>244</sup> under which it is possible to appoint a substitute judge after the trial has already begun and the majority of evidence has already been directly examined by the other judge and the consideration of the case is not started from the beginning, is against the principle of direct examination of evidence;<sup>245</sup> and the judgment adopted by a substitute judge is adopted in violation of this principle (conviction is based on those pieces of evidence that was directly examined by the other judge). Such practice does not meet the standard of a reasoned judgment.<sup>246</sup>

#### 6.5. PRESUMPTION OF INNOCENCE

Presumption of innocence is an aspect of the right to a fair trial implying a legal interest of a person not to be referred to as guilty until proved guilty, in accordance with the procedures established by law and the court's judgment of conviction that has entered into legal force. Breach of this right was identified during the reporting period. Investigative authorities referred to a person as guilty in affirmative when communicating with a third party.

In the reporting period, the Public Defender's Office examined the case of citizen Z.B. It was established that an investigative agency, on the various stages of the investigation, when addressing various legal entities of private law, referred to the fact of the commission a crime by Z.B. in affirmative, despite the fact that the person concerned was not even prosecuted at the material time.

238 The Civil Procedure Code of Georgia, Article 34.3<sup>1</sup>.

239 The Civil Procedure Code of Georgia, Article 391.6.

240 The Administrative Procedure Code of Georgia, Article 34.6.

241 The 2017 parliamentary report by the Public Defender, pp. 105-106.

242 Letter no. 1054-1 of the Kutaisi City Court, dated 25 January 2019; Letter no. 120/G of the Rustavi City Court, dated 30 January 2019; by Letter no. 210119 of the Tbilisi City Court, dated 2 January 2019, the court again refused to give statistics to the Public Defender's Office, due to the reason they did not have it.

243 On 29 November 2018, the Public Defender of Georgia submitted an amicus curiae brief (no. 15-5/14782) to the Constitutional Court of Georgia, regarding a constitutional complaint (no. 1300) in the case of *Citizens of Georgia: Giorgi Gulaberidze and Badri Shushbanidze v. the Parliament of Georgia*.

244 The Criminal Procedure Code of Georgia, Article 184: "By decision of the chairperson of the court, a substitute judge can be assigned to a case, who shall substitute for a judge who has withdrawn from the composition of the court, and the case hearing shall continue."

245 *Cutean v. Romania*, judgment of the European Court of Human Rights of 2 December 2014 para. 61; and *Beraru v. Romania*, judgment of the European Court of Human Rights of 18 March 2014, para. 66.

246 *Cerovšek and Božičnik v. Slovenia*, judgment of the European Court of Human Rights of 7 March 2017, paras. 38-47.

Based on this case, the Public Defender further examined other cases. There were other occasions established, when the information about a person's guilt was given in affirmative despite the fact that person was not convicted by a court's judgment that has entered into legal force against that person.

In this regard, it is necessary to additionally inform investigators and, in case of establishing a violation, it is necessary to impose responsibility on them.

## 6.6. PRINCIPLE OF LEGAL CERTAINTY

In 2018, the Public Defender of Georgia submitted an *amicus curiae* brief to the Tbilisi Court of Appeal, regarding the criminal case against the former President of Georgia, Mikheil Saakashvili. In accordance with the decision of 5 January 2018, the action of the former president (pardoning convicted persons) amounted to obstruction of justice and exempting particular persons from criminal responsibility. It should be noted that the charges have not been brought and the sentence is not imposed for a particular crime against the judiciary: Interference with legal proceedings, investigation, or defence (Article 364); for adducing false information or false testimony (Article 370; exertion of influence on an interviewee, a witness, or a victim (Article 372); and concealment of a crime (Article 375). The sentence is imposed based on a general article of abuse of power. The Public Defender, in her *amicus curiae* brief,<sup>247</sup> discussed international and constitutional standards which consider it problematic to impose criminal responsibility on high-ranking political officials for political decisions under abuse of official power or use of excessive power and other general crimes.<sup>248</sup> In the Public Defender's opinion, the provision on excessive use of power should be narrowly construed when it comes to the criminal responsibility of political officials in order not to violate the principle of legal certainty. The brief also discusses the use of indirect testimony as the Public Defender considered that the sentence was mainly based on evidence of this category. Unfortunately, the court did not take into consideration the *amicus curiae* brief submitted by the Public Defender.

## 6.7. IMPORTANCE OF A PUBLIC AND ORAL HEARING

Holding a public and oral hearing determines essentially the quality of justice. Public character of proceedings reinforces public trust in the judiciary, whereas oral hearing ensures quality of justice in a particular case. The entire chronology of the criminal proceeding against Giorgi Mamaladze convicted in the so-called cyanide case shows clearly that neither public nor oral hearing was conducted at any stage of the trial. This, accordingly, negatively affected the public confidence in the courts and the quality of justice in this particular case.

In August 2018, the Supreme Court without an oral hearing declared the cassation appeal of the lawyers representing the interests of convict Giorgi Mamaladze as inadmissible. The reasoning behind the decision was that the cassation appeal did not meet the admissibility criteria determined for a cassation appeal. The Public Defender considers that the lack of a public hearing at the previous levels of jurisdiction was unjustified.<sup>249</sup> Accordingly it would be a good opportunity to admit the cassation appeal and examine in at a public hearing in order to redeem the shortcomings that took place at lower levels of jurisdiction. Such a format of proceeding would contribute to improvement of the quality of justice in this case and would satisfy the public interest.

247 Amicus Curiae Brief of 9 May 2018, no. 15-5/6541.

248 The Venice Commission deems it to be a serious challenge to impose criminal responsibility on high-ranking political officials under the provisions that are too general and vague, see, <https://goo.gl/S4Teh3>, (accessed 3.03.2019).

249 The outcomes of the Public Defender's monitoring on the so-called cyanide Case, 15 November 2017.

Under the jurisprudence of the European Court, right to public hearing is not absolute and it can be restricted under certain grounds. When limiting this right, national courts should ascertain whether that decision can be seen to be justified by the special features of the proceedings viewed as a whole.<sup>250</sup> The European Court maintains that the public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts can be maintained.<sup>251</sup> In a number of cases, the Court pronounced itself in express terms that the fact that proceedings before an appellate court are held in public cannot remedy the lack of a public hearing at the lower levels of jurisdiction.<sup>252</sup> Thus, the cassation proceedings presented an opportunity to redeem one of the rights violated in the cyanide case, viz., the unjustified lack of a public hearing. However, the decision reached by the Court of Cassation about the inadmissibility of the cassation appeal excluded the use of even this possibility.

## 6.8. USE OF INADMISSIBLE EVIDENCE

The previous year's report<sup>253</sup> discussed the problem of worsening the situation of an accused person due to the use of illegal evidence. On 3 October 2018, the Tbilisi Court of Appeals upheld the judgment of the first instance court and based the conviction on the evidence that was obtained by the prosecution through the violation of the requirements of the Criminal Procedure Code of Georgia and other pieces of evidence obtained based on the illegal evidence<sup>254</sup> that have a significant influence on the judge's decision and worsen the situation of the convicted person. The Public Defender submitted the amicus curiae brief to the Supreme Court.<sup>255</sup> The judgment has not been delivered yet.

## 6.9. INVESTIGATION OF EXERTING INFLUENCE ON A JURY

In order to guarantee the right to a fair trial, it is necessary to protect jurors from undue influence.

In 2012-2018, no criminal prosecution was instituted<sup>256</sup> concerning crimes against a jury,<sup>257</sup> in 2013-2018, investigation started only in 2 cases.<sup>258</sup> Out of these two cases, the Public Defender made a recommendation in 2016 in the case of G.O. The investigation of the criminal case against G.O. (concerning unlawful interference with the activities of a jury, breach of confidentiality of jury deliberation and ballot in order to exert influence on criminal proceedings) was pending without result and the Public Defender's recommendation was to conduct it in an effective manner.

It should be pointed out that effective investigation and its outcomes are particularly important for the judgment of conviction delivered against G.O. as it could serve as the ground for its revision based on newly revealed

250 *Axen v. Germany*, judgment of the European Court of Human Rights of 8 December 1983, para. 28.

251 *Malhous v. the Czech Republic*, judgment of the European Court of Human Rights of 12 July 2001, paras. 55-56.

252 *Ramos Nunes de Carvalho e Sá v. Portugal*, judgment of the European Court of Human Rights of 6 November 2018, para. 192.

253 The 2017 parliamentary report by the Public Defender, pp. 110-111.

254 Examination of the person's clothes and seizing the mobile phone during the examination was carried out based on the consent of one who was not the owner of these items and therefore for procedural purposes was not the person to authorise the examination. Accordingly: 1) the report on the examination of the person's clothes was illegal evidence; and 2) the mobile phone seized as a result of the examination of the clothes was evidence obtained through illegal evidence.

255 Amicus curiae brief by the Public Defender of Georgia of 24 December 2018 (no. 15-2/15653) in the case of I.T.

256 Letter no. 13/7479 of the Office of the Prosecutor General of Georgia, dated 3 February 2019.

257 The Criminal Code of Georgia, Article 364.2<sup>1</sup> and Article 364.4, Articles 367<sup>1</sup>-367<sup>2</sup>.

258 Letter no. MIA51900367158 of the Ministry of Internal Affairs of Georgia, dated 12 February 2019:

1. Criminal Case no. 010090615002 on 9 June 2015 under Article 364.2<sup>1</sup> of the Criminal Code of Georgia and Article 367<sup>1</sup>;

2. Criminal Case no. 082251218001 on 25 December 2018 under Article 364.2<sup>1</sup> of the Criminal Code of Georgia.



circumstances.<sup>259</sup> The investigation has been conducted from 2015 to this day despite the expiry of statute of limitation<sup>260</sup> and the terms of investigation. The investigation is ongoing despite the imperative requirement of the law<sup>261</sup> and has not been closed to this day.

## 6.10. RIGHT TO KEEP A DOCUMENT IN PENITENTIARY ESTABLISHMENTS

Under the statutes of penitentiary establishments, there is a limit for prisoners in terms of keeping documents in cells based on the number of sheets. This limitation interferes with their right to effectively exercise their right to defence. The majority of criminal case-files contain numerous volumes. Accused and convicted persons are not allowed to keep documents containing more than 100 sheets. Accordingly, prisoners are unable to study the case-files and to establish their positions for a trial.

For addressing this problem, the Public Defender of Georgia, in 2015 made a proposal for the notice of the Ministry of Corrections and Probation of Georgia<sup>262</sup> to ensure that persons placed in penitentiary establishments have the right to keep and use not only copies of court's decisions and judgments but also copies of files of criminal cases against them, copies of case-files of administrative and civil proceedings and legislative and sub-legislative normative acts. Unfortunately, this proposal has not been fulfilled yet since the statutes of penitentiary establishments still provide this prohibition and prisoners are unjustifiably restricted from using their legal right to defend themselves.

## 6.11. SHORTCOMINGS OF THE CODE OF ADMINISTRATIVE VIOLATIONS

The previous reports by the Public Defender of Georgia<sup>263</sup> discussed on numerous occasions that the Code of Administrative Violations that was adopted in 1984 under the Soviet rule is a defective normative act and it is necessary to replace it by a new code.

The Governmental Action Plan for Human Rights Protection provided for the systemic revision of the Code of Administrative Violations and elaboration of the new code back in 2014-2015.<sup>264</sup> A governmental commission was set up to facilitate the form of the Code of Administrative Violations of Georgia.<sup>265</sup> Later, a draft Code of Administrative Violations was developed. However, it has not been submitted to the parliament. It should be noted that the Governmental Action Plan for Human Rights Protection for 2018-2020<sup>266</sup> determined 2018-2019 as the new time-frame for initiating.

The nonexistence of a standard of proof or burden of proof in the Code of Administrative Violations that would be applied during the examination of the case and imposition of administrative responsibility is

259 The Criminal Procedure Code of Georgia, Article 310.c).

260 The Criminal Code of Georgia, Article 71.1.a): A person shall be released from criminal liability if: a) two years have passed after the commission of the crime for which the maximum sentence prescribed by the special part of this Code does not exceed a two-year term of deprivation of liberty; Article 3642'; Article 367' imposes deprivation of liberty for up to two years.

261 The Criminal Procedure Code of Georgia, Article 105.1.e): 1. An investigation shall be terminated, and criminal prosecution shall not be initiated or shall be terminated: e) if a period of limitation for criminal liability determined by the Criminal Code of Georgia has expired.

262 Proposal no. 15-5/6444 of the Public Defender of Georgia of 6 August 2015 to the Ministry of Corrections and Probation of Georgia.

263 Parliamentary reports by the Public Defender of Georgia: 2012, pp. 448-450; 2013, pp. 271-277; 2014, pp. 303-307; 2015, pp. 462-467; 2017, p. 114.

264 Resolution no. 445 of the Government of Georgia of 9 July 2014.

265 Ordinance no. 1981 of the Government of Georgia of 3 November 2014.

266 Resolution no. 182 of the Government of Georgia of 17 April 2018.

problematic. The majority of decisions adopted by court on administrative violations are not reasoned and are formulaic as explained in the following examples: the act committed by the individual is not compatible with the described violation; decisions are based only on the data given in the reports on administrative violation and arrest, and in the explanation given by the law-enforcement officer who drafted the reports; in the cases examined by the Public Defender, all evidences are mostly obtained by one agency/official and the duty to have more than one evidence is just a formality;<sup>267</sup> when there is no neutral evidence (video recordings) and standard of proof, the code cannot be deemed to be serving the primary objective of ensuring legal interests of citizens.

While the code defines the notion of evidence<sup>268</sup> and lists types of evidence,<sup>269</sup> it does not determine the procedure for obtaining them. The code does not determine the procedure for the assessment of evidence as the Code of Criminal Procedure does (admissibility, relevance, authenticity); it only provides for the assessment of evidence based on inner belief and if there is more than one piece of evidence.<sup>270</sup> It should be noted that the absence of a standard of proof required for imposing administrative responsibility on a person creates great problems in practice. Besides, there is no obligation to indicate in a decision the evidence that ascertains the veracity of the circumstances established during the examination of a case.<sup>271</sup> These and other factors result in the lack of reasoning of court decisions.

The problem related to categorization of an action when continuing resistance to a police officer and commission of an illegal act is problematic. Due to identical wording of the *lex specialis* and aggravating circumstances (Articles 35 and 173) judges apply Article 173 of the Code of Administrative Violations without further elaboration, instead of aggravating responsibility for a particular violation.<sup>272</sup> More specifically, if a person does not immediately and continuously comply with a legal order, he/she will be imposed with a responsibility with a reference to an aggravating circumstance (under Article 35.1) but instead will be imposed with a responsibility for another count of the violation under Article 173).

For years, it was problematic to force a person to take a drug test. In 2015, the Public Defender lodged a constitutional claim with the Constitutional Court<sup>273</sup> regarding this issue and requested for the declaration of Article 45 of the Code of Administrative Violations and other relevant normative acts as unconstitutional.<sup>274</sup> The other normative acts vest police officers with the power to take a person, against his/her will, to take a drug test thus restricting his/her right to liberty as well as the right not to incriminate oneself since the person has to give biological material against his/her will to be used against him/her. There was no such practice identified in 2018; however, the provisions are still in force.

The code in force contains the concepts and terminology that are not compatible with the Constitution of Georgia and the legislation of Georgia; among them are the following: peoples' court;<sup>275</sup> resolutions of the Cabinet of Ministers of the Republic of Georgia;<sup>276</sup> reference to education of an offender as a purpose of the administrative penalty;<sup>277</sup> reference to education of citizens with the spirit of law-abidance as one of the objectives of proceedings;<sup>278</sup> the use of the persons imposed with administrative detention for physical labour;<sup>279</sup> discriminatory terminology (invalid) regarding persons with disability),<sup>280</sup> etc.

267 Outcomes of the examination conducted by the Office in 2018; 2015, pp. 463-464; 2014, pp. 304; 2013, pp. 272;

268 Article 236.1.

269 Article 236.2.

270 Article 237.

271 Article 266.2.

272 The 2015 report by the Public Defender, p. 467.

273 Constitutional claim no. 697 of 25 November 2015.

274 The Law of Georgia on Police, Article 17.2.d); the Law of Georgia on Narcotic Drugs, Psychotropic Substances and Precursors, and Narcological Assistance, Article 36.2; Order no. 725 of the Minister of Internal Affairs of Georgia; Provisions of joint Order no. 1244–no. 278/N of the Ministry of Internal Affairs of Georgia and Minister of Labour, Health and Social Affairs of Georgia of 24 October 2006.

275 Article 21 and Article 264.

276 Article 231.

277 Article 23.

278 Article 230.

279 Article 310.

280 Article 32.3.

Several legislative definitions determining administrative responsibility do not comply with the principle of legal certainty under the Constitution of Georgia. This creates problems in practice and allows extensive interpretation to those authorities who apply these provisions, for instance, Article 166. Under the jurisprudence of the courts of general jurisdiction, when examining resistance and the failure to comply with a legal order of a law-enforcement officer performing official duties,<sup>281</sup> courts do not scrutinise the legality of an order given by the law-enforcement officer and only establish the fact of resistance. The normative connotation of this provision is challenged before the Constitutional Court.<sup>282</sup>

The code does not regulate comprehensively the procedural issues of examination of administrative violations.<sup>283</sup> It does not adequately provide an individual with the safeguards of a fair trial. The objective of administrative proceedings on administrative violations<sup>284</sup> is to establish circumstances in a timely, thorough, comprehensive and impartial manner; however, there is no detailed procedure for examination of evidence. The person imposed with administrative responsibility has the right to adduce evidence;<sup>285</sup> however, there is no reference to the right to adduce evidence on the list of rights of a legal counsel.<sup>286</sup> While a lawyer can submit a motion, there is no possibility of obtaining or adducing evidence under particular provisions.

The code does not provide for safeguards for arrested persons. The law provides for the obligation to read rights to an arrested person;<sup>287</sup> however, there is no reference to explaining rights in writing or confirming the explanation of rights in a report.<sup>288</sup> When a juvenile is arrested, a parent or a legal representative is notified about it upon the very first possibility<sup>289</sup> and not immediately as required by the Code of Juvenile Justice.<sup>290</sup>

The wording of the code that came into force as of 1 November 2017 creates problems for unlawful restriction of the rights of arrested persons and worsens their legal status. In particular, despite the 12-hour term of administrative arrest,<sup>291</sup> a person arrested during a non-working period can be placed in a TDI for no less than 48 hours before the consideration of the case starts.<sup>292</sup> Non-working hours of public officials cannot justify extending the arrest and introducing the possibility of unreasonable extension of the duration of the arrest applied against an individual.

The Public Defender's Office examined court judgments delivered in 2018 and identified numerous shortcomings as a result of their analysis. In particular, out of 155 cases studied by the Office,<sup>293</sup> proceedings were discontinued only in 13 cases due to the absence of a violation; in 48 cases, verbal reprimand was imposed; in 66 cases, fine was imposed and in 34 cases, administrative detention was imposed. **In the majority of the cases reports on administrative violation, report on administrative arrest, police report or explanation were adduced as evidence before the court. The explanation of a police officer submitted during a hearing just reiterated the information given in reports; neutral evidence (video recordings) was adduced only in 7 cases; and witness was questioned only in 5 cases.** The absence of the practice of examination of evidence before the court, the formal nature of proceedings is also confirmed by the length of proceedings; up to 5-minute duration in 33 cases out of 131 cases; up to 10-minute duration in 50 cases; up to 10-20-minute duration in 33 cases and duration of over 20 minutes only in 15 cases. Reasoning of the majority of court resolutions is formulaic and only the data of the offenders is changed; otherwise, decisions

281 Article 173.

282 Constitutional claim no. 02.10.2017, *Citizens of Georgia: Natalia Peradze and Giorgi Guruli v. the Parliament of Georgia*.

283 Chapter 17.

284 Article 230.

285 Article 252.1.

286 Article 255.

287 Article 245.1.

288 Article 245.5.

289 Article 245.2.

290 The Code of Juvenile Justice, Article 4.1.

291 Article 247.1 (30.06.2017, no. 1194, to be enforced as of 1 November 2017).

292 Article 247.2

293 Cases examined by the City Courts of Tbilisi, Batumi, and Kutaisi in October 2018, Article 166 and 173 of the Code of Administrative Violations of Georgia. In the majority of the cases (134 cases), an administrative arrest was made.

just reiterate the general wording of police reports; the reasoning (mitigating or aggravating circumstances, personal character of the offender, etc.) for imposing a fine is very rare.

## 6.12. ENFORCEMENT OF A COURT DECISION

The analysis of applications filed with the Office of the Public Defender of Georgia in 2018<sup>294</sup> shows that there are certain obstacles regarding enforcement of court judgments that came into legal force. This, ultimately, prevents from effective exercise of the right to a court. It has been established that the enforcement procedure for reclaiming property from possession and/or use by another person has been systematically delayed. Similarly, on several occasions, the process of enforcing a court judgment delivered on a labour dispute and related to restoring a labour right was not finalised in timely and effective manner.

It should be noted that under the jurisprudence of the European Court of Human Rights, the implementation of judicial decisions is one of the aspects of the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>295</sup> Similarly, the Constitutional Court of Georgia maintains that right to a court cannot be a complete safeguard unless a person has enough guarantees that a judgment delivered in his/her favour that came into legal force will be enforced timely and appropriately.<sup>296</sup>

### Problems Related to Reclaiming Immovable Property from Unlawful Possession

Under the civil procedure provisions that came into force as of the 2016, disputes related to reclaiming immovable property from possession and/or use by another person are examined by courts.<sup>297</sup> The narrow time-frames for the consideration of the cases of the aforementioned category were also determined. In particular, the courts of first and second levels of jurisdiction consider disputes related to reclaiming property from possession and/or use by another person within one month after receiving an application/ claim.<sup>298</sup> The total term for admitting a cassation claim and adopting a judgment is 2 months.<sup>299</sup> Despite the narrow time-frames established by procedural legislation, in the reporting period, courts were unable to finalise proceedings within statutory deadline.<sup>300</sup> Examination of these cases continued for 3 months at average in the appellate court and only two cases were finalised within the statutory term of 2 month in the Supreme Court of Georgia. In 2018, out of 276 cases regarding reclaiming immovable property from possession and/or use by another person, 154 cases were not admitted and 60 cases out of the admitted cases were still pending as of 20 February 2019.<sup>301</sup>

As regards enforcement of judgments adopted on the cases related to reclaiming immovable property from possession and/or use by another person that came into force, in 2018, the examination of the applications lodged with the Public Defender of Georgia showed that enforcement procedures are pending for more than a year in many cases. This is also confirmed by the statistical data received from the LEPL National Bureau of Enforcement. According to this data, in 2017, there were 579 enforcement cases related to reclaiming

294 22.08.2018, application no. 12518/18; 18.09.2018, application no. 13580/18; and 17.12.2018, application no. 7493/18.

295 *Shihuyev v. Russia*, application no. 9647/02, judgment of the European Court of Human Rights of 6 January 2006.

296 Judgment of the Constitutional Court of Georgia in the case of *Natia Kipshidze v. the Parliament of Georgia* 30/09/2016. Case no. 1/2/596.

297 The Law of Georgia on Amending the Civil Procedure Code of Georgia [11.12.2015. 4626-LS] became fully operational as of 1 March 2019.

298 The Civil Procedure Code of Georgia, Article 59.3.

299 Civil Procedure Code, Article 391.6.

300 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2016, pp. 814-817; Letter no. 01/42 (A) of the Tbilisi Court of Appeals, dated 13 February 2019.

301 Letter no. P-98-19 of the Supreme Court of Georgia, dated 20 February 2019.

immovable property from possession and/or use by another person. Out of this number, 272 cases were enforced the same year; out of 700 enforcement cases started in 2018, only 269 cases were enforced.<sup>302</sup>

The LEPL National Bureau of Enforcement maintains in the letters sent to the Public Defender's Office<sup>303</sup> that there is the Office for the Protection of Parties' Interests involved in the enforcement cases related to reclaiming immovable property from possession and/or use by another person. The office maintains negotiations with creditors and debtors in order to bring to minimum the violation of the interests and rights of either parties or third persons. It should be noted that the Law of Georgia on Enforcement Proceedings does not provide concrete terms for enforcement proceedings for the cases related to reclaiming immovable property from possession and/or use by another person. **In particular, the law does not provide for the maximum time-frame within which the date of eviction should be scheduled (the first determining of eviction date).** Also, the Office for the Protection of Parties' Interests<sup>304</sup> does not determine the term within which or how frequently communications should be maintained with creditors and debtors.

Therefore, we maintain that delay in the enforcement proceeding related to reclaiming immovable property from possession and/or use by another person could be caused by the very fact that the enforcement legislation does not determine the narrow time-frames for the enforcement proceedings in the cases at stake. Also, we believe that, due to the negotiations maintained by the office with the parties of enforcement proceedings indefinitely and scheduling the date of reclaiming property from illegal possession by another person, enforcement is delayed at the expense of the owner of the immovable property. It should be also borne in mind that the current Law of Georgia on Enforcement Proceedings in the enforcement cases related to reclaiming immovable property from possession and/or use by another person protects the rights of the debtor and the National Bureau of Enforcement may postpone enforcement due to the special circumstances (debtor's or his/her family member's illness, death or other emergency circumstance).<sup>305</sup>

Against the background, where the disputes related to reclaiming property from possession and/or use by another person is delayed in courts and later proceedings before the LEPL National Bureau of Enforcement take up more than a year for enforcing court judgment that came into legal force, we maintain that individuals' right to property is unjustifiably restricted due to the existing legal and factual circumstances. The state needs to introduce in legislation tight terms for the enforcement procedure for reclaiming property from possession and/or use by another person. The Public Defender expresses hope that her recommendation regarding this issue will be incorporated in the Draft Enforcement Code to be submitted to the Parliament of Georgia in accordance with the short-term plan of the legislative activities of the Government of Georgia for the 2019 spring.

### The Problem of Enforcing Court Decisions on Restoring a Labour Right

The case of Ana Subeliani and Tamaz Akhobadze is noteworthy in revealing problems of enforcing court judgments that came into legal force. These cases also caught the Public Defender's attention and became the subject of her interest.<sup>306</sup> It was established that only when it came to enforcing the judgments, some significant circumstances were revealed during the enforcement proceedings that were not identified during the court proceedings and which posed formal obstacles to enforcing the court judgments, viz., restoring claimants unlawfully dismissed from the LEPL Crime Prevention Centre to equivalent positions. The Public Defender of Georgia recommended to the LEPL Crime Prevention Centre to use all legal means for enforcing the

302 Letter no. 12452 of the LEPL National Enforcement Bureau, dated 19 February 2019.

303 Letters nos. 69898, 61434 and 89633 of the LEPL National Enforcement Bureau dated 05.10.2018, 31.08.2018 and 28.12.2018, respectively.

304 Order no. 1548 of the Head of the LEPL National Bureau of Enforcement of 24 July 2014 on Approving the Statute of the Office for the Protection of Parties' Interests at the Structural Unit of the LEPL National Bureau of Enforcement.

305 The Law of Georgia on Enforcement Proceedings, Article 31.1.

306 Case no.7493/18.

judgment. The Public Defender, *inter alia*, recommended result-oriented negotiation process that would ensure just reimbursement of the damage inflicted as a result of the breach of rights.<sup>307</sup> While there were negotiations conducted with Ana Subeliani, the enforcement of the judgment with regard to Tamaz Akhobadze was delayed.

The Public Defender stresses the mandatory nature and the fundamental importance of enforcement of court decisions for ensuring restoring breached rights and hopes that in future there will be no formal obstacles preventing from enforcing court judgments that came into force and that human rights protection will be treated as a priority.

#### PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To carry out reform of the legislation governing the High School of Justice with the effect of ensuring its institutional independence and determining its autonomous competences;
- To determine statutorily the duty of the High Council of Justice to adopt the procedure and methodology for assessing judges' workload;
- To determine disciplinary responsibility of judges that will be based on clear and foreseeable grounds;
- To reform the procedure of electing presidents of courts (a section or a chamber) so that individual judges can elect presidents;
- To carry out reform of the process of selection and appointment of judges so that criteria are envisaged objectively; to ensure transparency and abolish judicial appointments for probationary period;
- To establish by the Criminal Procedure Code that conviction cannot be based on evidence that was examined by another judge, except for those cases where a substitute judge has been appointed in the proceedings;
- To adopt the new Code of Administrative Violations complying with international and constitutional standards on human rights ;
- To determine a concrete time-frame in the Administrative Procedure Code for handing a judgment to parties; and
- In 2019, to determine by the Law of Georgia on Enforcement Proceedings/Enforcement Code reasonable terms for the enforcement procedure for reclaiming property from possession and/or use by another person.

#### RECOMMENDATION

##### To the Ministry of Justice of Georgia:

- By amending statutes of penitentiary establishments to lift the ban or increase the limit imposed on the number of sheets of official documents prisoners can keep.

<sup>307</sup> Recommendation no. 04-3/12603 of the Public Defender of Georgia of 3 October 2018.

## 7. RIGHT TO RESPECT FOR PRIVATE LIFE

Similar to 2015-2016, the right to respect for private life has been at stake on numerous occasions in 2018 too. Dissemination of covert video recordings and blackmail of public figures in this regard was particularly problematic. Similar to the previous years, the Public Defender reminds the relevant public authorities again that the right to respect for private life does not merely compel the state to abstain from such interference, but there are also positive obligations inherent in effective respect for private life. Therefore, the state should take positive measures for reducing criminality and effective investigation of crimes that are already committed.

Strong protective statutory mechanisms aimed at preventing arbitrary interference remains to be controversial. In this context, the pending constitutional claim lodged with the Constitutional Court is implied. The constitutional claim was filed regarding the constitutionality of normative framework regulating the procedure for carrying out covert surveillance; the judgment has not been adopted yet.

The Public Defender challenged the normative framework under which the right to direct access to communication and network infrastructure through covert investigative operations as well as the right to copy and store communication that can identify a person remained within the agency that has a professional interest.

Unhindered application by prisoners to the Public Defender is one of the important safeguards for their protection from ill-treatment. Under the current regulation in force, there are limits concerning the use of telephone and prisoners have to contact the Public Defender's Office using the limit of their private telephone calls. This causes limiting their right to respect for private life. Regarding this issue, the Public Defender made a proposal to the parliament in May 2018.<sup>308</sup>

### 7.1. INVESTIGATION OF THE CRIME AND PUBLISHING STATISTICAL DATA

The right to respect for private life has been again, on numerous occasions, presented as a significant problematic issue to the public. In 2019, again there were incidents of disseminating video recordings depicting private life of a public figure through the Internet. Such incidents took place numerous times also in 2015 and 2016. However, complete investigation of these crimes could not be ensured. The fact is that the main actors of the crime are those individuals who planned, produced and originally disseminated video recordings depicting private life of certain persons in order to intimidate and blackmail them. It is also noteworthy that the main targets of such illegal actions are women, which also indicates the gender dimension of this problem.

The Public Defender of Georgia addressed the Prosecutor's Office of Georgia and urged it to conduct timely and effective investigation. Despite the actions taken by the prosecutor's office, which are confirmed by imposing criminal responsibility on numerous individuals, the answer, however, is still not given to the questions as to who planned, produced and originally disseminated video recordings depicting private life in each particular case.

<sup>308</sup> Proposal no. 15-11/6315 of the Public Defender of Georgia submitted to the Parliament of Georgia on 3 May 2018.

Along with effective investigation of the crimes committed, **it is also important that law-enforcement authorities should conduct an active preventive campaign, which would explain to citizens their obligations, in case they receive covert video recordings through their communication channels, in order to prevent them from becoming inadvertently accomplices to the crime.**

Article 157<sup>1</sup> of the Criminal Code of Georgia penalises Unlawful obtaining, storage, use, dissemination of or otherwise making available secrets of personal life. In order to establish criminal responsibility under this provision, a person must be aware that he/she is obtaining, storing, using, disseminating or otherwise making available secrets of *other individual's* personal life. Any data, towards which a person has an expectation for privacy and which is (audio and/or video) recorded against his/her will is containing *secrets of personal life*.

**Any person, who believes that one could be dealing with a criminal act, should contact law-enforcement authorities and inform them accordingly. Under the head of obtaining and storing, the legislation establishes a lenient exclusive provision: a person will not be held criminally responsible for a crime (obtaining, storage) if he/she has submitted the obtained/stored information to investigative authorities and communicated information about any other committed/anticipated criminal act in this manner.**

Informing the public proactively about the scale and scope of interference by the state in private life is an effective means for ensuring the state's accountability and public control over the authorities. Therefore, for ensuring public control over such activities, the Public Defender recommended to the prosecutor's office in the 2017 parliamentary report to start processing statistical data regarding wiretaps and recordings.<sup>309</sup>

Under the parliamentary resolution,<sup>310</sup> the Prosecutor's Office of Georgia was ordered to start processing statistical data regarding wiretaps and recordings of telephone conversations; in particular, regarding compliance with the duty to discontinue or suspend a covert operation in the cases stipulated by law.

By letter no. 13/10583, dated 13 February 2019, the Prosecutor's Office of Georgia informed the Public Defender's Office that, as of 1 January 2019, they had started processing the relevant data. We hope that this data will help the public in future to observe and analyse various aspects of restriction of their right for respect for private life and the existing situation in this regard. The Public Defender's Office will actively use this data in future.

## 7.2. THE PUBLIC DEFENDER'S CONSTITUTIONAL CLAIM CONCERNING THE CONSTITUTIONALITY OF THE PROCEDURE FOR CARRYING OUT COVERT SURVEILLANCE

In 2018, the Constitutional Court started consideration of the merits of the Public Defender's constitutional claim lodged in 2017. The Public Defender challenged the provisions of the Law of Georgia on the LEPL Operative and Technical Agency; the Criminal Procedure Code of Georgia, the Law of Georgia on Electronic Communications; and the Law of Georgia on Personal Data Protection. These laws are related to the powers of the LEPL Operative and Technical Agency operating under the State Security Service to conduct electronic surveillance; affording it the technical capacity to this end and vesting it with a power to produce electronic bank.

In the Public Defender's opinion, the right to direct access to communication and network infrastructure through covert investigative operations and the right to copy and store communication that can identify

309 The 2017 parliamentary report of the Public Defender of Georgia, p. 123.

310 Resolution no. 3148-RS of the Parliament of Georgia of 19 July 2018.



a person should not be vested with the agency that has professional interest to gather such information. Considering the institutional organisation of the agency (the Operative and Technical Agency is a legal entity of public law under the State Security Service) and the procedure of appointing its management (the head of the agency is nominated by the head of the State Security Service), the agency is under an effective control from the State Security Service and remains within its system. Therefore, the Public Defender considers the agency to have a professional interest. Apart from the above mentioned, the Public Defender maintains that there is no effective external control over the agency's activities and it gives rise to a real risk of conducting arbitrary covert surveillance activities without a court order.

In January and March 2019, the deliberations continued before the Constitutional Court of Georgia. On 21 March, the court and the parties heard an Irish expert, invited based on the claimant's motion. According to the expert, there is no *a priori* technical reason that would make it impossible to set up an alternative stationary capacity within the infrastructure of the provider of telecommunication; the parallel system can be configured so that the Inspector of Personal Data Protection (who monitors the legality of the electronic surveillance process via the respective electronic programme) will not be aware of this activity. According to the expert, it is less likely that any changes or modifications in any moderately complex system are spontaneously identified through periodic inspection of relevant infrastructure unless there is a special mechanism for tracking/detecting such changes.

### 7.3. USE OF PUBLIC DEFENDER'S HOTLINE IN PENITENTIARY ESTABLISHMENTS

The Public Defender of Georgia made a legislative proposal to the Parliament of Georgia<sup>311</sup> concerning ensuring an unlimited use of the Public Defender's hotline for persons placed in penitentiary establishments. The proposal was aimed at amending the legislation allowing a person held in a closed-type prison facility to contact the Public Defender irrespective of serving a disciplinary penalty or whether already used up the monthly limit of telephone calls afforded by legislation. The initiative was aimed at lifting barriers for prisoners in their communication with the Public Defender's Office and reporting violations of their rights and accordingly facilitating the examination of alleged violations indicated by prisoners. This initiative was based on the significant mandate of the Public Defender to effectively respond to violations of prisoners' human rights in closed-type prison facilities and incompatibility of the existing restrictions with the vital objectives sought by the Public Defender. It was also stressed that prisoners had to contact the Public Defender's Office using the quota of their private telephone calls. This caused indirect interference in their right to respect for private life.

The Parliament of Georgia<sup>312</sup> did not accept the Public Defender's proposal based on the position expressed by the Ministry of Corrections and Probation.<sup>313</sup> According to the ministry, this would give rise to a risk of abusing the right to unlimited use of the Public Defender's hotline by prisoners as the establishment's administration would not be able to monitor the recipients of prisoners' telephone calls. The ministry further indicated the need to find additional human and financial resources for implementing the initiative. It is planned to apply to the Constitutional Court regarding this issue in the near future and request the declaration of the relevant provisions as unconstitutional.

311 Proposal no. 15-11/6315 of the Public Defender of Georgia submitted to the Parliament of Georgia on 3 May 2018.

312 Letter no. 5682/4-2 of the Committee of Human Rights Protection and Civic Integration.

313 Letter no. MOC 21800458869 of the Ministry of Corrections and Probation of Georgia, dated 22 May 2018.

## RECOMMENDATIONS

### To the Prosecutor's Office

- To inform the public periodically about the progress made in the investigation instituted regarding incidents involving breach of the right to respect for private life.

### To the Ministry of Internal Affairs:

- Stemming from the Law of Georgia on Police, within the framework of implementing the preventive function of the police, to conduct preventive information campaign in public regarding their rights and obligations in case of receiving video recording depicting private life through various means of communication.

## 8. RIGHT TO EQUALITY

In 2018, protection of the right to equality remained as a significant challenge. The practice of the Public Defender in this regard shows that discrimination is often caused by those stereotypes and wrong perceptions existing in the society against vulnerable groups. However, there are hardly any measures on the part of the state to overcome them.

In the reporting period, the Public Defender's Office examined 158 incidents of alleged discrimination, made recommendations in 16 cases and general proposals in 6 cases. The high indicator in the number of applications on alleged discrimination filed with the Public Defender, similar to the previous year, is again related to public sector (69%). Most of the applications lodged with the Public Defender concerned discrimination on account of sex (16%). The next is alleged discrimination on account of religion (13%), discrimination on account of political and other opinions (9%), and ethnic origin (8%). As for the field, most of the applications concern alleged discrimination in labour relations.

Similar to the previous years, women, persons with disabilities and representatives of LGBT+ community remain to be the most vulnerable groups. Representatives of religious minorities actively applied to the Public Defender regarding hate crimes committed against them.

With regard to hate crimes, the murder of Vitali Safarov that was allegedly motivated by ethnic intolerance was a particularly alarming incident. Blocking the entrance to the Public Service Hall for certain individuals by radical nationalists was also alarming. It is also symptomatic that some members of the public expressed aggression towards Guram Kashia which was caused by the football player wearing an arm band in support of LGBT+ persons.

It is noteworthy that the Parliament of Georgia started deliberations on extending the mandate of the Public Defender of Georgia concerning private persons.<sup>314</sup> These amendments were prepared within the Gender Equality Council of the Parliament of Georgia and initiated by members of the parliament in February 2019. The Public Defender hopes that the Parliament of Georgia will support strengthening the Public Defender's mandate.

### 8.1. EQUALITY OF WOMEN

In the reporting period, there has been an increase in the number of applications lodged with the Public Defender's Office concerning incidents of sexual harassment. Interference in labour rights of women on account of pregnancy remains problematic. Women who are victims of sexual violence have been identified as one of the vulnerable groups beyond the state's healthcare programmes.

<sup>314</sup> The draft law of 4 February 2019 proposed by the members of the Parliament. Under the proposed amendments, the legal regime applied to the legal entities of public law will be extended to physical persons and legal entities of private law. In particular, private persons will be obliged to submit to the Public Defender requested in the process of examination of alleged discrimination as well as to notify the Public Defender about the outcomes of the deliberations over the recommendation. Furthermore, the Public Defender will have the right to request enforcement of her recommendation by a court in case the respective private person fails to enforce the recommendation.

## Sexual Harassment

In 2018, sexual harassment was identified as an acute problem. It is noteworthy that, through an amendment to the Law of Georgia on Elimination of All Forms of Discrimination, sexual harassment by any individual is now considered to be a form of discrimination and accordingly it is now prohibited in any sphere of life regulated by law.

It is also noteworthy that in February 2019 a draft law<sup>315</sup> was initiated aimed at prohibiting sexual harassment, inter alia, in public space (Administrative Offences Code of Georgia) and imposing penalties. Introduction of regulations on sexual harassment is an important step forward towards fighting against this phenomenon as one of the reasons for such incidents was the absence of such regulation. The absence of regulations used to preclude identification of such incidents as well.

Discrimination against women was relevant in the previous years too. However, in the reporting period, after the information about sexual harassment by one of the public figures was disseminated, the victims raised voice about the issue themselves.

The incidents of alleged sexual harassment that have been examined by the Public Defender's Office mostly concerned labour and other professional relations. It should be pointed out that sexual harassment was found in three cases.<sup>316</sup>

It is noteworthy that the number of applications concerning sexual harassment is very low. This is mainly caused by the attitude of some members of the public according to whom sexual harassment is a socially acceptable behaviour and the victims could themselves be provoking it. This attitude adversely affects women as they blame themselves and avoid making the incident public; in some cases, they destroy evidence that reminds them of their contact with the harasser.

## Pregnancy

There are cases where a private employer uses a particular condition of a woman, for example, pregnancy as a means to restrict her labour rights. In 2018 too there were women applying to the Public Defender alleging that their labour contracts were not continued after the expiry of the term. The reason for this was no other objective circumstance but their pregnancy.

## Female Victims of Sexual Assault

The absence of a state programme tailored to the physiological and psycho-emotional needs of female victims of sexual assault is problematic. It is further aggravated by the fact that the procedure of terminating pregnancy caused by rape is linked with the conviction pronounced by a court judgment in force, whereas it is usually a lengthy procedure to adopt a court judgment; therefore, the term allowed for abortion could be missed.

It is also important to have a possibility for funding, depending on the socio-economic situation of a victim, as discrimination against women is closely related with those stereotypes and perceptions on sexual and reproductive roles and functions that are based on patriarchal attitudes. In a society where blaming and stigmatising a victim of sexual assault is particularly rooted, pregnancy caused by a rape causes a victim to be under permanent social pressure around her.

315 The draft law of the Members of the Parliament of Georgia of 4 February 2019.

316 The Public Defender's Recommendation of 1 November 2018 to Z.D.

## 8.2. DISCRIMINATION BASED ON DISABILITY

Unfortunately, in the reporting period, persons with disabilities experienced restriction of their rights in almost all fields of public life again. The equality of this group is also not guaranteed at the formal level; denial to reasonable accommodation as a form of discrimination has not become a part of Georgian legislation. The environment is inaccessible in terms of physical accessibility and for persons with sight problems. The right to equality of disabled persons employed in public sector remains problematic. Those individuals, except for those having severe disabilities or disabilities due to visual impairment, unlike employees of private sector, are not given social benefits.<sup>317</sup>

### Physical Accessibility

In terms of physical accessibility for disabled persons, the new rule of allocating special parking spaces for disabled persons within the jurisdiction of Tbilisi Municipality is noteworthy. The new rule gives only individuals with severe disability the right to use special parking spaces. According to the position of the Municipality of the City of Tbilisi, such an approach is justified as the legislation distinguishes in general between individuals with severe and significant disability. Granting rights to persons based on their medical diagnosis is a retrograde step in the process of transformation from medical to social model of disability. In this regard, it is necessary that regulations introducing affirmative actions, were granted according to their individual needs.<sup>318</sup>

### Persons with Sight Problems

There is difficulty related to providing information and services with the use of braille, sign language, enhanced and alternative communication and/or other means accessible for individuals with sight problems.

For instance, declarations about socio-economic situation of a family are not accessible in braille or other alternative technical means and, therefore, individuals with sight problems have to refuse acting as an authorised representative for their family.<sup>319</sup> Also, persons with sight problems (full or partial loss of vision) are deprived of the possibility of filing an application, composed in braille and using other alternative means, with the Administration of the Government of Georgia.<sup>320</sup>

Furthermore, it is problematic for persons with sight problems to receive bank services independently. Such an environment is an obstructing factor in each sphere of life for these persons to live an independent life and enjoy full participation.

## 8.3. DISCRIMINATION OF MINORS

There are challenges in terms of exercising the right to education by minors. The Public Defender's report of previous years discussed the problems of the exercise of the right to inclusive education by children with special educational needs. Also, the legislation is defective, since the legislation of Georgia on the right of minors to access to a court does not allow children under 14 years of age to select independently a representative before a court. This puts minors under risk of being beyond the reach of justice system.

317 General proposal of the Public Defender of Georgia of 2 October 2017 to the Ministry of Labour, Healthcare and Social Security of Georgia.

318 Recommendation of the Public Defender of Georgia of 6 August 2018 to *Sakrebulo* of the City of Tbilisi Municipality.

319 Recommendation of the Public Defender of Georgia of 4 May 2018 to the Ministry of Labour, Healthcare and Social Security of Georgia.

320 Recommendation of the Public Defender of Georgia of 6 August 2018 to the Government of Georgia.

### Children with Special Educational Needs

The Public Defender examined one case<sup>321</sup> that concerned expelling a two-year old child from a kindergarten. The kindergarten's administration considered the child to be hyperactive and therefore unable to get along with other children. The respondent also explained that other children's parents had expressed indignation because of the child's behaviour and claimed that the applicant's behaviour posed threat to their children. In this case, the Public Defender found discrimination by perception on account of behaviour as it was grounded on future fears that other children's parents would discontinue contractual relations with the kindergarten which would be financially unfavourable for the kindergarten.

### Accessibility to Court for a Child

The neutral provision in the Georgian legislation, that gives everyone an equal right to apply to a court, excludes children's right to a court in some cases as a minor under 14 years of age is unable to select his/her representative. From this age, a minor has the right to apply to a court independently. However, this regulation does not contribute to full realisation of a minor's right to access to a court as in such cases the court designates a representative to act on behalf of a minor in proceedings in the course of examination of a case. Due to this reason, a child is unable to apply to a court with the help of a lawyer or another person from the very beginning.

In this regard, the Public Defender deems that entrusting a court with the representation issue for children under 14 years of age could serve as an additional safeguard for their protection.<sup>322</sup>

## 8.4. DISCRIMINATION BASED ON NATIONALITY

In the reporting period, discriminatory practice on account of nationality was identified in receiving bank services. Namely, commercial banks operating in Georgia requested students who are nationals of Nigeria, Iran and Syria to submit recommendation documentation from banks registered in the United States, Canada, Australia or EU Member States for issuing a student's traveller card, bank records and opening a bank account; it was objectively impossible for those students to submit such documentation. The same problem is encountered by citizens of Georgia born in Iran.

In this regard, commercial banks presume threat from certain nationals by default. According to the banks, the countries, whose nationals the applicants are, have been placed on the list of watch zones in accordance with Order no. 1/04 of the President of the National Bank of Georgia of 9 January 2017 on Determining the List of Watch Zones for the Purposes of the Law of Georgia on Contributing to Prevention from Legalisation of Illegal Proceeds. There is a need to introduce foreseeable regulations which will ensure that banks do not follow a blanket approach and instead each customer is assessed based on his/her individual circumstances.<sup>323</sup>

## 8.5. EQUALITY OF LGBT+ PERSONS

Discrimination on account of sexual orientation and gender identity remains as one of the challenges in Georgia. The existing homophobic attitudes often lead to discrimination against representatives of LGBT+ com-

321 Recommendation of the Public Defender of Georgia of 16 April 2018 to the kindergarten Wonderland Preschool.

322 Recommendation of the Public Defender of Georgia of 5 March 2018 to the Parliament of Georgia and the Government of Georgia

323 General proposal of the Public Defender of Georgia of 4 April 2018 to the National Bank of Georgia.

munity. In this regard, it is noteworthy that a draft law<sup>324</sup> on removing *sexual orientation and gender identity* from the Law of Georgia on the Elimination of All Forms of Discrimination as protected grounds was submitted by a member of the parliament in February 2019.

Similar to the previous reporting period, there are still numerous applications from the LGBT+ community that allege discrimination in accessing various services. Issues related to renting immovable property by representatives of LGBT+ community is also problematic. For instance, an individual refused to give office space for rent to a non-governmental organisation, Equality 17, working on LGBT+ issues.<sup>325</sup>

In the current reporting period, there were applications concerning the use of healthcare services by transgender people. Applicants alleged that unlike other components of healthcare, the state budget does not fund medical services tailored to the needs of transgender persons.<sup>326</sup>

The negative attitude towards members of the community is proved by recent incidents. Violence that took place during the demonstration held to mark the International Day Against Homophobia and Transphobia on 17 May 2013 is noteworthy. One of the representatives of LGBT+ community sustained a physical injury on the head when making a speech. Furthermore, on 28 September 2018, employees of an NGO, Equality Movement, were physically and verbally assaulted by an individual residing near the office.

It is also symptomatic that some members of the public expressed aggression towards a football player, Guram Kashia, for wearing an arm band in support of LGBT+ persons and the award given to him for this by the Union of European Football Associations (UEFA). This aggression was directed both against Guram Kashia and LGBT+ community. Moreover, during a football match at Dynamo Arena on 9 September, in which Guram Kashia took part for the first time after the said events and where some of the fans came for the very purpose of extending moral support to Kashia, police officers did not allow representatives of LGBT+ community to wave the symbolic flag of LGBT+ community in rainbow colours.

## 8.6. DISCRIMINATION IN LABOUR RELATIONS

In the current reporting period also there were most frequent incidents of alleged discrimination in labour relations. To this date, there is no express prohibition in Georgian legislation concerning the use of discriminatory criteria in job announcements and the range of their use is rather large, which in its turn contributes to establishing and reinforcing gender and other stereotypes in the labour market.<sup>327</sup>

Furthermore, there has been an increase in the number of applications concerning harassment at workplace. Similar to the previous year, incidents of discrimination on account of different opinions and political views have been found.

### Harassment

It is noteworthy that, through an amendment to the Law of Georgia on Elimination of All Forms of Discrimination, sexual harassment is now considered to be a form of discrimination. Until now, similar to sexual harassment, the absence of legislative regulation prevented identification of incidents of harassment.

324 Emzar Kvitsiani's initiative.

325 Recommendation of the Public Defender of Georgia of 9 January 2018 to S.K.

326 The state does not fund the costs related to medical diagnostics services for transgender persons; there is no clinical manual on care.

327 The General Proposal of the Public Defender of Georgia of 1 May 2017 to the Ministry of Labour, Health and Social Affairs of Georgia.

Harassment mostly takes place in public schools. Applicants in the current reporting period alleged reduced work hours on discriminatory grounds, dismissal from a tutorial position, imposition of disciplinary sanctions and problems related to receiving information.

On one occasion, the Public Defender found harassment with regard to the Deputy Director of Khelvachauri Culture Centre, who had limited possibilities to discharge the official duties due to limited access to essential information. This treatment was caused by criticism expressed towards the Director of Khelvachauri Culture Centre.<sup>328</sup>

### Political Views

In the reporting period, several persons employed in local self-government bodies alleged discrimination on account of political views in labour relations. The Public Defender, *inter alia*, is currently examining the incident of inspection carried out in Public School no. 6 in Zugdidi in the pre-election campaign, which could have possibly been caused by the political views of the school director, Ia Kerzaia.

The Public Defender found discrimination with regard to employees of Tianeti Municipality who alleged discriminatory actions on the part of the Mayor, Tamaz Metchiauri on account of the employees' political views. It is a disturbing situation where the reason for dismissal by the Mayor of Tianeti Municipality was damaging the office's reputation by filing an application with the Public Defender of Georgia. This is an alarming message that virtually restricts the right of officials employed in the public office to use the legal remedy afforded to them.<sup>329</sup> The dismissal followed the application filed with the Public Defender by several employees of the City Hall of Tianeti Municipality, among them, the person concerned. According to the application, the employees had to work in the winter period, due to their political views, in inappropriate conditions for health as they had not been supplied with firewood.<sup>330</sup>

## 8.7. DISCRIMINATION IN RECEIVING SOCIAL BENEFITS

The social security is arranged in a way that it excludes various groups from exercising certain rights.

### Children with Autism Spectrum

The state programmes of either central or local authorities that are tailored to the needs of children with autism spectrum are usually designed so that children's groups are ineligible on account of various criteria. This is often reflected negatively on the improvement of the children's development or maintaining the achieved progress.

For instance, children up to 5 years of age, along with other priority groups, are given priority in terms of participation in rehabilitation-habilitation programmes.<sup>331</sup> For this reason, funding is discontinued for children from 5 years of age and they are placed on a waiting list. Besides, children up to 7 years constitute the target group for the sub-programme of early development of children, as implemented within the State Programme

328 Recommendation of the Public Defender of Georgia to Non-entrepreneurial (Non-commercial) Legal Entity Cultural Centre of Khelvachauri.

329 The Public Defender' Recommendation of 19 February 2019 to the Mayor of Tianeti Municipality.

330 The Public Defender' Recommendation of 5 May 2018 to the Mayor of Tianeti Municipality.

331 Article 3.2.b) of the sub-programme of rehabilitation/habilitation as provided for by Resolution no. 102 of the Government of Georgia of 26 February 2016.



for Children's Social Rehabilitation and Care of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Healthcare and Social Affairs of Georgia. Such allocation of resources is problematic in terms of continuous treatment and endangers maintaining the results achieved by the programme. In this regard, in order to make the spent resource actually efficient for the development of children, it is necessary to allow children to continue benefiting from the programme after reaching the respective age.

Furthermore, it is mandatory for children to be registered with Tbilisi Municipality for the last 3 years (in case of children of 2 years of age – for 2 years) to benefit from the rehabilitation programme for children with Autism Spectrum.<sup>332</sup> Such policy prevents children with respective needs to benefit from the programme which adversely affects their development.

## 8.8. DISCRIMINATION BASED ON CITIZENSHIP

In cases, where one member of a family does not have Georgian nationality or residence permit, the entire family is left without subsistence allowance.<sup>333</sup> In order to have subsistence allowance assigned, each family member's identification/residence cards must be presented.<sup>334</sup>

In availing social benefits, discrimination on account of nationality is also manifested<sup>335</sup> in cases where only Georgian nationals can be eligible to certain healthcare programmes. Even individuals with a permanent residence permit in Georgia, who pay taxes similar to citizens of Georgia and are in comparable situation with them in terms of using social and healthcare programmes, cannot receive those benefits.

## 8.9. INCITING DISCRIMINATION

Inciting discrimination through statements by public figures and commercial advertisements is one of the major challenges in terms of attaining equality. Discriminatory advertisements used for selling products remains problematic. There is particularly a trend of branding products as “for girls” and “for boys” when marketing for instance, books, water, chocolate, etc.

In terms of preventing inciting discrimination, the Ethics Code for Members of the Parliament of Georgia, adopted in December 2018, is noteworthy. The Code prohibits, inter alia, the use of discriminatory statements and hate speech<sup>336</sup> and lays down relevant sanction too by posting the name of the person who violated the code on the website of the parliament along with a short summary of the violation.<sup>337</sup> The Public Defender has been stressing the need to introduce such regulations since 2017.<sup>338</sup>

Unfortunately, the resort to xenophobic, homophobic and religious hate speech inciting discrimination was a part of election campaign and one of the ways to win over voters in the period before the presidential elections of 2018.

332 Article 2.1.b) of the sub-programme of rehabilitation of children with autism spectrum disorder as provided for by Resolution no. 8-22 of *Sakrebulo* of the City of Tbilisi Municipality of 26 December 2017.

333 Recommendation of the Public Defender of Georgia of 2 October 2017 to the Ministry of Labour, Healthcare and Social Security of Georgia.

334 Article 7.5 of Order no. 141/N of the Minister of Labour, Healthcare and Social Security of Georgia of 20 May 2010.

335 Recommendation of the Public Defender of Georgia of 5 October 2017 to the Ministry of Labour, Healthcare and Social Security of Georgia; Recommendation of the Public Defender of Georgia of 4 April 2018 to the Ministry of Labour, Healthcare and Social Security of Georgia.

336 Ethics Code for Members of the Parliament of Georgia, Article 4.n).

337 Ethics Code for a Member of the Parliament of Georgia, Article 4.18.

338 General Proposal of the Public Defender of 6 February 2017 for the notice of the Parliament of Georgia.

For instance, a presidential candidate, Salome Zurbishvili, during a meeting organised in Ninotsminda, discussed the issue of citizenship of ethnic Armenians in a xenophobic context: “one president gave away too many citizenship to Turks but did not give it to you”.<sup>339</sup> The statement made by another presidential candidate, Kakha Kukava, regarding introducing bans on issuing residence permits for persons of certain origin was also xenophobic.<sup>340</sup> Kakha Kukava also stated that migrants make ethnic Georgians into a minority and they pose threat to Georgia. He discussed “the threats of religious expansion from Turkey” and also mentioned the threat of terrorism.<sup>341</sup>

During the same period, the former President of Georgia posted a public video supporting the united opposition on his Facebook page. The video contained xenophobic contents and mentioned tourists coming to Georgia from certain countries in a degrading context.<sup>342</sup>

The statement made by Davit Tarkhan-Mouravi – member of the Alliance of Patriots – is noteworthy: “There is a high governing body of Muslims in Georgia, which is the supreme body for Georgian Muslims, similar to the patriarchate... This is how disintegration of the country starts. This is a Turkish theory and it is carried out in all those countries where Turkey has its claims and I am now speaking for the Georgian Muslims to take a note, that this is the road to disintegration of the country.”<sup>343</sup>

Furthermore, a homophobic statement was made by a presidential candidate, Kakhaber Chichinadze, who gave a positive assessment to the incident of physical assault of a representative of LGBT+ community on 17 May 2018, on a rally to mark the International Day Against Homophobia and Transphobia.<sup>344</sup>

Unfortunately, this is not an exhaustive list of those statements that were made in the pre-election period in 2018 by presidential candidates and political parties.<sup>345</sup>

The following public statements were criticised in different periods: A sexist comment made by a member of Tbilisi Municipality *Sakrebulo*, Vakhtang Shakarishvili towards the participants of a public debate when Shakarishvili told his political opponents: “you are screaming like a whore”; and sexist opinions of a member of the Gender Equality Council of Batumi *Sakrebulo*, Archil Mumladze, when he stated that it is the responsibility of a woman to care for a child whereas a man has a dominant role in the society; also, women have good managerial skills and their opinion should be heard too; *however, it is better that a man had the first say*.

During the lifetime appointment of Lili Mskhiladze to the position of a judge media circulated her viewpoint expressed in social network on the demonstration held to mark the International Day Against Homophobia and Transphobia on 17 May 2013. Lili Mskhiladze referred to the fight of representatives of LGBT+ community for their right as *sick and indecent*.<sup>346</sup>

Expressing hateful viewpoints inciting discrimination towards any vulnerable group by public figures, especially those involved in political life endangers the equality of these groups and undermines the process the Georgian public underwent on the way of embracing the equality principle.

339 Available at: <https://bit.ly/2OgxzN8>, (accessed 19.03.2019).

340 “On Tbilisi streets, already at every corner, we look at Indians, Pakistanis, Chinese, Arabs, Turks and no other candidate, except for us, talks about this and call it xenophobia and they removed our clips. If people support me, one of the first steps that I am going to make will be that not a single permanent residence permit will be issued. We welcome investors, we welcome students, tourists are welcome. But as it is in any other country, tourist visa must be short-term. It can be issued for one month, two months, but not for 5 years.” Available at: <https://bit.ly/2Y5AqwY>, (accessed 19.03.2019).

341 Available at: <https://bit.ly/2W6ziqR>, (accessed 19.03.2019).

342 “We need rich tourists from all places. These skin and bone, my apologies, ugly people that come and bring their own sausages and canned food with them, it won't make us rich. We need them from the Emirates and not Bangladesh. Those who live over there, I don't have anything against them. It's just that they are workers who leave, Indians – they do not have enough income”... information available at: <https://bit.ly/2HzAM9N>, (accessed 19.03.2019).

343 Available at: <https://bit.ly/2Wfko1s>, (accessed 19.03.2019).

344 “He [Sergi Kakachia attacked a representative of LGBT+ community at the anti-homophobic demonstration on 17 May 2018] slapped not a person but immorality. He slapped those processes that have been imposed on us... And If Europe wants Georgia, they ought to take us with our rules, our character, our customs. Because we are Georgians and we are not either Europeans or Asians”. Available at: <https://bit.ly/2FjuSWS>, (accessed 19.03.2019).

345 Available at: <https://bit.ly/2W6ziqR>, (accessed 19.03.2019); See also: <https://bit.ly/2W6ziqR>.

346 Available at: <https://bit.ly/2CtWR5K>, (accessed 19.03.2019).

## RECOMMENDATIONS

### To the Government of Georgia:

- To ensure that persons with severe and moderate disability employed in the public sector benefit from the social package envisaged in the Ordinance of the Government of Georgia no. 279 of 23 July 2012, on determining the social package; and
- To draft legislative amendments to enable all persons under 18 years of age, when accessing a court, to have legal aid or assistance of a relative, other close person or a lawyer, with the participation of a judge and without the consent of a legal representative.

### To the Administration of the Government of Georgia:

- To ensure the possibility of filing an application with the Government's Administration composed in braille and using other alternative means for persons with sight problems (full or partial loss of vision).

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Healthcare and Social Affairs of Georgia:

- To ensure that the state health care and social programmes are available to persons with residence permit on an equal footing with the citizens of Georgia;
- To ensure that the fact that investigation of a rape case was instituted should be sufficient for deciding about funding a woman who became pregnant as a result of rape; and
- To make declarations about socio-economic situation of a family for the purpose of registering in the unified databases of socially vulnerable families accessible in braille or other alternative technical means and to reflect the respective change in Order no. 141/N of the Minister of Labour, Health and Social Affairs of Georgia of 20 May 2010.

### The Prosecutor's Office of Georgia:

- To impart information concerning the investigation of hate crimes within the report submitted based on Article 172.2 of the Rules of the Parliament of Georgia regarding activities carried out.

### To the National Bank of Georgia:

- To introduce simple and foreseeable regulations which will ensure that foreign nationals receive bank services in commercial banks without discrimination on any ground.

### Tbilisi Municipality's Sakrebulo:

- To determine the rule governing parking for disabled persons within Tbilisi municipality to ensure that it is possible to obtain special disabled signs based on the individual needs of disabled persons to use disabled parking.

## 9. GENDER EQUALITY

Attaining gender equality remains a challenge in Georgia. Despite numerous important steps made in terms of responding to violence against women and incidents of domestic violence,<sup>347</sup> the low involvement of women in a decision-making process and unequal economic participation remain problematic. Challenges existing in terms of reproductive health and efficient realisation of rights also negatively reflect on the index of the women's legal status and gender equality.

The high index of femicide and attempted femicide also remains a significant challenge. This is related to the shortcomings existing in the risk assessment and monitoring process in the cases of violence against women and domestic violence. It is also important that the state should make specific and complex steps towards distribution of the burden of care and contribution to the economic situation of women.

The protection of the rights of LGBT+ community is particularly problematic. Unfortunately, the state did not make positive steps in this regard either in 2018. This is heavily affecting the legal status of LGBT+ persons, especially against the background of discriminatory perceptions existing in society and increased anti-gender movements.

### 9.1. PARTICIPATION OF WOMEN IN DECISION-MAKING PROCESS

The index of women's political participation and their involvement in the decision-making process is directly linked with the quality of democracy in the country. According to the Global Gender Gap Index<sup>348</sup> 2018, based on the political empowerment and women in parliament, Georgia is ranked 119 among 149 countries; whereas according to the data of the Inter-Parliamentary Union,<sup>349</sup> with 22 women in the parliament,<sup>350</sup> Georgia is ranked 139 among 193 countries.<sup>351</sup>

The Public Defender's Office observes annually the gender balance within the executive. The picture in the gender prism is following.<sup>352</sup>

347 In this regard, the work done by the Department of Monitoring Human Rights Protection and Quality of Investigation of the Ministry of Internal Affairs and the Department of the Human Rights Protection of the Office of the Prosecutor General of Georgia is to be pointed out.

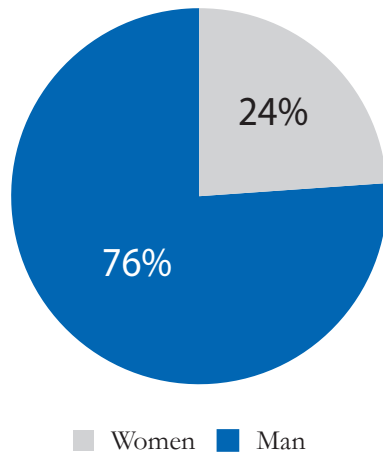
348 Information available at: <https://bit.ly/2SGVdqQ>, (accessed 21.03.2019).

349 Women in National Parliaments, available at: <https://bit.ly/2gWccEF>, (accessed 21.03.2019).

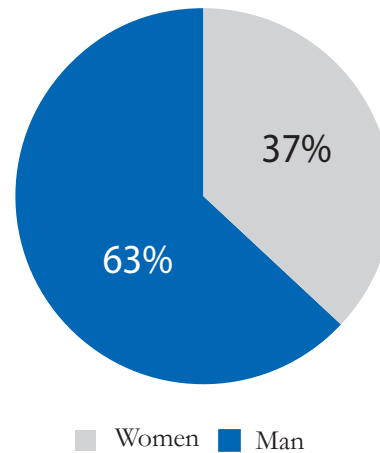
350 Women in Georgian Parliament, available at: <https://bit.ly/2UKbHfh>, (accessed 21.03.2019).

351 In 2017, according to the Global Gender Gap Index, based on the political empowerment and women in parliament, Georgia is ranked 114 among 144 countries.

352 In 2018, based on a decision adopted by the Government of Georgia, 3 ministries were abolished and the rules for the positions and hierarchical lists of professional public officials were determined, information is available at: <https://bit.ly/2HsHfDJ>, (accessed 21.03.2019).

Gender Balance Among Employees in Ministries<sup>353</sup>

Gender Balance Among Managers in Ministries



Besides, there are only 3 women out of 11 ministers in the Government of Georgia. As regards the adviser in gender issues, there is a person responsible for these issues only in 5 out of 11 ministries.<sup>354</sup>

The Public Defender of Georgia pointed out numerous times to the importance of the gender quotas being instrumental for equal political participation in those circumstances, where the existing political stereotypes, invisible social, cultural or individual barriers significantly hamper women's political participation. Despite numerous attempts,<sup>355</sup> in 2018, the Parliament of Georgia did not support the amendments to be made to the Code of Elections regarding gender quotas.<sup>356</sup>

Observing the two rounds of presidential elections was also important for assessing women's political participation in 2018.<sup>357</sup> Unfortunately, the election process was punctuated with hate speech and was not gender-balanced. In particular, despite the fact that one of the major presidential candidates was a woman, the future visions and possible solutions of problems were mostly discussed by male politicians.<sup>358</sup>

Existence and empowerment of institutional mechanisms in self-government bodies is particularly important for the elimination of gender equality and attaining equal participation of women. Unfortunately, the gender balance in self-government bodies remains a problem. In particular, only 42% of the employees in the city halls of self-governing cities are women; out of them only 31% work in managerial positions. Gender balance in elected members of Tbilisi City Assembly is particularly alarming. According to the information requested by the Public Defender,<sup>359</sup> 14% of elected members of the Tbilisi City Assembly are women and 86% are men. This is a critically low index of women's participation.

In 2018, the process of appointing gender advisors, formation of gender councils and developing action plans

353 Such a drastic difference in the percentage distribution of employed persons is caused by the fact that the majority of employees of the Ministry of Internal Affairs are male. In particular, there are 17,738 male employees and 4,343 female employees, Letter no. G1006 of the Public Service Bureau, dated 01.02.2019.

354 According to the Institutional Development Action Plan of the Intergovernmental Commission on Gender Equality, Violence Against Women and Domestic Violence, before September 2019, the position of advisor on gender equality issues will be set up or an employee working in an existing position will take up the mentioned duties (goal 2: Development of human resources for achieving gender equality goals).

355 The draft law on gender quotas was submitted to the Parliament for the first time in 2003 and for the second time in 2008; and for the third time in 2017, when it had 37000 signatures.

356 Information is available at: <https://bit.ly/2X0Nhjc>, (accessed 21.03.2019).

357 The first round of the presidential elections was held on 28 October 2018 and the second round – on 28 November 2018.

358 Discussed in detail in the subchapter on equality.

359 The statistics are counted based on the information requested and received by the Public Defender's Office in January-February 2019.

was active in municipalities.<sup>360</sup> Despite this, the outreach and working meetings of the Public Defender of Georgia in various regions show that training of gender advisors and members of the councils and participation of women in decision-making process remain a challenge. Besides, policies are planned without researching women's needs and consequently, policies are not coinciding with those needs that local population has. This particularly concerns participation of vulnerable groups at all stages of policy planning and implementation.

## 9.2. WOMEN'S ECONOMIC ACTIVITY AND LABOUR RIGHTS

In 2018, the situation concerning economic empowerment and labour rights of women has not substantially improved. In terms of gender balance in economic processes and equal access to resources, development and implementation of the methodology of gender budgeting is important. This has not been implemented to this day.

According to the Global Gender Gap Index 2018,<sup>361</sup> Georgia is ranked 85 among 149 countries in Europe and Central Asia, based on economic participation and opportunity index.

According to the same data, in terms of equal pay for equal work, Georgia moved from 45<sup>th</sup> to 69<sup>th</sup> position. As regards the difference between average indexes, a male's estimated annual income is almost double to that of a female's.<sup>362</sup> As regards Contributing family workers, the contribution made by females in this regard is almost double (female – 33.3; male – 14.7).

There is gender imbalance with regard to possession of agricultural land. Males are documented possessors 2 times more often than females. Besides, women cannot enjoy the right to sell their assets or give it as inheritance since their authority is limited in the decision-making process in the family.<sup>363</sup>

The important component of gender equality in labour relations is the prevention of sexual harassment and effective response. It is commendable that the parliament supported the adoption of amendment to the Law of Georgia on Elimination of All Forms of Discrimination under which sexual harassment is considered as a form of discrimination.<sup>364</sup>

The legislative shortcomings and absence of the correct regulation creates barriers in terms of childcare leave for both parents. Unfortunately, the situation did not change in 2018 and no specific activities were determined<sup>365</sup>

It is important to increase women's participation in the labour market and promote gender equality in labour relations. This should be accompanied by ensuring equal opportunities for employment.<sup>366</sup>

As a result of analysis of the information obtained from women living in rural areas and processed by the Public Defender's Office, it can be concluded that there is a problem also in terms of accessibility of information

<sup>360</sup> Nowadays, an advisor or responsible person in gender issues is appointed in all municipalities of Georgia; there are also gender councils set up; an Action Plan has been elaborated in 23 municipalities, while 39 municipalities do not have it yet or are in the process of elaboration. Detailed information on Gender Advisors, Gender Councils and Action Plans in self-government bodies is available on the website: <https://bit.ly/2Y8uKC7>, (accessed 21.03.2019).

<sup>361</sup> The information is available on the website: <https://bit.ly/2SGVdqQ>, (accessed 21.03.2019).

<sup>362</sup> Idem.

<sup>363</sup> Pilot Research on Gathering Gender Differentiated Data, Possessing Assets and Entrepreneurship; available at: <https://bit.ly/2TQmHe4>, (accessed 21.03.2019).

<sup>364</sup> Pilot Research on Gathering Gender Differentiated Data, Possessing Assets and Entrepreneurship; available at: <https://bit.ly/2TQmHe4>, (accessed 21.03.2019).

<sup>365</sup> Letter no.01/1702 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 01.02.2019.

<sup>366</sup> In 2018, total 229,555 job-seekers registered in the Information Centre of Labour Market Management, among them 48% were women. It is noteworthy that, as an exception, those also can participate in the state programme who could not finish the basic level of secondary education due to early marriage.

concerning projects available in economic field. The poor skills in project planning, money management, correct assessment of financial risks and project implementation is considered to be problematic by entrepreneurial women themselves.<sup>367</sup>

The legal status of single and multiple-child parents is another significant aspect of women's economic participation and realisation of their labour rights. Unequal distribution of the burden of care for single mothers needs to be addressed by pecuniary and non-pecuniary social programmes that would be aimed at easing the care of burden single parents carry.<sup>368</sup>

The Public Defender welcomes determining the status of a multiple-children family.<sup>369</sup> However, to this date, there is no agency determined that would be in charge of establishing/revoking the status of a multiple-children parent and maintaining the data of the respective persons.<sup>370</sup> Accordingly, the determined terms for social security do not meet the needs of women with multiple-children since the accessibility of benefits remains obscure, especially in terms of the improvement of their socio-economic situation.

### 9.3. WOMEN, PEACE AND SECURITY

Women's participation at the decision-making level is still low in security sector and peace negotiations. It is commendable that, in 2018, the Government of Georgia approved the National Action Plan of Georgia for the Implementation of the UN Security Council Resolution on Women, Peace and Security for 2018-2020.<sup>371</sup>

According to the information supplied to the Public Defender's Office, competent authorities started implementing the obligations under the action plan. This implies outreach and consultation meetings with IDPs and conflict-affected population, donors and NGOs;<sup>372</sup> retraining concerning the UN Security Council Resolution on Women, Peace and Security.<sup>373</sup> However, those activities that are aimed at economic empowerment of conflict-affected women have not started yet.

Despite the fact that in 2018 there were consultative meetings<sup>374</sup> organised by the authorities with population living along the Administrative Boundary line that is conflict-affected, the analysis of the information received at the meetings organised by the Public Defender's Office shows that awareness about violence against women and girls, inter alia, sexual and gender-related violence and security related risks is low.<sup>375</sup>

Activation of the National Action Plan localization process remains to be a significant issue. It should ensure that municipalities have the ownership of commitments undertaken by the action plan as well as active participation of local communities, among them IDPs and conflict-affected women, in decision-making.

367 42% of participants enrolled in vocational colleges and educational establishment in 2018 are women. They are particularly interested in the programmes of sewing products, hair stylist, felt processing, web interface developer, cook, and practicing nurse state programmes. Letter no. MES 6 19 00144512 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 08.02.2019.

368 According to the information supplied by the LEPL Public Service Development Agency (letter no. 01/53068, dated 19.02.2019), there are 3,144 women and 1 man registered as single parents in Georgia; only mother is indicated in 1,254 birth acts registered in 2018; father is not indicated in any of them.

369 Resolution no. 517 of the Government of Georgia on Determining Procedure and Terms for Protecting a Multiple-Children Parent, available at: <https://bit.ly/2Y1dNty>, (accessed 21.03.2019).

370 Letter no. 01/53068 of the LEPL Public Service Development Agency, dated 19.02.2019.

371 Resolution no. 17 of the Government of Georgia on Approving the National Action Plan of Georgia for the Implementation of the UN Security Council Resolution on Women, Peace and Security for 2018-2020, available at: <https://bit.ly/2WcRlvL>, (accessed 21.03.2019).

372 Letter no. 248 of the Office of the Minister of Reconciliation and Civic Equality of Georgia, dated 06/02/2019.

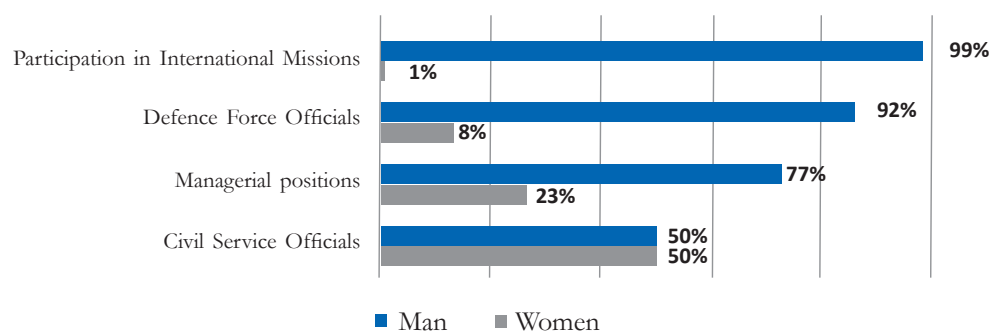
373 Letter no. LA 3 19 00002668 of the Legal Aid Office, dated 31/01/2019.

374 Letter no. 248 of the Office of the Minister of Reconciliation and Civic Equality of Georgia, dated 06/02/2019.

375 Outreach meeting in Samegrelo region, Ganmukhuri, 31/05/2018; in Shida Kartli region, Zemo Nikozi, 8/05/2018.

The balance among the civil service officials in the Ministry of defence remains the same – 50%. In 2018, women’s representation in managerial positions is reduced by 7% and is at 23%.<sup>376</sup>

**Table no. 1. Gender Balance Among the Defence Ministry Employees**



Economic empowerment of conflict-affected women remains a problem as well as quality and need-based health-care services, among them reproductive services for women and girls who are IDPs and living along the Administrative Boundary Line.<sup>377</sup>

#### 9.4. WOMEN’S REPRODUCTIVE HEALTH AND RIGHTS

The situation concerning sexual and reproductive health and rights is one of the significant indicators in analysing the gender equality in the country.

In 2018, the Public Defender’s Office, with the support of the Country office of the United Nations Population Fund (UNFPA), held a national survey of sexual and reproductive health and rights. Service receivers and service providers, relevant NGOs and decision-making persons were involved in this survey. The survey covered issues of complex education on mothers’ health, modern methods of family planning and accessibility of respective information, and human sexuality. The monitoring revealed a number of problems and obstacles that various groups of women encounter in terms of accessibility of services.

The changes in terms of mother’s health-care are welcome. In particular, the number of free antenatal visits increased from 4 to 8.<sup>378</sup> However, the absence of a systemic approach towards postnatal care remains problematic, including integration of family planning in this service.

