



Report of the Public Defender of Georgia

On the Situation of Protection of Human Rights
and Freedoms in Georgia

2020

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Introduction

This report by the Georgian Public Defender has been prepared in line with the Georgian Constitution (Art. 35), the Organic Law of Georgia on the Public Defender of Georgia (Art. 22) and the Parliamentary Rules of Procedure (Art. 163). It reports on the challenges and progress made in the field of protection of constitutionally guaranteed human rights in 2020 and discusses the rate of fulfilment of Public Defender-issued recommendations and proposals. A period covered by the report is the year of 2020 but other issues that started before and continued into the reporting period are also covered.

In 2020, the pandemic put the Public Defender's Office in front of new challenges. The remote working mode gave rise to dozens of logistical and technical problems at the beginning. However, in the shortest time possible, the Office managed to fully adapt to the reality on the ground and continued functioning without any significant obstructions. Equipped with appropriate medical equipment to prevent the spread of the coronavirus, our staff even continued to pay their systematic visits to closed institutions.

The Public Defender's Office received 5,698 new complaints on human rights violations during the reporting period. Of this figure, 3,859 complaints were considered admissible. The Public Defender operates a hotline citizens can use to receive information round the clock or report violation of their rights. During 2020, we received 8,270 calls via the hotline.

Public Defender's Tbilisi Office gave out advice to 796 visitors. Worth noting is that we stopped face-to-face meetings with citizens during April-December 2020 due to the Covid pandemic surge.

5,684 interested individuals received over-the-phone and in-person advice from the Public Defender's offices in the regions (eastern and western parts of Georgia). The regional offices conducted 618 meetings attended by local residents and representatives of local organizations.

In 2020, based on individual applications reviewed, the Public Defender drafted and made 107 recommendations and proposals. The largest number of recommendations were sent to the Prosecutor-General's Office (10 recommendations) and the Ministry of Justice (7 recommendations). In 2020, we prepared 25 special reports, filed 6 lawsuits with the Constitutional Court and sent 6 communications to the Council of Europe Committee of Ministers. We drafted and sent out 11 *amicus curiae* to the Constitutional Court (2), Tbilisi City Court (3), Batumi City Court (1) and Tbilisi Court of Appeals (3). In the reporting period, the Public Defender also addressed the European Court of Human Rights and joined two litigations as a third party.

During the reporting period, members of our Department of Criminal Justice paid 286 visits to penitentiary institutions and talked to 1,159 pretrial and convicted prisoners. They visited the National Mental Health Center 15 times and saw 46 patients. Also, within the framework of the National Preventive Mechanism, which envisages monitoring detention facilities through planned and unexpected visits, the Special Preventive Group paid 28 visits to 10 penitentiary institutions, 38 visits to 28 pretrial detention facilities, 61

visits to 61 police departments, 6 visits to 4 psychiatric institutions, and 2 visits to the Interior Ministry's Migration Center. 124 remote interviews were conducted with quarantined individuals.

As part of enforcement and monitoring measures conducted within the frames of the UN Convention on the Rights of Persons with Disabilities, two (2) unexpected visits were paid to the Mental Health Center of Tbilisi Ltd, one (1) visit was paid to a pretrial detention facility, three (3) unexpected visits were made to board and care homes for disabled people, five (5) scheduled monitoring activities were conducted in care homes and boarding schools for disabled children, and three (3) information meetings were held in the municipalities of Telavi, Zugdidi and Kutaisi. As part of gender equality monitoring, members of our Gender Equality Department conducted follow-up monitoring visits in 5 shelters and 5 crisis centers for victims of domestic violence. With a view to monitoring children's rights, we conducted the following visits: 6 visits to penitentiary institutions (facilities no. 11 and no. 5); 2 visits to a shelter for children living and working on the street; 4 visits to boarding schools; 4 visits to small family-type children's homes; and 2 visits to foster families.

In order to evaluate the legal situation of stateless persons, we conducted a number of activities: 3 monitoring visits to assess the conditions of foreign citizens and asylum seekers detained in penitentiary facilities; 4 monitoring visits to the Reception Center for Asylum Seekers run by the Interior Ministry's Migration Department; 2 monitoring visits to the Temporary Accommodation Center under the Migration Department of the Ministry of Internal Affairs; and 9 times monitoring of refugee status determination procedures. As part of our mandate under the Law of Georgia on the Elimination of All Forms of Discrimination, we conducted 6 meetings with 12 private companies to discuss internal measures they could take to combat sexual harassment in the workplace. In addition, 3 remote discussions were held on equality issues.

In regard to human rights protection in the armed forces, the Public Defender's Office visited 8 military units of the Ministry of Defence; 16 paramilitary units of the Ministry of Internal Affairs; 4 Special Penitentiary Service institutions; and regional offices of the State Service for Veteran Affairs in Adjara, Samegrelo-Zemo Svaneti and Imereti. We also inspected provisional coronavirus-related quarantine checkpoints in Marneuli, Rustavi and Mtskheta. Representatives of the Public Defender's Office conducted monitoring in 18 borderline villages as part of its activities directed at protection of the rights of conflict-affected population.

Information collected during the above-mentioned visits and meetings has been used to frame our evaluations you will find in the chapters of the present Public Defender's Report to the Parliament.

25 special reports we prepared in 2020 concerned various aspects of human rights such as the freedom of peaceful gatherings (scope of protection and standards for gathering management), the level of protection of women's rights to sexual and reproductive health in psychiatric and State-run care institutions; gender policy of local self-governments with a special focus on women's economic empowerment; protection of the rights of the elderly in Georgia; situation in institutions providing services to victims of domestic violence and trafficking; administration of justice in criminal cases involving sexual violence against women; situation in preschool care and education institutions; and situation in the sites where the right to liberty of the person had been restricted on account of novel coronavirus-related quarantine measures.

In this report, we discuss the following topics:

Chapter One of the Public Defender's 2020 Report for the Parliament discusses challenges in the field of protection of **the right to life** in the country. As in the previous years, investigative authorities either took no action or ran late and took ineffective action to find truth in a series of cases involving alleged violation of the right to life.

In 2020, the Public Defender's Office studied the materials of 17 completed cases of prisoner deaths (occurred through 2015-2018). As it found, according to post-mortem forensic examination reports, the prisoners had had serious medical conditions before they died that remained untreated at their detention facilities. Investigative bodies only inquired in the immediate reasons of the deaths but never attempted to find out whether the prisoners had been provided with appropriate and adequate healthcare services while they were still alive. Often times, investigative actions were tardy and ineffective making it less likely to find truth.

Like last year, the 2021 Healthcare State Program does not envisage monitoring and treatment of somatic (physical) health problems for individuals in psychiatric hospitals. Inadequate treatment of physical health issues and failure to pay attention to relevant risk factors are the usual causes of prisoners' deaths.

Flawed investigation was conducted in the reporting period in the death of Giorgi Shakarashvili. Actions taken by the investigative authorities at the initial stage were incomplete. Some of the flaws were mended by the investigation later but potential breach by police officer of the rights of parties to the proceedings were revealed. Worth mentioning is also the case of Temur Machalikashvili in which the investigation left a series of questions unanswered. As for the murder of juveniles in Khorava Street, internal investigation of the case is still pending.

As in the recent years, **ineffective fight against ill-treatment** remained one of the hard challenges of 2020. During the reporting period, the Public Defender received 154 citizen complaints concerning ill-treatment. According to the complaints, the facts of alleged ill-treatment had been perpetrated by prison staff (77 complaints) and police officers (60 complaints). 16 complaints were related to the conditions in the penitentiary institutions. 50 complainants reported protracted investigations.

A major challenge in penitentiary institutions continued to be informal governance – a phenomenon that accounts for the existing violent environment in prisons and affects a large number of inmates. In 2020, the Public Defender's Office studied cases forwarded to the prosecution office on the basis of inmate reports that related to both criminal subculture in prisons and criminal offenses possibly committed by prison officials who cover up prison gangs. Our examination showed that even though inmates were furnishing the investigative bodies with detailed information on the *modus operandi* of prison gangs, specific individuals involved in informal governance and potentially illegal conduct perpetrated by them (threat battery, extortion, economic crimes, abuse of power by officials etc), the Georgian prosecution bodies and the internal oversight authority of the penitentiary services failed to demonstrate willingness to effectively

respond to these allegations and prosecute alleged perpetrators. Many procedural and investigation actions were simply not conducted.

An important challenge in regard to elimination and prevention of ill-treatment is also the practice of isolating prisoners for extended time periods by holding them alone in the cell for a long time. Apart from that, prisoners (including underage remand prisoners) are also frequently and unjustifiably put in de-escalation and solitary rooms for extended periods.

Monitoring conducted in 2020 revealed problems with provision of timely and quality medical services to inmates with somatic (physical) health issues in penitentiary institutions. The so-called full checkups of prisoners remained to be practiced meaning that inmates were required to get completely naked rather than taking their clothes off one by one.

Through our special monitoring methodology, we found that treatment of individuals under administrative detention remained adverse in 2020. Of the total number of ill-treatment allegations, we inquired in (463 cases), bodily injuries inflicted either during or after arrest featured in 34.3% of cases. It should be pointed out that recent years have been seeing a trend of worsening the way detained citizens are treated. For illustration, in 2018 the same figure was 26.8%, while in 2019 it rose to 31.8%. Against the backdrop of the growing use of administrative arrest during gatherings and in everyday life, there is a need for some additional safeguards to be introduced to balance the existing *status quo* and reduce or prevent the odds of ill-treatment occurrences.

From the cases reviewed by the Public Defender's Office in 2020, many detainees emphasized they had been ill-treated by police officers in police cars (either while parked or during transportation). Beating was one of the forms of such ill-treatment. Police cars as places of potential ill-treatment are mentioned in the State Inspector's report as well.

Due to the pandemic-engendered modifications to narcotic drug replacement programs, many patients often found themselves detained in temporary detention facilities that were not equipped with the right means for "withdrawal syndrome" management.

The Public Defender has been keen to scrutinize psychiatric institutions and the rights of patients in those institutions. Unfortunately, violent conduct against psychiatric patients was revealed in 2020 as well. We identified physical violence and verbal insults perpetrated by the staff of mental health hospitals against their patients on the one hand and conflicts and acts of violence between and among mental patients on the other hand. The frequent and awry practice of using physical and chemical means of restraining patients remained prevalent in the reporting period too. The conditions in which mental patients live and receive treatment, amount to ill-treatment.

The prosecution office's ineffective investigation into crimes allegedly committed by law enforcement members continued to remain a systemic problem. Relevant to mention here is that, based on Public Defender's 107 proposals to commence investigation that were forwarded to the Prosecution Office through 2013-2019, the prosecution office started criminal prosecution only against 3 police officers, and only 1

individual was granted the victim status. In her 2019 report to the Parliament, the Public Defender analyzed the criminal investigation into the June 20-21 events in light of anti-ill-treatment procedural safeguards. In 2020, the Public Defender's finding remains unchanged: investigation has been focused on detecting and legally assessing the wrongdoings of only those individual law enforcement members who actually perpetrated the offences but never showed interest in performing a comprehensive analysis of the events to identify those who issued instructions to the lower-ranking police officers.

In 2020, the Public Defender felt particularly concerned about the case of **Temur Abazov**, an individual charged with exposing another person to inhuman, debasing and degrading conditions and organizing public dissemination of a footage depicting this conduct. At the final stage of his trial, the Prosecution Office dropped one of the two counts of heavy charges (the organizing of the footage dissemination) against him without any justification and thus deprived the court of a chance to hear about that part of the charge thereby facilitating Abazov's acquittal eventually.

In view of the pandemic, **protection of the right to liberty and security of person** was a matter of special scrutiny by the Public Defender in 2020. Although a number of restrictions were lifted in March 2021, the Georgian Government did not present a scientific method-based justification of why it considered there was an inevitable necessity of keeping the freedom of movement restricted. It would be reasonable and important for the Interagency Council to provide the public with substantiated and detailed information on the effects of restricted freedom of movement on the containment of the coronavirus.

The Public Defender asserts that, in the reporting period, quarantined/isolated individuals were not properly provided with safeguards such as effective remedies to challenge the duration of quarantine measures. Also, until 2 June 2020, conditions of committing people to self-isolation as a lesser restrictive measure were not clear and predictable enough.

The chapter of this report on the right to liberty and security of person also discusses parole application practices. Defying the calls by various international organizations for States to release more prisoners in view of the pandemic, in Georgia, the rate of using parole measures dropped in 2020. In particular, 1,279 convicted prisoners were released on parole in 2019 but that figure was down to 830 in 2020. However, compared to 2019, the year of 2020 saw an increased rate of replacing the remaining part of sentences with less severe penalties.

In regard to **the right to fair trial**, the report pays special attention to the institutional challenges existing within the Georgian judiciary such as judicial appointments, the electronic case allocation system, judicial discipline and other related issues.

In our understanding, the institutional challenges within the judiciary, the weighty violations detected in the process of selection of the Supreme Court judges and the lack of transparency of the process open up opportunities for considering more drastic intervention in the judicial system in the future.

Since the right to fair trial has been considerably affected by the Covid pandemic, this chapter discusses new regulations drafted in response to the pandemic that influenced the judiciary system and the exercise of

their rights by court users. Regrettably, as in the previous years, provision of prompt and effective justice remained a challenge in 2020. Despite the new judicial appointments to the Supreme Court, problems with expediency of cassation justice lingered in the reporting period.

In the context of the right to fair trial, we touch upon cases in which proceedings were or are conducted with substantial flaws: investigation into the battery of Lasha Tordia, former Auditor General, was conducted under a wrong criminal charge and was delayed in time – something that hindered the administration of justice in the case and ended up with an acquittal of one of the defendants. In the Public Defender's opinion, the involuntary investigative measure conducted in relation to Giorgi Rurua on 3 January 2020 without his lawyer's presence breached his defense right – a fact the investigation authorities did not show interest in, regrettably. The Public Defender also explored the termination of Nikanor Melia's status as a member of parliament and rendered its opinion on the judgement of the Constitutional Court regarding this case. The report also discusses defects in the so-called "cartographers' case" such as the breach of the principle of legality and allegations of abuse of the justice system for political or other objectives. In 2020, like in the previous years, we revealed a number of breaches of the **right to privacy**, including the potentially illegal wiretapping of MP Salome Samadashvili, a TV Pirveli journalist, and a member of the Unified National Movement. It has been years that the Public Defender's Office has been demanding the launching of investigation into all cases concerning the publicizing of confidential conversations and records. Regrettably, these cases hardly end with an effective investigation capable of detection and prosecution of perpetrators.

For individuals in closed institutions, it is essential to be able to maintain effective communication with the outside world. We have analyzed the rights of prisoners during the pandemic, and the relief measures in favor of prisoners that we deemed insufficient. We focused particularly on problems faced by foreign prisoners who virtually had no possibility of effective communication with their family members. Communication with own families is a hard task also for patients in mental institutions who, in fact, are prohibited from using the phone.

Worth mentioning is that, in the reporting period, the Office of the State Inspector found the Justice Ministry and the Special Penitentiary Service guilty of breaching the Personal Data Protection Act and fined them for illegally publicizing video footages of members of the Public Defender's Office. We wish to note that, at Public Defender's request, the Office of the State Inspector also examined the legality of Special Penitentiary Department's processing of electronic surveillance data collected in penitentiary institutions and detected a number of serious breaches by the Department.

In regard to the **right to equality**, the Public Defender welcomes the important legislative amendments effected during 2020. Pursuant to the amendments, the Law of Georgia on the Elimination of All Forms of Discrimination now considers denial of reasonable accommodation a form of discrimination. The Parliament also enacted the Law of Georgia on the Rights of Persons with Disabilities, which introduces important rights and guarantees for people with disabilities. Essential changes were made to the labor legislation. Some of the significant examples of the changes are that an employer must pay equal remuneration to their male and female employees performing equal work; the equal treatment principle applies to both precontractual

and contractual labor relations; the pregnancy and child delivery leave is now separated from the childcare leave; and employers are under the obligation to respond to sexual harassment occurrences.

It should be pointed out that the epidemiologic situation in the country has had negative effects on the effective exercise of the right to equality. In addition to the natural handicaps created by the pandemic, we also faced Government-imposed restrictions that had unequal impact on various groups of the society. In the reporting period too, groups that suffered most due to the barriers were women, religious minorities, LGBT+ community and disabled people. In 2020, the Public Defender examined 113 new potential discrimination cases of which 18% concerned discrimination on account of sex/gender and 9% concerned discrimination for disability. Complaints related to unequal treatment due to different opinion and political views made up 12% and 9% respectively.

Labor relations remained one of the areas that became badly exposed to discrimination during the reporting period. Acts of discrimination took place against journalists too. Sexual harassment, which was most frequently taking place in the workplace and while provision of healthcare services, has been a challenge up to now.

In regard to **gender equality**, we welcome the introduction of gender quotas in the Georgian Parliament in 2020. Unfortunately, no other significant steps have been made to facilitate equal participation of men and women in political life in the reporting period. Average salary rates have remained distinct for men and women. In Georgia, women spend 3 times more time on unpaid domestic work compared to men. The novel coronavirus pandemic made the women's burden of performing unpaid household work even more arduous. Numerous problems remained unsolved in regard to exercising their sexual and reproductive health rights by women.

One of the major challenges in the reporting period continued to be gender killings of women (femicides). Statistics show that the number of femicides has only been increasing year by year. According to the Georgian Prosecutor-General's Office data, in 2020, 24 murders of women were detected, of which 15 cases were committed by family members against family members. Of the 27 attempted murders perpetrated against women, 17 cases involved family members. The fight against femicide and administration of justice in femicide cases remain to be connected to numerous challenges that show up both at the investigation stage and later at the trial stage. We also revealed cases in which femicides took place even though victims reported violence they had been exposed to before murdered.

During the pandemic, victims of domestic violence found themselves in extremely hard conditions, face-to-face with their abusers in shared space. This increased risks of violence perpetration and reduced chances of detecting abuses.

Existing legislation on sexual crimes still has a number of shortcomings. We negatively assess the fact that, in the reporting period, the Parliament did not support enacting changes in Article 137 of the Criminal Code (rape), which is a defective provision. In regard to fight against human trafficking, both the number of detected trafficking offenses and the number of individuals availing themselves of anti-trafficking services remain low.

Early marriages and early engagements remain a serious challenge from the perspective of both doing away with malicious practice in general and effectively managing of individual cases. Against the background of the pandemic, distant learning made it even more difficult for social workers to timely detect and inquire into such occurrences. Coordination among the Interior Ministry, education institutions and the social service on the one hand and the relevant referral mechanism on the other hand certainly leave room for improvement.

No significant steps have been made in 2020 to improve protection of the rights of LGBT+ people. With the pandemic around, despite more challenges faced by LGBT+ people, their social and economic needs did not get reflected in the Government's anti-crisis economic plan.

A chapter of this report concerning **freedom of belief and religion** describes main challenges identified in 2020. These challenges include discriminatory legal provisions in the taxation and State property legislation in regard to non-dominant religious associations, obstacles encountered by religious minorities in using their property rights, potentially hate crimes and ineffective investigations on the part of the State into such crimes, problems related to the State Agency for Religions and the unequal approach to religious holidays embedded in the labor legislation. The chapter also discusses unequal treatment by the State of non-dominant religious associations during the pandemic, and the antisemitic and religiously discriminating public statements made during 2020. In the reporting period, the State again made no real steps to raise public awareness of religious diversity, diverse traditions and religious freedom or to eliminate the embedded religion-motivated unequal practices.

The **freedom of expression** chapter of the report assesses the country's media environment in 2020 as pluralistic but highly polarized. It also discusses violation of labor rights of Achara Television employees and examples of controlling the content of media programs. It speaks not only about intrusions in journalists' professional activity as a lingering problem, but of the lack of complete statistics on other offenses perpetrated against journalists while performing their professional duties and the need for taking additional measures to protect media representatives. The Public Defender also notes that physical safety of media representatives who are there to cover events unfolding at the place of gatherings is often compromised.

Exercising the **freedom of assembly** was in the center of attention in the period in the same way as in the previous years. The Public Defender's view is that the way a number of gatherings of diverse size and content were conducted last year has obviated the State failure to duly fulfill its obligation to allow for full-fledged exercise of the freedom of assembly. Disproportionate use of force by the Government against protestants was spotted on 8 November 2020 when law enforcement officers fired from a water cannon toward rally participants who were gathered in front of the Central Election Commission to challenge the parliamentary election results, in order to break up the rally, which they did in breach of law, without giving the protestants a warning before they started applying force. This year too, like they used to do in the previous years to manage gatherings, law enforcement authorities frequently resorted to administrative arrest of rally participants for petty hooliganism and disobedience to a law enforcement officer's legal order – a kind of practice the Public Defender considers harmful, not meeting the necessity requirement and rather having the overtone of unjustified interference in the freedom of gathering. Apart from that, ability to exercise one's

freedom of assembly has become jeopardized especially by the raging Covid-19 pandemic and various restrictions imposed to contain the virus. During the reporting period, the Public Defender also observed occasions of forbidding rally participants from having certain items with them. For example, on 9 November and 2 December 2020, law enforcement officers unjustifiably disallowed protestants to keep firewood at the rally site.

In its 2020 report to the Parliament, the Public Defender allocates a separate chapter to the **freedom of information**. The freedom of information legislation in Georgia is faulty and requires fundamental reformation. The reform started 8 years ago and has not completed yet. Also, it is important that the country ratifies the Council of Europe Convention on Access to Official Documents as of 18 June 2009 on time, which Georgia signed immediately after its adoption. Denying access to open-source information under the pretext of the risk of personal data disclosure and neglecting interests of publicity were the greatest challenge to being able to exercise one's freedom of information. This has created problems not only for individuals who wanted to get public information but for public institutions who were hindered from performing their duties properly.

The emergency declared in 2020 caused temporary suspension of the legally established timeframes for releasing public information, for the period of emergency. In Public Defender's view, due to high public interest, it was important for the restriction related to public information release timeframes to not apply to the pandemic-related public information. While the Government suspended the legal timeframes for providing public information, it did not impose any obligation on public authorities to proactively provide the population with such information to balance out the restrictive measures at least to some extent.

The situation of **human rights defenders** remained difficult. Verbal and physical assaults and intimidation remained a regrettable trend in 2020. The unacceptable practice of making discrediting statements against the work of human rights defenders was a commonplace. Such statements were being made also by high-ranking political figures. Defenders of the rights of LGBT+ communities continued to remain challenged by problems with protection of their own rights. Attacks on the office of Tbilisi Pride by radical groups and the stealing of a flag from the office are examples. It should be pointed out that the national legislation does not provide a definition of human rights defenders – a fact that has been getting in the way of thorough detection of crimes committed against them and the collecting of relevant statistics for years.

In 2020, Georgia faced a number of challenges related to the protection of **environmental rights**. Especially acute in the reporting period were problems with government's energy policy; legal and enforcement-related shortcomings in the functioning of the environmental impact evaluation system; neglect of human rights in urban planning and construction; lack of measures directed at preventing and eliminating the dealing of harm to environment; and hazardous waste management issues. Effective safeguards for the oversight of the safety of residential natural gas distribution networks remained absent. Despite a considerable number of positive measures carried out for improving the atmospheric air quality in the country, many problems remain unresolved. One example is a defective system of atmospheric air quality monitoring that does not provide a full picture of air pollution across the country. Inadequate regulation of industrial sector-generated pollutions is problematic too.

Legislative rules on environmental impact assessment need to be effectively enforced while implementing individual projects. During the reporting period, public attention was seized by the construction of a chain of hydroelectric power plants called “Namakhvani” power plants. The project is a vivid example of systemic problems the Public Defender and environmental experts have been pinpointing for years. Citizens, professionals and civil society have been concerned staging continuous protest rallies because of the geological and seismic threats, landslide hazards and expected microclimate changes the project poses if implemented. This has created expectations of deteriorated ecological and socio-economic situation in the society. Moreover, profitability of the project from economic and energy supply perspectives also poses questions. Public discussion of the project’s environmental impact assessment report did not go smoothly either and rather deepened public distrust of the project even further.

Worth pointing out is a **labor law reform** carried out in 2020; in particular, the Labor Inspection received an ultimate mandate to oversee the protection of labor rights. We also praise the increase in the number of labor inspectors and the improvement of the Inspection’s infrastructure and equipment during the reporting period. Amendments to the Labor Code enacted by the Parliament on 29 September 2020 expanded the scope of prohibition of discrimination. Provisions of the Labor Code on precontractual relationship, leaves, night shifts, shift work, night work and breaks became more specific and better articulated. The concept of an intern was introduced and new provisions regulating internship purposes, remuneration and duration were added.

Stringent restrictions imposed for containing the novel coronavirus had a direct impact on the exercise of labor rights in Georgia. In particular, many people lost their jobs as businesses suspended their economic activities. There were problems with protecting employees from catching the Covid-19 infection in the workplace.

We detected a series of issues with observance of occupational safety and health norms in the workplace during the reporting period. Tragically, 39 people died and 249 were injured while being on the job in 2020. It should be pointed out though that, for the last two years after 2018, the number of deaths at work has been diminishing (59 deaths in 2018 and 45 deaths in 2019) – something that can relate to the creation and operation of a body responsible for the oversight of work safety norms or the suspended businesses and activities during the pandemic.

The unfavorable situation in the healthcare sector deteriorated in 2020 due to the Covid-19 pandemic, which also complicated the enjoyment of **healthcare rights**. Problems in the fields of effective management of increased patient flows, provision of quality and timely medical services, providing the public with comprehensive and detailed information and effective implementation of preventive measures are an incomplete list of issues faced by the national health service. Other challenges related to the effectiveness of remedies available to patients and sufficient number of qualified medical assistants. Despite some measures taken, population had difficulty accessing quality and affordable medications. The Government did not draw up a unified State program for the treatment of cancer patients that would also address prevention and rehabilitation issues. The Public Defender wishes to reiterate the need for making substantial changes to the country’s narcotics policy and shifting to a new, treatment- and rehabilitation-based model.

As in the previous years, in 2020, the Public Defender's Office had been actively supervising protection of **social security rights** in the country. Main challenge in this area in the reporting period has been evaluation of effectiveness of the Targeted Social Assistance Program, its systemic monitoring and elaboration of required methodologies.

By December 2020 data, nearly 100 thousand more individuals were receiving subsistence allowance within the Targeted Social Assistance Program compared to the previous year. Accordingly, the share of subsistence allowance recipients increased from 11.5% to 14.1% of the country's entire population. Unfortunately, procrastinated procedure of having a subsistence allowance appointed remained unresolved. In particular, the period between the filing of an application by a family and the actual wiring of a social allowance money to the applicant's account varies from 3 to 4 months. In regard to the right to adequate nutrition and access to free meals, the Public Defender points out that a majority of municipalities has not conducted an assessment of alimentary needs of individuals and families residing in their territories. Problems with benefiting from free meal services also remain untreated.

In the **right to proper housing** chapter of the report, the Public Defender assesses as extremely negative the Government's failure to draft a nation policy document on homelessness and an operational action plan for its implementation – an obligation assumed under the Open Government Georgia Action Plan for 2018-2019. Like in the previous years, there is no legislative definition of a homeless person and a framework legislation regulating the modalities of exercising one's right to proper housing. Up to the present day, there is no unified database of homeless people in the country. Some municipalities do not have even local databases of the homeless. Budgetary resources and relevant infrastructure are very limited and there are no support programs for those residing in shelters and social homes. In some municipalities, the existing programs are ineffective and incapable of improving their beneficiaries' socio-economic conditions.

One of the serious challenges in 2020 was the **conducting of the parliamentary election in a fair and equal environment**. As in the previous years, the 2020 parliamentary election was held against an extremely tensed background. Altercations and violent incidents, including assaults on media representatives were observed. Open sources were reporting confrontation between various subjects, breach of voting secrecy, potential control of voter preferences and allegations of voter bribery. All of these adversely affected public interest in holding a peaceful election. Exercise of their rights by voters was also influenced by the novel coronavirus pandemic.

It should be pointed out that local election-observing organizations and civil society evaluated the 2020 parliamentary election as "the least democratic and least free" election held during the rule of the "Georgian Dream". According to the OSCE/ODIHR international observation mission's report, the election was competitive and, overall, fundamental freedoms were respected. However, the report also points out a number of alleged violations. For example, according ODIHR's assessment, the line between the ruling party and the state was often blurred, contrary to OSCE commitments and international good practice – something that reduced public confidence in some aspects of the process. Systemic rejection of a majority of complaints on formalistic grounds significantly limited the opportunity to seek effective legal remedy. Also, the fact that virtually all complaints lodged with the election commissions were decided by the CEC or DEC chairpersons

without review in open sessions significantly diminished effective application of the legal remedy and reduced transparency in the handling of disputes. The international election observation mission also emphasizes that recommendations issued by the OSCE/ODIHR and the Venice Commission a long time ago on simplifying the complaint handling and appeal procedures and harmonizing this process with international and best practices remain unfulfilled – which raises doubts as to impartiality and effectiveness of the complaint review process.

After the parliamentary election, the government made a political pledge to carry out an election reform. The Public Defender's Office is part of the working group on the election reform. The Public Defender hopes that the election reform will be successful and the electoral legislation will be reframed to fully match the relevant international standards and good practices. It is also of vital importance to the country's democratic development and effective exercise of human rights that the law enforcement authorities effectively and timely react to every single allegation of election-related offenses, on the one hand, and that the country exits the deep political crisis – which is a result of numerous defects during the electoral process and the events unfolded as the aftermath of the election – through negotiation and finding of a common solution by all parties involved, on the other hand.

As in the previous year, rules and norms governing the **protection of cultural heritage** remained inadequate and ineffective in 2020. It has been years that there is an ongoing work to draft a Cultural and Natural Heritage Code of Law. Lack of holistic and effective measures to protect privately-owned cultural heritage was also a challenge during 2020.

In the reporting period, the public was struck by the fact that Gelati, a world cultural heritage monument, was damaged in the process of refurbishment. Unique church murals were spoiled to a considerable extent. Unfortunately, international organizations' assessment of the temple roof refurbishment project is absent. Also, according to the project documents, no proper reasons were given to substantiate the need for and advantages of the roofing methodologies used in the project. A construction permit was issued without checking the construction materials to be used. In addition to defects at the licensing stage, supervision of the works was insufficient. The Georgian Public Defender has been critical in her assessment of the Agency's work in regard to Gelati. It is important to ascertain what specifically causes damage to the monument and to take all necessary measures to contain the reasons and mend the present consequences.

The reporting period was challenging in terms of the urban planning and constructions in Batumi. It is alarming that, up to the present day, Batumi does not have a spatial development and construction management document of the town of Batumi, nor a historical and cultural planning guide. Discussed in the report are also challenges related to the Khada Gorge cultural landscape and the Davit Gareji Monastery Complex.

Softening legal penalties for cultural heritage-related wrongdoings certainly does no good job to help prevent and suppress illegal conduct against the objects of cultural heritage. In reporting period too, we did not see any tangible results of the ongoing criminal investigations into the damaging and destruction of the

ancient Sakdrisi-Kachagiani goldmine and the destruction of archeological objects in the process of Ruisi-Rikoti highway construction.

The Public Defender's report to the Parliament also tackles the issue of **the teaching of human rights** in the country. In 2020, we have had a fruitful cooperation with the Ministry of Education, Science, Culture and Sports. Through joint work, we prepared an online educational course for teachers. Unfortunately, we did not see progress in the reporting period in terms of elaboration of policy documents (such as a strategy and an action plan on teaching human rights) and proactive detection of proselytism/religious indoctrination in schools. Also, the current level of integration of the teaching of digital citizenship does not live up to modern standards determined by the Council of Europe and the Committee on the Rights of the Child.

In regard to protection of **children's rights**, acts of violence against children continued to prevail in the reporting period. According to the Public Law Entity Agency for State Care and Assistance of Statutory and Non-statutory Victims of Trafficking, 1,818 cases of violence against children were detected in 2020. Nevertheless, the State has not introduced services specifically tailored to child victims of violence this far. Ineffective action-taking in regard to sexual violence against children has shown itself as a serious problem in the reporting period. Suppression of domestic violence against children, and protection and assistance of victims leave room for improvement. In this regard, timely expansion of the number of social workers and psychologists is of critical importance. Currently, some 268 social workers and 12 psychologists are available in the whole of the country to work with thousands of juveniles with various problems. Prevention of suicide in children remains a challenge. In 2020, 14 cases of child suicide and 54 cases of attempted suicide were registered. Despite acuteness of the problem, the State has not developed a concrete strategy and an action plan to deal with it.

In the reporting period, there were problems with distant learning. Sudden shift to the distant learning mode for a prolonged period of time while families were not properly technically equipped to keep up with the change jeopardized enjoyment of their right to education by some part of child population. The matter was especially acute in the regions, and for children living in poverty. In the meanwhile, a high rate of school dropouts remains a concern in the country.

The negative impact the pandemic had on Georgian families' socio-economic conditions has to be mentioned. In 2020, in the period between January and December, the number of families having children and receiving subsistence allowance increased from 71,766 to 87,527, and the number of child recipients of the social assistance increased from 152,353 to 186,131.

Poverty, need, neglect that other social factors push children into jobs that are harmful to their age and development. As a result, they become truants and eventually drop out of school completely. Engaged in seasonal work, household jobs or temporary migrant gigs abroad, juveniles no longer take part in the school learning process. Instead, they are busy doing jobs that are inappropriate for their age and physical development. They work in unhealthy environments with a busy schedule. Oftentimes, their living conditions are inadequate. They are not getting meals, sleep and rest in an orderly manner. Such occurrences are not

always detected and reacted upon. Children living and working on the street found themselves exposed to heavier problems as a result of the novel coronavirus pandemic.

Protection of the rights of pupils living and studying in religious boarding schools and their monitoring remained a problem. A boarding school in Ninotsminda is attracting attention as its management refuses to let social workers in for inspection. The management's position puts the protection of the rights of boarders under threat and increases the already-existent risk of institutional violence.

Effective protection of **the rights of disabled people** remained hampered by numerous challenges. We welcome the adoption by the Georgian Parliament of the Rights of Disabled People Act, which is a step towards approximation of Georgia's domestic legislation with the international standards. However, contrary to the Public Defender's recommendations, a number of important suggestions were not taken into consideration at the time of enacting the law. In 2020, the Georgian Government issued technical rules entitled "National Standards of Accessibility" – a regulation based on the principles of universal design and articulating technical criteria in regard to accessibility. We wish to especially highlight ratification by Georgia of the Optional Protocol to the UN Convention on the Rights of People with Disabilities, which entitles individuals with disabilities to lodge their complaints with the relevant UN Committee for violation of their rights. Unfortunately, no steps have been taken to implement the Convention itself so far.

During the pandemic, restrictions on public transport proved to be a considerable obstacle for the beneficiaries of rehabilitation programs. Adequate inclusion in the educational process of pupils with disabilities and special learning needs was related to plenty of challenges as well. Observance of healthcare recommendations on the prevention of the spread of the virus was problematic in State care institutions. We welcome the approval of the "Guiding Principles on the management of patients receiving psychiatric services" during the Covid-19 pandemic, which served the purpose of safely managing the patients. Albeit implementation of the Guiding Principles leaves much to be desired.