One of the main objectives of the state programme in terms of sexual and reproductive health and rights is to reduce maternal mortality. According to the preliminary data, the maternal mortality index in 2018 is 23.5/100 000 live births.<sup>379</sup>

The monitoring also revealed problems concerning breach of confidentiality by healthcare service providers as well as obtaining informed consent. Adapting the buildings of healthcare service providers for disabled women is also problematic. Women who are representatives of ethnic minorities and cannot receive services in their native tongue and do not have the command of the state language also encounter problems when receiving services.

<sup>376</sup> Letter no. MOD 8 19 00133953 of the Ministry of Defence of Georgia, dated 08/02/2019.

<sup>377</sup> Outreach meeting in Samegrelo region, Khurcha, 30/05/2018; In Shida Kartli region, Ergneti, 08/05/2018.

<sup>378</sup> The Public Defender’s recommendation was also mentioned. Information available at: <https://bit.ly/2W8Uuwv>, (accessed 21.03.2019).

<sup>379</sup> It is noteworthy that the index could change, since each case of mothers’ death is studied based on medical recordings and verbal autopsies. Letter no. 06/727 of the LEPL L. Sakvarelidze National Centre for Disease Control and Public Health, dated 28 February 2019. This index in 2017 was 13.1/100000.



The survey showed that the family planning services are not fully integrated at the level of primary healthcare. Therefore, there is a comprehensive and systemic approach towards family planning in terms of providing information, education and services. This creates serious problems in terms of accessibility. Furthermore, in villages and mountainous regions, there is a limited number of clinics and consultation centres for women. In order to receive services, women have to go to a neighbouring settlement or go down to the city. The problem of the absence of services also implies limited resources of adequate equipment and required utensils.

Particularly noteworthy are those problems which are encountered by girls when family planning and receiving non-surgical induced abortion (medical abortion). The monitoring showed that providers of medical assistance, often without the wish of the girl, not only notify the parent about the service but even request informed consent for it in advance. Such a practice significantly damages the right to healthcare of the girls as it virtually limits their access to reproductive health services. This practice also encourages girls to seek illegal means to obtain medical services which pose risk to their life and limb.<sup>380</sup>

The decreasing dynamics of registered induced abortions is welcomed. In particular, according to the preliminary data, in 2018, 23,295 abortions were performed in Georgia, and in 2017 – 24,308.<sup>381</sup>

Despite this trend, accessibility of safe abortion remains problematic. The monitoring showed that in some cases, service-providing professionals attempt to discourage women needing abortion and sometimes even resort to unethical ways such as providing purposefully incorrect information to service receivers about the condition of their health.

It is problematic to take into account women's sexual and reproductive health at the stage of determining treatment in psychiatric facilities.<sup>382</sup>

The monitoring showed that young girls do not have sufficient information about modern methods of contraception. It should be mentioned that the results of the absence of complex education on human sexuality is reflected disproportionately and negatively on the legal status of girls. In particular, youths are not given information in schools about evidence-based means and safe sex to prevent undesirable pregnancy. This further deepens the taboo on human sexuality which is directly linked with gender inequality.

## 9.5. HUMAN TRAFFICKING

Human Trafficking is a serious form of human rights violation the victims of which are often women and children. The analysis of the cases examined by the Public Defender show that representatives of ethnic minorities and transgender people are particularly vulnerable groups in terms of trafficking and sexual exploitation.

During 2018, investigation instituted on 21 incidents of alleged trafficking. Only 6 women were given the status of a victim of human trafficking and the status of an affected party was given to 2 women.<sup>383</sup> The indicator of

380 Under the Law of Georgia on A Patient's Rights, a minor patient aged 14 to 18 who, in the opinion of a medical care provider, can evaluate his/her health condition correctly and who referred to the doctor for treatment of sexually transmitted diseases or drug addiction, or for taking advice on non-surgical methods of contraception or for artificial termination of pregnancy, information is available at: <https://bit.ly/2W2MU6C>, (accessed21.03.2019).

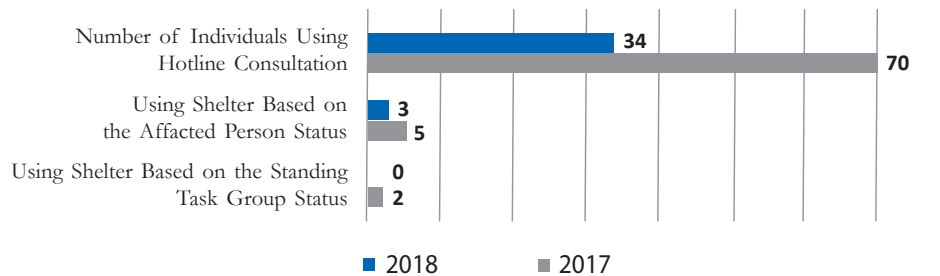
381 Letter no. 06/443 of the National Centre for Disease Control and Public Health, dated 6 February 2019. This is a total of the number of spontaneous abortions and medical abortions and is a preliminary data that will be specified as a result of multi-indicator cluster survey.

382 Regarding this, on 8 May 2018, the Public Defender's Office made a recommendation to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (08/6621).

383 Letter no. 2309 of the Ministry of Justice of 13 February 2019. Among others, 18 alleged incidents are committed in Georgia and 3 in Turkey, Ukraine and the United States: sexual exploitation of an adult – out of 10 cases, 9 are committed in Georgia (6 are allegedly committed in Ajara, 1 – in Tbilisi and 1 – in Kvemo Kartli) and 1 – in Turkey. Out of 2 alleged incidents of labour and sexual exploitation of an adult, 1 is allegedly committed in Georgia (in Tbilisi) and another – in the United States. Out of 2 alleged incidents of labour exploitation of an adult, 1 is allegedly committed in Georgia (Ajara) and Ukraine. 5 alleged incidents of forced labour (begging) committed against a minor are in Georgia (3 is allegedly committed in Ajara and 2 – in Tbilisi); 2 alleged incidents of selling-buying a child is committed in Georgia (in Kutaisi and Tbilisi).

the beneficiaries of the services for victims of human trafficking is as follows:<sup>384</sup>

**Table no. 2. Data on Services for Victims of Human Trafficking**



The Public Defender's Office conducted monitoring in Tbilisi and Batumi shelters for victims of trafficking and found out that shelters are mainly tailored to the needs of victims of domestic violence; whereas provision with an interpreter and services related with psychosocial rehabilitation programmes for victims of trafficking remains problematic. The services provided for human trafficking victims in Tbilisi and Batumi need improvement and beneficiaries should be offered services that are tailored to their needs.<sup>385</sup>

The state ought to care for raising awareness among representatives of law-enforcement authorities and the general public and intensify efforts towards identifying possible crimes and providing effective response. Furthermore, when planning preventive measures, particular attention should be paid to tourist and cross-border regions where the risk of trafficking is particularly high.

## 9.6. VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

There were significant steps made concerning fight against violence against women and domestic violence this year. In particular, the legislation was amended and punishment for domestic violence was made stricter.<sup>386</sup> Following the Public Defender's recommendation, a witness and victim coordinator's service was set up within the Ministry of Internal Affairs.<sup>387</sup> The instrument for assessing risks of violence against women and domestic violence has been implemented in practice, which is a crucial safeguard for victims' security and prevention of reoffending.<sup>388</sup> It is also important that statistics on violence against women and domestic violence is processed and published periodically. However, the comprehensive approach towards violence against women and domestic violence and coordinated efforts among state authorities remain problematic.

Despite the numerous recommendations made by the Public Defender, there is no uniform methodological standard of gathering and processing statistics on violence against women and domestic violence. Unfortunately, the effective involvement of social workers in the process of examining domestic violence is still problematic; due to the lack of social workers and their workload, they are prevented from adequately performing their duties.<sup>389</sup> Adequate support and protection of victims' interests remains problematic.

384 Letter no. 07/131 of the State Fund for the Protection and Assistance of the Victims of Human Trafficking, 2019.

385 Report on Monitoring of Shelters for the Victims of Domestic Violence and Trafficking, available at: <https://bit.ly/2TUbnzF>, (accessed 21.03.2019).

386 Under the law adopted with the initiative of the Ministry of Internal Affairs, punishment is made stricter for those committed domestic violence; available at: <https://bit.ly/2Joz5xK>, (accessed 21.03.2019).

387 The witness and victim coordinator's service became operational in the Ministry of Internal Affairs of Georgia; available at: <https://bit.ly/2HuOhrk>, (accessed 21.03.2019).

388 On 1 September 2018, the instrument for assessing risks of violence against women and domestic violence and the mechanism for monitoring restraining order became operational; available at: <https://bit.ly/2TPJ5F5>, (accessed 21.03.2019).

389 In the reporting period, the Public Defender's Gender Department held meetings with social workers working in the regions in the field of domestic violence. Social workers pointed out that the inadequate working conditions prevent them from properly performing duties. Social workers mentioned the following as problematic: overwork, inadequate pay, problems related to infrastructure and transportation, and the impossibility of professional development.

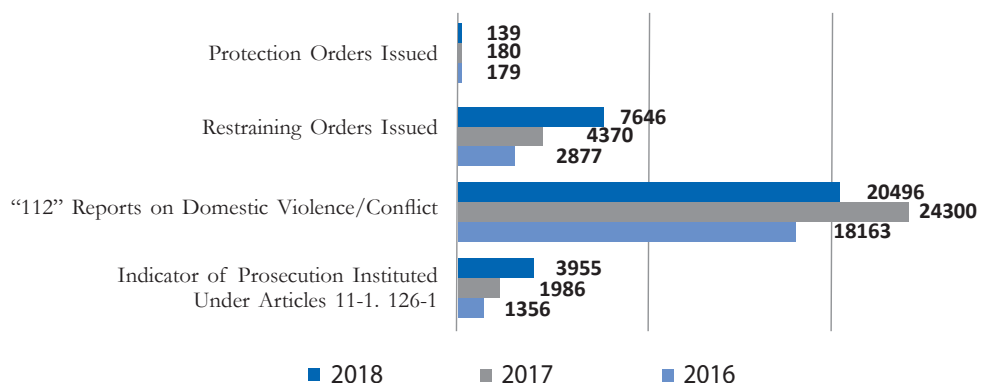
According to the cases examined by the Public Defender, domestic violence is particularly heavily reflected on the women with low income, no income, women with no education, single women, conflict-affected women, elderly women and women whose partners/ex-partners work/worked in law-enforcement authorities and/or serve in armed forces. It is noteworthy that the cases examined by the Public Defender of Georgia show incidents involving manipulations by using a child in order to punish the victim.

Undergoing the mandatory course oriented at violent attitude and behaviour by offenders is also problematic.<sup>390</sup> On the one hand, it is problematic that the process of rehabilitation is not mandatory on the one hand and, on the other hand, there has been no assessment of the existing programme of managing violent behaviour.

Number of Probationers		Number of Probationers Involved in Rehabilitation Programme for Violent Behaviour	Number of Persons Convicted for Domestic Crime and Domestic Violence	Number of Convicted Persons Involved in Rehabilitation Programme for Violent Behaviour
Violence Against Women	Domestic Violence			
690	397	160	641	117

It should be noted that compared to the previous years, the index of identifying violence against women and domestic violence and the use of protective measures is higher in 2018. This is, *inter alia*, due to the work of the Department of Monitoring of Human Rights Protection and Quality of Investigation at the Ministry of Internal Affairs and the Human Rights Protection Department at the Office of the Prosecutor General. However, identifying gender motive, which is crucial for the correct categorisation of the crime and imposition of the adequate sentence, remains problematic.<sup>391</sup> Compared to the previous year, the index of identifying the discriminatory gender motive is higher. However, the index is still low considering the total number of violent incidents.<sup>392</sup>

**Table no. 3. Incidents of Domestic Violence**<sup>393</sup>



390 The LEPL of the Ministry of Justice – the National Agency of Enforcement of Non-Custodial Sentence and Probation, (Letter no. 2/16371, dated 19 February 2019); The Special Penitentiary Service of the Ministry of Justice of Georgia (Letter no. 46141/01, dated 19 February 2019).

391 According to the new survey about violence against women, published jointly by the UN Women and Geostat with the financial support of the European Union, one out of four women in Georgia experienced gender violence during lifetime; available at: <https://bit.ly/2SHp16j>, (accessed 21.03.2019).

392 Letter no. 13/8161 of the Office of the Prosecutor General of Georgia, dated 5 February 2019. According to the information supplied, in 2017, criminal prosecution was instituted on domestic violence committed with gender discrimination motive against 25 persons; in 2018 – 111 persons. According to Letter no. 13/10476 of the Office of the Prosecutor General of Georgia, dated 13 February 2019, the gender motive was established in one crime committed against a woman in 2018.

393 Letter no. 13/10346 of the Office of the Prosecutor General of Georgia, dated 13 February 2019; Letter no. MIA 3 19 00283366 of the Ministry of Internal Affairs of Georgia, dated 4 February 2019; Letter no. MIA 6 19 00258547 of the Ministry of Internal Affairs of Georgia, dated 31 January 2019; Letter no. P-67-19 of the Supreme Court of Georgia, dated 6 February 2019.

It is noteworthy that in 2018, 205 restraining<sup>394</sup> and 130 protective<sup>395</sup> orders were issued concerning violence against women. According to the information supplied by the Ministry of Internal Affairs, in 2018, investigation was instituted in 126 criminal cases under Article 151<sup>1</sup> of the Criminal Code of Georgia (stalking).

Despite the increase in the identification and response indicator, the low number of applications about domestic violence and violence against women in the regions remains problematic.<sup>396</sup> The analysis of the cases by the Public Defender also shows it is problematic to identify the incidents involving threats of violence. In particular, according to victims, emphasis is often on physical injuries only.<sup>397</sup>

There are problematic cases where a restraining order had been issued against the victim.<sup>398</sup> According to victims, in order to establish violence, they were made to face their abusers in police buildings.<sup>399</sup> Cooperation between the Ministry of Internal Affairs and the Social Service concerning violence against women and domestic violence remains problematic.<sup>400</sup>

The cases examined by the Public Defender show that lack of sensitivity on the part of the law-enforcement officials and absence of special procedures for interviewing victims of violence in police stations remain problematic.<sup>401</sup> Furthermore, there are frequent cases where victims allege offensive and ridiculing attitude from police officers.<sup>402</sup> The insensitive attitude of law-enforcement officials and lack of adequate infrastructure in police stations make it impossible to offer friendly services to victims of violence and, therefore, victims refuse to re-apply to police in a number of cases. This adversely affects their legal status.

The Public Defender studied numerous cases of sexual violence against women. Among the cases, there are incidents involving violence against disabled women and girls.<sup>403</sup> In this regard, it is problematic that law-enforcement authorities do not have the guidelines for interviewing victims/affected persons of sexual violence that would be tailored to the specific situations of such victims/affected persons.<sup>404</sup> The legislation governing sex crimes is also problematic. Physical resistance from a victim is a defining element of the crime. Such an approach, of course, makes it difficult to identify incidents of sexual violence against women and hamper their effective protection.<sup>405</sup>

Female genital mutilation (FGM) is one of the extreme forms of the violation of a woman's rights and is performed to have control over a woman and her body. This practice remains a challenge in Georgia.<sup>406</sup> Despite certain positive steps,<sup>407</sup> there is no information about the geographic area where FGM is practised.<sup>408</sup> This raises questions about the effectiveness of the fight against this practice. The outreach meetings held by the Office of the Public Defender shows that after criminalisation of an act, the public is less vocal about the respective problem, whereas the preventive measures taken by the state, including in terms of raising awareness are not sufficient.

394 Letter no. MIA 6 19 00258547 of the Ministry of Internal Affairs of Georgia, dated 31 January 2019

395 Letter no. P-67-19 of the Supreme Court of Georgia, dated 6 February 2019.

396 Letter no. MIA 6 19 00258547 of the Ministry of Internal Affairs of Georgia, dated 31 January 2019.

397 Case nos. 18004/18, 47/19, and 13141/17, See also the Public Defender's recommendation to the Ministry of Internal Affairs (no. 08/6622, 08/05/2018).

398 Case nos. 172/18 and 18028/17. It is noteworthy that the court annulled both orders.

399 Case nos. 16170/18, and 17589/18, referral was made from Kvemo Kartli on both occasions.

400 It was mentioned during workshops organised by the Gender Department with social workers that police officers are not well informed about the functions of social workers and police only sees a formal aspect in this work.

401 Victims often indicate that they have to explain one and the same issue over and over again and accordingly have to stay for a long time in a police station. Also, due to infrastructure, confidentiality is not guaranteed in police buildings.

402 The Public Defender, with the applicant's consent, notifies the Inspectorate General of the Ministry of Internal Affairs; however, in most cases no disciplinary offence is established. Unfortunately, in some cases applicants themselves do not cooperate with the Inspectorate General as they do not expect a tangible outcome and it is difficult to obtain evidence in some cases.

403 Case no. 16265/18; 15097/18; 9191/18

404 The Public Defender's recommendation to the Ministry of Internal Affairs (no. 08/15654, 24/12/2018).

405 Equality Now, report on Obstacles of Justice: Why the Countries of Europe and Asia Do not Protect Victims of Sexual Assault <https://bit.ly/2WaGfHk>, (accessed 21.03.2019).

406 This damaging practice is discussed in detail in the chapter on gender equality in the 2016 parliamentary report of the Public Defender of Georgia, available at: <https://bit.ly/2TiDrGh>, (accessed 21.03.2019).

407 Communication for Behavioural Impact (COMBI) on preventing and eradicating harmful practice of early marriage, jointly elaborated by the Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence and UNFPA is to be mentioned positively.

408 Letter no. GOV 4 19 00004716 of the Administration of the Government of Georgia, dated 7 February 2019.

## Assessment of the Services Offered by Facilities for Victims of Domestic Violence

It is commendable that, in 2018, 5 state facilities serving victims of violence (shelters) and 4 crisis centres were operational. This is a significant step forward in terms of accessibility of services.<sup>409</sup>

Monitoring carried out by the Public Defender in 2018 in shelters and crisis centres identified that these facilities offer a supportive and reassuring atmosphere to beneficiaries and they are safe there. However, there is still the problem that victims/affected persons have limited psychosocial rehabilitation, education and employment programmes available. Sometimes there are no such programmes at all.

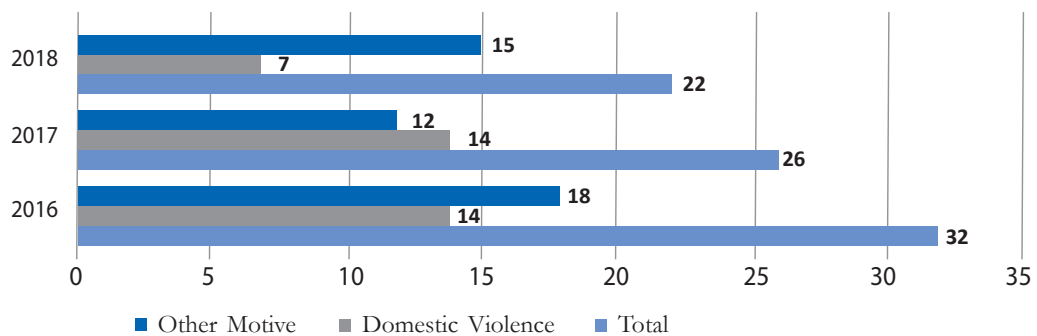
The provision of victims with accommodation and financial support after they leave the shelter is problematic. Among others, the provision of socially vulnerable victims with timely subsistence allowances is still problematic.<sup>410</sup> Furthermore, it is important that local self-government authorities should be more active and elaborate special supporting programmes.<sup>411</sup>

It should be mentioned that those victims who, due to various reasons are unwilling to apply to law-enforcement authorities, can apply to the group determining the status of a victim of violence against women and a victim of domestic violence as an alternative and based on the respective status benefit from psychosocial rehabilitation services.<sup>412</sup> While the existence of such an alternative is positive, it is important to eradicate the identified shortcomings in this regard. The principles on which the group's work is based should be revised.<sup>413</sup>

## Femicide

According to the data of the prosecutor's office, in 2018, there were 22 murders of women, among them were 7 incidents involving domestic violence; and 18 attempted murder of women, among them 11 incidents involving domestic violence.<sup>414</sup>

Table no. 4. Statistics on Femicides



409 According to Letter no. 07/131 of the State Fund for the Protection and Assistance of the Victims of Human Trafficking, dated 29 January 2019, 415 individuals benefited from the shelter for victims of violence and the services therein; 224 individuals benefited from the crisis centre for victims of domestic violence, among them, 166 – in Tbilisi, 10 – in Kutaisi, 46 – in Gori and 2 – in Ozurgeti.

410 This problem was also addressed in the 2017 parliamentary report of the Public Defender.

411 It is to be mentioned that only a few municipalities offer allowances for victims of violence, such as one-time monetary allowance and rent.

412 During 2018, the group determining the status of a domestic violence victim received 39 applications; among them were 37 women and 2 men. The status of a domestic violence was given to 34 women and 2 men. The status was denied to 3 women. As regards the status of a person affected by domestic violence, the group received one application and the status was given to one woman; Letter no. GOV 5 19 00002548 of the Administration of the Government of Georgia, dated 24 January 2019.

413 It is important to have procedures for abolishing the status by the group identifying victims. This issue is not covered by existing regulations. It is also important to maintain statistics by the group identifying victims based on the applications received and to analyse the received information. The trends thus identified would allow improving the existing mechanisms for victim protection and assistance to make them tailored to the actual needs and problems.

414 Letter no. 13/6816 of the Prosecutor's Office of Georgia, dated 31 January 2019. It is noteworthy that the information supplied by the Ministry of Internal Affairs of Georgia and Prosecutor's Office of Georgia regarding femicide and attempted femicide do not match.

**As the analysis of statistical data shows, the indicator of femicide as a result of domestic violence has reduced twice.** This is the result of the active work in the cases of violence against women and domestic violence done by the Department of Monitoring of Human Rights Protection and Quality of Investigation at the Ministry of Internal Affairs. **However, the indicator of attempted femicide as a result of domestic violence has increased.** Furthermore, out of the incidents identified in 2018, 10 of them concern attempted murder by the husband.<sup>415</sup>

The analysis by the Public Defender of the cases of femicide and attempted femicide<sup>416</sup> shows that despite the positive steps taken regarding violence against women and domestic violence, there are still numerous challenges in terms of the fight against the gravest form of such violence – femicide. Those cases are particularly noteworthy, where a law-enforcement agency was informed about the alleged violence in the family and yet the extreme form of violence could not be prevented.<sup>417</sup>

Those cases are also noteworthy where a victim has not applied to the police. This is mostly caused by lack of trust in police authorities. The analysis of the cases shows shortcomings identified at the investigative and trial stages such as the problem of categorisation of a crime and identifying gender motive, the failure to take into account prior background and to base resolutions and decisions on these factors; the use of gender insensitive terminology by authorities, etc.

It should also be mentioned that categorising the incidents of leading a woman to commit suicide as femicide is particularly problematic. The same problem is encountered in the examination of prior background and investigation of incidents. Since 2014, the Public Defender has been observing the cases of M.D. L.V. and Kh.S. about alleged leading/attempted leading to commit suicide. There are no known tangible results so far.

## 9.7. EARLY MARRIAGE

Early marriage and the practice of engagement remains one of the most important challenges. There is a problem in terms of prevention and managing individual incidents. While the registration of marriage of under-18 persons is not carried out anymore, the problems of actual cohabitation remains problematic.

In 2018, early marriage index is reduced compared to the data of 2017 (835 underage parents). However, the number of underage parents is still high. In particular, in 2018, 715 underage mothers and 23 underage fathers were registered.<sup>418</sup>

In order to prevent the incidents of early marriage/engagement, it is crucial to raise awareness of risks accompanying early marriage by integrating gender issues and vital skills/complex sex education in the system of education.

In this regard, the Communication for Behavioural Impact (COMBI) on preventing and eradicating harmful practice of early marriage, jointly elaborated by the Inter-agency Commission on Gender Equality, Violence against Women and Domestic Violence and UNFPA, is to be mentioned positively.

The analysis of the cases examined by the Public Defender's Office<sup>419</sup> shows that coordinated work among law-enforcement agencies, social services and establishments of secondary education concerning early marriage

415 Case no. 674/18, N 5950/18, N 9952/18.

416 The Public Defender analysed the cases of femicide and attempted femicide committed in 2017. In total, 17 cases were analysed. Out of these, 9 cases concerned femicide and 8 concerned attempted femicide. Within this research, resolutions and court decisions on termination of criminal prosecution were also analysed (9 cases in total). For more details, see the Monitoring Report on Femicide: Analysis of the Criminal Cases in 2017, available at: <https://bit.ly/2TgR9K3>, (accessed 21.03.2019).

417 Case no. 674/18, N 5950/18, N 9952/18

418 Letter no. 01/53139 of the Ministry of Justice of Georgia, dated 19 February 2019.

419 In 2018, the Public Defender examined 45 cases of early marriage and engagement. The problems discussed in this sub-chapter are based on these cases.

is problematic. This is confirmed by the information supplied by the Social Services Agency<sup>420</sup> according to which, in total, 115 cases were studied in 2018, whereas far more individuals left school due to early marriage.<sup>421</sup>

The issue of referrals from establishments of secondary education to competent authorities concerning early marriages/engagements is problematic.<sup>422</sup> The cases examined by the Public Defender's Office show that some schools cover the incidents of marriages/engagements and fail to register adequately those cases when girls did not turn up in the school.<sup>423</sup>

The cases examined by the Public Defender's Office show the problem of the application of Article 140 of the Criminal Code of Georgia. The current wording of this article provides for imposition of criminal responsibility of an adult for sexual contact with a person aged less than 16 years of age.<sup>424</sup> This creates problems when there is a small age gap between couples.<sup>425</sup>

The problem of illegal deprivation of liberty to marry girls that takes place in the regions populated by ethnic minorities is still unsolved. The analysis of these cases shows that, when it comes to ethnic minorities, strict policing is not carried out with regard to these particular crimes. There is indignation towards police that operative and investigative measures are delayed which mostly happens because the authorities suppose that families will reconcile and their work will thus be finished sooner. It is significant that, according to the cases examined by the Public Defender, some girls leave school because they fear abduction.

Along with the practice of early marriage, engagement of minor girls also remains problematic. Under Article 150<sup>1</sup> of the Criminal Code of Georgia, which implies forced marriage, according to the information supplied by the Ministry of Internal Affairs, 16 cases were investigated and criminal prosecution was instituted in 5 cases.<sup>426</sup>

## 9.8. LGBT+ PERSONS' RIGHTS

In 2018, the situation in terms of protecting rights of LGBT+ people has not substantially changed in the country. Homophobic and transphobic attitudes are still strong in the public due to which LGBT+ people still suffer from oppression, discrimination and often become victims of violence.

On 17 May 2018, the International Day Against Homophobia and Transphobia, NGOs working on LGBT+ persons' rights, activists and members of the LGBT+ community, due to the processions of anti-gender movements and possible altercation, still were not allowed to freely choose the place and format for the demonstration. This adversely affects the protection of LGBT+ persons' rights. Despite the fact that before the demonstration, activists and representatives of the Ministry of Internal Affairs conducted negotiations to ensure their security, the Ministry of Internal Affairs still could not manage to convince some of the activists that their freedom of expression and freedom of assembly and security would be guaranteed during the demonstration.<sup>427</sup>

420 Letter no. 04/3838, 29/01/2019 of the LEPL Social Service Agency.

421 Letter no. MES 8 19 00108442 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 1 February 2019.

422 The Public Defender's recommendation concerning breaches of the referral procedure by establishments of secondary education (no. 08/5536, 16/04/2018).

423 This problem is identified as a result of monitoring and examination of individual cases by the Public Defender in public schools in the village of Sabirkendi.

424 The Criminal Code of Georgia, Article 140.

425 When persons under 16 and 18 are in an actual and voluntary cohabitation, their relationship does not amount to crime. However, when a person becomes of the age after engaging in voluntary cohabitation and his/her partner is still under 16 years of age, there is a legal ground for instituting criminal prosecution against the adult partner.

426 Letter no. MIA 3 19 00595342, of the Ministry of Internal Affairs of Georgia, dated 07/03/2019.

427 Some organisers and activists decided to mark the International Day against Homophobia and Transphobia by resorting to the so-called guerrilla demonstrations which were organised without prior announcement of time and location; available at: <https://bit.ly/2Tg43HW>, (accessed 21.03.2019).

The measures taken by the states to protect LGBT+ persons' rights are not sufficient and do not meet the actual challenges. Unfortunately, to this day, the state does not have a systemic vision for improving the legal status of LGBT+ people.

### Violence Against LGBT+ Persons

The analysis of the cases examined by the Public Defender in 2018 shows that there are frequent incidents involving violence against LGBT+ persons on account of sexual orientation and gender identity.

The analysis shows that LGBT+ persons often chose not to report to police or if they do, they later stop cooperation with the police. This is caused by the insensitive attitude of law-enforcement authorities towards LGBT+ persons. It is noteworthy that the infrastructure is not accommodated to the needs of LGBT+ persons. It is problematic for representatives of the LGBT+ community to give information to law enforcement authorities in an open area. Therefore, the Ministry of Internal Affairs should take steps for introducing LGBT+ friendly services for interviewing them. It is, in particular, important to have separate rooms for interviewing, to show sensitive attitude towards members of the LGBT+ community, etc.

The analysis of the cases examined by the Public Defender shows that victims allege that they have been subjected to violence on numerous occasions by law-enforcement officials. In particular, there are frequent occasions of inadequate response to violence and incidents of insensitive, ridiculing and homophobic treatment.<sup>428</sup> In 2018, the Department of Gender at the Public Defender's Office examined 13 such cases.

According to the information supplied by the Chief Prosecutor's Office, in 2018, criminal prosecution was instituted against 15 persons regarding crimes committed on account of intolerance towards sexual orientation and against 12 persons regarding crimes committed on account of intolerance towards gender identity.<sup>429</sup> According to the information submitted by the same agency, in 2018, an investigation started only in one case in relation to a crime committed by employees of the Ministry of Internal Affairs against LGBT+ persons.<sup>430</sup>

It is noteworthy that the existing mechanisms of protection and assistance that are used in the cases of violence against women and domestic violence are not sufficient for providing adequate services for LGBT+ persons that have been a victim of violence or domestic violence. Furthermore, it is problematic that, in case of violence from a partner, gay/bi men cannot obtain adequate protection and assistance services. Similarly, it is problematic to have protection and assistance services offered proactively by law-enforcement officials to transgender women (namely, shelter) and it is only possible after the involvement of human right defenders.

Furthermore, maintaining statistics of violence among same-sex couples remains problematic. This is caused by the fact that the legislation is developed from the hetero-normative perspective. This is further reinforced by the stigma within the community itself, the fear of forced coming-out and mistrust in the law-enforcement authorities. For these reasons, LGBT+ persons refrain from reporting to police in the cases violence from a partner.

### Socio-Economic Rights of LGBT+ Persons

Protection of socio-economic rights such as labour, healthcare, social security and education has crucial importance for ensuring quality and dignified minimum living standard. Due to the homophobic and transphobic perceptions existing in the large part of the society, LGBT+ persons are faced with problems in terms of unhindered enjoyment of these rights.

428 It should be pointed out that the Public Defender issued a general proposal regarding this issue for the notice of the Minister of Internal Affairs of Georgia and the Chief Prosecutor (Letter no. 13/10773; 15/08/2018).

429 49 in 2017, available at: <https://bit.ly/2USUtgz>, (accessed 21.03.2019).

430 Letter no. 13/8280 of the Prosecutor's Office of Georgia.



In particular, it is problematic for LGBT+ persons to have access to education due to the hostile environment in an educational area which is manifested in homophobic bullying/attitude.<sup>431</sup> The situation of LGBT+ persons in terms of employment is also problematic due to discriminatory environment at workspace.

There is no political will to make efforts to eradicate these problems.<sup>432</sup> It is also a problem that LGBT+ persons are not involved in policymaking and therefore they cannot influence to put the protection of their rights on the political agenda.

LGBT+ persons are still faced with problems when receiving various services, for instance, in terms of funding medical services tailored to their needs. Since there are no concrete researches by the state, the needs of LGBT+ persons in terms of healthcare are unknown and there is no information about the availability and accessibility of health care services for them.<sup>433</sup>

### Sexual and Reproductive Health and Rights of LGBT+ Persons

In 2018, the situation in terms of sexual and reproductive health and rights of LGBT+ persons has not improved. The analysis of the cases examined by the Public Defender shows that, in a number of cases, violation of sexual and reproductive rights could have been caused by unconventional sexual behaviour, manifestation and identity.

It is still problematic for transgender persons to have sex changes entered in their identification documents, which is only possible under the existing legislation and established practice if a person has undergone sex reassignment. Requirements to undergo sterilisation to have a sex change entered in the identification document run counter to respect for bodily integrity, self-determination and human dignity.<sup>434</sup>

Regarding this issue, the Parliamentary Assembly of the Council of Europe calls upon the states to make gender reassignment procedures, such as hormone treatment, surgery and psychological support, accessible for transgender people, and ensure that they are reimbursed by public health insurance schemes; limitations to cost coverage must be lawful, objective and proportionate.<sup>435</sup>

As a result of the said practice, transgender persons are left out from state services. They face problems in terms of participation in public space, education, employment and healthcare services which adversely affect their legal status.

## 9.9. PROTECTING RIGHTS OF FEMALE AND LGBT+ RIGHTS DEFENDERS

In those circumstances, when anti-gender groups are becoming more active in the country and often endanger the agenda of gender equality and policies by demonstrating physical strength, it is crucial to have effective response from the state authorities to each crime/alleged crime against women and LGBT+ human rights defenders.

431 Case no. 4937/17.

432 This is confirmed by the fact that while the Action Plan for the Human Rights Protection and Integration for 2017-2020 reflects marking 17 May as the International Day Against Homophobia, Transphobia, the committee decided against celebrating it.

433 Mandate of the United Nations Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity, Country visit to Georgia – 25 September to 5 October 2018, available at: <https://bit.ly/2UHhmTn>, (accessed 21.03.2019)

434 Mandate of the United Nations Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity, Country visit to Georgia – 25 September to 5 October 2018, available at: <https://bit.ly/2UHhmTn>, (accessed 21.03.2019)

435 Resolution no. 2048, 2015, available at: <https://bit.ly/2E4MLGo>, (accessed 21.03.2019).

According to the information supplied by the Prosecutor's Office of Georgia, in 2018, criminal prosecution was instituted against 2 persons for alleged crimes committed against women and LGBT+ rights defenders.

It should be noted that women and those LGBT+ rights defenders who self-identify with the LGBT+ community are under increased risk of violence. The analysis of the cases examined by the Public Defender shows that cyber-threats and cyber-bullying are the major forms of violence. The response of law-enforcement agencies to these crimes is not effective and fails to respond to the scale of the problem.

The Public Defender's Office is currently examining cases involving alleged violence against women and LGBT+ rights defenders. One case involved physical assault, cyber-attack and threats in relation to an LGBT+ rights activist on the International Day against Homophobia and Transphobia at an anti-homophobic rally.<sup>436</sup> In another case, there were cyber-threats against an activist who openly supported voicing anti-homophobic messages by a public figure.<sup>437</sup> The Public Defender is also examining a case against a woman human rights defender who received cyber-threats because she had recorded and posted educational videos on sexual and reproductive health and rights.<sup>438</sup>

#### **Proposal to the Parliament of Georgia:**

- To ensure the introduction of gender quota, special interim measures to increase women's political participation.

### **RECOMMENDATIONS**

#### **to the Government of Georgia:**

- To enhance coordination with local self-government authorities for improving institutional mechanism of gender equality;
- To reflect in national action plans the agenda of LGBT+ persons and to ensure the involvement of NGOs working on LGBT+ issues and representatives of the LGBT+ community throughout the process;
- To revise the activity of the group identifying the status of a victim of violence against women and a victim of domestic violence for identifying and eradicating shortcomings; and
- To regulate the procedure of changing entries on sex in civil acts to make it compatible with international standards of human rights protection, not to be invasive and breaching the right to respect for private life.

#### **To the Ministry of Internal Affairs of Georgia:**

- To ensure retraining of personnel of territorial bodies of the Ministry of Internal Affairs on issues of violence against women, domestic violence and early marriage; also, develop a post-training assessment document to measure the progress achieved by retrained personnel;
- For effective protection and assistance of victims, to determine the specialisation of investigators in the cases of violence against women and domestic violence;

436 Case no. 7920/18, the case of N.G.

437 Case no. 12916/18, the case of Ts.V.

438 Case no. 2171/19 the case of Kh.A.

- To determine guidelines on interviewing victims of violence and persons affected by violence, including sexual violence in order to protect them from secondary victimisation; and
- To improve analysis of statistical data on violence against women and domestic violence, in particular, to analyse statistical information on violence against women and domestic violence from a partner, including the same-sex partners, in order to study specific characteristics of violence.

#### **To the Prosecutor's Office of Georgia:**

- To undertake preventive measures to decrease/avoid forced marriages, illegal deprivation of liberty and sexual contacts with minors; in particular, facilitating awareness-raising of population and detailed analysis of crimes is important; and
- To gather and take into account the materials of the background in the cases of violence against women and domestic violence.

#### **The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- To amend the rule of providing maternity, childbirth and childcare leave and relevant compensation so as to ensure both parents with the equal possibility to use it.
- To introduce measures towards assisting single parents and parents with many children, inter alia, by envisaging them in the existing social assistance system; to collect and analyse comprehensive statistical data on single mothers and mothers with many children;
- To collect and analyse categorized data on access to sexual and reproductive health services, including for vulnerable groups;
- To revise the rule of assessing social and economic conditions of socially vulnerable families so as to ensure that the placement in shelters for victims of domestic violence does not entail the termination of social allowance automatically;
- To elaborate a systemic approach towards antenatal care and to integrate psychological assistance services in the former;
- To elaborate a course on confidentiality and informed decision (certificate programme) and to have it integrated in the curricula of medical institutions;
- To disseminated information about state instruments of supervision over medical activity in facilities providing abortion services and to monitor service providers in providing services to their patients.

#### **To the Ministry of Education, Science, Culture and Sport of Georgia:**

- To ensure raising awareness among educators and developing the assessment toolkit concerning obligations regarding early marriage issues;
- To tighten control on violations of requirements under the referral document; and

- To integrate complex education on reproductive and sexual health and rights in the system of formal and informal education.

#### **To the State Fund for the Protection and Assistance of the Victims of Human Trafficking:**

- Shelters should facilitate enhanced cooperation with local NGOs and service provider companies and coordinate beneficiaries' psychosocial, educational and employment opportunities;
- To ensure that shelters improve, to the maximum extent possible, the delivery of services to LGBT+ persons and conduct continuous retraining of the personnel; and
- To improve the physical environment of shelters for servicing PWDs and adjust buildings in accordance with mandatory standards.

#### **To Local Self-Governments:**

- To ensure retraining of gender advisors at the municipalities and continuous monitoring of the implementation of the action plan by them;
- To research women's needs at the local level in order to identify problems in gender equality and improve women' legal status; and
- To plan and implement projects on a local level oriented towards economic and political empowerment of women, with allocating appropriate budget.

## 10. FREEDOM OF RELIGION AND BELIEF

In terms of protection of freedom of religion, the reporting period started with constitutional amendments. The constitutional amendments adopted through the 2017 constitutional reform provided for the new wording of the freedom of religion and revoked the part of the article on freedom of belief and religion that envisaged unjustified qualifying conditions of freedom of religion. As a result of the efforts of the Council of Religions and Tolerance Centre under the Public Defender, NGOs and Venice Commission, in 2018, the legislature removed the problematic qualifying grounds for freedom of religion. Through this amendment, the constitution became closer to the structure of the article on freedom of religion of the European Convention on Human Rights.

The issue of categorising by law-enforcement agencies of religious hate crimes that was problematic for years has improved. However, an effective and timely response to these crimes remains as a significant challenge.

Religious associations still face problems regarding enjoying their property and issues concerning construction permits for religious buildings. The issue of constructing a mosque on the plot of land owned by the Muslim community in Batumi remains unsolved.<sup>439</sup> The court is examining the case of the so-called Tandoyants Church which is historically Armenian, which was seized from the Armenian Apostolic Church by the Soviet Government and given by the state to the Patriarchate of Georgia in 2017.

It is noteworthy that in 2018, the Protestant Church of Georgia in the city of Rustavi was renovated and reconstructed. The Catholic Church, after lengthy discriminatory obstacles, managed to build and bless a temple in Rustavi. Despite the fact that they had won the case in court, they had to give up the plot of land originally purchased and exchange it for another plot where the church was built.

In 2018, a legislative initiative was submitted to the Parliament of Georgia concerning introducing criminal responsibility for “offending religious feelings”. The explanatory report of the draft law indicated in express terms that its adoption was caused by recently intensified covert or overt insults directed at the Georgian Orthodox Church, and other various “traditional” religions existing in the country. The Committee of Human Rights and Civic Integration supported the draft law in principle. However, the deliberations stopped after the backlash from the Council of Religions under the Public Defender and NGOs. The Public Defender hopes that the legislature does not support similar bills in future either.

Despite significant changes, the situation existing in terms of religious freedom still can be considered to be systemic discriminatory and intolerant. For years, the following problems have not been solved: returning historical property, violations and unequal environment in educational field, obstacles related to religious communities’ constructions, and effective and timely investigation of crimes committed on account of religious intolerance. Furthermore, acute intolerance, hatred and rhetoric against persons with different religious or non-religious convictions are expressed in the political context, media and social networks. For religious minorities, it is mostly impossible to use public space and media.

---

439 After the negative decision of the Batumi City Hall, the judgment is pending before a court.

## 10.1. OFFENCES COMMITTED ON THE GROUND OF RELIGIOUS INTOLERANCE

During 2018, the Public Defender examined 19 incidents in terms of establishing effectiveness of investigation of crimes committed on the ground of religious intolerance.<sup>440</sup> All of them involved acts committed against Jehovah's Witnesses.

The aggression against Jehovah's Witnesses mainly was manifested in creating obstacles to perform religious rites and damaging and destruction of religious publications and stands. These acts were accompanied on a number of occasions with physical assault and verbal abuse. Such incidents took place on the streets during dissemination of religious publications and door to door visits. Negative attitudes were manifested against Jehovah's Witnesses also by subjecting them to physical assault and verbal abuse; posting offensive posters on religious buildings (royal halls); vandalising windows, walls and illumination, painting crosses and restricting car parking. In one case, at a bus station in Rustavi, one Jehovah's Witness was sold a ticket for another means of transportation. According to the applicant, the cashier at the bus station told them that *they were sold a wrong ticket on purpose to make them suffer, as their religious belief was known. Apart from the verbal abuse, the cashier tried to injure the applicant.*

According to the information supplied by the Office of the Prosecutor General, the prosecutor's office attempted to establish hate motives and the investigative authorities often applied Articles 155 (illegal obstruction to perform religious rites) and 156 (persecution). However, it should also be noted that, in certain cases, acts were categorised under articles of the Criminal Code of Georgia that do not contain a religious motive, for example, Article 126 (violence) and Article 332 (abuse of official power). Such a practice makes it difficult to establish discriminatory motive and during criminal prosecution alleged hate motive escapes the notice of the competent bodies.<sup>441</sup>

It is also noteworthy that Jehovah's Witnesses have concerns about objective and timely investigation that is not carried out in incidents against them. In particular, these concerns are related with the terms of charging a person, recognising a person as a victim and adopting a final decision. The Public Defender shares this position and observes that, in many cases, the analysis of the information received from investigative agencies shows that there were a number of investigative actions, steps were taken to establish a religious motive; however, a perpetrator cannot be identified and respective persons are not granted the victim status. This is further aggravated by the fact that reasonable terms have passed from the commission of an act and this casts doubts about the effectiveness of the efforts made by investigative authorities.

Furthermore, in individual cases, Jehovah's Witnesses discuss indifferent attitude of the police when dealing with them. They often maintain that they are not given adequate information and investigative authorities do not diligently maintain communication with them; they seek to involve the Public Defender, as one of the means of legal remedy.

To sum up, it can be said that Jehovah's Witnesses remain the most vulnerable group in terms of hate crimes and they often become victims of aggression from various persons. Furthermore, the problematic issues of the delay in the examination of cases by investigative authorities and maintaining adequate communication with victims still persist.

<sup>440</sup> Physical violence (6 cases), obstructing religious rituals (3 cases); damaging religious publications/bookstand (3 cases); damaging praying halls/theft/vandalism (4 cases); threat with a knife/firearm (2 cases); alleged discriminatory attitude of employees of the Ministry of Internal Affairs (1 case).

<sup>441</sup> According to information supplied by the Office of the Prosecutor General of Georgia, investigation was instituted in 6 cases under persecution on religious ground; in 2 cases – under illegal obstruction of religious worship; 2 cases – violence; 1 case – abuse of official power, and 1 case – theft.

## 10.2. LEGISLATION AND THE 2018 JUDGMENTS OF THE CONSTITUTIONAL COURT

The Public Defender and the Council of Religions under the Public Defender have been arguing for the necessity to eradicate the discriminatory provisions in the legislation that create different rights and privileges for the Georgian Patriarchate, on the one hand, and for all other religious associations on the other hand.

Despite the obligations under the Governmental Action Plan for Protection of Human rights (for 2018-2020), the Government of Georgia still did not take any measures to prepare legislative initiatives to eradicate discriminatory approaches towards religious associations.

Despite numerous recommendations of the Public Defender of Georgia, the Parliament of Georgia did not make efforts to change discriminatory provisions in the legislation. To date, the non-equal status established by the Tax Code and the Law of Georgia on State Property are the most problematic.

On 3 July 2018, the Constitutional Court delivered key judgments<sup>442</sup> and upheld two claims of religious organisations. In particular, the Constitutional Court found the violation of Article 14 (right to equality) and declared the provisions of the Tax Code and the Law of Georgia on State Property that created unequal conditions for religious organisations as unconstitutional.

1. The Constitutional Court declared the impugned provision of the Tax Code that granted VAT exemption solely to the Georgian Apostolic Autocephalous Orthodox Church in case of restoration, construction and painting as unconstitutional.
2. The Constitutional Court declared the impugned provision of the Law of Georgia on State Property, which allowed only the Georgian Patriarchate to receive state-owned property without charge, as unconstitutional.

It is significant that the Constitutional Court made the landmark interpretation concerning the role of the Orthodox Church and the equality of religious associations:

***“Acknowledging the special role is connected with its historical contribution and does not serve to creating privileged legal status for the Orthodox Christian religion in the present. The historical contribution made cannot be considered as the source of legitimacy of privileges. Differentiating and creating legally prevalent status for the church is not and cannot be the rationale of the Constitution. [...] Granting the church a certain right does not imply preventing other religious organisations from enjoying the same right.”***

Regarding both constitutional claims, the Constitutional Court opined that elimination of discrimination is possible by virtue of abolishing the privileges and extending them equally to persons in similar positions.

To give the possibility to the parliament to eradicate the discriminatory provisions, the Constitutional Court postponed the enforcement of both judgments for 6 months, until 31 December 2018. However, the respective changes were not initiated in the parliament in 2018. Therefore, the unconstitutional provision became invalid as of 31 December 2018.

## 10.3. PROBLEMS RELATED TO RELIGIOUS ASSOCIATIONS' PROPERTY

Non-dominant religious associations still face numerous obstacles concerning their property and buildings of worship. No steps were made either in the reporting period to return religious buildings seized during

442 Information is available at: <https://bit.ly/2y0gHmK>, (accessed 21.03.2019).

the totalitarian Soviet regime. The failure to solve the issue can be considered as giving rise to systemic discrimination. This is further illustrated by the events unfolded around the historically Armenian churches in the reporting period.

### *Tandoyants Church*

The Public Defender discussed the events unfolding around Tandoyants Church.<sup>443</sup> The recommendation to stop construction works on the church was not fulfilled. The monitoring of the process continued in 2018 and it was established that a permit was issued for research works on the place of the remnants of the church.<sup>444</sup> Ultimately, the holder of the permit (the Georgian Patriarchate) submitted the Report on Artistic and Archaeological Research of the Structure. The document contains the photographic material depicting the condition of the monument after the completion of the research, which shows that the appearance of the monument is altered.

Despite circulation of numerous photographic materials proving that the works conducted based on the above order were not limited to research works only, the competent authority has not taken any efforts to stop the works, on the one hand and to respond appropriate to alleged violation after the final report was submitted, on the other hand.<sup>445</sup>

### *Surb Mina Church*

Surb Mina is one of these churches that were seized from the Armenian Church in the Soviet period. The church has the status of cultural heritage monument<sup>446</sup> and is in a dire condition.<sup>447</sup> The Public Defender's Office studied the registration of the church in private ownership and found out that the decision under which the Surb Mina Church ended up in the joint ownership of a private partnership was taken without consideration of the circumstances of the case. There was no document establishing the title to the building that would allow the registering authority to register the ownership.

Considering the above-mentioned, the Public Defender of Georgia requested the LEPL National Agency of Public Registry to abolish the decision on registering cadastral boundaries with respect to Surb Mina Church.<sup>448</sup> The recipient agency has not accepted the recommendation.<sup>449</sup>

### *Surb Nshan Church*

In the reporting period, the Public Defender's Office examined the legality of construction permit for a hotel on the adjacent territory of an Armenian Church – Surb Nshan.<sup>450</sup> It should be mentioned at the outset that the church has the status of immovable monument of cultural heritage<sup>451</sup> and is currently in a dire condition.<sup>452</sup> It was found out that certain legal procedure had been instituted to start the construction of a hotel near the

443 See the 2017 parliamentary report of the Public Defender, p. 160.

444 Order no. 04/200 of the LEPL National Agency for Cultural Heritage Preservation of Georgia of 8 December 2017.

445 Letter no. 09/275 of 2019 of the LEPL National Agency for Cultural Heritage Preservation of Georgia,

446 Order no. 3/181 of the Ministry of the Ministry of Culture, Preservation of Monuments and Sport of Georgia, dated 1 October 2007.

447 Available at: <https://bit.ly/2Fn1FdB>, (accessed 21.03.2019).

448 Recommendation no. 04-9/10827 of the Public Defender of Georgia of 16 August 2018.

449 Letter no. 85480 of the LEPL National Agency of Public Registry, dated 11 March 2019.

450 Order no. 1-904 of the City Hall of Tbilisi municipality of 25 October 2016 on Increasing Urbanisation Parameters.

451 Order no. 3/181 of the Ministry of Culture, Preservation of Monuments and Sport of Georgia, dated 1 October 2007, Card no. 010407270.

452 According to the information provided by the Diocese, the water used for extinguishing the fires erupted in the church, caused the land to collapse; besides, the column under the dome, on the North-East, has collapsed; there are cracks on the west and east facades. In May 2012 the church's bell tower collapsed. See the 2012 parliamentary report, p. 524.



church.<sup>453</sup> At the same time, an act issued by the City Hall increased the construction intensity coefficient (K2).<sup>454</sup> It is noteworthy that it was necessary to study the substantial circumstances of the case since the plot of land requested for construction is in the cultural heritage preservation zone. Besides, there is an old church in the nearby that has the status of a monument of cultural heritage, is dilapidating and the planned construction would worsen its condition. The decision on increasing the construction intensity coefficient does not provide for the argument and grounds for the necessity of such a change. Therefore, the order has been adopted without due account of the important circumstances.

## 10.4. PROBLEMS RELATED TO OBTAINING CONSTRUCTION PERMITS

Certain religious minorities still face obstacles in the process of obtaining construction permits for the new buildings of worship.

### *The New Mosque in Batumi*

In 2018, in Batumi, the local Muslim Community was still unable to start the construction of a new mosque. For years local Muslims have requested the possibility of construction of a new mosque. However, despite the promises made, the issue remains unresolved. In 2017, local Muslims bought a plot of land to construct the mosque. However, the Batumi City Hall refused to issue the permit for the construction on 5 May 2017.

The Foundation of Constructing the New Mosque in Batumi challenged the decision of the Batumi City Hall in a court on 11 June 2017. After 20 months since the claim was filed with the court, only one court hearing was held on 20 February 2018. A representative of the Batumi City Hall of Batumi municipality, with the view of conducting negotiation with the Muslims, motioned for postponing the hearing. With the agreement of both parties, the hearing was postponed based on the above ground and the court gave one-month term to negotiate about the subject of the dispute. However, the parties failed to agree and while the Batumi City Court was notified about it another hearing was not scheduled in the reporting period.

The Public Defender started examination of the legality of the decision of the Batumi City Hall in 2017. The Public Defender found that the decision of the Batumi City Hall had been made without due consideration of circumstances of the case and proper justification. Public Defender addressed the Batumi City Hall with a recommendation to revoke the decision on refusal to issue construction permit and requested to adopt a new, justified decision considering the significant circumstances of the case.

### *Problem Related to Construction Permit in Tsalka*

The Public Defender of Georgia is currently examining Nugzar Mgeladze's application which alleges discrimination on account of religion which was manifested in the revocation of the construction permit for a residential house by the City Hall of Tsalka municipality. According to the application, Nugzar Mgeladze has registered title to a plot of land in the village of Akhalsheni in Tsalka municipality. He plans to construct a residential house on the said plot of land.

453 The LEPL the Architecture Service of Tbilisi municipality adopted a decision concerning the preliminary agreement of the hotel sketch project. Under the same agency's order no. 2531063 of 12 April 2016, the terms of use of the plot of land for the construction were determined.

454 Coefficient K2 - 3.0.

According to the application, under Order no. 1222 of the *Gamgebeli* of Tsalka municipality of 11 July 2017, a construction permit and a permit certificate concerning the plot of land registered to Nugzar Mgeladze were issued. Based on the construction permit issued, Nugzar Mgeladze started construction works on his plot of land, built foundation and purchased construction material. On 17 April 2018, Nugzar Mgeladze applied to the City Hall of Tsalka municipality requesting to agree with a corrected architectural project with the authorities. Following his request, he was notified that by a letter, dated 27 April 2018, the National Agency for Cultural Heritage Preservation of Georgia had informed the City Hall of Tsalka municipality that construction was taking place in the cultural heritage preservation zone; in accordance with Article 29 of Resolution no. 57 of the Government of Georgia of 24 March 2009, the construction was illegal and had to be stopped. By Order no. 402 of the Mayor of Tsalka municipality of 23 May 2018, Order no. 1222 of the *Gamgebeli* of Tsalka municipality of 11 July 2017, the construction permit was revoked.

In the applicant's opinion, the above decision was based on a letter of the Orthodox population of the village of Akhalsheni, dated 10 April 2018, wherein they indicated that he was constructing a mosque and not a residential house. The Orthodox population of the village of Akhalsheni submitted a similar letter to the National Agency for Cultural Heritage Preservation too on 16 April 2018. The applicant maintains that, based on the letter of the Orthodox population of the village of Akhalsheni, administrative authorities formed a wrong idea that he was indeed constructing a mosque and Nugzar Mgeladze became a victim of discrimination by perception.

On 27 September 2018, the Court of Tetrtskaro adopted a judgment regarding this issue and partially allowed Nugzar Mgeladze's claim: Order no. 42 of 23 May 2018 was declared null and void; the City Hall of Tsalka municipality was ordered to issue a new individual administrative act after the examination and assessment of substantive circumstances of the case. By the letter of the City Hall of Tsalka municipality, dated 20 December 2018, the Public Defender was notified that enquiry had been instituted concerning the construction permit issued in relation to the plot of land registered to Nugzar Mgeladze for which they were waiting for the respective answer from the National Agency for Cultural Heritage Preservation.

## 10.5. OBSTACLE FACED BY JEHOVAH'S WITNESSES WHEN RECEIVING MEDICAL TREATMENT

The annex approved by the Minister of Labour, Health and Social Affairs of Georgia,<sup>455</sup> according to which a patient gives an informed consent to anaesthesia is worded so that it does not allow a patient to consent to some methods of treatment and to refuse some methods of treatment, namely hemotransfusion (transfusion of blood and blood products). By signing this document, a patient is compelled to consent to hemotransfusion too, which is unacceptable for Jehovah's Witnesses due to their religious belief. Without signing the document, some medical facilities refuse to provide medical assistance. The above form does not allow presenting a patient's position concerning certain method of treatment and does not have a column to make comments. The religious organisation of Jehovah's Witnesses unsuccessfully applied several times to the Minister of Labour, Health and Social Affairs of Georgia in 2016-2017 requesting changes to be made to the form. In one instance, in relation to a patient's informed consent to hemotransfusion, a representative of the religious organisation of Jehovah's Witnesses applied to the Tbilisi City Court and requested elimination of discrimination, prevention of the violation of patients' rights, provision of medical assistance and reimbursement of non-pecuniary damage.

<sup>455</sup> Annex 9 – on A Patient's Consent Anaesthesia – to Order no. 108/N of 19 March 2009.

Under the judgment of 21 November 2018, the Section of Civil Cases of the Tbilisi City Court partially allowed the claim. The clinic was ordered to provide medical assistance for the claimant using alternative means and without requesting the consent to transfusion of blood or its components in accordance with the clinic's document on a patient's consent to anaesthesia.

The court found that the claimant had the right, based on their religious conviction, to undergo the operation without transfusion of blood or its components. The court also relied on the relevant judgment of the European Court of Human Rights and opined that refusing hemotransfusion is the manifestation of the free will by Jehovah's Witnesses and protected by Articles 8 and 9 of the European Convention as a part of personal autonomy. The clinic was also ordered to pay GEL 500 to the claimant for non-pecuniary damage caused by the violation of their right.

## RECOMMENDATIONS

### To the Government of Georgia:

- To eliminate unequal compensation practices to the religious associations; to this end, introduce relevant amendments to resolution no.117 of the Government of Georgia of 27 January 2014 on the Rule for the Implementation of Several Measures for Partial Compensation of Damages Caused by the Soviet Totalitarian Regime to Religious Associations in Georgia, which provides for acknowledging and compensating damage only with respect to four religious associations;
- To take effective measures for the return of the religious buildings seized during the Soviet period to their historic owners, to develop relevant legislation and return presently state-owned religious structures to the religious associations which were their historical owners; and
- To eliminate the practice of creating barriers in issuing construction permits for religious associations and, to eradicate the practice of undue interference of the central government in the competences of the self-government in this regard.

### To the Prosecutor's Office of Georgia:

- Within the report submitted, based on Article 172.2 of the Rules of the Parliament of Georgia regarding activities carried out, to impart information concerning the investigation of religious hate crimes; and
- To periodically inform public about the investigations into the violations of the rights of Muslims that occurred in 2014, in the villages of Tchela and Mokhe of Adigheni municipality, as well as in Kobuleti municipality; and about concrete investigative activities carried out in 2018 and 2019.

### To the Ministry of Internal Affairs and the Prosecutor's Office of Georgia:

- To provide detailed information on the measures carried out in regard to the cases of alleged offenses committed against the Muslim population in the villages of Nigvziani, Tsintskaro, Samtatskaro and in Kobuleti, as well as the alleged offenses committed against the representatives of Jehovah's Witnesses and other religious groups in 2012-2014.

**To the Local Self-Governmental Authorities:**

- To respect religious neutrality and adhere to constitutional principle of equality in the process of issuing permits to religious associations for constructing religious buildings.

**To the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- To amend Annex 9 – on A Patient’s Consent to Anaesthesia– to Order no. 108/N of the Minister of 19 March 2009 to the effect of allowing a patient to refuse hemotransfusion.

# 11. FREEDOM OF EXPRESSION

The freedom of expression and information is fundamental to the principles of democracy, the rule of law and respect for human rights<sup>456</sup> and therefore, the issue of realization of this right is a priority area of study by the Public Defender.

Availability of healthy media environment and lack of proper statistics on offences committed against journalists remained an issue in the reporting period. A matter of concern was the failure of the state to investigate the case of disappearance of Azerbaijani journalist Afgan Mukhtarli.

## 11.1. MEDIA ENVIRONMENT

According to recent surveys of leading international organizations<sup>457</sup> Georgia's media landscape is pluralist but rather polarized. According to annual Freedom House report on nations in transition, the developments around the Georgian Public Broadcaster and Rustavi 2 TV company,<sup>458</sup> the merger of three private TV channels (Imedi, Maestro and GDS) and the disappearance of Azerbaijani journalist Afgan Mukhtarli in 2017, adversely affected the media freedom index<sup>459</sup> in 2018.<sup>460</sup>

The 2018 World Press Freedom Index of Reporters Without Borders, which was published in the reporting period too, shows Georgia's headway by three steps as compared to the previous year; however, among 180 countries Georgia still occupies 61<sup>st</sup> place.<sup>461</sup> Among serious challenges faced by media, the organization named the interference of media owners in editorial activity, the dispute over ownership of the main national opposition TV channel, and the case of Azerbaijani journalist Afgan Mukhtarly.

Yet another noteworthy matter in the context of media freedom in 2018 was also the developments around the Iberia TV company. In September and October, media released secret audio recordings<sup>462</sup> of alleged conversation between Levan Kipiani, former Minister of Sport and Youth Affairs, and Zaza Okuashvili, founder of Iberia and Omega Group, raising doubts in society that financial problems<sup>463</sup> of Omega Group, the main financing source of the TV channel, were created by the state with the aim to pressure the TV founder into conceding this critical TV channel.<sup>464</sup> Given the created situation, Iberia, first, switched to a special regime of broadcasting<sup>465</sup> and then, went off the air.<sup>466</sup>

456 Declaration of the Council of Europe Committee of Ministers on the Freedom of Expression and Information; 29 April 1982.

457 See Freedom House report Nations in Transition 2018 at: <https://bit.ly/2GOKgy1> [last accessed on 15.03.2019]; see also Reporters Without Borders' 2018 World Press Freedom Index at: <https://rsf.org/en/georgia> [last accessed on 15.03.2019].

458 2017 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia.

459 While in 2017, Georgia's indicator by independent media was at 4, in 2018 this score increased to 4.25. The scores are awarded on a seven-point scale where 1 is the highest indicator of democratic progress whereas 7 is the lowest indicator.

460 Freedom House report Nations in Transition 2018 is available at: <https://bit.ly/2GOKgy1> [last accessed on 15.03.2019].

461 Reporters Without Borders' 2018 World Press Freedom Index is available at: <https://rsf.org/en/georgia> [last accessed on 15.03.2019].

462 See, among others, video recordings at: <https://bit.ly/2EseTXn>, <https://bit.ly/2SZOmJN>, <https://bit.ly/2Nm6asj> [last accessed on 15.03.2019].

463 See the statement of the Finance Ministry of Georgia of 7 September 2018, on a tax liability of tobacco manufacturing company OJT Ltd which falls within the Omega Group. Available at: <https://bit.ly/2I7gKJr> [last accessed on 15.03.2019].

464 Audio recordings are available at: <https://bit.ly/2EseTXn> [last accessed on 15.03.2019].

465 See the statement of journalists of Iberia TV company at: <https://bit.ly/2E9lowM> [last accessed on 15.03.2019].

466 Information is available at: <https://bit.ly/2GXVsYe> [last accessed on 15.03.2019].

Free media is a crucial prerequisite for the protection of human rights and good governance in the country and therefore, the state must undertake effective measures to defend media freedom. The role of media was envisaged in the universal agenda for sustainable development, adopted by the UN member states on 25 September 2015, which is focused on the achievement of economic, social and environmental progress by 2030.<sup>467</sup> In particular, ensuring public access to information and protecting fundamental freedoms, in accordance with national legislation and international agreements, is one of the targets defined in the document (Goal 16, Target 16.10) while number of various offences committed, among others, against journalists during a year is defined as a performance indicator (Indicator 16.10.1).<sup>468</sup>

At present, the Ministry of Internal Affairs of Georgia keeps data<sup>469</sup> only on investigations into illegal interference with professional activity of journalists.<sup>470</sup> This makes it difficult to comprehensively assess the media environment in the country. The Public Defender stresses once again that the public entity must keep detailed statistics not only on the interference with journalistic activity, but also on all those offences against journalists that concern their professional activity.<sup>471</sup>

According to information received from the Interior Ministry, in 2018, investigations were launched into 12 cases of illegal interference with journalistic activity.<sup>472</sup> As regards criminal prosecution, according to the Chief Prosecutor's Office of Georgia, in the reporting period, criminal proceedings were instituted against two persons for the interference with journalists' activity and against 10 persons for other offences<sup>473</sup> against journalists.<sup>474</sup>

With regard to offences against media representatives worth noting is a rally staged outside the building of Rustavi 2 on 19 March 2018, during which representatives of neo-Nazi movement, Georgian March, restricted the movement to Giorgi Gabunia, the presenter of the Post Scriptum program, and Tamta Muradashvili, a lawyer of the TV company. According to participants in the rally, they protested against an opinion expressed by the journalist in the program.<sup>475</sup> Furthermore, members of the Georgian March physically offended David Eradze, a correspondent, when, according to the correspondent, he was performing his professional duty. As a result, eight persons were charged with violence,<sup>476</sup> hooliganism<sup>477</sup> and damage of property<sup>478</sup> whereas Tamta Muradashvili and Davit Eradze were recognized as victims.<sup>479</sup> The investigation into that incident did not identify signs of offence such as persecution<sup>480</sup> or/and illegal interference with the professional activity of journalist,<sup>481</sup> which casts doubt on the capacity of the state to adequately qualify the committed offences and respond to such wrongdoings. It should also be noted that Giorgi Gabunia was not recognized as a victim in the criminal case.

467 Transforming our world: the 2030 Agenda for Sustainable Development approved under the UN General Assembly Resolution A/RES/70/1 on 25 September 2015. Available at: <https://undocs.org/A/RES/70/1> [last accessed on 15.03.2019].

468 Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, approved under the UN General Assembly Resolution (A/RES/71/313) on 6 July 2017.

469 Letter №374999 of 13 February 2019 from the Ministry of Internal Affairs of Georgia.

470 Article 154 of the Criminal Code of Georgia.

471 2017 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia.

472 Letter №374999 of 13 February 2019 from the Ministry of Internal Affairs of Georgia.

473 Facts of violence (Article 126 of Criminal Code of Georgia), hooliganism (Article 239 of the Code) and damage or destruction of property (Article 187).

474 Letter №13/10426 of the Chief Prosecutor of Georgia, dated 13 February 2019.

475 Information is available at: <https://bit.ly/2BCOuUV>.

476 Paragraph 1 of Article 126 of Criminal Code of Georgia.

477 Subparagraph (a) of Paragraph 1 of Article 239 of Criminal Code of Georgia.

478 Paragraph 1 of Article 187 of Criminal Code of Georgia.

479 Letter №844974 of 12 April 2018 from the Ministry of Internal Affairs of Georgia; Letter №13/10426 of the Chief Prosecutor of Georgia, dated 13 February 2019.

480 Article 156 of Criminal Code of Georgia.

481 Article 154 of Criminal Code of Georgia.

## 11.2. CASE OF AFGAN MUKHTARLI

Unfortunately, after almost two years of disappearance of Azerbaijani journalist Afgan Mukhtarli from the central part of Tbilisi and the whole set of investigative actions that were carried out, the investigation has not brought about any concrete result yet. Similar to previous reporting periods,<sup>482</sup> the Public Defender kept a close watch on the developments around this case in 2018 and periodically requested from the investigative agency the information about the progress in this investigation.

As noted in the parliamentary report of the previous year, questions were raised<sup>483</sup> about the authenticity of separate video recordings obtained in this case, but, according to Chief Prosecutor's Office, expert opinions on this video material have not been delivered yet. Furthermore, the journalist has not been granted a status of victim yet; the agency has not received a response on its motion concerning the provision of legal aid from the Republic of Azerbaijan; the investigation has not identified any aggravating circumstances such as unlawful imprisonment with a prior agreement by a group, by taking the victim abroad or/and taking the victim abroad by an organized group and therefore, the investigation is still conducted following Paragraph 1 of Article 143 (unlawful imprisonment) of the Criminal Code.<sup>484</sup>

The Public Defender reiterates its calls on Chief Prosecutor's Office to periodically inform society on the progress of investigation; this will help create the trust that the investigation is conducted in a timely and effective manner and dispel suspicions that the Georgian state turned a blind eye to the disappearance of the journalist.

## 11.3. THE CASE OF AIISA AND ALLEGED UNLAWFUL RESTRICTION OF FREEDOM OF EXPRESSION.

In its ruling №4/3070-18 of 4 May 2018, the Administrative Cases Panel of Tbilisi City Court found Ani Gachechiladze, an individual entrepreneur and owner of condom manufacturing company Aiisa, guilty of violating the statutory procedure for commissioning, producing and distributing advertisement. According to the court, inscriptions and images on the product packaging were unethical while the use of offensive words and comparisons in relation to religion, constituted an offence of universally recognized human and moral norms and contempt for religious symbols; also, the inscriptions and images on the advertisements were an insult to national and historical heritage, monuments. The court also ordered the entrepreneur to withdraw the advertisement as well as product already in distribution from the market.

This case is especially important as far as it concerns the discretion of the state to restrict one of fundamental human rights, the freedom of expression, for the protection of public moral or religious feelings. Bearing in mind that court decisions on such cases are precedential and influence future considerations of same subjects as well as formation of uniform practice, the Public Defender, on 23 May 2018, offered a friend-of-the-court opinion to the Appeals Court of Tbilisi.<sup>485</sup> In the opinion the reference was made to an approach of the European Court of Human Rights to the hearing of such cases, whereby in deliberation over the suitability of banning the use or imposing penalty for the use of images closely associated with religion, it is important to examine whether the proportionality of the limitation of freedom of expression to the legitimate aim sought. Furthermore, the opinion stressed that such evaluations shall not be based on declarative and vague statements

482 2017 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia.

483 Video material is available at: <https://bit.ly/2XXKSGG> [last accessed on 15.03.2019].

484 Letter №13/5861 of the Chief Prosecutor of Georgia, dated 28 January 2019.

485 The statement is available at: <https://bit.ly/2YfsNUL> [last accessed on 22.03.2019].

but shall clearly explain the reason.<sup>486</sup>

Unfortunately, the Tbilisi Appeals Court upheld the decision of the lower court.

The Public Defender points out once again that the freedom of expression must not be restricted mainly based on the argument that religious or historic symbols and phrases are used in an inappropriate context. Moreover, in Public Defender's view, a statutory definition of "unethical advertisement"<sup>487</sup> is rather general and broad and does not provide an exhaustive list of concrete actions. This, for its part, provides a room to limit freedom of expression to the extent that is disproportionate to the legitimate aim sought.

### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- Amend the Law of Georgia on Advertisement so as to have the placement and distribution of improper advertisement banned only when it is necessary to ensure the state security or public safety in a democratic society or the territorial integrity, to protect others' rights, prevent the disclosure of confidential information or ensure the independence and impartiality of courts.

### RECOMMENDATIONS

#### To Ministry of Internal Affairs of Georgia:

- Keep special statistics not only on the interference with professional duties of journalists but also on all offences committed against journalists that interfere with their professional activity.

#### To Chief Prosecutor of Georgia:

- Periodically, once in six months, update society about the progress in the investigation of the case of Afgan Mukhtarli.

<sup>486</sup> In the friend-of-the-court opinion, the Public Defender focused on the judgment of 30 January 2018 by the European Court of Human Rights in the case of *Sekmadienis Ltd. v. Lithuania*. In that judgment the court, when considering the lawfulness of imposing the penalty for employing comparisons between Jesus and Mary for commercial purposes, established that the freedom of expression was breached by applying the form of interference which was considered unnecessary in a democratic society.

<sup>487</sup> Paragraph 5 of Article 3 of the Law of Georgia on Advertisement.



## 12. FREEDOM OF ASSEMBLY AND MANIFESTATION

Right to freedom of assembly rests at the core of any functioning democratic society and its development. Monitoring of realization of this right in 2018 has revealed problems confronted with the restriction of erecting temporary constructions by the law-enforcement authorities, with improper and inefficient management of the assemblies and legislative gaps related to the inability to obstruct movement of traffic during spontaneous manifestations. In addition, restrictions against demonstration to mark the international day against homophobia and transphobia on May 17 are still noteworthy.<sup>488</sup>

### 12.1. POSSIBILITY TO ERECT NON-PERMANENT CONSTRUCTIONS DURING MANIFESTATION

As in previous years, the restriction to erect non-permanent constructions by law-enforcement bodies during manifestation has remained<sup>489</sup> a major challenge in the reporting period. Demonstration supporting Zaza Saralidze and Malkhaz Machalikashvili in front of the building of the Parliament once again revealed the acuteness of this problem. Since September 2018, Public Defender has addressed a number of cases when police officers have intervened in the erection of protest-camps by participants of the demonstration; as a result, the Public Defender assessed such acts as undue intervention into the realization of the right to assembly.<sup>490</sup>

Particular attention shall be paid to the information and video materials disseminated on September 26, 2018. According to the published materials, without any clarification, police officers, stopped Zaza Saralidze, who was going to the direction of the Parliament of Georgia to hold an assembly; they took a camp from the car.<sup>491</sup> Based on the analysis of information received from the Ministry of Internal Affairs of Georgia,<sup>492</sup> Public Defender considered that removal of the camp lacked any legal bases; therefore, she addressed General Prosecutor of Georgia with a proposal to launch investigation on alleged criminal act perpetrated by the law-enforcement officials.<sup>493</sup> Unfortunately, the General Prosecutor's Office of Georgia did not comply with the above-mentioned proposal.<sup>494</sup>

Saralidze and Machalikashvili subsequently addressed Tbilisi City Court regarding the same incidents and requested recognition of the decision (act) of September 26, 2018 on refusal to erect protest camp as illegal. On

488 See chapter on Gender Equality of this Report to get more information about the international Day on Homophobia and Transphobia of May 17, 2018 a {.

489 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, p. 171-172.

490 Statements of the Public Defender of Georgia can be retrieved from the following web-pages: <<https://bit.ly/2OkFJ6U>>, <<https://bit.ly/2HyQC4P>>, <<https://bit.ly/2HDvgmK>> [last visited on: 22.03.2019].

491 Information and video materials can be retrieved from the web-page: <<https://bit.ly/2T8rvH9>>, <<https://bit.ly/2UCF1V3>> [last visited on: 15.03.2019].

492 By the letter №2545596 of the Ministry of Internal Affairs of Georgia of October 17, 2018, Office of the Public Defender was informed that the right to erect a camp in front of the building of the Parliament on Rustaveli Avenue, in Tbilisi on September 26, 2018 was restricted based on the public security and public order interests. However, the agency did not indicate to the legal basis of the mentioned act.

493 Proposal №15-1/13687 of the Public Defender of Georgia of October 29, 2018.

494 Letter №13/84881 of the General Prosecutor's Office of Georgia of November 7, 2018.

October 16, 2018 Public Defender submitted *Amicus Curie* brief to the court hearing the case and emphasized the approach established by the European Court of Human Rights, according to which, in order to assess the legitimacy of the restriction of the right, the court must, first of all, assess whether the Georgian legislation provides for the prohibition of the use of a tent during an assembly in a similar case.<sup>495</sup>

In spite of the long-term resistance of the law-enforcement representatives, supporters of the manifestation of Saralidze and Machalikashvili could set up more than 20 tents in front of the Parliament's building on November 10, 2018 with the assistance of different non-governmental organizations. This assembly has been continuing in this form till today. Considering this fact, Tbilisi City Court ceased the hearing of the claim on December 3, 2018, however it paid attention to the possibility to erect non-permanent constructions (including tents) during the demonstration, if it does not contradict existing legislation.

Public Defender would like to indicate that no legal provision exists in the legislation of Georgia prohibiting to set up tents, beds, banners or other temporary constructions during assemblies and manifestations. Furthermore, problems related to traffic obstruction, blocking the entrance of the building or hindering activities of relevant institution have not been revealed in the above-mentioned case, therefore it fell within the scope of freedom of assembly. The possibility of erecting protest camps and other non-permanent construction during assemblies and manifestations is also envisaged by the OSCE Guidelines on Freedom of Peaceful Assembly.<sup>496</sup>

Furthermore, 2017 revealed the tendency that the erection of tents or other temporary constructions is restricted by the law enforcement bodies based on Article 134 of the Code of Georgia on Administrative Infringements; this has been assessed as illegal.<sup>497</sup> Nevertheless, Public Defender made a decision to appeal the constitutionality of the explanation provided by the Ministry of Internal Affairs of Georgia at the Constitutional Court of Georgia.<sup>498</sup>

## 12.2. COUNTER-DEMONSTRATION OF MAY 13

On May 13, 2018 a counter demonstration of neo-Nazis groups was held in parallel to the manifestation “For Our Freedom”, the latter being organized to protest against investigative activities undertaken at night clubs and against existing drug policy.<sup>499</sup>

According to the disseminated information, participants of the assembly “For Our Freedom” were subjected to threat to violence,<sup>500</sup> physical abuse and other violent acts by counter demonstrators.<sup>501</sup> As a result, Ministry of Internal Affairs of Georgia launched investigation on the fact of the threat of bodily injury undertaken by the group by “National Socialist Movement – National Unity of Georgia”,<sup>502</sup> however, no concrete individual has been recognized as a victim or a perpetrator in this criminal case yet.<sup>503</sup>

To address these incidents, Public Defender of Georgia issued a statement<sup>504</sup> and clarified that despite the fact that the right to hold an assembly is guaranteed by the constitution, it does not fall within the category

495 Information can be retrieved from the web-page: <<https://bit.ly/2HyQC4P>> [last visited on: 22.03.2019].

496 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, second edition, 2010, Para 18-19, pp. 30-31.

497 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, p. 172.

498 Information can be retrieved from the web-page: <<https://bit.ly/2HyQC4P>> [last visited on: 22.03.2019].

499 Information can be retrieved from the web-page: <<https://bit.ly/2SpBpZD>> [last visited on: 15.03.2019].

500 Information can be retrieved from the web-page: <<https://bit.ly/2TL036v>> [last visited on: 15.03.2019].

501 Information can be retrieved from the web-page: <<https://bit.ly/2IajFN1>>, <<https://bit.ly/2SMZCbq>>, <<https://bit.ly/2WPHYmG>>, <<https://bit.ly/2teGXam>>, <<https://bit.ly/2TFg4YC>> [last visited on: 15.03.2019].