Mental healthcare and provision of the population with quality psychiatric services remain a serious challenge for the State. The same goes true for the quality of individual services within the Social Rehabilitation Program and the small number of beneficiaries engaged in the program. There are issues with the protection of the rights of disabled people in large residential facilities, engaging disabled people in political and community life and adaptation of election precincts. Despite some developments, no needs assessment on accessibility has been carried out at the national level.

In one of the chapters of this report, the Public Defender assesses the situation of the **rights of the elderly** to state that elderly people are one of the marginalized and unprotected groups in Georgia. Unfortunately, the Government has not yet drafted a new action plan on the implementation of the Concept Paper on State Policy on Aging – a document reflecting the State's policy in regard to elderly people. According to the report on the implementation of the 2017-2018 Action Plan on Aging, more than a half of commitments enshrined in the action plan remained unfulfilled. Despite this halt, we welcome the fact that the Government started working on a concept and standards of long-term care for the elderly and that the term "long-term care for the elderly" has been defined. Of no less importance is the non-existence of statistical data on

violence against the elderly. Also, pensioners are given loans at high interest rates, which results in the pensioners getting more than 50% of their pension money withheld in payment of their loans – a circumstance that worsens the already unfavorable socio-economic conditions of the elderly. As we found out, there are no regulations or restrictions to limit what part of a pension can be withheld to serve a loan. The 2020 pandemic deteriorated the conditions of the elderly even more. This was felt especially hard by single elderly people living alone for whom accessing various services was a major challenge. In the Public Defender's view, while the pandemic is still persistent, special attention should be paid to seniors who are single, socially vulnerable or care-dependent. In 2020, there were 41,995 senior citizens having the status of the socially unprotected who lived alone.

In the Public Defender's view, challenges related to the **protection of national minorities** and their civic integration remained untreated in the reporting period. Specific issues in this realm are insufficient political integration of national minorities and their inadequate participation in the decision-making process, obstacles hindering access to the right to education, insufficiency of measures directed at protection and popularization of minority culture, and inadequate access to the media.

In respect of protection of human rights in the context of **armed forces**, the Public Defender continued to pay special attention to monitoring respect for the rights of conscripts, military servicemembers and veterans.

This year's report pays special attention to the protection of the rights of conscripts serving for the Ministry of Interior and the Special Penitentiary Service. At the Ministry of Interior, monthly remuneration of servicemembers who are not allowed to leave their place of deployment is 40 Lari, while soldiers serving their duty once every three days are paid 24 Lari a month. Military servicemembers serving their duty at the Special Penitentiary Department once every three days are getting 52 Lari as a salary. They have to pay for commutation, food and items of hygiene from their own pocket. Conscripted soldiers who serve in Unit no. 17 of the same Special Penitentiary Department and are not allowed to leave the place of duty have a salary of 5 Lari per month – which is insufficient to even cover their transportations costs to and from home twice a year. This report provides detailed description of the servicemembers' living conditions.

One chapter of the report is dedicated to the **rights of population affected by conflicts**. In that chapter, we assess the situation engendered by the pandemic and problems related to exercising healthcare rights in the occupied territories. It is the Public Defender's view that malfunctioning medical services and infrastructure, unsatisfactory level of healthcare staff's training, high prices and difficulties related to moving patients across the separation line are factors that heavily and adversely affect the local residents' ability to access their healthcare rights. Even before the outbreak of Covid-19, the *de facto* government in occupied Tskhinvali completely forbade movement of people across the so-called checkpoint. For this reason, it has been a year since we are witnessing an increased number of people dying from not receiving required medical assistance in the Occupied Territories. With deep regret we are mentioning the tragic deaths of 2 individuals who tried to swim across the Enguri river to get in Zugdidi by bypassing the occupation line. As in the previous years, in this chapter, the Public Defender focuses on illegal arrests and ill-treatment of citizens. More specifically, we discuss the cases of Vazha Gaprindashvili, Genadi Bestaev, Irakli Bebuia, Zaza Gakheladze, Ramaz Begeluri, Mirian Taziashvili and Kvicha Mgebrishvili.

The chapter also tackles protection of the rights of women and girls residing in the Occupied Territories and enjoyment by them of their right to education, which remains a serious matter of concern.

In the reporting period, as in the previous years, the Public Defender scrutinized **issues related to the rights of IDPs**. Unfortunately, the practice of resettling IDPs in new homes based on ill-founded decisions did not change in 2020. In addition, we identified cases of incorrect planning of resettlement by the number of settlers and procrastinated implementation of certain resettlement programs. Unlike the previous years, in 2020, 711 families from 96 unfit-for-human-habitation buildings received their new homes – something we do welcome. At the same time, we feel it necessary to mention that the number of buildings posing heightened threat to human life and health remains large. Out of 90 sites assessed by experts as being in bad conditions, 71 pose heightened threat to human life and health, while the remaining 19 buildings have been transferred into IDPs private property and the Agency is thus no longer checking their fitness.

The pandemic had negative effects also on the rights of IDPs aggravating their social conditions. Taking into consideration that a large number of IDPs had informal and unsteady jobs, they were not able to prove their employment and thus were left beyond the scope of beneficiaries to receive monetary relief from the State. This made already unprotected IDP families even more vulnerable.

The report assesses protection of **the rights of ecomigrants**. The Public Defender's opinion is that the situation of ecomigrants did not improve in 2020. In fact, in the reporting period, the State bought homes for a lesser number of ecomigrant families than it did in 2019. A major challenge in this regard has been a smaller amount of funds for resettling the ecomigrants and lack of measures aimed at preventing ecomigration. The Public Defender reiterates the importance of preventive measures that would make it possible to either resettle ecomigrant families or to avoid tragic consequences. The recent upsurge of landslide risks in Tbilisi has obviated the need for implementing effective preventative measures.

In 2020, as in the previous years, the Public Defender explored the **legal situation of foreigners** in Georgia. The pandemic badly affected groups of people who were vulnerable even before the coronavirus spread. Belonging to such groups are asylum seekers, refugees and humanitarian status holders, illegal migrants, migrants without documents and migrant workers having informal jobs.

Along with Georgian citizens, beneficiaries of social and economic programs were also stateless persons, refugees, humanitarian status holders and persons having permanent residence cards. However, one of the components of the relief program envisaging payment of monthly compensation to those who had lost their salaries due to the pandemic did not cover foreigners with temporary work permits in Georgia. That kind of treatment had no justification exposing such foreigners to higher vulnerability. A serious challenge was the leaving of migrants beyond categories eligible for municipal programs on the provision of homeless people with shelter. In particular, foreigners (except asylum seekers) are not entitled to get a rent allowance, social housing and/or temporary shelter for homeless people.

The rate of granting applications for international protection remained low in 2020. In addition, asylum seekers and persons under international protection started to face a new challenge related to the restrictions

on issuance and prolongation of personal identification documents. The same is true for granting residence permits to migrants.

A large number of rejections of residence permit applications for the reasons of state security and/or public order was another challenge in the reporting period. As in the previous years, integration programs were insufficient and the rate of beneficiary involvement in the programs was low. One problem in this respect remains to be the lack of knowledge of Georgian, which keeps beneficiaries out of education, employment and healthcare programs.

In respect of **the rights of stateless persons**, the amount of fee for statelessness determination was problematic. According to the plans, the fee should have been halved by the end of 2020. However, the State failed to honor the pledge it made at UNHCR's Executive Committee session in October 2019.

The Public Defender praises the Government for including stateless persons in the social and economic support programs aimed at mitigating the damages inflicted by the novel coronavirus in 2020. However, stateless persons with temporary residence permits were unable to benefit from the component of the Government's anti-crisis social relief package that envisaged payment of monthly compensation to socially vulnerable families.

1. The right to life

1.1. Introduction

Respect for the right to life continues to be one of the main challenges for the State. Last year saw plenty of cases becoming the center of public focus and heavy criticism directed at investigative authorities in regard to these high-profile cases. As per the Public Defender's assessment, in 2020, like in the previous years, the State has been failing to fulfil its positive obligations under the right to life by not carrying out effective investigation. In particular, investigative authorities either took no action or ran late and took ineffective action to find truth in a series of cases involving alleged violation of the right to life.

That state of play once again demonstrated the need for expanding the Public Defender's mandate – something the Public Defender has been addressing to the Parliament to do for many years.¹ It is of critical importance that the Public Defender is given access to right to life and ill-treatment cases while investigation is pending and that such an access is not dependent on the good will of investigative authorities.

In this chapter, we assess the situation in mental health institutions from the perspective of medical treatment of beneficiaries' somatic (physical) health problems. We address defects detected in the investigations into the deaths of prisoners as well as deaths of Giorgi Shakarashvili and Temirlan Machalikashvili. We will also discuss the progress of an internal investigation launched into the murder of 2 juveniles in Khorava Street and another investigation into the alleged abuse of official capacity in the process of presidential pardoning in 2019. The chapter assesses protection of the right to life in the context of occupational health and safety. It also tackles the right to life in the Occupied Territories.

We wish to mention two recent judgments of the European Court of Human Rights against Georgia in regard to the right to life: *Sakvarelidze v. Georgia*² and *Kukhalashvili and Others v. Georgia*.³ Although violations of the right to life featuring in these cases occurred in 2003 and 2006, findings of the European Court in regard to the way these violations were investigated by the national authorities remain relevant today. In the referenced judgments, the European Court of Human Rights focuses on unreasonable delays in investigation, late commencement of investigation and periods of inactivity of investigative authorities. The Court also tackles the independence and impartiality standards in investigation. In the referenced cases, Georgia was ordered to prevent and mend investigation shortcomings pinpointed by the European Court.

¹ The 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, p.84

² *Sakvarelidze v. Georgia*, application no. 40394/10, judgment of of the European Court of Human Rights of 6 February 2020

³ *Kukhalashvili and Others v. Georgia*, application nos. 8938/07 and 41891/07, judgment of of the European Court of Human Rights of 26 October 2020

We regret to state that none of the Public Defender's recommendations and proposals addressed to State bodies in PDO's 2019 parliamentary report aiming at improving protection of the right to life were fulfilled.

1.2. State's positive obligation to protect the right to life during the pandemic

States have a positive obligation to take preventive measures to protect human lives.⁴ A state would be in breach of its positive obligations envisaged by the right to life if an individual patient's life is knowingly put in danger by denial of access to life-saving emergency treatment or where a systemic or structural dysfunction in hospital services results in a patient's death and the authorities had knowledge or ought to have known about that risk and failed to undertake the necessary measures to prevent that risk from materializing.⁵

International human rights law specialists believe that a State has the positive obligation to create a healthcare system that ensures good functioning of medical institutions and effective provision of medical services during a healthcare emergency such as pandemic. This is necessary in order to prevent consequential violations of the right to life.⁶ Right to life-related positive obligation of states is also enshrined in Article 11 of the European Social Charter (Revised), which stipulates that states parties should take measures to deal with infectious diseases by such means as disease reporting, operation of a reporting center and implementation of emergency measures as may be necessary in case of epidemics.⁷

In the reporting year, given the epidemiologic forecasts made by experts, the Public Defender issued a special statement calling on the Georgian Government to take into account recommendations of health professionals and epidemiologists and fulfill its positive obligations stemming from the right to life by immediately and effectively restricting all gatherings of citizens in spite of form and place and to take any additional measures as necessary. The Public Defender's statement was aimed at warning the Government that the latter would have to take responsibility for any significant increase in the number of the infected and deaths resulting for the Government's failure or tardiness to take preventive and reactive measures.⁸

⁴ ECtHR, *Osman v. the UK*, Judgment of 28 October 1998, no. 23452/94, par. 115.

⁵ COVID-19 Symposium: Article 2 ECHR's Positive Obligations - How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic?, 1 April 2020, available at <<https://bit.ly/2VnFT1r>> [last viewed on 13.04.2020]; See Lopes De Sousa Fernandes v. Portugal, ECtHR Grand Chamber, judgment of 19 December 2017, no. 56090/13, par. 192.

⁶ Antonio Coco and Talita de Souza Dias, *Part I: Due Diligence and COVID-19: States' Duties to Prevent and Halt the Coronavirus Outbreak*, accessible at <<https://bit.ly/2yov5sg>> [last viewed on 15.04.2020].

⁷ ECSR, Conclusions XVII-2 (2005), Latvia.

⁸ The Georgian Public Defender's special statement addressed at the Georgian Government concerning the protection of the right to life, accessible at <<https://bit.ly/3fm73zM>> [last viewed on 16.03.2021].

1.3. Treatment of Somatic (physical) Health Problems in Psychiatric Establishments

In the reporting year, like in the previous years, provision of proper care and medical treatment to patients in mental health institutions remained a challenge. Similarly to last year, the 2021 State Healthcare Program does not envision monitoring and treatment of somatic (physical) health issues for individuals admitted to mental hospitals. Mental health institutions are not keeping statistics of deaths indicating the reasons of deaths.

Inadequate medical treatment of somatic health issues, incomplete monitoring of health status and failure to heed the risk factors may lead to deaths of beneficiaries. The Public Defender reiterates, based on the jurisprudence of the European Court of Human Rights, that a State is responsible for a violation of the right to life if the failure to provide individuals committed to a mental care institution with required care and treatment becomes a reason for their death.⁹

Patients engaged in long-term treatment with antipsychotic medications must undergo recurrent medical checkups of their physical health.¹⁰ A national guideline document on schizophrenia management¹¹ specifically pinpoints the importance of monitoring any antipsychotic drug treatment for early detection of somatic problems. Current practice in mental care institutions¹² does not provide for proper management of side effects – something capable of leading to lethal outcome in some cases. Patients in mental care institutions are enrolled in the Universal Healthcare Program but they cannot use planned medical services offered by the Program because the services are not fully funded by the government and making use of them requires co-funding on the part of a patient – something mental care patients cannot always afford. There is also a problem of patient transportation as this requires additional costs and human resources. Psychiatric institutions complain that it is nearly impossible to allocate funds for physical healthcare and relevant lab tests from the hospitals' scarce funding.

The Public Defender believes that the Ministry for IDPs from the Occupied Territories, Labor, Health and Social Protection must ensure that patients in psychiatric hospitals have access to scheduled medical services for the treatment of their somatic health issues.¹³

⁹ See, inter alia, ECtHR, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, judgment of 17 July 2014, app. No. 47848/08, par. 143-144.

¹⁰ Treatment and Management of Schizophrenia in Adults (Guidelines), Chapter 4.2.

¹¹ Treatment and Management of Schizophrenia in Adults (Guidelines), Chapter 4.7.

¹² On admission to a hospital, patients are required to take a complete blood count and a clinical urine test. They also get tested for Hepatitis C and glucose. If necessary, these tests are repeated. Only the blood and urine tests can not ensure proper management of side effects and it is important to manage clinical side effects of medicines to ensure dynamic assessment and control of the risk of developing agranulocytosis, metabolic processes.

¹³ This problem has been emphasized also by the European Committee for the Prevention of Torture (CPT) in the Report on its visit to Georgia through 10-21 September 2018. The Committee found it absolutely unacceptable that indigent mentally disordered in-patients are expected to fund their own somatic health. The Committee thus recommended the

1.4. The case of Giorgi Shakarashvili

On 22 June 2020, after four days of search, the body of 19-year-old Giorgi Shakarashvili was found in Aragvi River. The Public Defender's Office was granted access to the materials of the Interior Ministry's pending investigation on an exceptional basis. The materials contained information on all investigative and procedural actions conducted between 19 June and 12 August 2020.

Public Defender's examination of the case files revealed deficiencies in investigative actions conducted by the Mtskheta-Mtianeti Police Department. Witness testimonies did not contain detailed questions and were incomplete. Information received through police interviews was not properly corroborated or verified (via a lineup or an investigative experiment, for example). Some of the investigation defects were mended by the authority at a later stage. We also detected potential breach by police officers of the rights of parties to the proceedings – something that called for an internal investigation by the Inspectorate-General.

On 20 August 2020, the Public Defender sent a proposal to the Prosecutor-General and the Minister of Interior. In the proposal, the Public Defender assessed part of the investigative actions carried out at the initial stage as incomplete and belated, and called on the investigation authorities to conduct a number of specific investigative actions with a view to meet efficacy standards. The Public Defender's Office monitored the criminal trial of the case in the first instance court. In the nearest future, we will look into the court's judgments and will continue to monitor further proceedings in this case.

1.5. The case of Temirlan Machalikashvili

Since 2018, the Public Defender has been calling on the Georgian Parliament to use all of its parliamentary oversight tools to ensure effectiveness of the investigation into the death of Temirlan Machalikashvili.¹⁴ We also proposed to the Parliament to establish an interim investigative commission.¹⁵ Unfortunately, on 25 January 2020, the Prosecutor's Office of Georgia ceased investigation on the ground that it did not find any elements of crime in the conduct.

The Public Defender's Office examined the case materials in full. It detected a number of questions that remained unanswered by the investigation. In particular, the investigation did not extract recordings of over-

State to take urgent action to remedy this problem. See CPT, Report on the Visit to Georgia Carried out from 10 to 21 September 2018, (CPT/Inf (2019) 16), par. 128

¹⁴ 2018 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2019, pp. 32-33; 2019 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2020, p. 47.

¹⁵ *Ibid.*, p. 38.

the-radio talks as well as full information on telephone communications, calls, text messages and other communication via telephone apps and social networks exchanged between and among officials responsible for police operations and oversight.¹⁶

For this reason, on 27 March 2020, the Public Defender requested the Prosecutor-General's Office to reopen the case and conduct a thorough investigation into the infringement on Temur Machalikashvili's right to life. Regrettably, the Prosecutor's Office did not take up the Public Defender's proposal.¹⁷

1.6. Murders of juveniles in Khorava Street

The case of juveniles murdered on 1 December 2017 in Khorava Street has been in the center of Public Defender's attention for years already.¹⁸

As it is known to the public, after the Public Defender looked into the case materials, she called for launching an investigation into an alleged white-collar crime. The Prosecutor-General's Office did not heed the Public Defender's proposal. Instead of opening a criminal investigation, the Prosecutor's office launched an internal investigation, which remained ongoing in the reporting period too. Nor did the prosecution take into account the Public Defender's recommendation to inform the public on the results of its internal investigation and to furnish the investigation materials to the Public Defender's Office.¹⁹

As in the previous years, in 2020 as well, the Public Defender made a request to the prosecution office to share its internal investigation materials but the Prosecutor's office did not release the requested information to us stating that the investigation was still ongoing.²⁰ Neither were we granted access to view the internal investigation materials on an exceptional basis.²¹ Accordingly, the investigation results remain unknown to us.

The Public Defender's view is that the prosecution office should complete its internal investigation promptly and adequately assess the wrongdoings perpetrated by prosecutors or investigators.

¹⁶ Public Defender's Office, Department of Criminal Justice , Activity Report 2019, Tbilisi, 2020, pp. 12-13

¹⁷ Letter from the Prosecutor-General's Office no. 13/21165 dated 10 April 2020

¹⁸ See, for example, 2018 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2019, pp. 33-35; Public Defender's Office, Department of Criminal Justice, Activity Report 2019, Tbilisi, 2020, pp. 13-14.

¹⁹ 2018 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2019, 37-38; 2019 Report of the Public Defender to the Parliament of Georgia, 2020, p. 47.

²⁰ Letters from the Prosecutor-General's Office no. 13/86091 datd 9 December 2019 and no. 13/39978 dated 17 July 2020.

²¹ Letter from the Prosecutor-General's Office no. 13/71392 dated 9 October 2019.

1.7. Investigation into the deaths of prisoners in the penitentiary

Belated and inadequate medical services have been one of the problems most frequently complained of by inmates. Moreover, prisoners have been reckoning that bad quality and/or delayed medical assistance was to be blamed for deaths of prisoners inside the penitentiary system but these allegations have been remaining without adequate response from relevant State bodies.

With a view to checking the validity of these allegations, the Public Defender's Office looked into 17 criminal cases administered through 2015-2018 concerning deaths of prisoners. Investigations in these cases were ceased on the ground that investigative authorities did not detect elements of crime. Four of the cases concerned alleged suicides, while 13 other cases involved sudden deaths due to deteriorated health of the prisoner.

Our examination revealed both flawed investigations and ineffective medical services the prisoners were provided with.²² In regard to investigations, we found the following: investigations into the deaths of prisoners would be launched and conducted by the Investigative Department of the Ministry of Corrections – a body lacking institutional independence. None of the cases we studied was investigated by the Prosecutor's office. According to our assessment, there had been delays in conducting some important investigative actions such as extraction and inspection of video footages, interviewing a deceased prisoner's co-inmates and doctors, etc.

Investigations were aimed at finding out (excluding) whether prisoners had been exposed to physical violence or had been forced into committing a suicide. But the investigative authorities would not get interested in the quality of medical services provided and whether the deaths had been caused by inadequate or belated medical treatment. Investigation would not determine whether the medical personnel acted negligently. In some cases, the investigation did not obtain medical documentation of deceased prisoners. When inquiring into the medical services provided to the prisoners, the investigative authority would only confine itself to obtaining a forensic medical report, which it would then use to prove the death did not involve any violence and thus there was a ground for ceasing investigation.

As mentioned above, in addition to flawed investigations, the study of the seventeen prisoner death cases raised legitimate questions as to the quality of medical services provided to prisoners in the penitentiary.

In a number of cases, our study of forensic medical reports revealed that prisoners had had heavy illnesses²³ they were not diagnosed with while they were alive and thus they did not receive treatment for those illnesses. For example, a prisoner died of cardiovascular and respiratory failure developed as a result of tuberculosis so that the prisoner's medical files kept in the penitentiary system did not even mention anything about TB and, consequently, the prisoner did not receive any anti-tuberculosis treatment. Based on other

²² For detailed information, please view Public Defender's Office, Department of Criminal Justice, Activity Report 2019, Tbilisi, 2020, Chapter on the Right to Life.

²³ Cardiovascular diseases, tuberculosis, interstitial pneumonia, etc.

cases that followed the same pattern as in the example, prisoners' medical files led us to conclude that quality of medical services provided to the deceased prisoners prior to their deaths had been decisive in engendering their lethal outcomes.

The Public Defender believes that, in criminal proceedings concerning deaths of prisoners, investigation authorities must pay attention to not only such reasons of deaths as psychological or physical violence, but also to the quality and adequacy of medical services provided to each deceased prisoner in their life to ascertain (exclude) provision of improper treatment or neglect by the medical personnel capable of leading to the prisoner's death.

1.8. Investigation into the pardons granted by the President of Georgia

Pardoning by the President of Georgia of convicted prisoners who were serving their imprisonment sentences for premeditated murders and were released from the penitentiary with a considerable part of unserved sentences remaining as a result of presidential pardons in 2019 was evaluated by the Public Defender as a violation of the right to life.²⁴ A criminal investigation into the alleged abuse of official capacity during the pardon proceedings that commenced on 20 September 2019²⁵ is still ongoing and no tangible progress has been made so far.²⁶ Considering the positive obligations the State has under the fundamental right to life and the high public interest toward the case, the Public Defender's Office requested the Prosecutor-General's Office to grant the Public Defender access to inspect the criminal case materials on an exceptional basis; however, our request was denied.²⁷

Unfortunately, up to the present day, the Public Defender remains uninformed of how the investigation progresses, for example, how effectively, timely and thoroughly the relevant investigative actions are being carried out.

1.9. Work safety-related challenges

Despite the positive steps made toward ensuring a higher standard of occupational safety,²⁸ the number of workplace deaths remained high in 2020 – a fact indicative of challenges in this field. Thirty-nine people died and 249 were injured at work in the reporting period.

²⁴ 2019 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2020, p. 44

²⁵ Public Defender's Office, Department of Criminal Justice, Activity Report 2019, Tbilisi, 2020, pp. 14-16.

²⁶ Letter from the Prosecutor-General's Office no 13/3710 dated 27 January 2021. The authorities are conducting investigation into an alleged abuse of official capacity in the process of presidential pardon – a crime under Article 332(1) of the Criminal Code.

²⁷ Letter from the Prosecutor-General's Office no. 13/53054 dated 14 September 2020

²⁸ More detailed information is available in the Labor Rights chapter.

Violations of work safety norms were detected at all of the work sites inspected by the Labor Inspection Department last year. Inspection materials suggests that most frequent violations at high-risk, heavy, harmful and hazardous workplaces relate to employers' failure to identify hazards in the workplace and work sites and to assess and manage risks accordingly, lack of required training and instruction, and employees not wearing individual protection equipment. Violations of the Technical Regulations on Safety Norms of Working at Heights approved by the Georgian Government's Resolution no. 477 as of 27 October 2017 are also not infrequent.

Every worker's right to safe and healthy work environment is a widely-recognized principle that stems directly from the right to security of person and constitutes one of the fundamental principles of human rights.²⁹ Article 3 of the European Social Charter (the right to safe and healthy working conditions) directly relates to Article 2 of the European Convention on Human Rights, which provides for the right to life.³⁰ The article applies to the entire economy of a country covering both public and private sectors.

Accidental deaths in the workplace fall within the protection scope of Article 2 of the European Convention. In particular, states have the obligation to ensure safe working conditions. This obligation includes adoption of health and safety regulations in the workplace providing for preventive and protective measures against most of the risks recognized by the scientific community and laid down in international regulations and standards.³¹

In such cases, as established by the case-law of the European Court of Human Rights, the obligation of the State under Article 2 is not limited to adopting regulations for the protection of people's safety in public spaces, but also includes a duty to ensure the effective functioning of the regulatory framework.³² For example, in *Cevrioğlu v. Turkey*, the European Court found violation of Article 2 on account of the inadvertent loss of life at a construction site because the Government had not duly checked observance of safety norms at the site.

The Public Defender is actively monitoring occupational safety-related developments in the country and will be presenting its assessment of action plans, legal obligations and activities performed in this field to the public periodically.

1.10. Protection of the right to life in the Occupied Territories

Violations of the right to life in the Occupied Territories remains alarming. Infringements on the right to life of Davit Basharuli in 2014, Giga Otkozoria in 2016, Archil Tatumashvili in 2018 and Irakli Kvaratskhelia, a Georgian citizen killed at the Russian military base in Nabakevi Village, Gali District, Occupied Abkhazia are

²⁹ The European Committee of Social Rights (ECSR), Conclusions I, p. 22.

³⁰ The European Committee of Social Rights (ECSR), Conclusions XIV-2; The European Committee of Social Rights (ECSR), Conclusions 36.

³¹ The European Committee of Social Rights (ECSR), *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, application no. 30/2005, Decision of 6 December 2006, par. 224.

³² ECtHR, *Cevrioğlu v. Turkey*, application no. 69546/12, judgment of 4 October 2016, par. 62

proofs of this. We wish to emphasize that perpetrators of all of these killings are representatives of the *de facto* regimes in the Occupied Territories who remain unpunished despite numerous calls for bringing them to justice.

Whereabouts of five ethnic Ossetians who went missing after the 2008 war remain unknown. Among these five individuals are three Ossetian young men who presumably disappeared in the Georgia-controlled territory on 13 October 2008.³³ For years, the Public Defender has been requesting the Prosecution Office to provide the public with information on the progress of its investigation into the disappearance of these individuals.³⁴ It should be stated that, according to the European Court of Human Rights, disappearance of people in conflict zones in the life-threatening circumstances gives rise to a State's positive obligations under Article 2 of the European Convention.³⁵ The European Court considers it life-threatening when a person is detained by unidentified servicemen, without any subsequent acknowledgement of the detention.³⁶

Also, in the context of the right to life, the closure of the so-called checkpoints by the occupation regimes is a serious challenge. As a consequence, ethnic Georgian residents are prevented from entering the Georgian Government-controlled territory for the purpose of receiving quality medical services. Even before the Covid-19 pandemic, the *de facto* government in Tskhinvali banned movement of people across the so-called checkpoint completely. For this reason, it has been a year since we are witnessing an increased number of people dying from not receiving required medical assistance in the Occupied Territories.³⁷ With deep regret we are mentioning the tragic deaths of 2 individuals³⁸ who tried to swim across the Enguri river to get in Zugdidi by bypassing the occupation line.³⁹ Transporting patients from Akhgori into the Georgian Government-controlled territory also remains a difficult task. The *de facto* government continues imposing unlawful and discriminatory restrictions on issuance of movement permits.

It should be mentioned that on 21 January 2020, the European Court of Human Rights rendered a historic judgment in the case of August 2008 war finding Russia responsible for the serious violations of human rights perpetrated against Georgian citizens. Russia was also condemned for infringements the right to life, since Russia did not ensure effective investigation into the unlawful violations of the right to life after the 2008 war.

³³ For further details, see 2014 Report of the Public Defender to the Parliament of Georgia, Tbilisi 2015, p. 848

³⁴ 2019 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2020.

³⁵ See ECtHR, *Koku v. Turkey*, judgment of 31 May 2005, § 132; *Osmanoğlu v. Turkey*, judgment of 24 January 2008, § 75.

³⁶ See ECtHR, *Baysayeva v. Russia*, judgment of 5 April 2007, § 119; *Beksultanova v. Russia*, judgment of 27 September 2011, § 83.

³⁷ 2019 Report of the Public Defender to the Parliament of Georgia, Tbilisi, 2020, p. 405.

³⁸ A deceased man washed up on the shore of Enguri is supposed to be a resident of Gali, available at < <https://bit.ly/3subGO4> > [last viewed on 30.03.2021].

³⁹ The man swam across Enguri to get in Zugdidi dies, 22 September 2020, available at < <https://bit.ly/37OuMo8> > [last viewed on 30.03.2021].

Proposals

To the Parliament of Georgia:

- Amend the Organic Law of Georgia on the Public Defender of Georgia to the effect 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 investigations.

Recommendations

To the Prosecutor-General:

- Periodically inform the public of the results of an 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 an investigation on account of either official negligence or exceeding official powers;
- In the Prosecutor-General's report submitted to the Parliament under Article 172 of the Parliamentary Rules of Procedure, the Prosecutor-General to provide information on the effectiveness of investigations into right to life violations.
- Within the framework of the investigation into deprivation of life, to supply to the Office of the Public Defender of Georgia requested information regarding investigative and procedural actions, indicating respective dates.
- In criminal cases concerning prisoner deaths occurred before 1 May 2019, not only to focus on allegations of physical or mental violence, but make scrupulous inquiries into the quality and adequacy of medical services provided to deceased prisoners while they were still alive, including by conducting a competent analysis of relevant medical documents; report on the measures undertaken in this regard and their results in the report presented under Article 172 of the Parliamentary Rules of Procedure.

To the Minister of Justice:

- With a view to eliminating flaws in the maintenance of medical documentation, introduce an electronic medical card system.

To the Minister for IDPs from Occupied Territories, Labor, Health and Social Protection:

- Amend the mental health program to provide for treatment of somatic diseases of patients in mental care institutions; as an interim measure before the mental health program is amended, the Ministry

should give patients in mental care institutions access to a family doctor and provide them with transportation to medical institutions as necessary;

- Amend the mental health program to include management of medication side effects according to the existing national guidelines, by means of providing required medical tests and consultations;
- Ensure systematic collection and maintenance of statistics of deaths in mental care institutions, with indication of cause of death.

2. Prohibition and Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2.1. Introduction

In 2019, 154 applications were lodged with the Office of the Public Defender where citizens alleged incidents of ill-treatment committed by law enforcement officers. Among others, prison officers were cited as the possible perpetrators of alleged ill-treatment in 77 applications and police officers in 60 applications; 16 applications concerned inadequate conditions in penitentiary establishments and 50 applications⁴⁰ were filed regarding delaying an investigation into the allegations of ill-treatment.⁴¹

In 2020, following up on citizens' applications as well as acting proactively, i.e., responding to information disseminated publicly, representatives of the Public Defender paid 286 visits to penitentiary establishments and met 1159 prisoners individually. 15 visits were made to the National Centre for Mental Health, where representatives of the Office met 46 patients.

As regards the visits made within the National Preventive Mechanism, which implies supervision through scheduled and random monitoring of places of deprivation of liberty, in 2020, 136 visits were made to 104 places of deprivation/restriction of liberty (penitentiary, police and psychiatric establishments). The findings of this chapter and respective recommendations are based on the information obtained through these visits.

In the context of preventing ill-treatment, it is important to ensure that the monitoring body is able to perform its tasks freely. In this regard, the incident that took place on 21 January 2020, during a hearing of the Committee of Human Rights and Civic Integration of the Parliament of Georgia, is noteworthy. At the hearing, in gross violation of the law, the Minister of Justice of Georgia showed the video footage of a confidential meeting of the Public Defender's representative with a prisoner. This meeting had taken place in a cell. The minister criticised the actions of the Public Defender's representative thereby attempting to discredit the Public Defender personally and the institution as a whole, undermine the trust in them and stir up aggression in radical groups. For this action, the Ministry of Justice and the Special Penitentiary System were fined by the State Inspector. Furthermore, systemic monitoring of the video surveillance system of the penitentiary system was launched and, as a result, numerous shortcomings were identified. In this regard, an incident that took place on 23 January 2020 is also noteworthy. The information containing confidential details was posted on the official website and the social media page of the Special Penitentiary Service. Notably, it contained details of the Public Defender's visit to

⁴⁰ 32 applications concerned delayed investigation of alleged ill-treatment by penitentiary staff and 18 applications concerned delayed investigation of alleged ill-treatment by police officers.

⁴¹ According to the State Inspector's Service, in 2020, the service received 291 notifications from TDIs that concerned violence allegedly committed by officials of the Ministry of Internal Affairs. As regards alleged incidents of physical and/or psychological violence against prisoners by penitentiary staff, investigation was instituted in 30 criminal cases.

penitentiary establishment no. 9 and the names/surnames of those prisoners who had met and/or the Public Defender and the Deputy Public Defender wished to meet. Such an action is unprecedented by its implication, contradicts both the Constitution of Georgia and international law and, in the Public Defender's view, amounts to a crime.⁴² This virulent campaign launched by the Minister of Justice against the Public Defender and the Public Defender's Office took various forms in the penitentiary establishments throughout the year. This issue is discussed below.

In 2020, representatives of the Public Defender received numerous reports about the use of disproportionate and excessive force by the police during arrests and alleged incidents of ill-treatment committed after arrests. According to our monitoring results, there is an increase in the number of incidents of ill-treatment of persons arrested in administrative proceedings. In 2020, out of the suspicious cases identified by the Special Preventive Group, injuries were inflicted during and after arrests in 34.3% of them. In 2016, out of the suspicious cases identified by the Special Preventive Group, individuals arrested in administrative proceedings sustained bodily injuries during and/or after arrests in 12.8% of the cases. In 2017, the same indicator amounted to 26.4%, in 2018 to 26.8% and in 2019 to 31.8%. Since 2017, there has been a rising number of incidents of ill-treatment of persons arrested in administrative proceedings and this trend has been maintained.

As regards the context of the penitentiary system, the primary problem is the informal rule, which, in its turn, creates a conducive environment for violence. In terms of incidents of ill-treatment in the penitentiary system, another significant challenge is the long-term isolation of prisoners and their placement in de-escalation rooms and solitary confinement cells. It is also noteworthy that psychiatric patients are not protected against violence and inhuman and degrading treatment. The violent environment existing in the establishments and the notorious practice of physical and chemical restraint of patients is particularly problematic.