502 Criminal Code of Georgia, Article 151 (2, “a”).

503 Letter №13/10927 of the General Prosecutor's Office of Georgia of February 14, 2019; Letter №2031281 of the Ministry of Internal Affairs of Georgia of August 21, 2018;

504 Information can be retrieved from the web-page: <<https://bit.ly/2HLfzsR>> [last visited on: 22.03.2019].

of non-derogable rights. Government can cease a demonstration if it took illegal character.<sup>505</sup> The actions of participants of the counter demonstration went beyond the scope of freedom of assembly and expression; other signs of crime were also revealed. Despite allocation of police officers between the participants of the assemblies, participants of the counter demonstration tried to move to the side of the peaceful assembly for several times.<sup>506</sup>

Freedom of assembly and manifestation establishes positive obligation of the state to take reasonable and appropriate measures to enable peaceful assemblies, including mobilization of necessary police resources to protect participants of peaceful assembly and to take responsive actions against counter demonstrations.<sup>507</sup> Furthermore, as much as the protection of public order during assembly requires balancing of interests between participants of different demonstrations by the law-enforcers, their proper preparation in human rights standards, including management of masses carries particular significance,<sup>508</sup> in order to minimize risks related to security of protesters and at the same time, to facilitate unhindered peaceful demonstration to the maximum extent possible.<sup>509</sup> Furthermore, police officers need to be adequately equipped in order to effectively protect participants of the assembly. In the future, in case of spontaneous or planned demonstrations, Ministry of Internal Affairs of Georgia shall adequately and in a timely manner assess possible risks and take all necessary measures to prevent violent and criminal actions.<sup>510</sup> Besides, need to train officers of the law-enforcement bodies has once again been identified in relation to issues of freedom of assembly and manifestation.<sup>511</sup>

### 12.3. MANIFESTATION PLANNED IN PARALLEL TO THE PRESIDENT'S INAUGURATION

Public Defender of Georgia conducted active monitoring of events ongoing in Kakheti in parallel to the inauguration ceremony of the president of Georgia on December 16, 2018; the events developed into the confrontation between the participants of the demonstration and law-enforcement officials.<sup>512</sup>

Several days before the inauguration ceremony, information was disseminated according to which the united opposition “Strength is in Unity” planned to hold peaceful assembly in Telavi, on the territory in between the monument of King Erekle and perennial plane tree.<sup>513</sup> However, on December 16, 2018, due to blockage<sup>514</sup> of the road on several locations at the Gombori mountain pass and in Gurjaani, the mentioned assembly could not be held.

Freedom of assembly imposes an obligation on the state to carry out relevant measures to ensure that the right is realized in practice.<sup>515</sup> Nevertheless, information obtained from the Ministry of Internal Affairs of Georgia

505 Law of Georgia on Assemblies and Manifestations, Article 13.

506 Information can be retrieved from the web-pages: <<https://bit.ly/2RVüi4D>>, <<https://bit.ly/2tkREIy>>, <<https://bit.ly/2SE9PHm>> [last visited on: 15.03.2019].

507 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Handbook on Monitoring Peaceful Assembly 2014, p. 21; Decision of September 29, 2006 of the European Court of Human Rights on the Case „ÖLLINGER v. AUSTRIA“, par 37.

508 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Handbook on Monitoring Peaceful Assembly 2014, p. 24.

509 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, second edition, 2010, pp. 37-38.

510 Statement can be retrieved from the web-page: <<https://bit.ly/2HLfzsR>> [last visited on: 22.03.2019].

511 The recommendation of the Public Defender of Georgia toward the Ministry of Internal Affairs of Georgia issued in the Report on the Protection of Human Rights and Fundamental Freedoms in Georgia for 2017 (p 171-173) was reflected in the Resolution of the Parliament of Georgia of July 19, 2018 on the Report of the Public Defender of Georgia on Protection of Human Rights and Freedoms in Georgia.

512 Information on a number of violent incidents were disseminated through different sources; information can be retrieved from the following web-pages: <<https://bit.ly/2F75Iup>>, <<https://bit.ly/2XWHNqd>>, <<https://bit.ly/2Y0Coi3>>, <<https://bit.ly/2F3Kzl6>>, <<https://bit.ly/2F7h69A>> [last visited on: 15.03.2019].

513 Information can be retrieved from the web-page: <<https://bit.ly/2TDbf6d>>, <<https://bit.ly/2u8awe3>> [last visited on: 15.03.2019].

514 Information can be retrieved from the web-page: <<https://bit.ly/2O8Klws>> [last visited on: 15.03.2019].

515 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, second edition, 2010, Par 2.2., p. 15.

reveals that the authorities had not pre-assessed the threat of collapse of the high flow of vehicles from the capital to the direction of Telavi, which would importantly hinder the organization of the mentioned events. Therefore, measures that would respond these challenges have not been planned in a timely manner and the public was not informed about them accordingly.

In line with the ministry, the above mentioned circumstance was assessed only on December 16, 2018, after a high number of vehicles started to move on the territory; therefore, the decision to limit the movement to the direction of Telavi was made.<sup>516</sup> Even though the information about the restriction was published on the official web-page of the Ministry<sup>517</sup> in the morning, the public statement did not clarify which road the participants of the demonstration could take to get to Telavi without any impediments and on time.

According to the Ministry of Internal Affairs of Georgia, they provided the organizers of the demonstration with the information on the limitations and alternative itinerary (from Velistiske turn through Kvareli – street “Mshvidoba”) during the relocation.<sup>518</sup> The appropriateness of alternative route also posed questions. One of the representatives of the united opposition, Giorgi Baramidze, who consented to take alternative route proposed by the Ministry of Internal Affairs of Georgia, could arrive in Telavi only after the completion of the inauguration ceremony, due to a number of difficulties.<sup>519</sup> This indicates that the restrictions on the roads changed the nature of the event planned by the participants of the demonstration.

Thus, in the absence of informing the public on imposed restrictions and alternative routes in due time, they were deprived of the possibility to enjoy freedom of assembly to its full extent. This further prompted confrontation between the individuals willing to take part in the assembly and the representatives of law-enforcement bodies. To avoid these outcomes, assessment of risks in advance and communication of the decisions to the society early on carried particular significance.

## 12.4. BLOCKING OF THE PASSAGE OF THE TRANSPORT DURING SPONTANEOUS ASSEMBLY

In the previous years, Public Defender of Georgia has repeatedly referred to the legislative shortcoming related to the inability to block fully or partially the passage of the transport by the participants of spontaneous assemblies<sup>520</sup> and addressed the Parliament of Georgia to introduce relevant amendments to the Law of Georgia on Assemblies and Manifestations – namely, to establish an exception from the general rule requiring prior notification of the municipality to organize the assembly; this will ensure protection of participants of peaceful assembly and manifestation in cases where advance notification of relevant bodies are impossible.<sup>521</sup> The necessity of such amendment was once again illustrated in the night of May 12, 2018 during the spontaneous assembly on the territory of the club Bassiani to protest against investigative activities.<sup>522</sup>

The Venice Commission criticized the gaps of the legislation of Georgia related to the organization of the spontaneous assembly back in 2011.<sup>523</sup> Careful consideration shall be made to the fact that the freedom of as-

516 Letter №158648 of the Ministry of Internal Affairs of Georgia of January 21, 2019.

517 Statement can be retrieved from the web-page: <<https://bit.ly/2JfkOU7>> [last visited on: 15.03.2019].

518 Letter №158648 of the Ministry of Internal Affairs of Georgia of January 21, 2019.

519 Information can be retrieved from the web-page: <<https://bit.ly/2HxulU9>> [last visited on: 15.03.2019].

520 According to the OSCE guiding principles, a spontaneous assembly is generally regarding as one organized in response to some occurrence, incident, other assembly or speech, where the organized (if there is one) is unable to meet the legal deadline for prior notification.

521 Parliamentary Report of the Public Defender of Georgia for 2011, p. 68; Parliamentary Report for 2012 p.487-492; Parliamentary Report for 2013 p. 360; Parliamentary Report for 2014 p. 491-492; Parliamentary Report for 2015 p. 533; Parliamentary Report for 2016 p. 465.

522 Study of video materials published through media and decisions of the Tbilisi City Court rendered on cases of administrative infringements mentioned above showed that participants of the demonstration at Bassiani were deprived of the possibility to move to the transport passage line and in certain cases their detention was linked to movement on this territory.

523 European Commission for Democracy through Law (Venice Commission), №547/2009 final opinion on amendments introduced in the Law of Georgia on Assemblies and Manifestations, Strasbourg, October 17, 2011, Para 28 and 48.

sembly and manifestation imposes an obligation on the State to protect any form of peaceful assembly and to facilitate its organization.

#### **PROPOSAL TO THE PARLIAMENT OF GEORGIA:**

- To introduce an amendment to the Law of Georgia on Assemblies and Manifestations, which will establish an exception to the general rule of prior notification of the local municipality in case of spontaneous demonstration and will grant the participants of peaceful assembly with the possibility to block the passage of the transport in cases where advance notification of relevant bodies is impossible.

#### **RECOMMENDATION**

##### **to the Ministry of Internal Affairs of Georgia:**

- Not to restrict erecting non-permanent constructions during the assembly backed up by artificial and illegal arguments
- To assess expected risks in a timely and proper manner during future spontaneous manifestations, planned assemblies and counter demonstrations and to take all necessary measures, to facilitate the organization of the peaceful assembly on the one hand, and on the other hand to avoid criminal and violent acts.

## 13. FREEDOM OF ASSOCIATION AND HUMAN RIGHTS DEFENDERS

Freedom of Association endures self-realization of an individual jointly with other individuals, social and public groups.<sup>524</sup> Vigorous democracy depends on the existence of extensive range of democratic institutions,<sup>525</sup> such as political parties, non-governmental organization, religious organizations, trade unions and etc.<sup>526</sup> Essential contribution made by non-governmental organizations (NGOs) to the development and realization of rule of law and human rights needs to be particularly outlined.<sup>527</sup> Significant role is played by activists in the promotion of human rights and fundamental freedoms.

In spite of international guarantees<sup>528</sup> of protection of human rights defenders<sup>529</sup> they often become targets of serious abuse, threat, persecution, censorship, defamation, stigmatization, arbitrary deprivation of liberty, disappearance and murder.<sup>530</sup> They often are subject to restrictions on their freedoms of movement, expression, association and assembly.<sup>531</sup> These threats have been accompanied by a pervasive narrative depicting human rights defenders as criminals, undesirables or terrorists.<sup>532</sup> Some human rights defenders are at greater risk because of the nature of the rights they seek to protect. Women human rights defenders sometimes confront risks that are gender specific and require particular attention.<sup>533</sup> According to United Nations verified data, at least 1,019 human rights defenders, including 127 women, were killed in 61 countries across the world from 2015 to 2017.<sup>534</sup> While these figures underestimate the magnitude of the violence faced by human rights defenders globally, it is alarming to see that one person was killed every day while standing up for the rights of others during that period.<sup>535</sup>

Public Defender of Georgia drew attention to the challenges faced by the human rights defenders working at non-governmental organizations or independently in various countries, including Europe as well as to the recent developments in Georgia and decided to dedicate a separate chapter to such an important topic in her annual report.

- 524 Decision №2/2/439 of the Constitutional Court of Georgia of September 15, 2009 on the case “*Citizen of Georgia Omar Alapishvili vs. Parliament of Georgia*”, II, 2.
- 525 OSCE, Copenhagen Meeting Document of the Conference on the Human Dimension of the CSCE, 1990, Par. 26.
- 526 OSCE’s Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Association, 2015, p.14.
- 527 Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states of October 10, 2007 on the legal status of non-governmental organizations in Europe.
- 528 See *including*, 1998 UN Declaration on Human Rights Defenders, 1990 Copenhagen Meeting Document of the Conference on the Human Dimension of the CSCE, OSCE’s Office for Democratic Institutions and Human Rights of, Guidelines on the Protection of Human Rights Defenders, 2014 and OSCE’s Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Association, 2004 Guidelines of the European Union on Human Rights Defenders. Mandate of the Special Rapporteur on Human Rights defenders serves the protection of defenders and promotion of their work. Furthermore, special mechanism is activated for the support of defenders facing risks globally: [protectdefenders.eu](http://protectdefenders.eu).
- 529 According to the 1998 UN Declaration on Human Rights Defenders, human rights defenders are people who, individually or with others, act to promote, protect and realize human rights on national and international levels.
- 530 Information can be retrieved from the web-page of world summit organized by human rights defenders in 2018 by international human rights organizations: <<https://bit.ly/2IjoHXN>> [last visited on: 07.03.2019], see also information provided on the website of the Office for Democratic Institutions and Human Rights of the OSCE: <<https://bit.ly/2I3hGGC>> [last visited on: 07.03.2019].
- 531 Information on human rights violations committed against defenders, and other difficulties they confront can be retrieved from the web-page of the Office of the UN High Commissioner for Human Rights (OHCHR): <<https://bit.ly/2NccySY>> [last visited on: 07.03.2019].
- 532 Information can be retrieved from the web-page of world summit organized by human rights defenders in 2018 by international human rights organizations: <<https://bit.ly/2IjoHXN>> [last visited on: 07.03.2019].
- 533 Office of the UN High Commissioner for Human Rights (OHCHR), Factsheet №29 on Human Rights Defenders, April 2004, p. 10.
- 534 Report of the UN Special Rapporteur on the situation of human rights defenders, UN Human Rights Council, July 23, 2018, A/73/215, p. 4.
- 535 Report of the UN Special Rapporteur on the situation of human rights defenders, UN Human Rights Council, July 23, 2018, A/73/215, p. 4.

To facilitate work of human rights defenders the UN,<sup>536</sup> OSCE,<sup>537</sup> CoE<sup>538</sup> and other international organizations impose different obligations on states. Basically, the government is under an obligation to refrain from any action that will violate rights of human rights defenders due to their human rights work; to protect human rights defenders from abuse of third parties and to take proactive measures to facilitate full realization of rights by human rights defenders.

The UN Declaration on Human Rights Defenders clearly states the right to everyone, individually and in association with others, to submit to governmental bodies and agencies criticism regarding the issues that may hinder realization of human rights and to protest against any such policy.<sup>539</sup> The State shall take all necessary measures to ensure their protection against any arbitrary action as a consequence of their human rights work.<sup>540</sup> Public authorities should publicly condemn such acts and apply a policy of zero tolerance. All allegations of such acts must be promptly, thoroughly and independently investigated in a transparent manner.<sup>541</sup>

To fulfill such obligations, proper recording of crimes committed against human rights defenders is necessary. This is also one of the indicators<sup>542</sup> under the Sustainable Development Goal 16 of the 2030 Agenda<sup>543</sup> (to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels). Of particular concern is the fact, that no statistical data is recorded at the Ministry of Internal Affairs of Georgia regarding criminal acts against human rights defenders;<sup>544</sup> However General Prosecutor's Office of Georgia processes information on criminal prosecution launched on such category of cases.<sup>545</sup>

Besides, OSCE/ODIHR and Parliamentary Assembly of the Council of Europe outline that state authorities and officials shall refrain from engaging in smear campaigns, stigmatization and defamation of human rights defenders.<sup>546</sup> On the contrary, the OSCE urges states to acknowledge publicly the need of protection of human rights defenders and the importance of their work even when it is critical against the state.

In spite of such protection guarantees, a number of incidents of physical and verbal assault of human rights defenders, including from the high ranking officials have been identified in Georgia. This, considering the primary role of the state to protect human rights defenders, negatively affects the establishment of human rights protection environment in the country:

A number of statements were made by high ranking officials in October 2018 to discredit non-governmental organizations and their managers working on topics necessary for the democratic development of Georgia, such as prevention of corruption, protection of human rights, monitoring of proper functioning of state

536 1998 UN Declaration on Human Rights Defenders.

537 Office for Democratic Institutions and Human Rights of the OSCE, Guidelines on the Protection of Human Rights Defenders, 2014.

538 Resolution №2225 of the Parliamentary Assembly of the Council of Europe of 2018 on Protection of Human Rights Defenders in Council of Europe Member States.

539 1998 UN Declaration on Human Rights Defenders, Article 8 (2).

540 1998 UN Declaration on Human Rights Defenders, Article 12 (2).

541 Office for Democratic Institutions and Human Rights of the OSCE, Guidelines on the Protection of Human Rights Defenders, 2014, p. 3.

542 See framework of global indicators adopted for the 2030 Agenda Sustainable Development Goals and Targets by the resolution (A/RES/71/313) of the General Assembly of July 6, 2017, Goal 16, Target 16.10, indicator 16.10.1; information can be retrieved from the web-page: <<https://undocs.org/A/RES/71/313>> [last visited on: 13.03.2019].

543 2030 Agenda adopted by the UN General Assembly Resolution A/RES/70/1 on September 25, 2015 - „transforming our work: 2030 Agenda for Sustainable Development“, Document can be retrieved from the web-page: <<https://undocs.org/A/RES/70/1>> [last visited on: 13.03.2019].

544 Letter №511663 of the Ministry of Internal Affairs of Georgia of February 27, 2019.

545 According to the letter №13/15762 of the General Prosecutor's Office of Georgia of March4, 2019, criminal prosecution was launched against 2 individuals under Article 156 (2, “a”) of the Criminal Code of Georgia in 2018, which implies persecution of an individual committed with violence or threat to violence.

546 Office for Democratic Institutions and Human Rights of the OSCE, Guidelines on the Protection of Human Rights Defenders, 2014, pp 7-8; Resolution №2225 of the Parliamentary Assembly of the Council of Europe of 2018, on the protection of human rights defenders in countries of the Council of Europe, Par.5.6

institutions and elections.<sup>547</sup> This was accompanied by a large scale negative campaign against chairpersons of non-governmental organizations (in particular, Georgian Young Lawyers Association, Fair Elections, Transparency International – Georgia) Eka Gigauri, Mikheil Benidze, Sulokhan Saladze and other NGO leaders in social media. In spite of the big number of authors of defamatory and abusive content, information were similar in substance, whereas part of them – sponsored for wide distribution.<sup>548</sup>

Public Defender of Georgia addressed these cases with a statement and was concerned that they would threaten the democratic development processes in the country. At the same time, the Public Defender called upon the authorities to be guided with internationally recognized democratic standards for the protection of human rights defenders.<sup>549</sup>

Another case that needs to be mentioned is the fact of clapping a dustbin on the civic activist Giga Makarashvili by Teimuraz Mavnelishvili, head of the administrative and procurement department of Gori City Hall on October 10, 2018. The act took place during the manifestation under the name “Russia is an occupant”.<sup>550</sup> The mayor deemed such act as a severe disciplinary misconduct<sup>551</sup>, nevertheless with the consideration of the proportionality principle<sup>552</sup>, imposed a liability measure in the form of a mere reprimand against the official.<sup>553</sup> Currently, the official is dismissed from the office based on his own application.<sup>554</sup> Public Defender welcomes the response provided by the investigative body to this case. Namely, based on the undertaken investigative measures, Giga Makarashvili was recognized as a victim on January 15, 2019,<sup>555</sup> whereas ex-official has been charged<sup>556</sup> with degrading treatment<sup>557</sup> on February 9, 2019.

Other serious challenges in terms of protection of human rights defenders included criminal prosecution and arbitrary deprivation of liberty (twice) of Tamar Mearakishvili, activist from Akhlagori by law-enforcement bodies of de-facto Tskhinvali authorities in 2017,<sup>558</sup> as well as the murder of Vitali Safarov, defender of ethnic minorities, on the grounds of racial intolerance on September 30, 2018 in Tbilisi.<sup>559</sup>

Public Defender of Georgia once again expresses her support to all those organizations, their representatives and individual activists, who work toward the establishment of high standards of human rights protection in Georgia and urges the government to consider internationally recognized democratic standards in its actions.

547 On October 2, 2018, after 13 NGOs released a joint statement about the challenges faced by the democratic governance system (statement can be retrieved from the web-page: <<https://bit.ly/2QmhvZR>> [last visited on: 13.03.2019]), the Chairman of the Parliament blamed the leaders of these organizations for having politically biased opinions; as to the organizations, he mentioned them as political unions. Statement can be retrieved from the web-page: <<https://bit.ly/2UmZWeE>> [last visited on: 13.03.2019]; On October 3, 2018 Minister of Justice also mentioned 13 non-governmental organizations as political parties; statement can be retrieved from the web-page: <<https://bit.ly/2TsyNdh>> [last visited on: 07.03.2019]. On October 8, 2018 Chairman of the Parliament of Georgia addressed the statement disseminated in the social media by General Direction of TV Company Rustavi 2, Nika Gvaramia regarding sponsors and supporting politicians of Salome Zurabishvili, candidate to presidency (can be retrieved from the web-page: <<https://bit.ly/2SN7ENK>> [last visited on: 13.03.2019]); he called it as a statement of the “poor and sluggish” fascist, and named the heads of non-governmental organizations that have not critically addressed such a statement, as co-participants of the fascism; statement can be retrieved from the web-page: <<https://bit.ly/2tRPPfTw>> [last visited on: 13.03.2019]. On the same day, Mayor of the capital, Kakhi Kaladze stated in front of the journalists, that non-governmental organizations are mainly established by National Movement, and they currently are in their charm or dept; statement can be retrieved from the web-page: <<https://bit.ly/2tRzo9V>> [last visited on: 13.03.2019]. Minister of Justice, Tea Tsulukiani made an indication to the alleged participation of the chairperson of the organization “Transparency International – Georgia” Eka Gigauri in dismantling peaceful assembly of November 7, 2007 at the international anticorruption conference in Copenhagen on October 23, 2018. Statement can be retrieved from the web-page: <<https://bit.ly/2Hl5vXA>> [last visited on: 13.03.2019].

548 Information can be retrieved from the following web-page: <<https://bit.ly/2tRPPfTw>> [last visited on: 13.03.2019].

549 Statement can be retrieved from the following web-page: <<https://bit.ly/2HMkgmk>> [last visited on: 22.03.2019].

550 Information can be retrieved from the web-page: <<https://bit.ly/2sYfjOJ>> [last visited on: 13.03.2019].

551 Article 85 of the Law on Civil Service.

552 Article 97 of the Law on Civil Service.

553 Letter №01/2260 of Gori City Hall of February 12, 2019.

554 Information can be retrieved from the web-page: <<https://bit.ly/2NdtKYC>> [last visited on: 13.03.2019].

555 Information can be retrieved from the web-page: <<http://bit.do/eJoLv>> [last visited on: 13.03.2019]; Letter №13/12644 of the General Prosecutor’s Office of Georgia of February 20, 2019.

556 Letter №377337 of the Ministry of Internal Affairs of Georgia of February 13, 2019.

557 Article 144<sup>3</sup> (2, “a”) of the Criminal Code of Georgia.

558 For more information, please refer to the chapter on Situation of Rights of Conflict Affected Population of the present report.

559 For more information, please refer to the chapter on Rights to Equality of the present report.



## **RECOMMENDATIONS**

### **To the Ministry of Internal Affairs of Georgia:**

- To process statistics reflecting crimes committed against human rights defenders.

### **To high-ranking officials:**

- To be guided by internationally established democratic standards in order to facilitate activities of human rights defenders. To abstain from getting involved in the discrediting campaigns against human rights defenders and their physical and verbal assault.

## 14. THE RIGHT TO LIVE IN HEALTHY ENVIRONMENT

Georgians still face challenges in realizing the right to live in a healthy environment. The problem of ambient air pollution is especially acute; the scope of environmental damage caused over the years as a result of the violation of existing regulations and ineffective legislation is particularly alarming. Some of the most severe and most pressing issues include the environmental, as well as the social and economic impacts that resulted from the decision to construct hydro-power plants. Failure to consider the public interest and the failure to comprehensively analyze the situation in relation to the decisions taken on recreational areas remains problematic.

Shortcomings in legislation regulating the construction sector have also not been adequately addressed, which in practice denies citizens the right to live in a healthy and safe environment. Challenges pertaining to fire safety regulations<sup>560</sup> and prolonged investigations into a number of suspicious fires within commercial markets<sup>561</sup> have once again drawn the attention of the Public Defender.<sup>562</sup> Additionally, investigations into several criminal cases related to environmental protection are ongoing and have thus far failed to yield any tangible results.

The Public Defender welcomes the adoption of Technical Regulations on Construction Products, which were enacted in January of 2019. These regulations focus on the placement and use of cement, electric cables, suppliers and plastic pipes that are of high-quality and in line with European standards.<sup>563</sup> It is important to continue our active work towards ensuring the use of high-quality construction materials, which in turn facilitate the sustainability of the structures being erected. It should be noted that many construction materials (especially asbestos) may be toxic and harmful in nature. This necessitates the need to develop a list of materials deemed detrimental to public health and thus prohibited for use in the construction sphere.<sup>564</sup>

The right to live in a healthy environment is enshrined within the Georgian Constitution,<sup>565</sup> which along with strengthening social state principles, underlines the special role the state plays in ensuring environmental protection and safeguarding the rational use of natural resources.<sup>566</sup> Placing this clause within the constitution demonstrates our recognition of the significance of ecologic development within the value chains of the state.<sup>567</sup>

As early as in 2015, the Public Defender of Georgia had already discussed the close interrelationship that exists between environmental protection and human rights and the subsequent international standards.<sup>568</sup> Recognition

560 Acting technical regulation regarding fire safety rules and requirements/conditions states that other relevant documentation is used to regulate the aforementioned issue in the country (including standards used by EU and OECD countries), though it does not make a clear indication to the mentioned documents which complicates the identification of all acting fire safety regulations.

561 Letter №13/2787 of the Prosecutors Office of Georgia of January 15, 2019.

562 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, pp. 209-210.

563 Decree №476 of the Government of Georgia of October 1, 2018 on Adoption of the Technical Requirements of Construction Products

564 "Safety and Health in Construction: an ILO Code of Practice" (1992), p. 85; "Trends and the Economic Effect of Asbestos Bans and Decline in Asbestos Consumption and Production Worldwide, Lucy. P. Allen and others, International Health Organization (2017), pp. 20, 26.

565 Constitution of Georgia, Article 29 (1).

566 Constitution of Georgia, Article 5 (5).

567 Decision №2/1/524 of the Constitutional Court of Georgia of April 10, 2013 on the case "Citizen of Georgia, Giorgi Gachechiladze vs. Parliament of Georgia", II, Par. 2.

568 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2015, pp 590-591 and for 2016, pp. 522-523.

of the links that connect human rights and the environment have greatly increased over the years. Accordingly, the number and scope of international and domestic laws have grown rapidly – this includes the case law of the European Court of Human Rights.<sup>569</sup> Understanding the importance of the topic, the Human Rights Council established a mandate for the Independent Expert on Human Rights and the Environment in 2012. The independent expert has a mandate to study human rights obligations as they relate to the enjoyment of a safe, clean, healthy and sustainable environment, and to promote best practices related to the use of human rights in environmental policymaking.<sup>570</sup> Furthermore, in 2015 UN member states agreed on the Universal Agenda for Sustainable Development,<sup>571</sup> enlisting a number of Sustainable Development Goals (SDGs) which envisage the resolution of environmental challenges by 2030.<sup>572</sup>

Effective action planning to protect the environment is a priority of the Government of Georgia.<sup>573</sup> The EU Association Agreement makes a significant contribution to this process through cooperation that aims to preserve, protect, improve and rehabilitate the quality of the environment, protect human health, as well as the sustainable utilization of natural resources and the promotion of these measures at the international level.<sup>574</sup>

#### 14.1. RIGHT TO CLEAN AIR – QUALITY OF AMBIENT AIR

The Public Defender addressed the pressing issues pertaining to ambient air pollution in her report in 2017.<sup>575</sup> Taking into consideration the significance and complexity of the problem, the Public Defender's 2018 special report was also dedicated to the issue.<sup>576</sup>

However, Georgia's legal framework still fails to reflect the commitments undertaken as part of the EU Association Agreement to protect the quality of ambient air.<sup>577</sup>

Currently, national legislation does not include obligations to set the permit conditions on the basis of the best available techniques to decrease and prevent air pollution caused by industrial activities.<sup>578</sup> In addition, integrated installation permits are not in operation<sup>579</sup> and no effective monitoring mechanism of compliance with permit conditions are in place.<sup>580</sup> Pursuant to the information received from the Ministry of Environment and Agriculture of Georgia, the draft law on Industrial Emissions Control was created with the aim of meeting European standards on regulating industrial emissions.<sup>581</sup> The draft law will be initiated in the Parliament of

569 First Principle of the Stockholm Declaration on Human Environment of 1972; First Principle of the Rio-de-Janeiro Declaration of 1992; Article 24 of the UN Convention on Rights of the Child of 1989; Resolution 31/8 of the UN Human Rights Council of 2016; Judgment of the European Court of Human Rights of November 30, 2004 on the case “Öneryildiz v. Turkey”; Judgment of the European Court of Human Rights of September 29, 2008 on the case *Budayeva and Others v. Russia*; For additional information, see Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2015, pp. 590-591.

570 Information can be retrieved from the web-page: <<https://bit.ly/2O0e7lQ>> [last visited on: 20.02.2019].

571 Transforming Our World: 2030 Agenda for Sustainable Development, UN General Assembly, October 21, 2015, A/RES/70/1, Agenda can be retrieved from the web-page: <<https://bit.ly/1Y3D3sN>> [last visited on: 20.02.2019].

572 In particular, Agenda obliges states to take urgent action to combat climate change and its impacts (SDG 13); ensure healthy lives and promote well-being for all at all ages (SDG 3); protect, restore and promote sustainable use of terrestrial ecosystems (SDG 15); ensure availability and sustainable management of water and sanitation for all (SDG 6); make cities and human settlements inclusive, safe, resilient and sustainable (SDG 11) and ensure sustainable consumption and production patterns (SDG 12).

573 This is also confirmed by the green policy of the government. Information can be retrieved from the web-page: <<https://bit.ly/2BK1Bnr>> [last visited on: 20.02.2019].

574 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 302 (1); document defines state obligations in accordance with relevant EU Directives and determines concrete timeframes for their fulfillment.

575 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, p. 207.

576 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia).

577 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, Chapter 3, Article 302; Annex XXVI, Air Quality.

578 2010/75/EU Directive of Industrial Emissions, Article 14, part 3-6; deadline for implementation :2026.

579 2010/75/EU Directive of Industrial Emissions, Articles 4-6, 12, 17(2), 21 and 24 and annex IV.

580 2010/75/EU Directive of Industrial Emissions, Article 8, 14(1)(d) and 23(1).

581 Letter №6692/01 of the Ministry of Environment and Agriculture of Georgia of August 1, 2018

Georgia this year.<sup>582</sup> However, most of its provisions will be enacted over the next several years (2020-2026).

The existing system of monitoring ambient air quality does not provide a full picture of the pollution. A small number of observation stations are of particular relevance. The observation of the quality of ambient air is not conducted according to the standards set by EU Directives, and an integrated modelling system is also absent.<sup>583</sup>

Transport is one of the main sources of ambient air pollution in Georgia.<sup>584</sup> The periodic technical inspections that were enacted in full in 2019 are welcome change. However, the system does not envisage the control of major pollutants contained within car exhaust fumes.<sup>585</sup>

Putting those cars into exploitation, the enhanced substances of which outweigh the established norms is an administrative infringement.<sup>586</sup> Currently, citations are not administered for this offense, as the patrol police lack the appropriate equipment.<sup>587</sup>

Municipal transport also causes major problems in terms of protecting ambient air<sup>588</sup>, as many buses and mini buses do not have proper exhaust systems. With the recent acquisition of several large, eco-friendly buses, the situation has improved in the capital.<sup>589</sup> However, the situation remains relatively dire in the Rustavi, Zugdidi and Ambrolauri municipalities, where vehicles used for public transportation remain outdated.<sup>590</sup>

Georgia's fuel quality control system is also problematic.<sup>591</sup> The number of petrol stations examined in 2018, from where fuel samples were taken to examine volume of all substances envisaged on the national level was very small.<sup>592</sup>

Green urban spaces help reduce the risks that stem from sources of pollution. However, a concrete indicator of planting per capita, or standards of its assessment have not yet been determined on a municipal level.<sup>593</sup>

## 14.2. HARM CAUSED TO THE ENVIRONMENT – INEFFECTIVE LEGISLATION AND ALARMING STATISTICS

The reporting period identified significant shortcomings in terms of analyzing legislative norms and practices related to the compensation for damage caused to the environment. This challenge requires the immediate action of the responsible agencies. In particular, the legal guarantees for compensating damage caused to the environment are inadequate. In fact, the current legislation is not oriented towards the actual improvement of the negative consequences inflicted on the environment, and the existing regulations fail to provide compensation for environmental damage. Analysis of the legislation and practice of damaging the environment reveals that the obligation of the state bodies, individuals and legal persons during the planning and implementation of

582 Short term legislative plan of the Government of Georgia for the 2019 Spring Session of the Parliament of Georgia, Par.12, information can be retrieved from the web-page <<https://bit.ly/2SNljb3>> [last visited on: 20.02.2019].

583 Information on the system of modelling is available on the web-page of the European Environment Agency (EEA): <<https://bit.ly/2To3DVF>>, <<https://bit.ly/2UhVOFY>> [last visited on: 06.03.2019].

584 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 26-31.

585 Technical Regulation adopted by the Decree №510 of the Government of Georgia of December 1, 2017 on Technical Inspection of the Automobiles Article 6 (8.2).

586 Administrative Infringement Code of Georgia, Article 81.

587 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 27-28.

588 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, p. 208.

589 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 29-30.

590 Letter №02/2637 of the Rustavi Municipality of February 18, 2019; Letter №02/1610 of the Zugdidi Municipality of February 14, 2019; Letter №1121 of Ambrolauri Municipality of February 20, 2019.

591 Letter №56437 of Department of Environmental Supervision of September 17, 2018 and Letter №2369 of the same agency of January 16, 2019.

592 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 31-33.

593 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 35-36.

activities in accordance with environmental protection principles<sup>594</sup> carries formal characters. No legislative safeguards exist that would serve the principles of “pollutant pays” and the “principle of restitution”. In addition, pursuant to the existing regulations, the material remuneration of the damage is deferred for many years, whereas, cases of property compensation cannot be considered a guarantee in the effort to repair the damage.

Together with the responsibility for the violation of legislation in the field of environmental protection and natural resources, damage caused to the environment is considered *property damage, and its remuneration is carried out through the transfer of the amount to the state budget according to the established rule.*<sup>595</sup> Furthermore, no specific regulations exist with regard to the measures taken to restore the environment by the offender. The Law of Georgia on Protection of the Environment, along with other legislative acts and Technical Regulations<sup>596</sup> fail to clarify **whether and how to use the financial resources collected within the state budget for repairing the damage caused to the environment.** Accordingly, the transfer of funds into the state budget does not necessarily ensure the improvement of the damage already caused.

In addition, the regulations related to environmental damage are scattered throughout various legislative acts, which makes it difficult to gain a clear understanding of the responsible agencies, their competences, principles guiding this field, or the rules for compensating damages. The Forest Code<sup>597</sup>, Maritime Code<sup>598</sup> and the Administrative Infringements Act<sup>599</sup> all deal with compensation for the damage caused to the environment.

As main bodies responsible for carrying out state control in the sphere of protection of environment and natural resources, the Department of Environmental Supervision<sup>600</sup> and the LEPL National Forest Agency<sup>601</sup> calculate the damage caused to the environment<sup>602</sup> and demand compensation for harm caused to the environment environmental via the compilation of the infringement protocol at the court or via an independent legal claim. In the case that a crime has been identified, they send the case materials on to the relevant bodies.

According to the established practice of the agency,<sup>603</sup> if the case does not include signs of a crime envisaged by the Criminal Code of Georgia, it is a general rule,<sup>604</sup> that the damage caused to the environment is calculated and together with the protocol on administrative infringements, sent to the competent court. The court then imposes obligations on to the offender who then must compensate the damages during the decision making process on the imposition of the sanction for the administrative infringement. As for the cases where criminality is suspected, the cases are passed on to law-enforcement bodies. Compensation for damages through submission of civil claims is only possible when criminal responsibility of a particular individual is established.

Outcomes of the processing, systematization and analysis of statistical data received from the relevant bodies are particularly alarming. Data received from the LEPL National Forest Agency and Department of

594 Article 5 (2, e) of the Law of Georgia on Environmental Protection: “polluter pays” – obligation of the subject of the activity, also other individuals and legal persons to compensate damage caused to the environment; subchapter of the same Article „i“: “principle of restitution”- degraded environment as a result of the action shall be restored to its initial face as much as possible;

595 Technical Regulations adopted by the Decree №54 of the Government of Georgia of January 14, 2014 – “Methodology to calculate damage caused to the environment.”

596 Technical Regulations adopted by the Decree №54 of the Government of Georgia of January 14, 2014, Article 1 (2).

597 Forest Code of Georgia, Article 113.

598 Maritime Code, Chapter XVIII.

599 Code of Administrative Infringements of Georgia, Article 40.

600 Article 3 (1, “d”) of the Decree №2-98 of the Minister of Environment and Agriculture of Georgia of February 22, 2018 on adoption of the Charter of the Department of Environmental Supervision of the Ministry of Environment and Agriculture of Georgia.

601 Article 3 (“k”) of the Order №2-321 of the Minister of Environment and Agriculture of Georgia of May 8, 2018 on the adoption of the Charter of the LEPL National Forest Agency of Georgia

602 The environmental damage caused by the violation of the law during the use of natural resources or economic activities is calculated according to the damage to the environment and the income, which the state has not accumulated, but would gain in case of due implementation of legal norms – Article 1 (2) of the Technical Regulations adopted by the Decree №54 of the Government of Georgia of January 14, 2014.

603 Letter №6 18 00062054 of the Department of Environmental Supervision of October 12, 2018.

604 In case the claim on damage caused to the environment has not been submitted to the court with unjustified grounds, together with the protocol on administrative infringement, the civil claim to compensate such damage will be submitted.

Environmental Supervision reveal that damage calculated by these bodies between the years **2013-2018**<sup>605</sup> amounted to **€196.8 million**, out of which **€8.1 million** is due to administrative infringements, whereas in cases of criminal acts, the damage amounts to **€188.7 million**.<sup>606</sup>

Table №1 below shows data calculated by the LEPL National Forest Agency and Department of Environmental Supervision from 2013-2018 on the damages caused to the environment as a result of criminal acts or administrative misconduct. Table №2 shows data regarding demands for compensation for the damage by these two agencies, satisfaction of the request by the court and enforcement issues in relation to environmental damage caused by criminal acts only.

Table №1

State Agency	Damage calculated in criminal cases (Georgian lari)	Damage calculated in administrative cases
Department of Environmental Supervision	€164, 027, 176	€5, 346, 712
LEPL National Forest Agency	€24, 659, 433	€2, 763, 160
<b>Sum</b>	<b>€188 686 609</b>	<b>€8, 109, 872</b>
€196 796 481		

Table №2

Cases with signs of the crime	LEPL National Forest Agency	Department of Environmental Supervision	Sum
Calculated damage	€24, 659, 433	€164, 027, 176	€188, 686 609
Damage requested through civil claim / claim satisfied by the court	€111, 997	€669, 661	€781, 658
Enforced	Unknown	Unknown	Unknown

The data from 2018 is also interesting:<sup>607</sup> According to 2018 data, damage in the amount of €5.9 million was inflicted on the environment. Out of this number, €822, 458 was a result of administrative misconduct and €5, 032, 119 was inflicted via acts encompassing signs of a crime.<sup>608</sup>

The aforementioned statistical data demonstrates that the current regulations in relation to the criminal cases prolongs the process of demanding compensation for the damage inflicted upon the environment for an indefinite period of time.<sup>609</sup>

<sup>605</sup> Letters №3 18 00059677 and №6 18 00062054 of the Department of Environmental Supervision of October 2 and October 12, 2018 respectively; Letters №05/17614 and №05/22203 of the LEPL National Forest Agency of September 5 and October 26, 2018 respectively.

<sup>606</sup> According to the estimate made by the Department of Environmental Supervision and LEPL National Forest Agency, the damage made to the environment reached its highest number by the year 2015. Particularly, the Department of Environmental Supervision counted the instances of the damage comprising 99.3 million GEL (2, 161 facts), and LEPL National Forest Agency - 8.9 million GEL (3,434 facts). The maximum number of environmental crime falls in 2013 - Department of Environmental Supervision stated 12, 664 instances (169, 4 million GEL) and LEPL National Forest Agency claimed 7, 589 facts of the offence (947, 754 GEL).

<sup>607</sup> Data of the Department of Environmental Supervision 2.10.2018; data of the LEPL National Forest Agency 5.09.2018.

<sup>608</sup> According to Department of Environmental Supervision the total number of environmental crime facts is 1, 776 and the cost of the environmental damage overall comprises 2, 723,517 GEL. The given figure includes 1, 559 cases of Administrative Law offence with the cost of the environmental damage- 651, 698 GEL; 217 instances of Criminal Law offence with 2, 071, 819 GEL damage cost made to the environment. LEPL National Forest Agency refers to 1, 859 cases of offence including the environmental damage cost of 3, 131, 060 GEL. The above mentioned figure includes 1, 056 cases of Administrative Law offence with the cost of the environmental damage-170, 760 GEL; 803 instances of Criminal Law offence with 2,960, 300 GEL damage cost made to the environment.

<sup>609</sup> Letter №7 19 00007721 of the Department of Environmental Supervision of February 11, 2019 Materials received through the correspondence №3 18 00059677 of the Department of Environmental Supervision of 2.10.2018 №3 18 00059677.

**Request for compensation in relation to the damage caused to the environment in 2013-2018 as calculated by the LEPL National Forest Agency and the Department of Environmental Supervision, has not been made yet,** therefore no compensation has been paid. Despite the efforts made by the Office of the Public Defender of Georgia,<sup>610</sup> no comprehensive statistical data could be obtained about the compensation of damages caused to the environment in the framework of cases of administrative infringements.<sup>611</sup>

As noted above, compensation of the damage caused to the environment in the form of property constitutes the only reimbursement mechanism in this domain. The decision on the imposition of the sanction is issued by the court. However, the National Forest Agency and the Department of Environmental Supervision do not process any data regarding final compensation for the harm. **Therefore, agencies carrying out state control functions in this sphere lack knowledge on whether the damage to the environment they calculated has been compensated for.**

### 14.3. SAFETY TO UTILIZE NATURAL GAS

The recent accidents caused by gas leakages that resulted in several fatalities has shocked the public.<sup>612</sup> Pursuant to the information requested by the Office of the Public Defender of Georgia, the deaths of 7 individuals were registered at the Emergency Management Service in 2018 due to natural gas explosions or carbon monoxide poisoning.<sup>613</sup> In fact, the data of only one month in 2019 surpassed this number. Therefore, several questions remain with regard to the current situation and gas consumption regulations

Table №3 below shows the number of natural gas explosions and poisoning for 2017 and 2018.<sup>614</sup>

Table №3:

	Poisoning			Explosions		
	Incident	Damage	Decease	Incident	Damage	Decease
2017	34	56	10	10	14	0
2018	15	15	5	6	15	2

Georgian legislation states that supplying consumers with safe, continuous and reliable natural gas is one of the main principles of the natural gas supply.<sup>615</sup> The supplier is responsible for controlling the compliance of natural gas characteristics (quality, pressure, smell, etc.) with established standards, and its proper use.<sup>616</sup> The gas supplier shall inform the residents of the rules for the safe consumption of natural gas.<sup>617</sup> However, residents

610 Letters of the Public Defender of Georgia №04-11/14964, 04/12/2018 and №04-11/14962, 04/12/2018; Letter №5 18 00072304 of the Department of Environmental Supervision and Letter №04/26065 of the LEPL National Forest Agency.

611 According to LEPL National Forestry Agency, the estimated total cost of environmental damage claimed by the agency in 2017-2018 was €583, 375, 552. Enforced by the court decision the offenders were fined with the total sum of €574, 022, 052 (Letter- 04-11/14962 04/12/2018; Reply-04/26065, 20/12/2018). The Department of Environmental Supervision has not sent any kind of systematized statistics with this regard (Letter- 04-11/14964 04/12/2018; Reply-# 5 18 00072304, 18/12/2018).

612 The tragic incident in Upper Ponichala on November 15th, 2018 (2 people found dead, 3 injured); the accident in Avtandil Street, Big Dighomi on January 16th, 2019 (4 people found dead, 8 were injured); the accident in Ketevan Tsamebuli Street, January 31st, 2019 (7 people dead), etc.

613 Letter №00473964 of the Ministry of Internal Affairs of Georgia of February 22, 2019

614 Information is based on calls registered at the Emergency Management Service.

615 Resolution №12 of the Georgian National Energy and Water Supply Regulatory Commission on Rules of Supply and Consumption of Natural Gas of July 9, 2009; Article 2 (2).

616 Ibid, Article. 2, Par. 4(f), Article. 8, (3).

617 Article 9 (4) of the Decree №101 of the Government of Georgia on adoption of Technical Regulations on General Requirements of Safety of Gas Systems, January 22, 2014

have the direct responsibility of using the gas and gas equipment safely.<sup>618</sup>

Although the supplier conducts systemic checks of the networks of natural gas, gas-disposables and consumer devices,<sup>619</sup> the characteristics of the rules and safety violations often make it impossible to identify them on time. For example, these include cases of the arbitrary additions of equipment to the gas distribution network, the arbitrary restoration of previously shut-off gas-supplies,<sup>620</sup> leaving gas on without care, and the use of fire to identify gas leaks.<sup>621</sup>

To increase the safety of natural gas consumption and to ensure the identification of leakage, an odorant for natural gas was selected to provide the gas with a characteristic smell.<sup>622</sup> Nevertheless, this cannot be viewed as sufficient to prevent future natural gas-related fatalities, at least due to the fact of an alleged incomplete combustion process, resulting in the exhaustion of gas carbon dioxide (CO), which has no smell.<sup>623</sup> Therefore, the installation and operation of special detectors is obligatory, this includes their use in private dwellings.<sup>624</sup>

The Public Defender would like to address gas ventilation channels in joint use, as well as problems associated with attaching electronic gas ventilators and bathroom ventilators to these channels. Such practices convert natural ventilation systems into hybrid systems by adding mechanic elements to them, which changes the level of ventilation, direction of the air flow and model of its circulation.<sup>625</sup> Per the World Health Organization, particular care must be taken in such instances, as the improper installation of the ventilation system may result in increased levels of potentially harmful indoor pollutants, instead of removing pollutants generated indoors.<sup>626</sup> The common natural ventilation channel is connected to apartments via open holes in the building and ensures circulation of air throughout the entire building. The attachment of mechanical elements increases the risk of gas and carbon dioxide leaks from one apartment to the other. Although this type of activity is considered to be reconstruction of the engineering-utility networks for common use,<sup>627</sup> unfortunately, no supervision is conducted in these cases.<sup>628</sup>

The Public Defender believes that the appropriate agencies must take the necessary measures to prevent accidents caused by leakage or incomplete burning of the gas. On the other hand, regulating and supervising the attachment of electronic ventilation mechanisms of gas and bathrooms to ventilation channels carries particular significance.

618 Ibid, Article. 18 (1, “c”).

619 Resolution №12 of the Georgian National Energy and Water Supply Regulatory Commission on Rules of Supply and Consumption of Natural Gas of July 9, 2009, Article 2 (4, “h”), Article, 22.

620 Resolution №12 of the Georgian National Energy and Water Supply Regulatory Commission on Rules of Supply and Consumption of Natural Gas of July 9, 2009, Article 9.

621 Information can be retrieved from the web-page: <<https://www.ktg-tbilisi.ge/p/cemi-saxlis-usaftrxoeba/4472>> [last visited on 17.02.2019]; <<http://socargas.ge/ge/useful/details/2>> [last visited on 17.02.2019].

622 Article 4 (5) of the Decree №101 of the Government of Georgia on adoption of Technical Regulations on General Requirements of Safety of Gas Systems, January 22, 2014

623 Information can be retrieved from the web-page: <<http://socargas.ge/ge/useful/details/2>> [last visited on 18.02.2019]; <<https://www.ktg-tbilisi.ge/faq?lang=en>> [last visited on: 18.02.2019].

624 Information can be retrieved from the web-page <https://ces.to/dFU7SL> [last visited on: 18.02.2019]; <<https://www.hseni.gov.uk/articles/carbon-monoxide-alarms>> [last visited on: 18.02.2019].

625 Natural Ventilation for Infection Control in Health-Care Settings, World Health Organization Guidelines, can be retrieved from the web-page: <<https://ces.to/Wwk1pp>> [last visited on 18.02.2019], p. 7-8.

626 Ibid, Guidelines for Indoor Air Quality: Dampness and Mould; World Health Organization, can be retrieved from the web-page <<https://ces.to/VsXjhF>> [last visited on: 18.02.2019],

627 Decree №57 of the Government of Georgia of March 24, 2009 on Issuing Construction Permits and Terms of Such Permits, Article 3, par. 28-29, 53, Article. 4, par. 3,

628 Letter №17-01183134015 of the Municipal Inspectorate of Tbilisi Municipality of September 11, 2018; Letter №02-01/12398 of Monitoring and Local Tax Service of Rustavi Municipality of September 12, 2018.



## 14.4. DECISIONS ON CONSTRUCTING HYDRO POWER PLANTS

The Office of the Public Defender of Georgia monitors the construction of hydro power plants in the country. This monitoring is closely linked to the right to live in a healthy environment.<sup>629</sup>

The Public Defender believes that the state bodies responsible for making decisions regarding the construction of hydro power plants have failed to respond to the legitimate questions and concerns posed by society, and in most cases, the requirements set by law.<sup>630</sup> Questions on the quality of surveys and environmental impact assessment documents have been acute for several years. Other problems include, but are not limited to, the low level of involvement of society in the decision making process, the failure to take into consideration the interests of local communities, the legality of memorandums concluded with investors, the malpractice of formal administrative proceedings, issues pertaining to transparency of data and information, and reasonable doubts over the benefits to of hydro power plant projects. As a result, decisions made regarding the construction of hydro power plants lead to public protests and a decreased level of public trust in state decisions. Planned projects may even result in confrontation between citizens.<sup>631</sup>

Arbitrary intervention and the negative impact on the ecosystem constitute are often the outcomes of the construction of hydro power plants. Their construction is also closely linked to the legitimate interests of individuals. Therefore, issues of energy and the economic benefits of the projects are particularly acute. The Public Defender has encouraged the responsible bodies<sup>632</sup> to try to better understand whether the state has studied these issues or analyzed whether implementing these projects is even reasonable. As of February 1, 2019, the Ministry of Economy and Sustainable Development of Georgia informed<sup>633</sup> the Public Defender that 187 memorandums of understanding have been concluded with investors since 2008. While work is ongoing on 117 hydro power plant projects,<sup>634</sup> 32 memorandums have been invalidated. Grounds for these invalidations are based on the violation of contractual obligations by companies, as well as failure of the companies to present technical-economic analyses within the timeframes established by the memorandums. Furthermore, this agency does not deny that some delay in the implementation of several projects are associated with social issues that still need to be agreed with the population. Delays in redeeming lands from private ownership are frequent reasons for the projects to be put on hold. Problems were caused by investors too, as some of them failed to provide the necessary financial resources for the completion of the project.

The Public Defender is also keenly interested in whether the energy and economic benefits that hydro power plants have produced were studied and what type of benefits the state has already accrued. The Ministry of Economy and Sustainable Development informed the Office of the Public Defender that 26 hydro power plants have been put into operation since 2008 producing 536,99 MW. It is worth mentioning, that the regulations do not foresee an obligation to assess the energy and economic benefits that are expected from the use of hydro power plants when the construction permits are issued.<sup>635</sup>

629 Reports of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2013-2017: 2013, p 428; 2014. P. 559; 2015, p. 590; 2016, p. 522; 2017, p. 202.

630 Public Defender has been underling these problems, from legislative and practical perspectives, for past years. See of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2014, p. 558; for 2015, p. 591, for 2016, p. 523, for 2017, p. 207.

631 At this point following cases are pending at the Office of the Public Defender of Georgia: case №3383/18 of Oni Cascade; Case №3383/18 – Kheledula 3 Power Plants; Case №6523/18 – Samkuristskhali 2 Power Plants; Case №33494 Khadori 3 Power Plants; №2579/18 Khudonpower Plant;

632 Letter №04-11/539 16/01/2019 of the Office of the Public Defender of Georgia to the Ministry of Economy and Sustainable Development and to the LEPL Technical and Construction Supervision Agency.

633 Letter №23/947 of the Ministry of Economy and Sustainable Development of 8/02/2019.

634 Out of this number, 23 are under construction, 25 projects at the stage of construction and licensing, and 69 projects at the technical-economic assessment stage.

635 Letter №09/163 of LEPL Technical and Construction Supervision Agency of January 31, 2019.

Shuakhevi power plant is one of the hydro power plant projects that was halted. It is project in which large-scale investment would have made it the most costly and dense project in the country.<sup>636</sup> The construction of the power plant was finished in 2017.<sup>637</sup> However, in the same year, the water tunnel located in the village of Didachara in Khulo<sup>638</sup> (which reportedly is the second largest tunnel in the world) collapsed.<sup>639</sup> Locals and civil society demanded answers pertaining to the quality and reliability of the Shuakhevi Hydro Power Plant project even at the initial stages of construction. The Public Defender reflected the outcome of the analysis of this case study in the Parliamentary Report for 2014.<sup>640</sup> In accordance with the information provided to the Office of the Public Defender of Georgia by the company implementing the state project,<sup>641</sup> the degradation of rocky layer was identified, whereas in areas where the quality of the layer was good, degradation tendency of the layer was noticed. Previous reinforcement efforts were deemed inadequate due to the layers being exposed to water for a prolonged period of time, which was eventually the cause of the collapse. Rehabilitation work is ongoing, and the damage caused to the dismantled tunnel has not yet been evaluated. As such, the Shuakhevi power plant remains inoperable.

The state believes that the development of natural resources and the country's energy potential is important. The Public Defender of Georgia shares this view. However, the Public Defender's Office believes that consistent and complex approach to monitoring on behalf of the government is required. In addition, the Public Defender's Office believes that a long-term energy policy and strategy is needed. One which takes into consideration the rational use of natural resources, sustainable development, as well as the legitimate public interest to protect the environment, social-economic needs of the local population and the right for it to live in a healthy environment. To balance the three dimensions of sustainability (economic, social and environmental), the policy documents shall be explained based on surveys, best international practices, public discussions and with the active inclusion of a field experts. Furthermore, to plan and implement future activities effectively, a comprehensive study and analysis should be undertaken. This study and analysis should focus on all work completed, current and future investments, the cost-benefit of the project[s], as well as the lessons-learned.

In individual cases, the project's negative impact on the environment, the expected costs and energy, as well as the economic benefits shall be studied. Only after careful and qualified analysis of these circumstances can a decision on the reasonableness of the project's implementation be made. The Public Defender calls upon state authorities to change the malpractice of the administrative proceedings and to enforce the new regulations set by the Code on Environmental Assessment, which envisage the inclusion of a broad spectrum of stakeholders in the decision-making process.

## 14.5. LEGISLATION IN CONSTRUCTION INDUSTRY

The reporting period was marked by the systematic referral of the population to the Office of the Public Defender of Georgia regarding the violation of their legal interests due to construction sites adjacent to their

636 In 2011, a memorandum was concluded between the Government of Georgia, Clean Energy Invest AS and "LTD Adjaristskali Georgia; based on the amendments introduced in the amendment in 2012, agreement was made to construct 4 hydro power plants, with a total capacity of 399,8 MW, generated average per annum 1165,6 mio kWh, Investment capacity of 700 million USD; During 10 years generated energy as a result of the exploitation of each power plant should have been sold on local market, that would reflect positively on meeting internal needs and energy tariffs. Rest of the energy should have been exported. Letter №04/158 of Ministry of Energy of January 20, 2014

637 Investment capacity of the project reaches 420 million USD, total capacity -187 MW. Can be retrieved from the link: <https://ces.to/X8sRTo>. [last visited on: 13.03.2019]

638 See link: <https://bit.ly/2WijSjy> [last visited on:13.03.2019]

639 See link: <https://bit.ly/2JHbGrM> according to the official statement of the company, dismantling of a small part of the tunnel would not hinder the work of the power plant, which is ready for commercial activities: information available at <https://ces.to/B2RjGS> [last visited on: 13.03.2019]

640 Office of the Public Defender studied this case based on the joint application of the local population and Department of Prevention and Monitoring of the Office of Environmental Defender; Outcomes of the analysis can be found in Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2014, pp 558-564;

641 Letter №09/168 of LEPL Technical and Construction Supervision Agency of 31/01/2019 №09/168.

buildings.<sup>642</sup> Particularly problematic issues included health care, natural lighting and insulation. Namely, the applicants often pointed to the construction of a building in their neighborhood located a very small distance from their windows. As a result, they were denied access to natural light and air.

Nowadays, existing construction regulations in Georgia fail to provide the appropriate guarantees that protect the interests of third parties in such cases. In particular, the technical regulations on “Safety Rules of Buildings” include provisions on sanitary conditions, proper lighting and ventilation.<sup>643</sup> However, these regulations are mainly oriented on sites subject to new construction and the safety of those individuals that are directly linked to such activities. They do not offer any useful solutions to the aforementioned problems – especially those regarding access to light and air. To this end, the Public Defender welcomes the establishment of requirements under the Code of Georgia on Spatial Planning, Architectural and Construction Work that necessitate planning and construction of buildings in a manner which complies with insulation requirements during their period of use, including for the protection of the health of neighbors and natural lightning.<sup>644</sup> However, the relevant provision, that shall be enacted<sup>645</sup> beginning June 3, 2019, is very general in nature and does not determine the concrete conditions that need to be met for the achievement of these set objectives.

Specific requirements for the allocation of buildings on land plots are provided by Order №1-1/1254 of the Minister of Economic Development of July 8, 2008 on the Use of Territories of Settlements and Urban Development. Subsequent decrees of the local municipalities shall be aligned to this order.<sup>646</sup> Construction can only take place when the building is built in an area which is less than 3 meters from the neighborhood of the land plot (border zone). In such a case, any part of the building can be placed in the zone except for the open parts of the wall (for example: windows and balconies).<sup>647</sup> Furthermore, a door, a window and any other part of the wall on the building situated at the border of the adjacent construction, shall not be perceived as an obstacle for the construction of new buildings.<sup>648</sup> Thus, construction of a building with a deaf wall is permissible within a short distance of 3 meters from the neighborhood of the land plot, in spite of the fact that the wall is bounded by the window, balcony or other open parts of the neighboring building. Of course, such regulation only considers the interests of the owners of new constructions and ignores the interests of inhabitants living on the adjacent territory. As a result, we often find cases (especially in the capital) where the construction of a wall of a new building is carried out just a few centimeters from the window of the older building, which deprives its residents of access to air and the natural light.

The Public Defender would like to emphasize that the minimum standards of adequate housing shall guarantee the physical safety of the occupants, access to lighting and sanitation, as well as protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.<sup>649</sup> Taking into consideration these standards, the regulations mentioned above shall be reviewed. The transposition norms of the Spatial Planning, Architectural and Construction Work code foresee the adoption of the Governmental Decree on Minimum Insulation Requirements of Buildings before December 30, 2019. The Public Defender expresses its hope that this decree will appeal to the interests of the owners/users of the buildings adjacent to the constructions.

642 №1916/18, №4633/18, №4633/18, №13978/17, №2184/18, №11290/18 and №15987/18 applications.

643 Decree №41 of the Government of Georgia on the adoption of Technical Requirements on Safety Rules of Buildings and Constructions of January 28, 2016

644 Code of planning space, architectural and construction activities, Article 83.

645 Ibid, Article. 144 (2).

646 See for example Decree №14-39 of the Tbilisi City Assembly of May 24, 2016 on Rules regarding the Use of the Territory of Tbilisi Municipality and Settlement.

647 Order №1-1/1254 of the Minister of Economic Development on the Use of Territories of Settlements and Development of July 8, 2008, Article 26 (13-14).

648 Ibid, Par 23.

649 “General Comment №4: Right to Adequate Housing (Article 11(1 of the Covenant))”, UN Committee Economic, Social and Cultural Rights, E/1992/23, December 13, 1991, Par. 8(d).

## 14.6. PUBLIC INTEREST TO PRESERVE RECREATIONAL AREAS

Problems pertaining to the legality of actions of local municipalities in relation to the status removal of recreational areas, were particularly acute in the reporting period. The Office of the Public Defender of Georgia studied the case where the recreational-resort area status of the land plot was removed<sup>650</sup> on the territory of the Mtsvane Kontskhi. This was done on its own motion and deemed illegal.<sup>651</sup>

The Public Defender would like to clarify that during the decision making process, administrative bodies shall be guided by the regulations set in the Law of Georgia on Spatial Planning and Urban Development.<sup>652</sup> Strong consideration shall be given to the interest of preservation and the development of recreational territories. In cases where spatial planning and urban development contradict the public interest, they shall be ceased.<sup>653</sup> The case of Mtsvane Kontskhi and past experience shows that concerned stakeholders are not involved in the decision making process at the initial stage, or such participation merely carries formal character. The Public Defender believes that access to information on environmental issues cannot be equated with the general obligation to publicize documents. Each citizen shall be given the opportunity to receive information on environmental issues in an easy and understandable way.<sup>654</sup>

## 14.7. ENVIRONMENTAL ISSUES CAUSED BY ENTREPRENEURIAL ACTIVITIES AND RESPONSE MECHANISMS OF THE STATE

To enforce the rule of law principle, the Public Defender deems that tangible results need to be achieved by the investigation launched in 2013 on the violation of the rules of the utilization of natural resources by the Georgian Manganese LTD. This implies the identification of responsible individuals and the application of all necessary measures envisaged by the legislation of Georgia against them.<sup>655</sup> Of particular concern is the fact that the investigation into the arbitrary chopping of green crops on 10 Asatiani Street, Tbilisi, is still ongoing.<sup>656</sup>

For years, causal links between the environmental damage caused by the entrepreneurial activities of RMG Gold and RMG Copper and the health problems that have affected populations within the Bolnisi and Dmanisi municipalities have not been revealed.<sup>657</sup> This has hindered the ability of the local population to enjoy the right to health and the right to live in a healthy environment.

650 S/K #05.34.25.664, 20 366 sq/m, status of recreational resort area 2 was awarded since 2013.

651 Public Defender addresses the Batumi City Council and the Mayor with the recommendation №04-10/15630 24/12/2018 and requested abolishment of the Decree №65 of Batumi Municipality of September 28, 2018 on approval of the settlement plan of the land plot on the territory of Mtsvane Kontskhi and to adopt a new decision based on full and comprehensive analysis of the circumstances of the case. In her recommendation, Public Defender requested to be guided with the legitimate public interest on preservation of the recreational territories and standards enshrined in the recommendation within the administrative proceedings related to the issuance of the construction permit on the land plot situated on Mtsvane Kontskhi. Pursuant to the obligations under the Aarhus Convention, to inform public and involve them in the decision-making process on the changes related to the recreational areas early on.

652 The given law aims and focuses on creating the healthy and safe living and working environment for people, minimizing the negative effects on the environment made by economic and other activities, preserving and Restoring ecological balance, also effective usage and protection of natural resources and values, including recreational resources. While interrelating public and private interests in the area of spatial arrangement and urban planning, the project claims to take into account the maintenance and development of the recreational areas with other relating issues. As the law defines, the sustainable development of the country, its spatial arrangement and urbanization plan for Caucasian, European and worldwide integration is gained through the principles of preservation and development of the recreational areas.

653 Article 4, Article 6 (1, 2), Article 5 (1, "a") of the Law of Georgia on Spatial Arrangements and Urban Development;

654 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters foresees inclusion of the public in the decision making process at an early stage, i.e. at the time, when one can still affect the process.

655 Letter №13/8881 of the Prosecutor's Office of Georgia of February 7, 2019.

656 Letter №13/8899 of the Prosecutor's Office of Georgia of February 7, 2019

657 Report of the Public Defender of Georgia on Human Rights and Freedoms in the Country for 2017, p. 211.

## PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To make the relevant amendments to the Code of Administrative Infringements of Georgia for preventing the negative effects on ambient air pollution throughout the country.<sup>658</sup> To also determine the rules of transportation, allocation and processing of dereplicated materials on the territory of the municipalities
- To make amendments to the Code of Administrative Infringements for lodging sanctions for the prevention of offences against the protection of environment and use of natural resources<sup>659</sup> stringent
- To draft legislative changes and to establish unified regulations for providing the appropriate guarantees for the prevention of damage against the environment and the eradication of already-caused harm; to this end to clearly define the responsible bodies and their competences.
- To discuss and adopt the draft law of Georgia on Industrial Emissions, the initiation of which is planned for the Spring Session of Parliament in 2019 and to define the relatively short terms of enforcement.<sup>660</sup>
- To discuss and adopt the Draft Law on the amendment Law of Georgia on Protection of Ambient Air the initiation of which is planned for the Spring Session of the Parliament in 2019.<sup>661</sup>

## RECOMMENDATIONS

### To the Government of Georgia

- To approve the state program on measures to reduce ambient air pollution as a temporary measure in all municipalities, except Tbilisi, with due consideration of the pollution level.<sup>662</sup>
- To carry out cost-benefit analysis of each hydro power plant (implemented, halted, planned) along with their impacts on the environment, society and the economy; through balancing these dimensions to plan follow-up activities; to inform society about the outcomes of such a study,
- To prepare and adopt long-term policy documents for the rational use of natural resources and sustainable development and to define concrete measures, as well as the responsible bodies and timeframes, ensuring the achievement of these objectives.
- To consider the interests of neighboring residences to the maximum extent possible while adopting the Decree on Minimum Standards of Insulation of the Buildings.
- To amend Decree №57 of the Government of Georgia of March 24, 2009, on Issuing Construction Permits and Conditions of Such Permits, which will regulate ventilation attachment rules and supervisory bodies.

### To the prosecutor's Office of Georgia:

- Biannually to provide the public with information on the progress of the investigation into Georgian Manganese case (N 062231013801).

658 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 33-36.

659 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp. 36-37.

660 Short term legislative plan of the Government of Georgia for the 2019 Spring Session of the Parliament of Georgia, Par 12.

661 Short term legislative plan of the Government of Georgia for the 2019 Spring Session of the Parliament of Georgia, Par. 22.

662 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), p. 9.

**To the Ministry of Internal Affairs of Georgia:**

- To implement an effective mechanism of identification of offenses envisaged by Article 81 of the Code of Administrative Infringements of Georgia and the appropriate response measures.

**To the Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, Georgian National Energy and Water Supply Regulatory Commission:**

- To define specific obligations of natural gas suppliers and consumers by legislation/sub legal acts, and to prevent casualties caused by the leakage of gas.

**To the Ministry of Environment and Agriculture of Georgia**

- To improve the monitoring system of ambient air quality, including the increase of monitoring stations and their allocation according to the standards established by the EU Directive; to develop a modelling system of ambient air quality.
- To develop a package of legislative amendments that help prevent ambient air pollution from damaging the agricultural sector, which among others, will regulate issues related to dung management and cattle nutrition.<sup>663</sup>

**To the Department of Environmental Supervision under the Ministry of Environment and Agriculture of Georgia:**

- To improve the monitoring system of the supply of fuel not in line with established standards. To increase the number of petrol stations, from where fuel samples will be taken to examine the volume of all substances envisaged on the national level.

**To the Ministry of Environment and Agriculture of Georgia, LEPL Technical and Construction Monitoring Agency:**

- To thoroughly study the possible impacts that hydro power plants have on the environment, proportionality issues between the possible damage they cause to society and the environment, and benefits of the project; to ensure that the public is informed and involved in the decision-making process and the socioeconomic needs of the local population are foreseen.

**To the Ministry of Economy and Sustainable Development of Georgia:**

- To amend Article 26, Par 23 of the Order №1-1/1254 of the Ministry of Economy of July 8, 2008, on the Use of Territories of the Settlements and Development and to determine that doors, windows or any open spaces in the wall adjusting to the building of the neighbor is an obstacle for constructing new buildings in the adjacent zones.

663 Special Report of the Public Defender of Georgia for 2019 – Right to Clean Air (Level of Ambient Air in Georgia), pp 37-38.

**To the local municipalities:**

- To adopt decision regarding recreational territories based on a comprehensive study and assessment of all the relevant circumstances of the case, to take into consideration the public's interest in the preservation of recreational areas.
- To inform interested stakeholders on the planned changes regarding recreational areas in accordance with the obligations under the Aarhus Convention and to ensure the involvement of such stakeholders at an early stage of the decision-making process.
- To define a specific index of planting per capita, to determine evaluation standard of this indicator and to carry out the appropriate measures to ensure proper access to green public spaces.
- To fully update the fleet of municipal buses and minibuses that suffer from technical defects in 2019 with the goal of reducing ambient air pollution.

## 15. RIGHT TO WORK

Occupational safety remained a pressing issue during the reporting period. Furthermore, ensuring just and favourable conditions of work for the employees of institutions with specific operating conditions was identified as one of the problematic areas too.

Draft law aiming at amending the legal status of staff of president's administration, was critically assessed.<sup>664</sup> Subsequently, Public Defender would like to once again draw the attention of the legislator to the due consideration of stability of professional civil service, labor rights of civil servants and principles of civil service system.

### 15.1. OCCUPATIONAL SAFETY

According to the information provided by the Ministry of Internal Affairs of Georgia, **accidents occurred at work in 2018 resulted in the death of 59 and injuries of 199 individuals respectively,<sup>665</sup> compared to the previous year, these numbers have significantly increased.<sup>666</sup>** Public Defender is concerned about the fact that the enactment of the Law of Georgia on Occupational Safety has not improved the alarming situation in terms of safety and health care of employees, which finds its reasons behind the substantial shortcomings of the document. Although a number of crucial obligations were envisaged by the act, their enforcement had not been ensured through an effective inspection system - the supervisory body still lacked a mandate of unconditional access to the workplace.<sup>667</sup>

Public Defender deems that the adoption of the Organic Law of Georgia on Occupational Safety (February 2019) is a significant step forward; as envisaged by the law, standards of occupational safety will extend to all spheres of economic activity since September 2019, which is also welcomed. At the same time, labor inspectors will be released from any limitations to access workplaces. Thus, legislation of Georgia became more compliant with international standards.<sup>668</sup> Nevertheless, Georgia has not ratified international conventions setting these standards.<sup>669</sup> Undertaking timely steps in this direction carries crucial significance, particularly considering the fact that the commitment to ratify relevant international documents has been enshrined in the EU-Georgia Association Agreement since September 1, 2014.<sup>670</sup> Moreover, these standards determine that the system of

664 Statement of the Public Defender of Georgia of December 12, 2018 can be retrieved from the web-page: <<https://ces.to/v8OMGq>> [last visited on: 19.03.2019]

665 Letter №00291533 of the Ministry of Internal Affairs of Georgia of February 4, 2019.

666 47 individuals died and 106 individuals were injured in 2018. See the Report of the Public Defender on the Situation in Human Rights and Freedoms in Georgia, (2017), p. 194.

667 See Law of Georgia on Occupational Safety, Article 16 (5).

668 According to the International Labour Law Standards, Inspection system is effective if the inspectorate is empowered to enter freely and without previous notice to the working place, to enter by day any premises which they may have reasonable cause to believe to be liable to inspection and conduct any study or interviews. The standards foresee provision of each employment sphere with effective system of labor inspectorate (№C081 ILO Labor Inspection Convention, 1947, Article. 12 (1), Article 18; №129 ILO Convention concerning Labour Inspection in Agriculture, 1969, Article 16 (1) and Article 24. Protocol to the Convention on Occupational Safety of 1947, P081, 1995, Preamble, Article 1.

669 №C081 ILO Labor Inspection Convention, 1947; №129 ILO Convention concerning Labour Inspection in Agriculture, 1969.

670 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 229, P.4



labour inspection shall also cover enforcement of labour standards (such as working hours, remuneration, break, etc.) along with safety and healthcare issues.<sup>671</sup>

### State Programme Based Inspection

State programme on labour conditions inspection still remains as an instrument of monitoring requirements set for occupational safety. According to the information obtained from Labour Conditions Inspection Department,<sup>672</sup> 213 workplaces were inspected in the period of January 1, 2018 to February 15, 2019 in the framework of the state programme.<sup>673</sup>

During 2018, mandate of the labor inspectors was extended, granting them the authority to inspect other requirements of the legislation together with occupational safety norms.<sup>674</sup> However, only 10 organizations (50 workplaces were inspected) expressed consent to get involved into the programme and to undergo inspection within the extended mandate (consent is necessary to be inspected within the state programme). Inspection revealed systemic violations, such as: incompliance of working time with contract conditions, violation of the rules regarding annual leave and breach of rules related to worker's remuneration.

Following systemic violations were identified through the inspection of safety norms in a number of workplaces within the state programme: **lack of risk assessment, failure to use personal protection equipment, absence of general means of protection, shortage in safety specialists, use of hazardous equipment, violation of fire security rules and energy-security, absence of traumatism recordings, failure to conduct trainings, failure to provide first aid service trainings, lack of Action Plan in emergency situations, absence of preventive and periodic medical check, disruption of machines, failure to adhere to microclimate parameters, absence of warning signs and last but not least, violation of sanitary-hygienic norms.**

Unfortunately, re-monitoring of the mentioned places has not been conducted, making it difficult to assess the effectiveness of the state programme on labour conditions inspection.

### Monitoring conducted based on the Law of Georgia on Occupational Safety

Since August 1, 2018, norms determining responsibility for violation of occupational safety standards have been enacted and the list of hazardous, strenuous, injurious and dangerous jobs that contain high risk has been determined.<sup>675</sup> Pursuant to the information obtained from the Labour Conditions Inspection Department,<sup>676</sup> 139 workplaces have been inspected within the Law of Georgia on Occupational Safety; repeated visit was paid to 29 sites; out of this number, 9 workplaces (31%) complied with the instructions in full, whereas 20 companies were subject to an administrative liability in the form of a fine within the range of 1000 to 8000 Georgian Lari.<sup>677</sup> The mechanism of suspending entrepreneurial activities has not been applied to

671 №C081 ILO Labor Inspection Convention, 1947, Article 3 (1); №129 ILO Convention concerning Labour Inspection in Agriculture, 1969., Article 6 (1).

672 Letter №01/2560 of the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs of Georgia of February 15, 2018.

673 Information is complemented by the information received with the letter №01/9603-ბ of the Ministry of Georgia on Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs of Georgia of November 14, 2018.

674 Decree №603 of the Government of Georgia on the adoption of the state programme of inspecting occupational conditions of December 29, 2017.

675 Law of Georgia on Occupational Safety, Article 24 (2); Decree №381 of the Government of Georgia of July 27, 2018 on the adoption of the list of heavy, harmful and dangerous jobs that contain high risk.

676 Letter №01-9603-ბ of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Protection of Georgia of November 14, 2018.

677 Information is complemented through the information received by the Letter №01-9603-ბ of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Protection of Georgia of November 14, 2018.

any enterprise yet. Such trend is interesting, as in 2017 out of 33 enterprises re-inspected **within the state program**, the violations were completely eliminated only at 2 workplaces (6%) in accordance with the issued recommendations.<sup>678</sup> Therefore, despite the lack of data, the performance indicator illustrates the efficiency of the sanctioning mechanism determined by law (and not the one foreseen within the program).

### Outcomes of the Investigation on Incidents Caused at Work and Final Decisions of the Courts

Statistical data requested from the Ministry of Internal Affairs of Georgia shows that, unfortunately, the number of accidents at the workplace has increased in comparison with the previous year.<sup>679</sup> In particular, investigation has been launched on the 224 alleged facts occurring at work in 2018, which exceeds the numbers of the reporting period for 2017 significantly (128 facts).<sup>680</sup> Out of this number, the investigation was terminated in 67 cases. Criminal prosecution has only been launched in 19 cases. Thus, timely and effective investigation still remains a significant challenge.

An analysis of the judgments requested from the Common Courts of Georgia shows that the city and district courts have heard 35 cases related to the accidents at work that occurred during 2018; only in two cases has the deprivation of liberty been imposed as a real sentence. Conviction sentence has been released on 7 more cases following the main hearing.<sup>681</sup> Approximately 69% of the cases (22 cases) ended without a substantive review through the conclusion of the plea bargain agreement. 1 case was returned to the district prosecutor's office to apply mechanism of diversion. Unfortunately, the Office of the Public Defender of Georgia was not provided with a copy of 3 verdicts issued from November 1 to December 31, 2018 by Tbilisi City Court. Consequently, similarly to previous years, the state does not opt for a strict policy in terms of launching criminal proceedings in such cases.<sup>682</sup>

## 15.2. LABOR RIGHTS AT THE INSTITUTIONS WITH SPECIFIC OPERATING CONDITIONS

During the reporting period, the Office of the Public Defender of Georgia studied labor rights of employees at offices of special state agencies and emergencies — **Medical Emergency Center, Emergency Management Service, Patrol Police Department and LEPL “112”**; main focus of the study was made on the duration of working time. These institutions belong to a 24-hour non-stop service, whose activities are regulated by various legal acts.

Working hours of these services is regulated by the Labor Code of Georgia. Pursuant to the Labor Code, duration of working time in enterprises with specific operating conditions requiring more than eight hours of uninterrupted production/work process must not exceed 48 hours a week.<sup>683</sup>

The list of industries with specific operating conditions is compiled by the Decree #329 of the Government of Georgia of December 11, 2013, which does not cover the functioning of the police forces, unlike the

678 Information is processed based on the data received by the letter №01/7711 of February 9, 2018 of the Minister of Labor, Health and Social Affairs of Georgia

679 Letter №00291533 of the Minister of Internal Affairs of Georgia of February 4, 2019.

680 See the Report on the Protection of Human Rights and Fundamental Freedoms in Georgia for 2017; p.198 W

681 Detention, as a form of the sanction, has been imposed in 3 cases, which were counted in the conditional sentence (in one case along the deprivation of the right to occupy a position, and with the monetary sanction in another case) In the remaining 4 cases fees in the amount of 1900, 2000, 3000 and 5000 GEL respectively were determined.