Another significant obstacle in terms of the fight against ill-treatment is ineffective investigation, which the Public Defender has discussed for years. In this regard, the investigation of the events of 20-21 June 2019 should be pointed out. The Public Defender discussed this issue in the 2019 Parliamentary Report as well. Unfortunately, as of 2020, the Public Defender's main findings about the relevant problems and challenges remained the same. In 2020, the case of Temur Abazov was particularly worrying. At the final stage of the proceedings, the prosecution dismissed charges without justification, thus depriving the court of the possibility to examine the criminal case before it. The prosecution virtually contributed to the acquittal in this case.

In 2020, similar to the rest of the world, the major challenge in Georgia was COVID-19 and coping with its results. In this context, the Public Defender's representatives scrutinised the situation in penitentiary establishments, the Ministry of Internal Affairs and psychiatric establishments. This examination revealed significant challenges in terms of working and living conditions of penitentiary staff, the failure to

⁴² Article 352 – Influencing the Public Defender of Georgia.

compensate restrictions of prisoners' contact with the outside world and the need for introducing alternative opportunities to ensure rehabilitating activities for prisoners.

As regards the measures taken to prevent the spread of COVID-19 in psychiatric establishments and to control the epidemic situation, in the Public Defender's opinion, the conditions of sanitation and hygiene in the establishments, the overcrowding, the inability to maintain distance and the staff's failure to use personal protective equipment properly increase the risk of spreading the infection. Furthermore, upon the admission of a patient to the inpatient facility, testing is only available when the patient shows the symptoms.

Based on the study of the above issues, and in the context of the ongoing pandemic, the Public Defender presents detailed recommendations in this report.

This chapter consists of three subchapters: 1) practice that amounts or can amount to ill-treatment; 2) safeguards from ill-treatment/risk factors causing ill-treatment; and 3) investigation of alleged incidents of ill-treatment. Each subchapter discusses incidents of ill-treatment that take place in penitentiary establishments, the Ministry of Internal Affairs and psychiatric establishments, respective risk factors and legislative shortcomings.

Detailed information about the progress made in terms of the fulfilment of the Public Defender's recommendations made in 2019 to fight and prevent ill-treatment, as well as a detailed analysis of the issues discussed in the present chapter, is available in the 2020 Special Report of the National Preventive Mechanism.⁴³

2.2. Practice That Amounts or Can Amount to Ill-Treatment

This subchapter reviews the incidents of ill-treatment identified in the penitentiary system, the Ministry of Internal Affairs and psychiatric establishments. Furthermore, we highlight the preconditions within these systems that lead to the risk of ill-treatment or, as in many cases, cause such treatment.

The following causes ill-treatment in the penitentiary system: physical and psychological violence against prisoners, the informal rule, the regime in the special risk and closed prison facilities and the practice of placing prisoners in de-escalation rooms and solitary confinement cells for a long time. As regards the system of the Ministry of Internal Affairs, the incidents of physical and psychological violence by police against persons in custody amounts to ill-treatment.

Under certain circumstances, a failure to manage withdrawal syndrome can amount to ill-treatment. Infrastructural problems in TDIs also need to be mentioned in this regard. In the context of psychiatric

⁴³ See also the 2020 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

establishments, psychological and physical violence is augmented by the physical environment in which patients have to live, which amounts to ill-treatment.

2.2.1. The Penitentiary System

Violence

Isolated incidents of alleged physical violence against prisoners by the staff of closed prison facilities have been identified. Furthermore, the monitoring has also revealed some incidents of psychological violence. Notably, prisoners placed in closed prison facilities spoke about the offensive and aggressive attitude on the part of the staff. There were incidents where the prison staff verbally abused prisoners because they had gone on a hunger strike to express their protest, for lodging complaints against the staff or for telephoning the Public Defender's Office. In some cases, according to prisoners, the staff would refuse to give them a pen and a paper so that they could not write a complaint and would threaten them with the ban on their phone calls in the form of disciplinary sanctions if they dared to call the Public Defender.⁴⁴

Inter-prisoner violence remained problematic in the reporting period. For instance, during a visit to penitentiary establishment no. 8, the Special Preventive Group received three notifications about prisoners subjecting a foreign prisoner to physical and psychological violence. According to this information, Georgian prisoners beat their foreign cellmates, took their personal items from them and used their pay cards without permission to make phone calls or buy food items for themselves in the prison shop. Reportedly, the foreign prisoners requested the administration to move them to another cell, however, without any success until they self-harmed in protest and only after that, they were moved to another cell.⁴⁵

Informal Rule

Similar to the previous years, in 2020, managing penitentiary establishments by resorting to the informal rule remained a serious challenge in terms of protecting prisoners from violence. Administrations of penitentiary establishments delegate powers to informal leaders (the so-called watchers) and rule the establishments informally with their help that implies silencing prisoners, prohibiting them from discussing problems and maintaining an imaginary order in the establishments. This problem is also discussed in the survey published by NGOs in 2020.⁴⁶

The informal rule is characterised by physical and severe psychological inter-prisoner violence. Psychological violence is mainly manifested in extortion, debasement, marginalisation and other actions. As a result, a certain segment of prisoners that enjoy privileges enforce the informal rule with repressive

⁴⁴ It should be pointed out that, in these cases, prisoners declined to pursue legal response from the Public Defender.

⁴⁵ It is important, for alleviating the dire situation of foreign prisoners, to take into account as much as possible their linguistic, religious and cultural characteristics when allocating prisoners to cells. Similarly, the dietary needs of various religious beliefs are not taken into account when preparing food.

⁴⁶ The Influence of the Criminal Underworld Over Managing a Penitentiary Establishment, available at: <https://bit.ly/317W0DP>, [accessed 18.03.2021].

methods, which often lead to violence among prisoners and are manifested in punitive measures against those that disobey the informal rule. Again, in 2020, during the monitoring conducted by the Special Preventive Group in penitentiary establishments nos. 17 and 15, it was obvious that some prisoners were actively interfering in the group's communication with prisoners and kept those prisoners willing to discuss problematic issues at a distance.

Problems related to the informal rule in the penitentiary establishments became evident, among others, on 31 October 2020 and later on 14 January 2021 in Ksani penitentiary establishment no. 15. A group of prisoners first obstructed the staff members of the Public Defender's Office from observing the process of the exercise of the right to vote and later prevented them from talking to the establishment's physician. It is also noteworthy that, on 4 December 2020 and 13 January 2021, in establishment no. 8 a prisoner threatened the staff members of the Public Defender's Office and requested them to discontinue their visit to the prison.⁴⁷ In light of these incidents, it is evident that obstructing the staff members of the Public Defender's Office has assumed a systematic character that threatens the security of the Office personnel.

In the opinion of the Public Defender, the manifestation of aggression by privileged prisoners against the institution of the Public Defender in such a form and scale demonstrates the repressive and violent methods of the informal rules faced by non-privileged prisoners. This also shows that the enforcers of the informal rule enjoy support from the administration.

It is no surprise that prisoners mostly shy away from openly confronting the criminal underworld, especially in those circumstances, where the administration of the penitentiary system cooperates with the representatives of the criminal underworld and uses them for "settling relations" (hunger strikes, complaints and other forms of expressing dissatisfaction or conflict situations). Accordingly, prisoners rarely report these issues to the investigative authorities. They prefer to use channels for confidential communication with the Public Defender's Office.

In 2020, the Public Defender's Office examined those few cases where the prosecutor's office had instituted investigation based on prisoners' applications alleging commission of crimes by the criminal underworld and representatives of the administration acting as their protector or complicit by omission. The Public Defender's Office scrutinised eight such cases in 2020⁴⁸ and presented the relevant findings to the public.⁴⁹

⁴⁷ Establishment no. 8 is a closed prison facility and it is noteworthy that this prisoner always moves around the particular area of the establishment where our staff members are present for monitoring purposes.

⁴⁸ Out of these eight cases, three are closed criminal cases (they concern events of 2013-2015); one case is pending (concerns the events of 2020); three cases are completed official enquiries (they concern alleged events of 2017-2018); and one case is a pending official enquiry (concerns the events of 2020). Accordingly, case files of six closed cases could be studied fully and case files of two pending cases could be studied partially as the Public Defender's Office has limited statutory powers in terms of accessing case files in pending investigation/proceedings.

⁴⁹ See in detail the 2020 Report on the Activities of the Criminal Justice Department of the Office of the Public Defender of Georgia.

The purpose of this examination was to assess to what degree the authorities investigate alleged criminal incidents related to the criminal underworld; how timely and comprehensive the investigative actions are and to what extent they identify possible perpetrators and alleged incidents that fall under the Criminal Code.

This examination revealed that prosecutorial authorities of Georgia discharge their powers inadequately and their investigative actions are punctuated with serious shortcomings. The conclusion is that the state/investigative authorities are not motivated to respond effectively or punish perpetrators.

Despite reported crimes (threats, beatings, extortion, economic crimes, abuse of power, etc.) and the duty to start an investigation, the prosecutor's office would refuse to institute proceedings and refer the issue to be examined by the Inspectorate General of the Ministry of Corrections.⁵⁰ The latter having no investigative powers would limit its activities to an official enquiry. It should be pointed out that the investigative jurisdiction of the Inspectorate General, considering the institutional independence, did not include investigating alleged incidents of crime committed by the staff of the penitentiary establishments'/penitentiary service. This approach of the prosecutor's office failed to give prisoners a sense of security and the willingness to cooperate with the investigation. Furthermore, it turned out that an investigation was instituted only with regard to the incidents that resulted in either death or torture of a prisoner.

In terms of investigations conducted by prosecutorial authorities, numerous shortcomings were identified even in those cases where an investigation was instituted and various individuals, *inter alia*, personnel and even directors of penitentiary establishments were prosecuted/convicted.

In a number of cases, actions imputed to both prisoners and prison staff were categorised under lenient provisions of the Criminal Code. In most cases, the investigation completely overlooked the possible involvement of the prison staff in the crime even though it had been alleged by the main actors of the case and even by some officials of the penitentiary system that prison staff were involved.

Our study showed delays in investigative actions and collecting evidence that made it impossible to obtain certain information. Furthermore, in these cases, the investigative authorities did not question CCTV operators who carry out 24-hour surveillance of the prison territory. They did not look at the incidents involving the movement of unauthorised individuals around the prison and failed to obtain cell tower data confirming the movement. This and other investigative actions would make it possible to verify the information adduced by witnesses.

The case files showed that the inactivity of the penitentiary system towards the existence of the criminal underworld and its influences is rarely assessed from a legal point of view. The investigative authorities did not even question high-ranking officials of the penitentiary system (apart from prison administration) and failed to conduct necessary investigative actions in this regard. This was despite the fact that a

⁵⁰ Currently, the Monitoring Department of the Special Penitentiary Service of the Ministry of Justice.

representative of the penitentiary system alleged that staff members and the management of the then Penitentiary Department were responsible for granting privileges to the so-called watchers.

In one of the cases, a victim notified the investigative authorities that the prison governor and the deputy settled disputes among prisoners with the help of authority figures in the criminal underworld. Conversely, according to the prison director, who was questioned in this case, the administration aimed at averting mass prisoner dissatisfaction and disorder. Therefore, priority had to be given to prisoners who were identified as leaders among others, enjoyed authority and at the same time cooperated with the Penitentiary Department. The investigative authorities did not examine how authority figures in the criminal underworld subdued other prisoners and the methods they used in case of disobedience. Similarly, they did not show any interest in other alleged criminal offences committed in the past and failed to identify other alleged victims. Moreover, it was revealed in this case that granting privileges to certain prisoners in a penitentiary establishment, which implied the right to move freely in the penitentiary establishment at any time of the day, was agreed with the Head of the Penitentiary Department and his deputy. The investigative authorities did not carry out any investigative actions regarding granting privileges to the so-called watchers by the management of the Penitentiary Department.

In 2020, the Public Defender's office examined the case of a prisoner who alleged that the so-called kitty (the common fund belonging to the criminal underworld) was collected in a closed prison facility. An investigation was instituted and is pending before the Imereti, Racha-Lechkhumi and Kvemo Svaneti Police Department, under Article 223¹ of the Criminal Code of Georgia.⁵¹

In addition to the cases conducted by the Prosecutor's Office, the Public Defender's Office also examined the case files of the official enquiry of three cases carried out by the Inspectorate General of the Ministry of Corrections. The timeline of the alleged action is 2017-2018. As mentioned above, the prosecutor's office, by failing to investigate the possible crimes committed by administration personnel and delegating the cases to the Inspectorate General of the Ministry of Corrections, excluded prosecutorial supervision for the examination of the issue, which is supposed to be one of the priorities for the state and which serves as a basis for the restriction of numerous prisoners' rights on a daily basis.

Despite the fact that the Inspectorate General interviewed the complainant and several prisoners, no detailed additional questions were asked. Several prisoners refused to cooperate with the Inspectorate General and to comment. The Inspectorate General did not try to question other prisoners in the establishment who could provide some information about the presence of the so-called watchers and their privileges.

There was a similar case in 2020. A prisoner complained about the influence enjoyed by the members of the criminal underworld over other prisoners and the privileges granted to them by the prison administration, as well as the administration using them for their agenda. In this case, the prosecutor's

⁵¹ Letter no. MIA 4 20 02471896 of the Ministry of Internal Affairs, dated 4 September 2020 and letter no. MIA 6 21 00641133, of the Ministry of Internal Affairs, dated 16 March 2021.

office again forwarded the application of the Public Defender's Office to the Monitoring Department of the Special Penitentiary Service for a response.⁵²

Based on the above-mentioned, it can be concluded that the inactivity of the penitentiary system towards the existence of the criminal underworld and its influences is rarely assessed from a legal point of view.

Treatment Amounting to Ill-Treatment

Similar to the previous years, the special risk prisons and closed prison facilities are based on static security principles with a particularly restrictive, prohibitive and unconditionally strict regime that is not conducive to positive changes in prisoners' behaviour.⁵³ Prisoners of special risk and closed prison facilities are locked up in their cells for 23 hours without meaningful activities. They can only spend one hour in the exercise yards. The poor infrastructure of the exercise yards cannot ensure relaxation or recreation for prisoners.⁵⁴ Prisoners with high risk are subjected to more extensive statutory restrictions on their contact with the outside world.⁵⁵ The restrictive regime in the establishment and limited contact with the outside world exacerbate prisoners' psychological condition and cause their aggression towards the personnel and other prisoners. Such conditions create a violent environment, which is followed by prisoners expressing protests in the form of going on hunger strikes and inflicting self-harm. This, in turn, entails frequent resort to security measures by the administration. Building constructive and positive relations that are based on trust between prison staff and prisoners is important for ensuring control and security in penitentiary establishments.

The practice of limiting prisoners' communication with the outside world in closed (penitentiary establishments nos. 2 and 8) and special risk (penitentiary establishments nos. 3 and 6) prison facilities and the absence of activities tailored to their needs not only contradict the normalisation principle but also adversely affect prisoners' physical and mental health. This, in turn, increases the risk of violence against prisoners. Such a practice directly contradicts international standards⁵⁶ and can amount to cruel, inhuman and degrading treatment.

Similar to the previous years, prisoners were kept isolated for lengthy periods in closed and special risk prison facilities.⁵⁷ It is noteworthy that there is an increase in the number of prisoners placed alone in

⁵² Letter no. 13/11466 of the Office of the Prosecutor General of Georgia, dated 21 February 2020. The Office of the Public Defender of Georgia has no information about the progress and results of the official inspection as of January 2021.

⁵³ The Council of Europe, Committee of Ministers, Recommendation No. R (82) of the Committee of Ministers to Member States Concerning Custody and Treatment of Dangerous Prisoners, adopted by the Committee of Ministers on 24 September 1982 at the 350th meeting of the Ministers' Deputies, available at: <https://bit.ly/39DLIFD>, [accessed 31.01.2021].

⁵⁴ These exercise yards are cell-type rooms with a wall on all four sides and a metal lattice in the otherwise open ceiling. There is some exercise equipment in the yards.

⁵⁵ Unfortunately, during the period when special conditions were introduced and visits were restricted in the penitentiary establishments, in some cases, the ban on telephone and personal correspondence was still used as a disciplinary sanction.

⁵⁶ 21st General Report of the CPT, CPT/info(2011) 28, Strasbourg, Council of Europe, 2011, para. 52.

⁵⁷ For instance, during a visit to penitentiary establishment no. 6 in 2020, more than half of the prisoners were placed separately and most of them were in the cell alone for months.

penitentiary establishment no. 3.⁵⁸ Under the statute of the penitentiary establishment, prisoners are usually placed in single or double occupancy cells.⁵⁹ This decision is within the discretion of the director. The Public Defender regards this issue as problematic considering the fact that there is no statutory duty to substantiate such decisions. It should be pointed out that isolation of a prisoner for months and years contradicts international standards and, in the Public Defender's view, amounts to ill-treatment.⁶⁰

The Public Defender has been urging the Minister of Justice for years that de-escalation rooms should be used as a last resort and only with proper justification, not more than 24 hours, and in conditions of multidisciplinary work. Despite this, prisoners are still placed in de-escalation rooms and solitary confinement rooms for lengthy periods for ulterior and punitive purposes.⁶¹ This practice, in the Public Defender's view, amounts to cruel, inhuman and degrading treatment.

Under the statutes of the penitentiary establishments, the maximum duration for placing the accused/convict into a de-escalation room is still set at 72 hours. Furthermore, the number of times a prisoner could be placed in a de-escalation room or a solitary confinement (safe) cell for security reasons is not limited. A prisoner is usually placed in a de-escalation room or solitary confinement (safe) cell for the maximum period, virtually without an interruption, for several days with an interval of hours.⁶² It should also be pointed out that juveniles are still placed in de-escalation rooms.⁶³

Instant verbal de-escalation methods are not used to ease the situation before a prisoner is placed in the de-escalation room, and multidisciplinary work with juveniles is not carried out after their placement in a de-escalation room. Placing juveniles in the conditions existing in the solitary confinement (safe) cells and de-escalation rooms, especially for a lengthy period, is impermissible. Such a treatment against juveniles amounts to inhuman and degrading treatment.⁶⁴

The use of de-escalation rooms and solitary confinement (safe) cells for ulterior reasons also remains problematic. Due to the absence of psychosocial support services and other resources to manage

⁵⁸ At the time of the visit in 2020, there were 34 prisoners placed separately, during the visit of 16-17 September 2019, there were 27 prisons placed separately.

⁵⁹ For instance, the statute of penitentiary establishment no. 6 approved by order no. 108 of the Minister of Corrections and Probation of Georgia of 27 August 2015, Article 15.

⁶⁰ *Harakchiev and Tolumov v. Bulgaria*, applications nos. 15018/11 and 61199/12, judgment of the European Court of Human Rights of 8 July 2014, para. 204.

⁶¹ It is noteworthy that compared to accommodation cells, prisoners face extremely dire conditions in a de-escalation room or a solitary confinement cell; they have limited access to personal hygiene items and dishwashers; prisoners' access to their clothes is limited. During their stay in a de-escalation room, prisoners are mostly prohibited from taking a shower and having a stroll; their right to use the shop, make a phone call, maintain correspondence and have visits are limited. Therefore, prisoners perceive this measure as a punishment.

⁶² This is the case in penitentiary establishments nos. 2, 3, 6 and 8.

⁶³ For instance, de-escalation rooms and solitary confinement (safe) cells are used for juveniles in penitentiary establishment no. 8.

⁶⁴ Extract from the 2nd General Report of the CPT [CPT/Inf(92)3], para. 56.

situations in penitentiary establishments, the administration places prisoners with mental health problems in de-escalation rooms for a prolonged period.

Placing prisoners in de-escalation rooms and solitary confinement (safe) cells should be a measure of last resort and the use of a de-escalation room for security purposes should be preceded by other, less intrusive measures. Transfer to a de-escalation room and solitary confinement (safe) cells should be used as an urgent measure and should be as short as possible; ⁶⁵ its duration should not be more than 24 hours. ⁶⁶ At the same time, adequate care by a joint multidisciplinary team (a psychologist, a social worker, a doctor and a psychiatrist, if necessary) should be provided. If placement in a de-escalation room for 24 hours and the care by a multidisciplinary team prove to be insufficient, a prisoner should be immediately transferred to the psychiatric unit of medical establishment no. 18 for accused and convicted persons or another psychiatric clinic.

Similar to the previous years, full-body search of prisoners in penitentiary establishments is still a routine procedure and is not based on an assessment of the risks posed by the prisoner. Even if a search is done through a scanner in penitentiary establishments nos. 8, 12 and 2, prisoners are still subjected to strip search and instructed to do squats. During the full-body search, all parts of the body are stripped at once and not from the waist up and waist below. Such practice contradicts the establishments' regulations and international standards.⁶⁷ This practice, in the view of the Public Defender, amounts to degrading treatment of prisoners, which is especially worrying in the case of juveniles as it may be more harmful to the child.

Full body search should be conducted only based on specific and justified suspicion, under the conditions of respect for human dignity and in accordance with an established procedure. A scanner should be installed in all penitentiary establishments and should be used as an alternative to the full-body search. Furthermore, in those cases where the scanner was used as an alternative method, other methods should not be used additionally.⁶⁸

In addition to the issues addressed above, the Public Defender has been discussing for years the provision of timely and quality somatic (physical) health-care services and mental health care for prisoners in penitentiary establishments. The failure to solve these problems can be regarded as ill-treatment. Important recommendations made by the Public Defender in this regard have not been fulfilled. Among others, the number of mid-level health providers, including nurses on duty in penitentiary establishments has not been increased. A strategy to attract mental health-related service providers has not been elaborated either. Periodic mental health screening has not been introduced in penitentiary establishments. The number of psychiatrists has not been increased; therefore, the number of daily

⁶⁵ *Idem.*

⁶⁶ Extract from the 2nd General Report of the CPT [CPT/Inf(92)3], para. 56. The CPT report on the visit to Georgia from 10-21 September 2018, (CPT/Inf (2019) 16), para. 94.

⁶⁷ The Nelson Mandela Rules, Rule 50.

⁶⁸ After examination with a scanner, the search of a person is allowed only if the scan confirms that the person has a prohibited/unauthorised item (among other sources, the statute of penitentiary establishment no. 8, Article 64¹).

consulted patients exceeds 15. The frequency of a psychiatrist's visits is not adequate and the waiting period exceeds two weeks. The secondary legislation still does not determine the composition of a psychiatric multi-group, duties of each member of the multi-group or the procedure for organising and providing psychiatric care. A guideline on crisis prevention and crisis management has not been elaborated and the medical personnel of penitentiary establishments have not been retrained in crisis prevention and crisis management. A multidisciplinary group has not assessed the needs of those psychiatric patients that do not need in-patient treatment. Individual biopsychosocial intervention plans have not been developed to provide appropriate assistance based on identified needs.

Restrictions introduced for preventing the possible spread of Coronavirus had ramifications for juveniles' physical and mental health. The lack of meaningful activities is detrimental for any prisoner. It is however, even more harmful to juveniles, who have a particular need for physical activity and intellectual stimulation.⁶⁹ Juveniles' menu is virtually the same as the menu of adult prisoners.

2.2.2. The System of the Ministry of Internal Affairs

The National Preventive Mechanism received numerous complaints regarding the use of disproportionate, clearly excessive force by police officers during arrests and alleged incidents of ill-treatment after arrests.⁷⁰ It should be pointed out that the cases under the consideration of the Public Defender's Office concern allegations of verbal and physical abuse by police. In 2020, many arrested individuals alleged ill-treatment, including beating, by police officers when under police control in a police vehicle (parked or moving).

It should be pointed out that in the temporary detention facilities, where the monitoring is carried out, members of the Special Preventive Group check the personal files of all arrested persons accommodated before the date of the visit.

When monitoring a TDI, members of the Special Preventive Group inspect the personal files of each arrested individual placed in the isolator before the visit. The circumstances surrounding the arrest as well as the location, number and nature of injuries sustained may give rise to suspicion among members of the Special Preventive Group about possible ill-treatment of an arrested individual. In 2020, the Special Preventive Group identified 463 such suspicious cases.⁷¹ These cases cover arrests made both in administrative and criminal proceedings. According to the data, out of 463 cases, individuals arrested in administrative proceedings sustained injuries during and/or after arrests in 159 (34.3%) cases. In 2016, individuals arrested in administrative proceedings sustained injuries during and/or after arrests in 12.8%

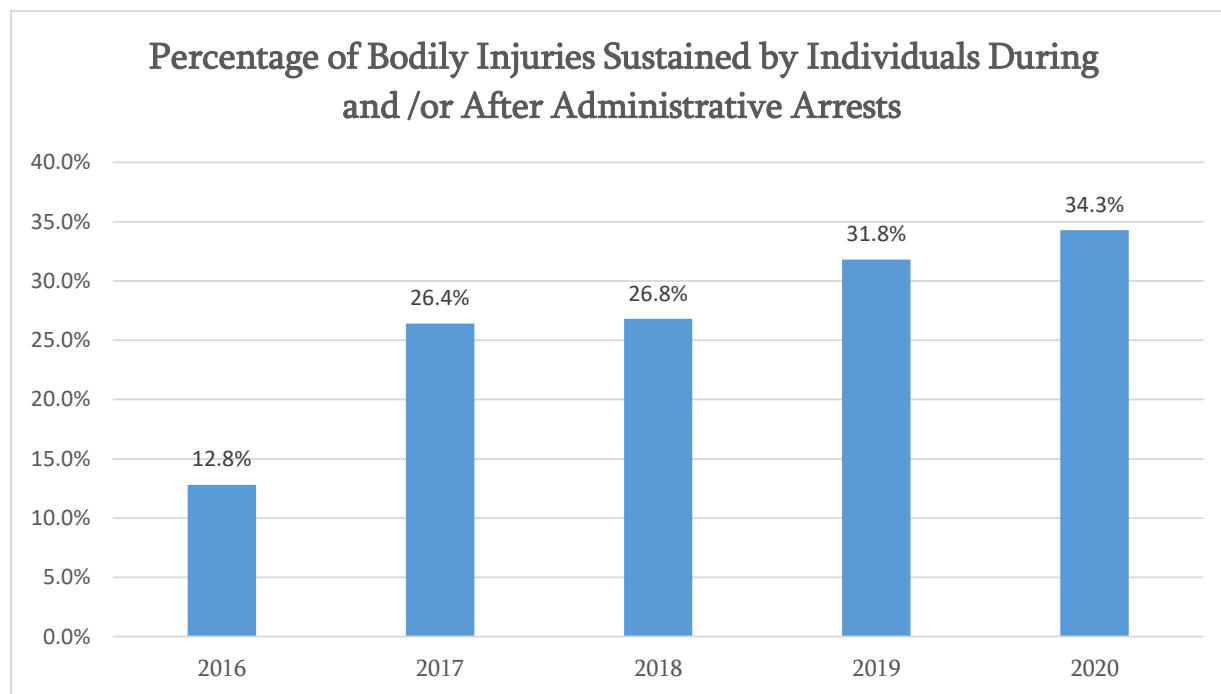
⁶⁹ See the CPT standards in *Juveniles Deprived of Their Liberty Under Criminal Legislation*, Extract from the 24th General Report of the CPT, published in 2015, Rule 107, available at: <https://bit.ly/2PjMV8k>. [accessed 27.01.2021].

⁷⁰ As a result of the inspections, the Special Preventive Group received 15 notifications from 58 interviewed individuals about alleged incidents of torture and other ill-treatment by police.

⁷¹ Inspections were conducted in police territorial agencies and TDIs in the regions of Kakheti, Imereti, Racha-Lechkhumi and Kvemo Svaneti, Guria, Ajara, Shida Kartli, Kvemo Kartli, Samtskhe Javakheti, Mtskheta Mtianeti and Samegrelo.

of cases out of the total cases treated as suspicious by the Special Preventive Group. The same indicator amounted to 26.4% in 2017, 26.8% in 2018, 31.8% in 2019 and the statistical data did not change drastically in 2020 (34.3%).

In the opinion of the Special Preventive Group, since 2017, the trend of worsening treatment of persons arrested in administrative proceedings has been maintained.



The monitoring results show that, when in police custody, arrested individuals were provided with medical services on time, but in one case, an individual received belated medical care.⁷² It is commendable that the number of medical centres in TDIs has increased from 19 to 23 in 2020.

The management of withdrawal syndrome in TDIs is noteworthy.⁷³ There are various methods of treating (detoxification) withdrawal syndrome – with or without drugs.

Under the amendment of 19 March 2020, made to the Order on the Special Substitution Programme for Treating Drug Addiction,⁷⁴ an exception was made for those involved in the methadone programme and each could take the five-day dose home. Consequently, individuals involved in methadone substitution

⁷² The individual sustained numerous injuries and lost consciousness while resisting arrest and the police using force. Police officers took the arrested individual in such a condition to the police station and only called an ambulance when he regained consciousness.

⁷³ A group of symptoms of variable clustering and severity occurring on absolute or relative withdrawal of a substance after repeated, and usually prolonged and/or high-dose use of that substance. Withdrawal syndrome may entail psychological disturbances, available at: <https://bit.ly/3aGshWM>, [accessed 09.02.2021].

⁷⁴ Order no. 01-41/N of the Minister of Labour, Health Care and Social Security of Georgia of 3 July 2014 on the Special Substitution Programme for Treating Drug Addiction.

therapy receive a 5-day dose, which, in some cases, is consumed before the specified days, or could be taken as evidence at the time of the arrest. In such cases, if a person were arrested and taken to a TDI, managing withdrawal syndrome would be at stake.

The visits of the Special Preventive Group revealed that medications for withdrawal syndrome are given to a patient to treat symptoms. These are mostly painkillers and/or sedatives, which in some cases were not necessary and an arrested person still felt unwell. In some cases, the effects of the medication lasted for a short time and the physician had to administer additional doses several times a day. Arrested persons are taken to hospital only after their condition deteriorates. We have studied and established that TDI medical staff do not have a unified guide on managing withdrawal syndrome.

2.2.3. Psychiatric Establishments

Physical and Psychological Violence

In the Public Defender's view, patients of psychiatric establishments are not protected from violence and inhuman and degrading treatment. There were incidents involving physical violence and verbal abuse of patients by staff in overcrowded psychiatric establishments in 2020 too.⁷⁵ For instance, during the monitoring visit made to LTD Tbilisi Mental Health Centre, patients spoke about beatings, rude and indifferent treatment. During the visit, the Special Preventive Group itself witnessed those incidents where personnel shouted at patients, addressed and replied to them in a rude manner.⁷⁶

There are also incidents involving conflict and inter-patient violence in psychiatric establishments. This problem is even more serious in large psychiatric establishments with a chaotic, non-therapeutic environment, overcrowding and inadequate living conditions.⁷⁷ One of the causes of the problem is the lack of an inter-patient conflict prevention strategy in the establishments. Consequently, the staff is unable to identify the dangers posed by the patients. To ensure a safe and therapeutic environment, it is important that, in addition to the conflict and violence prevention tool, the establishments have a strategy for the actions to take in the event of conflict and violence.

Treatment Amounting to Ill-Treatment

Psychiatric establishments have the duty to ensure that patients are treated in a safe and therapeutic environment and in the conditions respecting their dignity.⁷⁸

The Public Defender maintains that the living conditions in which patients have to live and receive treatment in psychiatric establishments, amount to ill-treatment. During the visits in 2020, the situation was especially difficult in this regard at LTD Centre for Mental Health and Prevention of Addiction.

⁷⁵ It should be pointed out that patients in LTD Senaki Mental Health Centre did not mention physical violence by the personnel but unethical and rude manner of communications remain problematic in this establishment as well.

⁷⁶ The 2020 Report of the National Prevention Mechanism of the Public Defender of Georgia, p. 158.

⁷⁷ *Ibid.*, p. 158.

⁷⁸ CPT Report on Involuntary Placement in Psychiatric Establishments, CPT/Inf(98)12-part, para. 32.

Overcrowded wards, faulty and outdated WCs, unhygienic conditions, especially against the background where patients are not allowed to be in the open air or engage in meaningful activities, create a particularly depressing and harsh environment. It should be pointed out that the inpatient establishment's infrastructure is not fully or partially adapted for people with mobility and sensory impairments.

There are 4, 5 and sometimes 6 patients living in some wards at LTD Centre for Mental Health and Prevention of Addiction and LTD Tbilisi Mental Health Centre. Therefore, it is impossible to ensure the standard of the minimum living space. It should be stressed that living conditions did not improve in psychiatric establishments that were inspected in 2020.⁷⁹ Furthermore, there is no uniform nutrition standard, determining a psychiatric establishment's duty to provide the patients with appropriate products and calories.

In accordance with the Law of Georgia on Psychiatric Care, the restraint method is an exceptional measure of last resort used for safety reasons and its use is permissible only when the patient poses a threat to his or her own health or another person's health and the danger cannot be averted otherwise.⁸⁰ The state should contribute to reducing and eradicating the use of physical⁸¹ and chemical⁸² restraints on inpatients. However, according to the monitoring results of 2020, the state and its institutions did not direct their efforts towards this end.

The monitoring visits have demonstrated that restraint methods are still actively used in psychiatric establishments to manage the behaviour of agitated and/or aggressive patients. The use of mechanical restraint is even on the rise in the LTD Centre for Mental Health and Prevention of Addiction.⁸³ It is noteworthy that physical restraint is usually used in combination with chemical restraint.⁸⁴ Isolation is another method of restraint used. From interviews with the patients of LTD Tbilisi Mental Health Centre, we learned about a possible incident of resorting to lengthy isolation in this clinic. Psychiatric establishments do not record all the methods of restraint that they use. Similar to the previous years, psychiatric establishments only document the use of mechanical restraint.

In the Public Defender's opinion, the established practice of restraint methods is explained by the fact that psychiatric establishments do not have a policy of crisis prevention and do not use non-violent (de-

⁷⁹ The Special Preventive Group visited LTD Centre for Mental Health and Prevention of Addiction, LTD Senaki Mental Health Centre and LTD Tbilisi Mental Health Centre.

⁸⁰ The Law of Georgia on Psychiatric Care, Article 16(1).

⁸¹ Under Article 16.2 of the Law of Georgia on Psychiatric Care, "methods of physical restraint are isolation and/or physical restraint of a patient in a specialised ward."

⁸² According to the CPT, chemical restraint implies forcible administration of medication for the purpose of controlling a patient's behaviour. See, Means of restraint in psychiatric establishments for adults (Revised CPT standards), introduction.

⁸³ According to the data of the first 5 months of 2019, 64 cases of physical restraint were identified in the establishment whereas according to the data of the first 5 months of 2020, there were 79 such cases.

⁸⁴ This is suggested by medication doses entered in "immobilisation logbooks".

escalation)⁸⁵ methods that in the end would eradicate the practice of restraint methods. Unfortunately, the psychiatric establishments' administration policy is not aimed at minimising the risks of escalation.

Involuntary Treatment of Inpatients of Psychiatric Establishments

Compulsory medical interventions used in psychiatric establishments to fulfil the prescription carry a high risk of arbitrariness. The risk of arbitrariness is even higher against the background where neither forcible administration of prescribed injections nor rapid tranquillisation performed against the patient's will to control his/her behaviour is documented.⁸⁶ Information about these procedures can only be obtained when speaking to a patient or witnessing the procedure.⁸⁷ According to the patients at LTD Tbilisi Mental Health Centre, the forcible administration of injections is a frequent occurrence in the establishment and even other patients are involved in this procedure. Incidents of male patients being involved in the process of giving injections by force to female patients have also been identified.