682 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for (2017), p. 198.

683 Labor Code of Georgia, Article 14 (1).

structures responsible for providing fire-rescue and emergency medical care. Pursuant to the legislation of Georgia, irregular working hours are determined for the police officers,<sup>684</sup> however, this does not constitute the ground for exclusion of the patrol police from the institutions with specific operating conditions, as the working process of the agency also foresees 24 hour uninterrupted functioning and it carries out public order management service on behalf of the state. Considering these specific characteristics, Emergency Management Service falls within the sphere regulated by the Decree mentioned above, in spite of the fact that special legal act determines irregular working day for these services too.<sup>685</sup>

Existing rules of overtime work turns the regulation of specific operating conditions even more problematic. Labor Code of Georgia deems work as overtime, when employer works during the period exceeding 40 hours a week.<sup>686</sup> In spite of the general nature of this norm, this regulation is vague when applied at the services working with specific operating conditions, because working week consisting of 48 hours determined for such entities is linked to the permanent production needs and not to the performance of overtime work by the employee due to certain conditions.<sup>687</sup> In absence of such provision for institutions with specific operating conditions, the extent of overtime work performance is not clear. This legislative shortcoming is relevant, among others, to the patrol police department of the Ministry of Internal Affairs, LEPL 112 and Emergency Management Service, as issues of overtime work are not regulated by special rules of work at these structures and therefore, Labour Code of Georgia is applicable.<sup>688</sup>

Public Defender deems it necessary to draw an attention to the real picture at these institutions. In particular, according to the information obtained from the Medical Emergency Center of Tbilisi Municipality,<sup>689</sup> senior doctors (372), junior doctors (387), drivers (373), senior shift doctors (4), hospitalization managers (12) and assistant specialists (5) employed at the center work uninterruptedly in 24 hour shifts.<sup>690</sup> 97 medical brigades are carrying out emergency medical care in the capital, where 97 senior doctors, the same number of junior doctors and a driver work in a shift. Following individuals also work from 10 am of one day till 10 am of another: 1 senior shift doctor, 3 hospitalization managers and 1 assistant specialist. Duration of working time for each member of the medical brigade is at least 7 shifts per month,<sup>691</sup> with 2-3 days of vacation between shifts. For employees working in shifts, the hourly remuneration is defined; In case of increasing number of working days, relevant remuneration is calculated by the hourly rate; more than 208 hours of work per month is considered to be an overtime work, followed by an increased pay rate.<sup>692</sup>

2 525 firemen-rescue men employed in The Emergency Management Service and more than 1000 staff members of the Patrol Police under the Ministry of Internal Affairs of Georgia perform the work similarly, uninterruptedly in 24 hour shifts. Their working schedule foresees 48 hours rest after working in a 1 day/night shift.<sup>693</sup> A 12-hour working schedule has been established for some of the employees of the Patrol Police Department (city of Tbilisi).<sup>694</sup> In addition to the period of their normal shift, they may be required to perform official duties in special and extreme situations (natural disaster, assemblies, etc.), where mobilization

684 Law of Georgia on Police, Article 52.

685 Law of Georgia on Public Security, Article. 49 (2).

686 Labor Code of Georgia, Article 17 (4).

687 Decision №2/2/565 of the Constitutional Court of April 19, 2016 on the Case “Citizens of Georgia Ilia Lejava and Levan Rostomashvili vs. Parliament of Georgia, II, Par 29.

688 Order №995 of the Minister of Internal Affairs of Georgia of December 31, 2013 on Services at the Ministry of Internal Affairs of Georgia, Article 1 (3<sup>1</sup>); Order №4 of the Minister of Internal Affairs of Georgia of January 17, 2019 on Service at the Emergency Management Service, Article 1 (3).

689 Letter №05/142 of the LEPL Medical Emergency Center of Tbilisi Municipality of January 25, 2019.

690 Number of employees is provided by January 24, 2019

691 Order №2/0 of the Director of the LEPL Medical Emergency Center of Tbilisi Municipality of January 4, 2019 on amending the Order №1 of the Director of the LEPL Medical Emergency Center of Tbilisi Municipality on Adopting Charter of the LEPL Medical Emergency Center, Article 1 (c)

692 Ibid, Par “e”.

693 Letter №00270528 of the Emergency Management Service of the Ministry of Internal Affairs of Georgia of February 1, 2019; Letter №2492508 of the Ministry of Internal Affairs of Georgia of October 11, 2018.

694 Letter №762350 of the Ministry of Internal Affairs of Georgia of March 25, 2019.

of additional forces and means is necessary to manage the situation. According to the agencies, only such a case is considered to be an overtime work.<sup>695</sup>

As to the LEPL “112” (also characterized with the specific working conditions), information obtained from this agency shows that<sup>696</sup> the working time of the 289 employees of the structural unit is sorted by the timetable; The timetable is organized in such a manner, that the employee’s labor process does not envisage more than 8 hours of uninterrupted work. From January 1, 2018 to February 1, 2019, due to the increase of the number of calls, the working schedule of call recipients has been changed twice, which has been equally reflected on all of them. According to the administration of LEPL “112”, the maximum duration of the uninterrupted work did not exceed timing prescribed by the legislation and the changed working schedule did not foresee overtime.

This shows that institutions with specific operating conditions determine the duration of the shifts differently. 1153 individuals employed at the Emergency Medical Center of Tbilisi Municipality, 2525 firemen/rescue men working at the Emergency Management Service and more than 1000 officers of the Patrol Police Department have to perform a non-stop work in 24-hour shifts; part of them works 12 hours, whereas 8-hour standardized working timeframe is maintained at LEPL “112”. These services do not apply unified standard to consider what falls under the overtime work category, therefore increased pay rate and additional time off of the employers are problematic.

The duration of working hours is crucial to ensure that workers maintain an appropriate balance between professional, family and personal responsibilities and to avoid work-related stress, accidents and disease.<sup>697</sup> Unreasonably long working hours affect the productiveness of the person and causes fatigue.<sup>698</sup> The UN Committee on Economic, Social and Cultural Rights urges state parties to the Convention to 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 working day.<sup>699</sup>

In as much as the general standard of 8-hour working day is applied,<sup>700</sup> duration of several hours more can be considered reasonable. The 24-hour working day is 3 times more than this threshold, it also includes night time, which is subject to separate restrictions on the international level; this is due to the fact that the human body is more sensitive to the impact of outer factors during the night time and long periods of night work may be harmful for the health of the worker.<sup>701</sup> **This is strengthened by the case law of the Court of Justice of the European Union, according to which periods of working time that may last for 24 consecutive hours (mostly applied to doctors and firemen) are illegal.**<sup>702</sup> This decision is based on an international standard, which imposes an obligation on the state to set minimum standards that must be respected and cannot be denied or reduced on the basis of economic or organisational arguments.<sup>703</sup>

In the absence of maximum number of daily hours of work and overtime thresholds in the labor legislation of Georgia, the practice established at the institutions with specific operating conditions demonstrate that employees are always under the threat to work at the risk of their health.

695 Ibid, also letter №2049708 of the Ministry of Internal Affairs of Georgia of August 23, 2018.

696 Letter №00263525 of the LEPL “112” of the Ministry of Internal Affairs of Georgia of February 1, 2019.

697 General comment No. 23 (2016) on the right to just and favorable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights UN Committee on Economic, Social and Cultural Rights), E/C.12/GC/23, 27.04. 2016, Par 34.

698 Decision №2/2/565 of the Constitutional Court of Georgia of April 19, 2016 on the case “Citizens of Georgia Ilija Lejava and Levan Rostomashvili vs. Parliament of Georgia” II, Par 40.

699 General comment No. 23 (2016) on the right to just and favorable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights UN Committee on Economic, Social and Cultural Rights), E/C.12/GC/23, 27.04. 2016, Par 35.

700 Ibid, №1 Convention of the International Labour Organization on Hours of Work (Industry), C001, 1919, Article 2.

701 №171 Night Work Convention of the International Labour Organization, C171, 1990; The Working Time Directive 2003/88/EC of the European Parliament and of the Council of November 4, 2003, Preamble, Par 7.

702 Katinka Barysch, “The Working Time Directive: What is the Fuss About?”, European Reform Center (2013) p. 6; Press release of the Court of Justice of the European Union №152/15, December 23 2015, information can be retrieved from the web-page: <https://ces.to/ueoaKK> [last visited on 14.02.2019].

703 Decision of the Court of Justice of the European Union of September 9, 2009 on the case C-151/02 (*Landeshauptstadt Kiel and Norbert Jaeger*), Par. 66-67; 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 UN Committee on Economic, Social and Cultural Rights), E/C.12/GC/23, 27.04. 2016, Par 34.

Therefore, Public Defender considers it necessary to determine maximum number of daily working hours to be performed by the employees of the institutions with specific operating conditions. It is also necessary to consider type, gravity and impact of the work to be performed on the physical and mental state of mind of a worker.<sup>704</sup> Strong consideration shall be given to that activities of employees at emergency services; problems related to their health and security might directly reflect on the interests of those persons, who are in need of assistance from individuals employed at such services.

As to the overtime work at such institutions, the vague regulation, which fails to determine maximum hours of work including overtime, establishes the possibility to perform work in a manner that violates minimum requirements of employees' health and security, contradicting European standards.<sup>705</sup> Therefore, it is important that the legislation sets maximum number of working hours as well as maximum number of working time in general, that also foresees overtime.<sup>706</sup>

Systemic deficiencies in relation to the work of social workers need to be specifically underlined. Among others shortcomings, low number of social workers employed at the Social Service Agency, absence of rules to reimburse overtime and irregular working schedule, working in 26 different dimensions are particularly alarming. Public Defender is concerned about the fact that issues related to the transportation of social workers, their working infrastructure, and human resources are still unresolved, along with the constant rise in responsibilities of the social worker.

The obligations imposed on the social worker are vast and in some cases, go beyond the mandate of their profession - they are loaded with obligations that do not correspond to their functions. Professional development of social workers and establishment of a solid system to that end needs to be improved on a systemic level.

It is important that State takes all appropriate and timely measures to reform the social security system. Public Defender calls upon the State to take in full consideration the role of a social worker in the process of creating an effective social system; to enable the representatives of the profession to carry out their obligations under the appropriate working conditions and benefit from high standards of care and support.

#### **PROPOSAL TO THE PARLIAMENT OF GEORGIA:**

- To equip labor inspectors with proper mandate (free access at work) and enforcement mechanisms (such as sanctions) in the process of inspecting compliance with the requirements of labor legislation (similarly to the monitoring of occupational safety norms);
- To determine in the Labor legislation of Georgia:
  - maximum number of daily hours of work (including for employees working in shifts at institutions with specific operating conditions and irregular working days) and a minimum number of weekly uninterrupted holidays for workers;
  - Maximum threshold of the overtime work (including at institutions with specific operating conditions and irregular working days)

704 Decision №2/2/565 of the Constitutional Court of Georgia of April 19, 2016 on the Case "Citizens of Georgia Ilia Lejava and Levan Rostomashvili vs. Parliament of Georgia" II, Par 41.

705 Press release of the Court of Justice of the European Union №152/15, December 23 2015, information can be retrieved from the web-page: <https://ces.to/ueoaKK> [last visited on 14.02.2019].

706 International Labour Office, Information Bulletin №WT-2, (2004), information can be retrieved from the web-page: < <https://bit.ly/2Y342uJ> > [last visited on 14.02.2019].

---

## RECOMMENDATIONS

### To the General Prosecutor of Georgia:

- To present in the 2019 Parliamentary Report the analysis / reasoning on criminal cases related to accidents occurred at industries and the practice of concluding plea bargain agreement with the defendants.

### To the Ministry of Internal Affairs of Georgia, LEPL Emergency Medical Service of Tbilisi Municipality:

- To revise the practice of 24-hour uninterrupted work in shifts and to consider the requirements of worker's health and security in the planning of the daily schedule.

## 16. RIGHT TO HEALTH CARE

In 2018, the state took significant steps towards a sustained implementation of universal healthcare program and increase in the access to medication. Particular steps were taken to broaden the circle of beneficiaries of the program on the provision of medication to people with chronic diseases as well as to extend the list of such medication. Nevertheless, the healthcare system still faces serious challenges in the areas such as the protection of patients' rights, increase of access to services and improvement of the quality of medical services.

### 16.1. PATIENTS' RIGHTS

Controlling the quality of medical care in all healthcare institutions is carried out by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereinafter, the Ministry), in accordance with the procedure defined in the legislation. The Ministry established a Professional Development Council<sup>707</sup> which receives organizational and technical support from the State Regulation Agency for Medical Activities. Moreover, the agency performs the function of the council's secretariat.

For years, the Public Defender has noted<sup>708</sup> that the Professional Development Council has delayed the review of citizen applications.<sup>709</sup> Moreover, citizens are not properly involved in the review of applications; nor are patients duly informed of Council meetings. For a full realization of applicant rights, the Council must inform an applicant about a place and time of a meeting in a timely manner and ensure that the applicant exercises their rights guaranteed under the law.<sup>710</sup> The agency was issued a recommendation to draw up a complaint/application procedure which would define reasonable timeframes for the submission of applications/complaints by citizens to the Professional Development Council and for the review of applications/complaints by the Council. In addition, it was recommended that they also establish a rule for notifying interested parties about the scheduled council meetings.<sup>711</sup> According to the State Regulation Agency for Medical Activities,<sup>712</sup> the Professional Development Council indeed established a standard procedure of notification regarding scheduled meetings of the Council. However, the procedure does not have an administrative-legal act and there is no information available about its implementation in the applications. Another persistent problem is the lack of information on the agency's webpage,<sup>713</sup> which is important for the protection of patients' rights.

707 Ordinance №01-9/N of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 15 August 2018.

708 For example, see 2016 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia; 2017 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia.

709 Application of citizen L.S. №7256/17. The citizen applied to the State Regulation Agency for Medical Activities at the beginning of 2017, asking to study the quality of provided service and alleged restriction of the right to health care. It was not until October 2018 that the Professional Development Council considered the issue of responsibility of medical personnel and tasked the Ministry of Health to organize a medical council for assessing the patient's health and determining the tactics of further treatment, which was held in December. See letter №01/271 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 10 January 2019.

710 2017 Parliamentary report of the Public Defender.

711 Resolution №3148-RS of the Parliament of Georgia on "the 2017 Report of the Public Defender of Georgia on the Situation of the Protection of Human Rights and Freedoms in Georgia."

712 Letter №02/49743 of the State Regulation Agency for Medical Activities.

713 LEPL State Regulation Agency for Medical Activities <http://rama.moh.gov.ge/geo> [last accessed on 13.03.2019].

There is no communication-consultation mechanism in place that would help patients find information about the activity and functions of the Professional Development Council nor any applications.

The State Regulation Agency for Medical Activities and the Professional Development Council carry out their activities with the assistance of experts. The selection procedure, appointment and activity of these experts is regulated by the Minister's ordinance.<sup>714</sup> The administrative act does not define the experts' liability in cases where they fail to properly perform their duties, which creates problems in practice; nor are the norms established that would regulate the involvement of a patient in the preparation of an expert opinion.<sup>715</sup> These regulations do not specify timeframes for the preparation/delivery of expert opinion, the legal power of these opinions and does not include provisions determining responsibilities.<sup>716</sup>

In 2018, the Office of the Public Defender (PDO) studied the applications<sup>717</sup> concerning the lawfulness of the decisions made on the financing/non-financing of medical services to citizens, which were taken by the commission to support the decision-making on the provision of relevant medical service within the framework of "referral service"<sup>718</sup> as well as by the commission, set up at the Tbilisi City Hall, to facilitate assistance measures for meeting medical and other social needs.<sup>719</sup> The study of materials obtained from the agencies<sup>720</sup> revealed that the decisions taken by the commissions lacked substantiation. The acts do not include references to legal and factual circumstances that served as the commission's grounds for each concrete decision.

The non-uniform quality of healthcare infrastructure and equipment remains a problem. The PDO studied an application<sup>721</sup> which concerned the situation at the Infectious Diseases, AIDS and Clinical Immunology Research Center, the quality of services provided there, as well as an alleged restriction of the right to health in that institution. According to information received from the state agencies, the executive government carried out several immediate measures to create new infrastructure on the basis of the Center.<sup>722</sup> However, the problem of obsolete and degraded infrastructure remains unsolved.

## 16.2. RIGHTS OF ONCOLOGICAL PATIENTS

Oncological diseases represent a global health challenge. Despite public health interventions and progress in the access to medical services, high cancer morbidity and mortality rates remain a serious challenge to the Georgian healthcare system.<sup>723</sup> World Health Organization experts predict that the existing cancer mortality rate, which has reached 8.2 million a year, will increase and exceed 13 million by 2030.<sup>724</sup>

The targets set in the National Strategy for the Prevention and Control of Non-Communicable Diseases in Georgia 2017-2020, include a reduction in the morbidity rate stemming from oncological diseases (zero

714 Ordinance №01-157-O of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 25 June 2014.

715 2017 Parliamentary report of the Public Defender.

716 Letter №01/1753 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 4 February 2019.

717 PDO, application of M.Sh. №2484/18, application of M.E. №5354/18, application of L.B. №14618/17 and others.

718 Ordinance №331 of the government on Georgia on the establishment of a commission for decision-making on the provision of relevant medical service within the framework of "referral service" and determination of the rule of its activity.

719 Resolution №15-49 of Tbilisi City Council, dated 6 March 2018, on the approval of the rule of implementation of subprogram on assistance measures for medical and other social needs, envisaged by the Tbilisi municipal budget.

720 Letter №15-01190282084(28/01/2019) of the Municipal Department of Healthcare and Social Services of Tbilisi municipality. Letter №01/2932 (20/02/2019) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

721 Citizen D.J. and non-profit (non-commercial) legal entity Equality Movement, application №4645/18.

722 Letters №01/21975 and 01/1811 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

723 National Cancer Control Strategy 2017-2020, available at: <https://ces.to/IC6I8> [last accessed on 13.03.2019].

724 Information is available at: <https://ces.to/vVRS6S> [last accessed on 13.03.2019].



increase) and an increase in access and the affordability of medical services and drug treatment of non-communicable diseases.<sup>725</sup>

Efforts of the state to provide health services and medication for oncological patients should be commended.<sup>726</sup> In particular, universal health care and other programs ensure planned treatment of oncological patients and related examinations and medications, but they do not cover all strata and age groups of the population.<sup>727</sup>

**It is unfortunate that there is no common state program centered around oncological diseases and medical services. It is also unfortunate that medications are provided in a fragmented manner within the framework of universal health insurance, onco-prevention program, palliative care and local municipal budgets.**

Under incomplete state financing, patients often must pay an additional amount – not at the percentage rate defined in the program, but rather according to tariffs set by medical institutions. No state service and type of insurance available to oncological patients ensures full financing of the healthcare or medication provided (only within the set limits). **Financing is also not provided for the management of side effects and psychological services.**

### 16.3. QUALIFIED MEDICAL PERSONNEL

Quality is one of the most important elements to the right to health. It implies a high level of medical service and ensures the high qualifications of medical personnel.<sup>728</sup> According to the information provided by the State Regulation Agency for Medical Activities, 503 cases of physician malpractice were to be considered in 2018. Some 348 cases were considered of which six doctors were cleared of any liability; 235 doctors received written warnings; 105 doctors had their state certificates suspended for various durations and 2 doctors has their licenses revoked.<sup>729</sup>

The executive government acknowledges that the shortage of qualified human resources and their uneven geographic distribution poses serious problems to the provision of quality medical services. In addition, nurses are in short supply both in urban and rural areas. There is a lack of general practitioners, a trend of aging is observed among staff in the medical specialties which are in short supply, and in general, medical personnel lack adequate qualifications.<sup>730</sup>

To develop the nursing workforce in Georgia and improve nursing education, the Ministry established a National Council for the Development of Nursing, which is authorized to study the quality of the objectives accomplished and develop recommendations to improve their efficiency.<sup>731</sup> Despite the measures implemented

725 Ordinance №2 of the government of Georgia on the Approval of the National Strategy for the Prevention and Control of Non-Communicable Diseases in Georgia 2017-2020.

726 Letter №01/2246 (12/02/2019) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

727 According to Annex 1.1. of the Ordinance №36 of the government of Georgia, dated 13 February 2013, planned surgeries (including, outpatient), also all types lab tests, instrumental examinations carried out before the hospitalization for planned surgeries as well as during and after the surgery – annual limit of GEL 15 000. This envisages 30% co-financing by a beneficiary; at the same time co-financing is not envisaged in neonatal age and cases that originated in this age, also cardiosurgical and oncological surgeries and related examinations for beneficiaries under 18 years of age; treatment of oncological patients (including, outpatient), in particular, chemotherapy, hormonotherapy and radiation therapy and related examinations and medications (except oncohematological services envisaged in a relevant healthcare state program) – annual limit of GEL 12 000. This envisages 20% co-financing by a beneficiary except those under 18 years of age, whose costs will be fully covered.

728 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) available at: <https://www.refworld.org/pdfid/4538838d0.pdf> [last accessed on 13.03.2019].

729 Letter №02/4418 (31/01/2019) of the State Regulation Agency for Medical Activities.

730 Vision for Developing the Healthcare System in Georgia by 2030, available at <https://ces.to/cqT8Uc> [last accessed on 13.03.2019].

731 Ordinance №01-23/N (12/05/2012) of the Ministry of Labour, Health and Social Affairs of Georgia.

by the Health Ministry,<sup>732</sup> the excess number of doctors, and low ratio between doctors and nurses, as well as uneven geographic distribution of healthcare professionals remains.<sup>733</sup> It is important for the state to carry on the implementation of those measures that determine the need for personnel, taking into consideration the specifics of the regional distribution of priority/deficient specialties and specialists.

#### 16.4. STATE PROGRAM: VILLAGE DOCTOR

Primary health care and village doctors, are crucial components of the healthcare system. The WHO believes that it is essential to establish a healthcare system which is accessible to all members of society and families and one that provides full healthcare support to them.<sup>734</sup> For years, the state has been implementing the Village Doctor program, which aims to enhance the geographic access and the affordability of primary health care to the population.

In 2015, the State Audit Office conducted an efficiency audit of the Village Doctor program.<sup>735</sup> According to the State Audit Service, if criteria for optimal distribution of medical personnel are used and shortcoming in geographic distribution eradicated, primary healthcare will become more accessible in rural areas. Among other things, the qualification of doctors was considered an important factor for productivity.

The Public Defender believes that the government must support, in light of the special needs of population, further development of healthcare infrastructure with allocations and by facilitating private investment.

#### 16.5. ENFORCEMENT OF LEGISLATION ON TOBACCO CONTROL

The Public Defender of Georgia keeps a close watch on the enforcement of the Law of Georgia on Tobacco Control. According to information provided by the agencies responsible for the enforcement of the tobacco control legislation,<sup>736</sup> the requirements of the law have been largely fulfilled.

A step backward was an amendment made to the Law on Tobacco Control on December 13, 2018, permitting smoking in casinos, as well as in slot clubs. This permission could be obtained by paying a license fee set at minimum €200, 000 for venues containing at least 20 slot machines.<sup>737</sup> Apart from the fact that the abovementioned amendment to the tobacco legislation is unsubstantiated and infringes on the right to health of employees and the customers of slot clubs, it sets a negative precedent which encourages the tobacco producing companies to intensify efforts towards softening the regulations prescribed by the Law of Georgia on Tobacco Control.

732 Letter №01/1490 (28/01/2019) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

733 Human Resources in the Healthcare Sector. Situation analysis. Curatio International Foundation 2018, available at: <https://ces.to/bZziPh> [last accessed on 13.03.2019].

734 International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978; information is available at: [https://www.who.int/publications/almaata\\_declaration\\_en.pdf](https://www.who.int/publications/almaata_declaration_en.pdf) [last accessed on 13.03.2019].

735 Information is available at: <https://ces.to/7wYDMM> [last accessed on 13.03.2019].

736 Letter #01/6639 (03/10/2018) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, letter #MOD01801003724 (05.10.2018) of the Defense Ministry of Georgia; Letter #MIA81802398750 (02.10.2018) of the Interior Ministry of Georgia, letter #21-12/136273 (01.11.2018) of the LEPL Revenue Service, letter #01/5633 (27.09.2018) of the Tbilisi Transport Company, letter #03/3361-18 (10.10.2018) of the Georgian National Communications Commission.

737 Paragraph 1<sup>a</sup> of Article 10 of the Law of Georgia on Tobacco Control (this provision lists buildings and structures where smoking is allowed) was amended by adding Subparagraph e<sup>1</sup>. [Law of Georgia on amending the Law on Tobacco Control, 13.12.2018, document №3956-ls].

Bearing in mind that the tobacco control legislation is closely linked to the right to health and that the scale of mortality and morbidity due to the high level of active and passive tobacco consumers, it is regrettable that the abovementioned amendment was drafted by the Parliamentary Committee on Healthcare and Social Issues and that the proposal of the Public Defender of Georgia<sup>738</sup> was not fully accommodated in the draft amendment.

## 16.6. DRUG POLICY

The use of narcotic substances **without a doctor's prescription**<sup>739</sup> is punishable both under administrative and criminal law in Georgia. Georgia's anti-drug policy is only oriented on punitive measures and focuses on the restriction of the supply. Therefore, a repressive component of the policy and the amount of human and financial resources allocated for law enforcement measures creates a sharp imbalance between punitive and care/assistance vectors of anti-drug policy. A strict anti-drug policy undermines the effectiveness of treatment-rehabilitation and prevention programs. Another problem is the spread of infectious diseases associated with intravenous drug use, such as hepatitis B and C and HIV/AIDS. Criminalization of drug abuse and drug abusers' mistrust towards the state hinders and dramatically complicates the elimination of these diseases.

According to recent studies, the estimated number of intravenous drug users alone is around 50,000 – 56,000 in Georgia.<sup>740</sup> This exceeds the data of similar surveys conducted in previous years,<sup>741</sup> indicating an increasing trend in the number of intravenous drug users.

Despite the efforts of the state and decrease in its scale, the so-called “pharmacy drug abuse” remains a serious problem, with drugstores illegally selling controlled medications. Another pressing problem are the mental disorders that result from the regular use of these medications without a doctor's prescription. One should also consider that these medications are easily available, including to minors, in local pharmacies.<sup>742</sup>

With the aim of changing the existing anti-drug policy, a State Strategy for Combating Drug Addiction in Georgia was established. This strategy focused on the recognition of the problem, rather than combatting and eliminating the problem, as well as the implementation of a pragmatic and realistic strategy that will lead to the effective management of the problem.<sup>743</sup> The state's strategy is focused on the following directions: decreasing the demand;<sup>744</sup> harm reduction;<sup>745</sup> overcoming stigmas and discrimination and decreasing the supply.

**Stigma and discrimination** against drug users represent an especially grave problem, creating a whole set of obstacles on the path towards overcoming this issue. The situation is graver when it comes to drug dependent women, as society is even more intolerant of females with substance abuse problems.

The Public Defender of Georgia believes that anti-drug policy reform, drawn up by the Georgian National Drug Policy Platform and initiated by MPs (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze), best fits the objectives of the state strategy on combating drug addiction. One of the recommendations of the Public Defender in the 2017 parliamentary report was to consider and adopt this draft law in a timely manner.

738 Proposal №01-4/12442 of the Public Defender of Georgia, 28 September 2018.

739 The situation is different with regard to the use of cannabis the use of which has been decriminalized by the decision №1/3/1282 of the Constitutional Court of Georgia of 30 July 2018.

740 The Drug Situation in Georgia 2016-2017, group of authors, 2018.

741 The Drug Situation in Georgia 2014, group of authors, 2016.

742 The 2017 parliamentary report of Public Defender.

743 The State Strategy on Combatting Drug Addiction approved in December 2013 by the Interagency Coordination Council for the Fight against Drug Addiction established under the Ordinance №751 of the President of Georgia of 22 November 2011. Available at <http://www.justice.gov.ge/Ministry/Index/308> [last accessed on 11.03.2019].

744 The decrease in demand implies a wide spectrum of strategies and programs aimed at reducing the willingness and desire to consume illegal narcotic substances. This, for its part, requires the prevention of use, relevant treatment and rehabilitation.

745 Activities towards harm reduction include the decrease in negative consequences of the use of narcotic/psychotropic substances. Such measures, among others, are the so-called syringe-exchange program, substitution therapy, etc.

The abovementioned reform mainly envisages the decriminalization of drug use which, in turn, will encourage drug users to turn to the state for assistance, as well as increase trust towards the state. It also envisages the following: the liberalization of penalties for drug crimes and the determination of small amounts of narcotic substances; the improvement of the procedure for forced narcotic drug testing (bringing it in line with human rights standards); improvement of the rights of people convicted for drug crimes; the creation of a new environment of care (service) in which people with drug-related problems will receive assistance; the improvement of treatment-rehabilitation and prevention systems and the creation of dissuasion commissions.

The consideration of this draft law package has virtually stopped since mid-2018. It is noteworthy that the process of further liberalization of anti-drug policy was suspended amid the sharply negative attitudes of society resulting from decision №1/3/1282 of the Constitutional Court of Georgia of July 30, 2018, (which actually legalized the consumption of cannabis) and an initiative about the legal cultivation of cannabis. Although it was difficult to predict, the decision of the Constitutional Court on legalization of cannabis somewhat negatively affected the process replacing the current repressive drug policy with a social and medical evidence-based drug policy. The Public Defender believes that the goal and process of replacing the strict current drug policy should continue without delay.

It should be noted here that as early as 2015-2016, the Public Defender of Georgia prepared constitutional complaints and filed them with the Constitutional Court, against the procedure of administering drug-related offences (so-called street drug testing: the constitutionality of applying administrative punishment to a person on the basis of a drug test and the use of a test result as evidence in criminal proceedings), as well as prison sentences for the consumption and possession of a small amounts of narcotic substances. Although more than four years have passed since filing the first constitutional complaint and more than three years have passed since filing an additional complaint, the Constitutional Court has not delivered its ruling yet (as of March 2018).

With regard to the legalization of the use of cannabis, one should also consider the legislative changes drafted by the Interior Ministry of Georgia and adopted by the Parliament, which prohibit the consumption of cannabis in various public spaces and provide, in some cases, unjustifiably severe sanctions for violating these prohibitions.<sup>746</sup> For example, pursuant to Paragraph 4 of Article 45<sup>1</sup> of the Administrative Offences Code of Georgia, consumption of cannabis by anyone under the age of 21 is a punishable offence resulting in a fine of €500 - €1,000 for a first-time offense and €1,000 - €1,500 for repeated offenses, whereas consumption of cannabis by anyone over 21 is not an offence at all. In other words, the state penalizes 16-21-year-olds, including minors, under the administrative code for an action which is not considered punishable for adults over 21. We deem it more appropriate to apply educational measures to people of this category rather than administrative sanctions which, by their nature, are of clearly criminal character.

#### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- Resume the consideration of a package of draft laws N 8700/2-1 prepared by the Georgian National Drug Policy Platform and initiated by MPs (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) on 22 June 2017, and by adopting it:
  - Decriminalize the use of narcotic drugs which, in turn, will encourage referrals of drug users for assistance to the state and increase trust towards the state;
  - Establish small amounts of controlled narcotic substances and initial amounts triggering a criminal liability, in a fair and adequate manner and in accordance with the explanatory note to the Draft Law №8700/2-1 on Controlled Substances and Narcological Assistance;<sup>747</sup>

<sup>746</sup> Amendments made to the Administrative Offences Code of Georgia on 30 November, 2018.

<sup>747</sup> The draft law proposes the following principles of determining small amounts: a small amount of controlled substances included in List I of the so-called framework law - an average daily amount consumed by a drug dependent person; small amounts of substances included in the List II - a maximum daily therapeutic dose of each substance; small amounts of substances given in Table 1 of the List III - 7 day supply of maximum daily therapeutic dose. The amounts were determined on the basis of international experience, opinions of narcologists and results of survey of patients of narcological clinics.

- Improve the forced drug testing procedure and bring it in line with human rights standards;
- Create a new environment of care (service) in which people with drug-related problems will receive assistance;
- Improve treatment-rehabilitation and prevention systems.

## **RECOMMENDATIONS**

### **To the government of Georgia:**

- Develop a specialized state program for the timely detection of new cases of oncological diseases, the prevention of the spread of cancer and the availability of treatment for oncological patients.

### **To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- Ensure the compliance of decisions taken by the commission for decision-making on the provision of relevant medical service within the framework of the “referral service” with the standards of substantiation defined by the legislation;
- Draw up regulatory norms for the activities of medical experts, preparation/consideration of expert opinions and responsibility of experts;
- Devise a plan within the scope of continuous medical education system, for ensuring the training of the nursing workforce and establish a stable system of vocational regulations, as well as the stimulation of nursing education;
- Carry out effective and swift measures for improving the infrastructure and sanitary-hygienic conditions in the Infectious Diseases, AIDS and Clinical Immunology Research Center, and raise them to established standards.

### **To the State Regulation Agency for Medical Activities:**

- In accordance with a rule prescribed by the legislation, determine reasonable timeframes for studying citizen applications/complaints and forwarding to the Professional Development Council for consideration as well as regulatory norms for other procedural issues;
- Considering the principles of transparency and accessibility, devise and implement a plan for publishing the information pertaining to the Professional Development Council on the agency’s electronic resources.

### **To Tbilisi City Hall:**

- Ensure the compliance of decisions taken by the commission set up at the Tbilisi City Hall to facilitate the assistance measures for meeting medical and other social needs with the standards of substantiation defined by the legislation.

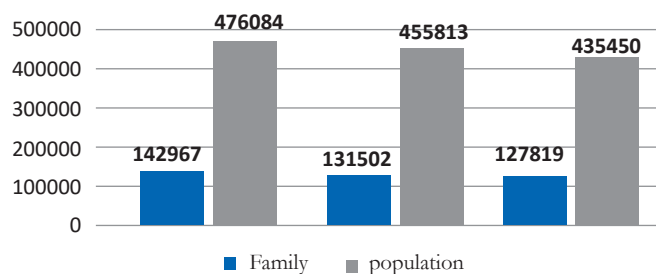
## 17. RIGHT TO SOCIAL SECURITY

The Public Defender of Georgia actively monitored the protection of the right to social security in 2018. In its reports, the Public Defender outlined the gaps in the subsistence allowance program for populations living below the poverty line, as well as issues pertaining to awarding subsistence allowances. These include the calculation of the living conditions index for families living in Tbilisi,<sup>748</sup> the inability to change the cost of the minimum consumer basket in the assessment methodology of the socioeconomic state of families, and delays in administering the appointment of subsistence allowance. Problems related to the right to adequate food within the poor populations living in the regions and the capital of Georgia were also discussed.

Pension reform introduced in the reporting period is worth mentioning, as the reform entails changes in the existing social pension system and the establishment of a private accumulated pension scheme. The Public Defender will observe the implementation of this system and will assess the process and effectiveness of the measures envisaged by the legislation.

### 17.1. SHORTCOMINGS OF THE SUBSISTENCE ALLOWANCE PROGRAM

Families and Population Receiving Subsistence Allowance



The country's poverty rate is high<sup>749</sup>, whereas the resources allocated to overcome it are scarce. Due to insufficient resources, the state only provides subsistence allowances to particularly vulnerable families within the main state program for social security.

The diagram below illustrates statistical information<sup>750</sup> on the families and population that have been awarded subsistence allowances over the past three years. Unfortunately, as much as 12% of the entire population receives subsistence allowance. However, this indicator and statistical information reflect the number of families granted a subsistence allowance only within the resources allocated by the state. According to the

748 Parquet is awarded a high coefficient when assessing the material of the floor of the household in Tbilisi.

749 According to the data of the National Statistics Office of Georgia, the share of the population below the absolute poverty line was 21.9% in 2017. <https://ces.to/gSY1fW> [last visited, 24.02.2018].

750 Information obtained from the web-page of the LEPL Social Service Agency [http://ssa.gov.ge/index.php?lang\\_id=GEO&sec\\_id=610](http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610)

National Statistics Office of Georgia, approximately 318,000 families were registered for subsistence allowance in 2018;<sup>751</sup> as shown in the diagram, the state can only provide subsidies to 128,000 families. **Therefore, there are other poor families who do not receive social assistance due to a lack of resources and thus, are unable to benefit from assistance related to their socially vulnerable status.**

For several years, the Public Defender has noted the shortcomings of the subsistence allowance program used by those living below the poverty line. In previous reports over the years,<sup>752</sup> the Public Defender outlined that the existing methodology used to assess the socioeconomic situation of families fails to allow for accurate identification of vulnerable groups. One of the main issues is the high coefficient of a parquet floor while assessing families living in Tbilisi. It is unfortunate that no amendment is planned to change/abolish the index prescribed to the parquet floor in the methodology.<sup>753</sup> As a result, this issue remains the basis to unreasonably increase the score of the prospective beneficiary. Failure to change the cost of the minimum consumer basket within the socioeconomic conditions assessment methodology is another problem that makes it difficult to update the relevant data and hinders the accurate calculation of household needs.<sup>754</sup>

Maintaining subsistence allowance in cases where beneficiaries are actually employed poses another significant challenge.<sup>755</sup> The Public Defender welcomes the amendments introduced in the subsistence allowance regulations of 2019,<sup>756</sup> which state that families under the subsistence allowance program will remain in the database for a certain period of time in case their salaries are reflected in the data of Revenue Service.<sup>757</sup>

In the 2017 report, the Public Defender drew attention to the delays in terms of administering subsistence allowance.<sup>758</sup> In particular, 3-4 months is needed from the time an assessment application is submitted to the receipt of the allowance. This period is rather long for families seeking social allowance and necessitates a reduction considering the needs of vulnerable households. Regrettably, no amendments have been introduced to help address this problem. Furthermore, it is important to note that in cases where registrations are lost or not entered in the database, the re-examination of the applicant's socioeconomic conditions must be undertaken increasing the delay, which further hinders the delivery of allowances to the beneficiaries in need.

The State Audit Service has also outlined the administrative shortcomings of subsistence allowance. It conducted an audit of the effectiveness of information systems to administer subsistence allowance for socially vulnerable families and identified shortcomings<sup>759</sup> in the process of validating information<sup>760</sup> pertaining to the beneficiaries. The findings show that the agency is unable to validate **gas consumption**. Currently, an applicant requesting subsistence allowance can submit the reduced amount of money to the agency for gas consumption, then the amount for the real consumption, which eventually reflects on the overall rating score. This puts the process of calculating the applicant's subsistence allowance score at risk and places them in unequal circumstances. Validating **age indicators** is also problematic. While calculating the ratings score, the agency does not update the age of the beneficiary in the application. Therefore, the age reflected in the application is not automatically updated together with the change in age of the beneficiary. The audit revealed cases where the factual age of

751 Information obtained from the web-page of the National Statistics Office of Georgia [http://www.geostat.ge/?action=page&p\\_id=199&lang=geo](http://www.geostat.ge/?action=page&p_id=199&lang=geo) [last visited, 24.02.2018].

752 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2015, pp. 787-788, Report for 2017 p. 229.

753 Letter №04/4200 of the LEPL Social Service Agency of January 30.

754 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, pp. 229-230.

755 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, pp. 227-233.

756 Decree №3 of the Government of Georgia of January 18, 2019 on amending the Decree №145 of the Government of Georgia of July 28, 2006 on Social Assistance; Decree №4 of the Government of Georgia of January 18, 2019 on amending the Decree №758 of the Government of Georgia of December 31, 2014 on Assessment Methodology of the Social-Economic Conditions of the Socially Vulnerable Families (Households).

757 Families, with a ranking score of less than 65001 remain in the system for 12 months, families with less than 100001 score – for 24 months.

758 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, pp. 230-231.

759 <https://ces.to/C8K4WX> [last visited on, 24.02.2018].

760 **Validation** – Verification of accuracy and relevance of the data reflected in the declaration of the family based on the information received from the third party.

the subsistence allowance-seeker is higher than indicated in the system, which reflects on numerous factors (index of household needs, demographic index and age thresholds) and eventually on the rating score of the family. The study showed that, if the actual age had been considered, the ratings score would have changed for 23,433 families out of 110,258.<sup>761</sup>

## 17.2. THE RIGHT TO ADEQUATE FOOD

Ensuring the right to adequate food is still one of the major challenges in Georgia. In recent years, the Public Defender has discussed the shortcomings as it relates to ensuring right to adequate food in the regions and in the capital.<sup>762</sup> Information received from various municipalities<sup>763</sup> by the Office of the Public Defender of Georgia revealed that the poor regions of the population lack proper access to “free canteens”, particularly in rural regions. No unified rules to realize the right to adequate food have been developed. In a number of municipalities, programs that offer free canteens do not function at all.<sup>764</sup> It was also found that only one free canteen exists in the municipalities with a high percentage of the population under the subsistence allowance program and administrative units, thus able to serve quite a few number of beneficiaries.<sup>765</sup> However, a single free canteen cannot ensure access to food for the population living in all settlements of the municipal unit, such as village or a town. As a result, municipalities have failed to properly assess the need to access to food within these territories.

The determination on whether to fund several beneficiaries enrolled in the main and additional lists remains a challenge within the Tbilisi municipality. In cases where beneficiaries on the main list do not receive food for various reasons, the beneficiaries on the additional list can access food (instead of those who have not shown up at the canteen on that particular day).<sup>766</sup> However, the number of “no shows” is generally very low. Therefore, very few beneficiaries enrolled in the additional list are able to access the free canteen. On the other hand, individuals on the waiting list,<sup>767</sup> cannot access free services at all. This does not apply to all districts – for example: no additional lists operate in the Vake or Saburtalo districts. Therefore, free canteens in these areas meet the needs for food according to the pre-determined number of beneficiaries. These districts have no waiting lists.

Correcting the list carries significance too. In particular, the review sequence of the applicants’ enrollment into the main and additional lists within the Tbilisi municipality is based on the registration date of the application. Preference is given to beneficiaries whose applications were registered earlier at the *Gamegeoba*. Pursuant to the information of the Tbilisi municipality, the number of individuals with a rating score ranging from 1,000 to 57,000 is high among those registered in the main and additional lists. This is in circumstances where the main list counts beneficiaries whose families scored from between 100, 000 to 200, 000. Despite the fact that families whose rating score does not exceed 200,000 have a right to access the free canteen in the Tbilisi municipality, practice shows that in a number of districts<sup>768</sup> poor individuals, with less than a 30,000 rating-score or those

761 Effectiveness Audit Report of State Audit Office for 2018, p. 33.

762 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2016, pp. 724-728, Report for 2017, pp. 231-233.

763 Tbilisi, Ambrolauri, Akhalkalaki, Batumi, Borjomi, Gori, Gurjaani, Dusheti, Zestaponi, Telavi, Lagodekhi, Lanchkhuti, Martvili, Mtskheta, Ninotsminda, Ozurgeti, Sagarejo, Samtredia, Sachkhere, Senaki, Poti, Shuakhevi, Tskaltubo, Khashuri and Zugdidi municipalities.

764 Municipalities of Martvili, Ninotsminda and Chokhatauri.

765 For example, there is one free canteen at Zestaponi municipality serving 110 beneficiaries, whereas 6460 families were registered for the social subsistence allowance and 1733 families are beneficiaries of such a subsidy. 200 beneficiaries have access to free canteen in Gurjaani municipality, however social assistance is provided to 2772 families. Furthermore, there is only one free canteen in Zugdidi municipality covering 250 beneficiaries from the entire administrative unit, whereas 2559 individuals were registered for the social subsistence allowance in 2018.

766 There are two lists of food recipients – main and additional.

767 Individuals, that were not enrolled in the main and additional lists.

768 For example, Gldani Gamegeoba and Nadzaladevi Gamegeoba in Tbilisi.



who fall within the margin of 30, 000 – 57, 000, are registered on the additional and waiting lists and do not have access to food. The fact that these individuals are enrolled with such a low score on the waiting list is problematic due to the fact that the number of individuals on the additional list makes up about 10% of the main list. Therefore, after reaching the determined limit for the additional list, individuals willing to apply for the free food service are automatically registered on the waiting list. And since these lists do not change, they are deprived of the ability to access free canteen services.

## RECOMMENDATIONS

### To the Government of Georgia

- To amend the methodology of assessing the social-economic situation of socially vulnerable families (households) established by Decree №758 of the Government of Georgia, considering the gaps identified by the Public Defender of Georgia;<sup>769</sup>
- To establish the governmental interagency commission, which will assess needs regarding access to food, determine state policy to meet challenges pertaining to this issue and monitor activities of bodies responsible for the implementation of such a policy.

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To amend Order №225/N of the Minister of Labor, Health and Social Affairs of Georgia of August 22, 2006 in order to decrease the terms of appointment of subsistence allowance and to initiate amendments to be introduced in Decrees №126 of April 24, 2010 and №145 of July 28, 2006 respectively of the Government of Georgia.

---

<sup>769</sup> High coefficient granted to the parquet while assessing families living in Tbilisi; inability to change the cost of minimum consumer basket in the methodology of evaluation of the socio-economic situation of the household.

## 18. RIGHT TO ADEQUATE HOUSING

Legislative shortcomings, the lack of integrated database of homeless persons and the absence of assistance programs for individuals held in shelters are significant challenges to the realization of the right to adequate housing.

The data received from local authorities across the country reveal that the lack of methodology to register homeless persons is still a problem within municipalities, which results in processing inadequate databases at the local level.<sup>770</sup> Furthermore, this list of issues entail the limited budgetary and infrastructural resources necessary for the realization of this right.<sup>771</sup> **Per the information obtained, the rules for registering as homeless, and the data processing and budgetary programs for the homeless operate only in 6 out of 30 municipalities studied across the country<sup>772</sup>, and only 11 municipalities meet their commitments partially, whereas 10 municipalities fail to do so altogether.**

In spite of the challenges listed above, the Public Defender of Georgia welcomes the Government of Georgia's approval of the Open Government Partnership Action Plan for 2018-2019, which defines the state's obligations with regard to the right to adequate housing.<sup>773</sup> For the first time, concrete actions were laid out in the Action Plan that will help the government fulfill its targets<sup>774</sup> established for the right to adequate housing in the National Human Rights Strategy. One of the activities foreseen by the Action Plan aims to create an interagency commission/council, which will analyze the homeless situation in the country, identify the existing challenges, and will develop housing policy and a subsequent action plan.

### 18.1. HUMAN RIGHTS CONDITIONS OF HOMELESS PERSONS IN TBILISI

In identifying problems related to self-care at the Tbilisi Municipality Shelter (Lilo), beneficiaries are diverted to the Palliative Hospice of Homeless Elderly named after St. Father Gabriel, where needs-based social and medical services are provided. According to the memorandum signed between Tbilisi City Hall and the Palliative Hospice of Homeless Elderly (hereinafter Hospice), social and medical services are only accessible to the beneficiaries of Lilo Shelter and Social Livelihood.<sup>775</sup> Homeless persons unable to take care of themselves are

<sup>770</sup> Majority of the municipalities run the database of homeless persons through the registration of applications of interested individuals.

<sup>771</sup> Majority of the municipalities lack shelter infrastructure, housing fund and provide assistance programme in the way of renting a flat.

<sup>772</sup> 3 municipalities out of each region of the country with the highest population number were selected. Information was provided to the Office of the Public Defender from the following municipalities: Ambrolauri, Akhalkalaki, Batumi, Borjomi, Gori, Gurjaani, Dusheti, Zestaponi, Zugdidi, Telavi, Lagodekhi, Lanchkhuti, Martvili, Marneuli, Mtskheta, Ninotsminda, Ozurgeti, Sagarejo, Samtredia, Sachkhere, Senaki, Poti, Shuakhevi, Chokhatauri, Tskaltubo, Khashuri, Kaspi. Bolnisi, Gardabani and Tsageri municipalities failed to provide such information.

<sup>773</sup> Decree №537 of the Government of Georgia of November 12, 2018, obligation №14, to approve the Action Plan for 2018-2019 of the Open Government Partnership of Georgia.

<sup>774</sup> Para. 21 of the Decree №2315 of the Government of Georgia of April 30, 2014 on approving National Human Rights Strategy of Georgia for 2014-2020.

<sup>775</sup> Article 2 (1) of the Memorandum of Understanding of January 30, 2018. This rule has been unaltered with the new Memorandum of Understanding concluded on December 31, 2018 which will be in force until December 31, 2019.

not able to access the services of Lilo's shelter.<sup>776</sup> Moreover, they are unable to take advantage of the social and medical services of the hospice based on the regulations enshrined within the above mentioned memorandum. **Thus, individuals who are not able to take care of themselves and are outside the municipal shelter are left without any care, resulting in the complete neglect of their right to adequate housing.**

Pursuant to the information obtained by the Public Defender of Georgia, 53 people were denied places at Lilo shelter because of their inability to look after themselves in 2018. Living on the street for extended periods can lead to both psychiatric and physical health problems, making self-care impossible. To this end, these individuals require the services provided by the Hospice.

According to the UN Committee on Economic, Social and Cultural Rights, states parties must provide due priority to social groups living in unfavorable conditions. Corresponding policies and legislation should not be designed to benefit social groups that are already advantaged.<sup>777</sup> Therefore, guarantees of adequate housing shall be provided in a way to ensure its accessibility to everyone in need, with particular consideration given to the most vulnerable segments of society.

Therefore, it is necessary to involve those in need in the hospice program so they can realize their right to adequate housing. Once these individuals regain the ability to care for themselves, they will then be provided access to the Lilo shelter. The Public Defender of Georgia takes into the consideration that such an amendment is linked to the mobilization of additional funds. However, before seeking appropriate financial resources, it would be reasonable to allocate budgetary assets in a manner that individuals outside the municipal shelters, who lack the capacity of self-care, are involved in the shelter programs.

Shortcomings in the legislative regulations that impact the reimbursement of housing rent envisaged under the sub-program of Compensating Demolished Accommodations remained a challenge in Tbilisi. In particular, in exceptional circumstances, the Gamgeoba had the right to issue compensation for the housing rent under various conditions and terms for individuals registered in a unified database of the socially vulnerable or persons living in dire socioeconomic conditions.<sup>778</sup> **The sub-program fails to determine the criteria for selecting individuals as service recipients, which brings into question the decision making process of the Gamgeoba through the exceptional scheme. Furthermore, the reasoning behind the refusal to issue subsidies is also problematic.**

The need to resolve the problem are shown by the statistical data received from the Gamgeoba. According to this data, ₾5,443,738 was spent on the sub-program of subsidized accommodation in 2018.<sup>779</sup> ₾1,362,379 were issued according to the general rule,<sup>780</sup> whereas ₾3,280,792 was issued under the exceptional scheme.<sup>781</sup> As for the number of beneficiaries, apartment rent was reimbursed to 1,157 families and 267 citizens in 2018. Out of these, 865 families and 184 individuals were provided with monthly subsidies through the special scheme.<sup>782</sup>

776 The basis of such a limitation is found in the acting instruction of the Tbilisi Municipality Shelter, in particular Article 2 (3, "d") of annex №1 of the Decree №27.22.607 of the Government of Tbilisi Municipality of July 13, 2016 (annulled by the Decree №18.813.1186 of the Government of Tbilisi municipality of October 2, 2018, however pursuant to Article 2 (4, "d") limitation is still in force and individuals registered at the psychic health center, who are in need of a daily care provider, were added to the relevant target of individuals).

777 Para 11 of the General Comment №4 of the Committee on Economic, Social and Cultural Rights, 1991.

778 Article 9 of the Decree №10-23 of Tbilisi City Assembly of January 16, 2018. This Decree was abolished since January 1, 2019 by the Decree №35-119 of Tbilisi City Assembly of December 28, 2018, where article 9 has been enforced without any changes.

779 These statistics do not include data of Chugureti district Gamgeoba, as it did not provide such information.

780 Pursuant to Article 2 (1) of the Decree №10-23 of the Tbilisi City Assembly of January 16, 2018 a person is entitled to the compensation if he/she is registered in the municipality of Tbilisi and owns or possesses on the territory of Tbilisi Municipality a demolished house or a house, which due to being otherwise affected cannot be utilized (hereinafter - amortized area), if the person was living in this house before its amortization and he and his family do not have any other place for living in private ownership, furthermore, he does not have resources to pay for a rent for a temporary accommodation and his registration address for a year before the moment of submitting an application was the territory of Tbilisi Municipality<sup>44</sup>.

781 Ibid, Article 9. These statistics do not include data of Chugureti district Gamgeoba and Mtatsminda district Gamgeoba, as they did not provide such information.

782 Gamgeobas of Tbilisi Municipality presented information differently; namely, some of them provided statistics according to individuals and not by families.

As a result, most of the beneficiaries of the rent sub-program, likewise in 2016 and 2017,<sup>783</sup> are recipients of the subsidy through the special scheme. The Public Defender once again states that it is of critical importance to establish standardized and comprehensive regulations, to ensure that budgetary funds are settled legally and transparently.<sup>784</sup>

The Public Defender would like to clarify that the said program is oriented on a one-time solution to the problem, and will not resolve the homelessness problem in the long term.<sup>785</sup> In the process of realizing of the right to adequate housing, the government is granted the leeway to determine which measures to apply. However, it is also bound by certain obligations. The state is responsible for showing that it is achieving measurable progress in the process of the full realization of this right.<sup>786</sup> During the study of individual applications, the Office of the Public Defender of Georgia identified that problems related to ensuring beneficiaries of a rent subsidy with housing are usually unchanged from year to year. Beneficiaries cannot independently manage the improvement of the socio-economic situation during the assistance period, and as a result, remain fully dependent on the compensation of the housing rent. In addition, the findings of the study further revealed that the grounds for terminating the rent allowance are mostly related to procedure violations committed by the recipients, or to the beginning of the new budget year, and not to the elimination of homelessness as such. This fact underscores that the current rent allowance rule offers short-term solutions but fails to target and eradicate homelessness over the long-term.

The Public Defender understands that the state cannot simultaneously ensure the realization of this right for everyone, but the measures applied shall be oriented towards the gradual improvement of the citizens' conditions. This obligation exists independently from increasing the resources and requires that the allocated funds be used effectively.<sup>787</sup> In parallel to housing rent compensation, the government shall undertake the necessary measures to improve the socio-economic situation of the beneficiaries, which will enable them to live independently in the future.

## RECOMMENDATIONS:

### Tbilisi City Municipal Assembly:

- To extend the services enshrined in the memorandum of understanding between Tbilisi Municipality and Palliative Hospice of the Homeless Elderly to homeless persons without the ability to care for themselves, and who are thus deprived of access to the services provided by the Lilo shelter.
- To amend the rules of implementing the budgetary sub-program of Compensating Demolished Accommodations, and to define objective criteria in the selection of recipients of assistance through the exceptional scheme.

783 In 2016 and 2017, at least 11 698 913 GEL was spent for the sub-programme of subsidized accommodation. Out of this sum, 4 435 530 GEL was issued under the general rule, and 6 065 470 GEL under the exceptional scheme respectively.

784 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, pp. 234-239.

785 Ibid, pp. 234-239.

786 Maastricht Guidelines on Violation of Economic, Social and Cultural Rights, 199, chapter II, sub-chapter „margin of discretion“.

787 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 1987, Principle 23.

## 19. RIGHT TO PROPERTY

The Public Defender supervises how the right to property, being one of the fundamental rights, is protected in the country. This year too, the Public Defender examined the fulfilment of the commitments in terms of the internal public debt. The Public Defender has also identified the failure to submit several documents in the process of issuing construction permits, which could lead to the violation of third persons' rights to property.

The restrictions imposed on foreigners in terms of agricultural land was another noteworthy issue this year. The legislative amendment made by the Parliament of Georgia on June 16, 2017 before the new wording of the constitution came into force, restricted the title to agricultural land (including, inherited plots of land) for foreigners, legal entities registered abroad, and legal entities registered by foreigners in Georgia.

It should be noted that the Constitutional Court of Georgia declared the legislative restrictions/moratorium unconstitutional. Therefore, any foreigner could enjoy this right prior to when the new wording of the constitution came into force. Unfortunately, they had only 9 days to exercise this right.

### 19.1. FULFILMENT OF COMMITMENTS REGARDING INTERNAL PUBLIC DEBT

In the parliamentary reports on the status of human rights and protection of freedoms in Georgia,<sup>788</sup> the Public Defender highlighted problems related to the fulfilment of commitments undertaken as internal public debt with regard to the persons affected by cooperative housing construction. In 2018, positive steps were taken in Tbilisi towards the solution of this problem. In particular, the Public Defender's recommendation was fulfilled and in the process of meeting the needs of persons affected by cooperative housing construction, when determining the order, the LEPL Social Services Agency determined a rating score and principle of territoriality.

Despite these positive steps, considering the number of persons affected by cooperative housing construction and the number of persons who have not been accommodated to this date (3,892 persons on within the Tbilisi Municipality),<sup>789</sup> it is necessary to determine and carry out, in the shortest terms possible, effective measures and activities for transferring title to certain immovable property in return for a symbolic price to persons affected by cooperative housing construction and drawing appropriate contracts.

The situation is particularly difficult in other regions of Georgia, where the issue is not legally regulated. Considering how old this problem is, the number of affected persons is important.<sup>790</sup> As such, it is advisable that the government of Georgia adopts a uniform normative act, similar to Ordinance No. 419 of March

788 The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2015, p. 557; the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2016, pp. 821-823; the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017, p. 178.

789 Letter no. 08-02/14791 of the Ministry of Finances of Georgia, dated 11 February 2019.

790 Pursuant to Letter no. 08-02/14791 of the Ministry of Finances of Georgia, dated 11 February 2019, according to the databases of the members of cooperative housing construction, the number of affected persons registered is the following: Akhaltsikhe –24; Akhagori –30; Akhalkalaki –50; Batumi –547; Poti –27; Mtskheta –46; Ozurgeti – 53; Dedoplistskaro –40; Kobuleti –58; Kutaisi –729; Rustavi –103; Senaki –51; Tchiatura –24; Khashuri –82; Samtredia –87; Zugdidi –149; Telavi –295; Gardabani –35; Gori – 371.

19, 2016,<sup>791</sup> to fulfil the commitments undertaken with regard to citizens affected by incomplete cooperative housing construction. The uniform normative act should stipulate in detail the manner and terms of fulfilling the commitments undertaken regarding the above-mentioned persons.

Based on the applications filed by citizens, it was identified that the situation has not improved concerning payment of debts of other categories under Article 48.1 of the Law of Georgia on the Public Debt. Under Resolution No. 108 of the Government of Georgia, a state commission was set up to study and solve the problems related to internal public debt recognized under Article 48.1 of the Law of Georgia on the Public Debt and to make recommendations in this regard. Under Resolution No. 646 of the Government of Georgia of December 25, 2018, the composition of the said commission has changed, and the term of its mandate was set until January 1, 2020.

Under Article 2.1 of the statute of the state commission examining the problems related to internal public debt, the commission elaborated recommendations concerning the coverage of internal public debt recognized under Article 48.1 of the Law of Georgia on the Public Debt and submits them to the Government of Georgia and the Parliament of Georgia. However, according to the information supplied by the Ministry of Finances of Georgia,<sup>792</sup> the commission has yet to provide any important recommendations. As such, the respective authorities have not reached decisions that would ensure the timely fulfilment of the commitments undertaken by the state as internal public debt.

## 19.2. IMPACT OF CONSTRUCTION ACTIVITIES ON DILAPIDATED BUILDINGS AND CONSTRUCTION

The Public Defender identified as a substantial legislative gap the absence of a duty to submit a number of documents when issuing construction permits,<sup>793</sup> resulting in the possible infringement of the right to property of third parties. It is noteworthy that, as of June 3, 2019, it will be mandatory to submit an engineering and geological survey, a construction arrangement project, as well as a construction scheme/project, along with a permit application.<sup>794</sup> However, the following still remain beyond permit procedures: the survey of buildings, constructions and land plots (including the assessment of their impact on neighbouring constructions and buildings and the examination of sustainability of neighbouring buildings and constructions); mandatory expert assessments and opinions regarding the safety of construction work to be carried out.<sup>795</sup>

This problem was found to be particularly pressing as it regards dilapidated buildings. In one documented case,<sup>796</sup> that the agency issuing the construction permit did not discuss the impact the planned work would have on neighboring buildings<sup>797</sup> even when a third party had submitted an expert opinion about the technical condition of the building before the impugned act was issued. Instead, the company carrying out the construction work was told that before the start of construction work could begin, they must first obtain the relevant opinion about the safety of the planned work. Accordingly, it was still possible to carry out construction in those cases,

791 Ordinance no. 419 of the Government of Georgia of 19 March 2016 approved the activities to be carried out for fulfilling commitments undertaken by the state as internal public debt under the Law of Georgia on the Public Debt in terms of cooperative house construction in Tbilisi.

792 Letter no. 08-02/24018 of the Ministry of Finances of Georgia, dated 6 March 2019.

793 the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2016, p. 524; the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017, p. 203.

794 The Code of Georgia on Planning Area, Architectural and Construction Activities, Article 106.1.g).

795 Resolution no. 57 of the Government of Georgia of 24 May 2009 on Issuing a Construction Permit and Licence Terms, Article 33.4.b)-c); Article 35; Article 65.x).

796 Criminal case no. 2184/18.

797 Resolution no. 57 of the Government of Georgia of 24 May 2009 on Issuing a Construction Permit and Licence Terms, Article 2.

when three expert opinions indicated that the house was dilapidated and there were risks posed by the planned construction work. The same problem was revealed in another case, where neighbors alleged that their houses were damaged as a result of the construction work that took place near a dilapidated building.<sup>798</sup>

The Public Defender points out that the right to property is guaranteed when an owner can fully exercise the rights implied within title and enjoy the property as he or she wishes.<sup>799</sup> The main rationale behind a house title implies its use as a residence. Adequate housing must be habitable, which means that the physical safety of its occupants must be guaranteed as well.<sup>800</sup> Therefore, in those conditions, where construction permits are issued without assessing the safety of planned work or the impact it will have on neighbouring buildings, the right to property of third parties is undermined. Therefore, the Public Defender reiterates that it is crucial to submit full documentation when obtaining a construction permit before the construction work begins.

### 19.3. RIGHT TO PROPERTY IN CRIMINAL CASES

The right to property is subject to limitation for public interests, in cases and in accordance with the procedure established by law.<sup>801</sup> Restriction is possible to attain a legitimate aim, with due respect for the proportionality principle and striking a fair balance between private and public interests. The Public Defender's Office identified instances where the right to property was restricted in violation of the principle of proportionality – namely in criminal proceedings. This is further facilitated by the legislative gaps. The issue was problematic back in 2013 and 2014, and the Public Defender discussed them in the respective parliamentary reports.<sup>802</sup> In 2018, this problem was again identified in the examined case.

As the numerous cases examined by the office showed, property is seized until the expiry of the statute of limitation of investigation. It is extended even after the expiry of that term. A person's right to use their property may be limited for years even though the investigation cannot be finalized. For instance, in one of the examined cases,<sup>803</sup> the investigation was continued even after the expiry of statute of limitation of the investigation.<sup>804</sup> In this case, citizen D.B. had been restricted in the use/disposal of their plot of land for more than 10 years based on a decision made by the Mtskheta District Court of December 26, 2008. The justification of this seizure has not been reviewed since 2008.

In the cases examined by the office in another two cases, property had been seized for 13 and 11 years, under the decision of Tbilisi City Court (November 22, 2005). The seizure was placed on flats owned by 240 citizens. During the investigation, the seizure was lifted on 51 of the flats; the rest of the properties are still being seized.<sup>805</sup> In another case, according to citizen T.K., the immovable property owned by the applicant had been

798 Letter no. 60-011811840 of the Architectural Office of the City Hall of Tbilisi Municipality, dated 28 April 2018.

799 Judgment no. 1/2/411 of the Constitutional Court of Georgia of 19 December 2008 in the case of : LTD "Russenergосervice", LTD "Patara Kakhi", JSC "Gorgota", Givi Abalaki's Individual Company "Farmer" and LTD "Energiа" v. the Parliament of Georgia and the Ministry of Energy of Georgia, II, para. 26.

800 General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant); the United Nations Committee on Economic, Social and Cultural Rights, E/1992/23, 13 December 1991, para. 8(d).

801 The Constitution of Georgia, Article 19.2.

802 The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2013, pp. 398-403; the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2014, pp. 513-519.

803 According to Letter no. 13/64454 of the Prosecutor's Office of Georgia, dated 22 August 2018 and Letter no. 13/87762, dated 13 November, investigation on criminal case no. 025080124 is pending under Article 362.2.b) of the Criminal Code of Georgia.

804 Criminal Code of Georgia, Article 363.2 envisages deprivation of liberty from 3 to 6 years and under Article 12.3 of the same code falls under the category of grave crimes. Article 71.1.c) of the Criminal Code of Georgia, a person is exempted from criminal responsibility if 10 years have passed from the commission of a grave crime.

805 According to Letter no. 13/2106, of the Office of the Chief Prosecutor of Georgia, dated 11 January 2017 and Letter no. 13/29004, dated 20 April 2018, investigation on criminal case no. 1002358 is pending under Article 180.1 Article 180.2.b) and Article 180.3. It is noteworthy that Article 182.3 envisages deprivation of liberty from 7 to 11 years and under Article 12.4 of the same code falls under the category of especially grave crimes.

seized by an order issued by Tbilisi City Court on May 1, 2007.<sup>806</sup>

Under the existing legislative framework, a property can be seized in criminal proceedings until the sentence is enforced, or up to the discontinuation of criminal prosecution and/or investigation.<sup>807</sup> Within 48 hours of its delivery, seizure decisions can be appealed once<sup>808</sup> before a court of appeal. It is possible to remove a court sanctioned seizure based on the motion of a party,<sup>809</sup> if it is established during the investigation that the statutory grounds and objectives<sup>810</sup> for seizure no longer exist. However, Georgian legislation does not provide for periodic court review on the legality of a seizure during the investigation. Similarly, it is not possible to review the justification for seizure within certain periods based on the motion of the person whose property is being seized. **Therefore, both the legislative gap and existing practices are problematic. Despite the expiry of the statute of limitation of investigation, the application of seizure is extended or is maintained for a disproportionately long period of time before its expiry.**<sup>811</sup>

According to the best practices of other countries, such risks are neutralized by legislation. For instance, Section 111b of the Criminal Procedure Code of Germany jointly governs the rules of application of seizure.<sup>812</sup> The court is the authority that reviews and controls the legitimacy of seizure. If there are no cogent grounds, the court may revoke the seizure after a maximum period of six months. Where certain facts substantiate the suspicion of the offence and the time limit referred to in the first sentence is not sufficient, given the particular difficulty or particular extent of the investigations or for another important reason, the court may, upon application by the public prosecution office, extend the measure, provided the grounds referred to justify their continuation. Unless there are cogent grounds, the measure shall not be continued for longer than a twelve-month period.

## PROPOSAL TO THE PARLIAMENT OF GEORGIA

- To amend the Criminal Procedure Code of Georgia with the effect of periodically controlling the grounds and legality of seizure.

## RECOMMENDATIONS

### To the Government of Georgia

- The timely elaboration of the procedures for reimbursing internal debt related to cooperative housing construction within the territories of the municipalities of Georgia, *inter alia*, to determine the order of the persons to be accommodated in the first place, as well as the effective mechanism

806 According to Letter no. 13/33624 of the Office of the Chief Prosecutor of Georgia, dated 7 May 2018, investigation on criminal case no. 74068114 is pending under Article 194.3.a) of the Criminal Code of Georgia. It is noteworthy that Article 194.3 of the Criminal Code of Georgia envisages deprivation of liberty from 9 to 12 years and under Article 12.4 of the same code falls under the category of especially grave crimes.

807 The Criminal Procedure Code of Georgia, Article 158.

808 The Criminal Procedure Code of Georgia, Article 156 and Article 207.

809 Stemming from the fact that seizure is imposed on the property of an accused person, the motion to apply this procedural measure is always made by the prosecution.

810 The Criminal Procedure Code of Georgia, Article 151.

811 Under the Criminal Procedure Code of Georgia, Article 103, investigation is conducted within a reasonable time, but no longer than the statute of limitation for criminal prosecution as determined by the Criminal Code of Georgia. Under the Criminal Code of Georgia, Article 71, statute of limitation of criminal prosecution shall be determined based on the category of a crime, accordingly for 2, 6, 10, 15, 30 years. Besides, statute of limitation shall not be applied in the cases determined by international agreements of Georgia and also in the cases determined by Articles 144<sup>1</sup>–144<sup>3</sup> of the Criminal Code of Georgia.

812 Available at: <https://goo.gl/kMqA4j>, (accessed 08.03.2019).



to fulfil commitments undertaken in relation to the affected population as it was done in the case of the Tbilisi Municipality.

- To ensure the effective performance of the state commission examining the problems of the internal public debt, making recommendations by the commission to the end of the timely fulfilment of commitments recognized as internal public debt; and
- To amend Resolution No. 57 of the Government of Georgia of May 24, 2009, on Issuing A Construction Permit and Licence Terms with the effect of envisaging the duty of submitting – in the process of issuing the construction process to the agency issuing the permit – the documentation referred to in Article 33.4.b).c), Article 35 and Article 64.x) of the same resolution.

## 20. ELECTORAL RIGHTS

2018 was a significant year in terms of exercising electoral rights. During the 2018 presidential elections, the country elected the President of Georgia through direct suffrage for the last time.

These elections, unlike the experience of the past few years, were conducted against the background of a particularly virulent campaign, which was marked by grave accusations and counteraccusations, as well as extreme political polarization. The election period was punctuated by various violent incidents; there was an increase in hate speech incidents on behalf of candidates and representatives of political parties. The electoral environment became even tenser before the second round of the elections. Various observer organizations,<sup>813</sup> media outlets and other public sources disseminated information about alleged incidents involving influencing citizens' will, vote-bribing, election rigging and illegal personal data processing.

In the Public Defender's opinion, such an electoral environment negatively affects the free, equal and peaceful electoral process, which in turn significantly undermines the democratic development of the country. It is imperative that the authorities respond in an effective and timely manner to each incident. Adequate measures must be taken against these persons in order to fulfil the rule of law principles, and to prevent criminal and all other illegal activities.

The Public Defender's Office observed electoral processes and the way elections were conducted within its statutory mandate. It is noteworthy that, unlike in previous years, the Public Defender's Office did not receive applications concerning the 2018 presidential elections.<sup>814</sup> However, the office is interested in the relevant issues related to the exercise of electoral rights. Accordingly, in order to study the various incidents and circumstances, the Public Defender's Office repeatedly addressed letters<sup>815</sup> to competent authorities and requested information on the measures taken by them regarding respective facts and outcomes of examination of the issues at stake.

The Public Defender observes that the state should take notice of the comments made by international organizations and international observation missions regarding elections. Based on the assessments made by local and international observers, the international organization Human Rights Watch stated<sup>816</sup> that during the presidential elections held in Georgia in 2018, "candidates were able to campaign freely and voters had a genuine choice." However, there were instances of the ruling party's misuse of administrative resources. The report<sup>817</sup> published in 2019 by the international human rights organization Freedom House, is noteworthy in understanding the electoral environment. According to the report, while the electoral environment was again largely peaceful, significant problem leading up to the election and voter intimidation on election day marred the quality of the runoff. Abuse of administrative resources and some instances of vote-buying and ballot-box stuffing were reported.

813 Information and reports of at the disposal of international election observation mission, Election Observation Mission (EOM) of OSCE/ODIHR, NGOs – International Society for Fair Elections and Democracy (ISFED), Georgian Young Lawyers' Organisation (GYLA), and Transparency International Georgia (TI).

814 On 3 December 2018, a member of the political council of the political party – United National Movement, Samira Ismailova, filed application no. 16699/18 with the Public Defender's Office.

815 Letters of the Public Defender of Georgia: no. 04-11/14357, no. 04-11/14535, no. 04-11/57, no. 04-11/15595, no. 04-11/538, no. 04-11/537, no. 04-11/536, no. 04-11/540, no. 04-11/541, no. 04-11/697, no. 04-11/781, no. 04-11/775, no. 04-11/883, no. 04-11/926, no. 04-11/928, no. 04-11/945, no. 04-11/953 addressed to the Central Election Commission of Georgia Office of the Prosecutor General of Georgia, State Audit Office of Georgia, Office of the Personal Data Protection Inspector of Georgia.

816 Georgia, Events of 2018, available at: <https://www.hrw.org/ka/world-report/2019/country-chapters/326092>, (accessed 22.01.2019)

817 Available at: <https://ces.to/AguaCN>, (accessed 18.03.2019).

## 20.1. HATE SPEECH

During the election period, electoral subjects and representatives of political parties actively used hate speech<sup>818</sup> in their statements.<sup>819</sup> They also incited discrimination<sup>820</sup> on various grounds; as well as made xenophobic and homophobic statements and expressed religious hatred towards certain groups. Furthermore, political debates usually contained aggressive rhetoric and offensive statements. Some representatives of the ruling party even made bellicose statements suggesting that violence might ensue if opposition candidates won the election.<sup>821</sup>

In the Public Defender's opinion, the above incidents can only hamper the formation of a peaceful electoral environment. It is crucial that representatives of political parties, respective candidates, supporters of political groups and political officials demonstrate political and civic responsibility and facilitate election campaigns that are pluralistic, and devoid of violence and hate speech. In order to establish a political culture that is oriented towards democratic values, it is important that the candidates' election campaigns are aimed at constructive debates oriented towards election programs. Otherwise, it will be difficult to talk about the steps taken towards establishing a healthy political culture.

## 20.2. VIOLENT INCIDENTS

Unlike the local self-government elections in 2017, physical altercations numerous incidents of violence marred the presidential elections.

In light of these violent incidents, the Public Defender's Office inquired as to what measures were taken by law-enforcement.<sup>822</sup> According to the Office of the Prosecutor General of Georgia, investigations have been conducted concerning various violent incidents, in particular:<sup>823</sup>

- **12 criminal cases** regarding pre-election incidents that had taken place before the ballot day, i.e. October 28, 2018
- **34 criminal cases** regarding election incidents that had been reported on October 28, 2018 (the ballot day of the first round of the elections)
- **31 criminal cases** regarding election incidents that had been reported on the ballot day of the second round and later.

Apart from the statistical data above, the Office of the Public Defender of Georgia<sup>824</sup> requested information from law-enforcement agencies about their response to the violent incidents below<sup>825</sup> identified via the analysis of reports of international and national observer missions and public sources:

818 In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. See, recommendation R (97) 20 of the Committee of Ministers of the Council of Europe to Member States on Hate Speech, adopted by the Committee of Ministers on 30 October 1997, available at <https://ces.to/juHplv>.

819 For instance see, the following statements by: a presidential candidate, Kakha Kukava: <https://ces.to/00PIFU>; presidential candidate, Kakhaber Chichinadze: <https://ces.to/OlvcPT>, at 1:23:13; presidential candidate, Salome Zurabishvili: <https://ces.to/JdrwgC>; the former President of Georgia, Mikheil Saakashvili: <https://ces.to/uqRPPJ>; presidential candidate, Giorgi Andriadze: <https://ces.to/4KkhEM>; a member of the Alliance of Patriots, Davit Tarkhan-Mouravi: <https://www.myvideo.ge/v/3689369>.

820 Under Article 2.5 of the Law of Georgia on the Elimination of All Forms of Discrimination, "Any action carried out for the purpose of forcing, inciting, or supporting a person to discriminate against a third person within the meaning of this article shall be prohibited."

821 See the statement of a member of the parliamentary majority, Gedevan Popkhadze: <https://ces.to/wPYF7N>; statement of the President of the Defence and Security Committee, Irakli Sesiasvili: <https://www.radiotavisupleba.ge/a/29573100.html>.

822 Letter no. 04-11/540 of the Public Defender's Office, dated 16/01/2019 to the Office of the Prosecutor General of Georgia.

823 Letter no. 13/6139 of the Office of the Prosecutor General of Georgia, dated 29/01/2019.

824 Letter no. 04-11/536 of the Public Defender's Office, dated 16/01/2019.

825 Letter no. 13/8858 of the Office of the Prosecutor General of Georgia, dated 07/01/2019.

- On October 30th, relatives and supporters of Endzel Mkoyan, a representative of the political party Georgian Dream – Democratic Georgia, and a majoritarian MP of Akhalkalaki, attacked members of the united opposition. As a result of the attacks, 4 members<sup>826</sup> of the united opposition sustained injuries. Representatives of the Public Defender of Georgia visited these persons in hospital. They allege that the physical attack on them by the MP and his supporters was based on political ground.<sup>827</sup> In response to the Public Defender's request,<sup>828</sup> the Office of the Prosecutor General of Georgia originally notified us that the investigation had been instituted,<sup>829</sup> all four persons had been given a victim's status and certain individuals had been charged with violence under the Criminal Code of Georgia.<sup>830</sup> According to the disseminated information, the Akhalkalaki District Court set bail at 3,000 GEL.<sup>831</sup>
- The Public Defender's Office is currently examining Samira Ismailova's application according to which, on November 28, 2018, she and members of her party were confronted by MP Gogi Meshveliani and approximately 150 persons who had been gathered by Meshveliani at polling station No. 60 of the Bolnisi District. Meshveliani's group verbally abused and threatened Ismailova's group. Furthermore, during the incident, a member of the United National Movement, Nikoloz Kakalashvili, was physically assaulted.<sup>832</sup> The Public Defender's Office was notified<sup>833</sup> that a criminal case<sup>834</sup> is pending in the Kvemo Kartli Regional Prosecutor's Office pertaining to a beating Nikoloz Kakalashvili suffered at polling station No. 60 and the official negligence demonstrated by police officers of the Bolnisi District Police Division under Article 162.1.1<sup>835</sup> and Article 342.1<sup>836</sup> of the Criminal Code of Georgia, respectively. Nobody has been charged or recognized as a victim at this stage. The investigation is pending.
- The incident occurred in the village of Algeti, Marneuli, at polling station No. 10, where the president, Ali Muradov, prevented an observer from the International Society for Fair Elections and Democracy

826 M.A.; A. R.; T.A.; and A.A.

827 According to M.A., on 30 October 2018, at approximately 12:00, when moving documents from the headquarters to the commission, M.A. was attacked by 5-6 individuals and beaten with clubs. An MP, Endzel Mkoyan was also present during the attack. He physically assaulted M.A. and made a threat towards their family. According to A.R., on 30 October 2018, near the party office, brother of the MP, Endzel Mkoyan, Martun Mkoyan threatened A.R. with death and hit them twice on their head with a weapon. According to A.R., when lying on the ground, A.R. was beaten by 8 individuals; was hit by a piece of still framework. A.R. also reported an illegal act by the Akhalkalaki *Sakrebulo's* Deputy President, Jumber Lomsadze. According to A.R., on 28 October 2018, the election day, Jumber Lomsadze ordered police officers in the election commission to throw out A.R. from the room and later subjected A.R. to verbal abuse in the street. According to T.A. and A.A., on 30 October, also near the party office, approximately 35-40 strangers assaulted them physically by beating them with clubs. According to them, brother of the MP, Endzel Mkoyan, Martun Mkoyan called upon these persons to physically liquidate T.A. and A.A. A.A. allegedly lost consciousness from the beating but they continued to beat A.A. even after the fall. According to T.A.'s sister A.A., they were verbally abused and threatened that they would blow up both of them and their office.