In the Public Defender's opinion, the established practice of rapid tranquilisation against a patient's will does not have an adequate justification or legal safeguards, leads to complete or partial suppression of the patient's consciousness and reflexes as well as excessive sedation and violates the patient's physical integrity.⁸⁸ This amounts to inhuman and degrading treatment of a patient. Under international standards, the informed consent of the patient regarding the treatment is crucial as it concerns the use of powerful psychotropic medications, the use of which may cause suffering and significant harm to an individual's health. Treating a patient without consent may reach the threshold of torture and ill-treatment.⁸⁹

Inpatient psychiatric care is voluntary in Georgia except in cases determined by law.⁹⁰ Voluntary implies a patient expressing a genuine will that he/she wishes to receive psychiatric care at a psychiatric establishment. The legislation provides for the need to establish a patient's informed consent for hospitalisation and treatment, which must be confirmed in a medical document.⁹¹ Most patients sign the informed consent form upon entering a psychiatric establishment unknowingly or unwillingly.⁹²

⁸⁵ The following are the constituent elements of de-escalation technique: immediate assessment of a potential crisis and prompt intervention; problem solving orientation; empathy and persuasion; stress management or relaxation techniques such as breathing exercises; allowing personal space to a person; offering a choice; giving time to think.

⁸⁶ In case of forcible injection, medical documentation only refers to injection administered without prescription.

⁸⁷ In LTD Senaki Mental Health Centre, the Special Preventive Group witnessed the incident of forcible administration of injection.

⁸⁸ Article 17 of the United Nations 2006 Convention on the Rights of Persons with Disabilities protects the physical integrity of a person.

⁸⁹ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, 28 July 2008, para. 63, available at: <https://bit.ly/3uecqqF>, [accessed 30.12.2020].

⁹⁰ The Law of Georgia on Psychiatric Care, Article 15.1.

⁹¹ The Law of Georgia on Psychiatric Care, Article 17.2.

⁹² According to patients, they do not know what they signed; some of them cannot even remember signing.

It is important to obtain informed written consent from a patient from the very beginning, continuation and alteration of the course of treatment.⁹³ The admission of a person to a psychiatric establishment on an involuntary basis should not automatically lead to his/her involuntary treatment.⁹⁴

The monitoring results demonstrate that patients are not informed about the methods of their treatment or alteration of the course of the treatment. Informed consent is not sought where the strategy of the treatment is modified to ensure that a patient is involved in this process to the maximum degree possible. This problem is caused by the fact that the legislation does not determine the obligation to obtain informed consents for hospitalisation and treatment separately.

The formal and illusory nature of voluntary placement and treatment of patients in a psychiatric establishment is also confirmed by the fact that patients cannot leave psychiatric establishments voluntarily. The gist of voluntariness implies that a patient should be able to withdraw informed consent for hospitalisation at any time and leave the psychiatric establishment.

In the Public Defender's opinion, formally voluntary psychiatric inpatients requesting discharge, should be immediately discharged if there is no legal basis for the use of involuntary psychiatric care. Similar to the previous years, lengthy hospitalisation of psychiatric inpatients remains problematic in 2020. The Public Defender has been discussing this issue for years. The Public Defender's recommendation regarding needs assessment of patients placed in psychiatric clinics for more than 6 months and the recommendation about discharging and referring them to community-based services remain unfulfilled. It is also important to elaborate a plan for setting up shelters based on an estimated number of potential beneficiaries. Even though patients do not often need active treatment, they cannot leave the hospital due to the lack of support services in the community and since the patients have nowhere to go.⁹⁵

2.3. Safeguards Against Ill-Treatment/Risk Factors Causing Ill-treatment

To prevent ill-treatment, persons deprived/restricted of/in their liberty must be provided with the minimum set of legal safeguards at the legislative level and in practice. The existence of statutory

⁹³ "Every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances." Extract from the 8th General Report of the CPT on Involuntary Placement in Psychiatric Establishments, para. 41.

⁹⁴ Extract from the 8th General Report of the CPT on Involuntary Placement in Psychiatric Establishments, para. 41, available at: <https://bit.ly/2PcedxE>, [accessed 30.12.2020].

⁹⁵ As of 12 June 2020, there were 12 patients for more than 6 months in LTD Centre for Mental Health and Prevention of Addiction. Out of the 12 patients, 5 patients had been placed in the centre for more than a year. Among them are those patients that had been in the inpatient psychiatric facility since 2011. As of 16 September 2020, there were 71 patients (24 men and 47 women) for more than 6 months in LTD Tbilisi Mental Health Centre. Out of them, 5 patients had been placed in the establishment for more than a year. There are patients in the establishment who had been placed in the inpatient psychiatric facility since 2008, 2014, 2015, 2016 and 2017.

procedural guarantees and their effective enforcement reduces the risks of ill-treatment, as it is possible to identify and respond to illegal actions.

2.3.1. The Penitentiary System

The Public Defender commends the adoption of new regulations aimed at increasing the effectiveness of the procedure for identifying, documenting and reporting cases of violence to the investigative authorities.⁹⁶ The regulations determined the duty of a medical professional to notify directly the State Inspector of Georgia about alleged incidents of ill-treatment. The Public Defender also commends another amendment determining medical professionals' duty to describe, photograph and report injuries to investigative authorities, irrespective of the prisoner's informed consent, whenever he/she suspects that the prisoner could have been subjected to torture or other inhuman treatment. Unfortunately, in the reporting period, medical professionals did not undergo training sessions in documenting and photographing injuries.

The information supplied by the State Inspector of Georgia on the complaints received regarding incidents of violence against prisoners is noteworthy. In 2020, an investigation was launched into 30 criminal cases involving alleged physical and/or psychological violence against prisoners by prison staff. Of these, the information given in applications/complaints served as the basis for instituting investigation in 25 cases. This indicates that, in 2020, individual applications filed by prisoners remained to be the main source of information on alleged violence against prisoners.

The Public Defender of Georgia maintains that the faulty practice of identifying and documenting incidents of alleged violence is preconditioned by the absence of a confidential environment for doctor-prisoner meetings. Inadequate qualifications of doctors and the lack of information should also be pointed out. Under such conditions, physicians fail to explain to prisoners the significance and purpose of documenting injuries or gain their trust.

In the reporting period, the preventive visits paid to penitentiary establishments revealed that the imbalance caused by the large number of prisoners and the small number of staff⁹⁷ could not ensure a safe, secure and orderly environment in prisons. There is a problem of overcrowding in both semi-open and closed prison facilities. For instance, 1700 convicted persons were placed in semi-open prison facility no. 17 during the visits of the Special Preventive Group.⁹⁸ At the material time, there were 100 prisoners per one employee of the Legal Regime Department, which is a great challenge in terms of order and security.⁹⁹ Inadequate staffing and its consequences⁹⁹ in the context of the Coronavirus pandemic were

⁹⁶ Order no. 663 of the Minister of Justice of Georgia of 30 November 2020.

⁹⁷ Legal Regime and Security Officers.

⁹⁸ Monitoring visits were paid to penitentiary establishment no. 17 on 30 April, 1 May and 7 May.

⁹⁹ There were 50 employees in the penitentiary establishment around the clock, seven days a week. 34 Legal Regime and 7 Security Unit Officers (including heads of these units) as well as 9 managers of the central administration (director,

particularly serious. In terms of the risks of ill-treatment, it can be said that the current situation, which causes an even busier work schedule for employees during the pandemic, also affects their attitude towards prisoners.

Furthermore, in penitentiary establishments for remand detention and deprivation of liberty, accused and convicted persons are placed together which often causes conflicts. This also violates international standards¹⁰⁰ and the requirement established by the Imprisonment Code regarding the placement of accused and convicted persons separately.¹⁰¹

The Public Defender believes that large penitentiary establishments should be transformed into smaller establishments with balanced infrastructure, both in terms of safety and order and risks in terms of infection control.

Effective complaint and inspection procedures are fundamental safeguards against ill-treatment in penitentiary establishments. Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority.¹⁰² In the reporting period, similar to the previous years, obstacles were identified in terms of the exercise of the right to request/complain. There were complaint boxes displayed in all penitentiary establishments visited in 2020.¹⁰³ However, the boxes remain within the area of video monitoring, which allows the identification of a complainant.

According to some prisoners placed in penitentiary establishments nos. 8 and 6, the administration does not supply them with items necessary to file a complaint¹⁰⁴ and obstructs the dispatch of complaints. In those cases where prisoners manage to write a complaint and put it in the box or give it to a prison officer for its dispatch,¹⁰⁵ they often do not know whether the correspondence reached the intended recipient. According to prisoners, correspondence addressed to the Public Defender is also blocked.¹⁰⁶

deputies and heads of departments). Employees are on duty on alternate days. There were 17 employees of the Legal Regime Department on duty.

¹⁰⁰ In accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by General Assembly resolution 70/175, untried prisoners shall be kept separate from convicted prisoners Rule no. 11(b)).

¹⁰¹ The Code of Imprisonment, Article 9.2.

¹⁰² Extract from the 2nd General Report of the CPT, published in 1992, para. 54, available at: <https://bit.ly/3ubiT5o>, [accessed 18.01.2021].

¹⁰³ During a visit made to penitentiary establishment no. 6 on 26 June 2020, it was revealed that the administration had not opened complaint boxes since 16 March.

¹⁰⁴ It is important for the exercise of the right to complain to provide prisoners with paper, confidential complaint envelopes, and pens.

¹⁰⁵ In 2020, after the introduction of the special conditions, prisoners' letters and complaints are dispatched through security or regime officers instead of social workers.

¹⁰⁶ In July-August 2020, the Public Defender's hotline received 7 notifications from penitentiary establishment no. 6 regarding blocking prisoners' correspondence addressed to the Public Defender's Office and other agencies. The Public Defender's Office verified the information and established that prisoners' complaints had not reached the office.

It is particularly worrying that prisoners, despite their desire, cannot exercise their right to complain because of the criminal underworld existing in the penitentiary system. It is alarming that the resort to the complaint mechanism constitutes one of the risk factors for ill-treatment in the system. In particular, according to the informal rule, writing a complaint is unacceptable and the complainant will be punished accordingly.¹⁰⁷ This problem is also discussed in the survey published by NGOs in 2020.¹⁰⁸

It should also be pointed out that, despite the Public Defender's recommendation, the role of social workers in explaining to a prisoner his/her rights in detail and giving information about the procedure for filing a request/complaint and the procedure for the examination of these requests/complaints did not improve in the reporting period.

2.3.2. The System of the Ministry of Internal Affairs

Under the Criminal Procedure Code of Georgia,¹⁰⁹ an arresting officer must notify an arrested person about his/her rights and the ground for arrest. However, similar to the previous years, the practice of notification of rights by police to an arrested person remained problematic. The interviews conducted by the Special Preventive Group showed that arrested persons are usually not notified about their rights either in the process of arrest or before questioning or they are informed partially.¹¹⁰

The Public Defender welcomes the placement of posters in police stations for raising awareness about the rights of arrested individuals.¹¹¹ However, in addition to informing through posters, which a person in custody may not even be able to read, it is important to provide them with information about their rights orally and promptly in a language, they understand.

Immediate access to a lawyer is a crucial safeguard for an arrested person against police ill-treatment, as arrested persons are most vulnerable in the very first hours in terms of pressure and ill-treatment by the police.

¹⁰⁷ Against the background that almost half of the entire prison population serves sentence in open prison facilities (penitentiary establishments nos. 14, 15 and 17), out of 1,384 applications lodged by prisoners with the Public Defender's Office in 2020, only 57 applications were filed by prisoners from these three penitentiary establishments. The information supplied by the Ministry of Justice about inter-prisoner violence that allegedly took place in penitentiary establishments is also noteworthy. According to this information, in 2020, there were 465 notifications and out of this number, only eight incidents were reported from penitentiary establishment no. 17; one notification was sent from penitentiary establishment no. 14 and no reports were made from penitentiary establishment no. 15.

¹⁰⁸ The Influence of the Criminal Underworld Over Managing a Penitentiary Establishment, available at: <https://bit.ly/317W0DP>, [accessed 18.03.2021].

¹⁰⁹ The Criminal Procedure Code of Georgia, Article 38(2) and 174(1).

¹¹⁰ Lawyers also point out this issue and they maintain in their interviews with members of the Special Preventive Group that prisoners learned about their rights from the lawyer for the first time.

¹¹¹ In the absolute majority of police stations and TDIs visited by the Special Preventive Group in 2020, there were large posters at the entrances that imparted information about procedural rights.

In 2020, according to our monitoring results, the indicator of involving a lawyer within the first 24 hours is considerably better. Notably, in 2020, a lawyer was involved in the case within the first 24-hour period in 45% of 430 criminal cases; a lawyer was involved in the case within the first 48-hour period in 29% of cases.¹¹² It should also be pointed out that the time of the request or contacting a lawyer by an arrested person is still not documented.

As regards informing the family, according to the data processed by the Special Preventive Group, in 2020, out of the 84% of the processed criminal cases, notifications were given within the statutory three-hour term.¹¹³ The situation in this regard is slightly worth compared to the previous year but remains stable overall.¹¹⁴

Similar to the previous years,¹¹⁵ the Public Defender maintains that the Ministry of Interior should develop a concrete mechanism allowing verification whether arrested individuals are notified about their right to contact family members, relatives and a lawyer.

Unfortunately, the recommendation that the Public Defender has been making for years concerning maintaining audio and video recordings that are backed up by numerous international standards remain unfulfilled to this day. The CPT recommends the Member States to take steps to monitor police interviewing standards and procedures and to introduce uninterrupted electronic (audio and/or video) recording of police interviews, which constitutes one of the important additional safeguards to prevent ill-treatment.¹¹⁶ The CoE Committee of Ministers, in a decision adopted on *Tsintsabadze Group v. Georgia*, called on the authorities to strengthen safeguards for the prevention of torture, notably by exploring the possibility of extending audio/video recording of arrested or detained persons' communications with law enforcement agents, including interrogations and questioning.¹¹⁷ Electronic recordings should be kept securely for a reasonable period, made available to the detained persons concerned, and/or their lawyers, and accessible to representatives of international and national monitoring bodies.¹¹⁸

In contrast, under Georgian law, an audio-video recording of the interrogation/questioning of arrested persons in police stations is not mandatory and falls within the discretion of the police. Interviews

¹¹² Yearly statistics on the involvement of a lawyer in a case within the first 24 hours: 2017 -15%, 2018 -11.9% and 2019 - 24.6%.

¹¹³ The Criminal Procedure Code of Georgia, Article 177.1.

¹¹⁴ Dynamics according to years is as follows: 2017 -71%, 2018 - 86.8% and 2019 - 94.4%.

¹¹⁵ The 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, p. 89; The 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, p. 61.

¹¹⁶ Final report to the Russian Federation, Committee Against Torture, CAT/C/RUS/CO/6, 28.08.2018.

¹¹⁷ Decision of the CoE Committee of Ministers regarding *Tsintsabadze group v. Georgia*, para. 13, available at: <https://bit.ly/3a5Q0jT>, [accessed 08.01.21].

¹¹⁸ 28th General Report of the CPT, 2019, para. 81, available at: <https://bit.ly/3rBonoG>, [accessed 08.02.2021]. Report of the UN Subcommittee on Prevention of Torture to the Government of Poland, *CAT/OP/POL/ROSP/1*, 09.01.2020, para. 47, available at: <https://bit.ly/2xXKrn7>, [accessed 08.02.2021].

conducted with arrested persons and lawyers in 2020 showed that audio or video recording of questioning carried out in police stations is not observed.¹¹⁹

For years, the Public Defender has been recommending the Ministry of Internal Affairs to determine by secondary legislation the obligation of police officers (patrol inspectors, officers of the Central Criminal Police Department and territorial agencies) to record their communication with citizens and to determine the procedure and terms of storing the recordings. The situation did not change in this regard in 2020. The duty to record has not been determined in any of the aforementioned cases. As regards the duration of storing video recordings, only the duration of storing video recordings by the body cameras of patrolling inspectors has been determined.¹²⁰ Against the background of such legislative regulation, body cameras are seldom used in practice. According to the arrested individuals that have been interviewed, the body cameras of patrolling inspectors were turned off during the arrests.¹²¹ According to lawyers, when they request records, it usually turns out that either the camera was not turned on or the record was accidentally deleted.

In 2020, many arrested individuals alleged ill-treatment, including beatings, by police officers when under police control in a police vehicle (parked or moving). According to the 2019 Report of the State Inspector, a police vehicle (interior is not equipped with a video surveillance system) is named as the place where 30% of the alleged crimes are committed by law enforcement officials.

In 2020, an adequate CCTV coverage of internal and external perimeters in a number of police stations remained problematic. The practice of using a room of a Chief of Police or a Deputy Chief of Police for interviewing an arrested person or a person being in a police station with a different status also continued. These offices are not equipped with an audio-video surveillance system, which poses a risk of ill-treatment.

The Public Defender of Georgia believes that any area in police agencies where an arrested person or a citizen might be kept should be fully covered by a CCTV system. CCTV systems should be installed on all internal and external premises of police agencies, where an arrested person might be kept except in those cases where this can interfere with an arrested person's right to respect for private life or confidentiality of a meeting with a lawyer or a doctor.¹²²

One of the most important means of identifying ill-treatment is the proper documentation of injuries and, in general, the proper maintenance of documentation in the Ministry of Internal Affairs system, be it filling in gaps in detention reports or proper maintenance of logbooks at police stations. This includes indicating

¹¹⁹ In accordance with Article 287 of the Criminal Procedure Code of Georgia, video/audio recording is allowed during conducting investigative actions.

¹²⁰ Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 on Approving Instructions on the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia, Article 12¹.

¹²¹ Out of 58 arrested persons, three maintained that the arrest had been recorded; four individuals did not remember whether the arrest had been recorded by a body camera and there is no information regarding four arrested individuals. In the rest of the 47 cases, arrested persons maintained that the arrest had not been recorded.

¹²² Final report to the Russian Federation, Committee against Torture, CAT/C/RUS/CO/6, 28.08.2018.

the date and time of arrest, the date and time of taking a person to a TDI, proper maintenance of a logbook of arrested persons, which describes the injuries on the body of an arrested person, both when entering and leaving the facility, and other circumstances.

Similar to the previous years, the practice of inadequate maintenance of documentation about arrested persons in territorial police agencies remains problematic. Shortcomings related to maintaining logbooks were identified in 27 police agencies out of 62 agencies visited by the Special Preventive Group.¹²³ It is important, *inter alia*, to develop a mechanism that will enable the monitoring bodies to receive credible information about a person's status, his/her entering and leaving a police station.

It is noteworthy that, out of the 463 suspicious cases processed by the Special Preventive Group in 2020,¹²⁴ arrest reports in 122 cases fail to indicate injuries described in medical records made in the TDIs. Certainly, there is a strong presumption in such cases that an arrested person was possibly subjected to physical violence when under police control.

The Administrative arrest report form does not contain a column where a police officer should indicate injuries, if any, found on the body of an arrested person. This contributes to a non-uniform practice as some police officers describe injuries in the note section of the report and others do not.

As regards medical personnel documenting injuries found on persons placed in TDIs, the Public Defender believes that physicians do not pay proper attention to the issue of documenting injuries and disregard the requirements of the Istanbul Protocol. To identify an incident of ill-treatment, it is most important for a medical professional to establish consistency between the injuries found on an arrested person's body and the origin of those injuries based on the person's report of ill-treatment.¹²⁵ Similar to the previous years, the practice of documenting injuries by doctors is punctuated with shortcomings.¹²⁶

As regards photographing injuries, out of 377 cases of documenting injuries that were examined by the Special Preventive Group in accordance with the Istanbul Protocol, photographs were taken in 67 (17.7%) cases. The Special Preventive Group examined 50 photos; the photographs were of satisfactory quality in four cases and the quality was not satisfactory in 46 cases. In particular, the problem was the focus and

¹²³ According to the Inspectorate General of the Ministry of Internal Affairs of Georgia, from 1 January 2020 to 15 November 2020, there were 41 incidents involving the failure to fill out logbooks or the failure to fill out logbooks properly. Letter no. MIA 5 20 02723536 of the Ministry of Internal Affairs of Georgia, dated 20 November 2020.

¹²⁴ Those cases are treated as suspicious, where the circumstances surrounding the arrest as well as the location, number and nature of injuries sustained give rise to a suspicion among the members of the Special Preventive Group about possible ill-treatment of an arrested individual.

¹²⁵ The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, para. 104.

¹²⁶ Out of 463 cases processed in 2020, in 377 (84.1%) cases, injuries were documented by reports drawn in accordance with the Istanbul Protocol.

insufficient and inadequate lighting in the photos. It is also noteworthy that the TDIs still do not have a unified procedure for storing photographs.¹²⁷

TDIs are important sources of notifications for the State Inspector's Service. 291 notifications about alleged violence committed by officials of the Ministry of Internal Affairs were filed with the State Inspector's Service from TDIs.¹²⁸

Out of the 463 suspicious cases processed by the NPM, notifications were not sent to the State Inspector in 43 (9.3%) cases. Among them, there are cases where injuries are inflicted in the facial area and near eye-sockets and the pattern and colouration of these injuries indicate that they were fresh. It should be pointed out that this data is reduced compared to 2019. In 2019, out of the 449 cases examined by the Special Preventive Group, notifications have not been sent in 98 cases (21.8%).

The Judge's Role

Judges can play an important role in preventing incidents of ill-treatment.¹²⁹ Under the Criminal Procedure Code of Georgia, at any stage of criminal proceedings, a judge applies to a competent investigative authority in case of suspicion concerning torture, inhuman or degrading ill-treatment that an accused/convicted person could be subjected to or when an accused/convicted person him/herself states about it before the court.¹³⁰ However, it is important to amend the Administrative Offences Code of Georgia and provide for this possibility with regard to persons under administrative responsibility. The importance of this recommendation is confirmed by the fact that the number of incidents of alleged ill-treatment of individuals arrested in administrative proceedings is still high.

According to the Supreme Court of Georgia, judges applied to investigative authorities in 70 cases due to the suspicion that an arrested person had been subjected to torture, inhuman or degrading treatment or the person concerned stated about it before the court.¹³¹

Regarding a judge's role, the practice of online court trials is noteworthy. Remote court hearings are conducted without respecting confidentiality in TDIs, as the staff does not leave an arrested individual alone. It should also be borne in mind that an attorney also participates remotely in a court hearing which creates a feeling in an accused that he/she is without a lawyer. The Public Defender believes that accused persons will be less motivated to speak of ill-treatment without a lawyer and in the presence of officers of the Ministry of Internal Affairs. This impedes the identification of possible incidents of ill-treatment. Another aspect to be mentioned regarding remotely held court hearings is the limited

¹²⁷ Photos are mostly stored in a folder on a desktop computer. Often the photos did not have the name, surname of a person or the date when they were taken. Sometimes physicians could not find photos at all.

¹²⁸ Letter no. 22000020027 of the State Inspector's Service, dated 8 December 2020.

¹²⁹ "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).

¹³⁰ The Criminal Procedure Code of Georgia, Article 191¹.

¹³¹ Letter no. P-1996-20 of the Supreme Court of Georgia, dated 8 February 2021.

possibility for a judge to assess visually the physical and psycho-emotional state of an accused individual.¹³²

2.3.3. Psychiatric Establishments

Similar to the previous years, in the reporting period, violent incidents in psychiatric establishments and the practice of documenting them remained problematic. There is no legal mechanism in psychiatric establishments for documenting possible violence against a patient and notifying the investigating authorities. Psychiatric establishments do not respond at all to conflicts that have already occurred as they do not have the duty to record incidents of violence in a special logbook or take appropriate action.

It is mainly the insufficient numbers and inadequate qualifications of the medical staff in psychiatric establishments that cause ill-treatment. Enhancing the qualifications of the medical staff is particularly important for them to be able to calm a patient verbally or by resorting to other modern methods recognised in psychiatry, convince and persuade a patient to ensure that they undergo treatment and, in this way, avoid the use of more restrictive measures. It is also noteworthy that due to insufficient numbers and inadequate qualifications of medical staff, staff without special qualifications, non-medical staff or patients participate in the process of physical and chemical restraint of psychiatric patients.

The practice of involving non-medical and unskilled personnel in the restraint process is not only a threat to the patient's health but also a strongly stigmatising experience. The issue of the qualifications of the staff employed in the field of psychosocial rehabilitation remains a challenge. The Public Defender's recommendations regarding providing psychosocial rehabilitation services tailored to individual needs, and based on the respect for patients' rights, in psychiatric establishments are unfortunately unfulfilled. In addition, the mental health programme does not provide access to psychosocial rehabilitation services for patients receiving short-term treatment.

The monitoring carried out by the National Preventive Mechanism at LTD Tbilisi Mental Health Centre revealed that, according to the qualification documents, the psychologists working in the establishment had not passed the relevant training courses recently and the certificates kept in their personal files date back to 2011-2012. As regards the social workers, their personal files did not contain information whether a social worker has a bachelor's degree, a master's/equal to a master's or a doctorate in the field of social work or a respective certificate about undergoing training programme on skills required for a social worker.

One of the most important safeguards against the ill-treatment of a patient is the implementation of an accessible, simple and confidential internal and external complaint mechanism.¹³³ While the legislation

¹³² It should also be noted that the Public Defender's monitoring report on remote court hearings included cases where the image of the accused was either not visible at all or was distorted and obscure. See the Public Defender's report on Monitoring Remote Criminal Trial, available at: <https://bit.ly/3p8Z6Rx>, [accessed 10.02.2021].

¹³³ Convention on the Rights of Persons with Disabilities, Article 13.

lays down a patient's right to lodge a complaint or an application in a court and other state institutions,¹³⁴ there is no statutory procedure to ensure that a patient makes use of these remedies.

It should be noted that, compared to the previous year, the situation in terms of the introduction of an internal complaint mechanism has not improved. The Law of Georgia on Psychiatric Care does not determine the duty of a psychiatric establishment to develop an internal mechanism for reviewing patients' complaints; psychiatric establishments themselves do not make any effort to either develop or introduce this mechanism on their own initiative.¹³⁵

It is noteworthy that, for patients to use the complaint mechanisms in practice, it is necessary to inform them adequately about respective legal safeguards. A vivid example in this context is LTD Senaki Centre for Mental Health where an internal complaint box is located, albeit without any function, as patients have no information about complaint procedures.

Information on complaint procedures, including the Public Defender's hotline number, is inaccessible for patients in psychiatric establishments. Furthermore, due to the lack of a telephone and the inability to speak in a confidential environment, it is virtually impossible to reach state authorities or the Public Defender's Office by telephone.

The amendment of the Law of Georgia on Psychiatric Care introducing a statutory mechanism for monitoring the protection of patients' rights and the quality of services provided in the field of mental health is commendable.¹³⁶ Under the amendment, monitoring implies on-site inspections, development of recommendations, publication of a report and communication with stakeholders. Unfortunately, the mechanism does not provide for the possibility of receiving either confidential or open communications from patients or other stakeholders. Furthermore, while the monitoring grounds were supposed to be determined by 1 September 2020, they have not been determined to this day.

Georgian legislation contains regulations that allow certain arbitrary decisions to be made by medical staff. The provision of the Law of Georgia on Psychiatric Care vests physicians, in case of extreme necessity, with an authority to restrict patients' various rights for safety reasons by a written decision.¹³⁷ In particular, a physician has the right to restrict the following rights of patients: the right to use the telephone; right to leave the hospital for a short time; the right to receive letters, parcels and visitors; the right to own a personal item; right to receive audio-visual information, as well as the right to information and medical documentation about one's health condition.

It is unclear what the restriction of the right for safety reasons means. The kind of safety based on which a doctor can restrict a patient's rights is unclear. Therefore, to prevent arbitrary decisions by physicians,

¹³⁴ The Law of Georgia on Psychiatric Care, Article 5.1.g).

¹³⁵ In the 2019 Monitoring Report on LTD Academician B. Naneishvili National Centre for Mental Health, the Public Defender welcomed the introduction of the commission examining patients' oral and written proposals and complaints, p. 10, available at: <https://bit.ly/3slxe9H>, [accessed 21.01.2021].

¹³⁶ The Law of Georgia on Amending the Law of Georgia on Psychiatric Care, Chapter VII¹.

¹³⁷ The Law of Georgia on Psychiatric Care, Article 15.3.

it is important to determine the procedure and criteria clearly concerning each right. As regards the restriction of the right to access information in a language understandable for the patient and medical documentation about his/her health condition, it is unjustified for any reason.

2.4. Investigation of Alleged Incidents of Ill-Treatment

Effective investigation of ill-treatment is one of the important safeguards for preventing this crime. All incidents of ill-treatment must be adequately punished and all investigations need to be conducted effectively. Unfortunately, there were challenges in this regard in 2020. From year to year, reports of local¹³⁸ and international organisations¹³⁹ address this problem.

Since 1 November 2019, the State Inspector's Service has been working on eradicating the problem of impunity of law-enforcement officers for ill-treatment. Here, the quality of cooperation with the State Inspector's Service should be noted. So far, no shortcomings have been identified in the communication maintained with the State Inspector's Service. The Inspector's Service provided detailed information on the investigation to the Public Defender's Office in tens of cases and provided access to the case files in two criminal cases as an exception.

Prior to the introduction of the State Inspector's Service, the only body responsible for investigating and prosecuting crimes of ill-treatment committed by law enforcement officers was the Prosecutor's Office of Georgia. The Prosecutor's Office of Georgia is still investigating the crimes committed before 1 November 2019. Unfortunately, the investigation of incidents of ill-treatment carried out by the prosecutor's office over the years does not meet the standards of an effective investigation,¹⁴⁰ nor does the agency provide information to the public on its important cases.

Under the Constitution of Georgia, the Prosecutor's Office of Georgia is an independent and accountable agency. The prosecutor's office has a significant function in terms of ensuring respect for human rights. The independence and proper functioning of the prosecutor's office are crucial in terms of remedying violated human rights and prevention of these violations in general. Considering the significant task of the Office of the Prosecutor General of Georgia, it is of critical importance to start the reform of the office to improve its institutional organisation and accountability. Therefore, the Public Defender addressed the

¹³⁸ Preventing Ill-Treatment and Responding to Past Incidents, Georgian Young Lawyers' Association, 2019; Preventing Ill-Treatment in Policing, Human Rights and Monitoring Centre (EMC), 2019; Shortcomings of Investigating Ill-Treatment by Law Enforcement Officers and Legal Status of Victims in Georgia, the Georgian Democracy Initiative (GDI), 2018.

¹³⁹ The 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 10 to 21 September 2018, (CPT/Inf (2019) 16), paras. 13-15; the 2020 Report on Georgia by the Human Rights Watch; the 2017-2018 Report on Georgia by the Amnesty International.

¹⁴⁰ The Special Report of the Public Defender of Georgia on the Effectiveness of Investigation of Criminal Cases of Ill-Treatment, 2019, p. 6.

Parliament of Georgia with a proposal to start the reform of the Office of the Prosecutor General of Georgia.¹⁴¹ However, the parliament, similar to 2019, did not fulfil this recommendation in the reporting period. Accordingly, in the Public Defender's opinion, the need for reforming the Office of the Prosecutor General remains relevant.

In September 2020¹⁴² and March 2021, the CoE Committee of Ministers¹⁴³ again called upon the authorities to continue the reforms aimed at further enhancing the independence, effectiveness and accountability of the prosecutor's office. The committee observed that were constant concerns about the effectiveness of investigations. According to the committee, a number of general measures undertaken, including in the context of the 2017-2018 constitutional reform, appear to be insufficient and further sustained reforms are essential to achieve the required level of independence and accountability of the prosecutor's office. This is considered a general measure aimed at restoring violated rights as found by the judgment of the European Court of Human Rights.

The concrete data on instituting investigation and criminal prosecution against the law enforcement officials by the General Prosecutor's Office of Georgia and the State Inspector's Service in 2019-2020 are given separately. From 1 January 2020 to 31 December 2020, the prosecutor's office instituted an investigation in one case allegedly involving police officers and charged three persons. The State Inspector's Service instituted investigation in 176 incidents allegedly involving police officers and brought charges against three individuals. Compared to the indicators of 2019, the general rate of instituting investigation is lower in 2020. As of 1 November 2019, the prosecutor's office instituted investigation in 298 incidents allegedly involving police officers and charged four individuals; the State Inspector's Service, after becoming operational on 1 November 2019, instituted investigation in 62 incidents allegedly involving police officers and charged one individual.

Nevertheless, the indicator of instituting investigations in the incidents committed in penitentiary establishments has increased. In particular, in 2020, the Office of the Prosecutor General of Georgia instituted an investigation in an incident allegedly committed by staff members of a penitentiary establishment. Within this investigation, the prosecutor's office brought charges against one person. The State Inspector's Service instituted investigation in 30 cases. As of 1 November 2019, the prosecutor's office instituted investigation in 18 cases allegedly involving prison staff and the State Inspector's Service instituted investigation in one case. Nobody has been charged within these investigations.¹⁴⁴

It should be noted that both the Prosecutor's Office and the State Inspector's Service tend to institute an investigation into the crimes allegedly committed by police officers and prison staff, mainly under Article 333 of the Criminal Code of Georgia (exceeding official powers). In 2020, an investigation was not

¹⁴¹ The 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, p. 84.

¹⁴² Decision of the CoE Committee of Ministers, adopted at the 1398th session on 9-11 March 2021, available at: <https://bit.ly/2QhV0dR>, [accessed 22.03.2021].

¹⁴³ *Idem*.

¹⁴⁴ See detailed information in the 2020 Report on the Activities of the Criminal Justice Department of the Office of the Public Defender of Georgia, the chapter on torture and other cruel, inhuman and degrading treatment.

instituted under Article 144¹ of the Criminal Code of Georgia (prohibition of torture). As regards Article 144³ of the Criminal Code of Georgia (degrading or inhuman treatment), in 2020, the State Inspector instituted investigation under this provision in 18 cases involving police officers and in 5 cases involving prison staff in alleged ill-treatment.

Problems concerning the institution of an investigation, based on the 107 proposals submitted by the Public Defender to the Prosecutor's Office in 2013-2019, should be noted in this context.

The Public Defender observed in the 2019 Parliamentary Report as well that not a single person had been held responsible in criminal cases instituted based on the Public Defender's 107 proposals submitted to the prosecutor's office in 2013-2019. As regards the 2020 data, within the investigations instituted, based on the said 107 proposals, only three police officers were prosecuted and only one person was given a victim status.

In the reporting period, the Public Defender's Office identified significant shortcomings in the criminal cases examined from the point of view of alleged ill-treatment.

The examination of a number of applications by the Public Defender's Office revealed that, in some cases, the investigative authorities are not able to conduct forensic medical examination (by a commission/complex forensics) - an important investigative action. It is impossible to secure the participation of specialists in a particular field of medicine as they refuse to participate. It is noteworthy that investigative authorities could not assess the culpability of some individuals due to the impossibility of conducting a medical examination (by a commission) in the examined cases. This undermined both the rights of the victims and the general obligation of the state to investigate an alleged crime. Furthermore, forensic examinations took 7, 9, 18 months in three cases.

In addition to the above-mentioned, similar to 2019, there were cases of delays in conducting the forensic psychiatric examination of accused persons in the reporting period. The reason for this was the repair works going on at LEPL Levan Samkharauli National Forensics Bureau, the lack of expert psychiatrist personnel and the pandemic.¹⁴⁵ It should be pointed out that delays in conducting forensic psychiatric examinations pose significant problems in terms of the medical condition of some accused persons.

Apart from the above-mentioned, there were the following noteworthy cases in the reporting period:

[Luka Siradze Case](#)¹⁴⁶ - in 2020, the State Inspector's Service, as an exception, granted the Public Defender's Office access to case files of the Luka Siradze case (officials of the Ministry of Internal Affairs compelling underage Luka Siradze to give a statement, which led him to commit suicide). As a result of the study of the case files, it was revealed that it was possible that one of the key witnesses had committed perjury, thus creating an objective obstacle for the investigation. Furthermore, one police officer attempted to exert influence on two witnesses. There was a need to identify other possible perpetrators in this case,

¹⁴⁵ Letter no. 5002825420 of LEPL Levan Samkharauli National Forensics Bureau, dated 29 May 2020.

¹⁴⁶ The 2019 Report on the Activities of the Criminal Justice Department of the Office of the Public Defender of Georgia, 2020, p. 19.

acting on behalf of the indirect witness in this case. Therefore, further scrutiny was expected from the investigative authorities. Regarding these issues, the Public Defender submitted a proposal to the Prosecutor General of Georgia.¹⁴⁷ Unfortunately, the prosecutor's office did not institute an investigation into possible perjury by the witness and possible exertion of influence on the witness. In its turn, the State Inspector's Service carried out the investigative action proposed by the Public Defender – identification parade.¹⁴⁸ At this stage, the investigation is pending before the State Inspector's Service.

[The Case of Charging Temur Abazov](#) – at the beginning of 2020, the public's attention was caught by the acquittal of Temur Abazov, the former Mayor of Marneuli Municipality.

Within the criminal prosecution brought against Temur Abazov, he was charged with putting a victim in an inhuman and degrading condition.¹⁴⁹ According to the charges, he, with the help of other individuals, organised the public dissemination of the recording of the act. Consequently, Temur Abazov was charged with two serious crimes. By the end of the court trial, at the stage of the closing statements, the prosecutor's office changed the position and dismissed the charges completely under the head of the dissemination of the recordings. Based on this, the prosecutor's office observed that Temur Abazov had committed both the actions with one common intent due to which the first crime fully covered the period of organising, storing and disseminating the recordings.

The trial court found that there was insufficient evidence in the case to prove inhuman and degrading treatment. Since the charges for the second count had been dismissed, the court acquitted Temur Abazov.

It should be borne in mind that, by the stage of presenting closing statements, all the pieces of evidence in the case files have already been examined. The body of evidence indicated that accused persons had obtained and disseminated an intimate aspect of private life. They shared these recordings with each other, specified the nature of the video material and organised dissemination of this material on social media, etc.

The Public Defender does not agree with the reasons adduced by the prosecutor's office when dismissing the charges of dissemination of recordings. Neither the provisions of the Criminal Code nor the logical analysis of the above actions indicates that inhuman and degrading treatment implies a constituent element of dissemination of recordings of that treatment. Public dissemination of a recording depicting inhuman and degrading treatment further deepens the severe moral suffering experienced by a victim and causes his/her secondary victimisation, which is why this action is punishable as a separate, independent crime by the Criminal Code.

¹⁴⁷ Proposal no. 15-3/10514 of the Public Defender of Georgia of 23 October 2020.

¹⁴⁸ Letter no. SIS 5 21 00004207 of the State Inspector's Service, dated 5 March 2021.

¹⁴⁹ According to the charges, this was manifested in forcing the victim to abuse verbally his spouse during a live broadcast, then urinate in a glass and wash his face with his own urine.

The judge also observed in the judgment that these crimes do not cover each other and, however, found that it was impossible to examine the dissemination of video recording depicting the degrading treatment as these charges had been dismissed by the prosecution.¹⁵⁰

It is particularly alarming that the prosecutor's office, at the concluding stage of the court trial, by dismissing the charges without any justification, deprived the court of the possibility to examine this grave crime and virtually contributed to the acquittal. Moreover, as a result of the dismissal of charges, due to the *non bis in idem* principle, restoration of justice is excluded for the future as well. By such an action of the prosecutor's office, the positive aspect of the prohibition of ill-treatment was not implemented for the victim that implies effective investigation and criminal prosecution of those responsible.

Proposals

To the Parliament of Georgia:

- To start the reform of the Office of the Prosecutor General of Georgia, to involve the Prosecutorial Council in the process of determining the jurisdiction and separation of competences among structural units, and approving guidelines and adopting normative acts stemming from criminal law policy that regulate the systemic aspects of the prosecutor's office;
- To determine by the Imprisonment Code the duty of providing the minimum personal space of 4² metres per accused person;
- To amend the Administrative Offences Code of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, the judge applies to the competent investigative authorities;
- Through amending the Law of Georgia on Psychiatric Care, to determine the application of requirements and safeguards under Article 16 (the use of restrictions against a patient) of the same law to forcible rapid tranquillisation of a patient;
- To introduce a uniform standard and to impose a duty on psychiatric establishments to develop binding internal guidelines on crisis prevention and management to minimise risks of escalating situations into crises;
- The Law of Georgia on Psychiatric Care should determine the duty of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to develop and approve binding internal guidelines on crisis prevention and management for psychiatric establishments so that establishments minimise risks of escalating situations into crises without resorting to extreme measures;
- Through amending the Law of Georgia on Psychiatric Care, to ensure a clear procedure for the restriction of a patient's rights by a doctor for security considerations with accompanying legal

¹⁵⁰ Judgment of the Rustavi City Court of 12 February 2020, p. 22.

safeguards (it should be determined based on what criteria each right can be restricted, for how long and how this decision can be appealed); and

- To amend the Law of Georgia on Psychiatric Care to the effect of distinguishing in express terms between informed consent for hospitalisation and informed consent for treatment.

Recommendations

To the Government of Georgia:

- To elaborate a plan ensuring the practical implementation of the guiding principles under the Istanbul Protocol during forensic medical examinations and their timely implementation.

To the Minister of Justice of Georgia:

- To take all necessary measures to protect victims of violence, who are placed in penitentiary establishments, among others, by transferring them to other establishments, or avoiding their contact with prisoners who adhere to the criminal underworld;
- In 2021, to ensure gradual retraining of security officers and legal regime officers in all penitentiary establishments in issues such as conflict prevention, mediation and the principles of professional conduct of the officers of the penitentiary service;
- To ensure that statutes of penitentiary establishments are amended to the effect of stipulating that placing prisoners in de-escalation and solitary confinement (safe) rooms can only be a measure of last resort; the use of these measures must be substantiated and explained why it was deemed to be without any alternative. Furthermore, the statutes should determine that the use of de-escalation and solitary confinement (safe) rooms should be preceded by other, less intrusive measures such as personal supervision by a staff member and video monitoring;
- 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 in de-escalation and solitary confinement (safe) rooms;
- To ensure a safe environment in de-escalation rooms, including lining the walls and floors with soft material;
- To ensure that the maximum term for placing a prisoner in a de-escalation room is 24 hours;
- To determine the maximum term of 24 hours of placing a prisoner in a de-escalation room; and if placement in a de-escalation room for 24 hours and the care by a multidisciplinary team prove to be insufficient for security purposes, a prisoner with psychiatric problems should be immediately transferred to the psychiatric unit of medical establishment no. 18 for accused and convicted persons or a psychiatric clinic in the civil sector;
- For preventing the ill-treatment of prisoners, through systemic inspections, the Monitoring Department of the Special Penitentiary Service should:

- Ensure the study of an appropriate response to the practice of placing prisoners with psychiatric problems in de-escalation rooms and solitary confinement (safe) cells for a long time, the use of handcuffs against them and the failure to provide them with psychiatric care in penitentiary establishments; and
- Ensure the study of an appropriate response to the practice in penitentiary establishments of placing prisoners in de-escalation rooms and solitary confinement (safe) cells without any legal ground and for punitive reasons.
- In 2021, by amending penitentiary establishments' statutes, to determine the maximum duration of prisoners' isolation and the duty to review isolation 14 days after the application of this measure and thereafter, within the same time interval;
- Through issuing a new secondary legislative act or amending the statutes of penitentiary establishments, to determine the duty to carry out individual risk assessments and uphold the principle of proportionality during full-body searches; to lay down the obligation of offering an alternative method of full-body search (scanner; to ban requesting a prisoner to take off all of his/her clothes at the same time);
- For overcoming the problem of overcrowding in penitentiary establishments, to determine in the action plan the duty of increasing the number of regime officers working in the prisoners' accommodation blocks so that there is at least one officer responsible for order and security per 15 prisoners;
- To ensure linguistic, religious and cultural characteristics are taken into account when prisoners are placed in cells; and to look into the reasons why it is difficult to consider these characteristics and develop a problem-solving plan. To ensure the needs of the representatives of different religions are taken into account in the preparation of food;
- In 2021, to ensure the separation of accused persons from convicted persons in establishments nos. 2 and 8, at least in cells separated from each other;
- With the view of addressing the problem of the criminal underworld and its informal rule in penitentiary establishments, to develop a strategy for overcoming the criminal underworld and to submit the drafted document to the Office of the Public Defender of Georgia for comments;
- In 2021, to ensure training sessions in documenting and photographing injuries for all medical professionals that document injuries in accordance with Order no. 633 of the Minister of Justice of Georgia Approving the Procedure for Documenting Injuries of Accused and Convicted Persons Sustained as a Result of Alleged Torture and Other Cruel, Inhuman and Degrading Treatment;
- For effective identification and adequate documentation of incidents of torture and other ill-treatment, to develop statutory guidelines on the criteria for medical professionals to use in selecting suspicious injuries found on accused/convicted persons;
- To amend the statutes of penitentiary establishments and determine the confidentiality of meetings between medical staff and prisoners and, in case of third-party attendance, the duty to justify such attendance in writing;

- To enable the Public Defender's Office to access the draft concept on small establishments by the ministry and make comments;
- To abolish the so-called barrack type dormitories in penitentiary establishment no. 17;
- To ensure each prisoner in penitentiary establishments is provided with 4² metres of living space;
- To examine and respond to the shortcomings related to physical environment identified by the National Preventive Mechanism in monitoring reports on penitentiary establishments;
- In 2021, to ensure balancing the number of social workers and psychologists in penitentiary establishments against that of prisoners by increasing the number of social workers and psychologists;
- In 2021, to ensure the retraining of those social workers who do not have a bachelor's degree, a master's/equal to a master's or a doctorate in the field of social work;
- To ensure that vacancies in the medical sector are filled up as soon as possible;
- To at least double the number of nurses;
- To ensure professional training sessions and courses for the establishments' medical personnel in terms of continuous medical education;
- To elaborate a strategy for attracting providers of mental health-related services;
- To introduce periodic mental health screening in penitentiary establishments;
- Taking into account the specifics of penitentiary establishments, to determine by secondary legislation the composition of a psychiatric multi-group, duties of each member of the multi-group and the procedure for organising and providing psychiatric care;
- To ensure that a multidisciplinary group assesses the needs of those psychiatric patients that do not need in-patient treatment; based on identified needs, to develop individual biopsychosocial intervention plans and provide appropriate assistance;
- In 2021, for creating incentives for prisoners to be involved in various rehabilitation activities, to start working on introducing such a mechanism that will directly reflect on the reduction of unserved sentence or its commutation with a lesser sentence;
- In 2021, to allow prisoners in closed and special-risk prison facilities to spend more than one hour in the open air; to enable prisoners in establishments nos. 2 and 8 to have a stroll during the time determined by the daily schedule;
- The investigative agency of the Special Penitentiary Service should fully inspect the practice of placing juveniles in de-escalation rooms and safe cells in penitentiary establishment no. 8 and the practice of full-body search and related incidents in penitentiary establishments nos. 8 and 11 and notify the results of the inspection to the Public Defender of Georgia;
- To take all the measures to ensure that, instead of safe rooms, there are specially arranged calm rooms that are used as a last resort and the duration of their use should not be more than several hours. During this period, juveniles should enjoy adequate human contact and benefit from multidisciplinary work to calm them down, assess their risks and needs and plan activities necessary for correcting their behaviour;

- To ensure that juveniles are informed about their rights and responsibilities and the complaint mechanism in an understandable (simple) language; to increase the role of social workers in explaining in detail to juveniles their rights and responsibilities, the request/complaint and review procedures once they are admitted to the establishment; also within reasonable periods, work with prisoners either individually or in a group about their rights and obligations, filing a request/complaint and review procedures; among others, this information should be imparted to juveniles in brochures composed in an understandable (simple) language to be posted in places accessible for prisoners;
- To ensure the implementation of rehabilitation activities, tailored to the individual needs of juveniles;
- To build a wing for juvenile accused persons in juvenile rehabilitation establishment no. 11;
- To amend Article 4.1 of joint order no. 388–no.01-18/N of the Minister of Justice of Georgia and the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 6 March 2019 to the effect of providing juveniles with four healthy meals a day, one meal being a three-course dinner and to ensure that the menu for juveniles includes fresh vegetables and fruit;
- To ensure all non-Georgian speaking prisoners, if needs be, are provided with the services of an interpreter; among others, to ensure that they are provided with information in a language understandable to them about services and regulations in the establishment;
- To ensure training on professional burnout is provided for all personnel of the penitentiary establishments;
- To pay each staff member of penitentiary establishments for their overtime work;
- To enable each employee of penitentiary establishments to make full use of their leave;
- To provide staff staying around the clock in penitentiary establishments with appropriate technical arrangements so that they could maintain contact with their family members and relatives independently and without hindrance;
- In cooperation with the National Centre for Disease Control and Public Health, provide an assessment of infection spreading risks to establishments and needs assessment in terms of addressing these risks; furthermore, develop a plan for COVID-19 prevention and control in penitentiary establishments;
- To apply the mechanisms provided by the Criminal Code and the Criminal Procedure Code for persons with chronic diseases and the elderly who do not pose a real threat to public safety, to ensure the release of a convicted person due to old age; in those cases, where this is not possible, place prisoners that are at high-risk from an epidemiological point of view in safe conditions under special medical supervision;
- To conduct training sessions for penitentiary establishments' medical and non-medical staff on infection control (with special emphasis on COVID-19), including the use of PPE;
- All prisoners should be supplied with the necessary items of personal hygiene at the expense of the state and their use should be effectively supervised;

- To ensure that prisoners showing symptoms of respiratory diseases use masks in penitentiary establishments; to ensure that prisoners are informed on preventive measures against the spread of COVID-19 both by putting up information posters and by handing out leaflets and showing video clips to prisoners;
- To ensure periodic testing of prisoners for COVID-19;
- To ensure COVID-19 vaccination of prison staff and prisoners;
- Considering the current epidemiological situation in the country, by following all the measures of infection control, to ensure the resumption of specialised doctor visits to psychiatric establishments;
- Considering the current epidemiological situation in the country, by following all the measures of infection control, to ensure the resumption of scheduled medical referral system;
- In 2021, in the period of pandemic related special measures, to take additional measures to balance the restriction of prisoners' contact with the outside world;
- To ensure immediately the alternative possibility of rehabilitation activities in the conditions of pandemic related special measures in all penitentiary establishments; and
- To ensure that social workers and psychologists, with the maximum observance of infection control regulations, are admitted to penitentiary establishments so that they can, with the help/support of the establishment's respective units, implement new and diverse rehabilitation activities in all penitentiary establishments; and to increase the opportunities of involving prisoners in rehabilitation activities.

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

- To ensure the ministry develops and implements regulations on identifying, documenting and notifying independent investigative authorities about incidents involving the acts referred to in Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities (torture or cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse);
- To ensure the ministry develops and implements the strategy for preventing and responding to inter-patient conflicts, incorporating the duty to document the incidents of violence in a special logbook as well as the duty to provide relevant psychological assistance to victims of violence;
- To ensure the ministry develops and implements detailed instructions on staff relations with patients in psychiatric establishments, incorporating the standards of protecting patients' rights and providing adequate psychiatric care;
- To ensure that the staff of psychiatric establishments undergo training, covering minimum the following topics: multidisciplinary work, de-escalation technique, patients' rights and standards of professional conduct, recovery-based approach and modern psychiatry, with particular emphasis on ensuring that the staff understands the significance of biopsychosocial model of psychiatric care and develops the skill-set necessary for its practical implementation;

- To ensure the ministry, through monitoring conducted in psychiatric establishments, identifies and prevents incidents involving violence against patients by staff, including forcible administration of injections and medications against patients' will;
- To develop and introduce binding internal guidelines for psychiatric establishments on crisis prevention and management to minimise risks of escalating situations into crises so it was not necessary to resort to extreme measures in psychiatric establishments;
- To examine, through monitoring the psychiatric establishments, the legality and justification of restraint methods as well as the revision of the status of formally voluntary patients after the use of restraint methods;
- To update the instructions on the rules and procedures for the use of methods of physical restraint through consultation with the Public Defender's Office and organisations working on the rights of PWDs;
- To instruct the Regulatory Agency for Medical and Pharmaceutical Activities to examine the practice of administering antipsychotic medicines and managing their underlying side effects in psychiatric establishments;
- To study the needs in terms of providing psychosocial rehabilitation services in psychiatric establishments and to ensure the introduction of such services in mutual cooperation with psychiatric establishments;
- To amend the mental health programme to make the psychosocial rehabilitation component available to patients on short-term treatment as well;
- To examine the cases of involuntary hospitalisation of patients receiving formal voluntary psychiatric care and to take all necessary measures for immediate discharge of patients from the hospital concerning whom there is no legal basis for applying the procedure of involuntary psychiatric care;
- To develop and approve, by an order of the minister, a unified form of consent for placement in a psychiatric inpatient facility, providing complete, accurate and detailed information on psychiatric care and patients' rights in a comprehensible manner; furthermore, the order should determine the duty of a psychiatric establishment to provide a patient with a copy of the informed consent and information on to whom the patient should apply if he/she does not want to stay in the inpatient facility;
- To amend the minister's order¹⁵¹ to the effect of rendering it obligatory – at each stage of starting, continuing and changing a patient's course of treatment – to fill out the questionnaire (no. IV-300-12/A) approved by Order no. 108/N;
- To develop and approve, by an order of the minister, the duty of a psychiatric establishment to provide a patient with oral and written information about the establishment's regulations, patient rights and inpatient policies, upon his/her placement in an inpatient facility and, later, regularly

¹⁵¹ Order no. 87/N of the Minister of Labour, Health and Social Security of Georgia of 20 March 2007 on Approving the Procedure for Admission to Psychiatric In-Patient Facility.

in a language that the patient understands; to instruct a competent authority to examine whether patients are provided with information regularly and in a language understandable to them;

- To develop and approve by an order of the minister a mandatory external procedure for lodging applications/complaints in psychiatric establishments that are accessible, simple and confidential;
- To develop and approve by a ministerial order a mandatory internal procedure for lodging applications/complaints in psychiatric establishments that are accessible, simple and confidential;
- In 2020, to ensure retraining of those social workers employed in the psychiatric inpatient facilities of penitentiary establishments who do not have a bachelor's degree, master's degree /equivalent to a master's degree or doctorate in the field of social work;
- To ensure needs assessment of patients, placed in psychiatric clinics for more than 6 months, for discharging and referring them to community-based services;
- To study to what extent the infrastructure of psychiatric establishments is adapted to the persons with mobility and sensory disabilities;
- To study the issue of providing patients with a minimum living space in psychiatric establishments in accordance with the rules and conditions of issuing a licence for medical activities and a permit for an inpatient facility;
- To support the management of psychiatric inpatient facilities in arranging a minimum of two isolated wards with individual bathrooms in the establishment, where it would be possible to isolate the patient before the COVID-19 test results are ready;
- To examine the implementation by psychiatric establishments of the recommendations incorporated in the Mental Health and COVID-19 Clinical Practice Recommendation (Guideline); and
- To develop and approve, by an order of the minister, a unified standard of nutrition in psychiatric establishments, providing a healthy and balanced diet, the nutritional value corresponding to the age, health condition and cultural/religious characteristics of individuals, and the daily ration including fruit.

To the Minister of Internal Affairs of Georgia:

- To ensure in a pilot mode, in several police agencies audio and video recording of the process of notification of rights by police officers to arrested persons;
- By maintaining appropriate logbooks, to ensure proper documentation of the arrested persons' requests for family or lawyer notification;
- In 2021, to increase the number of those TDIs where a medical centre is functioning; to ensure that in those TDIs, where due to small number of arrested persons it is not planned to open a medical centre, physicians are contracted;
- To ensure for medical professionals, employed in TDIs, training sessions are conducted about instructions on photographing injuries found on arrested persons and storing the respective photographic material;

- To ensure that, in those TDIs where medical centres operate, the reports drawn up by the ambulance doctors are kept with the TDI doctors;
- In 2021, to equip gradually officers of territorial agencies and the Criminal Police with body cameras and to determine by secondary legislation their duty to record their communication with citizens as well as the procedure and terms of storing recordings;
- To determine by Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 on Approving Instructions on the Rules of Patrolling by the Office of the Patrol Police of the Ministry of Internal Affairs of Georgia the duty of video recording communications of patrolling inspectors with citizens. The duty of video recording should be introduced for the following instances: identifying a person; frisking and examining a person; carrying out special inspection and examination; restricting a person or a vehicle from moving or restricting actual possession of an item and arresting a person;
- To equip gradually police vehicles with an internal and external CCTV system;
- To determine by a normative act the duty of uninterrupted video recording of a person placed in a police vehicle with an internal and external CCTV system or, if there is no such system, with a body camera;
- To install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person willing to give a statement has to stay;
- To eliminate the practice of conducting interviews with arrested persons in the offices of a Chief of Police/Deputy Chief of Police and to ensure such meetings take place only in the areas that are equipped with a CCTV system;
- To ensure uninterrupted audio and video recording of questioning an arrested person in several police agencies in pilot mode;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add a column to the sample of a protocol approved by Annex 9 for entering the following information: the time of drawing the report; the decision on the injuries on an arrested person's body; the circumstances of the arrest; if there was resistance to police and if force was used in any manner;
- Through maintaining a register, to ensure documenting all persons brought to police departments, divisions and stations indicating their status, the time of entering and leaving administrative buildings;
- To introduce systematised, standardised and unified databases replacing logbooks maintained in police agencies;
- Before the introduction of the electronic databases to ensure police officers are given clear instructions regarding filling out logbooks and are provided with guidelines about maintaining the logbooks;
- To ensure meetings between persons placed in TDIs and investigators of the State Inspector's Service (among others, video meetings) are held in a confidential environment;

- To ensure that remote court hearings in TDIs are held in a confidential environment, in the absence of Ministry of Internal Affairs staff;
- To ensure elaboration of unified guidelines for medical personnel on managing withdrawal syndrome in TDIs. The guidelines should determine the volume of care to be provided in a TDI and clear instructions on under what circumstances an arrested person must be admitted to an inpatient facility; and
- To ensure the inspection of the TDIs and appropriate responses to the shortcomings concerning living conditions that were identified in the 2020 Report of the National Preventive Mechanism.

To the State Inspector:

- To ensure to a maximum extent face-to-face meetings with persons placed in TDIs.

To the Prosecutor General of Georgia:

- To conduct an effective investigation on criminal case no. 074220619801 and take steps towards the fulfilment of the Public Defender's proposals.

3. Right to liberty and security

3.1. Introduction

This chapter addresses challenges related to violation of the right to liberty and security of person during the reporting period. These are: restrictions imposed on the right to liberty and security of person on account of the pandemic in the country; arrests made in breach of legal requirements; legislative defects lingering for years unresolved; the way pretrial measures are applied; shortcomings in criminal trials on the charges of illegal crossing of Georgia's state border; defects revealed in investigative measures conducted in the case of Ivane Merabishvili; ineffective mechanisms of prisoner release and shortcomings while enforcing non-custodial punishments.

The right to liberty and security of person enshrined in Article 13 of the Georgian Constitution and Article 5 of the European Convention on Human Rights implies, among others, protection of a person's liberty and the requirement that a person can be imposed deprivation of liberty or other restrictions on their liberty only by a decision of a court of law.

Protection of the right to liberty and security of person became of special importance against the background of the pandemic. Individuals placed in quarantine/isolation were not provided with guarantees such as an effective legal remedy while quarantined; also, criteria for applying self-isolation as a lesser restrictive measure were not clear and predictable and there were shortcomings in the application of this measure in practice.

It must be pointed out that the Public Defender's recommendations to the Ministry of Internal Affairs contained in the right to liberty and security chapter of the PD's 2019 report to the Parliament remained unfulfilled up to the present day. There is no legal obligation for law enforcement officers carrying out a special police operation to wear body cams and the law does not determine the rules of using body cams in the process of such special operations.

3.2. Restrictions imposed on the right to liberty and security of person on account of the pandemic in the country

On 21 March 2020, emergency was declared effective in the entire territory of Georgia.¹⁵² Based on the presidential decree on emergency, on 23 March 2020, the Government of Georgia issued an Ordinance On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel

¹⁵² Decree no. 1 of the President of Georgia On Measures to be Implemented in connection with the Declaration of a State of Emergency.

Coronavirus (COVID-19) in Georgia.¹⁵³ The governmental ordinance introduced quarantine zones,¹⁵⁴ while rules and procedures for implementing quarantine measures to contain the novel coronavirus were determined by a ministerial order issued by the Minister for Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.¹⁵⁵ After the government-announced emergency was over, the same rules were incorporated into an Ordinance of the Government of Georgia no. 322 dated 23 May 2020 almost unchanged.¹⁵⁶

Quarantine areas

In response to the challenges engendered by the Covid-19 pandemic, the State undertook a number of measures for the protection of public health. One of such measures was the establishment of quarantine institutions.

The type of a quarantine measure when a person is committed to effective control by State representatives and the person has an obligation to stay in the quarantined area for a definite period of time without having the choice of leaving the area at his/her own will (if they do leave the area, they will incur sanctions) is considered a restriction of liberty, according to Article 13 of the Constitution of Georgia and Article 5 of the European Convention on Human Rights. It is important that persons committed to quarantine/isolation are provided with adequate protection guarantees.¹⁵⁷

Notably, as per the Public Defender's recommendation, interim amendments were made to the Law of Georgia on Public Health on 22 May 2020 determining, in its transitional provisions, that whenever a person is sent into isolation and/or quarantine he/she must be explained, in the manner understandable to him/her: the reason of their transfer into isolation and/or quarantine; their right to have a lawyer; their right to inform their relative or friend as well as the administration of their work place or education institution, if they so wish, of the fact that they have been sent into isolation and/or quarantine and their whereabouts.¹⁵⁸

¹⁵³ Ordinance of the Government of Georgia no.181 On the Approval of Measures to be implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia.

¹⁵⁴ Articles 6 and 8 of the original version of the "Ordinance of the Government of Georgia no. 181 dated 23 March 2020 On the Approval of Measures to be implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia.

¹⁵⁵ Ministerial order no. 01-31/N On Determining isolation and Quarantine Rules by the Minister for Internally Displaced Persons s from the Occupied Territories, Labour, Health and Social Protection remained in force until 21 May 2020 when the state of emergency expired.

¹⁵⁶ That ordinance was issued within the interim powers endowed on the Government under Article 45³(1) of the Law of Georgia on Public Health.

¹⁵⁷ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, 25 March 2020, par. 9; CPT, Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, CPT/Inf(2020)13, par. 4.

¹⁵⁸ Article 45³(1) of the Law of Georgia on Public Health.

In March-May 2020, the Public Defender studied situation in quarantine institutions from the perspective of human rights protection.¹⁵⁹ Our finding was that living conditions in quarantine areas were satisfying, for the most part. Quarantined individuals were provided with linen and items of personal hygiene. Only in a few cases did the respondents we interviewed raise claims in regard to living conditions. The Public Defender positively assesses the Interior Ministry's taking into consideration of our recommendation to develop a short guidance for the members of the Interior Ministry whose job envisaged interaction with individuals to be transported to or placed in quarantine areas. However, the Ministry did not take up our recommendation to make it mandatory for law enforcement members to wear body cams during involuntary enforcement of quarantine measures.

Monitoring conducted by the National Preventive Mechanism in quarantine areas revealed only a few cases¹⁶⁰ in which law enforcement officials exceeded their official capacity¹⁶¹ or rudely treated/talked to citizens.¹⁶² As for the treatment of somatic (physical) illnesses of individuals in quarantine areas, we note with satisfaction that these individuals were provided with access to a doctor. However, no one placed in quarantine areas had information about available medical services.

Self-isolation

Both self-isolation and quarantine are restrictive measures but self-isolation is less restrictive than quarantine. Before a person's liberty is restricted by placing them in quarantine, less severe measures capable of achieving the determined legitimate goal should be considered.¹⁶³ Neither during the emergency in the country nor after it was lifted did any detailed criteria exist in written form for sending people into self-isolation. As a consequence, opting for self-isolation was related to various practical obstacles even if the person met the requirements.

We welcome the fact that on 2 June 2020, the Georgian Government, through a governmental resolution, introduced more criteria for sending people into self-isolation.¹⁶⁴ In particular, the existing criteria were expanded to cover also medical necessities warranted by a person's health condition, disability, being under the age of majority and other special circumstances. This allowed a broader circle of individuals to opt for

¹⁵⁹ The Public Defender's National Preventive Mechanism, Report on the monitoring of places of liberty restriction imposed as part of anti-novel coronavirus (Covid-19) quarantine measures, Tbilisi, 2020.

¹⁶⁰ There were several instances of rude treatment by private persons and healthcare staff.

¹⁶¹ Two people out of 112 respondents interviewed.

¹⁶² Three people out of 112 respondents interviewed.

¹⁶³ ECtHR, *Enhorn v. Sweden*, judgment of 25 January 2005, application no. 56529/00, par. 44.

¹⁶⁴ Ordinance of the Government of Georgia N322 On the Approval of Isolation and Quarantine Rules, Article 11(7¹) and (7²).

self-isolation.¹⁶⁵ However, despite the legal development, there were cases in real life when requests for self-isolation got denied even though the applicants were eligible for self-isolation.¹⁶⁶

Challenging a decision committing a person to isolation or quarantine

Individuals placed in quarantine or isolation must be provided with due guarantees such as an effective legal remedy to promptly challenge a measure of quarantine that is restrictive of a person's liberty if the person disagrees with the decision committing them to quarantine or isolation. The Law of Georgia on Public Health¹⁶⁷ does not explicitly determine rules of appealing a quarantine or isolation decision; nor does it specify the form, the phase and the timeframe of serving the decision on the person.

The Public Defender is of the view that the legal remedy provided for in the Public Health Act is not an effective mechanism. Decisions are first appealed under the General Administrative Code to a superior administrative body¹⁶⁸ and only after the administrative remedy is exhausted, a judicial remedy can be employed. The whole process can last months.¹⁶⁹ Since the duration of quarantine is a matter of days, it is important that an appeal mechanism is capable of leading to a legal outcome in the shortest time possible, for it to be considered effective. If the restrictive measure a person has been committed to is found illegal or disproportionate by a competent body, the person subject to such a measure must be able to leave the quarantine area in as a short time as possible. Accordingly, the Public Defender made a proposal to the Parliament to enact a legislation establishing a time-effective appeal mechanism enabling a judicial review of the necessity and proportionality of a restrictive measure imposed.¹⁷⁰ Unfortunately, the Parliament did not take up the Public Defender's proposal.

¹⁶⁵ The Public Defender's National Preventive Mechanism, Report on the monitoring of places of liberty restriction imposed as part of anti-novel coronavirus (Covid-19) quarantine measures, Tbilisi, 2020, p. 14

¹⁶⁶ An example is the case of Ana Arganashvili, human rights defender, who was placed in a hotel in Tbilisi together with her underage child. Both the hotel room space and nutrition were insufficient for the child. Ana Arganashvili asked for the permission to go into self-isolation but her request stayed unanswered. She then challenged the authorities' neglect in the court. The City Court of Tbilisi seconded Ana Arganashvili's request to move herself and her family from quarantine into self-isolation. Apart from Ana Arganashvili's case, the Public Defender's Office was approached also by a citizen whose request for going into self-isolation was denied by the Public Law Entity "Emergency Service" on the ground that the citizen and his/her family members were not meeting the criteria for self-isolation. Finally, the person was placed in quarantine in Tbilisi where he/she stayed with his/her underage child and spouse. The applicant complained of inadequate conditions for the underage child while in quarantine.

¹⁶⁷ The Law of Georgia on Public Health Article 11(2)

¹⁶⁸ The General Administrative Code, Article 178(1)

¹⁶⁹ Under Article 183(1) of the General Administrative Code, an administrative body has 1 month for examining and deciding an administrative complaint. The timeframe for adjudicating an administrative case is governed by the Civil Procedure Code, which gives the judge 5 days for deciding on whether to accept a case for review (Article 445(3)). There is also a timeframe for a court to examine a case, which is 2 months (Article 59(1)).

¹⁷⁰ Public Defender's proposal concerning draft laws amending the Public Health Act and the Criminal Procedure Code, available at < <https://bit.ly/3sviR7L> > [last viewed 25.02.2021].

Restriction of movement

On 31 March 2020, strict quarantine measures were introduced in Georgia. These implied the Government imposing extremely stringent restrictions, including declaration of curfew for the period of the previously ordered national emergency.¹⁷¹ Movement of both individuals and vehicles at night between 21:00 and 06:00 hours, was banned.¹⁷²

Later, on 9 November 2020, movement was banned in big towns¹⁷³ from 22:00 till 05:00 hours.¹⁷⁴ By decision of the Interagency Council, since 28 November, the same restriction was extended across the entire country, between 21:00 and 05:00 hours this time.¹⁷⁵ The ban on movement of people and vehicles has been in force nationwide since then.¹⁷⁶

Although a number of restrictive measures were lifted in March 2021, the Georgian Government has not presented a concrete scientific method-based justification proving the necessity of keeping the movement ban. It is important that the Interagency Council give reasons and provide the public with detailed information on the impact the movement ban has on the containment of coronavirus.

It should be pointed out that the curfew imposed by Governmental resolution no. 322 dated 23 May 2020 approving isolation and quarantine rules was challenged in the Constitutional Court.¹⁷⁷ In addition to challenging the restriction's compliance with relevant formal requirements, the plaintiff argued that the prohibition ordered by the governmental resolution was not a proportionate restrictive measure. However, the Constitutional Court did not accept the lawsuit for review, for the reason that the impugned resolution was amended in the meanwhile. Normative acts imposing restrictions in connection with Covid-19 and the restrictive measures ordered by these acts have been changing quickly and frequently,¹⁷⁸ but the Constitutional Court as a body of constitutional oversight must offer insurance against the risk by protecting fundamental human rights promptly, especially when the matter of dispute is a temporary measure.