828 Letter no. 15-7/14607 of the Public Defender's Office, dated 21/11/2018; Letter no. 13/92113 of the Office of the Prosecutor General of Georgia, dated 07/12/2018.

829 Criminal case no. 015301018001 regarding hooliganism committed by a group, under Article 239.2.a) and Article 239.3 of the Criminal Code of Georgia.

830 Martun Mkoyan was charged with Article 126.1<sup>1</sup>.b) (violence committed by a group) of the Criminal Code of Georgia; Eduard Mkoyan was charged with Article 126.1<sup>1</sup>.b) (violence committed by a group) of the Criminal Code of Georgia; Karapet Mkoyan was charged with Article 126.1<sup>1</sup>.b) (violence committed by a group) and Article 126.1<sup>1</sup>.c) (violence committed by a group against two or more persons) of the Criminal Code of Georgia; Ararat Ambaryan was charged with Article 126.1<sup>1</sup>.b) (violence committed by a group) and Article 126.1<sup>1</sup>.c) (violence committed by a group against two or more persons) of the Criminal Code of Georgia; Andranik Karslyan was charged with Article 126.1<sup>1</sup>.b) (violence committed by a group) and Article 126.1<sup>1</sup>.c) (violence committed by a group against two or more persons) of the Criminal Code of Georgia; Letter no. 13/12214 of the Office of the Prosecutor General of Georgia, dated 19/02/2019.

831 Available at: <http://netgazeti.ge/news/317217/>, (accessed 18.03.2019).

832 According to the application, the incident was witnessed by the acting Head of the Police Division of the Bolnisi District, L.G. and police officer G.M. and other law-enforcement officials who did not respond to the incident.

833 Letter no. 13/7580 of the Office of the Prosecutor General of Georgia, dated 04/02/2019

834 Criminal case no. 019291118001; the following investigative actions were conducted in the case: interviewing witnesses, examination of the crime scene, forensic examination was scheduled. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

835 Battery or other violence, that has not incurred the consequences provided for by Article 120 of this Code, or threat of violence at a polling station, an election commission premises, or their adjacent territory, from the day of calling an election till the day of summing up the final results of the election, or during canvassing or an election campaign event.

836 Official negligence, i.e., non-performance or improper performance of official duties by an official or a person equal thereto due to the careless attitude towards the duties, which has resulted in substantial breach of the rights of a physical or legal person or of the lawful interests of the public or state.

(ISFED) from video-recording. He also threatened to “smash their head”, attempted to take away their phone, abused them physically and threw them out of the polling station. According to the information submitted to us,<sup>837</sup> an investigation was launched concerning the alleged threat and physical abuse by Ali Muradov against the observer.<sup>838</sup>

In addition, an investigation is ongoing regarding the following incidents:

- A knife attack on the Head of Grigol Vashadze’s election headquarters in Oni<sup>839</sup>
- Setting fire to the balcony of a flat owned by a member of the unified opposition, Goga Injigia, in Rustavi<sup>840</sup>
- An incident that occurred in the village of Bodbe, during which an activist of European Georgia, Besik Lazariasvhili, was attacked by three masked men, who verbally abused and demanded that he stop his political activity<sup>841</sup>
- A violent incident in Akhalkalaki, by the President of the Regional Electoral Commission, Hasmik Marangozian, against a member of the same commission, Teona Tchalidze;<sup>842</sup>
- The physical assault of Georgian Dream activist Roman Pashurishvili, by a supporter of the United National Movement in Tianeti;<sup>843</sup>
- An altercation that occurred among Kutaisi *Sakrebulo*’s members;<sup>844</sup>
- An incident of verbal and physical abuse that took place at polling station No. 16, located at Kindergarten No. 51 on Gorgasali Street 16 in Tbilisi, Krtsanisi district<sup>845</sup>
- A violent incident at polling station No. 20, located at Norio Uphill 24, in Tbilisi<sup>846</sup>
- An individual has been charged with physically assaulting Grigol Vashadze supporter – Aliosha Guliglli –in the village of Khidiskuri, in the Kaspi district.<sup>847</sup>

837 Letter no. 13/6571 of the Office of the Prosecutor General of Georgia, dated 30/012019.

838 Criminal case no. 031180119004, instituted under Article 162<sup>1</sup>.1 of the Criminal Code of Georgia (Violence or threat of violence at a polling station, an election commission premises, or their adjacent territory, or violence or threat of violence during canvassing or election campaign). Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

839 Criminal case no. 059221118001, instituted under Articles 19 and 108 (attempted premeditated murder). The following investigative actions have been carried out: witness interrogation; crime scene examination; investigative experiments; forensic examinations on alcoholic intoxication, drug intoxication, tratology, dactiloscopic, biological and micro trace examinations. The results of these examinations have not been out at this stage. K.I. has been charged under Article 19 and 108 of the Criminal Code of Georgia and Nodar Burdiladze has been given a victim’s status. Investigation is pending.

840 Criminal case no. 012251118001 instituted under Article 187.2 of the Criminal Code of Georgia (damage or destruction of property). The following investigative actions have been carried out: witness interrogation; chemical forensic examination was scheduled and conducted. The results of the examination have not been out at this stage. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

841 Criminal case no. 034071118001, instituted under Article 126 of the Criminal Code of Georgia (violence). The following investigative actions have been carried out: witness interrogation; crime scene examination; forensic examination scheduled and conducted. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

842 Criminal case no. 015270918001, instituted under Article 162<sup>1</sup>.1 of the Criminal Code of Georgia. The following investigative actions have been carried out: witness interrogation; crime scene investigation; examination of relevant video recordings; forensic and tratology examinations scheduled; relevant information requested. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

843 Criminal case no. 037150918001. The following investigative actions have been carried out: witness interrogation; crime scene investigation; forensic, tratology and biological examinations scheduled; D.J. was charged under Article 156.2.a) of the Criminal Code of Georgia (persecution with violence and threat of violence) and Roman Pashurishvili was given a victim’s status. Trial is pending before the Mtskheta District Court.

844 Criminal case no. 041190918004. The following investigative actions have been carried out: witness interrogation; examination of relevant video recordings; forensic examination scheduled and conducted; phonoscopic and habitoscopic examinations have been scheduled and their results are not out at this stage. Imeda Saghinadze and Amiran Kopaleishvili have been charged with Article 126.1<sup>1</sup>.b) of the Criminal Code of Georgia. Giorgi Ukleba has been given a victim’s status. Investigation is pending.

845 Criminal case no. 008271118011, instituted under Article 126.1 of the Criminal Code of Georgia. Witnesses were interrogated. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

846 Criminal case no. 008281118003, instituted under Article 126.1 of the Criminal Code of Georgia. Witnesses were interrogated. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

847 Criminal case no. 028291018001; investigative acts were carried out, Gula Bairamov was charged under Article 120 of the Criminal Code of Georgia and Aliosha Guliglli was recognized as a victim. Trial is pending before the Gori District Court.

The Public Defender of Georgia observes that the principles of the rule of law require that a timely and effective investigation be conducted in order to identify the offenders and measures must be taken against them as stipulated by law. The incidents that take place during the electoral period and their investigation should not lose their urgency after the elections are over. Investigative authorities should meticulously examine and investigate all alleged criminal acts in order to enforce the law, as to not give the impression to society that individuals can act with impunity. Moreover, an effective investigation contributes considerably to preventing such incidents in the future. Therefore, the Public Defender calls upon the law-enforcement to promptly investigate all alleged criminal activities, to examine possible political motives in each incident and make the results of the investigation conducted available to the general public.

### 20.3. INCIDENTS OF ALLEGED BRIBING VOTERS

After the results of the first round of the presidential elections were published, the authorities announced various social and infrastructural programs.<sup>848</sup> The statements made during the pre-election campaign concerning these programs negatively affected the establishment of an equal and fair electoral process. This gave rise to legitimate grievances among the public that the ruling party, with the use of administrative resources, unfairly attempted to gain an advantage for their candidates, by promising to implement certain programs.

Several days before the second round of elections, the ruling party announced their intention to write-off outstanding bank loans.<sup>849</sup> This initiative was viewed by national and international observer organizations to contain elements of vote bribing.<sup>850</sup> According to the International Election Observation Mission,<sup>851</sup> the announcement of a series of social and financial initiatives, in particular, the debt forgiveness program and the involvement of senior state officials from the ruling party in the campaign, continued to blur the line between the state and the party.<sup>852</sup>

The Office of the Prosecutor of Georgia, informed the Public Defender's Office<sup>853</sup> that no crimes have been identified regarding this incident. However, the issue is under consideration. According to the agency, the data circulated publicly concerning the said program was examined and the respective documents and information were requested from the Central Election Commission of Georgia. An examination and legal analysis showed that the debt write-off program of approximately €1.5 billion debt for 600,000 citizens of Georgia did not intend to support any candidate in the presidential elections of Georgia. It applies equally to any citizen of Georgia, irrespective of their party affiliation and support to any candidate in the elections.

According to the Public Defender, the initiative at stake is objectively associated with the ruling party and that prior to the second round of the elections, openly supported one of the presidential candidates and actively

848 Programmes announced after the results of the first round of the presidential elections were published, for instance: Socially vulnerable children up to 16 years of age and families with children will receive allowances increased five times; available at: <https://ces.to/OkB1UJ>; **salaries of military officials, officers of border police and coast guard will be increased**; available at: <https://ces.to/26GjYF>; **socially vulnerable persons will maintain allowances in case of getting employed**; available at: <https://ces.to/Ctj7dH>.

849 The Cartu Foundation will fully cover the bank loans for approximately 600,000 persons being on the so-called Black List; available at: <http://netgazeti.ge/news/320491/>, (accessed 22.01.2019).

850 See the statement jointly made by the following organisations: International Society for Fair Elections and Democracy (ISFED), Georgian Young Lawyers' Organisation (GYLA), and Transparency International Georgia (TI); available at: <http://old.isfed.ge/main/1447/geo/>; see also the final report of the ODIHR Election Observation Mission, p. 27, available at: <https://ces.to/vt64ta>.

851 Available at: <https://www.osce.org/odihr/elections/georgia/404642?download=true>, p. 1.

852 Under Article 5.4 of the 1990 Copenhagen Document of OSCE, there should be a clear separation between the state and political parties. Under ILB 1.1, of the 2016 Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes of the European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), "The legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate."

853 Letter no. 04-11/926, of the Office of the Public Defender of Georgia, dated 24/01/2019.

participated in her election campaign as well. The close cooperation between the supported candidate and the Georgian Dream – Democratic Georgia party was not questioned before the second round of the elections. Therefore, for an objective observer, the initiatives voiced by the ruling party were perceived as an attempt to gain additional votes in favor of the preferred candidate. Accordingly, considering the situation, while the efforts or the decision regarding the large-scale initiatives might have been made by the government well before the election period, voicing such information in an active election period is perceived negatively in the process of ensuring an equal and fair electoral environment and ensuring voters' free will.

Furthermore, it is noteworthy that under Article 164<sup>1</sup> of the Criminal Code of Georgia: *offering, promising, handing over or providing directly or indirectly money, securities (including financial instruments), other property, title in property, services or any other advantage, or knowingly accepting such offering, or entering into fraudulent, sham or other transactions to avoid statutory restrictions for election purposes* constitutes vote buying. Therefore, establishing by the competent authorities whether the act amounts to vote buying, inter alia, requires an examination and assessment of the electoral objectives as well. Besides, it is possible to bribe voters directly and indirectly. The Public Defender shares the above assessment of the national and international observation organizations and calls upon the prosecutor's office to institute an investigation into the alleged vote buying incident, conduct timely investigative actions and ensure that the public is informed of the progress of the investigation and its final outcome.

Apart from the above incident, the Public Defender, with the help of public sources, obtained information about facts that could be potentially linked with vote-bribing. In particular, we were informed by the State Audit Office that<sup>854</sup> the office is conducting an inquiry into an alleged vote-bribing incident in favor of presidential candidate Salome Zurbishvili.<sup>855</sup> In particular, the local population were given food and certain sums. Reportedly, in case of the victory of Salome Zurbishvili, they would be given additional food products.

The State Audit Office also started an inquiry into the United National Movement's initiative – People v. Ivanishvili. According to the initiative, the party planned to reimburse the damages incurred to the population from the banking sector during the rule of the Georgian Dream as well as introducing a two-year moratorium on the payment of debts owed to banks and microfinance organizations if they were victorious. Within the project, the party offered cooperation to citizens finding themselves in dire economic and legal situations. On June 27, 2018, representatives of the United National Movement awarded 100 citizens living in Zugdidi with "guarantee certificates".

Stemming from the scale of the issue and amount of the sum, it was decided to send the case files to the Office of the Prosecutor General of Georgia. According to the Office of the Prosecutor General of Georgia, an investigation has been launched into alleged vote-bribing under Article 1164<sup>1</sup> of the Criminal Code of Georgia.<sup>856</sup>

The Office of the Prosecutor General of Georgia informed us that the investigation under Article 164<sup>1</sup> of the Criminal Code of Georgia had been instituted on alleged vote-bribery on Election Day and subsequently was conducted on 8 criminal cases in total. Investigations have been conducted on these criminal cases. However, nobody has been charged or recognized as a victim at this stage.<sup>857</sup>

An investigation has not been initiated regarding alleged vote-bribery in Tbilisi, at polling station No. 56 in

854 Letter no. 001065/10 of the State Audit Office, dated 05/02/2019.

855 Available at: <http://rustavi2.ge/ka/news/119021>, (accessed 18.01.2019).

856 Criminal case no. 083091118801; witnesses have been interrogated nobody has been charged or recognised as a victim at this stage. Investigation is pending; Letter no. 13/10816 of the Office of the Prosecutor General of Georgia, dated 14 February 2019.

857 Letter no. 13/10816 of the Office of the Prosecutor General of Georgia, dated 14 February 2019. Furthermore, according to the agency, in order to receive full information concerning alleged voter-bribery near polling stations nos. 18 and 19 in Khelvachauri Electoral Region, the investigative unit of the prosecutor's office of the Autonomous Republic of Ajara summoned several times the author of the briefing aired on 28 October 2018, at 14:18 by TV Company Rustavi 2 and the head of the faction of the United National Movement at the Khelvachauri Municipality *Sakrebulo*, Mirdat Kamadadze. However, the latter failed to appear before the investigative body and give respective information. The issue is subject to further examination and investigation has not instituted at this stage.

Samgori.<sup>858</sup> However, the agency has not explained the reason why.

It is noteworthy that the Office of the Prosecutor General and State Audit Office supplied contradictory information to the Public Defender's Office.<sup>859</sup> In particular, the Office of the Prosecutor General informed us that the investigation has not begun regarding the dispersal of food products to IDP settlements by representatives of the Georgian Dream and Veterans' Council in Zugdidi or allegations of money being given to pensioners in Kutaisi to gain their support for presidential candidate Salome Zurbishvili. According to the Office of the Prosecutor General, the issue is being examined by the State Audit Office. However, according to the State Audit Office, they have not been informed about these incidents.<sup>860</sup> In particular, they have not been asked to conduct an inquiry or to submit information confirming these incidents.

The Public Defender maintains that all the incidents indicated above concerning alleged voter-bribery should be comprehensively examined by competent authorities. In cases where illegal acts are confirmed, all statutory measures should be applied to those responsible. Furthermore, the public should be informed concerning the progress in the examination of each incident and their results. Specifically, law-enforcement authorities should explain the factual and legal grounds as to why an investigation was not initiated in each case.

#### 20.4. PROTECTION OF PERSONAL DATA AND IMPACT ON THE WILL OF VOTERS

On polling day, it was reported that near polling stations, coordinators of electoral subjects and political parties had voter lists with photographs which enabled them to identify citizens and process their personal data. The Public Defender considers that such a practice could intimidate citizens and negatively reflect on the expression of free will, which is impermissible and infringes on basic principles such as the prohibition of restricting free expression of the will of voters and the impermissibility of any influence restricting the free expression of voters' will.<sup>861</sup> We were informed by the Office of the Inspector of Personal Data Protection<sup>862</sup> regarding this issue. As the examination revealed, there were no adequate organizational and technical measures taken by the Electoral Administration to secure the personal data when processing the uniform list of voters with photographs. This gives rise to the risk of illegal/accidental processing of the data.<sup>863</sup> Under the Inspector's decision No. G-1/072/2019 of March 1, 2019, the Electoral

858 Reportedly, there were incidents of voter-bribery in Tbilisi, at polling station no. 56 in Samgori. In particular, there were coordinators mobilised in the yard, who, according to an observer of the NGO Georgian Young Lawyers' Association (GYLA), would allegedly give money to voters leaving the polling station; available at: <https://ces.to/KDrofn>. Reportedly, observers of the NGO Transparency International Georgia (TI) revealed several alleged incidents of handing out money near polling stations nos. 2, 10, 20, and 32 of Dmanisi Electoral Region no. 24; at polling stations nos. 32 and 12 of Isani Electoral Region no. 5; and polling station no. 2 of Gurjaani Electoral Region no. 12; available at: <https://ces.to/CzSEKt>.

859 Information supplied in Letter no. 13/10816 of the Office of the Prosecutor General of Georgia, dated 14 February 2019 and Letter no. 001065/10 of the State Audit Office, dated 5 February 2019.

860 According to various sources and allegations made by the head of the opposition group of the United National Movement at the Khelvachauri Municipality *Sakrebulo*, Mirdat Kamadadze, near polling stations nos. 18 and 19, coordinators of the political party Georgian Dream – Democratic Georgia had lists indicating sums to be handed out to voters; in Zugdidi, representatives of the Georgian Dream and Veterans' Council handed out food to residents of IDPs compact settlements. Food was given only to those IDPs that according to the previously drafted lists had promised their vote to the campaigner of the ruling party and given them their IDs; in Kutaisi, in return to voting in favour of Salome Zurbishvili, a presidential candidate, representatives of the political party Georgian Dream – Democratic Georgia gave certain sums to pensioners; coordinators of this party also promised locals to have their bank loans paid off. In Tbilisi, near polling station no. 56, in Samgori, there were coordinators mobilised in the yard, who, according to an observer of the NGO Georgian Young Lawyers' Association (GYLA), would allegedly give money to voters leaving the polling station.

861 See Article 3.d.b) of the Election Code, also Article 7.7 of the 1990 Copenhagen Document, available at: <https://www.osce.org/odihr/elections/14304?download=true>.

862 Letter no. 6 19 00000891 of the Office of the Personal Data Protection Inspector, dated 06/03/2019.

863 In particular, the Head of the Data Management Division of the Department of Forming Voters' Lists and IT of the Electoral Commission hands over the public version of the uniform list of voters to the competent subjects as determined by law. Only the head of the said unit has access to the uniform lists of voters. Besides, the data is stored in an official stationery computer secured by the username and password assigned to the same official. The examination showed that the Electoral Administration does not register the actions ("logs" carried out with regard to the electronic data (the public version of the voters' list with photographs) stored in the above-mentioned stationary computer. Accordingly, it is not controlled as to who, when, for what purpose and what actions carried out regarding this data. Therefore, the Electoral Administration of Georgia violated Article 17 of the Law of Georgia on Personal Data Protection; in particular, the Electoral Administration has not taken adequate organisational and technical measures to ensure the safety of the data.



Administration of Georgia was declared as having committed an administrative violation under Article 46.1 of the Law of Georgia on Personal Data Protection and was given a reprimand as an administrative penalty. Furthermore, the Electoral Administration of Georgia was ordered to ensure the introduction of a mechanism that logs the activities that are carried out regarding the electronic data of the public version of the uniform list of voters, no later than 30 April 2019.

The incident where it was found that supporter lists were collected also amounted to use of administrative resources and was viewed as impacting the free will of voters.<sup>864</sup> In several regions, municipal officials obliged directors and employees of Non-Entrepreneurial (Non-Commercial) Legal Entities funded by the state budget to mobilize Salome Zurabishvili's supporters and send the lists of potential supporters to various individuals. According to the information source, employees of Non-Entrepreneurial (Non-Commercial) Legal Entities were supposed to enter their relatives' data (name, surname, personal number, number of the polling station and relationship) into previously prepared forms. According to the information at our disposal, this fact is being investigated by the Personal Data Protection Inspector.

The Public Defender's Office expressed its interest in the alleged coercion of the population to take an oath on bread in Gardabani.<sup>865</sup> According to a source, taking an oath on bread would ensure voting for Salome Zurabishvili, a presidential candidate, as such a ritual is equated with taking an oath on the Koran and therefore citizens are compelled to fulfil the oath. In addition, Jeikhun Narzalov, a journalist, was reportedly contacted by phone by Gardabani's Deputy Mayor's son, who threatened to get even with him should the information be leaked. According to the Office of the Prosecutor General of Georgia,<sup>866</sup> on November 23, 2018, an investigation was opened into the illegal interference of a journalist's<sup>867</sup> professional activity.

## 20.5. ALLEGED FALSIFICATION OF ELECTORAL BALLOT PAPERS

Media outlets circulated information<sup>868</sup> about how commission members added extra ballot papers to the boxes at several polling stations,<sup>869</sup> breaches of suffrage secrecy were reported<sup>870</sup> and attempts of voting with forged IDs.<sup>871</sup> We were informed by the Office of the Prosecutor General of Georgia<sup>872</sup> that an investigation had been opened regarding breaches of ballot secrecy and election fraud.<sup>873</sup> A timely and effective investigation will be most important for enforcing the rule of law and preventing such criminal acts in the future.

In Marneuli, the vote counting process ended with a physical altercation at polling station no. 59 in the village of Imiri.<sup>874</sup> According to the information at our disposal, an investigation is ongoing into an incident of

864 Available at: <https://ces.to/NXOOKS>, (accessed 23.01.2019).

865 Available at: <http://rustavi2.ge/ka/news/118450>, (accessed 10.11.2018).

866 Letter no. 13/92266 of the Office of the Prosecutor General of Georgia, dated 7 December 2018.

867 Criminal case no. 021231118002, instituted under Article 154.2 of the Criminal Code of Georgia.

868 Available at: <https://ces.to/SKInUU>, (accessed 18.12.2018).

869 Polling stations nos.44 and 24 in Dmanisi and polling station no. 14 in Senaki.

870 Abasha polling station.

871 Polling station no. 4 in Senaki.

872 Letter no. 13/133 of the Office of the Prosecutor General of Georgia, dated 3 January 2019.

873 Criminal case no. 074261218802 instituted under Article 164 (Breach of the secrecy of the ballot, miscounting of votes or incorrect summing up of votes) and Article 164<sup>3</sup> (Electoral fraud) of the Criminal Code of Georgia.

874 Minutes no. 17167/18 drawn by the Public Defender's Office, see also the link: <http://netgazeti.ge/news/324724/>; Salome Zurabishvili received 394 votes and Grigol Vashadze received 400 votes at the polling station. According to an observer, Jeihun Karayev, he requested a copy of the final minutes which was refused by the Head of the District Election Commission, Davit Nazghaidze. The latter called police and officers escorted Jeihun Karayev and opposition representatives outside the polling station, where the representatives of the ruling and opposition parties confronted each other. According to the representatives of the united opposition – Jeihun Karayev and Givi Kvelidze, police physically assaulted them and other representatives of the opposition. During the altercation, a representative of an observing organisation, the Public Movement – Multinational Georgia was injured. Reportedly, ballot box was stolen and eventually, the results were falsified in favour of Salome Zurabishvili. According to Givi Kvelidze and Jeihun Karayev, the Deputy Head of the Marneuli Municipality's *Sakrebulo*, Mamuka Naverian was actively involved in rigging the election data.

premeditated hooliganism committed by a group.<sup>875</sup> However, it is important to examine and assess within the investigation the possible reasons behind the altercation, which, according to reports, was related to the possible falsification of the counting results.

## 20.6. TRANSPARENCY OF FINANCES

The Public Defender's Office expressed its interest<sup>876</sup> in the activities carried out by the State Audit Office during the election period.<sup>877</sup> This very agency is vested with the power to monitor the financial activities of citizens' political associations within the competences determined by the Organic Law of Georgia on the Elections Code and the Organic Law of Georgia on Citizens' Political Associations.<sup>878</sup>

The interim reports of the State Audit Office<sup>879</sup> show that several illegal donations were made on behalf of presidential candidate Salome Zurabishvili. These incidents were documented in official reports and the case-files containing the violations were forwarded to the Tbilisi City Court.<sup>880</sup> Illegal donations were also made to benefit the United National Movement<sup>881</sup> and European Georgia political parties.<sup>882</sup> These incidents were also documented in reports and case-files which were forwarded to the Tbilisi City Court.

During the election period, there was great public interest in the legality of donations made in favor of independent candidate Salome Zurabishvili by employees of Chachava Clinic and Gudushauri National Medication Centre in early October. According to the above reports, the State Audit Office is conducting an inquiry into this case.<sup>883</sup> It is imperative that the State Audit Office studies this case promptly and informs the public about the inquiry's outcome.

The social media monitoring results are noteworthy. According to the results, the use of social media to fund political campaigns was particularly acute during the election period.<sup>884</sup> The Public Defender deems it necessary that the expenses incurred in this regard should be transparent and in compliance with the requirements of the legislation on elections.

875 Letter no. 13/6568 of the Office of the Prosecutor General of Georgia, dated 30/01/2019; Criminal case no. 031291118001, instituted under Article 239.2.a). The following investigative acts were conducted in the case: interviewing witnesses, relevant video recording requested, product examination was scheduled and conducted. Nobody has been charged or recognised as a victim at this stage. Investigation is pending.

876 Letter no. 04-11/57, dated 08/01/2019.

877 The State Audit Office finalised administrative proceedings in 9 cases, based on complaints and retrieved information and the examination of 2 issues is still pending; Letter no. 000505/09 of the State Audit Office, dated 21/01/2019.

878 Article 6.2 of the Organic Law of Georgia on State Audit.

879 Interim reports of monitoring on financial activities of the 2018 presidential elections, available at: <https://ces.to/LKNI8F>, <https://ces.to/SMxiOE>.

880 The Alliance of Patriots of Georgia printed GEL 15,295 worth of agitation brochures in favour of an independent candidate, Salome Zurabishvili. This was considered to be a donation in favour of Salome Zurabishvili; the cost of renting an office for organising activities carried out by movement No to Nazism for the amount of GEL 8,160 considered to be a donation in favour of Salome Zurabishvili; transportation costs of voters organised by movement No to Nazism for the amount of GEL 9,200 in total, considered to be a donation in favour of Salome Zurabishvili; the costs of activities carried out by movement I protect Freedom in support to Salome Zurabishvili amounted to GEL16,400 and was considered to be a donation in favour of Salome Zurabishvili; the agitation posts published on a Facebook page the costs of which amounted to GEL 99,585 was considered to be a donation in favour of Salome Zurabishvili.

881 The donation of AutoHause – Rustavi 2011 LTD for the amount of GEL 30,000; Use of 2 offices rented in Telavi and Gori (GEL 6,720) by Christian-Conservative Party; Lasha Tsutskiridze's donation of GEL 10,000.

882 Movement Free Georgia rented 17 offices for use by the European Georgia (GEL 51,737); Natia Mildiani's donation of GEL 10,000; Nikoloz Dalakishvili's donation of GEL 2 000.

883 The Organic Law of Georgia on Citizens' Political Associations, Article 34<sup>2</sup>.2.

884 In terms of monitoring of social media, see reports by NGO International Society for Fair Elections and Democracy (ISFED); available at: <https://ces.to/mxm52D>, <https://ces.to/QaEatZ>, (accessed 23.01.2019).

## 20.7. MEDIA ENVIRONMENT

Monitoring conducted by various international and local organizations during both rounds of the 2018 presidential elections confirmed that the media environment during the pre-election period was pluralist. However, it was acutely polarized.<sup>885</sup> Against this background, it is particularly problematic that the Public Broadcaster revealed bias against the opposition candidate<sup>886</sup> in violation of its statutory obligations.<sup>887</sup>

During the pre-election period, significant criticism was directed at a position<sup>888</sup> taken by the National Commission of Communications, which regulates activities in the field of broadcasting. One letter the commission sent to the broadcasters on September 25, 2018 is noteworthy. According to the letter, the broadcasters were asked to remove their broadcasts net advertisements against the candidate supported by the Georgian Dream.<sup>889</sup> According to the correspondence, the video clips were in breach of the legislation in force.<sup>890</sup> The National Commission of Communications later explained that the letter was not its legal act<sup>891</sup> and therefore bore no mandatory force. However, the civic sector is considered to be posing threat to freedom of expression.<sup>892</sup> In December 2018, the commission declared five broadcasters to be in breach for placing similar advertisements against Salome Zurabishvili and Grigol Vashadze.<sup>893</sup>

The Public Defender shares the opinion of several NGOs, pointing out that opinions made regarding politicians are protected by higher standards of freedom of expression which serves open debates of political issues in a democratic society. Besides, the opinion of the OSCE/ODIHR should be borne in mind, as media outlets should not be liable for the content of political advertisements that they air unless the content was previously ruled unlawful by a court or includes statements that constitute direct incitement to violence.<sup>894</sup>

During the second round of the elections, there were two reported incidents involving violence against journalists from the online portal on.ge<sup>895</sup> and TV Pirveli.<sup>896</sup> Investigations into both incidents have been launched under Article 126 (violence) of the Criminal Code of Georgia. According to the agency, no elements of a crime were established in the case of the on.ge's reporter and the investigation was discontinued; whereas one person was charged on December 6, 2018 for the attack on the Pirveli TV journalist.<sup>897</sup>

The information circulated on October 30, 2018, concerning closure of the information agency Imereti News

885 The final report of the OSCE/ODIHR Election Observation Mission on Presidential Election (28 October 2018 and 28 November 2018), pp. 15-18, available at: <https://bit.ly/2HEn70z>, (accessed 18.03.2019); the statement made by the international observation mission of the National Democratic Institute (NDI), available at: <https://bit.ly/2BGWUup>, (accessed 18.03.2019); International Society for Fair Elections and Democracy (ISFED), Transparency International Georgia and Georgian Young Lawyers' Association (GYLA), Assessment of the Pre-Election Environment of the Second Round of the Presidential Elections, available at: <https://bit.ly/2NhKZrK>, (accessed 18.03.2019).

886 The final report of the OSCE/ODIHR Election Observation Mission on Presidential Election (28 October 2018 and 28 November 2018), p. 28.

887 Law of Georgia on Broadcasting, Article 16.1.a).

888 NGO International Society for Fair Elections and Democracy (ISFED), the 2018 Presidential Elections, I Interim Report on Pre-Election Monitoring, 13 September 2018, p. 13, available at: <https://bit.ly/2BKaFbY>, (accessed 18.03.2019); statement by the international observation mission of the National Democratic Institute, pp. 11-12.

889 Available at: <https://bit.ly/2SZVkJ>, (accessed 18.03.2019).

890 According to the commission, one of the video ads contained an offensive statement and comparison towards the presidential candidate and the candidate was referred to as a traitor, in violation of moral norms and tarnishing the reputation. The commission considered this video clip to be unethical and therefore, inappropriate advertisement which cannot be aired under Article 63.2 of the Law of Georgia on Broadcasting.

891 Available at: <https://bit.ly/2DQijbg>, (accessed 18.03.2019).

892 The statement made by the Georgian Young Lawyers' Association (GYLA), available at: <https://bit.ly/2tBO2ID>, (accessed 18.03.2019); NGO International Society for Fair Elections and Democracy (ISFED), the 2018 Presidential Elections, II Interim Report on Pre-Election Monitoring, (9-30 September), pp. 16-17, available at: <https://bit.ly/2ScE3gh>, (accessed 18.03.2019).

893 Available at: <https://bit.ly/2T8uiEe>, <https://bit.ly/2V3Ezip>, <https://bit.ly/2SMV04G>, <https://bit.ly/2V61v0I>, <https://bit.ly/2V7vHIM>, (accessed 18.03.2019).

894 The final report of the OSCE/ODIHR Election Observation Mission on Presidential Election (28 October 2018 and 28 November 2018), p.18.

895 Available at: <https://bit.ly/2RHpvQK>, (accessed 18.03.2019).

896 Available at: <https://bit.ly/2GyoC0u>, (accessed 18.03.2019).

897 Letter no. 361961 of the Ministry of Internal Affairs of Georgia, dated 12 February 2019.

in Kutaisi, gave rise to questions.<sup>898</sup> The founder of the agency, Konstantin Tsirekidze, linked the closure to threats made by the authorities.<sup>899</sup> According to the Ministry of Internal Affairs of Georgia, while nobody reported the fact to the law-enforcement, they launched an inquiry into the issue on their own motion and interviewed various individuals.<sup>900</sup> It has not been determined yet to launch an investigation into this incident, since, according to the agency, it has not been possible to interview Konstantin Tsirekidze. The Public Defender observes that in terms of making an informed decision and considering the crucial role of the media, it is important to ensure that all incidents are followed up on with an effective and timely investigation in order to ensure a diverse media environment during the election period.

## 20.8. DISMISSAL OF DIRECTORS OF KINDERGARTENS AND SCHOOLS IN THE ELECTION PERIOD

Based on the complaints received during the election period, the Public Defender began examining the dismissal of directors of public kindergartens in Tbilisi as a result of unplanned monitoring conducted only between the first and second rounds of the 2018 presidential elections. Serious questions were raised by the objective sought by the monitoring in Zugdidi public school No. 6 conducted by the Internal Audit Department of the Ministry of Science, Culture, Science and Sport of Georgia between the first and second rounds of the presidential elections. The director of this establishment, Ia Kerzaia, in her application<sup>901</sup> filed with the Public Defender of Georgia, alleged that the inspection conducted in the school was political retribution against her. Furthermore, the former acting director of school No. 7 in Zugdidi, Natela Khorguani, in her application filed with the Public Defender of Georgia, alleged that<sup>902</sup> there was pressure against her from the Zugdidi Educational Resource Centre and linked her dismissal to the fact that in the pre-election period, she had not taken her employees to a political rally in support of Salome Zurabishvili.

According to the information supplied by the Ministry of Science, Culture, Science and Sport of Georgia,<sup>903</sup> the agency, based on citizens' applications, conducted eight inspections in total in 2018. Out of these inspections, in 5 cases, the inspections were carried out between the first and second rounds of the presidential elections and one of them was the inspection conducted in Zugdidi public school No. 6. Additionally, an order about the inspection during the election period was issued on four occasions on the day a respective application was filed or the next day (in one occasion the date cannot be established); on three other occasions (non-election period), there is an average of a one-month period between the registration of an application regarding inspection and issuing an order concerning the inspection.

The Public Defender deems it impermissible to use the mechanism of inspecting educational establishments for political purposes. Therefore, it is imperative that the prosecutor's office promptly investigates events related to the inspection of Zugdidi public school No. 6 in November 2018.

According to the information supplied by the Non-Entrepreneurial (Non-Commercial) legal entity Kindergarten Management Agency of Tbilisi, there were 644 planned and unplanned inspections conducted in kindergartens in 2018 in total. The number of planned inspections was four times more than that of unplanned inspections (planned inspections were conducted 511 times and unplanned inspections 133 times).<sup>904</sup>

898 Available at: <https://bit.ly/2RHr1Mm>, (accessed 18.03.2019).

899 Available at: <https://bit.ly/2FmzHQJ>, (accessed 18.03.2019).

900 Letter no. 361961 of the Ministry of Internal Affairs of Georgia, dated 12 February 2019.

901 Application no. 16557/18, dated 27.11.2018.

902 Application no. 1315/19, dated 04.02.2019.

903 Documents received from the Ministry of Education, Science, Culture and Sport of Georgia by the Office of the Public Defender of Georgia during the proceedings.

904 Letter no. 66-01190453008 of the Non-entrepreneurial (non-commercial) Legal Entity Kindergarten Management Agency of Tbilisi, dated 14 February 2019.

In November of 2018 (the period between the first and second rounds of the presidential election 01.11.2018-16.11.2018), and December 2018, only unplanned inspections were conducted in Tbilisi kindergartens, whereas in the previous months, the number of planned inspections had been at least twice as frequent as the number of non-planned inspections (sometimes, even ten times higher). **It is noteworthy that based on the violations identified as a result of the 644 inspections conducted in 2018, only in November 2018, were 7 kindergarten directors dismissed as a result of unplanned inspections conducted between the first and second rounds of presidential elections.** On six occasions, an inspection and dismissal took place on the same day. This is suspicious, as the inspection results have not been assessed properly and decisions were not reached after a comprehensive examination of the circumstances. Therefore, they could have been serving an ulterior reason.

The suspicion expressed above is further reinforced by the application filed with the Public Defender of Georgia by A.J., the former director of public kindergarten No. 131. According to the application, the purpose of the inspection conducted on November 7, 2018 was to dismiss directors appointed by the previous authorities. The information supplied by the Non-entrepreneurial (non-commercial) Legal Entity Kindergarten Management Agency of Tbilisi shows that the violations revealed by the inspection conducted in kindergarten No. 131 on November 7, 2018 have been revealed in numerous other public kindergartens too. However, directors of other kindergartens have not been dismissed for similar violations during the non-election period.

In their application filed with the Public Defender, T.S., the manager of Vejini kindergarten in the Gurjaani District, also alleged that their dismissal was based on having a different political viewpoint. According to the application, the inspection conducted by the association of pre-school establishments of Gurjaani during the election period (06.11.2018) was retribution against T.S. who had been appointed to this position by the previous authorities. According to the information supplied by the association of pre-school establishments of Gurjaani,<sup>905</sup> in 2018, kindergartens were inspected 41 times in total, 5 of which were un-planned. **The results of all inspections conducted in 2018 reveal that only the manager of the Vejini kindergarten was dismissed.** The objectivity of the association of pre-school establishments of Gurjaani is further questioned by the following circumstances: according to the information supplied by the association, the planned inspection conducted in Gurjaani kindergartens Nos. 2 and 3, as well as the Bakurtsikhe kindergarten, did not reveal any violations in food facilities (among others, there have been no violations in Gurjaani kindergarten No. 3); whereas, within 2 months after the said inspections, the Kakheti division for food safety stopped the production process in the listed kindergartens on account of the situation existing in the proximity of food products stored in food facilities.<sup>906</sup>

The Public Defender of Georgia welcomes responsible oversight over hygiene, nutrition, children's health and safety, architectural standards, educational methodology, and the introduction and implementation of inclusive approaches. However, the Public Defender maintains that these activities should be aimed at maintaining the paramount interests of children and should not give rise to misgivings regarding retribution against certain individuals.

## RECOMMENDATIONS

### To the Office of the Prosecutor General of Georgia

- Institute an investigation concerning the writing-off of citizens' debts and inform the public about the investigation and its progress periodically every six months.
- Inform the public every six months about the investigation and its progress on all criminal activities

<sup>905</sup> Letter no. 31 of the Association of Pre-School Establishments of Gurjaani, dated 18 February 2019.

<sup>906</sup> Available at: <https://ces.to/Ooo8jS>, (accessed 21.02.2019).

(involving violence, rigging, bribery, obstruction of journalistic activity), as well as concerning the inspection conducted in school No. 6 of Zugdidi and;

- Regarding the investigation and its progress on all criminal activities (involving violence, rigging, bribery, obstruction of journalistic activity), to provide reasoning in the annual parliamentary report submitted based on Article 68 of the Organic Law of Georgia on the Prosecutor's Office and Article 172 of the Rules of the Parliament of Georgia.

**To the Central Election Commission of Georgia, to the Interagency Commission for Free and fair Elections:**

- In order to facilitate a healthy electoral process and to offer to political parties a memorandum of understanding concerning the ban on hate speech during the electoral period in order to ensure hate speech is uniformly understood and all stakeholders refrain from its use.

**To the Central Election Commission of Georgia:**

- To plan and conduct an educational campaign on electoral rights, including the existing leverages to ensure secret ballot for fully informing citizens and raising their awareness.

**To the State Audit Office:**

- To examine in a timely fashion all incidents involving the alleged cases of illegal donations and voter-bribery discussed in the present chapter; based on the examination outcomes, to take measures in accordance with law and inform the public about the aforementioned.

## 21. RIGHT TO PROTECT CULTURAL HERITAGE

Cultural heritage is based on the spiritual, cultural and social development of a person and is a powerful tool to advance socioeconomic conditions in the country. Pursuant to the Constitution of Georgia,<sup>907</sup> the right to protect cultural heritage falls under the scope of social rights, which requires active role of the state in protecting cultural heritage and the establishment of effective mechanisms to accomplish this. In addition, Georgia took on several international obligations<sup>908</sup> in this direction, which are included within the framework of the EU-Georgia Association Agreement and Association Agenda.<sup>909</sup>

Similar to previous years, issues pertaining to the realization of the right to cultural heritage are still acute and necessitate that effective steps be taken by the government for their resolution. The Public Defender believes it is essential to create effective legislative guarantees for the protection of cultural heritage. In addition, it is important for the government to plan and coordinate results-oriented actions in order to protect cultural heritage in private ownership. It is furthermore necessary to complete the registry of the monuments and to plan and implement the appropriate measures for their rehabilitation.

### 21.1. GAPS IN LEGISLATIVE GUARANTEES

The various aspects of the protection of cultural heritage require the appropriate legislative safeguards. The Draft Code on Cultural and Natural Heritage has not yet taken place. As early as in 2017, the Office of the Public Defender of Georgia was informed about work undertaken toward the establishment of the draft Code on Cultural and Natural Heritage at the National Agency for Cultural Heritage Preservation of Georgia.<sup>910</sup> The Public Defender believes that the establishment of a unified, complex and effective legislative basis carries particular significance and expresses its hope that the Code will be initiated/adopted in 2019.

According to the existing regulations, the authority to issue a permit as it relates to efforts to protect the cultural heritage of Tbilisi is fully delegated to the Tbilisi municipality.<sup>911</sup> In the view of the Public Defender and considering the public interest in the protection of cultural heritage, it is necessary to provide a legislative

907 Constitution of Georgia, Article 5 (6) and Article 20.

908 For example: UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), Council of Europe Convention for the Protection of the Architectural Heritage of Europe (1985) Convention for the Protection of the Archaeological Heritage of Europe (revised 1992), UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003); UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005); COE Convention on the Value of Cultural Heritage for Society (2005) and others.

909 Articles 362 and 363 of Chapter 17 of 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; Pursuant to the EU-Georgia Association Agenda, parties shall promote the implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005; they shall cooperate in order to foster cultural diversity, and preserve and valorise cultural and historical heritage; fostering participation of the culture sector in cultural cooperation programmes is also envisaged.

910 Letter №09/513 of the LEPL National Agency for Cultural Heritage Preservation of Georgia of February 22, 2018, See the Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, p.189.

911 Article 2 of the Decree №137 of the Government of Georgia of March 26, 2015 on Activities Related To the Issuing of Permits to Undertake Work on Cultural Heritage Monuments and Archeological Works; Administrative treaty on delegating authority to the Tbilisi Municipality by the Ministry of Culture and Monument Protection of Georgia.

basis for the involvement of the National Agency for Cultural Heritage Preservation of Georgia while issuing permits for the activities in the protected areas.<sup>912</sup>

The Public Defender also views it necessary to clearly segregate competences in the legislation between the Agency and the municipality when illegal work is undertaken on cultural heritage sites, together with the active participation of the National Agency for Cultural Heritage Preservation of Georgia.<sup>913</sup>

## 21.2. CARE AND MAINTENANCE OF MONUMENTS IN PRIVATE OWNERSHIP

The Office of the Public Defender of Georgia<sup>914</sup> is concerned with the effectiveness of the activities undertaken to rehabilitate residential buildings with the status of the cultural heritage in dire conditions. An initial outline shall be made to the general character of the legislative provisions. Pursuant to the Law of Georgia on Cultural Heritage,<sup>915</sup> the **ministry**<sup>916</sup> bears the responsibility of overseeing the care of cultural heritage throughout the country. Furthermore, the **owner of an immovable monument** is obligated to protect the immovable monument in their ownership and to pay for the maintenance of such a monument's care. The competence of the **LEPL National Agency for Cultural Heritage Preservation** includes the methodical expertise of research and rehabilitation work undertaken on the monument/sites, preparation of documents for the protection and conservation of the monuments; providing recommendations and the development of projects on the topics related to the research and rehabilitation of monuments and sites.<sup>917</sup> The function of the **Tbilisi Municipal Department for Infrastructure Development**<sup>918</sup> is to ensure the rehabilitation of buildings-monuments in general, to monitor buildings in emergency situation, to restore and reconstruct, as well as to strengthen the work. The **Tbilisi Development Fund's** objective is to support the preservation of the historic appearance of Tbilisi and increase the value of immovable property.<sup>919</sup>

Materials<sup>920</sup> obtained by the Office of the Public Defender of Georgia illustrate that the response to the dire conditions of cultural heritage monuments in private ownership by the Ministry of Culture and Monument Protection and LEPL National Agency of Cultural Heritage Preservation is limited to the exchange of citizen's appeals among the authorities and forwarding them to Tbilisi Development Fund.<sup>921</sup> At the same time,

912 Study of one of the cases by the Public Defender revealed that archeological layers of the cultural heritage were destroyed in the framework of the construction permit issued without the involvement of the Agency. Namely, The construction of a residential building next to the Shamkaretsi church caused the destruction of archaeological and cultural layers of the historical district. The sustainability of the residual wall of the Armenian Church was also threatened; Letter №09/2243 of the LEPL National Agency for Cultural Heritage Preservation of Georgia of June 18, 2018.

913 Public Defender addressed the LEPL National Agency for Cultural Heritage Preservation of Georgia and Tbilisi City Hall, to consider the need to clearly separate competences between the Agency and the municipality while performing illegal work on cultural heritage monuments during legislative drafting process with active participation of the Agency. Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, p.193. It is noteworthy to mention, that the Parliament of Georgia shared this recommendation. See Decree of the Parliament of Georgia on the Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017. See the link: <https://ces.to/xt6N6> [last visited on: 13.03.2019].

914 Individual applications at different stages, for example: Application №7683/16 (2016) on critical condition of the cultural heritage monument located on №15/12 Chonkadze Str, Tbilisi; Application №8525/18 (2018) on critical condition of the cultural heritage monument located on №37 Nino Chkheidze Str, Tbilisi.

915 Article 6 (1, "j") and Article 25 (2, "a") of the Law of Georgia on Cultural Heritage.

916 Ministry of Education, Science, Culture and Sport of Georgia.

917 Statute of the LEPL National Agency for Cultural Heritage Preservation of Georgia adopted by the Decree №05/11 of the Minister in 2015.

918 Article 2 (2, "a" and "b") of the Decree №10-15 of the Tbilisi City Assembly of January 16, 2018 on the adoption of the Statute of the Tbilisi Municipal Department for Infrastructure Development.

919 Statute of the Fund, see the link: <https://ces.to/7PCk10> [last visited on: 13.03.2019].

920 For example: Letter №05/08-2638 of the Minister of Culture and Monument Protection of Georgia of June 10, 2016 and Letter №05/08-2626 of June 9, 2016 respectively, Letter №0/05/09/29 of the LEPL National Agency for Cultural Heritage Preservation of February 18, 2014, Letter №13/09/1508 of July 28, 2015, Letter №13/15/1404 of July 11, 2016 and Letter №09/2744 of July 18, 2018 respectively.

921 Letter №14-01182643441 of the Tbilisi Municipal Department for Infrastructure Development of September 21, 2018; It turns out, that the mentioned agency refers the individual applications to the Tbilisi Development Fund.



residential houses with cultural heritage status are not falling under the priority areas of the activities of the Tbilisi Development Fund.<sup>922</sup>

Consequently, many agencies have been informed about the need to rehabilitate residential buildings with cultural heritage status. However, no effective steps are being taken for their rehabilitation, which further aggravates the difficult situation of the monuments. This, in certain cases, accelerates the destruction process of residential houses with cultural heritage status<sup>923</sup> and monuments are no longer subject to restoration.<sup>924</sup>

The Public Defender believes it is necessary to **clearly regulate competences and obligations between state authorities** in an effort to care and maintain cultural heritage monuments (including those owned privately). This includes and is not limited to the increase of the state role and responsibility in this domain, as well as planning coordinated, effective and results-oriented activities.

Interpretations provided by the Constitutional Court of Georgia concerning state responsibilities in relation to cultural heritage monuments are worth mentioning. According to the Court, each citizen and state bears responsibility for taking care of and protecting cultural heritage. The state obligation primarily envisages the care and maintenance duties of existing material cultural values. The court considers that the state is obliged to prevent and/or eradicate damage caused to the cultural heritage as far as possible.<sup>925</sup> Furthermore, the court directly points out that if the person cannot take care of the cultural heritage in their ownership or possession due to lack of resources, the state is obligated to take all necessary measures required for the preservation of the monument.

### 21.3. MONUMENTS BELONGING TO RELIGIOUS CONFESSIONS

The Public Defender welcomes the decision of the Constitutional Court of Georgia to abolish the provision of the Law of Georgia on the Protection of Cultural Heritage, according to which religious confessions are free from the responsibility to take care and maintain cultural heritage monuments under their ownership (possession) without due justification.<sup>926</sup> The Public Defender has underlined this exceptional rule as problematic for a number of years and required the introduction of legislative amendments to ensure equal treatment of every owner.<sup>927</sup> Based on the decision of the Constitutional Court,<sup>928</sup> currently the responsibility to take care of and to maintain monuments prescribed by the Law of Georgia on the Protection of Cultural

922 According to the agency, the priorities of the Fund are not related to organizing work on individual buildings, including the sites with the status of immovable cultural heritage monuments; Priorities of the Fund include rehabilitation of large areas in old Tbilisi, restoration of historical and cultural heritage monuments along the big touristic routes and their surroundings; Rehabilitation of historical entrances and museums; Development of recreational zones; for example: Letter №01-479 of Tbilisi Development Fund of May 22, 2017 and №01-726 of June 9, 2016 respectively.

923 Joint application №8525/18 of June 4, 2018 on №37 Nino Chkheidze Str, Tbilisi.

924 Forensic Engineering Conclusion №003702214 of Levan Samkharauli National Forensic Bureau of July 21, 2014.

925 Decision of the Constitutional Court of Georgia on the case №2/6/1216 of July 27, 2018. Decision can be retrieved from the following webpage <https://ces.to/6TZGZZ>. According to Article 34 (2) of the Constitution in force at that time, every citizen of Georgia shall be obliged to protect and preserve their cultural heritage; The State shall protect cultural heritage by law; According to Article 20 (4) of the current Constitution, Everyone has the right to take care of protecting cultural heritage. Cultural heritage shall be protected by law." The Court does not question the state's obligations towards cultural heritage and explains that considering the constitutional norm merely as a norm-principle toward the protection of cultural heritage shall be excluded. By recognizing the protection of the cultural heritage as a basic human right, the Constitution of Georgia has unequivocally pointed out that cultural heritage is a public value carrying particular significance, the protection of which cannot be allocated to the good will of the state.

926 Article 30 (8) of the Law of Georgia on Protection of Cultural Heritage.

927 For more see the Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2015, pp. 568-569; Report for 2016, pp. 503-504; Report for 2017, p. 189 respectively.

928 Constitutional Court ruled that the disputed provision violated right to equality before the law (Article 14 of the Constitution) and right to protection of cultural heritage (Article 34 (2) of the Constitution) and declared words "this Article and" of the Article 30 (8) of the Law on Protection of Cultural Heritage as unconstitutional. Decision of the Constitutional Court can be retrieved from the following web-page: <<https://ces.to/6TZGZZ>>;

Heritage is extended to everyone, including religious confessions.<sup>929</sup> The Public Defender believes it necessary to implement this legal guarantee in practice in an unimpeded and effective manner.

## 21.4. DATABASE OF MONUMENTS/SITES

The National Agency for Cultural Heritage Preservation informed the Office of the Public Defender of Georgia about the incentivization outcomes of monuments/sites in the Truso Gorge, Kazbegi Municipality.<sup>930</sup> It is noteworthy that only six monuments with cultural heritage status were recorded in the mentioned valley. However, as a result of the incentivization, 33 monuments/sites, including 7 previously unknown monuments were registered. Currently, all pertinent documentation is prepared and the cultural heritage database is updated step by step. This information reaffirms the fact that the existing cultural heritage database does not fully reflect reality and needs to be updated and refined. The Public Defender calls on the agency to carry out timely incentivization and the proactive planning of the necessary rehabilitation activities of the monuments across the country.

The Public Defender is particularly concerned with the fact that the investigation into the damage and destruction of the ancient Sakdrisi-Kachagiani gold mine has been ongoing since 2014 without any tangible results. Additionally, the investigation into the destruction of archaeological sites during the construction of Ruisi-Rikoti road has yet to be finalized.<sup>931</sup>

### PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To elaborate and initiate regulations to facilitate the maintenance and development of privately owned monuments/sites, through a clear separation of the competences and responsibilities of the authorities and by strengthening the state's role in relation to such monuments.

#### To the Government of Georgia:

- To ensure the elaboration of the Code of Cultural and Natural Heritage on time and its submission to the Parliament of Georgia;
- To introduce amendments into Decree №137 of the Government of Georgia of March 26, 2015 on Activities Related to Issuing Permits to Undertake Work on Cultural Heritage Monuments and Archeological Work and to ensure the involvement of the National Agency for Cultural Heritage Preservation while issuing such permits in Tbilisi.

#### Prosecutors Office of Georgia:

- To inform the public biannually on the progress of the investigation into the damage and destruction of the ancient Sakdrisi-Kachagiani gold mine and on the destruction of archaeological sites during the construction of Ruisi-Rikoti road.

929 Edition of Article 30 (8) of the Law of Georgia on Cultural Heritage before the Decision of the Constitutional Court: this article [Responsibility of the owner (legitimate user) of cultural proper] and Article 32 of this Law do not apply to cultural properties in the ownership (use) determined by Article 7 (1) of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia and in the ownership of other religious confessions.; Current edition of the mentioned provision as a result of the Decision of the Constitutional Court: Article 32 of this Law do not apply to cultural properties in the ownership (use) determined by Article 7 (1) of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia and in the ownership of other religious confessions.”

930 Letter №09/274 of the LEPL National Agency for Cultural Heritage Preservation of 30/01/2019; Public Defender of Georgia addressed the Ministry of Education, Science, Culture and Sports of Georgia and requested undertaking timely measures to improve database of monuments of cultural heritage and other sites; she also requested planning of monitoring and rehabilitation work of cultural heritage monuments. See the Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017, p. 193.

931 Letters №13/8882 and №13/8879 (07/02/2019) of the Prosecutor's Office of Georgia.

## 22. HUMAN RIGHTS EDUCATION

Pursuant to Article 3 (3) of the Organic Law of Georgia on Public Defender of Georgia, the Public Defender of Georgia shall carry out educational activities with regard to human rights and freedoms. Unit responsible for human Rights education was established at the Office of the Public Defender of Georgia in 2016, aiming at raising human rights awareness through monitoring human rights education. Since 2018, Department became responsible on active supervision of formal human rights education process and elaboration of relevant recommendations. In coming years, Office of the Public Defender of Georgia plans to conduct monitoring of human rights education at preschool, school, higher and vocational educational institutions. To this end, development of special reports and recommendations/proposals are planned on different topics, as well as the examination of individual applications.

Following challenges were identified as a result of the analysis of a number of regulations, and study of the human rights teaching and educational environment<sup>932</sup> at general educational institutions during the reporting period: Inadequate and non-institutional reflection of human rights education at all stages of formal education in relevant policy documents; gaps in legislation to provide human rights education<sup>933</sup>; Ineffective implementation of obligations under the legislation and sub-legislative acts governing specific areas of formal education.<sup>934</sup>

### 22.1. STATE POLICY IN THE FIELD OF HUMAN RIGHTS EDUCATION

Pursuant to the Education and Science Strategy for 2017-2021 Development of civil consciousness and human rights education is considered as a strategic priority of the country. These issues are discussed in the subchapter regarding all levels of education, except for the vocational education.<sup>935</sup> National Human Rights Strategy perceives human rights education as a preventive measure.<sup>936</sup> However, there is no such information in the Government Action Plan of the Education and Science Strategy and issues related to human rights education (eg. gender equality, tolerance, equality, etc.) are not systematically referred to there.<sup>937</sup>

UN Declaration on Human Rights Education and Training obliges states and relevant governmental bodies to promote human rights education and training through the adoption of relevant legislation and policies as

932 Survey on Human Rights Education and Educational Environment in General Education Space, 2018; the survey can be retrieved from the following web-page: < <https://goo.gl/ZahJoi> > [last visited on 24/01/2019].

933 For example, the instructions and behavioral norms (where the mandatory character of human rights education and subsequent competences shall be documented) of individuals involved in the preschool educational process are not defined by a number of municipalities; Also, ethical standards and rules of behavior of persons involved on the level of general education do not foresee the requirement of theoretical knowledge and practical skills in human rights; Furthermore, regulatory norms of cooperation between school and civil society organizations limit the process of civil activism at general educational institutions.

934 For example: civil educational issues are not properly introduced at early and preschool educational institutions, principle of continued human rights education is violated on the general educational level and etc.

935 Decree №533 of the Government of Georgia of December 7, 2017 on the adoption of the Education and Science Strategy of Georgia 2017-2021, Annex 1, P.3

936 Decree N2315-IIb of the Parliament of Georgia of April 30, 2014 on the adoption of the National Human Rights Strategy of Georgia (2014-2020), chapter “Human Rights Principles”.

937 Decree №182 of the Government of Georgia of April 17, 2018 on the adoption of Human Rights Action Plan, target 12.11., target 12.14., target 12.15., target 12.16., target 16.1.4, target 16.1.5., target 18.1.1., target 18.1.4.

well as application of administrative measures.<sup>938</sup> This is also underlined by the World Programme for Human Rights Education, which calls upon its member states to reflect human rights education progressively either in a unified human rights strategy or a separate document in the form of a plan of action for human rights education,<sup>939</sup> for which to guiding documents have been elaborated.<sup>940</sup>

Activities facilitating human rights /civic education are reflected in an inconsistent manner in the mid-term action plan of the Ministry of Education, Science, Culture and Sports of Georgia for 2019-2022.<sup>941</sup> Human Rights are only addressed in relation to pre-school and general educational levels and only in the form of professional development of teachers.<sup>942</sup> Other requirements (material resources, extracurricular activities, etc.) necessary for the effective implementation of human rights education are not provided in this document. The document fails to say anything about human rights education and training at the vocational and higher educational levels.

## 22.2. ANALYSIS OF NATIONAL LEGISLATION

Early and pre-school education in Georgia is regulated by the Law of Georgia on Early and Pre-school Education, which defines the basic obligations of the state in the field. The education of children and teachers is regulated by various sub-normative acts.<sup>943</sup>

According to the Order on the approval of the Training-Module for Professional Education of Teachers, a separate thematic component is dedicated to the rights of children.<sup>944</sup> Attending the content of such trainings is mandatory.<sup>945</sup> The professional educational framework of a teacher also foresees coaching on methods to educate children on citizenship related issues.<sup>946</sup>

In order to create an environment conducive to human rights at pre-school institutions, equipment of representatives of administration and other staff with appropriate knowledge and skills about human rights carries particular significance. General Comment of the UN Committee on the Rights of the Child focuses on the necessity to possess knowledge about children's rights and states that everyone working with and for children shall have knowledge of the Convention.<sup>947</sup> Municipalities define the qualification requirements of the principals of the municipal kindergartens, the official instructions of the personnel and the codes of conduct. Out of the 64 municipalities on the territories controlled by Georgia, 13 municipalities adopted qualification

938 UN Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly, 9 December 2011, N66/137, Article 17 (1). Declaration can be retrieved from the following web-page: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/467/04/PDF/N1146704.pdf?OpenElement>> [last visited on 23.01.2019].

939 World Programme for Human Rights Education - National action plans/strategies for human rights education, Document can be retrieved from the following web-page: <<https://www.ohchr.org/EN/Issues/Education/Training/WPHRE/FirstPhase/Pages/NationalActionsPlans.aspx>> [last visited on 24/01/2019].

940 Guidelines for National Plans of Action for Human Rights Education; Document can be retrieved from the following web-page <[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/GuidelinesforNationalPlansofActionforHumanRightsEducation\(1997\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/GuidelinesforNationalPlansofActionforHumanRightsEducation(1997).aspx)> [last visited on 24/01/2019].

941 Document can be retrieved from the following web-page <<http://mes.gov.ge/publicInfo/wp-content/uploads/2013/12/საშუალო-ვადაიანი-სამოქმედო-გეგმა.pdf>> [last visited on 24/01/2019].

942 Ibid, p 46. 2.2.7 Action

943 Decree 488 of the Government of Georgia of October 30, 2017 on adoption of state standards for pre-school and general education; Decree №478 of the Government of Georgia of October 27, 2017 on the adoption of professional qualification standards of teachers; Order №192/6 of the Minister of Education and Science of Georgia of December 12, 2017 on the adoption of framework document of professional education programmes of teachers; Order №97/6 of the Minister of Education and Science of Georgia of June 29, 2018 on the adoption of the training module of professional development of teachers.

944 Ibid, Annex №1, Session 13.2.

945 Please, refer to the Decree №478 of the Government of Georgia of October 27, 2017 on the adoption of professional qualification standards of teachers, Article 4 (a.a.)

946 Order №192/6 of the Minister of Education and Science of Georgia of December 12, 2017 on the adoption of framework document of professional education programmes of teachers, annex №-2, module 22.

947 General Comment of the UN Committee on the Right of the Child, 69, p. 16. The document can be retrieved from the following web-page: <<https://www.refworld.org/docid/4538834f11.html>> [last visited on 24.01.2019].

requirements of the principals of pre-school and public educational institutions. This document provides for the possibility to include knowledge of human rights among mandatory qualification requirements too. As to the professional standards set for the teachers and other personnel at the pre-school and public educational institutions, 11 municipalities have not elaborated documents where qualification requirements could also foresee human rights knowledge as provided by the rest 53 municipalities.

## General Education

### *Standards, ethics and rules of conduct of individuals involved in the educational process*

Standards of the principals of public schools, which define theoretical knowledge and practical skills necessary for the fulfillment of relevant obligations by the principal, do not foresee human rights topics.<sup>948</sup> However, human rights competencies are of particular significance for these individuals, as they are obliged to protect human rights and establish non-discriminatory environment pursuant to the code of ethics and rules of conduct.<sup>949</sup>

General part of the professional standard of the teacher also fails to consider knowledge and skills in the human rights sphere, however they provide the requirement of the teacher's knowledge and skills regarding intercultural learning and inclusive education<sup>950</sup>. Subject-wise, requirement to possess knowledge and skills in human rights is reflected in the standards of teachers of social sciences. Such a wording indicates that competence in human rights is exclusively required for teachers of social sciences, which contradicts existing international standards.<sup>951</sup>

Pursuant to the code of ethic of pupils, a pupil shall express his/her views in a manner which does not violate rights of others.<sup>952</sup> It is necessary to underline that pupils are under an obligation to abstain from the abuse of others in any form and shall inform the school administration in case such malpractices take place. The acuteness of this problem was revealed by the study conducted by the Public Defender, which indicates that the practice of abuse and mockery<sup>953</sup> are widely disseminated and pupils decide not to inform administration about such cases<sup>954</sup>.

### *Hindering factors of civic activism at general education institutions*

Analysis of research outcomes conducted at general educational institutions revealed that conditions of facilitating civic activities are not provided at a significantly high number of schools (29%).<sup>955</sup>

To this end, it is important to simplify the norms regulating cooperation between schools and civil society organizations, while considering European regulations and best practices.<sup>956</sup> In spite of the fact that the law

948 Articles 9 and 10 of the Order №115/Б, of the Minister of Education and Science of Georgia of November 30, 2010 on Standards of a Principal of a Public School.

949 Article 3 of the Order №80/Б, of the Minister of Education and Science of Georgia of August 30, 2010 on Code of Ethics of the Principal of a Public School.

950 Article 6 of the Order №1014 of the Minister of Education and Science of November 21, 2008 on Professional Standard of a Teacher.

951 UN World Programme for Human Rights Education calls upon states to integrate principles of human rights education in training programmes of teachers and school personnel. See Action Plan, WPHRE, p. 4, Par. 5. Document can be retrieved from the following web-page: <<https://unesdoc.unesco.org/ark:/48223/pf0000147853>> [last visited on 24.01.2019].

952 Article 7 (3) of the Order №79/Б of the Minister of Education and Science of Georgia on the Code of Conduct of the Pupil

953 Survey on Human Rights Education and Educational Environment in General Education Space, 2018, p. 61.

954 Ibid, p 50.

955 Ibid, p. 41.

956 Inter alia, European Commission, Communication on school development and excellent teaching for a great start in life Brussels 2017, pp. 17-18, 20-22. To be retrieved from the following web-page: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COMP%3A2017%3A248%3AFIN>> [last visited on 24/01/2019]. Council of Europe, Committee of Ministers, Recommendation No. R (85)7, Par 4.1, P. 3. To be retrieved from the following web-page: <<https://rm.coe.int/16804c2d48>>

grants general educational institutions administrative and financial autonomy<sup>957</sup>, the Order №837 of the Minister of Education and Science of November 12, 2010 sets out the obligation to issue an authorization to conduct lectures, seminars or trainings at public schools.<sup>958</sup> The Act does not include terms and criteria which shall be met in order to discuss requests and to obtain a permit. In the absence of such a rule, the Ministry may be guided by the rules provided in the General Administrative Code of Georgia and to consider the application within a maximum of 3 months period. Therefore, absence of criteria and rigid timeframes might significantly impede cooperation between civil organizations and schools. To avoid this, it is necessary that the schools are expanded with the decision making mandate and provided with the autonomy to cooperate with the society without any unreasonable impediments.

### 22.3. PRINCIPLE OF CONTINUES HUMAN RIGHTS EDUCATION

Principles of continues human rights education is enshrined in international documents and legislative framework of Georgia.<sup>959</sup> For students attending III-X grades the principle is ensured through mandatory classes: „Society and I“, „Our Georgia“, „Civil Education“. <sup>960</sup> Nevertheless, implementation of the principle of continuity in practice is still linked to a number of important problems.

National Curriculum for Primary and Basic Education compiles a list of selective educational courses.<sup>961</sup> The programmes of such courses are regulated by the Order №36 on the adoption of national curriculum of March 11, 2011.<sup>962</sup> Analysis of the documents reveal that continuity of human rights education at XI-XII grades is ensured by the legislation through the selective course - „State and Law“. Nevertheless, pursuant to the information provided by the Ministry, there are no textbooks approved according to the rules in this subject. It is of particular concern that no one has addressed the Ministry yet to agree the textbook<sup>963</sup> in accordance with the rules of approval as stated in the Order of the Minister of Education and Science of Georgia.<sup>964</sup> In case the textbook has not been approved in accordance with established rules, the teacher of the subject himself/herself looks for or develops other teaching materials (printed and/or digital) in accordance with the national curriculum, which will assist students to reach objectives foreseen by the programme.<sup>965</sup>

These facts require particular attention in situations, when “State and Law” as a subject in 2017-2018 was selected by 367 schools out of 2313, whereas this number has decreased to 358 in the year of 2018-2019.<sup>966</sup> Analysis of the statistical data shows that only 6% of students attending X-XII grades joined the course of “State and Law” within the mentioned period.<sup>967</sup>

The reality illustrates that without the approved textbook, achieving results set for the subject are under question. In the similar context, providing schools that have opted for the “State and Law” course with additional literature is necessary.

957 Article 3 (2, “f”) of the Law of Georgia on General Education.

958 Para 2 of the Order №837 of the Minister of Education and Science of November 12, 2010 on conducting lectures, seminars and trainings by natural and legal persons at public educational institutions

959 Resolution adopted by the Human Rights Council 16/1 United Nations Declaration on Human Rights Education and Training, 08.04.2011. Article 70 of the Annex adopted based on Article 1 of the Order №40/5 of the Minister of Education and Science of May 18, 2016 on the National Educational Curriculum.

960 Ibid. Article 49 (1).

961 Ibid, Article 70.

962 Chapter LXXVIII of the Order №36 of March 11, 2011 on adoption of National Teaching Curriculum. See also Article 2 (“f”) of the Order №40/5, of the Minister of Education and Science of Georgia.

963 Letter MES31900041676 of the Ministry of Education, Science, Culture and Sports of Georgia of 17/01/2019.

964 Article 14 (5) of the Rules Approved by Article 1 of the Order 28/5 of February 16, 2017 of the Minister of Education and Science of Georgia on Adopting Rules of Approval of Textbooks of General Educational Institutions.

965 Ibid

966 Letter MES 91900010676 of the Ministry of Education, Science, Culture and Sports of Georgia of 08/01/2019.

967 Ibid, also see Letter MES31900041676 of the Ministry of Education, Science, Culture and Sports of Georgia of 17/01/2019.

Teaching Year	Number of Pupils at the XI-XII grades	Number of pupils choosing the course "State and Law"	%
2017-2018	80 122	7976	9.9
2018-2019	78 501	7506	9.6

## 22.4. COMPONENT OF HUMAN RIGHTS EDUCATION IN THE TRAINING PROGRAMME OF TEACHERS

Within the framework of the research conducted by the Public Defender, we have studied issues related to the education of teachers in human rights at higher educational institutions, level of their knowledge on the human rights topic and protection mechanisms, as well as professional development possibilities of the teachers. The research demonstrates that level of awareness of teachers on human rights is average or below average. This is due to two main factors: low level of integration of human rights teaching at educational programmes of teachers at higher educational establishments and scarce possibilities of their professional development.<sup>968</sup>

Gaps in terms of human rights education and training are revealed in the higher educational programme of teachers, which foresees requirements determined by sectoral characteristics. The programme is developed in a manner that provides students with the knowledge of the teaching process and enables them to successfully perform teaching practice through integration of such skills in the content of the course. However, requirement of human rights knowledge is not foreseen in the Order<sup>969</sup> of the Director of the National Center for Educational Quality Enhancement on Sectoral Characteristics of Teachers Educational Programme.

For the reporting purposes, the Office of the Public Defender also analyzed all programmes of the higher educational institutions with relevant authorization in Georgia. Out of 55 authorized educational institutions,<sup>970</sup> 19 higher educational establishments have academic programmes of teachers in different forms and at different levels.<sup>971</sup> The analyzed data allows to conclude that the study of human rights as a separate discipline is a rare practice at pedagogical faculties and future teachers acquaint themselves to the topics related to human rights through different subjects.<sup>972</sup>

## RECOMMENDATIONS

### To the Ministry of Education, Science, Culture and Sports of Georgia

- To develop unified strategy and action plan on human rights education in accordance with international guiding principles and best practices of other countries
- To introduce amendments to the Order of the Minister of Education and Science on the adoption of the standards of the principals of public schools in order to foresee human rights knowledge and skills as a necessary requirement

968 Survey on Human Rights Education and Educational Environment in General Education Space, 2018; see footnote 24, p. 32.

969 Order №69 of the Director of the National Center for Educational Quality Enhancement of February 11, 2016 to amend the Order №923 of the Director of the National Center for Educational Quality Enhancement of October 24, 2011 on sectoral characteristics of teachers educational programme. see [https://www.eqe.ge/res/docs/69\\_mascavleblismomzadeba.pdf](https://www.eqe.ge/res/docs/69_mascavleblismomzadeba.pdf) [last visited on 04/03/2019].

970 This number does not include orthodox theological educational institutions.

971 See programmes <http://mes.gov.ge/content.php?id=1855&lang=geo> [last visited on 24/12/2018].

972 „Education and Rights of Children“, see programme of Tbilisi State University in Pedagogy [minor] <https://bit.ly/2SwF6wN> [last visited on 24/12/2018]. „Teaching Global Citizenship in Social Sciences“ see integrated bachelor-master programme of the Ilia State University. <https://bit.ly/2tjpbmb> [last visited on 24/12/2018]. „Basics in multicultural education“. see <https://bit.ly/2WZgZ8c> [last visited on 24/12/2018].

- To foresee the requirement of the basic knowledge of human rights (particularly rights of a child) in standards determined for teachers of the general educational system
- To introduce an amendment into the Order №79/6 of the Minister of Education and Science of Georgia on the Code of Conduct of the Pupil and to set the obligation of the student to abstain from the abuse of others and to inform relevant individuals if such cases occur
- To abolish the Order №837 of the Minister of Education and Science of November 12, 2010 on conducting lectures, seminars and trainings by natural and legal persons at public educational institutions and to determine a new rule clearly defining conditions of issuing authorization for such actions, their rules, terms and criteria
- To develop a textbook on “State and Law” for students and teachers and other literature
- To carry out active measures to popularize “State and Law “courses at schools.

**To Municipalities of Dedoplistkharo, Khoni, Chiatura, Signagi, Zestaponi, Lagodekhi, Lanchkhuti, Tkibuli, Kazbegi, Mtskheta, Khashuri, Kaspi and Tianeti**

- To elaborate and adopt qualification criteria of principals of pre-school and general public institutions, which will foresee the requirements of the human rights knowledge and skills (with particular emphasis on rights of the child).

**To Municipalities of Akhaltsikhe, Dedoplistkharo, Zestaponi, Zugdidi, Lagodekhi, Lanchkhuti, Signagi, Tkibuli, Kazbegi, Chiatura and Khoni:**

- To elaborate and adopt professional standards of teachers and other personnel at pre-school and general public institutions, which will foresee the requirements of the human rights knowledge and skills (with particular emphasis on rights of the child).

**To the LEPL National Center For Educational Quality Enhancement:**

- To introduce amendments into the Order of the Director of the National Center for Educational Quality Enhancement on sectoral characteristics of educational programme of teachers, which will envisage human rights related knowledge and values in the sectoral characteristics of the program.



## 23. RIGHTS OF THE CHILD

Steps taken towards the protection of the rights of child in 2018 are insufficient and do not respond to systemic and persisting challenges that require effective and timely measures on the part of the state.

The practice of the Public Defender makes it clear that the ineffective state policy in the area of protection of child's rights led the state's child care system to crisis. The state does not allocate sufficient resources to sustain and enhance systemic changes undertaken in this sphere. While the indicator of child withdrawal from biological family, due to poverty, remains high, the state lacks a vision for the empowerment of families in crisis. Existing programs fail to offer needs-tailored support. The reintegration subprogram of the State Social Rehabilitation and Child Care Program is deeply flawed. The state care for children in boarding houses of religious denominations remains a problem, etc.

Despite repeated recommendations of the Public Defender, the concept of rehabilitation of child victims of sexual violence, as well as the corresponding service have not been created yet. Regarding the violence against children, issues such as prevention, timely detection and adequate response to violence remain a pressing concern. The number of social workers and psychologists as well as their working conditions do not correspond to the current challenges existing in this area.

### 23.1. RIGHT TO LIFE

In order to ensure the wellbeing of children and protect their rights, the state should, within the scope of its positive obligations, undertake all necessary measures for the protection of minors' right to life.

One of the deplorable results of the inefficient child protection system in Georgia is that lives of a number of minors are at stake. Such risk-groups include children living and working on the streets, children in alternative care, child victims of domestic violence and minors living in poverty.

The case of four-year-old *N.Z.*'s death clearly demonstrates the inefficiency of the child care system and the lack of prompt respond to domestic violence and child care. According to the Ministry of Internally Displaced Persons' Issues of Georgia's internal oversight department's conclusion,<sup>973</sup> the child was in foster care since her infancy till 14 August 2018. After the necessary removal of the child from the foster family (in August 2018), *N.Z.* lived in the biological family without a legal ground as the mother had a permission to see and take the child out with her only during daytime. According to the abovementioned conclusion, authorized employees of the Social Service Agency did respond adequately to the information about violence against the child. Having received the information, a social worker consulted a police representative through only a phone call and recommended to transfer the child to a medical institution. The social worker made no further inquiries concerning the fact. The other social worker, who visited the child in the hospital did not assess the injuries and signs of violence on the body of the child as well and trusted the information provided by the allegedly offending parent in the conversation through phone call.

The study of the case by the PDO reveals that authorized employees of Social Service Agency did not undertake the measures prescribed by the law for detecting and preventing violence against child and protecting child's

<sup>973</sup> Letter №01/1834 of the internal audit of Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

safety. This case points out serious flaws existing in the response mechanism to domestic violence as well as significant and systemic problems in the performance of the Social Service Agency, which adversely affect the beneficiaries.

**23.2. RIGHTS OF CHILDREN IN ALTERNATIVE CARE**

Pursuant to the UN Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance provided by the State;<sup>974</sup> the state should ensure alternative care for such a child.

The state has not so far responded effectively to challenges in the protection of the rights of children placed in alternative state care. Violence against children, the exercise of the right to education, the provision of children with proper psychological/rehabilitation services, preparation of minors for independent living, qualification of persons engaged in child care and the shortage of human and financial resources all remain problem.<sup>975</sup>

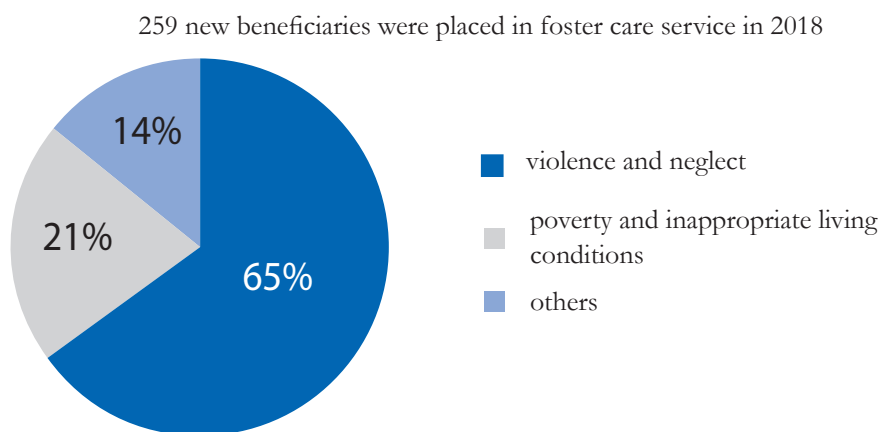
Frequent change of forms of service, experience of violence and separation from biological families are factors of stress for minors and require that minors are treated in an exceptional way and provided with high-quality services, which is not ensured properly.

**The rights of children involved in the state foster care subprogram**

The subprogram of foster care has been implemented in Georgia since 2006 and it has a crucial role in the prevention of child abandonment and the deinstitutionalization process.<sup>976</sup>

259 new cases of foster care were registered in 2018, while the total number of beneficiaries of the state subprogram comprised 1440.<sup>977</sup> Poverty and inappropriate living conditions, neglect and violence remain as the main causes of removal of minors from their biological families into the state care. In addition to this, the lack of state services oriented to empower families is still a challenge.

**Table №1: Grounds of placement of beneficiaries in foster care service in 2018.**<sup>978</sup>



974 Article 20 of the UN Convention on the Rights of the Child.  
 975 Special report of the Public Defender, Monitoring of Child Care System – Effectiveness of Alternative Care, 2019.  
 976 Foster care service standards approved under the Decree №01-238/O of the Minister of Labour, Health and Social Affairs of Georgia, 7 November 2017.  
 977 Correspondence №04/1516, 16/01/2019 of the LEPL Social Service Agency.  
 978 Correspondence №04/1516, 16/01/2019 of the LEPL Social Service Agency.

The monitoring conducted by the PDO<sup>979</sup> shows that persisting problematic areas include the provision of rehabilitation services to child victims of domestic violence and low awareness level about management and prevention of misbehavior among caregivers. Especially concerning is that the foster parents lack proper knowledge and experience that is crucial to provide a adequate care for children with disabilities. Individual development plans are of nominal nature and do not reflect the needs of children properly. Furthermore, there is no effective mechanism to prepare beneficiaries for an independent living after the withdrawal from the service.

Due to work overload and scarcity of resources, social workers often fail to pay scheduled and unscheduled visits to families, to conduct a comprehensive and regular evaluation of families, to talk with minors, thereby depriving beneficiaries of an opportunity to express their opinions and ideas about care-related issues. Such practice adversely affects the indicator of prevention and detection of violence and the protection of minors' rights and their best interests.

### The rights of children placed in the state reintegration service

The reintegration subprogram is a crucial component of the state care system as it means the return of a child placed in alternative care to his/her biological family, guardian/custodian, provided that this is in the best interest of the child.<sup>980</sup>

Some 123 new cases of reintegration were registered in 2018 while the total of 470 beneficiaries were engaged in the state subprogram.<sup>981</sup>

The results of the PDO study revealed the failure of the state reintegration subprogram to ensure the protection of child's rights and best interests. Families where the reintegration program is implemented find it difficult to properly meet the needs of minors and provide them with minimal living conditions. Problems are also indicated in supporting minors to obtain general and vocational education.<sup>982</sup>

Support of biological families which is crucial for a proper functioning of the service remains a problem. The majority of families engaged in the reintegration service cannot provide minors with adequate nutrition; therefore, a segment of them are beneficiaries of municipal soup kitchen programs, but these programs also fail to meet nutritional needs of minors.

Problems were identified in supporting minors to obtain general and vocational education, raise motivation and get non-formal education. Only 58.3% of parents say that they support children in acquiring vocational and higher education.<sup>983</sup> This is even more problematic in rural areas due to difficulties in transportation and shortage of financial means.

There are problems in identifying and preventing violence in reintegrated families by social workers due to seldom visits of social workers.<sup>984</sup> Moreover, social workers do not consider necessary to regularly monitor children living in their biological families.<sup>985</sup>

979 Special report of the Public Defender, Monitoring of Child Care System – Effectiveness of Alternative Care, 2018.

980 Ordinance №01-20/N of the Ministry of Labour, Health and Social Affairs of Georgia on Determining the Rule and Conditions of Granting, Suspending, Resuming and Terminating Reintegration Assistance and Other Relations Concerning its Issuance, dated 20 March 2014.

981 Letter N04/1516, 16/01/2019 from the LEPL Social Service Agency.

982 Special report of the Public Defender, Monitoring of Child Care System – Effectiveness of Alternative Care, 2019.

983 The number of surveyed respondents – 68.

984 One of main factors of this is work overload and scarcity of resources of the LEPL Social Service Agency.

985 Special report of the Public Defender, Monitoring of Child Care System – Effectiveness of Alternative Care, 2019.

### The rights of children in small family-type homes

The service of small family-type homes aims at raising children in the conditions approximated to family environment. This also implies identifying and meeting their needs, protecting them against violence, supervising their proper development in a safe environment oriented on interests of children.

There are 48 small family-type homes operating in Georgia, which counted 351 minors as on 31 December 2018.<sup>986</sup>

Results of the monitoring conducted by the PDO in 2018 showed that problems that remain unsolved for years in small family-type homes include the identification of child victims of violence, misbehavior and crisis management, prevention of violence, timely response to violence and provision of psycho-social assistance. Implementation of educational activities tailored to the interests of children and preparation of minors for independent living continue to be a problem too. **The country lacks an uniform approach to the protection and support of youth who have left the care system.**

A large segment of children living in small family-type homes lack motivation to obtain education; the majority of minors drops general education in order to obtain vocational education and get job. The majority of beneficiaries has no access to qualified professional assistance, rehabilitation and information educational activities. Efforts to provide vocational education are often of nominal nature. Individual interests and capabilities of a child are not always considered; nor are further steps planned to support the employment by mastered vocation.

Children often withdraw from the care absolutely unprepared for independent living and their return to the families after turning 18 may pose risks such as poverty and repeated violence. In this regard children with disabilities are especially vulnerable.

**Violence among children is a regular occurrence in a large number of small family-type homes. Situation is extremely grave in a number of small family-type homes, because children with traumatic experience, disturbing behavior and mental disorders are placed together. Especially alarming is the lack of adequate response to sexual violence among children, when efforts are not taken either timely or at all to ensure the safety of child victims and prevent them from repeated abuse.**<sup>987</sup>

Main responsibility to manage incidents of violence lies with caregivers who, in the majority of cases, lack crisis and conflict management skills and sometimes may themselves provoke such conflicts. A psychologist is not a permanent member of child care team and often gets involved in this process in cases of emergency.

### Rights of the child in boarding schools subordinated to religious denominations

Operation of boarding schools at religious confessions remains the most problematic issue in the field of child care. The problems are related to licensing of such type of boarding schools, lack of state control, large number of children enrolled at such institutions and lack of focus on individual needs of beneficiaries.

The majority of religious boarding schools are large institutions where educational conditions do not meet the requirements for the protection of child's best interests.<sup>988</sup> The state has no information about the number of religious boarding schools and children enrolled at them. In the institutions, where this data is available, the state control and monitoring mechanism is weak. LEPL Social Service Agency is virtually not involved in children's enrollment at and discharge from these institutions and does not control educational conditions and

986 Correspondence №04/1516, 16/01/2019 of the LEPL Social Service Agency.

987 Public Defender's Recommendation № 10-3/193, 10/01/2019.

988 Except for Feria and Bediani institutions of the Patriarchate of the Georgian Orthodox Church.

environment in the boarding schools. Consequently, entry and exit of the institutions is carried out without the involvement of responsible state entities, thereby leaving beneficiaries of these institutions unprotected.

Although the law prohibits the conduct of educational activity without relevant licensing<sup>989</sup> the majority of religious boarding schools operate without the license; only three institutions have a relevant permit.<sup>990</sup>

In 2018, the PDO conducted the monitoring of seven religious boarding schools.<sup>991</sup> It revealed that representatives of those institutions which operate without a license are not properly informed of mandatory licensing criteria. The majority of boarding houses visited by representatives of PDO apply a strict method of rearing and enroll a large number of minors, which does not create a family-type environment.<sup>992</sup> In a number of instances the application of ear pulling, hair pulling, putting in the corner, and bowing to minors was used as punishment.<sup>993</sup>

Due to a problem of record keeping and documenting, the boarding schools do not have information about facts of violence, measures undertaken by boarding schools in response to complaints and feedback. In a number of cases beneficiaries are isolated from the community while their freedom of expression is restricted. Given the institutional regime, they do not have a possibility to voice their protest, freely express dissenting opinions and they have to put up with existing educational conditions and severe environment.

### 23.3. RIGHT TO EDUCATION

According to the UN Convention on the Rights of the Child, the state shall ensure the availability of general and higher education.<sup>994</sup> Moreover, the document of 9 March 2017 of the Committee on the Rights of the Child, “Concluding observations on the fourth periodic report of Georgia,” calls on the state to support educational institutions and improve existing situation.<sup>995</sup>

Effective exercise of the right to education remained a challenge in the reporting period. Grave situation in kindergartens and public schools, high number of out-of-school children and the lack of efforts among responsible officials to fulfill recommendations of the Public Defender further aggravate the existing situation. The situation in terms of access to education is especially alarming in mountainous regions.<sup>996</sup>

989 According to Paragraphs 1 and 2 of Article 3 of the Law of Georgia on Licensing of Educational Activity, the rule and conditions of conducting an educational activity is defined in a relevant legal act and it is prohibited to conduct educational activity in breach of these requirements.

990 Letter №02/22509, 19.04.2018 of LEPL State Regulation Agency for Medical Activities.

991 Not-for-profit (non-commercial) legal entity “St. Nino Boarding School for Orphans, Waifs and Children in Need of Care”, the Patriarchate of the Georgian Orthodox Church; Not for-profit (non-commercial) legal entity “St. Apostle Matthias Foundation’s Boarding School in Village Feria”, the Patriarchate of the Georgian Orthodox Church; Rehabilitation Center for Children and Adolescents in Bediani, the Patriarchate of the Georgian Orthodox Church; Girls Boarding School in Village Feria, Georgian Muslims’ Association; Boys Boarding House in Village Feria, Georgian Muslims’ Association; Boys Boarding House in Kobuleti, Georgian Muslims’ Association; Boys Muslim Boarding School in village Ghorjomi, Khulo municipality. Visits were also paid to boarding schools in Stepantsminda and the village Bajiti of Sachkhere municipality, where the provision of boarding service to children was terminated at the time of monitoring.

992 As noted above, except for Feria and Bediani institutions.

993 Not-for-profit (non-commercial) legal entity “St. Nino Boarding School for Orphans, Waifs and Children in Need of Care” in Javakheti, the Patriarchate of the Georgian Orthodox Church.

994 Article 28 of UN Convention on the Rights of the Child.

995 Committee on the Rights of the Child, “Concluding observations on the fourth periodic report of Georgia”, CRC/C/GEO/CO/4, 09.03.2017. Information is available at: <https://bit.ly/2FziRhe> [last accessed on 27.02.2019].

996 It should be noted that due to closure of boarding houses, the access of children from more than 10 villages of Dusheti municipality to education has been restricted. Moreover, the need to improve infrastructure was observed in the boarding houses of Shatili, Barisakho and Magharoskari villages, which was communicated by the Public Defender to relevant entities.

## Early and preschool education

Realization of the right to early and preschool education faces serious challenges in Georgia. Even though the state standards of early and preschool education<sup>997</sup> were approved in 2017 as well as technical regulation on sanitary and hygiene norms of early and preschool care and education institutions,<sup>998</sup> requirements of these documents were not effectively met in practice in 2018 and moreover, the mandatory authorization of institutions was postponed.<sup>999</sup>

The study conducted by the PDO revealed a number of kindergartens in villages and mountainous regions falling short of minimum safety standards and reliable physical design criteria. There were kindergartens which, due to dilapidated buildings, operate in rented or inadequate buildings not meeting relevant state standards.

Relevant municipal services do not respond to needs of kindergartens in a timely manner. Despite repeated calls of the PDO, municipalities still fail to undertake proper financial and administrative measures to ensure a smooth operation of kindergartens in regions, improve infrastructure and educational environment.

In a number of kindergartens sanitary-hygienic conditions need to be improved; children sleep in wet and dilapidated rooms; there is a shortage of beds for daytime naps of smaller children, as well as of safe educational materials, new toys and visual aids; there is an insufficient number of child educational groups and children of various age are sometimes placed in one group, which hinders the delivery of quality preschool education.<sup>1000</sup>

Problems in conducting an effective educational process at kindergartens are caused by the shortage of personnel. The issue of training and retraining of personnel, caregivers and pedagogues is not regulated; similar to previous years, a mechanism for detecting possible violence is not established.

## Out-of-school children

Ensuring an effective education system and protecting the right of minors to education remains one of the serious challenges in the country. This challenge cannot be tackled successfully when there is a large number of children who are left beyond the education system for various reasons and actually represents “invisible children” for this system.

The right to education is often affected by issues such as child poverty, early marriage, violence, child labor, special needs of minors with disabilities, etc. There are problems in ensuring a coordinated activity of agencies, timely and result-oriented response to each concrete case and systemic vision of a problem. The fact that the number of out-of-school children remains high indicate the lack of sufficient efforts by the state to protect the rights of the child. The practice of the Public Defender shows that these groups of children do not represent a priority for the state.

There are 2 085 public schools in Georgia. In the 2017-2018 academic year, the number of pupils stood at 518 038 in public schools while at 57 143 in private schools. During or after the 2017-2018 academic year, the status of pupil was suspended/terminated to **10 433** children.<sup>1001</sup> This indicator is almost twice as many as in the 2016-2017 academic year, which totalled **5 713**.<sup>1002</sup>

997 Ordinance №488 of the government of Georgia on the Approval of State Standards of Early and Preschool Care and Education, 30 October 2017.

998 Ordinance №485 of the government of Georgia on the Approval of Technical Regulation on Sanitary and Hygiene Norms of Early and Preschool Care and Education Institutions, 27 October 2017.

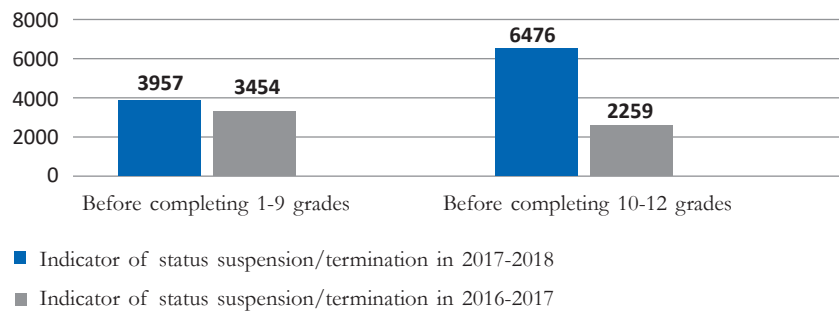
999 It was determined that each municipality shall ensure the authorization of kindergartens between 1 April 2019 and 31 December 2020.

1000 In 2018, the Public Defender issued a special recommendation to self-government bodies of Akhmeta and Gori to timely improve the existing conditions in the kindergartens. Despite measures undertaken by these municipalities, the situation remains problematic and requires systematic steps.

1001 Correspondence MES 9 19 00097446 of the Ministry of Education and Science, 31/01/2019.

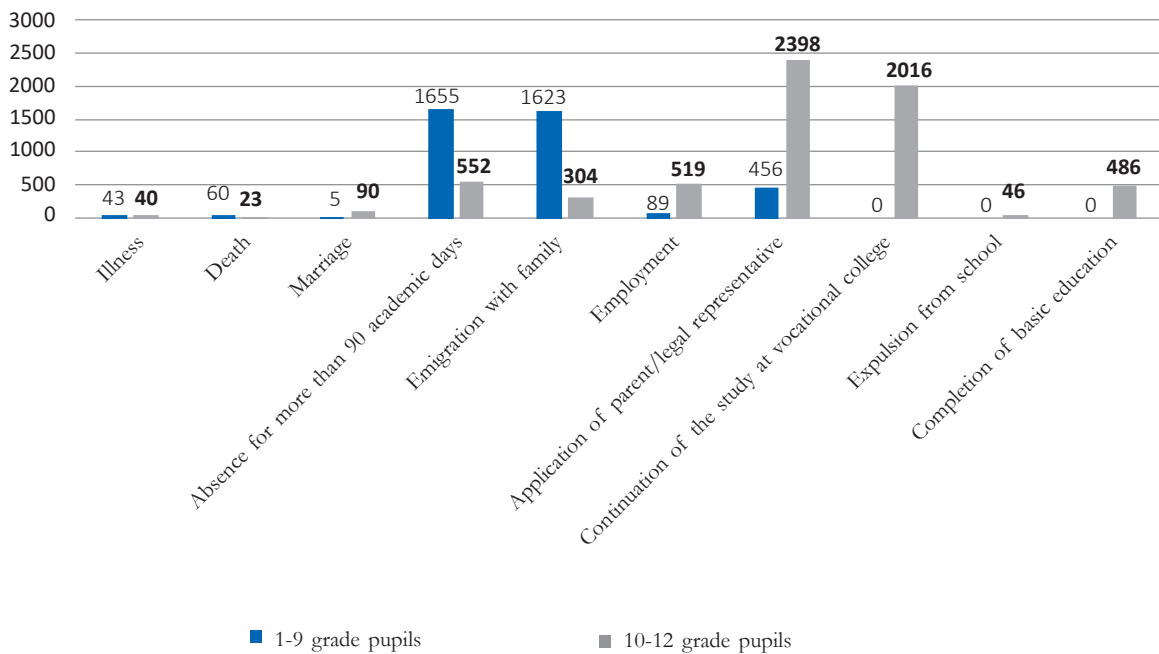
1002 Letter № MES 4 18 00286334 of the Ministry of Education and Science, 14.03.2018.

**Table №1. Indicator of suspension/termination of status of pupil.**

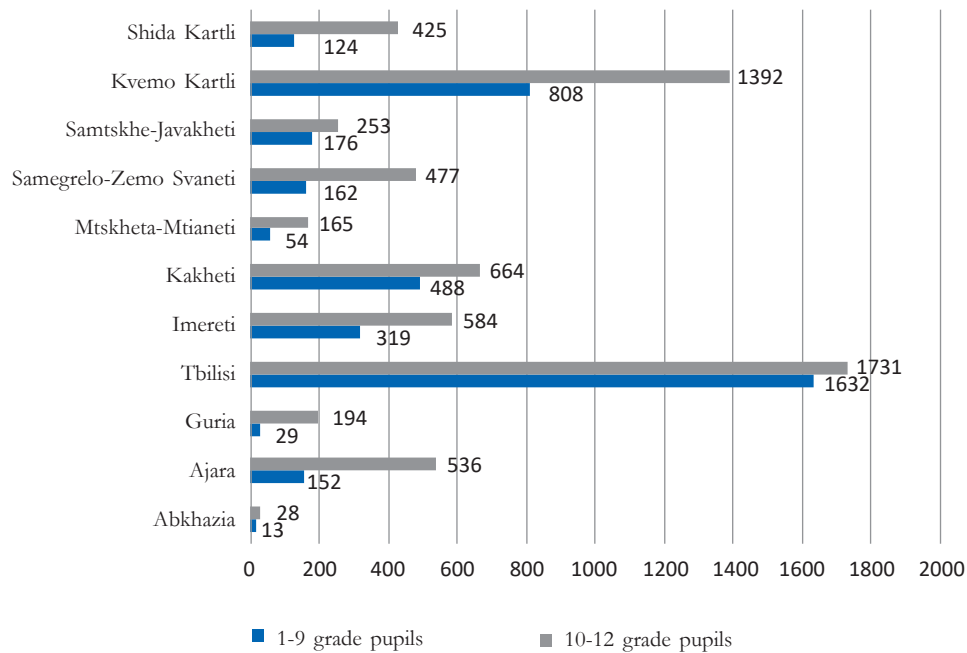


In order to fully understand the issue, to identify problems and ensure an effective response mechanism, it is extremely important to study and identify causes of school abandonment. It is worth to note that the number of those pupils whose status was suspended/terminated on the application of a parent/legal representative is high. However, schools do not keep detailed data recording and do not inquire about the causes and hence, do not study such cases thoroughly. **It is also important to study general causes of absenteeism for more than 90 academic days.** Attention should also be paid to the abandonment of school because of early marriage or work.

**Table №2. Causes of status suspension/termination in 2017-2018 academic year.**



Attention must be paid to the regions with very high pupil status suspension/termination indicators and serious problems in the protection of child's rights.

**Table №3. Indicators of status suspension/termination in 2017-2018 academic year, by regions**

Although the high indicator of school abandonment has remained a problem for years now, the referral mechanism is still weak and ineffective in the country. According to the information provided by the Ministry of Education, Science, Culture and Sport of Georgia,<sup>1003</sup> referral to responsible agencies was carried out on 96 cases of school abandonment during the 2017-2018 academic year and the first semester of 2018-2019, although there were 89 cases of school abandonment before the completion of the basic education level because of employment and 95 cases because of marriage.

The most vulnerable groups among out-of-school children are children living and working on the streets and children with disabilities.<sup>1004</sup> The reporting period indicated the enrollment at school of 37 children living and working on the streets; however, given the scale of the problem, this indicator is not adequate and requires an individual approach tailored to the needs of these children.

### Water supply, sanitation and hygiene in public schools of Georgia

The situation in terms of water supply and sanitation in public schools is especially alarming in the country. Much like in previous years, schools continue to face the problem of water shortage, properly functioning toilets and bathrooms. The study revealed lack of sanitation in toilets, delays in waste management, failure to clean toilets, obsolete infrastructure that cannot meet existing needs.

In 2018, to study the situation regarding water supply and sanitation, the PDO visited 108 public schools in six regions<sup>1005</sup> of Georgia. The results of the inspection show that physical arrangement and sanitation at public schools are not oriented on the needs of pupils and school personnel. In 71.3% of the inspected schools water is not regularly tested on safety while 77.4% of the schools do not have internal regulations on water supply and sanitation norms; hand soap was available in only 44.4% of schools, napkins in 26.9% while the flushing system operated only in 25.9% of schools.

1003 Written correspondence MES 9 19 00097446; 31/01/2019.

1004 Detailed information on the right to education of children with disabilities is provided in the chapter on the rights of PWDs.

1005 Ajara, Samegrelo-Zemo Svaneti, Kakheti, Samtskhe-Javakheti, Racha-Lechkhumi and Kvemo Svaneti, Kvemo Kartli.



### The right to education of juvenile delinquents

Juvenile delinquents placed in the juvenile rehabilitation facility №11 of the Special Penitentiary Service are enrolled at a public school and engaged in general education. However, largely because of delayed applications by minors' legal representatives for mobility to general education institutions, timely enrollment of juvenile delinquents has remained a problem. Consequently, in some cases, children, attend lessons only nominally, without officially being enrolled at school. Moreover, before the placement in the facility, a large segment of minors skipped classes or was not enrolled at school at all. Hence, they have difficulties in learning. Individual plans of serving sentences indicate that they lag behind a relevant age development, though this evaluation is made by social workers of the facility alone and children are not awarded a special education status. They do not have a special teacher either.

For the rehabilitation and resocialization of minors it is especially important to enhance support to minors and to work on increasing their motivation. Unfortunately, activities planned and carried out throughout a year are not diverse and it is not clear how tailored they are to minors' interests and needs.

Minors show interest towards vocational education which is a supportive resource for them especially after they leave the facility. However, activities specified in plans of serving sentence and records of revision thereof are largely homogenous. During the reporting period the facility organized mainly cultural, sport and informational events, such as, for example, checkers circle, chess circle, film screening, football match, readers' club, etc. It is important to plan events that are result oriented and tailored to minors' interests and needs not only in the area of formal but also informal education, offering them various vocations and engaging vocational education institutions, which is not performed at this stage. Consequently, minors have much free unorganized time, especially during holidays, and they lack motivation; all these do not ensure their proper preparation for the release.

## 23.4. POVERTY AND INADEQUATE LIVING STANDARD

Child poverty and inadequate living standard remains an unsolved problem. Despite social assistance programs, the situation in overcoming child poverty has not changed, which speaks about inefficiency of these programs. Families financially depending on social assistance are not able to meet basic needs of minors. This is further aggravated by inefficiency of social programs and delays in assistance. At the end of the day, all this fails to meet needs of socially vulnerable families.

Child poverty is closely interlinked with issues of the exercise of the child's right to education and protection against violence. Apart from failing to fully protect minors from poverty, the social protection system also fails to facilitate the elimination of problems in the abovementioned areas.

Children living and working on the streets represent especially vulnerable group. The state has not taken necessary steps in this direction. There are six day centers and six round-the-clock shelters operating in three cities, Tbilisi, Rustavi and Kutaisi, within the framework of subprogram for the provision of shelter to homeless children. In 2018, the total of 280 children received this service, though given the scale of the problem this figure indicates that needs of only a small segment of children are met.

According to information provided by the LEPL Social Service Agency,<sup>1006</sup> over the period between 2014 and 2018, mobile groups of subprogram for the provision of shelter to homeless children established contact with 1 409 homeless children in Tbilisi, Rustavi and Kutaisi. In 2018, social workers discovered 34 newborns. It should be noted that the involvement of a small segment of children living and working on the streets in the

1006 Written correspondence № 04/4986; 04/02/2019.

subprogram for the provision of shelter to homeless children does not automatically rule out that they do not continue begging or doing other jobs on streets.

In terms of poverty elimination, it is important to implement result-oriented programs on the level of municipalities, which will help families improve inadequate living conditions. Ensuring children with balanced, healthy nutrition in soup kitchens is a problem, especially considering that a large segment of poor families depend on this service.

### 23.5 CHILD LABOR

Child labor and extreme forms of its manifestation represented the most pressing issue in the reporting period, in terms of its prevention and effective response to identified cases.

Especially alarming is the fact that due to poverty and gravest socio-economic conditions, children in Georgia have to perform age-inappropriate jobs in dangerous environment. This is especially apparent in resort towns, including seaside resorts, where children perform various jobs seasonally. In such cases, the state does not conduct any control on child labor, nor does it undertake any response to it.

Involvement of social workers and patrol police in terms of responding to child labor, identifying children working as street laborers and their referral, is weak. The Public Defender highlighted this issue in parliamentary reports of previous years too. However, relevant state entities have not taken effective steps to fulfil of this positive obligation yet.

According to the LEPL Social Service Agency, in 2018, two persons were arrested for the engagement of a minor in anti-social activity and trafficking; the Agency referred 11 cases of engagement into anti-social activity and trafficking to the Ministry of Internal Affairs; also, 280 beneficiaries, all of them identified as homeless minors, used day centers and round-the-clock shelters within the framework of subprogram for the provision of shelter to homeless children.<sup>1007</sup>

There was a tragic accident of child labor in the beginning of 2019, when a 12-year-old minor died while collecting scrap metal. The study revealed that the minor lived in relative poverty, lacked educational conditions and was a victim of neglect. Because of poverty this 12-year-old minor had to perform age-inappropriate hard work, which ended in tragic accident. This case made it clear that relevant state entities must take more effective measures towards identifying cases of child labor and providing timely assistance to children and placing children in adequate services.

### 23.6. VIOLENCE AGAINST CHILDREN

Prevention, identification and effective response to violence against children is the acutest problem in the country. In this regard, one of most important areas of study of the Public Defender is a proper response of relevant entities and officials to violence as well as attitudes of society towards violence.

Prevention of early marriage remains a problem, which adversely affects the rights of the child to education, development and sexual inviolability. As the study by the PDO of this issue shows, the indicator of school abandonment because of marriage remains high whereas the level of public awareness of its illegal nature remains low.<sup>1008</sup>

<sup>1007</sup> Correspondence №04/10736, 01.03.2019.

<sup>1008</sup> Detailed information is provided in the chapter on gender equality.

## Sexual violence against minors

A problem in the protection of children against violence and provision of assistance to them is the implementation of measures by relevant entities in a timely and effective manner. A matter of particular concern is a failure to timely identify children having suffered sexual abuse, a conduct of proper psycho-social rehabilitation and proper integration of minors into educational and social environment.

In 2018, the number of infringements on sexual freedom and inviolability of children was high again. According to the information of the Interior Ministry,<sup>1009</sup> investigations were initiated into 311 alleged cases of sexual violence against minors, including 26 alleged rapes of minors, 81 alleged lewd acts and 205 alleged sexual intercourse with persons under 16. Moreover, in 2018 the Interior Ministry registered the total of 405 incidents of alleged sexual violence<sup>1010</sup> of which 156 crimes were solved.<sup>1011</sup> The mentioned indicator of sexual abuse of children is alarmingly high and requires immediate measures for effective prevention.

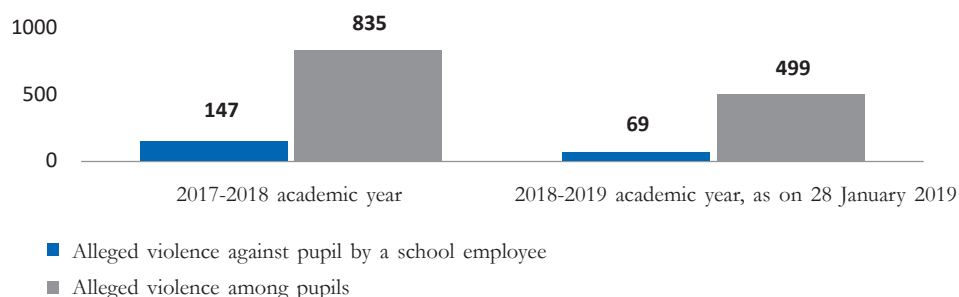
Against this backdrop, the state has not devised a concrete action plan and rehabilitation concept for the protection of children from unwelcome acts of sexual nature. Unfortunately, children often lack appropriate information about whom to address in case of violence, including acts of sexual violence.

Despite the scale of the problem, the state does not conduct awareness raising activities and campaigns in a society-friendly and especially child-friendly formats. General education institutions do not deliver relevant educational activities to raise awareness of children and ensure access to information.<sup>1012</sup> There is a need to raise qualification of professionals working with children, especially teachers and social workers to have them develop skills of detecting signs and cases of sexual violence. The number of psychologists of Social Service Agency, working with child victims in regions, is disproportionately small and not oriented on the needs.<sup>1013</sup>

## Violence in general educational institutions

General educational institutions have a special role in preventing violence against children, identifying such facts and responding to them, though this remains a serious challenge in the country. Disciplinary sanctions applied in schools and existing mechanisms of response to violence, activities of school disciplinary committees and supervisory boards are not oriented on a child as a victim of violence and on the best interests and rehabilitation of an underage offender.

**Table №5. Indicator of disciplinary proceedings in schools<sup>1014</sup>**



1009 Correspondence №MIA 2 19 00662003, 14.03.2019.

1010 Articles 137-141 of the Criminal Code of Georgia.

1011 According to the methodology applied by the Interior Ministry of Georgia - the statistics of registered and solved crimes dynamically cover a large part of criminal proceeding, from the moment of committing a crime, leveling a charge against a person to sentencing, changing the qualification, merging and separating cases, terminating the proceeding, etc.

1012 For this topic, see also a special report of the Public Defender of Georgia, Human Rights Education and Educational Environment in General Education Space. 2018. Information is available at: <https://bit.ly/2YUc2l> [last accessed on 06.07.2018].

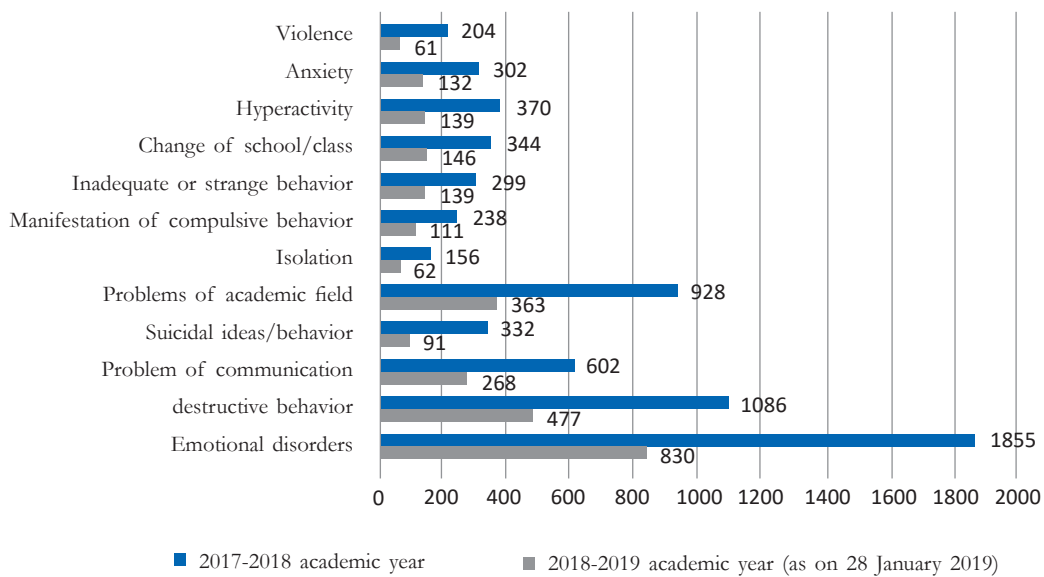
1013 Eleven psychologists nationwide.

1014 Correspondence of the Ministry of Education, Science, Culture and Sport MES 5 19 00082907, 28/01/2019.

The statistics of studied incidents indicates high level of violence against children in schools; furthermore, this indicator does not fully reflect a real picture as it is obviously difficult to timely identify facts of violence and respond to them. **In 2018, the state failed again to develop a common policy and action strategy on combating violence, particularly, bullying.**<sup>1015</sup> Therefore, response of educational institutions to violence is not homogenous, does not allow to thoroughly study the incidents and also does not enable minors to express their opinions.

According to information received from the Ministry, in the 2017-2018 academic year, through the referral mechanism, as many as 2 732 beneficiaries were directed to the Psychological Service Center of the Office of Reserve Officers and 1 203 beneficiaries in the 2018-2019 academic year (as on 28 January 2019).

**Table №6. Causes of referral to Psychological Service Center of LEPL Office of Resource Officers of Educational Institutions.**<sup>1016</sup>



Although in the above indicated period 80% of referred beneficiaries used the psychological service, the problem in the delivery of such service to beneficiaries is geographic access.<sup>1017</sup> Consequently, it is of utmost importance to enhance human resources of the psychological service at the Office of Reserve Officers in terms of and ensure geographic access to this service.

The application of referral procedure by educational institutions remains problematic. According to obtained information,<sup>1018</sup> in 2017-2018, schools referred 40 cases to the Interior Ministry and 400 cases to LEPL Social Service Agency.<sup>1019</sup> The highest share of referrals to LEPL Social Service Agency accounts for Tbilisi, Imereti and Kvemo Kartli regions; there was no referral to the Agency from Racha-Lechkhumi region. In some regions, referral is minimal and does not reflect a real picture of the scale of violence.

1015 With the ordinance №06/N of the Ministry of Education, Science, Culture and Sport, dated 29 January 2019, “The Rule and Conditions of Protecting Safety and Public Order in General Education Institutions” was approved, which is aimed at developing the rule of protecting safety and public order in general education institutions and improving conditions, assessing risks of violence and preventing violence at an early stage. Correspondence of the Ministry of Education, Science, Culture and Sport MES 5 19 00190998, 19/02/2019.  
 1016 Correspondence of the Ministry of Education, Science, Culture and Sport MES 5 19 00082907, 28/01/2019.  
 1017 Only eight psychological centers of the LEPL Office of Reserve Officers operate across the country: two in Tbilisi and one in Rustavi, Gori, Kutaisi, Batumi and Poti each. Consequently, psychological centers are not available in Guria, Racha-Lechkhumi and Samegrelo-Zemo Svaneti regions.  
 1018 Correspondence of the Ministry of Education, Science, Culture and Sport MES 5 19 00082907, 28/01/2019.  
 1019 Data received from the Ministry and the LEPL Social Service Agency (correspondence of LEPL Social Service Agency №04/7779, 15/02/19) do not tally. According to the information from the Agency, in 2017-2018 schools made 213 referrals to the Agency. The highest share of referrals to LEPL Social Service Agency accounts for Tbilisi, Kvemo Kartli, Kakheti and Shida Kartli regions.

2018

## Domestic violence

One of serious challenges is the protection of child's safety and interests in cases of domestic violence, detection of facts of domestic violence against children, identification of child victims and thereafter support of such children with relevant psycho-social services. It is important to raise awareness of society and relevant entities in the area of child protection from domestic violence, thereby facilitating timely identification of and response to violence.

According to the Interior Ministry data,<sup>1020</sup> there were 392 domestic violence restraining orders were issued in 2018, where minors were victims. Along with Tbilisi, highest shares of these orders were issued in Imereti, Kvemo Kartli, Ajara and Kakheti.

The problem in the provision of adequate services and support to child victims of domestic violence has remained unsolved. **The country lacks a system of rehabilitation and protection of safety of child victims of domestic violence while the involvement of child psychologists is minimal and only in separate cases.**

**Another persisting problem which has not been solved for years is the enforcement of court orders on transfer of child custody or/and child's relationship with another parent or other family members.** One may often observe the neglect of child's opinions, interests and needs in this process. **Parental manipulation of underage children is manifested in extreme forms of psychological violence, which is not properly studied by relevant entities; effective protection mechanism is largely missing.**

**A problem in terms of response to domestic violence is the identification of early marriages, protection of the interests and rights of children living and working on the streets whose safety is protected to only minimal extent.**

To ensure a timely response to facts of violence, the state must fully acknowledge the role and responsibility of social workers in this process and ensure proper working conditions to enable representatives of this profession to perform their job. They must enjoy a high standard of protection and support. Otherwise, until the social system is reformed, child victims of domestic violence, who lack adequate support from society and relevant state entities, will continue to face a very high risk.

## RECOMMENDATIONS

### To the government of Georgia:

- To overcome child poverty, evaluate the efficiency of state programs of child care and revise them within the scope of child care system reform so as to ensure that they adequately protect minors from extreme poverty and inadequate living standard;
- Develop a subprogram of support to beneficiaries of full legal age who have withdrawn from the state care system, which will ensure their integration into society and preparation for independent living;
- Update legislative regulations on standards of water supply, sanitation and hygiene at school; assess the efficiency of the mechanism of supervision of water availability and quality and plan changes for the establishment of systematic and effective supervision mechanism;
- Ensure timely development by relevant entities of a concept of rehabilitation of child victims of sexual violence;

<sup>1020</sup> Correspondence №MIA 2 19 00662003, 14.03.2019.

- Devise a concrete action plan in accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Establish a tool for the evaluation of referral mechanism to identify shortcomings and needs of cooperation among relevant entities in the area of domestic violence.

**To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- Identify needs of poor families with children, inform them about child care or social assistance programs; using all available resources, avoid the placement of children in alternative care because of poverty;
- Considering the existing problem, ensure the delivery of service of the subprogram for the provision of shelter to homeless children to Ajara region. Assess quality of work of mobile teams and develop an effective assessment form which will allow to determine individual needs and risks of each identified child living and working on the streets;
- Enhance territorial centers of the LEPL Social Service Agency in terms of human, technical and financial resources, including, by increasing the number of social workers and psychologists;
- Improve supervision mechanism of protection of children in alternative care in terms of studying their rights and identifying their needs;
- Regularly retrain persons working with children in alternative care in the areas of child rights and needs as well as management of misbehavior;
- Ensure constant monitoring by social workers of challenges in education of children in alternative care and preparation thereof for independent living, also proactive search of all services available in a community taking into account children's interests and desires;
- Initiate the process of development and implementation of psycho-social and rehabilitation programs tailored to individual needs of children with traumatic experience and disturbing behavior;
- Intensively supervise rights of children in religious boarding schools, taking into account the best interests of children;
- Carry on an intensive work in the area of licensing of religious boarding schools; provide administrations of these institutions with relevant information about a mandatory nature of licensing and licensing criteria;
- Establish an effective mechanism of monitoring response to, evaluation process, exiting instrument and assessment criteria of incidents of domestic violence against children in order to identify/avoid shortcomings and inadequate response;
- Ensure the engagement of a psychologist from the very onset of the work with a child victim of domestic violence and planning of the process of psycho-social rehabilitation of a child.

**To the Ministry of Education, Science, Culture and Sport:**

- Ensure timely provision of water supply systems to general education schools, also, in cooperation with municipal government, availability and quality control of potable water;

- Incorporate in educational programs the teaching of rational use of water resources, norms of sanitation and hygiene;
- Determine an effective school response mechanism to absenteeism of a pupil for 90 consecutive days;
- Provide public schools with information about response mechanisms available for the protection of child's rights and interests, in cases of school abandonment, and about their obligations; conduct regular supervision of this process;
- Increase the number of psychological service centers at LEPL Office of Resource Officers of Educational Institutions and enhance capacities of existing ones;
- Revise a general rule of enrollment at public schools of minors placed in the juvenile rehabilitation facility №11 of the Special Penitentiary Service and make legislative changes so as to ensure timely enrollment of each such minor at a general educational institution. Furthermore, in each individual case of doubt and information about special educational needs of a child, ensure timely assessment of situation, decision-making on granting a status and provision of a special teacher.

**To local self-government bodies:**

- Timely undertake measures for improving situation in kindergartens and bringing them up to state standards;
- Support the improvement of water supply system and water quality; identify public schools with problems in availability of water and sanitary-hygienic conditions; plan measures necessary to tackle the problems in such schools.

**To Ministry of Justice of Georgia:**

- In the juvenile rehabilitation facility №11 of the Special Penitentiary Service, plan vocational and other educational/rehabilitation activities tailored to interests and needs of minors, which will enable juvenile convicts to master vocations of their choice and ensure effective rehabilitation process.

## 24. PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

Similar to the previous years, there are numerous challenges remaining in terms of equal and effective realisation of the rights of persons with disabilities.

No significant steps have been taken towards the implementation of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter the “CRPD”).<sup>1021</sup> The state agency in charge of coordinating this process has not been determined either.<sup>1022</sup> Furthermore, the optional protocol has not been ratified which prevents persons with disabilities (hereinafter “PWDs”) to challenge violations of their rights before the respective committee.

No substantial changes have been made to bring the national legislation in compliance with the CRPD. The draft Law on the Rights of Persons with Disabilities, which was planned to be deliberated upon and initiated at the 2018 Spring Session<sup>1023</sup> was developed back in 2017. However, the draft law has not been submitted to the parliament to this day.

The amendments made to the Law of Georgia on General Education in 2018<sup>1024</sup> create additional safeguards for facilitating inclusive education. Under the amendments, it was determined as a duty, instead of a right of secondary education establishments, to create conditions for inclusive education. It should be noted that special (education) teachers were given the status of a teacher, which will enable them to exercise the rights determined for other professional teachers.

It should be positively mentioned that new instruments have been developed towards reforming the system of assessment and granting a relevant status to persons/children with disabilities. They are going to be implemented on pilot basis in the Autonomous Republic of Ajara in 2019.<sup>1025</sup>

It is noteworthy that, in 2018, funding of certain components<sup>1026</sup> tailored to the needs of PWDs increased. However, this could not ensure meeting existing needs in full. The following remains to be particularly problematic: accessibility of environment, information and services, the quality of inclusive education, low indicator of PWDs’ employment, protection of the rights of persons with mental health problems, the shortage and lack of effectiveness of programmes aimed at habilitation/rehabilitation of disabled children and adults, provision of respective services for children with behavioural and mental health problems.

More efforts has to be made for the implementation of activities in terms of protecting the rights of PWDs envisaged by the Governmental Action Plan for Human Rights Protection (2018-2020). This should be paid particular attention since the majority of the activities are not implemented for years and are repeated in action plans over again.

Equal participation of PWDs in social and political life remains to be a challenge. In 2018, during the presidential elections, it was still problematic to ensure an inclusive electoral environment for PWDs. Despite

1021 The United Nations Convention on the Rights of Persons with Disabilities, available at: <https://bit.ly/2CqO7wZ>, (accessed 19.03.2019).

1022 The obligation to set up this mechanism is envisaged in Article 33.1 of the CRPD.

1023 Letter no. 14824/3-39, of the Committee of Human Rights Protection and Civic Integration of the Parliament dated 15.12.2017.

1024 Law of Georgia on General Education, available at: <https://bit.ly/2XaiW1V>, (accessed 19.03.2019).

1025 Letter no. 01/1852 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 05.02.2019.

1026 State programme of social rehabilitation and child care; social programme of mental health.



the attempts of the Central Electoral Commission to improve the indicator of accessible/adapted polling stations, in cooperation with other agencies, there were only 1,268 such polling stations (35%).

Effective functioning of regional and local councils working on the issues of PWDs and participation of PWDs and/or organisations representing them in this process remain problematic.

In the reporting period, violence, especially sexual violence, against disabled minors and adults was identified as a serious problem. This is demonstrated by the increase in the number of applications filed with the Public Defender regarding these issues as well as information circulated in the media and social networks.

## 24.1. RIGHT TO EDUCATION

Introduction of quality and continuous inclusive education remains problematic in the country despite undertaking commitments under international law and domestic legislation to realise PWDs' right to education.

In the reporting period, meetings on preschool education held with municipalities<sup>1027</sup> and received information<sup>1028</sup> demonstrated that the process of implementation of the obligations under the Law of Georgia on Early and Preschool Education is hindered. The needs existing in inclusive preschool education are not adequately studied and the results are not reflected in the municipality programmes and financial plans.

The coordination between the Ministry of Education, Science, Culture and Sport of Georgia and municipalities is weak as is between the LEPL Social Services Agency and preschool establishments.

The information requested by the Office of the Public Defender from municipalities<sup>1029</sup> showed that the indicator of involvement of children with disabilities in preschool education is extremely low. According to the National Statistics Office of Georgia<sup>1030</sup> during the academic year of 2018-2019, there were in total 161,931 children registered in preschool establishments. The letters received from 59 municipalities show that there are approximately **805 pupils with disabilities** registered in preschool establishments at this stage.<sup>1031</sup>

Similarly, there are serious problems in terms of accessibility of external and internal infrastructure in kindergartens; namely, out of 1,488 preschool establishments of 59 municipalities, 523 are partly adapted. In most cases, adaptation is limited to arranging ramps, which cannot meet the needs of pupils with various disabilities.

Apart from number of problems, there are significant shortcomings also in terms of human resources. In particular, there is a need to involve inclusive education specialists<sup>1032</sup> in the process of preschool education and to retrain the existing personnel. There are consultative councils formed in some preschool establishments and public educational establishments that would contribute to effective functioning of respective establishments.

In terms of General education, the amendment made to the Law of Georgia on General Education in 2018<sup>1033</sup> should be positively assessed. The changes created additional safeguards for facilitating inclusive education.

1027 12 meetings were held, in 2018, in 6 municipalities, among them, in: Zugdidi, Ozurgeti, Batumi, Kutaisi, T'ianeti, and Borjomi; the following were the target groups: representatives of associations of kindergartens and employees of preschool establishments as well as parents of children with disabilities.

1028 Correspondences no. 09-2/15282-12.12.2018; no. 09-2/13964-05.11.2018; no. 09-2/13963-05.11.2018; no. 09-2/13962-05.11.2018; no. 09-2/13960-05.11.2018; no. 09-2/15284-12.12.2018; no. 09-2/104-08.01.2019; no. 09-2/101-08.01.2019.

1029 Information was requested from 64 municipalities, however, as of 14 March 2019, only 59 municipalities supplied data to the Public Defender's Office.

1030 Available at: <https://bit.ly/2Oc56ba>, (accessed 19.03.2019).

1031 It is difficult to calculate data accurately since kindergartens are often unable to discern pupils with special educational needs from those with disabilities.

1032 Special teacher, psychologist, occupational therapist, speech therapist, etc.

1033 Law of Georgia on General Education, available at: <https://bit.ly/2XaiW1V>, (accessed 19.03.2019).

Under the amendments, it was determined as a duty,<sup>1034</sup> instead of as a right, of general education establishments (schools) to create conditions for inclusive education. This issue had been highlighted in the Public Defender's reports on numerous occasions. It should be particularly noted that special education teachers were given a status of a teacher<sup>1035</sup> which will enable them to exercise the rights<sup>1036</sup> determined for other teachers.

In the reporting period, an order of the Minister of Education, Science, Culture and Sport of Georgia approved rules for introducing, developing and monitoring of inclusive education as well as the mechanism of identifying students with special educational needs.<sup>1037</sup>

It should be negatively assessed that the Ministry of Education, Science, Culture and Sport of Georgia still does not have at its disposal statistics on disabled children left behind formal education<sup>1038</sup>

According to the National Statistics Office of Georgia,<sup>1039</sup> in public schools of Georgia, 524,000 pupils were registered in 2018-2019 academic year. As regards to students with disabilities, according to the information of the Ministry of Education, Science, Culture and Sport of Georgia,<sup>1040</sup> only **750 students with disabilities** are indicated in the respective columns of student management electronic databases, which is only 0.14% of the total number of students.

Despite the legislative amendments made, the situation existing in public schools remains problematic. Accessibility of physical environment remains particularly problematic in general education establishments. According to the ministry,<sup>1041</sup> in Georgia only up to 120 are fully adapted and up to 690 schools are partially adapted out of 2,084 public schools.<sup>1042</sup> It is noteworthy that resource rooms are present only in 350 public schools.

At the end of 2018, the monitoring conducted by the Public Defender's Office in educational establishments<sup>1043</sup> revealed significant shortcomings, inter alia: absence of the action plan to introduce inclusive education; insufficient mechanisms for protecting students from violence and management of behavioural problems; absence of accessible external and internal infrastructure and study resources; insufficient number of additional specialists of inclusive education<sup>1044</sup> and individual assistants; insufficient readiness of school teachers to meet the educational needs of students with special educational needs/disabilities; inadequate implementation of individual study plans and absence of effective internal monitoring of establishments. Insufficient resources (funding) allocated by the administration to the schools is cited as one of the reasons for the enumerated problems.

As regards the specialised education system, nowadays there are 8 resource schools in Georgia. It is problematic that education tailored to the needs of children with different disabilities (including children with visual and hearing impairment) is unavailable in the regions and they have to come to Tbilisi to receive proper education.

1034 Law of Georgia on General Education, Article 33.g).

1035 Law of Georgia on General Education, Article 2.w<sup>1</sup>).

1036 Efforts for raising qualification, perspectives for pay raise, etc.

1037 Order no. 16/N, of the Minister of Education and Science of Georgia of 28 February 2018, available at: <https://bit.ly/2TcJuwg>, (accessed 19.03.2019).

1038 In 2018, a project on the State Programme of Monitoring Children Left behind Education and their Inclusion in Formal Education was prepared. The project, among other issues, will regulate exchange of respective information about children left behind mandatory secondary education for its monitoring and analysis purposes among agencies and sectors.

1039 Available at: <https://bit.ly/2HtXOyY>, (accessed 19.03.2019).

1040 Letter no. MES 0 19 00252480 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 1 March 2019.

1041 *Idem*.

1042 The data does not reflect the public schools of the autonomous republics of Ajara and Abkhazia. Besides, it needs an expert opinion whether the listed schools fully or partially are adapted.

1043 Monitoring was conducted in 15 schools, where inclusive education has been implemented on a pilot basis since 2006: Khashuri public school no. 2; Akhaltsikhe public school no. 5; Telavi public school no. 7; Rustavi public school no. 28; Zestaponi public school no. 4; Oni public school; Chokhatauri public school; Kobuleti no. 3; Zugdidi public school no. 5; Mtskheta public school no. 1; Tbilisi public school no. 60; Tbilisi public school no. 180; Tbilisi public school no. 10; Tbilisi public school no. 181; and Tbilisi public school no. 160.

1044 Psychologist, occupational therapist; mobility and direction specialist; sign language interpreter, language and speech therapist.

In the reporting period, there were violations identified in LEPL Tbilisi public school no. 202, where pupils with full and partial visual impairment study. The living conditions of children benefiting from boarding school services is particularly noteworthy; accessibility, safety, nutrition and medical treatment therein cannot be considered to be satisfactory; besides, there are no violence prevention services introduced in the school and there are no activities carried out to help developing skills necessary for independent living.<sup>1045</sup>

As regards the stage of vocational education, despite involvement of PWDs in the existing educational programmes their subsequent employment remains to be a challenge. The limited choice of professions to study is also problematic.<sup>1046</sup>

An order of the Minister of Education and Science of Georgia on Approving the Statute and Cost of Authorisation of Educational Establishments<sup>1047</sup> determines standards which should be met by educational institutions, based on their mission. The standards of authorisation of educational establishments,<sup>1048</sup> *inter alia*, should comprise substantive, information and financial resources. Under the substantive resource component, an establishment should have adapted environment for persons with special needs.<sup>1049</sup>

Another challenge is that the Ministry of Education, Science, Culture and Sport of Georgia still does not have at its disposal the statistical information about the students with disabilities who study at higher educational establishments.<sup>1050</sup>

It should be noted that, due to the problems in terms of accessibility of physical environment and study materials, as well as the absence of specific supporting activities, continuation of education at higher level still remains problematic for PWDs. This, in its turn, cannot ensure continuity of education.

## 24.2. ACCESSIBILITY

Ensuring accessibility is an essential precondition for the realisation of the rights and freedoms of PWDs. This issue has been pointed out by the Public Defender also in the reports of the previous years.<sup>1051</sup>

On 20 June 2018, the Parliament of Georgia adopted the Code of Georgia on Planning Space, Architectural and Construction Activities. This was caused by the lack of uniform approach of the said field.<sup>1052</sup> Article 85 of the code is about ensuring the use of buildings and public space by PWDs.

1045 Monitoring Report on the School/Boarding School for Visually Impaired Children at the LEPL Tbilisi Public School no. 202, 2018, available at: <https://bit.ly/2CmO31d>, (accessed 19.03.2019).

1046 State Programmes Facilitating Employment of PWDs, Monitoring Report, 2017, available at: <https://bit.ly/2UKg8Xt>, (accessed 19.03.2019).

1047 Order of the Minister of Education and Science of Georgia on Approving the Statute and Cost of Authorisation of Educational Establishments, available at: <https://bit.ly/2TQuDgl>, (accessed 19.03.2019).

1048 Order no. 07/N. Of the Minister of Education and Science of Georgia of 31 January 2018, available at: <https://bit.ly/2UHNeYf>, (accessed 19.03.2019).

1049 The following are the criteria: a person with special needs can freely direct him/herself and move about in a building (*inter alia*, with ramps, lifts, etc.); a student with special educational needs has access to study materials envisaged by the programme or individual study plan that are adapted to the needs and requirements of persons with special educational needs; also has access to the administration of educational establishment and faculty; there is a WC adequately arranged for students with special educational needs; there is a parking for PWDs near the building, with an unhindered access to the building.

1050 Order no. 127/N of the Minister of Education and Science of Georgia of 22 July 2011 on Approving the Rule for Maintaining a Registry of An Educational Establishment does not envisage registering information on students with disabilities in the registry of higher educational establishments; Letter no. MES 0 19 00252480 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 1 March 2019.

1051 The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2016, available at: <https://bit.ly/2TiDrGh>, (accessed 19.03.2019); The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2017, available at: <https://bit.ly/2USUtgz>, (accessed 19.03.2019).

1052 The explanatory note available at: <https://bit.ly/2W4eHU0>, (accessed 19.03.2019).

Besides, there are works carried out to amend several codes<sup>1053</sup> with the effect of determining sanctions for the failure to arrange space for PWDs and to take into consideration the respective architectural and planning elements.

The Public Defender's Special Report of 2018 on Shortcomings of Accessibility of Physical Environment of PWDs<sup>1054</sup> shows that, despite positive steps, the Georgian legislation still does not comply with the CRPD<sup>1055</sup> requirements. The regulations determined under domestic technical rules<sup>1056</sup> are deficient, contradictory and prevent practical implementation of the requirements of "universal design".

It is also problematic that the needs existing in terms of accessibility at the national level are not researched; there is no action plan and statistics are not maintained concerning the improved physical environment. Furthermore, the participation of organisations of PWDs and organisations working on the issues of PWDs is not adequately engaged in the decision-making process and the process of drafting strategic documents concerning accessibility.

The information requested from municipalities<sup>1057</sup> to assess the implementation of accessibility standards in practice shows that the use of effective mechanisms in the process of implementation of standards of arrangement space/construction standards for PWDs at the local level remains problematic.

### 24.3. EMPLOYMENT OF PERSONS WITH DISABILITIES

Stable and equal working environment is crucial for leading an independent life by PWDs. This issue has been remained an unsolved problem for years in Georgia.

The Public Defender prepared in the reporting period a special report<sup>1058</sup> that described gaps in the legislation governing employment of PWDs in Georgia and shortcomings of the state programmes. The Public Defender made corresponding recommendations to responsible state agencies. The research showed that, due to the lack of appropriate legal safeguards, practical facilitation and effective mechanisms of implementation, PWDs' right to work is not adequately exercised. The provisions in the domestic legislation and strategic documents are declaratory, which in turn, hampers their effective implementation and monitoring. Besides, the measures determined in state programmes are on a number of occasions identical and fail to meet the existing needs.

The problem of accessibility of physical environment, transport and working spaces is a significant obstacle for PWDs in terms of reaching the workplace, carrying out work and socialising with colleagues. The economic benefit of employment is very low and along with other obstacle it renders the activity non-profitable. Furthermore, in case of getting a job, there was a risk of termination of subsistence state allowance for the family of a person with disability.

A new initiative introduced by the Government of Georgia<sup>1059</sup> is a step forward, according to which in case of getting a job, social benefits would be maintained for a year.

1053 Code of Georgia on Planning Space, Architectural and Construction Activities; the Code of Georgia on Administrative Violations; the Code of Product Safety and Free Circulation.

1054 Special Report on Shortcomings of Accessibility of Physical Environment of PWDs, 2018, available at: <https://bit.ly/2WbZ1hU>, (accessed 19.03.201).

1055 The United Nations Convention on the Rights of Persons with Disabilities, available at: <https://bit.ly/2Fkki34>, (accessed 19.03.201).

1056 Resolution no. 41 of the Government of Georgia on Approving Technical Rules for Arranging Space for Persons with Disabilities and Architectural and Planning Elements, available at: <https://bit.ly/2glQWqU>, (accessed 19.03.201); and Resolution no. 41 of the Government of Georgia on Approving Safety Rules for Buildings and Constructions, available at: <https://bit.ly/2kU01pi>, (accessed 19.03.201).

1057 Correspondences: 09-2/748-22.01.2019; no. 09-2/749-22.01.2019; no. 09-2/750-22.01.2019; no. 09-2/752-22.01.2019; no. 09-2/751-22.01.2019.

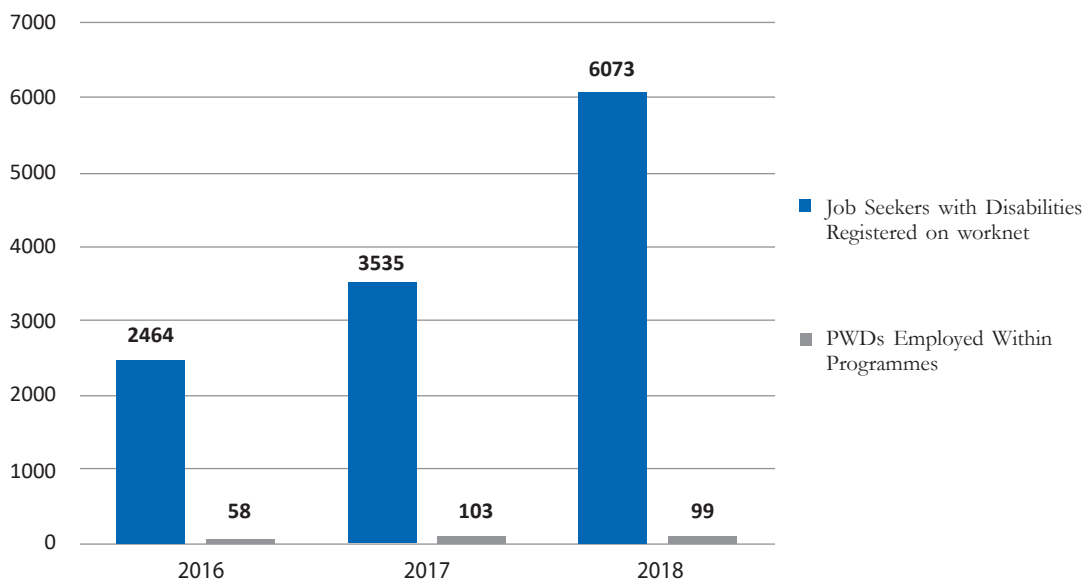
1058 The Public Defender's special report, available at: <https://bit.ly/2CBSuFV>, (accessed 19.03.2019).

1059 Resolution no. 3 of the Government of Georgia of 18 January 2019 on Amending Resolution no. 145 of the Government of Georgia of 28 July 2006 on Social Allowance, Article 5, available at: <https://bit.ly/2Y5wR9T>, (accessed 19.03.2019).

No effective steps have been taken by the state for eradicating other systemic problems and fulfilling the recommendations of the Public Defender. This is further confirmed by other research works conducted during 2018. The research centre of the Tbilisi State University analysed the factors affecting the effectiveness of services offered within the major state programme in the field of facilitating PWD employment – the Programme Developing Employment Facilitation Services. It was revealed that support employment consultants constitute the major component of the programme and there are only 11 such consultants throughout the country; despite the planned increase, no actual steps have been made in this regard. Furthermore, the number of PWDs employed with the help of consultants within the programme is very small and it does not change the overall picture existing in the country in terms of employment of PWDs. It should be noted that it remains a serious problem to keep PWDs at workplace. It is also clear that the programme mostly covers persons with minor and average disabilities.<sup>1060</sup>

The ineffectiveness of the mechanisms facilitating employment is demonstrated by the statistics supplied by the LEPL Social Services Agency,<sup>1061</sup> which have been almost intact for the past two years. As of December 2018, there were 6,073 PWDs registered at [www.worknet.gov.ge](http://www.worknet.gov.ge) – labour management information system; whereas during 2018, within the facilitating employment programmes, 99 PWDs were employed in total. Last year this indicator amounted to 103.

**Indicator of Employment of PWDs in 2016 - 2018**



#### 24.4. VIOLENCE AGAINST PERSONS WITH DISABILITIES

The CRPD imposes an obligation on the states to take all appropriate measures to protect persons with disabilities, from all forms of exploitation, violence and abuse, including their gender-based aspects.

The United Nations World Health Organisation points out a worldwide increase in the number of reported incidents involving alleged violence against PWDs.<sup>1062</sup>

<sup>1060</sup> Tamar Makharadze, Irina Zhvania, and Linda Stevenson: Improving Social Services Supporting Employment of Persons with Disabilities, Ivane Javakishvili Tbilisi State University, 2018, pp. 20-21.

<sup>1061</sup> Correspondence no. 04/7368, 14.02.2019.

<sup>1062</sup> Increased Risk of Violence against PWDs: Systemic Review and Analysis, available at: <https://bit.ly/2JpSXAD>, (accessed 19.03.2019).

Despite the fact that there is no uniform statistics maintained in Georgia about violence against PWDs, including sexual violence, the information circulated in the media and social networks and an increase in the number of applications filed with the Public Defender on these issues<sup>1063</sup> indicate that violence, especially sexual violence against persons with disabilities over and under 18 years of age, is a significant problem and there are no adequate steps made by the relevant stage agencies to prevent and eradicate this problem. There is physical, sexual, psychological and economic violence in families, institutions and community.

Identification of acts of violence and rehabilitation of victims and effective response remain to be a challenge. The problem of coordination among social services, education system and law-enforcement agencies is particularly noteworthy in this regard. Besides, low competences of representatives of state agencies to identify alleged violence against children and adults with disabilities (including in terms of forensic examination), correct referrals and identifying needs of rehabilitation should be noted among problems. The absence of specialised rehabilitation services in the country is also a challenge.

Out of the cases involving alleged violence against PWDs that the Public Defender studied in 2018, there are approximately 35% of incidents involving alleged sexual violence.<sup>1064</sup> Investigation has been instituted in most of the cases and various investigative actions have been conducted. However, nobody has been charged or recognised as a victim at this stage. Furthermore, in one of the cases being examined by the office,<sup>1065</sup> an incident of sexual violence allegedly took place among beneficiaries of a PWD boarding house. The respective unit of the Ministry of Internal Affairs<sup>1066</sup> have not started investigation straightaway. The following was cited as the reason: according to the case-files obtained regarding the notification, there were no signs of assault or violence identified and investigation was not started due to the absence of elements of a crime.<sup>1067</sup> However, it is noteworthy that after the Public Defender's Office applied to the Office of the Prosecutor General of Georgia<sup>1068</sup> the Ministry of Internal Affairs instituted investigation regarding the mentioned incident. At the same time, the Inspectorate General of the Office of the Prosecutor General of Georgia started an official enquiry on this case.<sup>1069</sup>

In one of the cases being examined by the Office,<sup>1070</sup> which involved alleged violence and/or sexual violence on a child with disabilities in the family,<sup>1071</sup> despite numerous applications by the school and the Public Defender, the Marneuli District Division of the LEPL Social Services Agency could not confirm the violence. Furthermore, according to the correspondence, a social worker could not establish communication with the child – (the alleged victim cannot speak). However, a psychologist or other specialist and investigative authorities were not involved in the process of examination of the incident.

The indicated cases show that after alleged incidents of violence are reported, on numerous occasions, representatives of responsible state agencies do not take all measures to examine the circumstances in a comprehensive manner. This, on the one hand, is caused by the disorderly system of protecting PWDs from violence and, on the other hand, the existing stigma by influence of which state officials often show superficial approach and do not perceive seriously the information received from PWDs.

1063 During 2018m the Public Defender's Office examined 14 case of alleged violence against PWDs.

1064 During 2018m the Public Defender's Office examined 14 case of alleged violence against PWDs, out of which 5 incidents concerned sexual violence.

1065 Case no.17593/18

1066 Gardabani District Division of the Kvemo Kartli Police Department.

1067 Correspondence no. MIA 8 18 03137208, dated 28 December 2018.

1068 Letter no. 09-4/480, 19/01/2019.

1069 Letter no.13/7855, 04/02/2019.

1070 Case no. 7796/18.

1071 The circumstances of the case are described in the Public Defender's special report, available at: <https://bit.ly/2CmO31d>, pp. 16-17.

## 24.5. MENTAL HEALTH

Creating safeguards by the state for protecting the right to mental health is one of the crucial aspects of exercise of the right to health. Despite the positive trend of increasing the funding for the state programme on mental health,<sup>1072</sup> adequate development of the sphere remains a serious challenge for the country.

The monitoring<sup>1073</sup> carried out by the Public Defender's Office over the measures, envisaged by the Strategy Document of Mental Health Development and the Action Plan for 2015-2020,<sup>1074</sup> showed that timely implementation of activities envisaged by the documents in practice is problematic.

In 2018, certain steps were taken towards developing community-based services in the mental healthcare. In particular, the ratio of the funding of inpatient and community-based services in relation to the total budget allocated to the mental health programmes went over the interim milestone envisaged by the action plan and amounted to 34%/66% in 2018. The number and funding of community-based mobile groups also increased<sup>1075</sup> and the scope of coverage extended. It is planned for the end of 2019 to increase the number of mobile groups up to 31. However, the funding for other outpatient services is still low.

The continuation of mental health services is also problematic. In 2018, subsequent to hospitalisation, only 37% of patients received outpatient/community-based services. This too indicates the need to enhance outpatient services.<sup>1076</sup>

The efforts to elaborate the suicide prevention program were delayed and the programme has not been approved to this day, whereas it was planned to approve and implement this programme by 2016.<sup>1077</sup>

There is no progress identified in terms of developing services based on social integration and rehabilitation. The number of psychosocial rehabilitation centres still has not increased based on the principle of geographical coverage. Insignificant budgetary increase in 2018 did not create expectations for tangible changes in this regard. The increase in funding from GEL 77.8 thousand to GEL 88.0 thousand for the said component of mental health in 2019 cannot be considered to be sufficient to address the basic challenges in the field

There were virtually no steps taken in the reporting period to harmonise the domestic legislation governing mental health with international standards.<sup>1078</sup> Similarly, no changes have been made to bring the national legislation governing involuntary psychiatric inpatient services closer to international standards. Informing a patient and establishing his/her genuine will in the process of obtaining consent to psychotic treatment remains to be problematic.

In 2018, certain steps were made concerning rehabilitation of inpatient mental health facilities.<sup>1079</sup> However, inadequate infrastructure and living conditions remains problematic in the majority of inpatient psychiatric facilities operational in the country.<sup>1080</sup> It should be noted that despite improvement of patients' living conditions to a certain degree, living in large facilities cannot be considered as high-quality protection of their rights.

1072 In 2018, annual programme budget is GEL 20,550.7 thousand; in 2017 – GEL 15,803.9 thousand; in 2019 - GEL24, 000.0 thousand.

1073 Information retrieved from responsible agencies concerning the implementation of the plan (letters nos. 09-1/754 and 09-1/755).

1074 Resolution no. 762 of the Government of Georgia of 31 December 2014 on Approving the Strategy Document of Mental Health Development and the Action Plan for 2015-2020.

1075 Tbilisi – 6 mobile groups: Kakheti – 1, Kvemo Kartli – 2, Imereti –1, Ajara – 1.

1076 Letter no. 01/1810 Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, dated 04.02.2019.

1077 The plan provided for setting it up and making it operational in 2015-2016.

1078 The process has been lingered for years. In 2016, with the technical assistance of the Council of Europe, recommendations were made as a result of the review of the legislation of Georgia regulating mental health. Since then these recommendations have been discussed with stakeholders with the view of reflecting them in the legislation. However, we are not aware of any changes made to the legislation in this regard. Under the governmental action plan, the process of harmonisation of the legislation with international standards was supposed to be finalised in 2017.

1079 Within the investment contract concluded with the Academician B. Naneishvili National Centre for Mental Health, a 2,400 m2 building, built according to international standards, has become operational. External infrastructure was arranged in the Batumi Psychiatric Facility as well. The infrastructure in the living quarters of the Surami Psychiatric Clinic was completely renovated.

1080 Referral to the respective unit of the NPM.

It is clearly a negative that there is no strategy for deinstitutionalisation, which is considered to be a basic direction for developing mental healthcare. This strategy was supposed to be elaborated back in 2016; it should be based on replacing inpatient services with modern, community-based services. Works to develop the mapping plan of healthcare services reportedly started only in December 2018. This plan will be the basis for the deinstitutionalisation strategy.

The mental health sphere experiences acute shortage of human resources in Georgia.<sup>1081</sup> However, no tangible changes have been made to address this problem in the reporting period. Similarly, no positive steps have been taken to boost human resources in the sub-specialisation of the field - children's psychiatry. The long-term strategy to develop human resources in the field of mental healthcare has not been finalised. In 2018, there were no activities to enhance the capacities of primary healthcare personnel in identifying and managing mental health problems.<sup>1082</sup>

The activities carried out in the reporting period to raise awareness among the public about mental health, changing attitudes and reducing stigma are not satisfactory.<sup>1083</sup> The strategic plan for 2017–2020 on education and awareness-raising about mental health has not been approved. There are no long-term and short-term strategies elaborated to mobilise public for educating and awareness-raising about mental health.

Manifestation of mental and behavioural disorders caused by substance abuse and their management is identified as an important challenge. It happens that often it is impossible to provide emergency services for patients due to legislative regulations in force and state programmes. In particular, patients with psychosis-related conditions caused by the use of psychoactive drugs do not receive the required services since drug offices are not ready provide such services and psychiatric facilities do not have the competences to manage such conditions.

The said problem needs to be addressed immediately, considering the increased number of mental disorders caused by substance abuse. In particular, in 2018, the number of hospitalised patients diagnosed with abuse of psychoactive agents increased by 45% compared to the previous year.<sup>1084</sup> This indicator is even more alarming considering the challenges in terms of identification of mental disorders caused by substance abuse.

One of the cases being examined by the Public Defender's Office<sup>1085</sup> concerns the murder of a 13-year old by a person with mental health problems, caused allegedly by the use of psychoactive agents. This case demonstrates the problems related to referrals among the agencies providing primary healthcare, drug and psychiatric services and regulations being in force. The Office of the Public Defender of Georgia continues examination of this incident.

## Somatic Health

The problem related to providing somatic healthcare services is a pressing issue for patients receiving mental health inpatient services. This issue requires specific regulation and arrangement.

Despite the fact that some of the mental health inpatient facilities have concluded contracts with various healthcare specialists (a GP, surgeon, dentist, gynaecologist, etc.) on providing services, the schedule of their

1081 At least deficit of 250 psychiatrists. In 2015 – 240 psychiatrists and 13 child psychiatrists; in 2017 – 245 psychiatrists and 16 child psychiatrists.

1082 Similar to 2017, in 2018, the planned (and not carried out) activity is 6-cycle training programme for doctors, nurses and social workers of mental health facilities.

1083 The activities carried out in terms of awareness-raising of mental health are similar to those carried out the previous year. The response received from the agency does not specify whether these activities were carried out in 2017 or 2018.

1084 The number of patients hospitalised due to diagnosis of the use of psychoactive agents: in 2017 – 2,398, in 2018 – 3,472: Letter no. 01/3090 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

1085 Case no. 1836/19.



work and the small number of patients who received treatment during the year raise questions. The existing services on somatic health provided in mental health institutions are not prevention-oriented. A mental health facility resorts to referrals/transfers of a patient to a medical facility of a respective specialisation, mostly during emergencies, when a patient's condition is extremely serious. There is no uniform approach in mental health inpatient facilities concerning provision of somatic health services. This casts doubts as to the effectiveness of somatic healthcare services provided especially in those conditions when there is no mechanism of internal inspection and monitoring.<sup>1086</sup>

Furthermore, it is problematic to purchase medication prescribed by a doctor for somatic healthcare since this purchase is not funded within the Universal Healthcare or state programmes on mental health. Those patients who do not have family support and not receive social benefits are not provided with corresponding assistance.

In terms of somatic healthcare, the situation of women receiving mental health inpatient services is even more serious. There is no practice of care for sexual and reproductive health of women in these facilities. The Public Defender's office started examination of the situation in this regard.<sup>1087</sup> As a result, it was confirmed that the majority of female patients in mental health inpatient facilities<sup>1088</sup> are not informed about basic aspects of sexual and reproductive health. Management and medical personnel do not pay attention to this issue in terms of providing medical services or information. Administration and personnel do not consider women's sexual and reproductive healthcare to be a significant component of the services to be provided by them.

#### **24.6. HABILITATION/REHABILITATION/MANAGEMENT OF BEHAVIOURAL PROBLEMS OF PWDS**

The state undertakes a commitment to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, states are supposed to organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes.<sup>1089</sup>

Targeted services are provided in the country for persons with various disabilities within the components determined by the state programme of social rehabilitation and childcare.<sup>1090</sup> Despite certain positive aspects, the programme still does not fully cover needs throughout the entire country and there are persons on waiting lists to be included in various sub-programs.<sup>1091</sup> The quality of conducted supervision of provided services is also problematic.

1086 Information supplied in the answers received from inpatient mental health facilities: correspondences no. 2557/19 (no. 630 – 15.02.2019); no. 2151/19 (no. 33 – 18.02.2019); no. 1927/19 (no. 58 – 7.02.2019); no. 1928/19 (no. 70 – 11.02.2019); no. 17984/18 (no. 105 – 31.12.2018); no. 2088/19 (OL-6782/-2/19 – 13.02.2019); no. 2037/19 (no. 19 – 11.02.2019); no. 2600/19 (no. 307 – 13.02.2019).

1087 At the initial stage, general situation was assessed in two facilities (in Surami and Khoni).

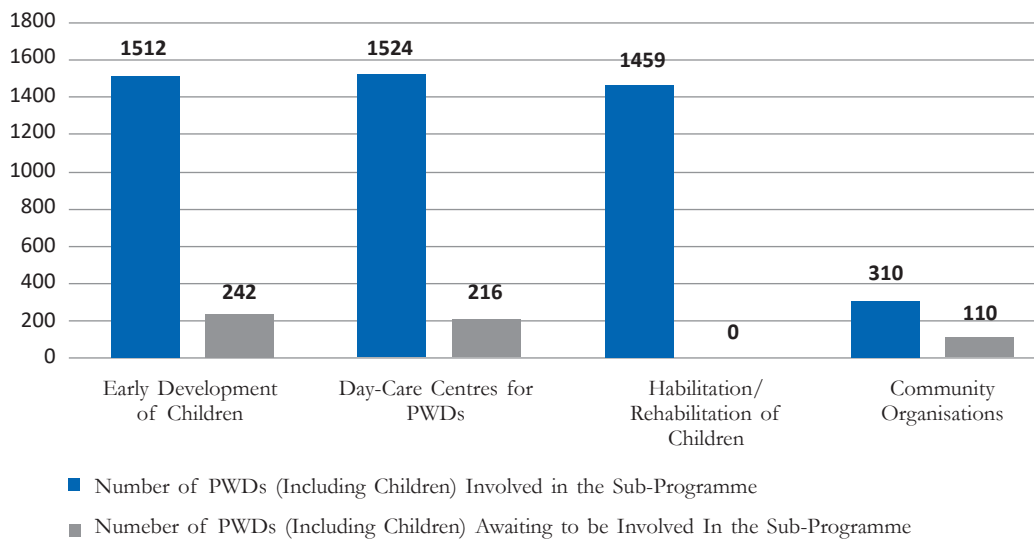
1088 Visits of the Office of the Public Defender of Georgia to facilities in Khoni and Surami (10-12 December 2018).