¹⁷¹ Ordinance of the Government of Georgia no. 204 dated 30 March 2020 that amends an Ordinance of the Government no. 181 dated 23 March 2020 On the Approval of Measures to be implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia.

¹⁷² Ordinance of the Government of Georgia no.181 On the Approval of Measures to be implemented in connection with the Prevention of the Spread of the Novel Coronavirus (COVID-19) in Georgia, Article 2(9).

¹⁷³ Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Poti, Zugdidi.

¹⁷⁴ Governmental ordinance no. 670 dated 9 November 2020 that amends a Governmental ordinance no. 322 dated 23 May 2020 On the Approval of Isolation and Quarantine.Rules.

¹⁷⁵ Governmental ordinance no. 699 dated 26 November 2020 that amends a Governmental ordinance no. 322 dated 23 May 2020 On the Approval of Isolation and Quarantine Rules.

¹⁷⁶ The Government lifted the curfew only on the nights of the New Year and Christmas as a matter of exception. See Government ordinance no. 812 dated 30 December 2020.

¹⁷⁷ Lawsuit no. 1548, *Givi Liluashvili and Tornike Artkmeladze v. the Government of Georgia*

¹⁷⁸ By 9 March 2021, ninety-five changes have been made in the Governmental ordinance no. 322 dated 23 May 2020 On the Approval of Isolation and Quarantine Rules.

It is for this reason that we hold a negative view of the fact that the Constitutional Court failed to timely examine constitutionality of the curfew imposed,¹⁷⁹ especially against the background that the Court would not be hindered by the Covid-19 pandemic as it could opt for distant proceedings.

3.3. Arrests in breach of the requirements of law

In the reporting period, the Public Defender revealed arrests of witnesses in breach on the established legal requirements.

On 27 March 2020, the Public Defender sent the Prosecutor-General a proposal to launch investigation into the potentially illegal arrest of, and other violations against, three individuals. According to the case materials, three individuals were apprehended as witnesses and forced to appear in a police station. They were kept at the police station for 12 hours but their family members did not know their whereabouts during this period. They also did not have a lawyer. Based on the Public Defender's proposal, investigation was opened into the allegation of deliberately illegal arrest and coercion to testify.¹⁸⁰

A similar occurrence took place in August and November 2020 when police officers had involuntarily detained individuals they were referring to as witnesses for several hours. In both cases, the Public Defender requested the Interior Ministry's "112" emergency service to share video footages that could corroborate the fact of deliberate illegal arrest of the individuals. However, we were informed in response that the requested information was not stored on the hard drive of the recording device.¹⁸¹

3.4. Flaws in the law

The judgment of the Constitutional Court as of 29 December 2020 was a positive development in the reporting period.¹⁸² Once it enters into force on 1 June 2021, the judgment will invalidate¹⁸³ a provision that allows for a person detained in non-working hours to be kept in a pretrial detention facility until a competent body hears their case. An overall detention term of the person in this case must not exceed 48 hours.¹⁸⁴ The Constitutional Court opined that the impugned provision established unequal treatment of essentially equal persons.

¹⁷⁹ The Constitutional Court, namely its 1st Panel, held its pretrial conference in the case 3 months beyond the legal deadline, on 12 February 2021.

¹⁸⁰ Public Defender's Office, of Criminal Justice, 2020 Activity Report, Tbilisi, 2020, Right to Liberty and Security Chapter.

¹⁸¹ Public Defender's Office, Department of Criminal Justice, 2020 Activity Report, Tbilisi, 2020.

¹⁸² The Constitutional Court of Georgia, *Irakli Jugeli v. the Parliament of Georgia*, judgment no. 32/4/1412 as of 29 December 2020.

¹⁸³ Inasmuch as implementation of the judgment calls for enactment of legal amendments, the Constitutional Court postponed its enforcement till 1 June 2021.

¹⁸⁴ Code of Administrative Offenses, Article 247(2).

In her 2019 report to the Parliament, the Public Defender also emphasized other shortcomings in the legislation that have been lingering up to the present day. Many of these shortcomings can only be corrected by means of legal amendments. One of such issues is the jurisdiction of looking into the legality of administrative detention.¹⁸⁵

More specifically, when a person challenges their administrative detention before a judge hearing his/her administrative offense case, the judge never inquires into the legality of the administrative detention and will only discuss this issue within another, separate legal proceeding. The Public Defender's position is that legality of administrative detention must be dealt with within the same legal proceeding in which the alleged perpetration of an administrative offense is heard – the same way as this happens in the context of criminal proceedings.¹⁸⁶

In addition to that, the Public Defender considers how police uses the method of “keeping people away from an area” in practice, and the way this is regulated at the policy level, problematic. The method is about a police officer ordering people to leave a certain place for a definite time or prohibiting them to enter a certain territory. Legally, there are no written rules for the police in which they are supposed to use this method in practice.¹⁸⁷ This allows police officers a too broad margin of action. In order for law enforcement officers' interference in the right to liberty to be foreseeable, the “keeping away” method needs to be regulated through a normative act.

3.5. Use of preventative measures pending trial

The practice of using preventative measures pending trial remained unchanged, as in the previous years. According to the statistical data published on the webpage of the Georgian Supreme Court, types of preventative measures and their usage rates in 2020 and in 2019 were similar. Analysis of the statistical data shows that detention and bail were the most frequently used preventative measures imposed on defendants in criminal trials. Other types of measures, as in the previous years, were rarely used.

According to statistical data published on the webpage of the Supreme Court, **in 2020, preventative measures pending trial were used 9,491 times in total.**¹⁸⁸ Of this figure, pretrial detentions account for 47.1%

¹⁸⁵ This viewpoint is also shared by the Coalition for Independent and Transparent Justice, see the Coalition's letter to the United Nations Special Rapporteur, available at <<http://bit.ly/38p6aAU>> [last viewed 04.03.2020].

¹⁸⁶ Criminal Procedure Code, Article 176(1)(e); Article 197(1)(g). See Commentary to the Criminal Procedure Code, p. 505, available at <<http://bit.ly/2TMCU2R>> [last viewed 13.03.2020].

¹⁸⁷ Pursuant to Article 25, Police Law, “a police officer is authorized to require a person to leave a definite place for some period of time and forbid their entrance into the territory if this is necessary to prevent a threat. A restriction thus imposed may be extended until the threat is eliminated.” Although official information we received suggests that it is not a usual thing for the police to refer to this provision, in some cases there may be grounds for using the measure described. In any case, we believe it is necessary to regulate the matter in detail through a normative act, which should also provide grounds for applying this measure by the police, and procedures to be followed.

¹⁸⁸ Statistical data as presented on the webpage of the Georgian Supreme Court, available at <https://bit.ly/2ZScq2g>> [last viewed 19.03.2021].

(4,471 times). Percentage figures from the year of 2019 were similar: out of a total of 11,031 preventative measures used by courts, detention pending trial was used in 5,205 cases, which equals 47,2%.¹⁸⁹

In regard to non-custodial pretrial measures, the rate of using bail in 2020 has been nearly identical to the figure in 2019. **By the 2020 data, bail was used in 96,7% of cases in which non-custodial measures were employed.** This figure is slightly greater than the one in 2019 when the share of bails in the total number of non-custodial measures used was 96,3%.

3.6. The case concerning Ivane Merabishvili

Through its reports to the Parliament, the Public Defender has been reporting to the public on the enforcement of a judgment rendered by the European Court of Human Rights in the case of Ivane Merabishvili¹⁹⁰ over the past years. The reports discuss flaws in the investigative actions carried out within the investigation reopened into the case of Ivane Merabishvili on 12 July 2018 on the basis of the European Court judgment.¹⁹¹

In 2020, the Public Defender's Office continued getting acquainted with the materials of the renewed investigation into the potential abuse of official capacity (removal of Ivane Merabishvili from his prison cell). Having viewed and analyzed the investigation case file, we discovered a series of critical flaws in the new investigation. On 15 September 2020, after a 4-year interruption, K.T., a key witness, was interrogated again. When he testified in 2016, K.T. described how he saw, on 14 December 2013, from a peepole in the cell, Ivane Merabishvili and prison director walking down in front of his cell (presumably together with some other individuals). An investigative experiment to check the veracity of K.T.'s testimony conducted on 17 December 2020 corroborated that the witness would truly be able to discern the characteristics of individuals from his cell. Within the experiment, an individual who was completely unknown to K.T., was told to walk down the corridor past the cell of K.T. Afterwards, K.T. correctly described details of the experimenting stranger's appearance and attire. Although the witness did not identify the person who passed through the corridor, he did say the person was unknown to him and this is why he found it hard to identify him. However, the witness said, he knew both then-director of prison and Ivane Merabishvili and identifying these individuals within a similar experiment would not be a difficult task for him. The experiment also served as an additional proof of credibility of Ivane Merabishvili's alleged removal from the prison.

In the reporting period, the Public Defender sent two communications to the Council of Europe Committee of Ministers concerning the enforcement of the judgment of the European Court of Human Rights in *Merabishvili v. Georgia*. The Public Defender presented its assessment of the individual and general measures

¹⁸⁹ *Ibid.*

¹⁹⁰ ECtHR, Grand Chamber, *Merabishvili v. Georgia*, judgment of 28 November 2017

¹⁹¹ The Public Defender, 2019 report to the Parliament of Georgia, Tbilisi 2020, pp. 134-135; The Public Defender, 2018 Report to the Parliament of Georgia, Tbilisi, 2019, pp. 89-90.

carried out by the Georgian Government.¹⁹² It is notable that the Committee of Ministers subscribed to the Georgian Public Defender's assessment in its March 2021 decision.¹⁹³ In respect of individual measures, the Committee opined that questions remained as to effectiveness and independence of the investigation.

3.7 Restriction of Giorgi Ugulava's right to free movement

On 23 January 2021, Citizen Giorgi Ugulava was prevented from crossing the Georgian state border at the Tbilisi International Airport.¹⁹⁴ As we studied the matter, we found out that the Interior Ministry had not yet received a Tbilisi City Court's decision of 9 March 2020, which lifted Giorgi Ugulava's previously imposed duty of surrendering his passport and personal identification document.

It is inferred from a letter from the City Court of Tbilisi that the criminal case file does not contain any document confirming that the court decision was delivered to the Interior Ministry. According to the information received from the Interior Ministry, the Ministry was informed by the prosecution office on 23 January 2021. The Tbilisi City Court's failure to fulfill its obligation under law¹⁹⁵ by not sending its decision to the Interior Ministry on time (the delay lasted for about 9 months) resulted in violation of Giorgi Ugulava's right to movement.

3.8 Flaws in using extradition detention

In the context of extradition, we wish to mention the case of Mindia Lavasogli who had been sentenced to imprisonment *in absentia*. Since 2018, he was detained pending extradition in Turkey but his extradition to Georgia was being delayed for unknown reasons. Worth pointing out is that the Turkish President signed all the papers required for Lavasogli's extradition to Georgia. Finally, the deadline for keeping Lavasogli in extradition detention expired and in 2020 he was expelled to the Republic of Belarus. At the request of the Georgian prosecution office, he was arrested in Belarus again. As his lawyer reported publicly, Lavasogli's extradition detention timeframe expired in Belarus too and in January 2021 he was

¹⁹² Communication as of 11 August 2020, available at < <https://bit.ly/3qRtJf2> > [last viewed 30.03.2021]; Communication as of 1 February 2021, available at < <https://bit.ly/3twFKs6> > [last viewed 18.03.2021].

¹⁹³ The Committee of Ministers of the Council of Europe, decision of March 9-11, available at < <https://bit.ly/3ty3lB5> > [last viewed 18.03.2021].

¹⁹⁴ Public Defender's Office, Department of Criminal Justice, 2020 Activity Report, Tbilisi, 2020, Right to Liberty and Security Chapter.

¹⁹⁵ Article 206(7) of the Criminal Procedure Code stipulates that "one copy of a judicial decision imposing, altering or cancelling a preventative measure pending trial remains with the court, while other copies must be handed over to the defendant or their lawyer, the investigator, the prosecutor and the institution responsible for enforcing the preventative measure, one for each."

expelled to Ukraine this time. According to the latest information received from the Georgian prosecution office, Lavasogli's whereabouts is currently unknown.¹⁹⁶

We call on the State to take all measures as may be necessary for Mindia Lavasogli's extradition procedures to be carried out without keeping him in detention pending extradition for unreasonable time and/or without violating his rights as a result of detention conditions.¹⁹⁷

3.9 Mechanisms for release from detention

During 2020, as in the previous years, the actual practice of releasing convicted prisoners on parole and substitution of the unserved part of the sentence with a less severe punishment remained problematic. Legislation governing these issues was challenging too. In order to produce a qualitative assessment of the parole mechanism, in May 2020, the Public Defender's Office requested and received 1,001 decisions by local councils concerning prisoner parole and replacement of the unserved part of imprisonment with a less severe type of punishment.

Our analysis of the local councils' decisions¹⁹⁸ showed that the local councils are not giving reasons for their decisions and are not invoking concrete arguments to justify why they value one criterion over another. Decisions made by the local councils are identical to each other containing a formalistic reference to criteria relied on by the relevant council in making its negative decision.¹⁹⁹

Inconsistent decisions made by the local councils in similar cases are another considerable shortcoming.²⁰⁰

In 2019, the Public Defender welcomed the inclusion into the Strategy for the Development of Penitentiary and Crime Prevention Systems and a Corresponding Action Plan for 2019-2020²⁰¹ of issues related to improvement of parole methodology and elaboration of a novel evaluation system and parole procedures. However, the envisaged reform has not been carried out this far. The only thing the Ministry did in this direction is that it adopted an interim procedure in connection with the pandemic, which simplified and accelerated legal procedures for releasing eligible inmates on parole.²⁰² But, even though the interim procedure started to apply in practice, statistical figures on the use of the parole mechanism

¹⁹⁶ Letter from the Prosecutor-General's Office no. 13/3711 dated 21 January 2021.

¹⁹⁷ Public Defender's Office Department of Criminal Justice, 2020 Activity Report, Tbilisi, 2020

¹⁹⁸ Initially called local councils under the Ministry for Prisons, Probation and Legal Aid, they have transformed into local councils of the Special Penitentiary Service under the Ministry of Justice.

¹⁹⁹ Public Defender, Special Report, "The practice of parole and replacement of the unserved part of a sentence with a less severe punishment in Georgia"

²⁰⁰ For detailed analysis, see Public Defender's Office, Department of Criminal Justice, 2020 Activity Report, Tbilisi.

²⁰¹ Order of the Minister of Justice no. 385 dated 22 February 2019 approving a Strategy for the Development of Penitentiary and Crime Prevention Systems and a Corresponding Action Plan for 2019-2020.

²⁰² Order of the Minister of Justice no. 508 dated 27 March 2020 and no. 672 dated 20 January 2021.

have not improved. On the contrary, the number of inmates released on parole dwindled compared to 2019; in particular, while 1,279 convicts were released in 2019, this figure was only 830 in 2020.²⁰³

For all the above-referenced reasons, the Public Defender considers it necessary to improve the legal framework so that the parole process and replacement of the unserved part of the a sentence with a less serious punishment uses more criteria and factors, including the convicted individual's future plans, perspectives, opportunities and other relevant issues.²⁰⁴ Another important aspect is to make sure that a negative decision denying parole is not primarily based on the mere nature and seriousness of the crime an individual is convicted of, especially if the prisoner has demonstrated positive behavior while serving their sentence.

Apart from that, in 2020, like in 2019,²⁰⁵ the Public Defender's Office discovered in a number of parole cases that the penitentiary service has been incorrectly counting timeframes for eligibility for parole and sending prisoner information to the parole board tardily – a practice that breaches prisoners' rights.²⁰⁶

Also noteworthy is that life prisoners can apply to the parole board for conditional release only after they have served actual 20 years of their prison sentence. They can ask for substitution of life imprisonment with community service or house arrest after they have served 15 years of their life sentence.

Another mechanism for obtaining release from serving a sentence, reducing a sentence or having a sentence replaced with a less severe punishment is pardon – a right that is vested in and can be exercised exclusively by the President in accordance with the Constitution. On 26 November 2019, President approved new pardoning rules by its Decree no. 556. According to the new rules, a life prisoner must now spend 20 years instead of 15 years in the prison to become eligible for presidential pardon.

The Public Defender is of the view that, for prisoners serving life sentence, it is important that both the requirement of the length of sentence served for applying to a court for parole and the duration of the length of sentence served for applying for presidential pardon be reduced. In developed European countries, it is considered a good practice if prisoners sentenced for life can apply for parole after serving 15 years of their prison sentence.²⁰⁷ As we said earlier, life prisoners become eligible for applying to the court for parole only after they have done 20 years in prison. Furthermore, according to the new pardon

²⁰³ However, we should point out that the practice of replacing the unserved part of a sentence with a less severe sentence has improved. In 2019, this mechanism was applied to 236 convicts, while in 2020 (by December 24, inclusive), 545 convicts benefited from this opportunity. The figures are based on the National Statistics Service data.

²⁰⁴ Public Defender, Special Report, The Practice of Parole and Replacement of the Unserved Part of a Sentence with a Less Severe Punishment in Georgia, available at <<http://bit.ly/37NBXy5>> [last viewed 24.02.2021].

²⁰⁵ See Public Defender's Office, Department of Criminal Justice., 2019 Activity Report, Tbilisi, 2020, p. 6.

²⁰⁶ See, example, a proposal by Public Defender on the Use of the Parole Mechanism by Convicted Prisoners within the Legally Established Timeframe, available at <<https://bit.ly/3razrtg>> [last viewed 18.03.2021].; see also a proposal by the Public Defender on the correct way of calculating a legal timeframe for convicted prisoners to apply for parole, available at <<https://bit.ly/3e0E85a>> [last viewed 18.03.2021].

²⁰⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Situation of life-sentenced prisoners, Extract from the 25th General Report of the CPT* [CPT/Inf (2016) 10], April 2016, available at <<https://bit.ly/3mcMUjD>> [last viewed: 11.01.21].

rules approved on 26 November 2019, 20 years of prison time is now required for also a life convict to apply for presidential pardon the first time.

The Public Defender believes that there should be diverse parole and sentence reduction mechanisms in the country so as to create additional opportunities for the release of prisoners, while the existing mechanisms should be made better and be used correctly, i.e. differently from how they are used now. Also, against the background that the existing criminal policy in the country does not in general favor application of non-custodial measures and that the parole system works with notable defects, the presidential pardon mechanism becomes of special importance. Consequently, the requirement for life-sentenced prisoners to serve 20 years in order to become eligible for presidential pardon should be reduced back to 15 years again – like it was the case before 26 November 2019.

In addition, as in 2019,²⁰⁸ examination of a number of cases in 2020 led the Public Defender's Office to concluding that the penitentiary service has been incorrectly calculating parole application timeframes and has been tardy in forwarding convicted prisoners' information/documentation to the parole board – a practice that violates prisoners' rights.²⁰⁹

3.10 Defects in enforcing non-custodial punishments

In the reporting period we observed defects in the way non-custodial sentences are enforced. The Public Defender's Office examined a case in which the Tbilisi City Court imposed an additional obligation on a person while he/she was under house arrest. We believe this practice is highly detrimental to not only that particular individual but to the legal situation of other convicts who are on the list of the probation bureau.

In the above-referenced case, the unserved part of the convicted person's sentence was replaced with house arrest. He/she was ordered to stay home every day between 21:00 till 08:00 hours. According to an oral agreement with the probation bureau, for the purposes of reintegration into the society and rehabilitation, he/she had the right to leave his/her place of residence for work. According to the oral agreement, he/she had two duties to fulfill: inform the probation officer before leaving home and provide the probation bureau with documents proving that he had been working while being out. The convict was performing his/her obligations under the agreement and the probation bureau was deeming his/her presence away from home excusable. Another time when the convict informed the probation officer orally and left home during night hours for work was, for some reason, considered by the probation bureau

²⁰⁸ Public Defender's Office, Department of Criminal Justice, 2019 Activity Report, Tbilisi, 2020, p. 6

²⁰⁹ For example, see a proposal by Public Defender on the use of the parole mechanism by convicted prisoners within the legally established timeframe, available at <<https://bit.ly/3razrtg>> [last viewed 18.03.2021]; see also a proposal by the Public Defender on the correct way of calculating a legal timeframe for convicted prisoners to apply for parole, available at <<https://bit.ly/3e0E85a>> [last viewed 18.03.2021].

non-excusable. The Tbilisi City Court partially seconded the National Probation Bureau's request to increase the duration of the convict's daily stay-at-home time.

The Public Defender lodged its *amicus curiae* brief with the Tbilisi Court of Appeal in regard to this case,²¹⁰ in which she opined that both the Probation Agency and the City Court disregarded the legal trust the convict had in the administrative body. He/she relied on an entitling individual administrative act issued by the administrative body (Probation Agency) in an oral form, which allowed him/her to leave his/her place of residence. The legal trust he/she had in the administrative body would expunge only if he/she breached his/her duties.

Unfortunately, the above-described dangerous and wrong practice of dealing with parolees was not remedied in the Tbilisi Court of Appeals. The convict was amnestied and he/she refused to continue the proceedings in the end.

Proposals

To the Parliament:

- Amend the Code of Administrative Offenses making it a duty for judicial officers presiding over an administrative offense case to also examine the legality of administrative detention of the alleged perpetrator;
- Amend the Public Health Act to introduce a prompt and effective legal remedy for challenging quarantine decisions in a higher administrative body or directly in the court by offering an alternative appeal mechanism; duration of examining and deciding an appeal not to exceed 72 hours;
- Amend the Criminal Code and the Criminal Procedure Code with the effect of reducing the number of years a lifer prisoner is required to serve before applying to court for parole by several years.

To the President:

- Amend the presidential decree no. 556 dated 26 November 2019 approving pardon rules to make life prisoners eligible for presidential pardon after they serve 15 years of their prison sentence.

²¹⁰ The Public Defender's *amicus curiae* brief to the President of Tbilisi Court of Appeals, no. 15-10/1451.

Recommendations

To the Minister of Internal Affairs

- In 2021, make it a legal obligation for law enforcement officers carrying out special police operations to wear body cams and determine rules of using body cams during those operations;
- Equip law enforcement officers involved in special police operations with body cams in 2021.

4. Right to a Fair Trial

4.1. Introduction

Various events and incidents that occurred during 2020 have brought to light problems the judiciary is grappling with. Some of these issues require legislative and institutional changes.

Access to fair trial is a fundamental right of its own but it is also a mechanism for the enjoyment of other rights. Forming a fair court system has been a major challenge the Georgian State has been facing for years. Independent and effective operation of the judiciary is key to improving protection of human rights in the country – and this makes the right to a fair trial an object of Public Defender’s special focus.

In her 2019 report to the Parliament, the Public Defender issued 6 proposals and 2 recommendations in regard to the right to a fair trial. As in the previous years, fulfillment rate of our recommendation remains unsatisfactory. Of the 8 proposals/recommendations, State authorities fulfilled only one.

The Public Defender welcomes the insertion of an amendment in the Law of Georgia on Legal Aid in 2020, which ensures legal aid also to child witnesses.²¹¹ But regrettably, the Georgian Government did not take any effective steps to train psychologists in juvenile justice and to introduce a respective quality assurance system.

In addition to the above-mentioned recommendations and proposals, the Georgian Government also did not take into consideration important proposals aimed at implementing a judgment of the European Court of Human Rights and failed to enact legal amendments aimed at prevention of crime provocation. Up to the present day, the Criminal Procedure Code does not clearly stipulate that a judgment must not be based on evidence examined by another judge; nor does the Criminal Procedure Code release destitute prisoners from the duty of paying the court fee.

This chapter especially emphasizes institutional challenges in the judiciary. These are issues related to judicial appointments, the electronic case allocation software, judicial discipline, etc. The right to a fair trial was badly affected by the Covid pandemic too. In the chapter, we discuss pandemic-engendered new regulations that had an impact on the judiciary system and the rights of court users. As in the previous years, there were problems with delivering prompt and effective justice. Even though judicial vacancies in the Supreme Court were filled, problems related to prompt administration of justice at the cassation level actually increased.²¹²

²¹¹ The Law of Georgia on Legal Aid, Article 4¹

²¹² For further details, see Public Defender’s Office, Department of Criminal Justice, 2020 Activity Report, Tbilisi, 2020, The Right to a Fair Trial Chapter.

During 2020, the European Court of Human Rights handed down 3 judgments against Georgia involving the right to a fair trial.²¹³ In two of the three cases, the Court found violation of Article 6 of the Convention.

In the course of 2020, the Public Defender received 262 applications regarding problems with administration of justice. 199 of these applications concerned shortcomings during judicial proceedings, while 143 related to the criminal investigation phase.

4.2. Institutional problems in the judiciary

Forming the judiciary and ensuring its institutionally sound operation is a key prerequisite for the development of a rule of law State. An independent and institutionally sound court system ensures an irreversible development of a democratic country bound with human rights and freedoms. As it is stated in the jurisprudence of the Constitutional Court of Georgia the constitutional right to a fair trial does not apply *in abstracto*; it applies within institutionally established frames²¹⁴ and is closely intertwined with human rights.²¹⁵

A major challenge the judiciary is facing in Georgia is lack of independence and public confidence. Flawed rules and procedures for the selection and appointment of judges to the Supreme Court, lingering for years, led to complete loss of public confidence in the judiciary. The way the judicial selection process was handled in 2019 and 2020 well demonstrated the shortcomings professional groups have been emphasizing for many years already.²¹⁶ The public well saw how some candidates clearly lacked competence and there were questions about their integrity because of their past but, nevertheless, they were appointed judges. The whole process was a proof of that decisions were not made on the basis of constitutional criteria but were guided by some other interests or arrangements.

The High Council of Justice, which is a collegiate body responsible for court management, makes decisions (including on judicial nominations) by some informally pre-agreed, pre-coordinated rules, which completely undermines the entire reason of having a collegiate body making decisions based on pluralism, discussion and consensus/agreement. This fact coupled with unsatisfactory quality of the

²¹³ ECtHR, *Lobzhanidze and Peradze v. Georgia*, judgment of 7 September 2020, applications nos. 21447/11 and 35839/11; ECtHR, *Qadagishvili v. Georgia*, judgment of 14 August 2020, application no. 12391/06; ECtHR, *Bokhonko v. Georgia*, judgment of 22 October 2020, application no. 6739/11.

²¹⁴ The Constitutional Court of Georgia, *A Group of Georgian MPs (Davit Bakradze, Sergo Ratiani, Roland Akhalaia, Levan Bezhashvili and others – a total of 38 MPs) and Georgian Citizens Erasti Jakobia and Karine Shakhparoniani v. the Parliament of Georgia*, judgment no. 3/5/768,769,790,792 as of 29 December 2016, II par. 68.

²¹⁵ The Constitutional Court of Georgia, *Georgian Citizens Giorgi Kipiani and Avtandil Ungiadze v. the Parliament of Georgia*, judgement no. 1/3/421,422 as of 10 November 2009, II, par. 1.

²¹⁶ OSCE/ODIHR, Report on the monitoring of selection of judicial candidates to the Supreme Court by the High Council of Justice, available at <<https://bit.ly/3cvbyXc>> [last viewed 25.03.21]. (2) OSCE/ODIHR, Second report on the nomination and appointment of Supreme Court judges in Georgia, available at <<https://bit.ly/3rTvmDK>> [last viewed 25.03.2021].

reasoning of judicial decisions by courts and as obscure process as it could be results in the judiciary system not meeting even minimum requirements of transparency.

Against the background of above-described factors and circumstances it becomes obvious that the judicial branch of power is governed by a few influential groups controlling the judicial system through the High Council of Justice and court presidents. Healing the judiciary calls for maximum openness, accountability before the public, decentralization to the greatest possible extent, enhancement of the independence of judges at the individual level and making sure that judicial selection is based on candidates' merits and experience.

This sub-chapter discusses institutional challenges within the court system detected in 2020 that do a bad job for the purposes of human rights protection.

4.2.1. Appointment of judges to the Supreme Court

The making good the judicial system institutionally and judicial appointments are tightly linked with the quality of human rights protection. A proof to this is a judgment of the Grand Chamber of the European Court of Human Rights in *Guðmundur Andri Ástráðsson v. Iceland* as of 1 December 2020. In view of critical violations detected in the process of appointment of the Georgian Supreme Court judges and similarities to the facts of the *Guðmundur* case, the Georgian Public Defender submitted its opinion to the European Court that the Court might find useful to considering during its standard-setting process. We are happy to note that the European Court's Grand Chamber did heed a considerable part of our propositions in its judgment.

The European Court of Human Rights has paid special attention to the impact of procedural violations in the process of judicial appointments upon the right to a fair trial. The Court opined that a procedural breach of a nature is capable of having a considerable impact in the future upon any party's right to a fair trial would be contrary to the Convention. As an example of this situation, the judgment refers to an appointment to a judicial position of an individual who fails to meet legally established qualification criteria. According to the European Court, public confidence in the judicial system and independence of the judiciary are fundamental principles implied by the right to a fair trial under the Convention.

Through 2019-2020, the process of selection and appointment of judicial candidates to the Georgian Supreme Court was saturated with significant procedural violations incompatible with both the European Convention and the domestic law, which are capable of compromising parties' right to a fair trial in the future. The standard set by the Grand Chamber of the European Court creates a realistic basis for lodging complaints with the European Court of Human Rights in regard to judicial decisions rendered by those judges of the Georgian Supreme Court whose appointment process went on with considerable violations.

Public Defender-authored lawsuits addressed submitted to the Constitutional Court and the procedure for appointment of Constitutional Court judges

Issues related to appointment of judges to the Supreme Court continued to be on the agenda in 2020. Back in 2019, the Public Defender monitored the High Council of Justice-led process for the selection of candidates to fill 20 judicial vacancies in the Supreme Court of Georgia.²¹⁷

The magnitude of shortcomings and inconsistencies in the High Council of Justice-led process obviated weaknesses in the governing legal framework.²¹⁸ Public Defender's monitoring found that the Justice Council failed to ascertain, to a credible extent, judicial candidates' compliance with the established educational requirements. It did not determine rules capable of ensuring selection of judicial candidates by their competency and integrity. The selection rules were not good to avoid the risk of arbitrariness, since the secret ballot procedure established by the law does not obligate the High Council of Justice to give reasons for its decisions; i.e., to explain why it decided to prefer one candidate over another.

Because the legal framework did not ensure selection of judges to the Supreme Court by constitutionally established standards and did not result in selecting candidates best meeting the integrity and competence criteria, the Public Defender initiated a legal proceeding before the Constitutional Court on 1 November 2019 to have the candidate nomination rules by the High Council of Justice declared unconstitutional.

Our constitutional lawsuit was assigned to the Plenary Session of the Constitutional Court for review.²¹⁹ The Plenary Session consisted of 9 judges at that time but because two of the judges participated in the contest for the selection of Supreme Court judges, they recused themselves.²²⁰ Thus the Plenary Session continued the proceeding with 7 judges on the bench.

On 17 December 2019, when the Parliament had already appointed 14 judges to the Supreme Court, the Constitutional Court declared the main part of the lawsuit admissible.

By decision of the High Council of Justice, a new procedure of candidate selection to fill two judicial vacancies in the Supreme Court started on 17 March 2020. Shortly after the new selection process was

²¹⁷ On 8 October 2019, the Public Defender published a special report on the monitoring of selection of judicial candidates to the Supreme Court by the High Council of Justice, available at < <https://bit.ly/3cvbyXc> > [last viewed 17.03.2021]

²¹⁸ OSCE/ODIHR, Report on the nomination and appointment of Supreme Court judges in Georgia (phase one), available at: < <https://bit.ly/38FW9SU> > [last viewed 16.03.2021]; OSCE/ODIHR, Second report on the nomination and appointment of Supreme Court judges in Georgia, available: < <https://bit.ly/3rTvmrk> > [last viewed 16.03.2021].

²¹⁹ Through our lawsuit, we were asking invalidation, for the reason of their inconsistency with the Constitution, of the following provisions of the Organic Law on General Courts: several words in first sentence of Article 341(7); second, eighth, ninth and tenth sentences of Article 341(7); first, second and third sentences of Article 341(12); first and second sentences of Article 341(13).

²²⁰ On 27 November 2019, Zaza Tavadze and Maia Kopaleishvili, constitutional judges, moved before the Plenary Session of the Constitutional Court for a permission to step down from hearing a constitutional lawsuit no. 1459. The same day, the Plenary Session of the Court seconded the motion by its decision no. 3/1/1459.

launched, on 20 March, the Public Defender lodged a motion with the Constitutional Court asking for temporary suspension of a number of legal provisions. It also filed a constitutional lawsuit for declaring other provisions unconstitutional.²²¹

Since 5 December 2019, a judicial position had been vacant in the Constitutional Court, which the Plenary Session of the Supreme Court had the prerogative to fill. The Supreme Court's Plenary Session was authorized to fill the vacancy between 5 November and 15 December but it did not use this power either during the indicated period or for several months thereafter. Only after the Public Defender lodged a motion with the Constitutional Court on 20 March requesting suspension of the disputed provisions did the Supreme Court appoint a judge to the Constitutional Court in an accelerated mode.

On 3 April 2020, the Plenary Session of the Supreme Court appointed Khvicha Kikilashvili a judge of the Constitutional Court. It took the Supreme Court's Plenary Session only 15 minutes to discuss the matter and make this appointment. In justification of his meeting of high and extraordinary professionalism criterion, the Plenary Session stated that Khvicha Kikilashvili had been performing his judicial duties in general courts for years "without noise".²²² Worth noting is that the meeting of the Supreme Court's Plenary Session convened for electing a judge to the Constitutional Court was attended only by 18 members of whom 17 had been elected or was taking part in the selection of a Supreme Court judge at that moment on the basis of rules challenged in the Constitutional Court. Consequently, 17 members of the Plenary Session had a direct interest in not having selection rules of judicial candidates for the Supreme Court declared unconstitutional. It should be noted that some of the Supreme Court judges²²³ did not take part in the session because they had not been provided candidate information beforehand.²²⁴

On 15 April 2020, the Public Defender moved for removing Judge Khvicha Kikilashvili from hearing our lawsuit no. 1459 by the Constitutional Court. Our primary argument was that Judge Kikilashvili had been elected by Supreme Court judges that were interested in not having the disputed provisions invalidated. Unfortunately, the Constitutional Court rejected our motion.

On 15 June 2020, another judicial vacancy opened up in the Constitutional Court.²²⁵ By decision of the Plenary Session of the Constitutional Court as of 29 May 2020, Judge Vasil Roinishvili of the Supreme Court was appointed judge of the Constitutional Court this time.

Another important event in the history of the Constitutional Court that unfolded as the Public Defender's lawsuit was pending before the Court was the election of the Chief Justice of the Constitutional Court. Eventually, on 25 June 2020, by 5 votes of electing members, Merab Turava was elected Chief

²²¹ The lawsuit was registered on 3 April 2020, under the number 1491. In the lawsuit, we asked the Constitutional Court to invalidate a number of sentences in Article 34¹(15) of the Organic Law on General Courts as contrary to the Constitution.

²²² Statement by the Georgian Supreme Court, 3 April 2020, available at <<http://bit.ly/2OVfc4D>> [last viewed 16.03.2021].

²²³ Those were the ones elected by old rules when President would nominate candidatures to the Parliament and the Parliament would make appointments.

²²⁴ Judge Ekaterine Gasitashvili of the Supreme Court made a statement on this publicly: <<https://bit.ly/38V80MW>> [last viewed 16.03.2021].

²²⁵ Due to expiry of Judge Zaza Tavadze's official tenure.

Constitutional Justice. Although chief constitutional justices are elected by secret ballot,²²⁶ media outlets publicized information on members of the Constitutional Court who nominated candidates for Chief Constitutional Justice.²²⁷ Two candidates were nominated in total. Votes distributed in the same way during both election and nomination of candidates. Merab Turava was nominated as a candidate by himself, Manana Kobakhidze, Eva Gotsiridze, and the two judges recently appointed by the Plenary Session of the Supreme Court – Judge Kikilashvili and Judge Roinishvili.

A decisive role in electing Merab Turava a President of the Constitutional Court was played by the very two judges appointed by the Supreme Court Plenary Session (Khvicha Kikilashvili and Vasil Roinishvili). Also, worth pointing out is that judges who nominated Merab Turava for the President of the Constitutional Court and Merab Turava himself are the ones who rejected our lawsuit in their capacity as constitutional court judges.

The Constitutional Court judgment

Public Defender-authored constitutional lawsuits nos. 1459 and 1491 were reviewed by the Plenary Session of the Constitutional Court composed of 8 judges.²²⁸ While rendering a judgement, votes of the Plenary Session members tied.²²⁹ These judges did not uphold the claim: Khvicha Kikilashvili, Manana Kobakhidze, Merab Turava and Eva Gotsiridze. Judges Irine Imerlishvili, Giorgi Kverenchkiladze, Teimuraz Tugushi and Tamaz Tsabutashvili dissented; they opined that the provisions we challenged were contradicting the Constitution.

Those judges who disagreed with our claim stated that a decision by the High Council of Justice does not require any justification and it might be even impossible for a collegiate body such as the Council to give reasons for its decisions. The Public Defender believes these conclusions were reached by overly broad and false interpretation of constitutional and other legal provisions governing the status of the High

²²⁶ Organic Law on the Constitutional Court, Article 10(5).

²²⁷ "According to the words of Giorgi Lomtadze, Adviser to the Constitutional Court, Merab Turava was nominated by five judges and Irina Imerlishvili was nominated by four judges. As Giorgi Lomtadze stated, Judge Merab Turava's candidacy is supported by Manana Kobakhidze, Eva Gotsiridze, Khvicha Kikilashvili, Vasil Roinishvili and Merab Turava himself. As for Irina Imerlishvili, she was nominated by judges Giorgi Kverenchkiladze, Temur Tugushi, Tamaz Tsabutashvili and Irina Imerlishvili herself." available: <<https://bit.ly/3n0axLo>> [last viewed 18.03.2021].

²²⁸ Vasil Roinishvili did not participate in the process as he took part in the contest for a judicial vacancy in the Supreme Court before.

²²⁹ Pursuant to the Organic Law on the Constitutional Court, Article 21(6), "if, in the process of decision-making in regard to a constitutional lawsuit, the votes of attending members at the meeting of a Plenary Session (panel) are tied, the constitutional lawsuit will be considered rejected."

Council of Justice, independence guarantees for its members and the Council's decision-making procedures.²³⁰

According to the authors of the dissenting judicial opinion one of the fundamental aspects implied by Article 25 of the Constitution is the citizens' right to have access to public office, which means having a realistic possibility of taking up a public office on fair and equal terms when it comes to professional criteria-based positions, as mandated by the good governance concept. The Constitution explicitly requires that office be taken, whether elected or appointed, by the most competent of candidate among available candidates and that only the candidate thus selected be allowed to fulfil public duties.²³¹ The authors of the judicial dissenting opinion believe the disputed provisions do not serve to achieve this goal.

The separate opinion of dissenting judges also refers to the fact that, by a judgment of 30 July 2020, four judges altered the Constitutional Court's previously established practice – something they were not authorized to do. The four judges of the Constitutional Court who did not approve of the lawsuit claim changed, through their judgment, the practice the Constitutional Court's Plenary Session established in regard to the High Council of Justice giving reasons for its decision to nominate candidates for judicial office in the Supreme Court to the Parliament. Pursuant to the Organic Law on the Constitutional Court of Georgia, Article 21¹(2), "An admissibility decision, a judgment or a conclusion of the Constitutional Court's Plenary Session that differs from the practice of the Constitutional Court will be considered adopted if the decision, judgment or conclusion is supported by a majority of all members of a Plenary Constitutional Court."

Unfortunately, the Constitutional Court's decision of 30 July 2020 blemishes the paramount principles of transparency of justice and confidence in the judiciary in Georgia – tenets directly related to the protection of fundamental human rights in the country. Especially alarming is that the decisive vote in the determination of the case was cast by a Supreme Court-appointed judge. And Supreme Court judges were directly interested in not having the disputed provisions repealed because they had been elected based on those provisions. It should be emphasized that, owing to the support from Supreme Court-appointed judges, Merab Turava became a Chief Constitutional Justice – a judge who was one of those who rejected our lawsuit claim. A combination of the above-described circumstances proves that the Constitutional Court's decision is not a judicial act based on the Constitution but rather a document enforcing the interests of an influential and biased group of judges from general courts.

²³⁰ The Constitutional Court of Georgia, *Public Defender v. the Parliament of Georgia*, judgment no. 3/1/1459,1491 as of 30 June 2020

²³¹ A collective dissenting opinion of Constitutional Court judges – Teimuraz Tugushi, Irine Imerlishvili, Giorgi Kverenchkiladze and Tamaz Tsabutashvili – on the judgment of the Plenary Session of the Constitutional Court as of 30 July 2020 in the case no. 3/1/1459,1491, paras. 7-8.

4.2.2. Changes in the judicial selection procedure of Supreme Court judges

Worth noting also is that just 2 months after²³² the Constitutional Court judgment was rendered,²³³ the Parliament adopted legal changes in the judicial selection procedure of Supreme Court judges at its third, final reading. This circumstance is another proof of the fact that the legitimacy of the Constitutional Court's judgment was questionable in the eyes of all actors, including the Government, and was not regarded a sufficient reason for leaving then-applicable provisions unchanged. Although a counsel for the Parliament argued before the Constitutional Court there were sufficient guarantees in the Organic Law on General Courts to ensure election of competent and honest judges to the Supreme Court, the legal amendments process initiated in the Parliament shortly after the judgment indicates to the contrary.

The Public Defender made public comments about the initial version of draft changes in the law.²³⁴ It also sent its written comments in regard to a more later version and requested that the draft be sent to the Venice Commission for analysis.²³⁵ Even though the initial draft of legal changes was amended, it remained defective because the secret ballot mechanism remained same and the mechanism of challenging Council decisions still contained significant legislative flaws.

On 22 September 2020, the Parliament did send the draft law to the Venice Commission for its conclusion. Regrettably though, on 20 September, the Parliament adopted the changes by third and final reading without waiting for the Venice Commission's conclusion.

The Venice Commission issued its conclusion on the draft amendments in the Law on General Courts on 8 October. That was already a week after the draft amendments had been enacted into law. The Venice Commission expressed its regret at the fact that the Parliament had already adopted the changes. Focusing on the local context, the Venice Commission stressed the fact that the Georgian High Council of Justice – a body that guides the process of selection of Supreme Court judges – enjoys low confidence on the part of public. It stated that such an irregular situation called for taking greater transparency measures as the situation might not be analogous to other countries' conditions owing to the specifics of their local contexts.

The Venice Commission positively evaluated part of the draft law that introduced High Council of Justice members' obligation to give reasons for their decisions; albeit it pointed out that concealed identity of voting members of the High Council of Justice complicated the identification of grounds for challenging their decisions and defeated the purpose of the Law. The Venice Commission also opined that, with a view to proposing best candidates to the Parliament, conducting secret ballots in the High Judicial Council should be abolished; information regarding the qualifications of candidates should be made public and

²³² September 30, 2020

²³³ July 30, 2020

²³⁴ Statement by the Public Defender, 14 September 2020, available at <<http://bit.ly/38zBlqV>> [last viewed 16.10.20].

²³⁵ Public Defender, Proposal to the Parliament no. 02-1/9181 dated 18 September 2020.

the candidate assessment procedure should be based on the objective criteria. The Venice Commission considered it necessary to ensure a mechanism for challenging reasoned decisions regarding the selection of judicial candidates.²³⁶ The Georgian Parliament did not manage, through the law it adopted on 30 September 2020, to put limits on the unlimited discretion of the High Council of Justice and to create legislative prerequisites for conducting a fair judicial selection process for the Supreme Court.

The widespread institutional challenges within the judiciary, the weighty violations detected in the process of selection of Supreme Court judges and the lack of transparency of the process open up opportunities for considering more drastic intervention in the judicial system in the future – something the public has been increasingly calling for. It should also be noted that the Venice Commission²³⁷ and the European Court of Human Rights²³⁸ have both supported, against the background of the context existing in the country, rather extraordinary solutions to bring about a profound reform of the judiciary system.

4.2.3. The 2020 competition for the selection of Supreme Court judges

Along with the above-described events, in 2020, during the period of about two months, 3 competitions were announced to fill 11 judicial vacancies in the Supreme Court.²³⁹ By March 2021, there were 14 permanently appointed judges in the Supreme Court already. Once all the vacancies are filled, the Supreme Court composition will not be renewed for decades, as mandated by the law. In view of significance of the issue, the Public Defender invited the OSCE/ODIHR to observe the judicial selection process once again.²⁴⁰

Rules of holding public hearing of candidates

After amendments in the Organic Law on General Courts were enacted,²⁴¹ the High Council of Justice produced a draft version of rules of conducting public interviews with judicial candidates for the Supreme Court for their nomination to and appointment by the Parliament.²⁴² While the rules were in the process

²³⁶ The Venice Commission, Opinion on the draft organic law amending the organic law on common courts, 8 October 2020, available at < <https://bit.ly/38C5paH> > [last viewed 16.03.2021].

²³⁷ The Venice Commission, *Amicus curiae* brief for the Constitutional Court of Albania, Opinion no. 868/2016, available at < <https://bit.ly/3vsxtab> > [last viewed 15.03.2021].

²³⁸ ECtHR, *Xhoxhaj v. Albania*, judgment of 9 February 2021, application no. 15227/19, par. 299.

²³⁹ On 8 October 2020, a competition to fill nine judicial vacancies was announced; on 2 November 2020, a competition was announced for one judicial office, and on 20 November 2020 for another judicial office.

²⁴⁰ Statement by the Public Defender, 24 November 2020, available at < <http://bit.ly/3cznfMN> > [last viewed 16.03.2021].

²⁴¹ Organic Law of Georgia amending the Organic Law on General Courts

²⁴² The High Council of Justice resolution no. 16 as of 9 December 2020 approving rules of conducting public interviews with judicial candidates for the Supreme Court for their nomination to and appointment by the Parliament

of elaboration, the Public Defender submitted a series of recommendations some of which were taken into consideration.

It should be pointed out that the initial version of the rules allowed the chair of an interview hearing to remove a question asked of a candidate in some circumstances.²⁴³ Importantly, the Council took up the Public Defender's recommendation²⁴⁴ and the current version of the rules does not vest such a power in the chair of the hearing.

Regrettably, the High Council of Justice did not heed the Public Defender's another very important proposal on elimination of conflicts of interests. Pursuant to Article 4(7) of Council's resolution, in respect of the matter of a conflict of interests, president of a hearing will confine themselves to merely explaining the right to raise a motion on Council member recusal and finding out whether anyone wishes to raise such a motion. This is against the backdrop that both the Organic Law on General Courts²⁴⁵ and the Law on Conflict of Interest and Corruption in Public Service²⁴⁶ oblige the affected Council member, even without the need for someone else to raise a motion for recusal, to disclose their incompatible interests in advance and to not participate in the decision making. So it is necessary for the president of an interview hearing to not only inquire of the candidate about existence of any conflict of interests but receive this information from the Council members proper.

The ongoing competition

As we have mentioned above, during the period of October – November 2020, three competitions were announced to fill the open judicial seats on the Supreme Court. In March 2021, the High Council of Justice was conducting candidate interviews within a competition announced on 8 October 2020 only. As for other competitions, no candidate interviews were being conducted in the High Council of Justice at the date 15 March 2021 – which is a violation of the Organic Law on General Courts.²⁴⁷

It should be pointed out that candidate interviews in this competition are conducted at different and unpredictable intervals. Unlike the competition held in 2019, the Council is quite slow in scheduling interviews with the candidates. Such a state of play does not inspire objective expectations in the contestants; it is only up to the High Council of Justice to decide at its own discretion when to conduct an interview with the next candidate.

²⁴³ Article 4(13), draft version, Rules of conducting public interviews with judicial candidates for the Supreme Court for their nomination to and appointment by the Parliament, available at < <https://bit.ly/2NbomcG> > [last viewed 11.03.2021].

²⁴⁴ Proposal by the Public Defender no. 01-4/12024 dated 7 December 2020 to Nino Kadagidze, President of the High Council of Justice.

²⁴⁵ Organic Law on General Courts 35³(2)

²⁴⁶ Law on Conflict of Interest and Corruption in Public Service, Article 11(1)

²⁴⁷ Organic Law on General Courts, Article 34¹(3)-(8).

Conflict of interests

Dimitri Gvritishvili, member of the High Council of Justice, is taking part in a competition for judicial office in the Supreme Court announced on 2 November 2020.²⁴⁸ Along with this, Dimitri Gvritishvili also participates in conducting interviews with judicial candidates, in his capacity as a member of the High Council of Justice, within a competition announced on 8 October. Worth noting also is that the same competition involves as participants judicial candidates who are competitors to Dimitri Gvritishvili as a candidate for the judicial vacancy in the Supreme Court.²⁴⁹

4.2.4. The High Council of Justice

For High Council of Justice, the year of 2021 may wind up as a beginning of fundamental changes. A reason for this expectation is a soon-to-open opportunity for electing new members of the Council. In 2021, the office tenure will expire for five non-judicial members²⁵⁰ and four judicial members.²⁵¹

Pursuant to the Organic Law on General Courts, five non-judge members of the High Council of Justice should be elected by the Parliament.²⁵²

If the requisite preparedness exists, these upcoming staff changes allow for garnering greater trust of various communities, which the Georgian judicial system is obviously destitute of now. According to the Venice Commission's opinion, the High Council of Georgia failed to gain public trust.²⁵³ Lack of trust is also evidenced by a study carried out by the NDI, which showed that only 13% of the population thinks of activity of courts positively.²⁵⁴

The High Council of Justice and its members as guardians of independence and freedom of general courts have an array of possibilities for improving the situation in the judiciary. This year, for the first time, the Parliament will elect members of the High Council of Justice by 3/5 of its majority – a process that calls for a very high degree of political consensus capable of reaching a decision of high legitimacy.

²⁴⁸ Available at < <http://bit.ly/3taPAzF> > [last viewed 10.03.2021].

²⁴⁹ These persons took part in both competitions: the one announced on 8 October and the other one announced on 2 November.

²⁵⁰ Irma Gelashvili, Levan Gzirishvili, Shota Kadagidze, Zaza Kharebava and Nasi Janezashvili

²⁵¹ Irakli Bondarenko, Dimitri Gvritishvili, Vasil Mshvenieradze and Irakli Shengelia

²⁵² Organic Law of Georgia on General Courts, Article 47(5)

²⁵³ The Venice Commission, Opinion on the draft organic law amending the organic law on common courts, 8 October 2020, available at < <https://bit.ly/38C5paH> > last viewed [12.03.2021].

²⁵⁴ National Democratic Institute (NDI), Public Attitudes in Georgia, Results of December 2020 telephone survey, available at < <https://bit.ly/3cvqKE0> > [last viewed 11.03.2021].

The Public Defender of Georgia calls on the Parliament of Georgia to reach a consensus-based decision with maximum involvement of political subjects and all interested societal groups. Further important is also to ensure that the process of selecting judicial members of the High Council of Justice is more open and democratic and that all individual judges have as great chances as possible of either being represented in the High Council of Justice or supporting the best candidatures of their fellow judges.

4.2.5. The Plenary Session of the Supreme Court

Pursuant to the Organic Law on General Courts, the Plenary Session Supreme Court (i.e. Supreme Court sitting *en banc*) consists of a Chief Justice, Deputy Chief Justices and Justices of the Supreme Court and Presidents of Courts of Appeals.²⁵⁵

Since the Plenary Session of the Supreme Court discharges only Supreme Court-related administrative functions, it is unclear what presidents of courts of appeals have to do while the Supreme Court is sitting *en banc*. Excessive power concentration in the hands of court presidents has frequently become an object of criticism on the part of international community.²⁵⁶ Presence of presidents of court of appeals, for vague reasons, in the composition of a Plenary Supreme Court reinforces their formal and informal influence upon the judicial system. So, in order to heal the judicial system, the country should opt for more internal decentralization and exclusion of presidents of court of appeals from membership in the Plenary Session of the Supreme Court.

4.2.6. Judicial discipline

In her 2020 report to the Parliament,²⁵⁷ the Public Defender positively assessed the judicial discipline-related changes in the law.²⁵⁸ The amendments made prerequisites for disciplining judges more elaborated and predictable. Despite this positive development, in 2020, we have detected various shortcomings in the way the legal provisions are implemented, which require further taking of action and mending.

One of the new challenges we identified is the procedure for electing an Independent Inspector of the High Council of Justice, which fails to inspire the sensation of fairness and transparency. In the previous year too, the Public Defender assessed rules of election of an Independent Inspector as faulty from both legal and factual perspectives.²⁵⁹

²⁵⁵ Organic Law on General Courts, Article 18.

²⁵⁶ Anti-Corruption Network for Eastern Europe and Central Asia, Fourth Round of Monitoring, available at < <https://bit.ly/3lsMYdU> > [last viewed 17.03.2021].

²⁵⁷ The Public Defender, 2019 report to the Parliament of Georgia, Tbilisi, 2020, p. 135.

²⁵⁸ Amendments in the Organic Law on General Courts, 13 December 2019.

²⁵⁹ The Public Defender, 2019 report to the Parliament of Georgia, Tbilisi, 2020, p. 138

The challenges relate mostly to insufficient degree of transparency, which has several causes. Although the 2017-2018 Action Plan for the Judiciary envisaged setting up an electronic software for the management of disciplinary proceedings against judges,²⁶⁰ the software has not been created this far. The Strategy for the Judiciary considers lack of transparency to be a major shortcoming of the judicial discipline process. According to the Strategy, the electronic case management software is key to ensuring transparency of judicial disciplining procedures. Inadequate openness of the system is manifested also by the actual confidential nature of conclusions issued by the Justice Council's Independent Inspector. Not only the Independent Inspector's reports are not published (with identifying data anonymized), but they are also inaccessible on request under the Freedom of Information Rules – which creates a serious problem from transparency point of view.²⁶¹

One of the indicators to measure the effectiveness of reforming the judicial discipline system should also be the pace at which the High Council of Justice works on these issues. Unfortunately, the Council's performance leave much to be desired in this respect. During 2020, the Council conducted only 4 hearings²⁶² concerning disciplinary liability of judges of general courts.²⁶³ Worth noting is that the Council has not held a single disciplinary hearing in the first half of the year – an obstacle in the way of promptness and effectiveness of justice.

4.2.7. Electronic case allocation

Based on the amendments made in the Organic Law on General Courts,²⁶⁴ the High Council of Justice adopted Rules for random allocation of cases in general courts via an electronic software.²⁶⁵ The document regulates how, on random principle, court cases should be allocated to judges in town (district) and courts of appeals in the entire territory of Georgia as well as in the Supreme Court via an electronic computer software. This development was welcomed by international and local organizations.²⁶⁶ However, despite the unequivocally positive nature of the concept, application of the rules in practice has been going on with faults that need to be addressed.

²⁶⁰ 2017-2018 Action Plan for the Judiciary, paragraph 2.3.1.3.

²⁶¹ IDFI and EMC, Second Shadow Report: Implementation of the Strategy and Action Plan for the Judiciary, available at < <https://bit.ly/3tiDeW1> > [last viewed 11.03.2021], 55.

²⁶² June 26, September 9, October 2, October 12.

²⁶³ Letter from the High Council of Justice no. 103/399-o dated 9 September 2021

²⁶⁴ Organic Law of Georgia amending the Organic Law of Georgia on General Courts, 08/02/2017.

²⁶⁵ The High Council of Justice, Decision no. 1/56, 1 May 2017, available at < <https://bit.ly/3aBAuLc> > [last viewed 17.03.2021].

²⁶⁶ The Venice Commission, Opinion on the draft law on amendments to the Organic Law on General Courts, available at < <https://bit.ly/37iVmo7> > [last viewed 18.03.2021]. The Coalition for Independent and Transparent Justice, Considerations on the "Third Wave" of the Judiciary Reform, available at < <https://bit.ly/2RgnROf> > [last viewed 17.03.2021].

By Council's decision, trial court presidents were vested with the power to determine the composition of court panels. Worth noting is that the initial draft version of the decision envisaged assignment of judges to judicial panels also by the electronic system rather than by court presidents.

The High Council of Justice justified alteration of the original version of its draft by referring to a provision in the Civil Procedure Code that says that a reasoned decision to have a case reviewed by a panel of judges should be served on a president of the court who determines who of the judges will be on the panel. The only reservation is that the initial judge of the case must be included in the panel.²⁶⁷

The electronic system of case allocation plays an important role in improving the quality of transparency in the judiciary. Hence, amending the Civil Procedure Code in order to ensure distribution of cases fully by the electronic system would be desirable.

In courts of appeals and the Supreme Court, where a case is to be heard by a panel of judges, the electronic software assigns only a presiding/rapporteur judge for the case but how the other judges should be selected to sit on the panel is unclear. Courts of appeals and the Supreme Court have themselves corroborated there is an ambiguity in those courts over this issue.

According to explanations received from the courts of appeals of Tbilisi and Kutaisi, the law does not envisage a specific timeframe judicial panels should be set up for. This means the law does not exclude the possibility of establishing judicial panels with different composition for each case. But appeals courts reckon panels created within the judicial system usually enjoy some level of temporal stability.

According to the Supreme Court, there is no normative act defining procedures for the selection of two other judges of a judicial panel established for hearing a case.²⁶⁸

Against the above-described background, we believe rules of allocation of court cases via an electronic software in courts of appeals and the Supreme Court need to be amended so that the electronic software determines all the three judges who should sit on the panel to hear each specific court case.

5.1. 4.3. Impact of COVID-19 upon the right to a fair trial

Protection of human rights has been a special challenge during the Covid-19 pandemic. The right to a fair trial, which itself is an instrumental tool for the protection of other human rights, has gained double importance in this situation. In the present chapter, we discuss and assess the standards of enjoyment of the right to a fair hearing in time of the novel coronavirus (Covid-19) pandemic.

²⁶⁷ The Civil Procedure Code of Georgia, Article 26

²⁶⁸ Human Rights Education and Monitoring Center (EMC), Electronic System of Case Distribution in Courts, Tbilisi, 2020, p. 34.

4.3.1. Legal regulation

Since 21 March 2020, an emergency was declared in the entire territory of Georgia. The same day, President issued a special decree having the force of an organic law. Among other issues, the special presidential decree laid down the possibility of conducting court hearings in criminal cases envisaged by the criminal procedure law remotely.²⁶⁹

After the emergency was over, the Georgian Parliament enacted, along with other acts, amendments in the Criminal Procedure Code determining prerequisites and rules for conducting judicial hearings remotely. According to current regulation, until 1 July 2021, courts are authorized to conduct hearings remotely using electronic equipment in the event of a pandemic and/or a risk of spread of an epidemic that is highly dangerous to public health if: (a) the accused/convicted/acquitted person agrees to this; (b) the defendant has been detained pending trial or the convicted person has been sentenced to deprivation of liberty and/or unless the hearing is conducted remotely, the public interest in solving the crime and bringing the responsible person to criminal justice may be compromised. It should be noted that, before enacting these amendments in the Criminal Procedure Code, the Parliament took account of the Public Defender's position not to conduct remote judicial hearings envisaged by the Criminal Procedure Code as a normal way of deciding cases, but rather as an exception.

In this context, we wish to mention recommendations the High Council of Justice issued to general courts in June 2020.²⁷⁰ According to the recommendations, deciding cases without an oral hearing had to be given priority as a preferred method or, when necessary, a hearing had to be conducted remotely using electronic means of communication. On 15 September, the High Council of Justice issued new recommendations calling on courts to examine cases without oral hearings and to engage parties in the proceedings remotely in the events envisaged by procedural law.²⁷¹

International recommendations are useful to recall in this context. The Council of Europe Parliamentary Assembly calls on its member States to ensure the functioning of the justice system in a way that does not result in violation of the rights to liberty, security and fair trial and does not undermine the right to effective remedy and constitutional principles. For this purpose, States should prioritize cases according to their urgency, general importance and impact on individual rights and vulnerable groups; technological solutions should be introduced within the judicial system.²⁷² While assessing legal regulations, we should also recall a declaration by the European Commission for the Efficiency of Justice (CEPEJ), which stipulates that access to justice must be ensured for all users, but at a time of health crisis, special attention must be devoted to vulnerable groups who are even more at risk of suffering from the situation. Thus, judicial

²⁶⁹ Special Presidential Decree no. 1, Article 7.

²⁷⁰ The High Council of Justice, Recommendations, 5 June 2020, available at < <http://bit.ly/3r0uBhD> > [last viewed 16.03.2021].

²⁷¹ The High Council of Justice, Recommendations, 15 September 2020, available at < <http://bit.ly/3rU2Nwj> > [last viewed 16.03.2021].

²⁷² Council of Europe, The impact of the Covid-19 pandemic on human rights and the rule of law, available at < <https://bit.ly/3fBZ8hz> > [last viewed 16.03.2021].

systems should give priority to cases which concern these groups, such as cases of domestic violence, in particular against women and children, involving elderly people or persons with disabilities. Vulnerabilities arising from the crisis should also be taken into account.²⁷³

These standards should be implemented in both legislative acts and Council of Justice-issued recommendations so that access to courts is ensured to the greatest possible extent.

4.3.2. Ensuring publicity of judicial proceedings

For the purpose of assessing the impact of remote court proceedings on the right to a fair trial, the Public Defender monitored remotely held hearings in criminal cases and prepared a special report on this matter.²⁷⁴

During their trial monitoring activity, the Public Defender's representatives were met by serious obstacles such as unsubstantiated prohibition to attend hearings and being ordered to leave. A representative of the Public Defender was directed to leave the courtroom notwithstanding the fact that some problems with the court software did not relate to our representative but other attendees. Our representatives were excused from the courtroom by judges of the Rustavi Town Court and Telavi District Court.²⁷⁵

Problems in attending and monitoring court hearings proved to be greater in regard to non-governmental organizations: of the 279 cases monitored by the Public Defender, representatives of non-governmental organizations were allowed to attend only 12.²⁷⁶

4.3.3. The right to defense and adversarial proceedings

Monitoring of remotely conducted court hearings revealed flaws in other important aspects of the right to a fair trial.

Since it is fundamental that communication between the advocate and the client is kept confidential, such an opportunity should actually be provided also when court proceedings are conducted distantly. Pursuant to the jurisprudence of the European Court of Human Rights, if a defendant joins a hearing

²⁷³ The European Commission for the Efficiency of Justice (CEPEJ), Declaration. Lessons learnt and challenges faced by the judiciary during and after the covid-19 pandemic, available: < <https://bit.ly/3l8PrZ1> > [last viewed [16.03.2021].

²⁷⁴ Public Defender, Report on the monitoring of remote criminal court proceedings, 2020, available at < <https://bit.ly/3bVc81C> > [last viewed 17.03.2021].

²⁷⁵ Public Defender, Report on the monitoring of remote criminal court proceedings, 2020, pp. 8-9; the Georgian Young Lawyers' Association has also been pinpointing lack of publicity of court hearings and limitations on attending court trials, see available: < <https://bit.ly/3nXngHz> > [last viewed 17.03.2021].

²⁷⁶ *Ibid.*

distantly, the communication must be supported sufficient from the technical point of view so that he/she can interact with his/her lawyer confidentially.²⁷⁷

Public Defender's monitoring of remote trials shows that remand prisoners who were joining their hearing from penitentiary institutions were not provided with the possibility of communicating with their lawyers on confidential terms. Instead, they were consulting with their counsels in other persons' presence.²⁷⁸

At pretrial hearings we observed how defendants were having difficulty understanding the contents of what was going on due to problems of technical nature. With the remote mode court proceedings, it was virtually impossible to examine physical evidence. In some cases, video footages played during a distant hearing were not comprehensible for the proceeding participants at all.²⁷⁹ A positive exception was when a judge adjourned witness examination because the witness's voice could not be heard and went on to examine only written evidence.²⁸⁰

As for merits hearings in criminal proceedings, we detected serious shortcomings here too. In particular, there were attempts to influence witnesses and guarantees to prevent this from happening were not sufficiently provided. For example, police officers were "dictating" to a witness what to say. Also, often times one would get the perception that the witness was not alone when testifying and/or was simply reading a written testimony.²⁸¹ These obstacles substantially affected the quality of enjoyment of their rights by the defense. The problem and its acuteness have also been pinpointed by the Georgian Young Lawyers' Association.²⁸²

4.3.4. Technical issues during remote court proceedings

Technical malfunctions were a commonplace during remote court proceedings. Court hearings defendants were joining remotely from their penitentiary institutions would start late because the penitentiary institutions were not properly equipped from the technical standpoint.²⁸³

²⁷⁷ ECtHR, *Marcello Viola v. Italy*, judgment of 1 May 2007, application no. 45106/04, paras. 63-67; ECtHR, *Sakhnovskiy v. Russia*, judgment of 2 November 2010, application no. 21272/03, par. 98

²⁷⁸ Public Defender, Report on the monitoring of remote criminal court proceedings, 2020, p. 13

²⁷⁹ The Georgian Young Lawyers Association, Special Report, "Courts during the pandemic", monitoring period: March 2020 – June 2020, Tbilisi, 2020, p. 21

²⁸⁰ Public Defender, Report on the monitoring of remote criminal court proceedings, 2020, p. 16

²⁸¹ *Ibid.*, pp. 15-16.

²⁸² The Georgian Young Lawyers Association, Special Report, "Courts during the pandemic", monitoring period: March 2020 – June 2020, Tbilisi, 2020, p. 19

²⁸³ The Public Defender's Office has made an attempt to receive more information on this but the Penitentiary Service did not provide the details.

Lack of required technical support would oftentimes result in adjourned court hearings because there were problems with involving individuals placed in special rooms in the proceedings distantly.²⁸⁴ Adjourned court sessions were especially symptomatic for town and district courts.

4.4. The right to be tried within a reasonable time

4.4.1. Criminal trials

Like in 2019, prompt and effective administration of justice remained lingering in 2020. Merits hearings in criminal proceedings were often stretched in time and were often conducted unreasonably beyond the legally established timeframes. Inadequate legal framework can be said to be one reason of this but overloaded courts continued to be a major cause.

Appeal complaints forwarded late

Georgia's criminal procedure law does not prescribe timeframes for sending complaints and corresponding case files by lower courts to higher courts. Nevertheless, courts should be adhering to the principle of prompt justice by furnishing other courts with required documents in as reasonable time as possible.

A convicting judgment against defendant K.T. handed down by the Gori District Court on 28 December 2018 was challenged by the defendant's lawyer on 25 January 2019. The lawyer specified his/her complaint on 1 April 2019. As required by the law, the lawyer filed the appeal complaint with the trial court (Gori District Court), which was to forward the complaint to a court of appeals thereafter.

The trial court sent the case file and the appeal complaint to Tbilisi Court of Appeals in November 2020. In its explanation provided to the Public Defender, the Gori District Court stated that the nearly 18 month-long delay had to do with technical issues with the electronic version of the hearing transcript.²⁸⁵ In particular, according to the court, in order for them to find a transcript for a concrete hearing, they had to look up the general database of hearing records one by one.

In another case, convicted I.G.'s appeal complaint lodged at Tbilisi City Court on 28 February 2020 and his case file was forwarded to the higher court late because of the coronavirus-related obstacles.²⁸⁶ The appeal complaint and the case materials were actually sent only in June.²⁸⁷

²⁸⁴ Public Defender, Report on the monitoring of remote criminal court proceedings, 2020, p. 10

²⁸⁵ Letter from the Gori District Court dated 31 December 2020

²⁸⁶ Letter from the Tbilisi City Court no. 10525 dated 3 June 2020.

²⁸⁷ Letter from the Tbilisi City Court no. 12060 dated 30 June 2020.

Because these violations happen all the time, it would be desirable to have the timeframe for sending complaints and case files to upper courts set by the law.

Timeframe for deciding on admissibility of cassation complaints

Georgia's criminal procedure law sets no specific timeframe for the Supreme Court to decide on admissibility of cassation complaints. Inasmuch as courts of appeals have a deadline for admissibility decisions, absence of such a deadline at the cassation level contradicts the principle of prompt and effective justice.

Our exchange of correspondence with the Supreme Court did not result in us finding out how much time it takes for the Supreme Court to decide on admissibility.

We believe the timeframe for admissibility decisions should be set by the law. This would help parties to proceedings form objective expectations as to the time periods with which the cassation court operates.

Timeframes for deciding cases

Deciding cases in reasonable time has been a challenge for both appeal courts and the Supreme Court. In Tbilisi Court of Appeals, the Criminal Cases Chamber was tardy in deciding 679 out of 1943 cases incumbent on it.²⁸⁸ In Kutaisi Court of Appeals, decision-making was belated in 236 out of 781 cases.²⁸⁹ In the Supreme Court,²⁹⁰ the Criminal Cases Chamber completed review of 300 out of 1176 cassation complaints, in violation of the legally established timeframe.

4.4.2. Adjudication of civil and administrative cases

As in the previous year, deciding civil and administrative cases within the period determined by the law remained a challenge.

The statistical data we received from the appeal courts of Tbilisi and Kutaisi suggest that a significant number of court cases are dealt with by these courts in breach of the procedural terms. Appeal courts have 2 months to decide civil and administrative cases according to the law, and this term can be extended in some special circumstances up to a total of 5 months.²⁹¹

²⁸⁸ Letters from the Tbilisi Court of Appeals no. 3/1258 dated 26 February 2021 and no. 3/2222 dated 1 March 2021.

²⁸⁹ Letters from the Kutaisi Court of Appeals no. 93-2/10 dated 1 March 2021 and no. 129-2/10 dated 17 March 2021.

²⁹⁰ Letter from the Supreme Court no. P-145-21 dated 10 March 2021.

²⁹¹ The Civil Procedure Code, Article 59(3).

Because the Public Defender's Office was provided data for the period from 1 January 2020 – February 2021, we will assess only the data for the first nine months of 2021 concerning duration of case proceedings in the appeals courts of Tbilisi and Kutaisi because the legal timeframe for deciding cases would not be expired yet for complaints lodged in October.

According to the information we were provided,²⁹² in the first nine months of 2020, out of 1156 appeal complaints lodged with the Tbilisi Court of Appeals, only 122 cases (making 10.5% of the total number) were completed in the legally determined 2 months' time; 278 cases (24%) were completed in a 5 months' time. This means 65.4% of incoming complaints registered by the Tbilisi Court of Appeal in 2020 were not decided by the Court within the legally determined time frames.