1089 The United Nations Convention on the Rights of Persons with Disabilities, Article 26.

1090 Resolution no. 601 of the Government of Georgia of 29 December 2017 on Approving the 2018 State Programme of Social Rehabilitation and Childcare.

1091 Letter no. 04/9248 of the LEPL Social Services Agency.

## PWD Rehabilitation Programmes and Waiting Lists



The increase in the funding of day-care centres since 2019,<sup>1092</sup> under current inflation, is not properly reflected on the quality of the services. According to service-providers, increased vouchers do not meet individual needs of beneficiaries. Monitoring carried out by the Public Defender's Office in the reporting<sup>1093</sup> showed that, without donor organisations' support, day-care centres find it difficult not only to provide quality rehabilitation services but even to meet minimum standards.<sup>1094</sup>

The fact that there are still no habilitation/rehabilitation services for adult persons with disabilities must be negatively assessed. The Public Defender appealed to the Government of Georgia with recommendation to provide habilitation/rehabilitation services for adult persons with disabilities back in 2017. However, no steps have been made to create the said programme. In 2018, the project of physical rehabilitation with the view of developing and implementing such programmes started in Georgia and this will contribute to enhancing rehabilitation profession in the country, retraining of specialists and accessibility of assistive and technological means for PWDs.<sup>1095</sup> However, for adult persons with disabilities, the habilitation/rehabilitation services are inaccessible to this day.

In 2018, the problem of providing children with behavioural and mental health problems with appropriate services was identified as particularly problematic.<sup>1096</sup>

Beneficiaries with behavioural and mental problems mostly require complex involvement of a psychologist and psychotherapist, and an intensive course of psychotherapy. However, due to the absence of such services, they cannot benefit from them. There is no access to various specialists and psycho-social rehabilitation in day-care centres either. These centres mostly refuse provision of these sufficient services, according to them, due to the absence of requisite human resources and appropriate environment; this is beyond the requirements determined by the standards.

Children with mental health and behavioural problems, whose families do not have financial resources to provide them with requisite therapy, are virtually without rehabilitation services. Parents are unable to manage

1092 Letter no. 01/3048 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

1093 Representatives of the Public Defender's Office visited 3 day-care centres within the monitoring carried out during the year.

1094 Order no. 01-13/N of the Minister of Labour, Health and Social Affairs of Georgia of 8 April 2011 on Approving Standards of Day-Care Centre Services for PWDs.

1095 Letter no. 01/1852 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

1096 Case no. 18014/18; no. 17263/18; no. 10806/18; no. 14797/18 and no. 16949/18.

their behaviour. When the situation is worsened, it becomes necessary to place a child in a psychiatric facility where during treatment and thereafter no psycho-social rehabilitation is provided for the them. It is noteworthy that managing behaviour in school conditions only and without accompanying therapy out of school is futile. Deterioration of behaviour is accordingly reflected on attaining objectives sought by an individual learning plan which poses a real threat of the child being left outside the school.<sup>1097</sup>

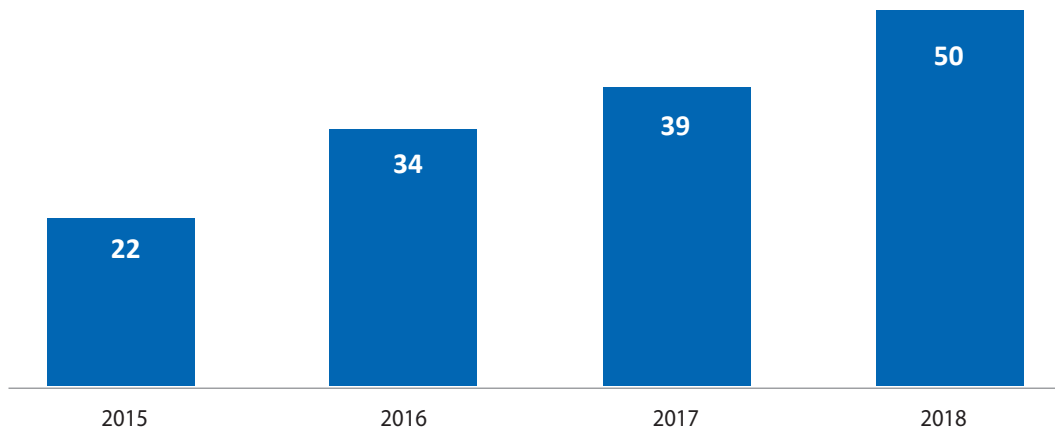
Due to the absence of a targeted programme, the separation of children with behavioural and mental health problems from their parents and placing them in the state's care is seen as a way of solving the problem by the state.<sup>1098</sup> This even worsens their situation as a minor is separated from the family and at the same time does not receive appropriate rehabilitation services in the state care institution.<sup>1099</sup>

#### 24.7. SETTING UP/MAKING OPERATIONAL COUNCILS WORKING ON PWD ISSUES AT REGIONAL AND LOCAL LEVELS

The Governmental Action Plan for Human Rights Protection in 2018-2020 approved by Resolution no. 182 of the Government of Georgia of 17 April 2018 provides for making operational the councils working on PWD issues at the regional and local levels and facilitating their effective functioning. The activities carried out by these councils are important to ensure the participation of PWDs and organisations representing them in the decision-making process locally.

In order to study this issue, the Public Defender's Office requested information from municipalities. It was revealed that, as of 2018, councils are set up in 50 self-government units. Furthermore, in some of them,<sup>1100</sup> the councils were reformed, members were changed and statutes were renewed. For the time being, the reformation process is undergoing in several municipalities.<sup>1101</sup>

Councils Working on PWD Issues in Municipalities



Despite the trend of increase of number of councils, the effective functioning of consultative bodies and the participation of PWDs and/or organisations representing them in the decision-making process locally remain problematic. The Public Defender's Office was periodically addressed regarding this issue in the reporting

1097 Especially in those conditions when rehabilitation component was assessed by a multidisciplinary team several times, according to their finding, grave and deep intellectual limitations are not confirmed. Therefore, enrolment of the child in schools is not recommended.

1098 Case no. 17263/18; no. 10806/18; no. 17797/18.

1099 The number of psychologists employed in local units of the agency cannot match the need of intensive work carried out with beneficiaries and psycho-rehabilitation therapy.

1100 Tbilisi, Ozurgeti, Sighnaghi, Lanchkhuti, and Qeda.

1101 Senaki, Kvareli, and Khoni.

period by representatives of various regions. The outreach meetings organised by the office in municipalities showed that the PWDs and/or organisations representing them are not informed about the existence of the local councils, their function or the procedure for selecting council members. Furthermore, there could be a conflict of interest due to the fact that there are representatives of service provider organisations invited as members of the councils in several municipalities. Participation of women with disabilities in the local councils is also problematic.

The fact that the process of setting up/making operational the councils, apart from exceptional cases,<sup>1102</sup> remains formalistic, is negatively assessed. In those municipalities which were set up in the previous years, sessions are not conducted altogether or there are no regular sessions. Apart from exceptional cases, it is unclear whether the local self-government bodies accepted the proposals initiated by councils. These proposals vary but most of them are focused on adapting external and internal environment of different facilities, ensuring the participation of PWDs in sport activities and providing them with assistive means.

## RECOMMENDATIONS

### To the Government of Georgia

- To approve a national accessibility standard that will be compatible with the requirements of the CRPD, the principles of universal design and American National Standards on Accessible and Usable Buildings and Facilities (ICC ANSI A.117.1.2009);
- To elaborate a national action plan on accessibility determining concrete measures, responsible agencies, fulfilment terms, funding component and measurable output indicators;
- To ensure that relevant ministries introduce maintaining statistics indicating improvement of accessibility to buildings/facilities under their control for PWDs;
- To take into account needs of persons with all types of disabilities when regulating issues related to accessibility;
- To ensure participation of the experts of the field (both international and local), PWDs and organisations representing them in the decision-making process regarding accessibility to a maximum degree;
- To ensure determination of children with behavioural and mental health problems as a target group in the relevant components of social rehabilitation and child-care state programmes and provide appropriate services for them;
- To facilitate geographic covering of services for those under 18 years of age with mental health and behavioural problems, including, extending rehabilitation services, increasing funding and effective monitoring;
- To ensure developing sub-programmes for habilitation/rehabilitation of adults with disabilities and its implementation with due account for geographic coverage; and
- To ensure accessibility of the services of sub-programmes for early development of children, children's habilitation/rehabilitation, PWDs day care centres and community organisation for all persons with respective needs throughout the country, by increasing the funding for these services and training-retraining of services providers.

<sup>1102</sup> Approximately 15 municipalities.

### To the Ministry of Education, Science, Culture and Sport of Georgia:

- To increase funding for pupils with special educational needs at school to the amount necessary to meet their complex needs;
- To ensure offering teachers practice-oriented training modules on requirements of pupils with special educational needs, including, concerning developing individual study plans, managing difficult behaviour, teaching methods to use with children with ASD and serious and multiple disorders;
- To ensure statistics on students with disabilities involved in higher education are maintained;
- To ensure the study of obstacles PWDs face in terms of continuing education at a higher level as well as needs of students with disabilities; to ensure targeted measures are organised based on the study outcomes; and
- To coordinate and supervise that establishments of general education:
  - a) Develop action plans for implementing inclusive education;
  - b) Ensure, where appropriate, hiring additional specialists of inclusive education (psychologist, occupational therapist, mobility and orientation specialist, sign language specialist, sign language interpreter, language and speech therapist based on a conclusion of a multidisciplinary team);
  - c) To ensure hiring individual assistants/assistants if there are pupils with special educational needs (disabilities) in a school, who need assistance with mobility or do not have self-sufficient skills or have problems in behaviour management;
  - d) To ensure external and internal school infrastructure and study resources are accessible based on the needs of pupils with special educational needs (disabilities);
  - e) To ensure setting up an internal inclusive education monitoring group (with parents' participation) with composition excluding conflict of interest to carrying out periodic monitoring; and
  - f) To elaborate internal instructions concerning protection of pupils from violence.

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia

- To ensure improvement of the databases of job seekers and employed persons with disabilities; to systematically analyse statistical indicators of employment of PWDs in public and private sectors, as well as various components of the state programmes facilitating their employment;
- To finalise development of the uniform concept and other normative acts facilitating employment of PWDs with the participation of PWDs in this process;
- To enhance measures aimed to facilitating employment of PWDs in the private sector and raising awareness among employers and other members of the public;
- To ensure enhancing and strengthening of the supporting employment component of PWDs employment state programmes, inter alia, by at least doubling the number of employment consultants and raising their qualification, as well as by increasing the sum under the subsidy component;

- To ensure training/retraining of at least 50% of social workers of district divisions of the LEPL Social Services Agency on specific issues of identifying violence against children and adults with disabilities, and about ethical standards and specifics of communication with PWDs;
- To introduce and implement an effective mechanism of preventing violence against PWDs, to develop corresponding methodology;
- To ensure developing the deinstitutionalisation strategy in shortest terms possible and in accordance with the strategy to start implementing community-based services for people with mental health problems, including by arranging a shelter, day-care centres and “protected household” based on modern community based approach;
- To ensure developing services that are based on social integration and rehabilitation, inter alia, by increasing the budget allocated for psychosocial rehabilitation component of the mental healthcare programme;
- To harmonise the domestic legislation regulating mental healthcare with international standards; inter alia, to make changes to bring the procedures of providing involuntary psychiatric inpatient mental health services in line with international standards;
- To ensure developing a mechanism of internal inspection and monitoring of mental health care facilities and its practical implementation;
- To take active measures to increase the number of human resources (psychiatrists, psychotherapists, psychiatry nurses and social workers) in the field of mental health and their equal distribution throughout the country; to develop a long-term strategy for developing human resources;
- To ensure retraining of number of primary healthcare staff determined by the plan (30%) in mental health issues;
- To ensure developing mental healthcare facilitation programmes in kindergartens, public schools and workplaces, jointly with relevant agencies;
- To approve a strategic plan for educating and awareness-raising about mental health;
- To take immediate steps for identifying, in a timely and effective manner, mental and behavioural disorders resulted from administering various psychoactive drugs and provision of mental and drug services for those person, through legislative amendments or changes in human resources, if needs be;
- To ensure detailed regulation of the rules and procedures for involving persons receiving inpatient mental services (both voluntary and involuntary (including convicted and accused persons) and persons receiving mandatory inpatient mental services – in the Universal Healthcare Programme for establishing a uniform practice;
- To provide those patients of inpatient mental health care with requisite medications who are not recipients of social benefits and do not have a support network; and
- To ensure sexual and reproductive healthcare for women in inpatient mental facilities by providing them with information in an understandable manner as well as timely and effective services.

#### **To the Ministry of Internal Affairs of Georgia:**

- To ensure maintenance and annual publication of unified and detailed statistics on violence, including sexual violence against PWDs;

- To develop a training module for employees of the relevant structural units of the Ministry of Internal Affairs on specific issues of identifying violence against children and adults with disabilities; also about ethical standards and specifics of communication with PWDs; to ensure integration of the said modules in training programmes; and
- To ensure the integration of the component of monitoring over effectiveness of timely response and pending investigation of crimes against PWDs in the department's work by amending the statute of the Department of Monitoring of Human Rights Protection and Quality of Investigation at the Ministry of Internal Affairs.

#### To Local Self-Government Bodies:

- To improve coordination with the Ministry of Education, Science, Culture and Sport of Georgia for implementing preschool inclusive education;
- At least once a year, to study comprehensively the needs of establishments of preschool education (in terms of inclusive education) and reflect them in municipal programmes and financial plans;
- To ensure allocation of financial funds to involve inclusive education specialists in preschool education, improving accessibility of external and internal infrastructure of kindergartens for children with disabilities;
- To ensure retraining of at least 50% of the personnel of establishments of preschool education on the needs of children with disabilities and appropriate approaches;
- Within their competence, to coordinate and supervise so that preschool education establishments:
  - a) ensure setting up of consultative councils and their functioning in accordance with the Law of Georgia on Early and Preschool Education; and
  - b) Ensure close cooperation with the LEPL Social Services Agency (local offices), especially in terms of protecting pupils from violence in accordance with the Procedures on Referrals on the Protection of the Child.
- To ensure practical implementation of arranging space/construction standards for PWDs and effective supervision over their implementation;
- To retrain the personnel of the respective architectural and supervision offices concerning space arrangement/construction standards and, where appropriate, to set up a service equipped with the expertise necessary for carrying out effective inspection;
- To maintain annually statistics on improved physical environment at municipal level;
- To ensure effective work of the councils locally working on the issues of PWD's with the participation of PWDs and organisations representing their interests; and
- To ensure setting of councils locally working on the issues of PWD's and their effective functioning with the participation of PWDs and organisations representing their interests in **the municipalities of Gardabani, Dusheti, Vani, Zestaponi, Tianeti, Kaspi, Marneuli, Kazbegi, Tsalka, Tchiatura, Khashuri, Sachkhere, Mtskheta, and Abasha.**

## 25. THE RIGHTS OF ELDERLY PERSONS

Georgia still faces many challenges pertaining to the enjoyment of human rights by the elderly. The Public Defender annually discusses these problems and provides the responsible state institutions with recommendations. Nevertheless, the state fails to take effective measures to improve the wellbeing of elderly people.

Discrimination based on age, violence (including domestic violence), severe socioeconomic conditions, the risk of poverty and homelessness, lack of access to physical environment, the absence of a comprehensive long-term care strategy, ineffective social services, lack of targeted programs, and a shortage of measures taken towards the welfare of the elderly at the local level, are particularly acute.

These problems were underlined in the report of the UN Independent Expert, Rosa Kornfeld-Matte on the enjoyment of all human rights by older persons,<sup>1103</sup> which also reflects the outcomes of her mission to Georgia in 2018. During her visit, she met with the representatives of the Office of the Public Defender, and shared the position of the Public Defender of Georgia vis-à-vis challenges facing the human rights situation of older persons in Georgia and addressed the state with subsequent recommendations.

The reporting period was marked with the expiration of the term of the National Action Plan for the 2017-2018 State Policy Concept on the Issues of Aging in Georgia;<sup>1104</sup> though the obligations foreseen by the document have not been properly met. The main reason for this is the delay in the adoption process of the Action Plan.<sup>1105</sup> The responsible agencies had only one year to fulfill the obligations enshrined in the document. In addition, no steps have been taken to prepare and adopt a new National Action Plan on aging.

### 25.1. VIOLENCE AGAINST ELDERLY PERSONS

The elderly is one of the most vulnerable groups among the victims of domestic violence. The analysis of cases studied by the Office of the Public Defender show that domestic violence against the elderly is mainly psychological and economic in nature.

A study of the cases reveals that victims avoid the involvement of law-enforcement bodies in instances of domestic violence. Furthermore, a number of refusals to continue the proceedings are linked to the fact that the offender in most cases is the guarantee of providing minimum social care of the older person. Regrettably, no specific psychological and economic rehabilitation programs exist for victims of violence, whereas existing programs fail to fully meet the needs of the elderly. For these reasons, the implementation of effective measures of protection and assistance are problematic.

1103 Report can be retrieved from the following web-page: <https://bit.ly/2TLJmsS> [last visited on: 19.03.2019]

1104 Decree №490 of the Government of Georgia of November 2, 2017 on the adoption of the national action plan on aging for 2017-2018; Information can be retrieved from the following webpage: <https://bit.ly/2CqSDLX> [last visited on: 19.03.2019].

1105 Report of the Public Defender of Georgia on the Situation in Human Rights and Freedoms in Georgia for 2017. pp. 311-313. Information can be retrieved from the following web-page: <https://bit.ly/2USUtgz> [last visited on: 19.03.2019].



Considering these circumstances, law-enforcement authorities and social services still find it difficult to identify cases of violence against older people and find it challenging to plan subsequent actions to protect victims of violence and ensure their socioeconomic rehabilitation.

According to the information provided by the Ministry of Internal Affairs of Georgia, 7,646 restraining orders were issued in 2018. Out of this number, 2,430 orders were issued to protect individuals above the age of 45 (1,865 women, and 565 men respectively).<sup>1106</sup> An analysis of these issued orders shows that the age group of above 45 years is the most vulnerable to violence among male victims.

An in-depth analysis of incidents of violence against the elderly, including statistical data provided by the Ministry of Internal Affairs, carries particular importance in identifying clear characteristics of violence against older people. It would also assist the responsible bodies in planning target-oriented prevention and protection measures.

## 25.2. PROGRESS IN THE FULFILLMENT OF MEASURES UNDER THE NATIONAL ACTION PLAN ON AGING

During the reporting period, the fulfillment of obligations undertaken by the National Action Plan for the 2017-2018 State Policy Concept on the Issues of Aging in Georgia was studied. Information received from responsible bodies showed that they are beginning to carry out the envisaged activities. However, none of the obligations were fulfilled in the established timeframe.

Insufficient steps have been taken to develop models of integrated care based on the bio-psycho-social approach and the provision of social assistance to the elderly. The main activities in this area were the development of the home-based care program and the establishment of a long-term care concept and its implementation strategy. However, based on the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Assistance of Georgia,<sup>1107</sup> the establishment of a working group on this topic is only planned from September 2019.

The new standard of service-delivery and the new monitoring mechanism for those with disabilities and older persons at residential care homes have not been approved yet. An inadequate number of residential care homes adapted to the needs of the elderly remains a problem too. According to the information provided by the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance of Georgia<sup>1108</sup>, out of the 64 municipalities in the country, community organization operates in only 11 municipalities.

The UN independent expert on the enjoyment of all human rights by older persons discusses these problems in a 2018 report. The document clearly underscores the fact that Georgia does not have a comprehensive strategy on long-term care. While some elements of care are available, others need to be strengthened.<sup>1109</sup> At the same time, available home-based care is insufficient to meet the country's needs. There is also an insufficient number of daycare centers. Pursuant to the existing information, the 28-public daycare centers operating in Georgia provide home-based care to no more 60 older persons.<sup>1110</sup>

1106 Letter №MIA 6 19 00258547of the Ministry of Internal Affairs, 31/01/2019

1107 Letter №01/2443-b of the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance Of Georgia of August 22, 2018

1108 Letter №01/2443-b of the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance Of Georgia of August 22, 2018.

1109 Report of the UN Independent Expert on the enjoyment of all human rights by older persons on her mission to Georgia, Human Rights Council, September 2018. Par. 68. Report can be retrieved from the following web-page: <https://bit.ly/2TLjmsS> [last visited on:19.03.2019].

1110 Ibid, Para. 80-81.

One of the priority areas under the aging action plan was the employment of elderly persons, through the development and use of their labor potential. However, information received from the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance of Georgia illustrates that measures undertaken for the employment of society are not adapted to the needs of the elderly. The agency has assessed neither the employment opportunities of older persons, nor their professional needs or professional orientation based on the labor market research. No segregated data has been collected on the employment of elderly individuals within state programs.

No measures have been taken to strengthen the prevention and response mechanisms against violence against older persons, or to raise awareness on the fight against such violence in the framework of the action plan.

### 25.3. SOCIAL WELL-BEING OF ELDERLY ON THE LOCAL LEVEL

One of the most important factors while discussing the human rights protections of the elderly are the lack of resources on the local level, and more often, inefficiently planned and implemented programs.

It is important to study the needs of the elderly living in the municipalities, in order to plan target-oriented programs and services and to allocate the necessary financial resources. This is also highlighted in the report of the UN independent expert on the enjoyment of all human rights by older persons. The expert deems<sup>1111</sup> that municipalities should be equipped financially and technically, with expertise as well as with human resources, to ensure that these services are available to older persons and their families.

The analysis of the 2019 budgets of self-governing bodies conducted by the Office of the Public Defender shows that programs and services tailored to the needs of the elderly have not changed substantially. Similar to previous years, these programs are limited to financing utility fees and one-off monetary assistance of the elderly, who are at least 100-years-old or above and for veterans of World War II. In order to meet the various needs of the older population, municipalities offer them coverage of treatment and rehabilitation costs and assistance in purchasing medications. Home-based care of the elderly is not viewed as a target program within the municipal budget. In rare cases,<sup>1112</sup> such services are offered within the framework of municipal co-financed projects, implemented by various organizations.

### 25.4. HUMAN RIGHTS SITUATION OF THE ELDERLY AT RESIDENTIAL CARE HOMES

The placement of older persons in residential institutions, and sometimes even in unsatisfactory conditions, constitutes one of the main challenges of the ineffective long-term care policy of older persons. In fact, the state offers such services to older persons in need of care through two large institutions<sup>1113</sup> and several community-based organizations. In most cases, placement in these facilities is problematic due to their scarcity. As a result, the elderly are placed on a waiting list for months. According to the data of March 2019,<sup>1114</sup> 72 elderly persons are awaiting registration at community-based organization.

1111 Report of the UN Independent Expert on the enjoyment of all human rights by older persons on her mission to Georgia, Human Rights Council, September 2018. Par. 80. Report can be retrieved from the following web-page: <<https://bit.ly/2TLJmsS>> last visited on: 19.03.2019].

1112 Tbilisi, Zugdidi, Kutaisi, Bolnisi and Dusheti Municipalities.

1113 Elderly Boarding House of Tbilisi, Elderly Boarding House of Kutaisi.

1114 Letter №04/11627 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance Of Georgia of March 6, 2019.

During the reporting period, the Public Defender of Georgia conducted monitoring of a number of residential elderly care homes.<sup>1115</sup> The visits showed that the conditions in these places are adapted to a family environment, sanitary-hygienic norms are met, beneficiaries are provided with three daily meals and seasonal clothing. No facts of violence and/or inhumane treatment were identified during the visits. The monitoring revealed scarcity in budget.<sup>1116</sup> As a result, the elderly are not provided with medication, physician services or a psychologist in accordance with their specific needs (except for the elderly boarding-house of Tbilisi). Problems arise in terms of adapting buildings and maintaining yards. Due to the lack of transport means, beneficiaries are unable to move about within the community.

According to the community service providers for the elderly, costs related to the burial of elderly persons who have died at the institutions are also problematic. The Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance of Georgia has been informed about this problem. However, incurring costs within the program budget are not envisaged at this point in time.

The report of the UN independent expert also critically assesses conditions at residential care homes for the elderly. In particular, the expert underlines that aside from insufficient capacity, quality of care remains an area of concern in all settings. In some old-age homes, the degree of care and living conditions for older persons is not adequate; problems remain in terms of identifying and recording acts of violence and inhumane treatment, lack of awareness of older persons about their rights and protection mechanisms, and the absence of monitoring.<sup>1117</sup> The expert calls upon the government to strengthen the quality control services at residential care institutions and to explore alternatives to institutionalization.<sup>1118</sup>

## RECOMMENDATIONS

### To the Government of Georgia:

- To adopt a new national action plan on aging with the involvement of society, including organizations working on elderly issues
- To include in the new action plan all activities foreseen by the 2017-2018 National Action Plan for the State Policy Concept on the Issues of Aging in Georgia, which have not been implemented; and to determine the source of financing and performance indicators for each activity
- To establish effective coordination mechanism to ensure the timely fulfillment of targets determined by the action plan
- To increase the budget of the component of the sub-program of community-based organizations of the “2018 State Program of Social Rehabilitation and Child Care” in a manner which will ensure meeting the needs of beneficiaries.
- To provide alternative care services to the elderly, including home nursing and day-care centers, as well as their geographical accessibility through the allocation of adequate resources in the state budget

1115 Territorial Unit (Branch) of the LEPL State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking – Tbilisi Boarding House of Elderly, 3 service providers under the sub-program of community based organizations of the “2018 State Program of Social Rehabilitation and Child Care” – Boarding House of Elderly “Basiliada”, “Route to Merci” and Residential Care Home of Elderly and Persons with Disabilities “My Family”.

1116 Service of one beneficiary is financed in the amount of GEL 16.

1117 Report of the UN Independent Expert on the enjoyment of all human rights by older persons on her mission to Georgia, Human Rights Council, September 2018. Par 77. Report can be retrieved from the following web-page: <<https://bit.ly/2TLjmsS>> [last visited on: 19.03.2019].

1118 Ibid, Para. 116-117.

**To the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Assistance of Georgia:**

- To ensure the timely adoption of 24-hour community services for the elderly and the establishment of an appropriate monitoring system
- To ensure the development of a long-term care concept and its implementation strategy with the broad involvement of society
- To develop in a timely manner a home nursing program whilst taking into consideration geographic accessibility
- To assess the employment opportunities of the elderly based on labor market research; to consider the special needs of the elderly within the framework of state programs promoting employment
- To process disaggregated data of employed elderly persons within the framework of the state programs, according to the fields of employment
- To study professional needs and professional orientation of the elderly and their inclusion in the appropriate programs.

**To the Ministry of Internal Affairs of Georgia:**

- To collect desegregated data pertaining to violence against older persons; support prevention, protection and assistance mechanisms adapted specifically to the needs of the elderly

**To Local Self-Governing Bodies:**

- To develop targeted programs based on the need assessments of the elderly living in municipalities and to reflect them in the local municipal budgets.

## 26. PROTECTION AND CIVIC INTEGRATION OF NATIONAL MINORITIES

During 2018, numerous important programmes were implemented within the framework of the State Strategy of Civic Equality and Integration and its Action Plan.<sup>1119</sup> Despite the fact that some state authorities identify and acknowledge the depth of problems in this field, unfortunately, no efficient or large-scale measures are being taken to address them.

Despite the implemented programmes, the systemic challenges in this field remain unchanged from year to year. Education, teaching the state language, protection of cultural heritage, participation in decision-making process and many other important issues involving national minorities remain relevant.

Nowadays, far more people speak Georgian than 10-15 years ago; various handbooks, publications have been published. However, the activities carried out so far have not yielded the positive result that was anticipated by the state and public from many years of efforts.

During 2018, the Public Defender of Georgia examined 5 cases concerning crimes committed on account of ethnic origin or race. However, the individual circumstances of the case-files show that ethnic and racial intolerance remains to be an acute problem in the country. In this regard, the murder of Vitali Safarov motivated by xenophobia was a particularly alarming incident. According to the circumstances depicted in the case-file, the victim sustained lethal injuries in a bar. One of the reasons leading to the altercation and subsequent murder was that Safarov was not speaking in Georgian to customers in the bar. According to the eyewitnesses of the incident, the altercation was about the homeland and Georgians.

### 26.1. PARTICIPATION OF NATIONAL MINORITIES IN DECISION-MAKING PROCESS

To this day, no efficient measures have been taken for facilitating the participation of national minorities in decision-making process. During 2018, the representation of national minorities in managerial positions in Marneuli municipality, which is densely populated by national minorities, was minimal. According to the 2014 census, there are 104,300 inhabitants in Marneuli municipality; among them, 83.77% are ethnic Azerbaijanis, 8.58% – Georgians and 6.99% – Armenians.<sup>1120</sup> Against this background, it is noteworthy that out of 8 offices of the Marneuli municipality city hall, only the manager of one office is a representative of a national minority group and none of the managers of 5 commissions<sup>1121</sup> of the *Sakrebulo* are from a national minority group. Out of 11 members of the bureau of the Marneuli *Sakrebulo*, only one is a representative of a national minority group. These examples clearly indicate the disturbing situation of representation and participation of national minorities, which undermines the efficiency of the state policy towards integration.

In some of the municipalities that are densely populated by national minorities – Gardabani, Dmanisi, Bolnisi, Akhaltsikhe, and Tsalka – national minorities are represented in managerial positions to a certain

1119 Report on the Implementation of the 2018 Action Plan for the State Strategy for Civic Equality and Integration, available at: <https://bit.ly/2HADo7G>, (accessed 22.03.2019).

1120 Information available at: <https://bit.ly/2FzeH9e>, (accessed 22.03.2019).

1121 Information available at: <https://bit.ly/2TXZDLi>, (accessed 22.03.2019).

degree; whereas this issues is completely solved in Akhalkalaki and Ninotsminda municipalities. There are representatives of national minorities in managerial positions in Akhalkalaki's and Ninotsminda's *Gamgeoba* and *Sakrebulo*.<sup>1122</sup> The low indicator of representation of national minorities in the administration of the State Governor of Samtskhe-Javakheti is problematic. National minorities are not represented in any of the managerial positions (governor, deputy governor, heads of the staff and offices, and their deputies<sup>1123</sup>) in the administration, although more than half of the region's population belong to national minorities (50.52% of the population of Samtskhe-Javakheti are Armenians and 48.28% are Georgians<sup>1124</sup>).

Representation of national minorities in the capital remains problematic. There is a council/working group entrusted with national minority issues that functions under the Tbilisi *Sakrebulo*. Its mandate, however, does not allow ensuring the representation of national minorities in the governance of the capital and their participation in decision-making process. For many years, there have been no representatives of national minorities in managerial positions in the governance of the capital (City Hall, *Sakrebulo* and Municipality *Gamgeobas*). According to statistical data, more than 10% of the population of the capital belong to national minorities.<sup>1125</sup>

There are 11 members that belong to national minorities in the Parliament of Georgia. It is noteworthy that none of them are represented in parliamentary positions (president of the parliament, president of a committee, their deputies).

With rare exceptions, national minorities are not represented in the Government of Georgia at the level of a minister, deputy minister, head of department or deputy head of department. It is noteworthy that very few representatives of national minorities are employed in the Ministry of Internal Affairs in the regions that are densely populated by national minorities.

The Office of the State Minister of Reconciliation and Civic Integration of Georgia implemented an internship programme for national minority students in state agencies. More than 200 youths took part in the programme. The implementation of the aforementioned programme creates preconditions for increasing and facilitating the participation of national minorities in future. However, overall, the representation of national minorities and their participation in decision-making process cannot be solved by an internship programme alone.

## 26.2. ACCESS TO EDUCATION

Challenges from the previous years that were related to availability of preschool, school and higher education for national minorities remain relevant to this day.

In Georgia, taught programmes are available in minority languages (Azerbaijani, Armenian, and Russian) in up to 290 public schools and sectors.<sup>1126</sup> Out of this number, taught programmes are organised in exclusively minority languages in 208 schools.<sup>1127</sup> There are different sectors in 76 schools and taught programmes are available in state and minority languages.<sup>1128</sup>

7,741 educators teach various subjects in the schools where taught programmes are available in minority languages. Among them, there are 3,411 educators in schools teaching in Azerbaijani, 2,985 educators in schools teaching in Armenian and 1,372 educators in schools teaching in Russian.

1122 Information available at: <https://bit.ly/2WgixK2>, (accessed 22.03.2019).

1123 Information available at: <https://bit.ly/21TuNn4>, (accessed 22.03.2019).

1124 Information available at: <https://bit.ly/2HylP89>, (accessed 22.03.2019).

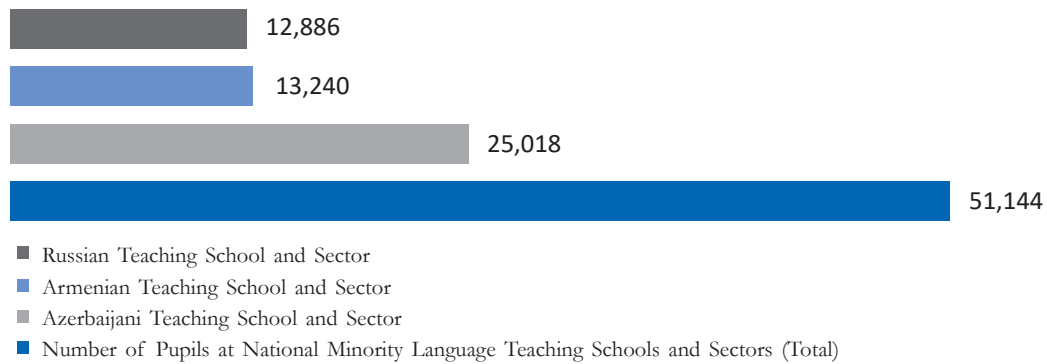
1125 Information available at: <https://bit.ly/2HylP89>, (accessed 22.03.2019).

1126 Letter no. MES 4 19 00294145 of the Ministry of Education, Science, Culture and Sport of Georgia.

1127 80 schools teaching in Azerbaijani; 117 schools teaching in Armenian and 11 schools teaching in Russian.

1128 Georgian-Azerbaijani sector – 31; Georgian-Russian sector – 30; Georgian-Armenian sector – 9; Georgian-Azerbaijani-Russian sector – 1; Georgian-Russian-Armenian sector – 1; Azerbaijani-Armenian sector – 2; Russian-Azerbaijani sector – 2. Five schools with two sectors have no pupils.

### Number of Pupils

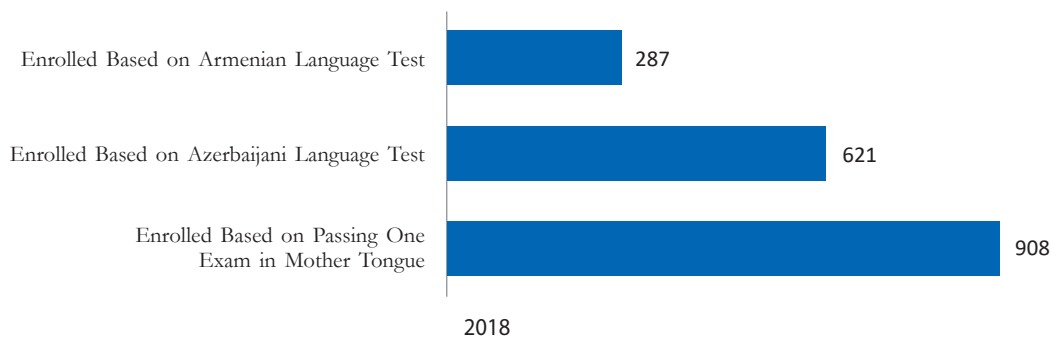


There are several dozen preschool institutions functioning in the regions densely populated by national minorities. Some of them were built, refurbished or reequipped in 2018. In some preschool institutions, Georgian language groups were set up. Despite the aforementioned, in 2018, in the regions densely populated by national minorities, as well as in the whole country, the lack of preschool institutions (the number of schools corresponding with the request) remained to be an acute problem. The capacities of preschool institutions are still not effectively employed to facilitate the study of the state language and native languages in the regions densely populated by national minorities. It is important that teaching of the native and state languages were more widely introduced in preschool institutions.

According to the information supplied by the Ministry of Education, Science, Culture and Sport of Georgia,<sup>1129</sup> for improving multilingual learning, Linguistic Education in Non-Georgian Language Schools/Sectors was added to the study programme in September 2018. The new programme determined the approaches of bilingual learning. Despite this change made by the ministry, the efficient multilingual (bilingual) learning model, developing school handbooks and training of multilingual educators remain problematic in those schools where taught programmes are available in minority languages. There are further challenges associated with attracting qualified bilingual human resources to schools.

Teaching native language and literature (in Armenian, Azerbaijani, and Russian) with uncertified handbooks in schools remains problematic. According to the information supplied by the Ministry of Education, Science, Culture and Sport of Georgia,<sup>1130</sup> none of the applications have been filed in the competition announced to eliminate this problem.

### Passing Exam in Mother Tongue Within the Common National Entrance Examinations at Higher Educational Institutes of Georgia



1129 Letter no. MES 4 19 00294145 of the Ministry of Education, Science, Culture and Sport of Georgia.

1130 *Idem.*

In 2018, 908 entrants enrolled in the higher educational institutes of Georgia through the Common National Entrance Examinations by passing a single exam in general skills in their native language. In terms of civic integration, the said programme is one of the most successful. Some graduates of this programme (the so-called 1+4) have a good command of the state and native languages, have qualification in relevant specialisation and it is important to facilitate their employment and career advancement.

To facilitate training and retraining of educators, the National Centre for Professional Development of Teachers,<sup>1131</sup> with the support of the Millennium Challenge Account – Georgia, implemented professional development programmes for the directors and teachers of those schools where learning is conducted in minority languages. Several hundred educators took part in the courses. Despite the implementation of this programme, training and retraining of educators of such schools remains to be a significant challenge. These educators have been performing a very important function for many years and many of them have the relevant qualification but nonetheless it should be noted that some teachers are past the retirement age, some of them lack the necessary competences for teaching respective specialisations and some of them need additional training. The Ministry of Education, Science, Culture and Sport of Georgia should implement wider and result-oriented programmes to ensure training and retraining of educators and attracting qualified human resources to work in the schools where taught programmes are available in minority languages.

The Ministry of Education is introducing the so-called “new school model” as a part of reforming education. This will naturally be reflected on those schools where taught programmes are available in minority languages. It is important to take into consideration the specificity and requirements of these schools when determining the reform strategy. It is also important to hold consultations with representatives of respective national minorities regarding issues related to those minorities.

### 26.3. TEACHING AND POPULARISING THE STATE LANGUAGE

During 2018, within various age and target groups, numerous important programmes were implemented in the regions populated by national minorities.

According to the information supplied by the Ministry of Education, Science, Culture and Sport of Georgia, overall, there are 1,196 educators in the country teaching Georgian in the schools where taught programmes are available in minority languages. Out of them, 539 educators teach in Azerbaijani schools and sectors, 219 educators each in Russian schools and sectors and 438 educators teach in Armenian schools and sectors.

**Teachers Sent to 175 Schools Teaching in National Minority Languages**



In 2018, 10 regional educational centres and 171 mobile groups of the LEPL Zurab Zhvania School of Public Administration ensured teaching the state language for the employees of local self-governments,

2018

1131 *Idem.*

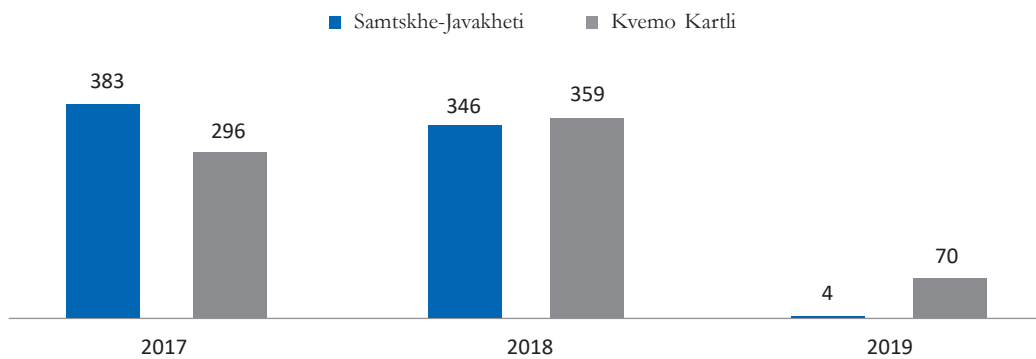


regional administration resource centres of the Ministry of Education, educators and other stakeholders. 3,386 representatives of ethnic minorities were included in the State Language Learning Programme that covered 10 cities and 67 villages being densely populated by national minorities. Statistics show the large-scale nature of the activities carried out to facilitate learning the state language. However, despite this, the difficulties in terms of learning and having knowledge of the state language are still relevant.

Some teachers of the Georgian language working in schools in the regions populated by national minorities do not have the command of Georgian even for maintaining basic communication. Furthermore, the number of teachers of the Georgian language, sent by the Professional Development Centre to the regions, is not enough for the complete solution of the issues in terms of teaching the state language within the framework of school education.

The number of educators of minority languages willing to study the state language has significantly decreased, which possibly negatively affects the quality of the command of the state language among educators and pupils in the long run.

#### Number of Educators Involved in State Language Teaching Programmes



#### 26.4. TEACHING NATIVE LANGUAGE TO SMALL ETHNIC GROUPS

As a result of many years of efforts and recommendations of the Public Defender of Georgia and the Council of National Minorities functioning under the Public Defender, since 2015, small ethnic groups have been taught their respective native language in schools in the regions populated by national minorities.<sup>1132</sup> The programme enables small minority groups to maintain and develop their respective linguistic and cultural heritage. Despite private initiatives and efforts, the problems related to developing and publishing manuals on the language and literature of small ethnic groups have not been completely solved to this day. The existing manuals are out of date and are brought from other countries, mainly from Russia. Languages of small ethnic groups are taught differently in different schools (in primary classes in some schools and in senior classes in other schools). It is also necessary to implement various educational programmes for enhancing qualification of teachers of small ethnic groups' languages.

#### 26.5. CULTURAL HERITAGE OF GEORGIA LINKED TO NATIONAL MINORITIES

Cultural activities have great significance for the preservation and further development of cultural heritage and self-identification of national minorities as well as facilitation of civic integration. During 2018, numerous

<sup>1132</sup> Within the framework of this programme, Assyrian, Udi, Kist, Ossetian, and Khundzi are taught. Due to the lack of educators Kurdish language is not taught yet.

concerts, exhibitions, stage productions and public holidays were organised, where representatives of national minorities could present their cultural heritage. In addition, various publications were translated and reprinted.

Only isolated activities were carried out to protect and develop material cultural heritage of national minorities. In 2018, up to 40 monuments were granted the status of cultural heritage; the Armenian Catholic Church in the village of Toria (Ninotsminda) underwent reconstruction. It should be, however, noted that most of the cultural heritage monuments of Georgia linked to national minorities are in a dire situation and their rehabilitation and reconstruction require large-scale activities.

There are thousands of cultural heritage monuments that are partially or completely linked to national minorities of Georgia. The parliamentary reports of 2016 and 2017 discussed the dire conditions of the cultural heritage monuments linked to national minorities.<sup>1133</sup> For years, these monuments have been in need of reinforcement and rehabilitation projects. The condition of these monuments is still dire and no steps were taken in 2018 towards rehabilitation.

The following are museums reflecting minority cultural heritage in Tbilisi: the LEPL Museum of Azerbaijani Culture under the Ministry of Education, Science, Culture and Sport of Georgia, named after Mirza Fatali Akhundov; the Smirnovs' Museum; and the David Baazov Museum of History of Jews of Georgia and Georgian-Jewish Relations. The cultural heritage of ethnic minorities in Georgia needs more efficient protection and further development. To this end, it is recommended that the Mirza Fatali Akhundov Museum of Azerbaijani Culture and the Smirnovs' Museum – in parallel to marking the important dates of the neighbouring countries – paid particular attention to protecting, presenting and popularising authentic cultural heritage of respective ethnic groups residing in Georgia.

## 26.6. SITUATION IN TERMS OF HUMAN RIGHTS PROTECTION AND INTEGRATION IN THE PANKISI GORGE

The central and local authorities have implemented many projects in the Pankisi Gorge. According to the State Representative in Kakheti,<sup>1134</sup> there are the following establishments in the Pankisi Gorge: 5 public schools and 2 preschools, 11 kindergartens, 4 culture houses, and a branch of music and art school. The Preschool Programme is implemented in the gorge. Furthermore, there is a judo school with three rooms, a football club with four teams and several teams of other sports and games in various villages. Schools (in Omalo and Koreti) as well as roads and bridges connecting the gorge have been constructed and rehabilitated. According to the information supplied by the Ministry of Education and Science,<sup>1135</sup> the National Agency for Cultural Heritage Preservation of Georgia conducted inventory and re-inventory of objects of cultural heritage in the Pankisi Gorge. Within this activity, up to 60 monuments and objects were studied and photo-recorded.

Despite these projects, there is a dire socio-economic situation in the gorge. Only a very small part of the population is employed. According to the 2014 universal census,<sup>1136</sup> 5,581 Kists reside in Akhmeta municipality. They constitute 17.39 of the population of the municipality. During meetings with the representatives of the Public Defender, a significant number of leaders of the local community positively assess the projects implemented by the state authorities in the gorge.<sup>1137</sup>

At the same time, during meetings with the representatives of the Public Defender, some leaders of the community of the Pankisi Gorge express their indignation and maintain that “the state, whoever is in power,

1133 Saint Gevorg of Mughni Church (6, Akhospireli Str.); Shamkhoretots Surb Astvatatsin Karmir Avetaran Church (6, Peristsvaleba Str.); Yerevantsots Saint Minas Church (13, Gelati Str.); Surb Nshan Church (6, Vertskhli Str.); Tandoyants Surb Astvatatsin Church (40, Davit Aghmashenebeli Ave.).

1134 Letter no. 428-01-2-201903071652 of the Administration of the State Representative to Kakheti.

1135 Letter no. MES 4 19 00294145 of the Ministry of Education, Science, Culture and Sport of Georgia.

1136 Available at: [http://csem.ge/wp-content/uploads/2016/07/ethnic\\_groups\\_of\\_georgia.jpg](http://csem.ge/wp-content/uploads/2016/07/ethnic_groups_of_georgia.jpg)

1137 Road infrastructure, medical outpatient facility, a gym, etc.

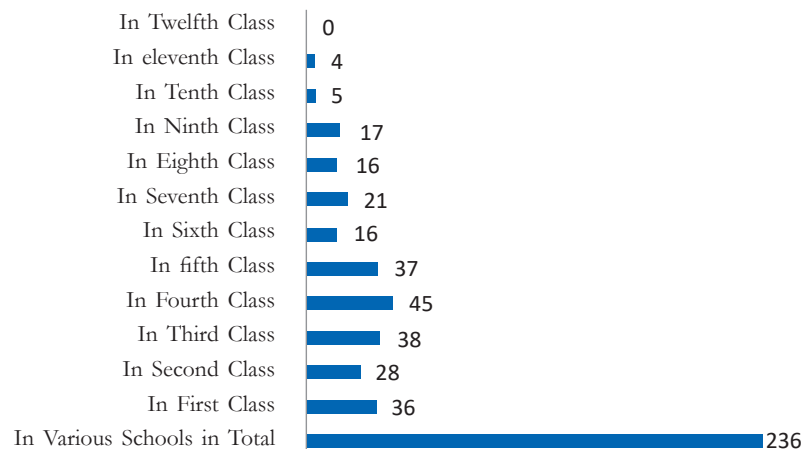
periodically resorts to unjustified violence against representatives of the gorge and later does not investigate these cases.” As an example, they refer to the cases involving deaths during operations conducted by Special Forces in different periods, for example, Lapankuri events, the case of Temirlan Machalikashvili, etc. According to the opinions of the leaders of the Pankisi Gorge community that were expressed during meetings with the Public Defender’s representatives, trust and attitude towards the state improved in the recent years; a significant number of leaders of the local community positively assessed the recent projects implemented by the state authorities in the gorge. However, in the opinion of some of the leaders, the problems arising in terms of the objective investigation of the case of Temirlan Machalikashvili caused and reinforced scepticism towards the state.

For the development and integration of the gorge, it is necessary to implement programmes in various fields. These programmes should be tailored to the needs of the population. It is important to implement activities in terms of facilitating training and retraining of human resources in education, culture and sport; promoting networking with other regions, employment, introducing to foreign experiences; supporting business ideas in terms of tourism and other fields. It is crucial, among others, to facilitate raising civic awareness and establishing civic values in the Pankisi Gorge. Kist youths should be afforded additional means for obtaining education and their self-realisation. When implementing programmes related to the gorge, it is important to take into consideration the attitudes, values, desires of the local population and plan educational and other programmes accordingly.

## 26.7. PROTECTION OF ROMA AND THEIR INTEGRATION

The situation of the Roma community in Georgia is particularly dire in terms education, health care, social security, integration and employment. According to the 2014 census, 604 Roma people live in Georgia. The Roma are concentrated in Tbilisi, Kobuleti, Kutaisi and the village of Tchoeti in Dedoplistskaro. Most of the Roma do not have permanent residence, or even if they have, due to their activities, they often have to change it and rent a residence. This, in turn, negatively affects Roma children’s schooling and academic progress. It is also problematic that a very small percentage of Roma children go to kindergartens and preschool centres. According to the Ministry of Education,<sup>1138</sup> 263 Roma children study in different schools throughout Georgia.

### Number of Roma Children in Schools



1138 Letter no. MES 4 19 00293524 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 11/03/2019.

The above statistics is alarming since most of the Roma pupils abandon studies after finishing primary classes. This is mainly caused by the dire social situation of the Roma community and the low level of academic performance. This is, in turn, caused by dire social conditions and the absence of the environment required for obtaining education. It is noteworthy that, according to the information supplied by the Ministry of Education and Science,<sup>1139</sup> there have been special programmes implemented for bringing Roma children into educational field and their full participation in social life. These programmes were implemented in school no. 4 of Zugdidi, school no. 5 of Kobuleti, school no. 2 of Dedoplistskaro, school no. 11 of Rustavi and schools of the village of Gamarjveba in Gardabani. Overall, 63 Roma children took part in this programme.

The universal electronic registration of first graders at public schools poses additional obstacles for Roma children in obtaining school education. The great majority of Roma are computer illiterate and are unable to register their children and family members electronically.

Only a very few Roma have stable employment. Due to the absence of legal documentation as well as low level of education and intolerance on the part of some members of the public, the Roma are very seldom offered employment and even then they only do temporary jobs. Apart from few exceptions, the Roma people do not have stable work. Due to the dire social conditions, some Roma have to resort to begging to sustain their families. Interviews with representatives of the Roma community showed that the Roma's labour migration to Turkey and other European countries has increased recently.

## 26.8. ALLEGED CRIMES COMMITTED ON ETHNIC AND RACIAL GROUNDS

During 2018, the Public Defender examined in total 5 cases involving crimes committed on ethnic or racial ground. However, the individual circumstances of the cases show that the presence of discriminatory crimes committed on ethnic and racial grounds remain a challenge in the country. In this regard, the murder of Vitali Safarov on xenophobic ground was particularly alarming.

The incidents studied by the Public Defender also concerned physical violence, restriction of access to public services and hate speech on the part of individuals and politicians in relation to non-Georgians.

On 11 April 2018, on the playground located on Beliashvili Street in Tbilisi, several students of African origin who were playing football for approximately two hours were thrown out of the premises by a group of aggressive men resorting to physical and verbal abuse. Regarding this incident, the Inspectorate General of the Ministry of Internal Affairs of Georgia informed the Public Defender that *the officials of the Ministry of Internal Affairs that were present at the incident received strict warnings concerning due fulfilment of their official duties and acting in full compliance with the requirements of Georgian legislation*. The Office of the Chief Prosecutor of Georgia commented that *an investigation concerning the incident was instituted under Article 126.1 (violence) of the Criminal Code of Georgia*.

In another case, a citizen of Cameroon was subjected to verbal abuse and physical assault on a minibus in Rustavi, after which the victim called police and he was taken to a hospital. According to the Office of the Chief Prosecutor of Georgia, investigation is conducted on the incident of racial discrimination, violence involving danger to health and threats of resorting to such violence under Article 142<sup>1.2.a</sup>) of the Criminal Code of Georgia. Various investigative actions were conducted in the case. The Cameroon citizen was recognised as a victim; one person was charged with the crime under Article 142<sup>1.2.a</sup>) of the Criminal Code of Georgia and was placed in remand custody. In one case, in Tbilisi, an ethnic Russian was verbally abused and physically assaulted by a bus driver after the latter heard a conversation in Russian. The abuse was punctuated by an emphasis on the national origin which is recorded by the camera installed in the applicant's vehicle. According

1139 *Idem*.

to the Office of the Chief Prosecutor of Georgia the applicant was given the status of a victim; one individual was charged with the crime under Article 126.1 (violence) of the Criminal Code of Georgia. At this stage, no discriminatory motive has been established and investigation is pending.

Furthermore, on 10 December 2018, Georgian March, Alliance of Patriots and other individuals supporting xenophobic ideology gathered near the Justice House and protested against the Constitutional Court's judgment that had abolished the moratorium on restricting purchase of agricultural lands by foreigners. They called upon the Minister of Justice to not allow giving agricultural land to foreigners. The demonstrators were obstructing foreign nationals from entering the Justice House and accessing public services. Police blocked the entrance to the Justice House during this demonstration. According to the Office of the General Prosecutor of Georgia, investigation is conducted under Article 142.1 (breach of individual's equality) of the Criminal Code of Georgia. Officers of the Police Department and the LEPL Security Police of the Ministry of Internal Affairs, as well as organisers of the demonstration and other individuals, were questioned. No final decision has been adopted in this criminal case; investigation is pending.

As a general trend, it can be said that the number of crimes committed on ethnic ground is less than that of crimes committed on religious grounds. However, the former crimes are characterised by far more serious results and involve a wider range of perpetrators. While private individuals are perpetrators of religious hate crimes, representatives of national minorities often fall victims to group aggression and protests by individuals in the case of the crimes committed on ethnic grounds.

#### **RECOMMENDATIONS:**

##### **To the Government of Georgia; Local Self-Governments of the Regions Densely Populated by National Minorities (Samtskhe-Javakheti, Kvemo Kartli, and Kakheti):**

- Particular attention should be paid to increasing and improving representation of national minorities through recruiting, training and retraining new human resources.

##### **To Local Self-Governments of the Regions Densely Populated by National Minorities (Samtskhe-Javakheti, Kvemo Kartli and Kakheti):**

- To facilitate setting up groups learning the state and native languages in preschool educational establishments, so that pupils are enabled to study Georgian and mother tongue from an early age; and
- To facilitate attracting and enrolment of Roma children in kindergartens and preschools.

##### **To the Ministry of Education, Science, Culture and Sport of Georgia:**

- To ensure the efficiency of multilingual (bilingual) teaching through developing relevant manuals, recruiting educators and enhancing their qualification;
- To continue efforts towards developing and certifying manuals on Armenian, Azerbaijani and Russian literature and language;
- To ensure the participation of national minorities and schools teaching in minority languages in the reform of educational system, *inter alia*, their participation in the so-called New School Model;

- To facilitate teaching the state language in the regions densely populated by national minorities, *inter alia*, by recruiting educators with requisite qualifications, their appropriate remuneration and raising awareness among the population;
- To facilitate teaching the languages of smaller ethnic minorities, in particular, by paying particular attention to developing and publishing school manuals, enhancing qualification of educators and integration throughout the teaching process;
- To take efficient and effective measures for the rehabilitation of cultural heritage monuments linked to national minorities;
- To facilitate learning authentic cultural heritage of Kists, its preservation, development and promotion of its use in everyday life;
- To take efficient measures for facilitating the exercise of the right to education by Roma children; to monitor the reasons of leaving school by Roma children and facilitate their integration in the learning process; and
- To implement systemic retraining programmes for educators working in the regions densely populated by ethnic minorities, *inter alia*, on values and concepts of democracy and human rights protection.

#### **To the State Minister of Reconciliation and Civic Equality of Georgia:**

- To ensure that Kist students and youths are offered additional educational and internship programmes, *inter alia*, to ensure they are given additional information concerning provisions and instruments on democracy and human rights protection;
- To facilitate raising awareness among Roma community on health care, education, human rights protection and other issues; and
- To ensure development and implementation of a special state programme and action plan for the protection of Roma's rights and their integration.

#### **To the Ministry of Economy and Sustainable Development of Georgia:**

- To study tourist potential of the Pankisi Gorge, facilitate developing tourist routes, arranging tourist infrastructure, popularising tourist potential of the gorge and stimulating the development of family-run guesthouses; and
- To encourage projects that represent mixed groups of neighbouring Georgian and Kist villages. This can be done in parallel to the grants supporting already existing businesses or within these grant components.

#### **To the Administration of the State Representative in Kakheti:**

- For integration among neighbouring Kist and Georgian villages, to facilitate the implementation of various programmes as well as cooperation in terms of culture, education, sport, business and other fields.

## 27. PROTECTION OF HUMAN RIGHTS IN THE DEFENCE FIELD

In 2018, the Department of Human Rights Protection in the Defence Field visited 15 units under the Ministry of Internal Affairs<sup>1140</sup> and 8 military units under the Ministry of Defence of Georgia, as a part of monitoring<sup>1141</sup>

For numerous years, the Public Defender has been recommending to make changes to Resolution no. 4 of the Government of Georgia of 11 January 2007 on Monetisation of Social Benefits so that beneficiaries are placed in equal positions and all persons having a veteran status benefited from subsistence allowance as it was before 1 September. While the Parliament of Georgia instructed the Government of Georgia to make the above change, no such changes have been made. According to the statements of representatives of the Ministry of Finances made during parliamentary deliberations, no plans were made to increase assignments in this regard in 2019 either. Considering this, the Public Defender on 17 October 2018, lodged a constitutional claim (18-4/13146) with the Constitutional Court of Georgia and requested to declare Article 8.7 of Resolution no. 4 of the Government of Georgia of 11 January 2007 on Monetisation of Social Benefits unconstitutional as null and void. After the submission of the constitutional claim, the Government of Georgia took a decision about giving the said benefit to all persons.<sup>1142</sup> We hope that this decision will be reflected in the relevant normative act in due time.

### 27.1. THE MINISTRY OF DEFENCE OF GEORGIA

Infrastructural problems were revealed in various sub-units of the defence system. The medical room of the Rangers Battalion of Special Operations Forces is not equipped with the requisite inventory for keeping medications in a cool place.

It was revealed in individual conversations with conscripts serving in the sub-units of the Logistics Command of the Armed Forces of Georgia that they cannot use their mobile phones in accordance with Order no. 1154 of the Minister of Defence of Georgia of 3 October 2013.

1140 Special Tasks Divisions I of the Special Tasks Department of the Ministry of Internal Affairs of Georgia; the Sub-Unit of Provision of Training and Preparation of the Personnel of the Unit of Training and Preparation of the Personnel of the Military Training and Retraining Division of the Facilities Protection Department of the Ministry of Internal Affairs of Georgia; various units of the Division of Security of Diplomatic Representations and National Treasure of the Security Police Department of the Ministry of Internal Affairs: the Embassy of the Federal Republic of Germany; Embassy of the Republic of Turkey; Embassy of the Czech Republic; the Section for the Russian Affairs; the Embassy of the Republic of Iran; the Embassy of Ukraine; the Embassy of France; the Embassy of the UK; the Embassy of Lithuania; the Embassy of Switzerland; the Embassy of Japan; the Embassy of Poland and the Embassy of Romania.

1141 The second division of Armament, Ammunition, and Military Technical Property Bases of the Logistics Command of the Armed Forces of Georgia; the 12<sup>th</sup> Light Infantry Battalion of the I Brigade Armed Forces of Georgia; the Training and Military Education Support Centre Krtsanisi; the Rangers Battalion of Special Operations Forces; the V Artillery Brigade of the Armed Forces of Georgia; the Deployable Communication Office of the Communication Centre of the General Staff; the Divisions of Armament, Ammunition, and Military Technical Property Bases of the Logistics Command of the Armed Forces of Georgia; *Giorgi Antskhelidze* NCO Training Centre.

1142 Available on the website of the Government of Georgia: [http://gov.ge/index.php?lang\\_id=GEO&sec\\_id=520&info\\_id=70743](http://gov.ge/index.php?lang_id=GEO&sec_id=520&info_id=70743), (accessed 26.03.2019).

## 27.2. THE DIVISION OF SECURITY OF DIPLOMATIC REPRESENTATIONS AND NATIONAL TREASURY OF THE SECURITY POLICE DEPARTMENT OF THE MINISTRY OF INTERNAL AFFAIRS

Sub-units nos. 6 and 7 are under the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs. Both regular and conscripts serve in these sub-units. The average salary of regular servicemen is GEL 700 and the salary of conscripts is GEL 75. Military servicemen are not provided with food<sup>1143</sup> and transportation.<sup>1144</sup> **3-4 military servicemen guards daily one diplomatic representation; they are stationed in booths at the entrances. All booths are approximately the same size of 3.5-4 m<sup>2</sup>, which cannot hold more than two persons. Therefore, they are too narrow, considering that these booths are used as bedrooms, office spaces and as spaces to relax for servicemen on assignment, which is in violation of the existing standard.<sup>1145</sup> There are one so-called “tapchan” bed and a chair in the booth. A “tapchan” is approximately 180 cm in length and considering its size does not allow a military serviceman to relax properly. There is no air conditioning in any booths; they only have fans. There is no refrigeration, therefore it is impossible to keep food brought from home; they have to buy food in a shop which results in additional costs.**

**In some divisions (the Embassy of Turkey, the Section for the Russian Affairs, and the Embassy of Lithuania), there is no drinking water or WC and they have to use a neighbouring facility, approximately 300-400 metres away. The Embassy of Switzerland rents toilets for their guards from a private person in the yard of a neighbouring residential block of flats. As there is no cleaner, the toilets are filthy; they take drinking water to flush the toilet bowl.**

Interviews with military servicemen revealed that personnel (consisting of both regular servicemen and conscripts) are not equally assigned to sub-units nos. 6 and 7 of the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs. Sub-unit no. 6 is always fully staffed with sufficient number of servicemen and sub-unit no. 7 almost never has enough number of personnel and **often they have to be on assignment every alternate day.** Considering official needs, conscripts can be confined to the place of assignment or working in an alternate-day regime.<sup>1146</sup> The legislation does not specify in which cases and for what maximum duration it is possible to transfer servicemen into the alternate-day working regime, which naturally needs to be determined.

## 27.3. ARBITRARY AND COLLECTIVE PUNISHMENT

Individual interviews with conscripts serving in the Ministry of Internal Affairs and Armed Forces of the Ministry of Defence showed that, in case of minor disciplinary violations, their direct commanders punish informally and not in accordance with the provisions of the respective statute, in particular, by ordering them to do unplanned physical exercise (pull-ups, squats, running, etc). Furthermore, on frequent occasions, in case of a disciplinary violation by a conscript, his entire troop is also punished in accordance with the principle “one for all, all for one,” which is also not determined by the statute.<sup>1147</sup>

1143 The Law of Georgia on the Status of a Military Serviceman, Article 12.1, a military serviceman’s costs are fully borne by the state.

1144 The Law of Georgia on the Status of a Military Serviceman, Article 19, Privileges with respect to transport travel and communal services.

1145 Internal Service Statute of the Armed Forces of Georgia, Article 143 and Article 144: space for the personnel in bedrooms shall be allocated 2.5 – 4 m<sup>2</sup> per each serviceman.

1146 Order no. 1009 of Minister of Internal Affairs of Georgia of 31 December 2013 on Approving the Statute on Serving Compulsory Military Service in the Ministry of Internal Affairs of Georgia.

1147 Regarding conscripts serving in the Ministry of Internal Affairs of Georgia – Resolution no. 615 of the Government of Georgia of 3 November 2014 on Approving the Statute on Military Discipline, Article 35 and Article 36; regarding conscripts serving in the Ministry of Defence of Georgia – Resolution no. 124 of the Government of Georgia of 17 March 2016 on Approving the Statute on Military Discipline for Military Servicemen within the System of the Ministry of Defence, Article 10 and Article 12.



On 27 October 2017, a military serviceman, B.R. from the Department of Special Tasks of the Ministry of Internal Affairs of Georgia, died as a result of a gunshot wound from a registered weapon. There were videos found in the mobile phone owned by him that showed inhuman and degrading treatment against recruits. The prosecutor's office instituted investigation in this case under Article 333.3.b and Article 333.3.c) of the Criminal Code of Georgia.

#### **27.4. INCIDENTS INVOLVING DEATHS IN MILITARY UNITS**

It should be noted that investigation on criminal cases concerning deaths in military units of the Ministry of Defence in 2015 is pending to this day.

On 4 October 2015, when performing official duties, military servicemen T.T. died after getting shot with the weapon assigned to him. A criminal case was instituted under Article 115 of the Criminal Code of Georgia; witnesses were questioned, a forensic examination was conducted; based on the motion by the deceased's family members and their lawyer, witnesses were questioned again and the crime scene was examined. However, nobody has been charged or recognised as a victim at this stage. Investigation is pending; the results and the progress of the investigation remains the same. Similarly, no progress has been made in the criminal case instituted concerning the death of the military serviceman, G.K., who was found dead on the territory of the Norio Training Centre on 20 October 2015. A criminal case was instituted under Article 115 of the Criminal Code of Georgia but later it was re-categorised on Article 117.2 of the Criminal Code of Georgia. Relevant investigative actions and forensic expertise were conducted. However, as it was impossible to establish the circumstances important for the case, nobody has been charged or recognised as a victim at this stage.

Stemming from the fact that when a person dies the state has to conduct an effective investigation, also considering that more than 3 years have passed from the institution of investigation, accountability is important and the competent agency should inform the public in detail about the results of the investigation. It is necessary to supply information as to how timely, thorough and adequate were the carried out investigative and procedural acts. The Public Defender's Office expresses the readiness to examine the criminal cases concerned, with the investigative authorities' consent.

#### **27.5. PROTECTION OF RIGHTS OF VETERANS**

As of today, there are small benefits for persons with a veteran's status.<sup>1148</sup> But we believe that these benefits are insufficient. Several factors justify introduction of additional socio-economic measures for veterans: 1) the dire economic situation existing in the country; 2) the contribution veterans for the state; 3) injuries sustained by them that could prevent them from leading an active lifestyle; and 4) adequate support to veterans is a motivating factor for incumbent military servicemen.

Under Article 82.2a.a) of the Tax Code of Georgia, income tax shall not be levied on taxable income up to GEL 3,000 earned during a calendar year by citizens of Georgia who participated in World War II, the battles for the territorial integrity, freedom and independence of Georgia and battles on the territories of other countries. It is noteworthy that under the Law of Georgia on the Veterans of War and Armed Forces, the state policy provides for developing and implementing state programmes aimed at creating socio-economic and legal benefits and the system of measures for their practical realisation for veterans and their family members.

<sup>1148</sup> Livelihood subsidy of 22GEL; provision of ritual services, medical insurance, free travel by public transport. .

Considering the above, we deem it advisable to increase the existing income tax-cut of GEL 3000 up to GEL 6,000 for veterans and up to GEL 9,000 for veterans with acute and significant disability.<sup>1149</sup> This will contribute to the improvement of veterans' socio-economic situation and protection of their other rights.

## RECOMMENDATIONS

### To the Ministry of Internal Affairs of Georgia:

- To address the problem of WC and ensure sanitary and hygiene standards in the units of the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs; to arrange large, well-furnished rooms, instead of existing booths, for personnel being on assignment to relax;
- To provide military servicemen serving in sub-units nos. 6 and 7 of the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs with food and transportation in accordance with Article 12 and Article 19 of the Law of Georgia on the Status of a Military Serviceman;
- To equally distribute the personnel of sub-units nos. 6 and 7 of the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs so that they could equally use breaks;
- To ensure that remuneration for the work of the military servicemen serving in sub-units nos. 6 and 7 of the Division of Security of Diplomatic Representations and National Treasury of the Security Police Department of the Ministry of Internal Affairs is calculated based on the number of 24-hour assignments; and
- To amend Order no. 1009 of Minister of Internal Affairs of Georgia of 31 December 2013 on Approving the Statute on Serving Compulsory Military Service in the Ministry of Internal Affairs of Georgia and to determine in clear terms the ground, maximum duration and conditions for transferring a military serviceman into alternate-day working regime.

### To the Ministry of Defence of Georgia:

- To ensure that conscripts serving in the sub-units of the Logistics Command of the Armed Forces of Georgia can use mobile phones in accordance with Order no. 1154 of the Minister of Defence of Georgia of 3 October 2013;<sup>1150</sup>
- To improve infrastructural conditions in the residential barracks of the armed forces of Georgia<sup>1151</sup> and to have them arranged in accordance with the standards established by the statute of the Internal Office of Armed Forces of Georgia; and
- To equip the medical room of the Rangers Battalion of Special Operations Forces with all necessary inventory.

1149 This will not put a significant burden on the state budget. Per GEL 3000 the state will not receive the income only in the amount of GEL 600 (income tax being 20%) and per GEL 6000 this sum will amount to GEL 1,200 whereas per GEL 9000– GEL 1,800 annually. Any income received above these sums will be taxed as usual.

1150 The Divisions of Armament, Ammunition, and Military Technical Property Bases of the Logistics Command of the Armed Forces of Georgia.

1151 To arrange the following: power supply, lighting, air conditioning and ventilating systems in all military units of Armed Forces of Georgia (in bedrooms, classrooms, dining rooms and kitchens); to eradicate problems regarding WC in the Rangers Battalion of Special Operations Forces, the Training and Military Education Support Centre Krtsanisi, and the V Artillery Brigade of the Armed Forces of Georgia.

### **The Ministry of Internal Affairs of Georgia, the Ministry of Defence of Georgia**

- To eradicate the application of non-statutory punishments not provided by a statute (unplanned physical activity for punitive purposes) against conscripts in case of commission of a disciplinary offence; to instruct to this end the Inspectorate General of the Ministry of Internal Affairs to systematically control the application of non-statutory punishments in military units and analyse situation in this regard annually.

### **The Prosecutor General of Georgia:**

- Within the report submitted, based on Article 172 of the Rules of the Parliament of Georgia, to present his opinions concerning the effectiveness of investigation instituted on the incidents of death in the units of the Ministry of Defence.

### **To the Government of Georgia:**

- To initiate amendments to the Tax Code and increase the existing income tax-cut for veterans up to GEL 6,000 (GEL 9,000 for veterans with acute and significant disability) as of 2020.

## 28. PROTECTION OF RIGHTS OF CONFLICT-AFFECTED POPULATION

Ten years have passed since the 2008 Georgia-Russian War that greatly affected democratic and socio-economic development of Georgia. However, the violation of the conflict-affected population's rights still continue in the reporting period; individuals still face illegal acts and unjustified obstacles in the reporting period.

Out of the cases examined by the Public Defender's Office in the reporting period, the violation of Archil Tatunashvili's right to life in the occupied Tskhinvali region was the gravest. This case prompted the Georgian authorities to lodge a third inter-state application against the Russian Federation with the European Court of Human Rights.

The present chapter discusses the violation of the rights of Georgian citizens to life, security, education, as well as violation of children's rights, restriction of the freedom of movement and discrimination on account of ethnicity on the occupied territories and along the occupation lines. The respective recommendations of the Public Defender are given in this chapter.

### 28.1. RIGHT TO LIFE AND SECURITY

In 2018, one of the gravest violations of human rights on the occupied territories was the death of a Georgian citizen in Tskhinvali. On 23 February 2018, the de facto authorities circulated information about the death of a citizen of Georgia, Archil Tatunashvili, who had been arrested in Akhgori. According to their information, after interrogation, Tatunashvili attempted to take away weapon from one of the officers. In response, force was used against him, whereby he rolled down the stairs and sustained injuries. Within two hours after having been brought to Tskhinvali hospital, he passed away due to heart failure.<sup>1152</sup> According to the information supplied to the Public Defender, Archil Tatunashvili was already dead when brought to the hospital and according to the medical personnel the injuries indicated that he had been beaten. The Public Defender made a public statement about this issue. The de facto authorities of Tskhinvali handed over the body, without internal organs, to the Georgian side only after one month. The Georgian side has been unsuccessfully requesting for the internal organs to this day.<sup>1153</sup>

According to the assessment of the National Forensics Bureau of Georgia, there are multiple injuries on the body, which most likely indicate torture.<sup>1154</sup> It has turned out to be impossible to establish the cause of death due to the missing internal organs. The Ministry of Internal Affairs of Georgia started investigation on the murder of Tatunashvili and charged *in absentia* two officials of the de facto law-enforcement body of Tskhinvali. These persons are wanted under the Interpol red notice; however, they have not been arrested to this day. The de facto Tskhinvali investigative authorities discontinued investigation on Tatunashvili's case.

1152 The Ossetian side: "a Georgian citizen rolled down the stairs in Tskhinvali isolator and died", 23.02.2018, Netgazeti, available at: <http://netgazeti.ge/news/255030/>, (accessed 20.03.2019).

1153 "Five-Hour Discussion of Incidents in Ergneti – For the First Time After Three Months", 18.12.2018, Freedom Radio, available at: <https://www.radiotavisupleba.ge/a/29663376.html>, (accessed 20.03.2019).

1154 Natia Mezvrishvili – "Another Charge has been Made in the Archil Tatunashvili's Case", 6.06.2018, The Public Broadcaster, available at: <https://ces.to/vXFiew>, (accessed 20.03.2019).

This case demonstrated again the insecure environment in which the population has to live on the occupied territories and in the villages along the occupation line. Those citizens of Georgia are in particular danger on the uncontrolled territories that live there permanently or regularly move along the occupation line. The Public Defender is aware of the incidents of stopping men when crossing the occupation line of Tskhinvali region and subjecting them to physical pressure. However, locals cannot voice their concerns. In their opinion, these measures aim at intimidating them and they feel insecure.<sup>1155</sup>

In the reporting period, there were several incidents involving the excessive use of force by the de facto law-enforcement agencies. On 30 July 2018, in the city of Tskhinvali, de facto law-enforcement officials physically assaulted several individuals who, in their opinion, could have some connection with a prisoner having escaped from the Tskhinvali prison. The de facto law-enforcement officials first beat the individual in prison who had shared a cell with the escaped prisoner and later, in the process of searching for the prisoner, beat several persons with criminal records in a restaurant. One of them sustained grave injuries. None of the de facto law-enforcement officials has been arrested. After this incident, representatives of civic society in Tskhinvali discussed the need for human rights protection mechanisms.<sup>1156</sup>

In terms of the freedom of movement, there are still challenges involving illegal arrests along the Boundary Line; this is a serious problem of security for the locals. Kidnapping a citizen of Georgia, Maia Otinashvili,<sup>1157</sup> from her own garden in the village of Khurvaleti of the Gori Municipality on 29 September 2018 and taking her to the occupied territory was particularly alarming. For several days, family members did not have any information about her general condition and security. The International Committee of the Red Cross (ICRC) which is the only international organisation in Tskhinvali Region could only see the arrestee on the sixth day. This fact indicates the need for having a more efficient mechanism of exchanging information about arrested persons.

According to the official data, in 2018, along the occupation line, in the direction of Tskhinvali region, 96 persons were arrested (these persons were arrested on the territory controlled by Georgia or when crossing the occupation line; this data amounted to 126 in 2017). According to the Ossetian data, there 607 persons arrested (this data amounted to 514 last year).<sup>1158</sup>

This clearly shows that the number of the persons who come from the occupied region of Tskhinvali to the territory controlled by Georgia to get healthcare, trade, visit family members and relatives increases over years and wires and illegal arrests damage the local population more and more, irrespective of their ethnic affiliations. There are open talks in Tskhinvali concerning the necessity to remove restrictions on freedom of movement;<sup>1159</sup> however, the de facto authorities continue to ignore the needs of the local population.

According to the official data, in 2018, 28 persons were arrested along the occupation line of Abkhazia (this indicator amounted to 52 in 2017). According to Abkhazian data, the number of arrested persons exceeded 300<sup>1160</sup> (their number amounted to 1,000 in 2017).

The incidents involving the deprivation of life of Georgian citizens on the occupation line strained the negotiations process and endangered the existing formats of negotiations. On 27 June 2018, the Abkhazian side walked out of the meeting under the Incident Prevention and Response Mechanism (IPRM) in protest

1155 Information supplied by a contact person to the Public Defender, 2018.

1156 "Tskhinvali: Talks about the Human Rights After the Scandal", 30.08.2018, JamNews, available at: <https://jam-news.net/?p=119912&clang=ka>, (accessed 20.03.2019).

1157 According to the information supplied to the Public Defender by eyewitnesses, armed and masked persons kidnapped the Georgian citizen from the territory controlled by Georgia, approximately 50 metres from the wires, by using physical force.

1158 "Ossetian Statistics" – in 2018, 6 times more Citizens of Tskhinvali were arrested than Citizens of Georgia, 11.01.2019, Freedom Radio, available at: <https://ces.to/36wBr3>, (accessed 20.03.2019).

1159 Information supplied by a contact person to the Public Defender, February 2019.

1160 According to the Sokhumi, the Incidents of Illegal Crossing of the Occupation Line Have Decreased, 26.03.2019, Livepress, available at: <https://ces.to/zpWd32>, (accessed 20.03.2019).

of adopting the “Otkhozoria-Tatunashvili List”<sup>1161</sup> by the Parliament of Georgia and requested to remove the issue of murder of G. Otkhozoria from the agenda in return of resuming negotiations. On 14 September 2018, the Ossetian side also abandoned negotiations in Ergneti and thereby protested the launch of the search, under Interpol red notice, of two Ossetian officials charged with illegal deprivation of liberty and torture of Archil Tatunashvili. The Ossetian side went back to negotiations only after three months on 18 December 2018; whereas meeting in Gali has not resumed to this date.

It is noteworthy that the whereabouts of five ethnic Ossetians that disappeared after the 2008 war are still unknown. Among them were three ethnic Ossetian youths who allegedly disappeared on 13 October 2008 on the territory controlled by Georgia.<sup>1162</sup> According to the information supplied by the Office of the Prosecutor General, investigation is ongoing and, despite investigative acts carried out, the whereabouts of the disappeared persons could not be established.<sup>1163</sup> The solution of the issue at stake would be important both in terms of human rights protection and restoration of trust.

## 28.2. DOCUMENTS AND MOVEMENT ON THE OCCUPATION LINES

The issue of documents of the local population in the occupied Gali District remains problematic. Up to 2017, approximately 12,000 individuals held so-called form no. 9 and up to 200 individuals held the so-called Abkhazian passport that is still valid<sup>1164</sup> and 26 000 individuals held the so-called old Abkhazian passports that were invalidated in 2014. These documents enabled the majority of the population to move on the Enguri Bridge.<sup>1165</sup> As of 2017, the de facto administration has further aggravated the situation when they decided to invalidate the old Abkhazian passports and replacement of form no. 9 with residence permits.

The majority of the Gali population refuses to take the residence permit which gives them the status of a foreigner. Eligibility for a residence permit has strict criteria and is valid for 5 years which can be used as an additional mechanism to exert pressure on the Gali population. The residence permit does not give title to immovable property to a holder of this document, which is one of the most important factors. However, at the same time, this is the only means for the Gali population to move on the occupation line. Therefore, they are forced to apply for this document.<sup>1166</sup> According to the information at the Public Defender’s disposal, locals have to queue for long times to obtain the residence permit. They also complain about the rampant corruption in place.<sup>1167</sup>

Obtaining the residence permit is particularly difficult for students as the local administration does not issue documents certifying their residence in the district. Therefore, they have to return home by a visa.<sup>1168</sup>

In 2017-2018, in total 10,332 applications were made for residence permits and 4,528 residence permits were issued.<sup>1169</sup> The possibility to receive form no. 9 was extended for another year. However, this form can only be

1161 See the Resolution of the Parliament of Georgia on the Gross Violations of Human Rights by the Russian Federation on the Occupied Abkhazia and Tskhinvali Region and “Otkhozoria-Tatunashvili List”, available at: <https://ces.to/sVXYco>, (accessed 20.03.2019).

1162 See, in detail, the 2014 parliamentary report of the Public Defender, p. 848.

1163 Letter no.13/44830 of the Office of the Chief Prosecutor of Georgia, dated 7 July 2017.

1164 The citizenship of Abkhazia or South Ossetia or passports issued by the de facto authorities of Abkhazia or Ossetia are not recognised by Georgia or international community; however, holding these documents is related to the exercise of many basic rights by the locals residing on these territories. See, in detail, the 2015 parliamentary report of the Public Defender of Georgia. p. 1193.

1165 “The Locals of Gali District Will Not Be Able to Vote in the Presidential Elections in Abkhazia”, 13.06.2014, Livepress, available at: <https://ces.to/17ExDp>, (accessed 20.03.2019).

1166 See the 2017 parliamentary report of the Public Defender, p. 321; “Sokhumi Started Issuing Residence Permits for Ethnic Georgians, 25.04.2017, civil.ge available at: <https://civil.ge/ka/archives/155946>, (accessed 20.03.2019).

1167 Information supplied by a contact person to the Public Defender, February 2019.

1168 Information supplied by a contact person to the Public Defender, July 2018.

1169 In 2017, residence permits were issued to 1,573 individuals; as of November 2018, residence permits were issued to 2,955 individuals. Information supplied by a contact person to the Public Defender, January 2019.

issued if a person has applied for residence permit. There are also cases where a person is refused form no. 9, in which case, it is impossible to move on the Boundary Line.

As of August 2018, movement by the Soviet passports was banned altogether and as of January 2019, by the so-called old Abkhazian passports. As of 2019, the movement on the Enguri Bridge is possible by only the so-called new Abkhazian passport, form no. 9 or a residence permit and by birth certificate for persons under 14 years of age. The movement is also allowed by a Georgian passport for those who have the permit to enter Abkhazia (the so-called visa).

Residence permit or any other local document is not issued for individuals living in the Kodori Gorge. Their movement on the Boundary Line is only allowed if they have a special permit. The permits are issued for the maximum of 2 weeks on the spot by the de facto security services. In case of overstaying, the person will not be granted entry to Abkhazia anymore.<sup>1170</sup> Another difficulty for the residents of the Kodori Gorge is that to cross over to the territory controlled by Georgia they need to cover the distance of around 200 km first from the Kodori Gorge to Sokhumi and from Sokhumi to the Enguri Bridge. The road from the gorge to Sokhumi is bad which poses particular problems for elderly or ill individuals.

The Tskhinvali de facto authority, by the end of December 2018, circulated information about restrictions introduced concerning movement on the occupation line in Akhgori for persons with the so-called Ossetian passports. The change that was supposed to come into force as of 1 January 2019 requires an additional special permit for those with the so-called Ossetian passports to be let through checkpoints. This caused rather serious indignation on the part of the locals since the majority of Akhgori population commutes on a daily basis on the occupation line; those with the so-called Ossetian passports are also among them.<sup>1171</sup> The regulation is in force as of 29 March and locals will have to submit the respective documents to the local offices of de facto security services. This change, according to the existing data, will affect approximately 800 individuals.<sup>1172</sup>

The formal regime established on the occupation line by de facto authorities and Russian border forces, which restricts the movement of the locals as it is, periodically is closed down altogether. Checkpoints stop functioning during elections and holidays. However, in the beginning of 2019, the Boundary Line was completely closed down towards Abkhazia (10 January) and Tskhinvali Region (11 January). The de facto authorities claimed that this was connected to the spread of H1N1 flu virus on the territory of Georgia. The closing down of the Abkhazian Boundary Line was announced to last for 2 months; however, movement was restored on the Enguri Bridge in 25 days. Movement Tskhinvali Boundary Line continued for more than 2 months and movement was only restored on 25 March.<sup>1173</sup>

Due to restrictions, problems are created for pupils and students who went to Abkhazia and Tskhinvali during the holidays. They could not go back to the territory controlled by Georgia in time for school. There were incidents where patients needed several days to leave Abkhazia; whereas patients in Tskhinvali could not enter the territory controlled by Georgia and they had to get treatment in Tskhinvali. Due to restrictions on movement on the occupation line, in February 2019, an emergency patient, a 52-year old male, was transported with a 10-hour delay which caused considerable deterioration of his health.<sup>1174</sup>

The restriction of movement on the Boundary Lines also affected the accessibility of food products and medications on the spot. In the same period, for 8 days the Transcaucasian Highway was also closed down. Prices on products increased both in Tskhinvali and Abkhazia. Locals receiving a Georgian pension or other allowances or having a bank loan found themselves in a difficult situation. For two months, employed individuals

1170 Information supplied by the Representation of the Government of the Autonomous Republic of Abkhazia to the Upper Abkhazia, February 2019.

1171 Information supplied by a contact person to the Public Defender, January 2019.

1172 Information supplied by a contact person to the Public Defender, February 2019.

1173 On 20 February, crossing points were open unilaterally for 3 days and more than 200 persons could cross over to the territory controlled by Georgia; information supplied by a contact person to the Public Defender, March 2019.

1174 Information supplied by a contact person to the Public Defender, February 2019.

who had left the region for a short time could not return to Akhgori. Therefore, these persons could not receive their pay for two months.<sup>1175</sup>

Another painful issue in terms of movement on the Boundary Line is attending a relative's funeral. The procedure is not uniform and locals face many difficulties, especially due to the great expenses involved in taking relatives into the Gali territory. Until 2015, this procedure was relatively simple and flexible. Nowadays, it costs GEL 100 per person, to be paid by the family, which often means that relatives cannot be invited to funerals.<sup>1176</sup>

### 28.3. FREEDOM OF EXPRESSION

The Public Defender considers it to be alarming that the incidents of pressure on female activists and journalists are increasing on the occupied territories. An activists and blogger from Akhgori, Tamar Mearakishvili, at the risk of her own right, security and health continues publicising and broadcasting the dire situation of human rights protection in Akhgori and the violation of the population's rights by the de facto authorities. Due to her activities, the de facto Akhgori prosecutor's office instituted another criminal case against her in the reporting period, which has already been the fourth charge since 2017.<sup>1177</sup> Her IDs have been taken away and therefore she cannot move freely or receive timely and quality medical and other services.

A journalist in Tskhinvali, Irina Kelekhsayeva, was subjected to psychological pressure from the de facto law-enforcement authorities for preparing critical material<sup>1178</sup> concerning the de facto president for the Russian language edition of the Freedom Radio in February 2018. She also used to work for the local Radio Ir from where she was dismissed.

A journalist in Sokhumi, Izida Tchania, was convicted by a de facto court for defamation for an article in which she criticised the former de facto minister of internal affairs and a member of the parliament, Raul Lolua.<sup>1179</sup> The court proceedings continued almost for 2 years. On 4 September 2018, Izida Tchania and her lawyer walked out of the courtroom in protest of the bias and partiality of the judge. After this, the judge finalised consideration of the case and ordered Izida Tchania to reimburse non-pecuniary damage to Lolua and costs of the proceedings.

These incidents can be assessed as the violation of the freedom of expression. International Organisation Freedom House, in its 2018 report, again considered the territory of Abkhazia as partly free<sup>1180</sup> and the territory of the Tskhinvali Region as not free.<sup>1181</sup>

1175 Information supplied by a contact person to the Public Defender, March 2019.

1176 During the year, the Public Defender's Office was informed about several such incidents; information supplied by contact persons to the Public Defender; also see the "Mourning Procession Divided by Wires – A Deceased was Mourned in Abkhazia from Samegrelo", 20.02.2019, Atinati Radio, available at: <https://ces.to/AQchOV>, (accessed 20.03.2019).

1177 Tamar Mearakishvili: "The Fourth Criminal Case Instituted Against Me", 5.11.2018, Netgazeti, available at: <http://netgazeti.ge/news/317169/>, (accessed 20.03.2019).

1178 "Howe the President and an Investor Fought", 16.02.2019, Echo Kavkaza [Как поссорились президент и инвестор], available at: <https://www.ekhokavkaza.com/a/29044281.html>, (accessed 20.03.2019).

1179 "An Abkhazian MP Won a Case Against Echo Kavkaza's Journalist", 7.09.2018, Netgazeti, available at: <http://netgazeti.ge/news/302760/>, (accessed 20.03.2019).

1180 Freedom in the World, 2019, Abkhazia, Freedom House, available at: <https://freedomhouse.org/report/freedom-world/2019/abkhazia>, (accessed 20.03.2019).

1181 Freedom in the World, 2019, South Ossetia, Freedom House, available at: <https://freedomhouse.org/report/freedom-world/2019/south-ossetia>, (accessed 20.03.2019).



## 28.4. SOCIAL RIGHTS

### Right to Education

Realisation of the right to education on the occupied territories of Abkhazia and South Ossetia is faced with multiple challenges. Restriction imposed for ethnic Georgians in obtaining education in the native tongue considerably worsened Georgians' legal status, their knowledge of the native tongue and the quality of education in general.<sup>1182</sup> This restriction was introduced in 2015 in Gali district and in 2017 in Akhlagori Municipality. Nowadays, instruction in Georgian language is completely banned in all preschool establishments and primary classes, and Georgian as a foreign language is only taught in senior classes and only in schools. Despite numerous calls, negotiations or offering various models of instruction in the native tongue according to other countries' practices, the de facto authorities are not considering to change the decision. Furthermore, the quality of education is worsening. There is a shortage of Russian-speaking human resources; therefore, there are frequent occasions when persons with no relevant education, specialisation or working experience, although speaking Russian, are designated as educators in kindergartens and schools. For instance, the Public Defender is informed about the appointment of an economist as a math teacher and of a lawyer as a teacher of Russian and History.<sup>1183</sup>

Furthermore, significant influence on the quality of education of pupils is made by the school environment and other spaces for development. When speaking with the Public Defender, ethnic Georgian youths maintain that they cannot freely express their opinions in the school (especially in the schools of the city of Gali). They often face persecution and insults on account of their ethnicity, inter alia, from Abkhazian teachers. To fill this gap, it is important for youths to have educational projects arranged by NGOs where they are offered a safe environment to express their opinions and emotions freely and develop critical thinking. Many such projects have been discontinued due to the termination of donors' funding. The decision made by the de facto administration's head in 2018 further restricted the small number of remaining projects. This decision bans the NGOs to conduct any activities or projects for pupils in Gali district schools without prior agreement with the district's de facto administration.<sup>1184</sup> In parallel to this, the administration strictly opposes and restricts the participation of the pupils of Gali schools in children's camps on the territory controlled by Georgia. In 2018, children, their parents and school teachers who participated in the summer camp on the territory controlled by Georgia were summoned for questioning.<sup>1185</sup>

The incidents identified last year involving psychological pressure on children and war propaganda are extremely alarming. According to locals, the celebration programmes at schools of Gali district are strictly censored by representatives of the de facto administration of Gali so that there are no Georgian dances, songs or other cultural elements included in the programmes.<sup>1186</sup> In 2018, an Abkhazian school director was dismissed for allowing Gali pupils to sing a song in Megrelian in a school of Tkvarcheli District.<sup>1187</sup>

Anniversary dates are to be mentioned separately. On these occasions, children are compelled to sing songs dedicated to the Russian Federation or take part in simulated military games against their will or the will of their families. 2018 was particularly noteworthy in this regard. To mark the 25<sup>th</sup> anniversary of the "victory" of Abkhazia, kindergarten and primary school children across Abkhazia were dressed in military uniforms and made to sing military songs.<sup>1188</sup> This is clearly war propaganda among children.

1182 See the 2015 special report of the Public Defender on the Right to Education in Gali District: News of the 2015-2016 Academic Year and Accompanying Problems.

1183 Information supplied by a contact person to the Public Defender, February 2019.

1184 Information supplied by a contact person to the Public Defender, June 2018.

1185 Information supplied by a contact person to the Public Defender; see also Psychological Pressure on Children and Suppressing Identity in Gali – Tsikhelashvili's Report, 31.10.2018, Netgazeti, available at: <https://ces.to/R98VqY>, (accessed 20.03.2019).

1186 Information supplied by a contact person to the Public Defender, June 2018.

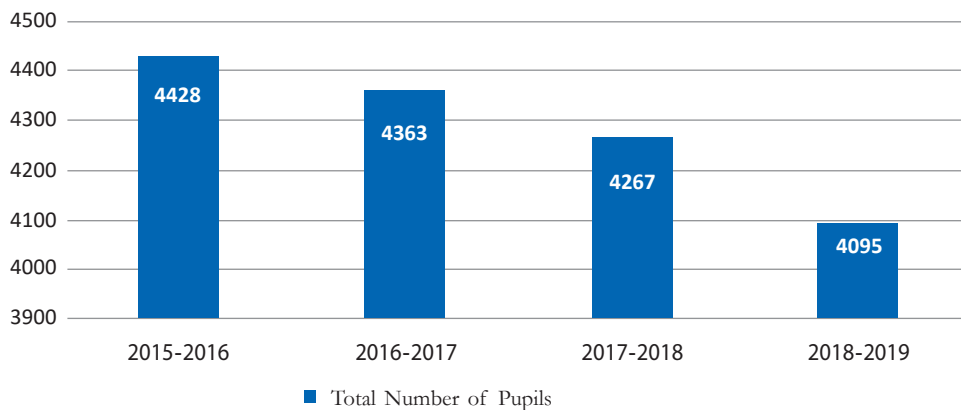
1187 Information supplied by a contact person to the Public Defender, June 2018.

1188 See the video at: <http://netgazeti.ge/news/315893/>, (accessed 20.03.2019).

The combination of events and policies carried out indicates that the legal status of children living in Gali district is even worse than in other districts of Abkhazia as, along with social problems and violent environment, children living in Gali district are subjected to ethnic discrimination and their cultural rights and right to education are violated.

Despite the existing problems, the number of pupils in schools in Gali district was relatively stable in the recent years. The number of first-graders was even increasing in 2014-2016. However, in 2018, the number of pupils significantly decreased. It is possible that the existing situation forced many parents to transfer their children to Georgian schools in Zugdidi.<sup>1189</sup>

**Number of Pupils in Schools of Gali District**



The number of first-graders is decreasing annually. For instance, in 2017, out of 7 schools only 5 schools of Akhagori has first-graders enrolled; whereas only 3 schools has first-graders in 2018 (in total, 13 and 11 first-graders, respectively).<sup>1190</sup>

An initiative of the Government of Georgia – A step to Better Future<sup>1191</sup> – is one of the measures aimed at eradicating the problem of Georgian language and improving the quality of education. One of its components envisages developing a programme to prepare youths living on the occupied territory for after-school education. The programme will offer the mandatory subjects of national examinations and optional subjects, among them, Georgian language and literature and IT programmes. It is important news that the youths enrolled on the programme will be provided with accommodation and stipend. It is planned to implement the programme in 2019 within the Tbilisi State University and Zugdidi State University.

While the programme covers all youths living in the occupied territory, it is important that the competent authorities pay particular importance that in practice the youths living in Gali and Akhagori districts are not beyond the programme.

### Right to Healthcare

Healthcare and social security face particular challenges on the occupied territories. There is a shortage of qualified human resources and modern medical infrastructure in the clinics of Abkhazia and Tskhinvali region. The majority of the population tries to obtain medical treatment beyond the occupied territories. The services

1189 Information supplied by the Educational Resource Centre of Gali district, January 2019.

1190 Information supplied to representatives of the Public Defender by Education Office of the Administration of the South Ossetia, January 2019.

1191 See the peace initiative, A Step to the Better Future – Developing Educational Capacities for the Population of Abkhazia and Tskhinvali Region/South Ossetia, available at: [http://smr.gov.ge/Uploads/\\_\\_\\_a2beda36.pdf](http://smr.gov.ge/Uploads/___a2beda36.pdf), (accessed 20.03.2019).

accessible for citizens on the territory controlled by Georgia are not accessible for vulnerable groups such as persons with disabilities, victims of violence, socially vulnerable persons etc.; whereas services offered by de facto authorities are often insufficient and unable to ensure adequate protection of the locals' rights.

Despite difficult conditions, patients face certain difficulties if they wish to continue treatment on the territory controlled by Georgia. For instance, the Public Defender is informed that the de facto authorities of the Tskhinvali region only allow transfer of patients in extreme situations.<sup>1192</sup> This often worsens patients' state of health.

Transportation of emergency patients from Abkhazia to the territory controlled by Georgia is also problematic. Until 2012, emergency service brigades of Gali district could transport a patient to clinics in Zugdidi through checkpoints (upper and lower zones and the Enguri Bridge). However, nowadays, they can only take a patient to the Enguri Bridge. A patient has to find a regular vehicle for transportation, which certainly is inadvisable for patients in a serious condition. It is important to put the movement of ambulance vans through checkpoints on the agenda of negotiations on a regular basis.

Against this background, the state programmes of Georgia assume particular importance for the healthcare and social security of persons on the occupied territories. The state referral service is considered to be the most successful programme of the Government of Georgia. Within this programme, persons on the occupied territories get medical treatment in medical establishments of Georgia, which is completely free of charge. From year to year, the number of such patients and the costs of their treatment have been increasing. However, as a result of the changes made to the rule of funding patients in the beginning of 2017, under which primary diagnostics is not funded anymore, the number of patients significantly decreased in 2017 and 2018.<sup>1193</sup> The aforementioned change is assessed as a step backwards.

Timely transportation of emergency patients from Abkhazia is another problem. Apart from the fact that a patient has to change an ambulance on the Enguri Bridge, calling an ambulance or a resuscitation ambulance on the territory controlled by Georgia is further delayed. A patient's family member has to contact directly senior officials of the Ministry of Health and Social Security of the Autonomous Republic of Abkhazia and the Office of the State Minister of Reconciliation and Civic Equality. This renders the emergency assistance mechanism dependant on several individuals. The Public Defender is aware of several incidents when a decision about sending a resuscitation ambulance was delayed from several hours to several days and on certain occasions it was even refused as considering the patient's diagnosis "nothing could help them".<sup>1194</sup>

It is important to improve the mechanism of calling an ambulance and a resuscitation ambulance for patients crossing over from Abkhazia so that they are not dependent on concrete persons and provide them with emergency medical treatment without any hindrance.

Considering the existing situation, it is important to support medical facilities and medical personnel on the occupied territories so that basic medical aid is improved on the spot. In this regard, it is still problematic to involve medical personnel in retraining programmes since they cannot regularly participate unlike medical professionals working on the territory controlled by Georgia. The lack of retraining programmes in addition to working on a low salary and old infrastructure further reduces the quality of medical services provided and medical professionals' motivation.

1192 Information supplied by a contact person to the Public Defender.

1193 From year to year, there has been a significant increase in the number of patients. In 2014, 837 patients were funded, whereas in 2015 – 1,537 patients were funded; and in 2016 – 2,052 patients were funded. In 2017, this dynamics changed and there were 1,644 cases of funding, and in 2018 – 1,169.

1194 This problem was discussed by representatives of the NGOs during a meeting with the Public Defender, 4 May 2018.

## 28.5. ECONOMIC SITUATION

Economic situation of the conflict-affected population living on the occupied territories has been always difficult. However, in 2018, their situation further worsened due to several factors: the Russian Federation reduced financial aid to Abkhazia and Tskhinvali region;<sup>1195</sup> the brown marmorated stink bug heavily damaged the economic situation of the locals. It destroyed hazelnut harvest which is one of the main sources of income for the population of Gali district; whereas in Tskhinvali region, the Roki Tunnel being the only connecting route between the region and Russia was closed down for a considerable time in the winter of 2018-2019. In parallel, the de facto administration of Tskhinvali region closed down the Akhlagori checkpoint for two months in January 2019 through which significant provisions of food products are brought in. In the same period, for approximately one month, the Enguri Bridge was also closed down. Therefore, prices on products increased and there was shortage of certain food products.

The population of Gali district found itself in a particularly difficult situation as they do not have any other source of income apart from hazelnut and citrus harvest. Hazelnuts processing small enterprises were closed down which used to create some jobs in the region. Unlike other population of Abkhazia, who have the passports of the Russian Federation, Gali population cannot enter Russia and trade there and the de facto authorities limit their movement and trade on the territory controlled by Georgia. Accordingly, apart from isolated exceptions, there is no alternative for Gali population to harvest and carry out economic activity.<sup>1196</sup> According to the information submitted by locals to the Public Defender, the created situation compels them to look for temporary work on the territory of Georgia and abroad or find some source of income through various irregular ways, among them, by bringing products without excise to the territory controlled by Georgia and selling them.

The statistical data supplied by the LEPL Revenue Office also confirms that compared to 2017, in 2018 the number of persons increased, against whom reports were drawn by the Revenue Office concerning the commission of an administrative offence under Article 155<sup>2</sup> of the Code of Georgia on Administrative Offences (Issuing, storing, selling or transporting excisable goods without excise stamps) when moving on the occupation line of Abkhazia.<sup>1197</sup>

An initiative of the Government of Georgia – A step to Better Future – also envisages setting up a special economic area to further trade along the occupation lines; entrepreneurs will be given special status of a tax-payer which would imply tax-cuts for the activities determined by the initiative. The procedure of status-neutral stamping will be enforced and it will be possible to export the products manufactured in Abkhazia and Tskhinvali region.

The new peace initiative also envisages setting up a special independent foundation that will attract funds from various donors and international partners to further trade along the Boundary Lines.

The Public Defender welcomes such initiative. The majority of planned changes are directly reflecting and fulfilling the Public Defender's recommendations.<sup>1198</sup> While these initiatives concern all persons living on the occupied territories, considering the especially dire situation, the competent authorities should pay additional attention to involvement of the population of Gali district in the new trade and economic projects.

1195 The 2018 Report of International Crisis Group, Abkhazia and South Ossetia: Time to Talk Trade, available at: <https://ces.to/hvdhCf>, (accessed 20.03.2019).

1196 Unlike Akhlagori, where bringing in food products for commercial purposes is formalised by the de facto authorities; see, the 2018 Report of International Crisis Group, Abkhazia and South Ossetia: Time to Talk Trade, available at: <https://ces.to/hvdhCf>, (accessed 20.03.2019).

1197 433 reports against 392 persons in 2018; 72 reports against 73 persons in 2017; Letter no. 21-12/154152 of the LEPL Revenue Office, dated 21 December 2018. However, it should also be taken into account that fine is imposed under this article mainly for bringing in cigarettes without excise duty. Considering that the price of cigarette has been increased on the territory controlled by Georgia in 2018 due to excise duty, it is more profitable to bring in cheaper cigarettes without excise duty from Abkhazia and sell them in territory controlled by Georgia.

1198 See the 2016 parliamentary report of the Public Defender of Georgia, pp. 776-777.

## 28.6. RIGHTS OF PERSONS LIVING IN THE VILLAGES ALONG THE OCCUPATION LINE

In 2013-2018, the Government of Georgia set an objective of meeting the needs of the population affected by the 2008 war and the wires as well as solving their socio-economic needs. Priority rehabilitation and construction works to install supply systems for gas, drinking and irrigation water as well as works to rehabilitate and construct roads, kindergartens, schools and outpatient medical facilities were carried out in the villages of Shida Kartli, Imereti, Racha-Lechkhumi, and Samegrelo-Zemo Svaneti along the Boundary Line. Providing vouchers of firewood and natural gas and funding higher education for students and offering benefits to some mountainous villages within special programmes was a significant relief for the local population.<sup>1199</sup> These projects considerably improved the rights of the local population in terms of accessibility of education and healthcare as well as social security.

However, the registration of land and immovable property in the villages along the occupation line, rehabilitation and compensation of houses damaged during the war, employment of the local population and solution of the problem of finding sources of income remain problematic. The Public Defender discussed these issues in detail in the reports of 2015, 2016 and 2017 and corresponding recommendations were made as well. The Temporary Governmental Commission Responding to the Needs of the Conflict-Affected Population in the Villages Along the Boundary Line, which was set up in 2013, discussed these issues in 2018 as well. However, it has been impossible to reach a decision and solve the problems to this day. The Ministry of Regional Development and Infrastructure of Georgia informed the Public Defender in its letter that the ministry supports the rehabilitation of houses damaged during the war.<sup>1200</sup> The State Minister for Reconciliation and Civic Equality of Georgia also has the same position; however, it remains a mystery as to why it has been impossible to solve this problem in over 5 years.

It is noteworthy that in 2018, the commission that was convened only once during the year, resumed deliberations concerning drafting the strategy on socio-economic development of the villages along the Boundary Line.<sup>1201</sup> Municipalities and ministries that are members of the commission were requested to submit their visions and opinions concerning the socio-economic development of the villages along the Boundary Line. When drafting the strategy, it is important to pay particular attention to the Public Defender's recommendations concerning registration of immovable property, rehabilitation/compensation of the property damaged during the war, employment of the local population and solving the problem related to finding sources of income.

### RECOMMENDATIONS

#### To the Office of the State Minister for Reconciliation and Civic Equality of Georgia:

- To put on the negotiations' agenda setting up a more efficient mechanism of exchanging information about arrested persons or improving the existing mechanism. This could imply direct phone contact of the arrested person with the family, vesting concrete persons with the authority to inspect the conditions of arrested/detained persons and imprisonment conditions;
- To make consultations concerning the issues of the negotiations' agenda with representatives of civil society regularly, inter alia, within the possibility, with those from occupied territories and take their recommendations into consideration; and

1199 See the detailed information in the 2013-2018 report of the Governmental Commission, available at: [http://smr.gov.ge/Uploads/\\_\\_\\_82bbbe45.pdf](http://smr.gov.ge/Uploads/___82bbbe45.pdf), (accessed 20.03.2019); also see the 2018 report on the activities of the Office of the State Minister for Reconciliation and Civic Equality of Georgia.

1200 Letter no. 01/811 of the Ministry of Regional Development and Infrastructure of Georgia, dated 22 February 2018.

1201 Minutes of a session of the Temporary Governmental Commission Responding to the Needs of the Conflict-Affected Population in the Villages along the Boundary Line.

- To maintain negotiations with various donors and international organisations to facilitate informal education opportunities for school pupils and youths in Abkhazia, the Gali district in particular.

#### **To the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia:**

- To involve medical doctors working on the occupied territories in those programmes in which medical doctors working on the rest of the territory of Georgia undergo; to increase support for medical establishments and personnel on the occupied territories; and
- To ensure taking measures for providing effective provision of ambulance services for patients from occupied territories.

#### **To the Ministry of Education, Science, Culture and Sport of Georgia:**

- To introduce teaching Georgian in summer camps and summer schools organised/funded by the central authorities for children and youths from occupied territories; to offer students taught programmes in Georgian language in parallel to studies in educational institutions;
- To develop a programme of providing stipend and/or accommodation for students from occupied territories, so that they could continue university studies in case of passing exams; and
- To develop new programmes to enhance qualifications by assisting in teaching process and providing inventory or expanding the existing initiatives and accommodating them to the needs of pupils and teachers on occupied territories so that at least partially to fill the gap and shortcomings of secondary education on the occupied territories.

#### **To the Temporary Governmental Commission Responding to the Needs of the Conflict-Affected Population in the Villages Along the Boundary Line:**

- To implement programmes for rehabilitation/compensation of property damaged during the 2008 war, employment of local population and finding sources of income.

#### **To the Office of the Prosecutor General of Georgia:**

- To inform the public once in 6 months about the progress of investigation into the disappearance of persons after the 2008 war.

2018

## 29. PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS

As in similar years, the Public Defender has examined the situation pertaining to the protection of the rights of Internally Displaced Persons (hereinafter “IDPs”). In the reporting period, an inconsistent approach towards ‘the resettlement of IDPs from a so-called collapsing buildings has been identified; the delays in long-term resettlement of IDPs in Tbilisi are similarly problematic. Furthermore, in accordance with the change made to the act on the resettlement of IDPs<sup>1202</sup> in 2018, when assessing a resettlement application, the internally displaced families are not awarded a score for their harsh living conditions anymore. This further affects the legal status of socially vulnerable IDPs.

### 29.1. LONG-TERM RESETTLEMENT OF IDPS

According to the data of 2018, there are 282,485 IDPs and 89,970 families registered in Georgia. Out of them, 39,782 families are provided with long-term accommodation and 50,188 families are awaiting resettlement. In 2018, 1,406 families were resettled,<sup>1203</sup> among them, 337 families living in collapsing buildings or dwellings posing a threat to life and limb. Furthermore, 1,531 families were given the title to the premises they legally possessed.<sup>1204</sup>

Regarding the resettlement process, it should be noted that since 2016, the long-term resettlement of IDPs in Tbilisi has been carried out only from buildings that were collapsing, posed increased threat to life and limb and in those the state was interested (in total, 190 families).<sup>1205</sup> Accordingly, in 2017-2018, internally displaced families registered in Tbilisi were not given the possibility to submit to the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia (hereinafter the “ministry”) an application concerning accommodation and be resettled based on competition. Unfortunately, the Public Defender is unaware of the hindering circumstances. Considering that a large number of IDPs are registered in Tbilisi,<sup>1206</sup> the number of applications for long-term accommodation in the capital is always high. This is confirmed by the use of the short-term accommodation – the rent program – and finances expended to this end.<sup>1207</sup>

1202 Order no. 320 of the Minister of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia of 9 August 2013.

1203 According to Letter no. 01/1299 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 28 January 2019, 709 families benefited from the house purchase programme; 116 families benefited from the mortgage payment programme; and 581 families were resettled in rehabilitated buildings, newly constructed buildings or buildings purchased from builders.

1204 Letter no. 01/1299 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 28 January 2019.

1205 According to Letter no. 01/1212 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019 and Letter no. 01/2961, dated 21 February 2019, in 2017, 10 families were resettled, and 180 families were resettled in 2018.

1206 According to Letter no. 01/1299 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 28 January 2019, there are 110,013 IDPs and 37,017 families registered in Tbilisi.

1207 According to Letter no. 01/1212 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019, during 2018, 1,015 families were provided with rented accommodation in Tbilisi. GEL 547,315 was spent accordingly.

According to the ministry, 826 flats have been purchased in Tbilisi for the long-term accommodation of IDPs. The IDPs will be resettled in these flats in 2019-2020.<sup>1208</sup> There are very few (40) single-room flats and four-room flats (23) among these apartments. At the last implemented phase of resettlement (in 2016), approximately 40% of applications for long-term accommodation were filed by those families that needed single bedroom accommodation.<sup>1209</sup> Therefore, it should be noted that the flats purchased to this day do not meet the needs of the families applying for single-room accommodation. During the previous stage of resettlement, the ministry informed the office that, for the purpose of purchasing living premises for IDPs, it is planned to announce a tender in 2019, where priority will be given to single bedroom and double bedroom flats.<sup>1210</sup> Considering that there are already accommodation resources at this stage, the ministry should plan IDP resettlement in 2019 so that 826 flats are fully distributed to IDPs and should purchase new flats to expedite the process.

## 29.2. RESETTLEMENT OF IDPS FROM BUILDINGS POSING INCREASED THREAT TO LIFE AND LIMB

The fact that IDPs continue to live in buildings posing an increased threat to life and limb is one of the pressing issues in the realization of their rights. Closing such buildings is one of the priorities of the Action Plan.<sup>1211</sup> Despite this decision, certain problems persist.

According to the ministry, 28 buildings posing increased threat to life were closed in 2018. 337 families were resettled from the closed buildings. It is noteworthy that the buildings identified as being in particularly poor condition in the Public Defender's parliamentary reports are among those that were closed.<sup>1212</sup>

**It is also problematic that to this day, there is no accurate data regarding buildings that pose an increased threat to life and limb. While the ministry inspects the technical sustainability of a certain number of buildings annually, this inspection does not cover all buildings that could pose a threat to their residents.**

According to the ministry, priority was given to buildings that were in particularly dire condition according to expert conclusions. The ministry also considered the amount of space to be distributed in order to enable the complete closure of a building. At the same time, the expert conclusions received from the ministry show that some buildings that were closed were in satisfactory condition and some buildings assessed were in unsatisfactory condition. However, IDPs were not resettled from the latter buildings. Also, there was a discrepancy in the number of families in the closed buildings and buildings to be closed. Fewer families resided in closed buildings than in those buildings which were not being closed at the moment.<sup>1213</sup> Unfortunately, the legitimate aim of this decision is not adequately reasoned. In those conditions, where the reasons as to why priority was given to these buildings are unclear, it is difficult to assess the legality of the process. It should also be noted that the ministry does not provide short-term accommodation to families living in such buildings.<sup>1214</sup>

1208 According to Letter no. 01/1212 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019, 40 were single-room flats; 216 were double-room flats; 547 were three-room flats; and 23 were four-room flats.

1209 According to Letter no. 01/2961 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 21 February 2019, out of the 11,016 applications filed in 2016, 4,465 applications concerned a single-room flat.

1210 Letter no. 01/1212 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1211 Ordinance no. 2566 of the Government of Georgia of 31 December 2018, Article 1.11.c).

1212 For instance, in Zugdidi, a building located at 26, Vazha Pshavela Str.; in Kutaisi, Kindergarten Martve located at 5, Orbeliani Str.; in Tbilisi, factory Kikicha located at 5, Mevele Str.

1213 For instance, the building of Eltechnics Lyceum at 12, Gugunava Str., in Kutaisi was closed. 39 IDPs lived in this building and its condition was satisfactory. On the other hand, the building of Tskaltsitela was not closed. 311 IDPs live in this building and its condition is unsatisfactory. Similarly, the hotel Tbilisi in Kutaisi accommodating 210 IDPs in unsatisfactory conditions was not closed.

1214 According to Letter no. 01/1193 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia of 24 January 2019, the ministry only resettled 6 families living in the so-called collapsing buildings in a rented accommodation.



Therefore, for during future resettlement of families living in collapsing buildings, the Public Defender deems it imperative to prioritize families that reside in buildings posing increased threat to life and limb.

### 29.3. LEGISLATIVE AMENDMENTS

In the reporting period, the responsible agency concerning IDPs was changed and the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia was put in charge.<sup>1215</sup> Nowadays, this ministry determines the policy in the field at stake,<sup>1216</sup> whereas the Social Service Agency implements the planned policy.<sup>1217</sup>

Apart from the abovementioned, under the changes made to the act governing IDP resettlement in 2018, at the preliminary stage of assessment, an internally displaced family can be awarded a score for living in hard conditions only by the monitoring division that had studied the living conditions at the spot or in those cases where there is an expert conclusion concerning the hard living conditions.<sup>1218</sup> These changes were assessed negatively by the Public Defender.<sup>1219</sup> We maintain that families of certain categories cannot be subject to monitoring. While a family might indeed be living in hard conditions, since it will not be able to obtain the score at the preliminary assessment stage, it will not be subjected to monitoring either. Therefore, it is possible that some families that are most vulnerable will not be eligible for the assessment. As such, they practically have no chance to have their application granted. Considering the explanations given by representatives of the agency during the meetings, these changes might have some rationale. However, the Public Defender observes that in order not to compromise IDP interests, it is advisable to allow them to submit photo materials depicting their living conditions when they submit their application and when filling out the questionnaire. When there is a reasonable doubt, the ministry will then examine the conditions on the spot and in the case they are confirmed, the family will be given a score under the respective criterion.

Legislative changes concerning IDPs were also made in 2019. In particular, the Governmental Plan of the Implementation of the Governmental Strategy Concerning IDPs (2019-2020)<sup>1220</sup> contains two new additions, namely, programs for the settlement of veterans and purchase through joint funding of accommodation for IDPs registered in Tbilisi. These programs have become operational since 2019. The Public Defender will certainly monitor the implementation of the projects after which it will be possible to assess its effectiveness.

### 29.4. PROBLEMS WITH REGISTERING IMMOVABLE PROPERTY ON OCCUPIED THE TERRITORIES

Another issue the Public Defender would like to highlight, is the registration of immovable property on the occupied territories. This issue was originally regulated by a presidential decree<sup>1221</sup> and since 2018, by a governmental resolution.<sup>1222</sup> This act provides for declaring and registering immovable property on occupied

1215 The Law of Georgia on Amending the Law of Georgia on Amending the Law of Georgia on the Structure, Powers and Proceedings of the Government of Georgia, Article 2.3.

1216 Resolution no. 473 of the Government of Georgia of 14 September 2018, Article 2.a).

1217 Order no. 01-14/N of the Minister of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia of 3 October 2018, Article 2.1.

1218 Order no. 320 of the Minister of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia of 9 August 2018, Annex no. 6, not no. 4.

1219 Verbal comments were made on 3 May 2018, during the working group deliberations.

1220 Ordinance no. 2566 of the Government of Georgia of 31 December 2-18.

1221 Decree no. 326 of the President of Georgia of 21 June 2011, *invalidated as of 22 August 2018*.

1222 Resolution no. 400 of the Government of Georgia of 6 August 2018.

territories for the purpose of registering title to these properties after the complete restoration of the jurisdiction of Georgia on these territories. The government allocated the finances for the fulfilment of this objective.<sup>1223</sup> The Ministry carries out declaration of property and its registration is carried out by the National Agency of the Public Register.<sup>1224</sup> Despite the legal regulation, to this date, it is unknown what activities have been carried out in this regard or whether the National Agency of the Public Register has registered immovable property on the occupied territories. The Public Defender expresses hope that the appropriate steps will be taken in this direction and the public will be duly informed.

## RECOMMENDATIONS

### To the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia:

- For long-term resettlement of IDPs in Tbilisi, to start statutory procedures within the shortest terms possible and to ensure that 826 purchased flats are fully distributed to IDPs in 2019;
- Within shortest terms possible, to start the procedures of purchasing single-room and double-room flats in Tbilisi and to ensure resettlement of the families with the corresponding number of members;
- Within the criteria of long-term resettlement, to award an internally displaced family a score for living in hard conditions right at the stage of the preliminary assessment upon presenting the required proof (for instance, photographs).

### To the National Agency of Public Register:

- To inform the public concerning the activities carried out regarding the registration of immovable property on the occupied territories and, when additional consultations are needed, to maintain discussions with all competent authorities and stakeholders.

1223 Ordinance no. 1123 of the Government of Georgia of 22 May 2018.

1224 Resolution no. 400 of the Government of Georgia of 6 August 2018, Article 1.3 and Article 1.4.

## 30. PROTECTION OF THE RIGHTS OF ECOMIGRANTS

The Public Defender of Georgia has actively monitored the legal status of eco-migrants. This monitoring showed that the funds allocated for the resettlement of ecomigrants remain small. Additionally, there are no effective mechanisms to prevent return migration and eco-migration.

### 30.1. RESETTLEMENT OF ECOMIGRANTS

Considering that natural disasters occur frequently in Georgia, the number of ecomigrants increases annually. According to the data of the previous reporting period, there were 5,009 ecomigrant families in 2017,<sup>1225</sup> and 5,457 ecomigrant families in 2018 were registered in the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia (hereinafter the “ministry”) database. Out of this number, the state and international organizations have provided 1,728 families with accommodation while 3,729 families await accommodation.<sup>1226</sup> Similar to previous years, the shortage of budgetary funds allocated for the resettlement of ecomigrants remained one of the challenges in the reporting period. In 2018, 617 applications for accommodation were submitted and 240 families were provided with accommodation.<sup>1227</sup> Out of these, 27 families had lived in conditions posing increased threat to life and limb.<sup>1228</sup> Monetary compensation was also given to 20 families.<sup>1229</sup> On the other hand, it is possible to resettle 291 families within the funds allocated for 2019.<sup>1230</sup> Furthermore, in the reporting period, 117 ecomigrant families that were resettled between 2004-2012 were given the title to the residential premises.<sup>1231</sup> In 2019, the number of families to be resettled is on the increase and it is not sufficient. Considering that the number of ecomigrants is gradually increasing and the demand for resettlement is increasing accordingly, it is important to have a budget allocated for the resettlement of ecomigrants increased as well. Furthermore, it is also problematic that some ecomigrants resettled between 2004-2012 still have not been given the title to their residence. Reportedly, 1,062 families<sup>1232</sup> were resettled in various regions of Georgia and only 529<sup>1233</sup> families have been given the title to immovable properties.

Another problem is related to the families living in conditions of increased threat.<sup>1234</sup> In 2018, conclusions on such conditions were issued with regard to 255 families (conclusions are issued by the National Environmental

1225 See the 2017 parliamentary report, p. 242.

1226 Letter no. 01/1210 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1227 The Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia resettled 122 families and 118 families were resettled by the Ministry of Health and Social Security of the Autonomous Republic of Ajara.

1228 Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 1, Article 3.3.a).

1229 Under Article 1.b) of Ordinance no. 1182 of the Government of Georgia of 9 June 2017.

1230 The Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia plans to resettle 174 families and the Ministry of Health and Social Security of the Autonomous Republic of Ajara plans to resettle 117 families.

1231 Letter no. 01/1210 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1232 The 2013 parliamentary report of the Public Defender, p. 620.

1233 In 2016, 311 families, in 2017, 101 families and in 2018, 117 families were given the title to the residential premises; see the 2016 parliamentary report of the Public Defender, p. 780, the 2017 parliamentary report, p. 242; Letter no. 01/1210 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1234 Under Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 1, Article 3.3, living in conditions of increased threat is a ground for resettlement without taking into account the score system.

Agency).<sup>1235</sup> However, the ministry<sup>1236</sup> received conclusions issued with regard to 70 families. This means that the central administrative agency responsible for the resettlement of ecomigrants still does not possess uniform information concerning such families during the reporting period<sup>1237</sup> and the conclusions were submitted on an individual basis.

It is commendable that, according to the information at the disposal of the Office,<sup>1238</sup> the ministry has been requesting geological conclusions issued by the National Environmental Agency since 2013. We hope that the accumulation of this information in the ministry will contribute to the implementation of a priority-based resettlement process within the existing budgetary funds and the resettlement of families living under increased threat. It is also important to take into account the number of these families when planning the budget.

Another problem which is noteworthy is the prevention of return migration. It is important that the Autonomous Republic of Adjara attempted to a certain degree to regulate return migration. In particular, there is a memorandum concluded between the family to be resettled and the local self-government authority about restricting the use of the damaged residence as a permanent residence.<sup>1239</sup> It should be noted that the ministry responsible for the resettlement of ecomigrants, according to the information supplied to the Office,<sup>1240</sup> is ready to make changes to the legal act to regulate the issue at hand.

## 30.2. PREVENTING ECO-MIGRATION

In terms of avoiding damage by eco-migration and sparing financial resources, it is crucial to forecast and prevent natural calamities. The Government of Georgia approved the National Strategy for Reducing Calamity Risks in 2017-2020 and an Action Plan for its implementation.<sup>1241</sup> The strategy is mainly limited to ecology and environmental issues. It also aims at identifying the results of natural disasters<sup>1242</sup> causing eco-migration and reducing their risks in certain geographical areas.

Apart from the above-mentioned, the role of the National Environmental Agency (hereinafter the “agency”) is noteworthy. One of its tasks is to facilitate preventive measures to be taken on territories posing increased threat.<sup>1243</sup> The annual news bulletin prepared by the agency indicates possible risks and envisages preventive measures to be taken in various regions.<sup>1244</sup> It is noteworthy that the natural risk zones indicated in the news bulletin of the National Environmental Agency<sup>1245</sup> and the Action Plan for the National Strategy for Reducing Calamity Risks in 2017-2020 approved by the Government of Georgia do not coincide with each other.<sup>1246</sup> This might hinder taking preventive measures making the resettlement of families inevitable.

1235 Letter no. 21/285 of the LEPL National Environmental Agency, dated 31 January 2019.

1236 In 2018, the responsible agency concerning ecomigrants was changed. The Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia was determined as the responsible agency, whereas the LEPL Social Service Agency implements the planned policy.

1237 Letter no. 01/1210 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1238 *Idem.*

1239 Letter no. 05/90 of the Ministry of Health and Social Security of the Autonomous Republic of Ajara, dated 18 January 2019.

1240 Letter no. 01/1210 of the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia, dated 24 January 2019.

1241 Resolution no. 4 of the Government of Georgia of 11 January 2017.

1242 For instance, landslide, torrent, avalanche, etc.

1243 Order no. 2-225 of the Minister of Environment and Natural Resources Protection of Georgia of 19 April 2018, Article 2.g).

1244 Order no. 2-225 of the Minister of Environment and Natural Resources Protection of Georgia of 19 April 2018, Article 5.2.c).

1245 The Outcomes of Natural Geological Processes in Georgia in 2017 and Prognosis for 2018.

1246 For instance, the news bulletin on The Outcomes of Natural Geological Processes in Georgia in 2017 and Prognosis for 2018 prepared by the LEPL National Environmental Agency covers territories such as: the territory of the village of Vani (minor rockslide and debris along the Chokhatauri-Surebi motorway poses danger for one of the residential houses), and the village of Kvemo Kheti where landslide is entering an active phase, p. 93; the landslide in the village of Lesa, p. 111, etc.

In conclusion, preventing eco-migration remains a major challenge. In particular, there is no monitoring over the implementation of the recommendations made by the agency,<sup>1247</sup> and the competence of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is limited to resettlement of families and does not have any coordination function with regard to agencies working in the field of eco-migration. This is caused by the absence of a special law which has been discussed by the Public Defender for years. However, no steps have been made in this direction to this day.

## RECOMMENDATIONS

### **To the Ministry of Internally Displaced Persons from Occupied Territories, Labour and Social Affairs of Georgia:**

- To amend Order No. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of November 13, 2013 with the effect of governing ecomigrants' return migration;
- To take into account the number of families living under increased threat at the outset of planning the budget and to expend at least 30% of the resettlement funds for the resettlement of such families; and
- To 2019 the process of transferring residential premises to the ownership of ecomigrants that started in 2004-2012.

---

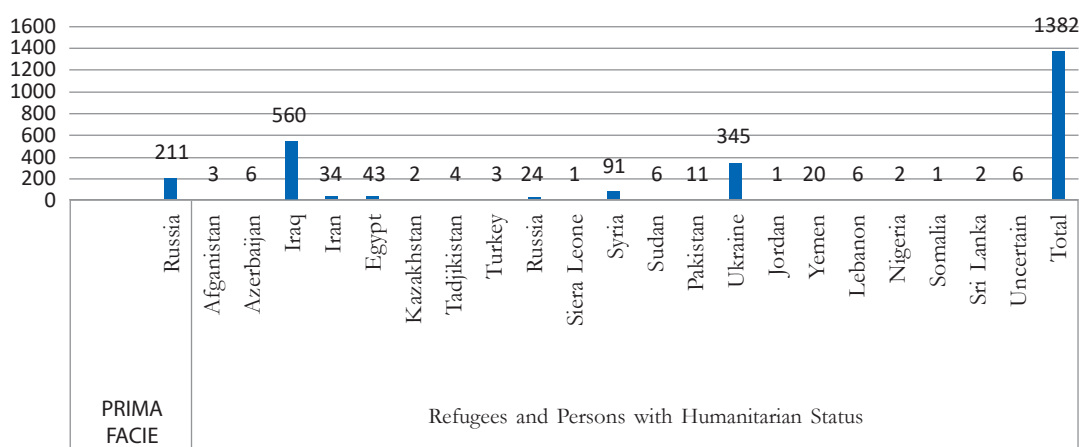
1247 Letter no. 21/285 of the LEPL National Environmental Agency, dated 31 January 2019.

## 31. LEGAL STATUS OF FOREIGNERS IN GEORGIA

### 31.1. PROTECTION OF RIGHTS OF ASYLUM SEEKERS AND PERSONS GRANTED INTERNATIONAL PROTECTION

In 2018, the Public Defender actively continued to study the legal status of asylum seekers and persons granted international protection.

Persons Granted International Protection (31 December 2018)



According to the data as of December 2018,<sup>1248</sup> 1,382 persons who are granted international protection reside in Georgia; among them are 211 *prima facie* refugees, 252 refugees and 919 persons with the humanitarian status. Regrouping this data according to the applicants' country of origin is also noteworthy.

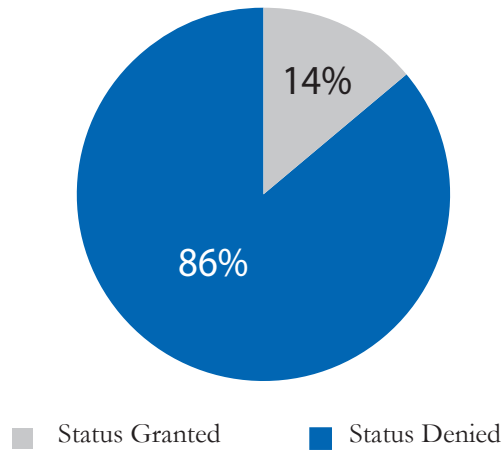
Similar to the previous period, the indicator for granting international protection has been decreasing. There are challenges in terms of integration as well. Raising qualification of representatives of state authorities working on asylum issues is also noteworthy. In this regard, representatives of the Public Defender held numerous training sessions in the reporting period. These training sessions concerned legislation on asylum and international protection of refugees.

The Office of the Public Defender has been implementing the project – Support to the Office of the Public Defender to Enhance Its Capacity to Address the Situation of Asylum Seekers and Persons granted International Protection – for five years, with the financial support of the UNHCR Regional Representative in the South Caucasus. The project aims at enhancing the capacities of the Public Defender's Office and improving the legal status of asylum seekers and persons granted international protection.

1248 Letter no. MIA 9 19 00254940 of the Migration Department of the Ministry of Internal Affairs of Georgia.

Indicator of Granting the Status and Situation of Persons Needing International Protection

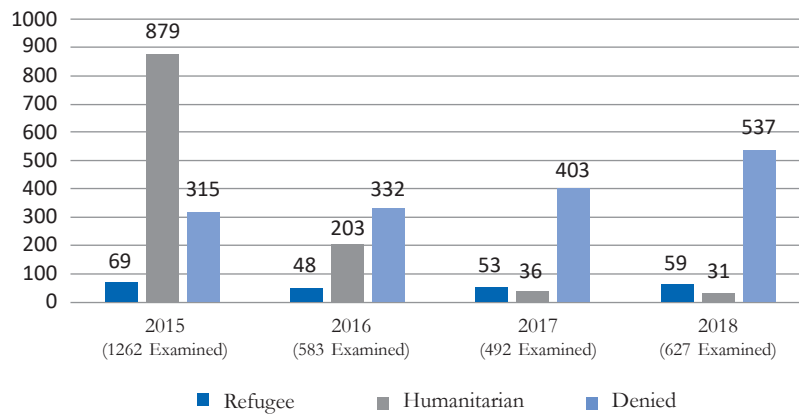
Indicator of Granting International Protection in 2018



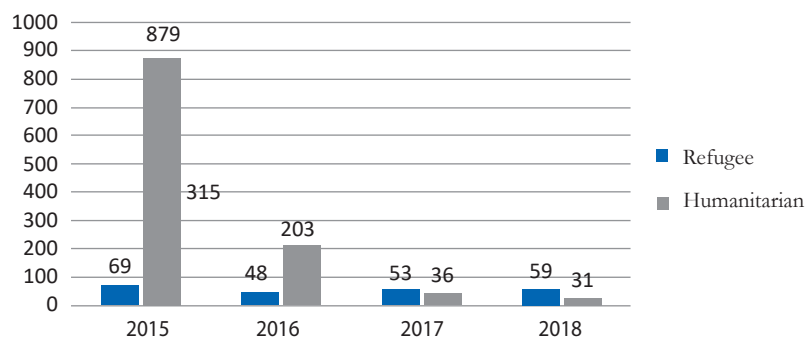
In the reporting period, similar to the previous years, the statistics on granting international protection have decreased. The percentage of granting the status was approximately 14% in 2018, whereas this indicator was 18% in 2017.

As regards the yearly quantitative indicator, see the below charts:

Statistics of Applications Examined in 2015-2018



Granting Refugee and Humanitarian Status in 2015, 2016, 2017, and 2018



The statistics of refusal to grant the status cross referenced with asylum seekers' country of origin and rejection grounds are noteworthy.

In the reporting period, 25 citizens of the Syrian Arab Republic were denied the status on national security grounds.<sup>1249</sup> According to the assessment made by various human protections organisations, Syria is still a war zone and human rights are systematically violated there. According to the Human Rights Watch report,<sup>1250</sup> civilian population, medical facilities and schools are under unlawful attacks. The situation is similar with regard to citizens of Eritrea and Yemen. It is noteworthy that, in the reporting period, 48 citizens of Eritrea and 58 citizens of Yemen were denied the status again based on security grounds.<sup>1251</sup> According to the Human Rights Watch report, Eritrea has been a dictatorship for the last 26 years.<sup>1252</sup> There is no independent media or judiciary in that country and religious freedom is restricted. All 18-year-olds are conscripted into national service indefinitely. Almost 15 percent of the population has fled since the 1998 war.<sup>1253</sup> As regards the situation in Yemen, according to the same report, as of November 2018, 6,872 civilians died and 10,768 civilians were wounded as a result of armed conflict in the country.<sup>1254</sup>

In such situations, the Public Defender observes that, irrespective of their status, asylum seekers should be protected from expulsion to the countries being in a state of war and faced with mass violations of human rights. It is important to apply paras. 2 and 3 of Article 59 and Article 60 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons to applicants from such countries. These provisions imply granting foreigners the right to stay temporarily in Georgia and be protected against expulsion to those countries where they might be persecuted or be subjected to torture or other ill-treatment and their life and health could be endangered.

In general, out of 86% of negative decisions on granting the status, 32% of the decisions cite national security considerations. The previous reports<sup>1255</sup> of the Public Defender discuss this issue in detail. It is still relevant and crucial to examine individual circumstances when this ground is invoked and to provide reasoning for decisions denying international protection in the way that does not allow compromising confidential information. It is important to improve the existing standard in this regard and to increase the quality of justification provided for individual administrative acts issued by the Migration Department of the Ministry of Internal Affairs. Appealing against negative decisions adopted based on security considerations is also noteworthy. Monitoring of court proceedings by the Public Defender's Office in the reporting period<sup>1256</sup> and the received information<sup>1257</sup> reveal that cases that are sent by the court to the ministry for fresh examination are returned with similar outcomes. In 2018, out of 34 cases returned by the court for fresh examination, only 7 were reviewed and unfortunately not a single decision has been changed. Examination of other 27 cases is still pending.

### Integration of Asylum Seekers and Persons Granted International Protection

As a result of governmental changes in 2018, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia was designated as the responsible agency for integration of foreigners, *inter alia*, persons granted international protection. Under Article 65 of the Law of Georgia on International Protection, the said ministry shall work out and/or implement programmes for the integration of persons granted international protection. According to the information supplied,<sup>1258</sup> refugees

1249 Letter no. MIA 9 19 00254940 of the Migration Department of the Ministry of Internal Affairs of Georgia.

1250 The report is available at: <https://bit.ly/2JlBq6j>, (accessed 20.03.2019).

1251 Letter no. MIA 9 19 00254940 of the Migration Department of the Ministry of Internal Affairs of Georgia.

1252 The report is available at: <https://bit.ly/2C3IYfI>, (accessed 20.03.2019).

1253 The report is available at: <https://bit.ly/2FKT4YZ>, (accessed 20.03.2019).

1254 The report is available at: <https://bit.ly/2FKT4YZ>, (accessed 20.03.2019).

1255 See the 2015-2017 reports of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia.

1256 In the reporting period, in total 15 cases were monitored.

1257 Letter no. MIA 7 19 00740597 of the Migration Department of the Ministry of Internal Affairs of Georgia.

1258 Letter no. 01/3899 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.



and persons with humanitarian status are registered in the information system of labour market management ([www.worknet.gov.ge](http://www.worknet.gov.ge)); they are beneficiaries of subsistence allowance – monetary social assistance based on the unified databases of socially vulnerable families; they are registered within the State Programme of Universal Health Care and are considered to be beneficiaries of the State Health Care Programmes for 2018. However, the level of participation of the said persons in the integration programmes is low. This issue was also addressed in the report of the previous year.<sup>1259</sup>

One of the key challenges of local integration is the language barrier. The majority of beneficiaries do not have the command of Georgian and therefore educational, employment and health care programmes are less accessible for them. The lack of information concerning enjoyment of these services is also noteworthy. The previous report discussed increasing accessibility of Georgian language courses for asylum seekers as well. This remains to be problematic. Only disabled beneficiaries and target groups receive services within the Integration Centre.<sup>1260</sup> Similar to 2017, in the reporting period as well, the target groups of the centre were set up from persons granted international protection only. It was planned to include asylum seekers as well, however, this plan was not fulfilled.<sup>1261</sup> According to the information supplied by the Ministry of Education, Science, Culture and Sport of Georgia,<sup>1262</sup> two projects are being implemented in this regard: the programme of Facilitating General Education and its sub-programme – Facilitating Access to General Education for Asylum Seekers, Persons Granted International Protection and Those Placed in the Migration Department of the Ministry of Internal Affairs who are Under 18 Years of Age. As of January 2018, there were 8 participants enrolled in these programmes; out of them 4 participants have not turned up and 4 participants left the programmes in October. As of August 2018, there were 64 participants enrolled in Georgian language courses; 51 of them continue their studies to date. It is also noteworthy that, according to the information of the same ministry, information about the students' social status (refugee status, humanitarian status, etc) is not entered in the registry.<sup>1263</sup>

A significant factor of successful integration is affording resettlement and adequate housing conditions to persons granted international protection. The support rendered by the state in providing accommodation to those persons is crucial.

## 31.2. LEGAL STATUS OF MIGRANTS

Similar to the previous year,<sup>1264</sup> foreigners<sup>1265</sup> applied to the Office of the Public Defender of Georgia also in 2018. Those applicants have been denied entry into Georgia. The examination of the applications showed that foreign citizens were denied entry into Georgia based on Article 11.1.i) of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, with the following wording: “in other cases provided for by the legislation of Georgia.” The aforementioned provision of the law implies that apart from Article 11 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, there must be another ground in Georgian legislation based on which a foreigner can be refused entry into Georgia. Stemming from the aforementioned, the said provision does generate legal effects on its own and for its application there must be a case regulated by legislation; it will be permissible to restrict border crossing under these circumstances. However, as the

1259 Letters nos. 02-01/05/28006 and 02-01/05/29052 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

1260 The Integration Centre has been functioning since 2017 with financial and technical support of UNHCR.

1261 Information supplied by the Integration Centre concerning integration of persons granted international protection according to reports 01.01.2018-31.12.2018.

1262 Letter no. MES 1 19 00293008 of the Ministry of Education, Science, Culture and Sport of Georgia.

1263 Order no. 127/N of the Minister of Education and Science of Georgia of 22 July 2011 on Approving the Procedure for Maintaining Registry of Educational Establishments.

1264 The 2017 report of the Public Defender on the Situation of Protection of Human Rights and Freedoms in Georgia, chapter Legal Status of Migrants, pp. 337-339.

1265 The Office of the Public Defender of Georgia examined 7 foreigners' case.

examined cases show, the Ministry of Internal Affairs of Georgia applies this provision as an independent ground without citing any other legislative act. In the Public Defender's opinion, in order to ensure compliance with statutory requirements, it is necessary to link each case of refusing entry into Georgia under the said ground to another specific legal provision. In this context, the interpretation of the Constitutional Court should be borne in mind, according to which: "law should not allow the executive to independently determine the range of its own actions."<sup>1266</sup>

In 2018, foreigners applied to the Public Defender of Georgia<sup>1267</sup> regarding decisions refusing residence permit based on national security and/or public order,<sup>1268</sup> as well as the legality of decisions of the LEPL Public Service Development Agency. As a result of examination of these applications, the Public Defender did not find any violations of foreign nationals' rights. It is noteworthy that according to the statistics obtained from the courts of general jurisdiction<sup>1269</sup> and the LEPL Public Service Development Agency<sup>1270</sup> in 2017 and 2018, under final court judgments, each year, a quarter of the agency's decisions refusing residence permits based on national security and/or public order are declared null and void and are sent back to the agency for consideration *de novo*.<sup>1271</sup> Against this background, the failure of administrative bodies to provide adequate reasoning for refusing residence permits on the above grounds in their decisions is noteworthy. This problem also needs to be addressed accordingly.

## RECOMMENDATIONS:

### To the Minister of Internal Affairs:

- To ensure that Article 59.2 and 3 and Article 60 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons apply to those asylum seekers who have been denied international protection on the ground of national security unless there are other grounds stipulated by law.

### To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To ensure holding outreach meetings concerning programmes on integration of persons granted international protection and raising awareness among beneficiaries and local communities; and
- To ensure accessibility of Georgian language course for asylum seekers as well.

1266 Judgment no. 1/3/407 of the Constitutional Court of Georgia of 26.12.2007 in the case of the Young Lawyers Association and Ekaterine Lomtadze v. the Parliament of Georgia, para. 14.

1267 The Office of the Public Defender of Georgia examined 13 foreigners' cases.

1268 The Law of Georgia on the Legal Status of Aliens and Stateless Persons, Article 18.1.a) and Article 18.1.c).

1269 Letter no. 2726665 of the Tbilisi City Court, dated 26 November 2018 and Letter no. 01/56(A) of the Tbilisi Court of Appeals, dated 28 February 2019.

1270 Letter no. 01/77943, dated 11 March 2019.

1271 According to statistics, in 2018, out of final court judgments in 455 cases, claims of foreigners were rejected and in 79 cases without deciding the dispute the agency's decisions were declared null and void; in such cases the agency is ordered to examine and assess relevant circumstances and to adopt a new act (claims are thus partially granted). Furthermore, in 4 cases, the agency's decisions were declared null and void and the administrative body was ordered to issue residence permits. In 2017, out of final court judgments, in 207 cases foreigners' claims were rejected and in 42 cases such claims were partially granted.

## 32. PROTECTION OF THE RIGHTS OF STATELESS PERSONS

The Public Defender addresses the legal status of stateless persons in her annual report for the first time. The status of stateless person was introduced in Georgian legislation in 2012.<sup>1272</sup> Before that, the country acceded to the 1954 Convention Relating to the Status of Stateless Persons<sup>1273</sup> and later to the 1961 Convention on the Reduction of Statelessness,<sup>1274</sup> thus undertaking relevant commitments. Most of the convention provisions are introduced and implemented in Georgia. There are, however, incompatibilities as well.

Statelessness, i.e., when “someone is not considered as a national by any state under operation of its law” requires a specific framework of legal protection and safeguards to be in place “to assure stateless persons the widest possible exercise of these fundamental rights and freedoms”.<sup>1275</sup> Establishing the legal status is important for stateless persons in terms of enabling them to exercise their fundamental rights as well as the possibility of acquiring nationality of the respective country in future.

The right to nationality is a fundamental right of a person.<sup>1276</sup> Statelessness in Georgia can be caused by various reasons. Due to problems related to documentation, for instance, some Roma have the status of stateless persons.<sup>1277</sup> The problem related to the uncertainty of legal status of Roma people in Georgia and the lack of their documentation has been addressed in numerous documents.<sup>1278</sup> **To this day, the status of a stateless person has been given to 566 persons in Georgia. However, due to the fact that small percentage of the population still face the problem of not possessing legal documents, have not applied to state authorities and accordingly have not been granted the status of stateless persons, their actual number can be higher.** It is also noteworthy that some persons are under the risk of becoming stateless due to the lack of documentation; although through resorting to legal procedures their nationality can be established and they can exercise their rights in full.

### 32.1. PROCEDURES FOR DETERMINING THE STATUS OF A STATELESS PERSON

Presently, the status of a stateless person is determined in accordance with a governmental resolution.<sup>1279</sup> Each person can apply for the institution of relevant proceedings. This procedure contains certain flaws and it is

1272 Amendments of 25 May 2012 to the Law of Georgia on Legal Status of Aliens.

1273 On 9 December 2011 (in force with respect to Georgia since 22 March 2012).

1274 On 2 April 2014 (in force with respect to Georgia since 29 September 2014).

1275 This is considered to be the objective and rationale of the 1954 convention according to the Handbook on Protection of Stateless Persons (a publication by the Office of the United Nations High Commissioner for Refugees, Geneva, 2014, p. 7).

1276 Article 15 of the Universal Declaration of Human Rights, Article 24.3 of the International Covenant on Civil and Political Rights, etc.

1277 Since 2011, including the first half of 2018, out of 75 Roma persons who have been issued with documents, 18 were given the status of a stateless person. Source: interim report (January-June) on the Implementation of the 2018 Action Plan for the State Strategy for Civic Equality and Integration, p. 5.

1278 The Second Opinion on Georgia by the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2015, p. 10, available at: <https://ces.to/hj0uyg>, (accessed 01.03.19); see also the Third Status Report of OSCE/ODIHR on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, 2018, p. 22, available at: <https://ces.to/ItncqR>, (accessed 01.03.19).

1279 Resolution no. 523 of the Government of Georgia of 1 September 2014 on Approval the Procedure for Determining the Status of a Stateless Person in Georgia.

important to address them. In particular, a person, against whom a decision on expulsion from Georgia is reached, does not have the right to request determination of the status of a stateless person.<sup>1280</sup> Such an absolute prohibition is against the 1954 Convention.<sup>1281</sup> There is no legal aid envisaged in the process of granting the status of a stateless person. Persons seeking the status cannot meet the general criteria for insolvency,<sup>1282</sup> since they cannot be registered in the unified databases of socially vulnerable families. There are no statutory conditions for exemption from the fees related to determination of the status of a stateless person;<sup>1283</sup> this might become an additional impediment in the practice. The rights of a person seeking the status are not specified by the law, whereas the procedure for determining the status of a stateless person is rather lengthy.<sup>1284</sup>

## 32.2. LEGISLATIVE CHANGES

The amendments made to the law in 2018<sup>1285</sup> also had a certain effect on the legal status of stateless persons. According to the existing international standard, the main objective for stateless persons is naturalisation and in this regard, there should be a favourable framework in place.<sup>1286</sup> The Law of Georgia on Georgian Citizenship used to provide for five-year lawful residence in Georgia as a precondition for naturalisation, not allowing any exceptions for stateless persons. However, due to the statutory term being rather short, it was considered to be a favourable regulation. Under the amendments made in 2018,<sup>1287</sup> the five-year term was increased to ten years, without making any allowances with regard to stateless persons. This has had a negative effect. Another significant issue that is worth mentioning and needs to be negatively assessed is the limitation of the right to appeal against decisions adopted with regard to citizenship.<sup>1288</sup>

## 32.3. EXERCISE OF SOCIAL RIGHTS BY STATELESS PERSONS

Exercise of social rights by stateless persons is identified as particularly problematic. Some legal acts expressly refer to stateless persons as those who can exercise certain rights. However, in certain cases, exercise of certain rights is dependent on holding a permanent residence permit. This can interfere with the exercise of rights by persons holding the status.

For instance, in Georgia, stateless persons having the status in Georgia can receive state pension<sup>1289</sup> and are

1280 *Ibid.*, Article 2.2.

1281 The 1954 Convention Relating to the Status of Stateless Persons, Article 31.1: “The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.” According to the Handbook on Protection of Stateless Persons, “As confirmed by the drafting history of the Convention applicants for statelessness status who enter into a determination procedure are therefore “lawfully in” the territory of a State party. By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.” (A publication by the Office of the United Nations High Commissioner for Refugees, Geneva, 2014, pp. 48-49).

1282 Resolution no. 424 of the Government of Georgia of 30.06.2014 on Determining the Procedure for Confirming a Person as Insolvent”.

1283 The only case where it is not required to pay service fee is the following: “if the examination of the application is based on the referral of the Guardianship and Custody Agency concerning the person who is under guardianship/custody of this agency.” See Article 8.6<sup>1</sup> of Resolution no. 508 of the Government of Georgia of 29.12.2011 on Approving the Procedure for Paying the Cost of Services, the Terms and Cost of Services, Rendered by a Consular Official within the Competences of the Public Service Development Agency – A Legal Entity of Public Law Under the Ministry of Justice of Georgia and Delegated Competence of this Agency.

1284 Under Article 22.6 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, this term shall not exceed 9 months.

1285 Amendments made to the Organic Law of Georgia on Georgian Citizenship on 21 July 2018.

1286 The 1954 Convention Relating to the Status of Stateless Persons, Article 32.

1287 Amendments made to the Organic Law of Georgia on Georgian Citizenship on 21 July 2018.

1288 In accordance with the new wording of Article 29.1 of the Organic Law of Georgia on Georgian Citizenship, “A decision of the President of Georgia regarding Georgian citizenship, except for the decision on terminating Georgian citizenship, may not be subject to appeal in court. When a person appeals in court a decision made by the President of Georgia on terminating Georgian citizenship, the President of Georgia shall act as a defendant.”

1289 The Law of Georgia on State Pension, Article 1.2.b).

eligible for numerous components of the State Programme of Universal Health Care.<sup>1290</sup> The aforementioned is not dependent on holding a specific type of residence permit. In 2018, 52 stateless persons having the status in Georgia received state pension.<sup>1291</sup> Meanwhile, in order to be eligible for basic social benefits, a stateless person having the status in Georgia is supposed to have a permanent residence permit.<sup>1292</sup> This type of permit is only guaranteed for certain category of stateless persons.<sup>1293</sup> In 2018, 28 stateless persons were registered in the unified databases of socially vulnerable families, out of which 13 received subsistence allowances.<sup>1294</sup> It is noteworthy that this is a considerable drop since 2017, when 98 stateless persons were registered in the unified databases of socially vulnerable families and out of them 52 received subsistence allowances.<sup>1295</sup> By the end of 2017, the legislative amendments<sup>1296</sup> focused on the type of residence permit and made it mandatory to hold a permanent residence permit, whereas it was sufficient to hold a residence permit (irrespective of the type of permit) under the legislation in force before the amendments. This amendment significantly affected the social security of stateless persons in Georgia and in 2018, compared to 2017, decreased the number of beneficiaries of social allowances by approximately 80%. In the current period of 2019, their number further decreased. Out of 22 stateless persons registered in the unified databases of socially vulnerable families, only 7 persons receive subsistence allowances.<sup>1297</sup>

In accordance with the 1954 convention, the Contracting States shall accord to stateless persons the same treatment with respect to public relief and assistance as is accorded to their nationals.<sup>1298</sup> Regarding housing,<sup>1299</sup> the convention safeguards the treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances. Beyond the 1954 convention, it is noteworthy that “The status of a stateless person under national law must also reflect applicable provisions of international human rights law.”<sup>1300</sup> The vast majority of human rights apply to all persons irrespective of nationality or immigration status, including to stateless persons.<sup>1301</sup> States must avoid different standards of treatment with regard to citizens and non-citizens that might lead to the unequal enjoyment of economic, social and cultural rights.<sup>1302</sup> In this context, it is problematic to exclude homeless stateless persons at the municipality level from exercising their right to adequate housing.<sup>1303</sup>

1290 Resolution no. 36 of the Government of Georgia of 21.02.2013 On Certain Measures to be Taken for the Purpose of Transition to Universal Health Care.

1291 According to Letter no. 04/12904 of the Social Service Agency, dated 13 March 2019, in 2012 18 stateless persons received state pension, in 2013 - 24, in 2014 - 31, in 2015 - 41, in 2016 - 52, in 2017 - 49, in 2018 - 52, in the current year of 2019 - 47.

1292 Order no. 225/N of the Minister of Labour, Health and Social Affairs of Georgia of 22 August 2006 on the Procedure for Determining and Issuing Targeted Social Allowance, Article 11.4.a).

1293 Under Article 16.2 of the Law of Georgia on the Legal Status of Aliens and Stateless Persons, “A residence permit to a stateless person shall be issued for a three-year period. A residence permit with the right of permanent residence shall be granted to a stateless person whose citizenship of Georgia has been terminated by reason of renunciation of the Georgian citizenship, or who has permanently lived in Georgia as of 31 March 1993, has not been considered a citizen of Georgia and has not been removed from permanent registration in Georgia after 31 March 1993.”

1294 According to Letter no. 04/12904 of the Social Service Agency, dated 13 March 2019, in 2012, there were 105 stateless persons registered in the unified databases of socially vulnerable families; out of them 20 persons received subsistence allowance; in 2013 - 116 persons were registered and 31 persons received subsistence allowance; in 2014 - 124 persons were registered and 38 received subsistence allowance; in 2015 - 130 persons were registered and 45 received subsistence allowance; in 2016 - 138 persons were registered and 56 persons received subsistence allowance.

1295 Letter no. 04/12904 of the Social Service Agency, dated 13 March 2019.

1296 Article 1 of Order no. 01-68/N of the Minister of Labour, Health and Social Affairs of Georgia of 11 December 2017 on Amending Order no. 225/N of the Minister of Labour, Health and Social Affairs of Georgia of 22 August 2006 on the Procedure for Determining and Issuing Targeted Social Allowance.

1297 Letter no. 04/12904 of the Social Service Agency, dated 13 March 2019.

1298 The 1954 Convention Relating to the Status of Stateless Persons, Article 23.

1299 *Ibid.*, Article 21.

1300 The Handbook on Protection of Stateless Persons (a publication by the Office of the United Nations High Commissioner for Refugees, Geneva, 2014, p. 50).

1301 *Idem.*

1302 The Rights of Non-Citizens, (a publication by the Office of the United Nations High Commissioner for Refugees, New York and Geneva, 2006, p 25, available at: <https://www.ohchr.org/documents/publications/noncitizensen.pdf>, (accessed 01.03.19).

1303 See, for instance, resolution no. 37-14 of Tbilisi Municipality *Sakrebulo*, dated 12.02.2019 on Approving the Procedure for Registering and Providing with Shelter/Housing on the Territory of Tbilisi Municipality. The resolution grants the status of a homeless person to a Georgian citizen only. The Law of Georgia on Social Allowance and the Local Self-Government Code do not provide for such a restriction.

**PROPOSAL TO THE PARLIAMENT OF GEORGIA:**

- To facilitate naturalisation of stateless persons, *inter alia*, by reducing the statutory term of residence in Georgia and to review the provision of the Organic Law on Georgian Citizenship that limits the right to appeal against presidential decisions adopted concerning citizenship.

**RECOMMENDATIONS****To the Government of Georgia:**

- To reflect in the Governmental Action Plan for Human Rights Protection (for 2018-2020) activities aimed at improving the legal status of stateless persons, *inter alia*, by eliminating inconsistencies in domestic legislation with relevant international standards.

**To the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:**

- To refer in express terms to a stateless person having the status in Georgia as a beneficiary irrespective of the type of residence permit in Order no. 225/N of the Minister of Labour, Health and Social Affairs of Georgia of 22 August 2006 on the Procedure for Determining and Issuing Targeted Social Allowance.



ევროკავშირი  
საქართველოსთვის  
The European Union for Georgia



PUBLIC DEFENDER  
(OMBUDSMAN) OF GEORGIA



 150, DAVID AGHMASHENBELI AVE., TBILISI, 0112, GEORGIA

 +995 32 2994404

 [info@ombudsman.ge](mailto:info@ombudsman.ge)

 [www.ombudsman.ge](http://www.ombudsman.ge)

 [fb.me/OmbudsmanofGeorgia](https://fb.me/OmbudsmanofGeorgia)

**HOT LINE: 1481**