During the first nine months of 2020, 975 complaints were lodged with administrative cases chambers of the Tbilisi Court of Appeals. Of this number, proceedings were completed within 2 months regarding 162 complaints (16%) and within 5 months regarding 269 complaints (27.5%). Accordingly, about 55.7% of new complaints registered in 2019 were not decided on time by the administrative cases chambers of the Tbilisi Court of Appeal.

There was a better situation in the Kutaisi Court of Appeals from this perspective. In 2020, only 27% of cases were not completed on time by the administrative cases chamber and only 34% of cases by the civil cases chamber.²⁹³

Pursuant to the civil procedure law and the administrative procedure law, administrative and civil cases chambers of the Supreme Court have 3 months to decide on admissibility of a cassation complaint²⁹⁴ and 6 months to decide a case.²⁹⁵

As a result of our communication with the Supreme Court, we were informed that the civil cases chamber of the cassation court received 1191 new cassation complaints during the reporting period.²⁹⁶ Out of 276 complaints declared inadmissible, the Court reviewed 156 complaints (56.5%) in breach of the 3 months term. Of the 915 admissible complaints, the Court completed proceedings within the legally established 6 months in only 17 cases (2%).

In 2020, the administrative cases chamber of the cassation court received 1259 complaints of which the court found 253 complaints inadmissible. Of these 253 cases, 160 (amounting to 63%) were found inadmissible in breach of the legal timeframe. Of the 1006 cases found admissible, the Supreme Court decided on 34 in the legally established 6-month period.

²⁹² Letters from the Tbilisi Court of Appeals no. 3/1258 dated 26 February 2021 and no. 3/2222 dated 1 March 2021.

²⁹³ Letters from the Kutaisi Court of Appeals no. 93-2/10 dated 1 March 2021 and no. 129-2/10 dated 17 March 2021.

²⁹⁴ The Civil Procedure Code, Article 401(3); The Administrative Procedure Code 41(8).

²⁹⁵ The Civil Procedure Code, 391(6); The Administrative Procedure Code, 34(4).

²⁹⁶ Letter from the Supreme Court no. P-145-21 dated 10 March 2021.

Despite the fact that the number of judges in the Supreme Court increased considerably compared to the previous year, we have not seen the court of cassation doing any better job from the standpoint of promptness and effectiveness of justice.

4.5. Cases adjudicated in substantive breach of the law

4.5.1. The case of Giorgi Ugulava

On 10 February 2020, Criminal Cases Chamber of the Supreme Court partially seconded the cassation complaint of Prosecutor's Office reassigning charges against Giorgi Ugulava and others under different articles of the Criminal Code. As a result, the defendants were imposed more severe punishments.²⁹⁷

One of the judges on the bench of the judicial chamber hearing the cassation complaint of Prosecutor's Office was Shalva Tadumadze who served as Chief Prosecutor (Prosecutor-General) between 16 July 2018 and 12 December 2019. It was during his time as a Chief Prosecutor that the Prosecutor's Office lodged the above-mentioned cassation complaint against the convicting judgment of the Tbilisi Court of Appeal with the Supreme Court.²⁹⁸

According to the case-law of the European Court of Human Rights, personal conviction and behavior of a judge must inspire the sense of impartiality in the eyes of the public. A judge whose impartiality raises obvious questions must not take part in deciding a case. The European Court has found violation on account of the fact that a person participated in two cases against one and the same party: in the first case as a lawyer of the opposing party and later in another case as a judge of the same party.²⁹⁹ In the case concerning Giorgi Ugulava too, it is obvious that the fact that a person acted as Prosecutor General and as a judge in one and the same case is a good reason to engender doubts about his impartiality.

The Public Defender commented on Giorgi Ugulava's case to say that the risks she was pinpointing during the process of appointment of Supreme Court judge materialized in that case.³⁰⁰

4.5.2. The case of cartographers

On 7 October 2020, Natalia Ilichova, a member of the Border Police Department of the Ministry of Internal Affairs and Iveri Melashvili, Chief of Demarcation and Border Relations Service of the Ministry of Foreign Affairs were arrested on the charge of violation of territorial integrity of Georgia.³⁰¹ The prosecution's theory of the case was that these two individuals who were formerly members of a State Commission for

²⁹⁷ The Supreme Court of Georgia, judgment no. 57APP-19, 10 February 2020.

²⁹⁸ 9 January 2019.

²⁹⁹ ECtHR, *Wettstein v. the Switzerland*, application no. 33958/96, judgment of 3 March 2001, par. 47

³⁰⁰ Statement by the Public Defender, 11 February 2020, available at <<http://bit.ly/3bP5Ro4>> [last viewed 16.03.2021].

³⁰¹ The Criminal Code of Georgia, Article 308.

Delimitation and Demarcation of the Georgia-Azerbaijan Border put Georgia under the risk of surrendering its historical land of about 35,000 hectares.

Before the start of judicial proceedings, on 25 February 2020, the Public Defender sent its *amicus curiae* brief to the Tbilisi City Court on this matter. The Public Defender highlighted the principle of legality was at stake. More specifically, the evidence in the case file did not prove the defendants had, or acted by, the intent of ceding part of Georgia's territory to a foreign state.

Evidence collected by the prosecution also does not prove the defendants had malicious intent while they acted as experts. Furthermore, the map with the scale 1:200 000, which the prosecution argues the defendants failed to use, has not been examined for fitness up to the present day (1 March 2021).

In view of the body of evidence the prosecution has collected by the time of hearing the case on merits by the court, we believe conviction of Melashvili and Ilichova contradicts the legality principle because there is nothing in their conduct capable of turning normal expert work into a crime.

The opening of a criminal investigation into this case coincided with the pre-parliamentary election period. Although the defendants were not political officials, their criminal case soon became a major matter of political debate and mutual blaming. The Public Defender's examination of the criminal case file and analysis of the ongoing events showed that the criminal prosecution initiated against Iveri Melashvili and Natalia Ilichova might be based on political or other non-legal motives, which, coupled with other shortcomings in the actions of the Prosecutor's Office, outweighed any legal motives in this case. In making this assessment, the Public relied on the standards of Article 18 of the European Convention of Human Rights.

In addition, we also wish to note violation of a procedural right of one of the defendants we detected in this case. On 30 December 2020, Iveri Melashvili met with his lawyer across a divider glass in penitentiary institution no. 8. The purpose of this communication was to discuss and agree on a defense strategy. The defendant made some notes on the maps he received from the lawyer and then asked the prison administration to hand the maps over to the lawyer. However, members of the Penitentiary Service examined the documents first, including the notes made by the defendant, before making them available to the lawyer. The Public Defender considers the fact that the administration of the Special Penitentiary Service's Institution no. 8 breached the right of defendant Iveri Melashvili to confidential communication with his lawyer³⁰² – a human right protected by both domestic legislation and international law.³⁰³

³⁰² Statement by the Public Defender, 29 January 2021, available at <<https://bit.ly/3ri2hrE>> last viewed [16.03.2021].

³⁰³ The Constitution of Georgia, Article 31; The European Convention on Human Rights, Article 6(3)(c); The Criminal Procedure Code of Georgia, Article 38(5); The Georgian Code of Imprisonment, Article 16(6).

4.5.3. The case of Nikanor Melia

By a convicting judgment of 2 December 2019 rendered by the Tbilisi City Court, Nikanor Melia was sentenced to a fine and a deprivation of the right to take office. Based on the same convicting judgement, his Parliament membership was terminated on 12 December.

The Public Defender filed its *amicus curiae* brief with the Constitutional Court. She opined that as long as enforcement of the judgment had not started yet, it had to be postponed until appeal procedures would be over and the final judicial instance would render a final decision in the case.

Regrettably, the Constitutional Court did not acquiesce to the Public Defender's *amicus* opinion.³⁰⁴ The Court, did, however, refer to the possibility of applying the systemic and the two-track methods of legal interpretation suggested by the Public Defender.³⁰⁵ These methods of construing the law lead to a conclusion that Parliament membership can terminate only and if a prison sentence is applied; but in case of a non-custodial sentence, a convicting judgment becomes enforceable only if there are no more legal remedies left.

But in the reasoning part of its judgment, the Constitutional Court did not discuss the above-mentioned methods of legal interpretation and, relying only on reputational and moral arguments, without analyzing the procedural code, concluded a trial court's judgment convicting the member of Parliament was enforceable irrespective of a custodial or non-custodial nature of the punishment imposed and had to be enforced immediately.³⁰⁶

4.5.4. The case of Giorgi Rurua

On 3 January 2020, an investigative procedure was conducted in the penitentiary institution in which Giorgi Rurua took part but his lawyer was not allowed to attend. With a view to studying this fact, on 13 April 2020, the Public Defender sent the Minister of Internal Affairs a proposal to open a disciplinary investigation into alleged breach of defendant Giorgi Rurua's right to a lawyer by police investigators.

Pursuant to the criminal procedure law,³⁰⁷ a person has the right to request that their lawyer attend investigative action in which he/she is involved. In Giorgi Rurua's case, the defendant's constitutional right to defense was compromised.

³⁰⁴ The Constitutional Court's judgment no. 3/2/1473 dated 25 September 2020 (available at <<http://bit.ly/38LKwKc>> [last viewed 30.03.2021] comes with dissenting opinions by four judges (available at <<http://bit.ly/3cEvWp7>> [last viewed 17.03.2021]).

³⁰⁵ The Constitutional Court of Georgia, *Nikanor Melia v. the Parliament of Georgia*, judgment no. 3/2/1473 as of 25 September 2020, I-18.

³⁰⁶ *Ibid.*, II-32-35.

³⁰⁷ The Criminal Procedure Code, Article 38(7).

Based on the Public Defender's proposal, the Ministry of Internal Affairs Inspectorate-General addressed the Prosecution Office of Tbilisi on 16 April 2020, but the latter returned the proposal back to the Inspectorate-General on 15 May. The Inspectorate-General informed the Public Defender that no internal investigation was launched because they received no such request from the Prosecutor-General's Office.

On 17 September 2020, the Public Defender sent its proposal to the Prosecutor-General's Office this time around asking the Prosecutor-General's Office to instruct the Ministry of Internal Affairs to open internal investigation. On 25 September, the Prosecutor-General's Office did send such an instruction to the Ministry.

By its letter dated 16 November 2020, the Inspectorate-General of the Ministry of Internal Affairs informed the Public Defender that they talked to the police investigators who stated that they did not verbally insult Giorgi Rurua and the force used during the investigative action was proportional. So the Inspectorate-General concluded there was no disciplinary misconduct on the part of the police investigators. It is inferred from the same letter, though, that the Inspectorate-General has not studied the legality of police investigators' conduct who carried out the investigative action in the absence of the defendant's lawyer.

We note it with regret that, for several months, the Prosecutor's Office and the Interior Ministry of Internal Affairs were bouncing Giorgi Rurua's case back and forth between each other procrastinating it unjustifiably. Unfortunately, the Ministry of Internal Affairs did not eventually inquire into the legality of failing to have Giorgi Rurua's lawyer attend the investigative action. Thus, Giorgi Rurua's breached right was never restored.

4.5.5. The case of Lasha Tordia

The Public Defender's Office has been monitoring the progress of criminal proceedings concerning the assault on Lasha Tordia, former Auditor General, since 2017.³⁰⁸ We have been observing the case develop at both investigation and judicial stages. Once the proceedings in the trial court were over, we took on to study the case file thoroughly.

Our study revealed charges were brought under a wrong provision of the Criminal Code. Criminal prosecution against two defendants was progressing under a less severe paragraph of the relevant provision of the Criminal Code. Although the facts of the case should have been described rather as "violence committed by a group of people" (Article paragraph 1¹ of Article 126 of the Criminal Code), the investigation ended up with charging the two individuals under paragraph 1 of Article 126, which means

³⁰⁸ The Public Defender, 2017 report to the Parliament of Georgia, p. 84; see also The Public Defender, 2019 report to the Parliament of Georgia, p. 149.

the same crime but committed by a single perpetrator.³⁰⁹ Eventually only one individual – M.Ch. – was convicted, while Otar Parskaladze, formerly Prosecutor-General, was acquitted.

It should be pointed out that, in the event of a crime committed by two or more perpetrators, it is not necessary for each perpetrator to perform the same conduct as other accomplices; it suffices when a person directly engages in the commission of a crime along with another person and, for example, helps another perpetrator expose a victim to a vulnerable condition or reduces a victim's ability to resist. This, in fact, was what Otar Parskaladze committed together with M.Ch.

The Public Defender is of the view that, contrary to what facts of the case suggested, charges were intentionally brought arbitrarily in a way to reduce the likelihood of a convicting judgment being handed down in the case.

Another issue we observed about the case was procrastination. Among other factors hindering investigation was that it took a phonoscopy and videography forensic expert one year and five months to produce a forensic report on the video footages. Forensic examination of the video footages at the Public Law Entity "Levan Samkharauli National Forensics Bureau" was ordered on 8 June 2017. It wasn't until 5 November 2018 that the Bureau issued its report. During this period, it is safe to say that the investigation halted pending forensic examination and no other investigative actions were carried out.

It took the same long one year and five months to find Lasha Tordia a victim of the crime. Even though the investigation authorities had received a medical expert's report concerning injuries on Lasha Tordia's body on 5 June 2017, he was granted a crime victim status only on 5 November 2018.

4.6. Gag order in criminal proceedings

The Criminal Procedure Code authorizes the prosecutor and/or the judge to make it incumbent on parties to criminal proceedings to not disclose case information without their prior permission and to warn such parties of criminal liability they can incur if they are to breach that order.³¹⁰

On 12 August 2020, the Prosecutor's Office issued a gag order in relation to lawyers of 5 individuals appearing as defendants in the alleged premeditated murder of Giorgi Shakarashvili committed by a group obliging them not to disclose and divulge any materials and information contained in the criminal case file. The Prosecutor's Office instructed the lawyer that, if they were to breach the gag order, they would face criminal liability.³¹¹

³⁰⁹ Paragraph 1(b) of Article 126 of the Criminal Code, as applicable on 13 May 2017, envisaged "battery or other violence committed by a group" punishable with imprisonment for up to 2 years as maximum sentence.

³¹⁰ The Criminal Procedure Code, Article 104.

³¹¹ The Criminal Code, Article 374.

At the time it indicted the defendants, the Prosecutor's Office informed the public about evidence they collected and the prosecution's theory of the case and showed a crime scene graphic reconstruction video. Against this background, the defense, too, had to have the possibility to speak about the case materials and inform the society of its version of what happened.

The Prosecutor's Office office used the gag order issuing power in other cases too. An example is the so-called cyanide case, in which the Prosecutor's Office imposed the obligation of no-disclosure upon Giorgi Mamaladze's lawyers, while it went public to actively discuss individual pieces of prosecution's evidence.

Such a practice of using gag orders has already been challenged in the Constitutional Court, which completed the merits stage of the case and went into deliberation.

The Public Defender considers that the issuance of gag orders in relation to defense lawyers is at odds with the purposes of the criminal procedure law and constitutes a continuation of the wrong practice of indirectly placing the defense in unequal conditions.

4.7. The right to property in the context of criminal proceedings

Giving back to their owners various physical items seized within a criminal investigation in a timely manner has been a problem for many years already.

It should be mentioned that the fundamental right to property can be breached by not only confiscation. A prolonged deprivation of access to a thing or property owned, taking away the actual possibility of using one's property, especially if it's impossible to tell when the owner will regain such access, equally constitutes a breach of the constitutionally guaranteed fundamental right to property.

The Public Defender's Office looked into an application lodged by Citizen O.M. who asserted the Prosecution Office breached their right to property. As we analyzed the case materials, we found out that O.M.'s car was seized by the Prosecutor's Office within a criminal investigation. On 13 March 2014, the Prosecutor's Office ceased investigation but did not return the car to the owner until a dispute over this physical evidence would be resolved in a civil court. However, as we were informed by the Bolnisi District Court³¹², there was no civil litigation involving the applicant at the Bolnisi District Court in the period of 2014-2020.

The Public Defender addressed the Prosecutor's Office with a proposal requesting that the applicant's right to his property be restored.³¹³ Although the Prosecutor-General's Office agreed to fulfil our proposal, the citizen has not received his key to the car and his vehicle registration document up to the present day. When he regained access to the car, he observed the car had been looted.³¹⁴ The citizen

³¹² Letter from the Bolnisi District Court no. 70 dated 8 April 2020

³¹³ Proposal by the Public Defender no. 15-2/5303 dated 28 May 2020.

³¹⁴ Application no. 6739/20 dated 22 June 2020

experienced multiple breaches of his property rights: he did not receive his car from the State on time, on the one hand, and the State failed to preserve his property (the car) intact, on the other hand.

A potential arbitrary violation of the right to property in the context of criminal proceedings was revealed in one of the cases studied by the Public Defender's Office.³¹⁵ The judge did not indicate in their judicial warrant what thing, document, substance or information he/she authorized the investigation authorities to seize. Firstly, lack of specificity in the judicial warrant excludes the possibility for the citizen to surrender the relevant item to the investigation voluntarily, without a search. Secondly, it gives searching officers too much of power and there is a higher risk of arbitrariness on their part accordingly.

The Public Defender's Office is currently studying a case in which computer equipment belonging to Company "X" and Citizens A.B. and Sh.B. were seized in March 2020 within a criminal investigation. The case concerned the sending by a person of 6 text messages containing false information about emergency declared in the country. The messages were sent on 16 March 2020 using an office computer and a server. Forensic examination of the computer equipment has not ended yet and is considered ongoing up to the present day. We have been constantly monitoring the progress of forensic activities in this case. As we were informed by the National Forensics Bureau, on 26 March 2020, two ICT forensic examinations were ordered in regard to 89 pieces of computer equipment seized from the company and its employees. According to the existing information as of 30 December 2020, forensics study was still ongoing and the work in relation to 73 pieces of equipment was still ahead. The Bureau also said they could not tell when approximately the exercise would end in the future. In spite of the number of computer items to be studied and the volume of the work to be carried out, the overly lengthy limitation of persons' property rights in this case cannot be considered justified. In fact, for the whole period since last year, the company has been deprived of almost all of its computers, which makes it impossible for them to function normally as a company.

4.8. Flaws in legal proceedings in administrative offense cases

The Public Defender has been reiterating the need for repealing and replacing the Soviet-era Administrative Offences Code of Georgia with a new Code over and over again.³¹⁶ The currently in-force Administrative Offences Code of Georgia falls short of meeting minimum requirements of human rights and freedoms.

The case of I.G. and Sh.G. the Public Defender's Office looked into in 2020 are evident examples of the fundamental problems inherent in the Georgian administrative offense proceedings. In this case, the

³¹⁵ Tbilisi City Court, decision no. 11b/19835, 17 December 2020

³¹⁶ Public Defenders reports to the Parliament of Georgia by years: 2012 report, Tbilisi, 2013, pp. 448-450; 2013 report, Tbilisi, 2014, pp. 271-277; 2014 report, Tbilisi, 2015, pp. 303-307; 2015 report, Tbilisi, 2016, pp. 462-467; 2017 report, Tbilisi, 2018, p. 114; 2018 report, Tbilisi, 2019, pp. 91-109; 2019 report, Tbilisi, 2020, pp. 157-159.

Tbilisi City Court found two quarantined individuals guilty of “petty hooliganism” under the Administrative Offences Code of Georgia committed in a hotel room (quarantine zone) just on the basis of citations issued by police officers and oral testimonies of the same police officers (who were themselves parties to the case and were interested in the outcome of the case).

For the purposes of “petty hooliganism”, a person should be insulting and calling names on citizens in a public thoroughfare, harrassing them or engaging in similar conduct, which violates public order. In the given case, the story told by the administrative defendants was exactly opposite of the police officers’ account of what happened. No neutral evidence corroborating the conduct of the administrative defendants they were found guilty of were submitted to the court.

The Public Defender sent the Appeal Court an *amicus curiae* brief concerning this case. She argued that finding a person guilty without neutral evidence and only based on police officers’ testimonies contradicted the case-law of the European Court of Human Rights and resulted in the shifting of the burden of proof from the State to the citizen, which was a breach of the presumption of innocence principle.

Proposals

To the Parliament of Georgia:

- Amend the Criminal Procedure Code setting a clear timeframe for the Supreme Court to decide on admissibility of cassation complaints;
- Amend the Organic Law on General Courts to the effect that only Supreme Court judges can sit on a Plenary Session of the Supreme Court;
- Enact amendments to determine a time period in which lower courts must send appeal complaints and corresponding criminal case files to higher courts;
- Amend Article 51¹(2) of the Organic Law on General Courts to require supporting votes of at least 2/3 of High Council of Justice members for electing an Independent Inspector;
- Amend the Civil Procedure Code to stipulate that the electronic case allocation software rather than court presidents should determine the composition of the bench when a civil case is to be heard by a panel of judges;
- Amend the law to make it incumbent on courts to release a prisoner from payment of court fees if the prisoner provides a bank statement for the period of their stay in the prison showing that their average monthly revenue was less than GEL 100 for the last six months;
- Insert a provision in the Criminal Procedure Code stipulating that a judgment cannot rely on a piece of evidence examined by another judge unless the other judge was a reserve judge;
- Make necessary amendments with the effect of establishing judicial oversight of evidence legality in cases with high risk of crime provocation;

- Adopt a new Administrative Offences Code of Georgia that is compatible with international and constitutional human rights standards;
- Add specifying provisions to the Criminal Procedure Code stipulating that, in the event a court hearing is conducted remotely,
 - No witness examination should start until the court assures itself that the witness is in a specially designed room alone, free from any undue influence;
 - No witness examination should start or witness examination that has already started must end if the defendant or other participant of the hearing cannot hear or see the witness.

Recommendations

To the Government:

- Determine a government agency responsible for developing a system of psychologists' training in juvenile justice and training quality assurance.

To the Minister of Justice:

- Improve technical infrastructure in penitentiary institutions so that each penitentiary institution has more special rooms that are better technically equipped to ensure unobstructed participation of defendants in remote court hearings.

To the High Council of Justice:

- Amend the Rules of Procedure of the High Council of Justice to lay down detailed procedures and criteria for election of an Independent Inspector by the Council that can exclude any conflict of interest during the election process as much as possible; further, lay down detailed assessment criteria of candidates for Independent Inspector, issues to address during candidate interviews and the duty to give reasons for any candidate assessment prepared;
- Ensure that an electronic software for the management of disciplinary proceedings against judges is developed and introduced in 2021;
- Publish conclusions authored by the Independence Inspector of the High Council of Justice, in observance of the personal data protection rules;
- Amend the electronic case allocation rules for courts so that all the three members of judicial panels in the appeal court and Supreme Court are selected by the random principle;
- Improve relevant hardware and software to allow for confidential communication between clients and their lawyers during remote court proceedings.

5. Right to Respect for Private Life

5.1. Introduction

Privacy and intactness of family life remained one of topical issues in 2020. During the reporting period, a number of criminal disclosures of information have occurred. In 2020, as in previous years, trends in the protection of the right to privacy and family life remained unchanged. State entities continued to trouble protecting the right to privacy and preventing its violation.

The world coronavirus pandemic put the right to privacy in front of new challenges. Additional restrictions on contact with the outside world inflicted serious harm on individuals in penitentiary and psychiatric institutions. Actions taken by the State to compensate for the restrictions did not provide for adequate alternatives for communicating with the outside world.

In regard to the right to respect for privacy and family life, during the reporting period, the Constitutional Court issued its judgment in *Giorgi Keburia v. the Parliament of Georgia*.³¹⁷ According to the Court, in deciding on the legality of a search conducted under the urgent necessity rule, the Court cannot consider the actual result of the search as a means of assessing whether the requisite probable cause standard has been met. In addition, the Constitutional Court made it incumbent on the prosecution to obtain neutral-source evidence in corroboration of legality of the search conducted and evidence collected. Examples of such neutral evidence, *inter alia*, include a video recording the process of search, a testimony of a neutral person attending the investigative action or other objective evidence capable of proving the fact of recovery of a piece of evidence from the object or person searched in order to exclude any unlawful conduct on the part of law enforcement members. We hope this landmark judgment of the Constitutional Court will set a new, higher standard of protection of the right to privacy in the country.

In her 2019 report to the Parliament, the Public Defender issued 7 recommendations and 6 proposals in respect of the right to privacy. Regrettably, the Georgian Parliament did not take any of these proposals into account, including a proposal on making a clear distinction between the contents of Article 157 and 157¹ of the Criminal Code. As for Public Defender's recommendations issued to executive authorities, only the Ministry of Internal Affairs fulfilled one of our recommendations, in part. We regard activities of the Ministry of Internal Affairs directed at raising public awareness of inviolability of private life to be at least partially positive. In the Public Defender's view, against the background of the epidemiologic situation in the country, the Ministry of Justice was unable to allow prisoners to receive short-term visitation without the glass partition for objective reasons.

³¹⁷ The Constitutional Court, *Citizen of Georgia Giorgi Keburia v. the Parliament of Georgia*, judgment no. 2/2/1276 as of 25 December 2020, available at < <http://bit.ly/3kcmXyG> > [last viewed 19.02.2021].

This chapter discusses actual cases of illegal wiretapping and the progress of ongoing investigations into unlawful disclosure of recordings in breach of the right to privacy. We also discuss challenges in maintaining contact with the outside world by individuals in penitentiary and psychiatric institutions.

5.2. Violations of the right to respect for privacy

In 2020, like in the previous years, we detected different types of violation of the right to privacy. For years, the Public Defender's Office has been demanding that investigation be carried out into unlawful disclosures of confidential conversations and recordings of political party representatives.³¹⁸ A number of similar cases were detected in 2020 as well.

Potential eavesdropping on a journalist and a politician

On 29 October 2020, at a briefing held in the office of the political party "Georgian Dream", Irakli Kobakhidze publicized the contents of a private conversation between Nato Gogelia, journalist at TV Pirveli, and Beso Katamadze, a member of the Ozurgeti Office of the National Movement political party. Nato Gogelia and Beso Katamadze stated the conversation occurred between them only. The Public Defender's Office could not obtain any information from the Interior Ministry on opening or progress of an investigation into the unlawful wiretapping of a conversation between a TV pirveli journalist and an opposition party member,³¹⁹ which most likely means no investigation was opened into this fact.

Eavesdropping on Salome Samadashvili

On 6 November 2020, the Imedi TV Company broadcast recordings obtained from a Ukrainian webpage possibly involving Georgian politicians, including Salome Samadashvili, member of the 9th parliament of Georgia. The Public Defender publicly condemned the extraction and publication of private conversation recordings as a continuation of a years-long corrupt practice. It is even more regrettable that this is happening to a member of parliament who is supposed to enjoy stronger guarantees of protection in the interests of performance of their constitutional mandate. Worth noting also is that illegally wiretapped recordings published in the recent years related most frequently to women members of the parliament

³¹⁸ The Public Defender, 2017 Report to the Parliament, Tbilisi, 2018, pp. 118-119.

³¹⁹ Letter from the Interior Ministry no. MIA32002979027 dated 23 December 2020; Letter from the Interior Ministry no. MIA82100175188 dated 26 January 2020.

or women politicians, which exacerbates the unequal participation of women in the country's political life.³²⁰

Unlawful actions of the Special Penitentiary Service and the Ministry of Justice

In an attempt to respond to a statement made by former convict A.S., the Ministry of Justice published special-category data concerning A.S.'s criminal record on its official Facebook page. Having conducted internal investigation, the Office of the State Inspector found that the Special Penitentiary Service acted without a legal basis in disclosing the above-mentioned information. Consequently, the Special Penitentiary Service was found to have breached the law and was imposed an administrative sanction.

On 21 January 2020, Thea Tsulukiani, formerly Minister of Justice, publicized video recordings of visits of the Public Defender's representatives in the penitentiary. Some of the footages included specific episodes depicting the meeting of Public Defender's proxies with prisoners in penitentiary institutions. Faces of the Public Defender's envoys were not anonymized in the publicly-played recordings.

On 22 January 2020, the Public Defender requested the State Inspector³²¹ to look into the legality of publication by the Minister of Justice of video recordings on 21 January 2021 at a hearing of the Parliamentary Human Rights Protection and Civic Integration Committee. The Public Defender also requested that the State Inspector examine and assess the Justice Ministry's regular practice of retention of video footages

By decision no. 1/100/2020, on account of illegal disclosure of the video recordings, the Office of the State Inspector fined both the Ministry of Justice and the Special Penitentiary Service finding that both agencies had breached the Law on Personal Data Protection

From the State Inspector's decision the Public Defender also learnt about something that is no less alarming. According to the decision, Director-General of the Special Penitentiary Service issued a decision on the retention (storage) of a video recording of a meeting on 19 April 2019 between a representative of the Public Defender and a prisoner in penitentiary institution no. 6 on the day before our representative visited to the prison. It should be mentioned that we received a letter from that prisoner asking for a meeting with us on 11 April 2019. Only a few employees of the Public Defender's Office knew the date of the upcoming visit. This raises questions as to the 18 April 2019 decision, which the Special Penitentiary Service's Director-General issued just one day before the scheduled visit. Obviously, the Director-General obtained this information not in a legal way.

³²⁰ Statement by the Public Defender, 7 November 2020, available at <<https://bit.ly/3kCjLwG>> [last viewed 30.03.2020]. For additional information, please see Public Defender's Office, Criminal Justice Department, 2020 Activity Report, Tbilisi, 2020, Right to Respect for Private Life Chapter.

³²¹ "The Public Defender of Georgia requests the State Inspector to examine the legality of the conduct of the Minister of Justice available at <<https://bit.ly/38QUQ3N>> [last viewed 18.03.2021].

The Public Defender's Office was notified that, based on the Public Defender's request, the State Inspector decided to evaluate the legality of processing electronic surveillance data in penitentiary institutions.

On 31 December 2020, the Public Defender was informed that the Office of the State Inspector examined (through a confidential proceeding) legality of the processing of electronic surveillance data in penitentiary institutions by the Special Penitentiary Service revealing a number of violations. In regard to the shortcomings identified, the State Inspector issued 9 (nine) instructions and 7 (seven) recommendations to the Special Penitentiary Service.

Apart from approaching the State Inspector with the request, the Public Defender started a separate process on her own to find out how often the Special Penitentiary Service archives (records and stores) video footages of Public Defender's representatives' meetings with prisoners. Despite our numerous efforts, our requests were not answered by the Special Penitentiary Service. The Public Defender then decided to sue the Service in the court on the ground of their disobedience to the lawful demand of the Public Defender.

The court seconded the Public Defender's claim finding the Director-General of the Special Penitentiary Service had breached the law and fined him for failure to provide information to the Public Defender. After the court judgment, the Public Defender's Office received a reply from the Special Penitentiary Service that said they were not archiving (recording and keeping) video footages and the one publicized by the Justice Minister was the only one they had been keeping.

It is interesting though that the Special Penitentiary Service's response letter includes a passage from a working draft of the letter which the sender mistakenly forgot to remove on sending.³²² The passage says decisions of the Special Penitentiary Service's Director-General do not bear a document number and it would be inappropriate to provide the requested information to the Public Defender's Office. A reply proposed in the Special Penitentiary Service's draft letter was actually what we received as a finished version from the Service eventually (which provided us with misleading, false information).

5.3. Investigations into breaches of the right to privacy

As per information received from the Prosecutor-General's Office, 44 individuals were prosecuted in 2020³²³ for violation of the right to privacy.³²⁴ No prosecutions were commenced in 2020 in regard to

³²² Letter from the Special Penitentiary Service no. 164785/01 dated 8 July 2020 reads: "In fact, the decision has no registration number on it; I'd suggest it would be inappropriate to provide the requested information. I guess the best answer on our part would be to say that archived materials are stored in a way that the storage medium also refers to and stores the basis of archiving, which is the Director-General's order in this case."

³²³ In 2019, 63 individuals were criminally prosecuted for violation of the right to privacy.

³²⁴ Sixteen individuals were prosecuted under Article 157 of the Criminal Code, 18 individuals were charged for a crime under Article 157¹ and 10 individuals were prosecuted for a crime under Article 158 of the Criminal Code.

criminal cases opened in the period through 2015-2017 into allegations of breaching the right of privacy. Unfortunately, our requests concerning individual cases were answered incompletely by the Prosecutor-General's Office that provided only general statistical data.³²⁵

The Public Defender reiterates its call to the Prosecutor-General's Office for greater transparency so as to open up avenues for objectively evaluating the effectiveness of investigative authorities' response measures.

5.4. Contact with the outside world in penitentiary institutions

Measures taken to contain the spread of the coronavirus affected the enjoyment of the right to maintain contact with the outside world by prisoners to the greatest extent.

As a result of limitations imposed since 5 March 2020, a series of prisoner rights envisaged by the Code of Imprisonment were restricted. These rights include the right to family, long- and short-term visitation, the right to leave a penitentiary institution for a short time and the right to a short-term furlough from a prison for personal reasons.³²⁶ The restriction was partially lifted on 25 May 2020,³²⁷ but soon thereafter, along with deteriorated epidemiology statistics, the right to short visits and the right to receive parcels and packages were again declared restricted until 1 January 2021 and 29 December 2020 respectively.³²⁸

The need to fulfil Public Defender's recommendations issued to various State authorities over years has become evident in 2020.

In the first place, we would like to highlight that decision-making as to allocating a prisoner to prison where they are to serve their sentence does not take into account the place where their family lives. Oftentimes this is a major cause of prisoners not being able to use their right to short and long visits. The Public Defender's Office is dealing with a number of cases in which prisoners have not been able to enjoy their right to visitation for several years already (while they had had this possibility in the past if admitted to a prison that was physically close to the place of their family members).

The Imprisonment Code does not allow exchanging the right to a long visit for the right to an over-the-phone visit or a video call. Prisoners in high-risk penitentiary institutions are additionally deprived of video

³²⁵ Letters from the Prosecutor-General's Office nos. 13/11375 and 13/12270 dated 1 March and 5 March 2020 respectively.

³²⁶ Order by Director-General of Special Penitentiary Service under the Ministry of Justice no. 4109 as of 5 March 2020, Article 2.

³²⁷ Prisoners were allowed to use their right to short-term visitation behind the glass partition. Short-term visitations were restored only temporarily, until 28 November 2020.

³²⁸ Prisoners started receiving parcels and packages again on 28 December 2020. Since then, they have been enjoying their right to receive parcels and packages, see Special Penitentiary Service's statement at < <https://bit.ly/36CtGfU> > [last viewed: 30.03.2021].

visitation opportunities. Some penitentiary institutions do not have an adequate number of phone sets and cannot offer conditions for a confidential conversation.

Our monitoring showed that penitentiary institutions nos. 2, 10, 12 and 18 are not equipped with infrastructure requisite for video visitation. Existing epidemiologic situation has made these means particularly important for the purposes of enabling prisoners to communicate with their family members in the format of video visitation, which is a good alternative to in-person communication.

We wish to point out our observation as a result of our 2020 monitoring that unfortunately the number of video visits decreased rather than increased in penitentiary institutions offering video calls. This should most likely have to do with prisoners' family members having to appear physically, as a mandatory rule, in one of the territorial offices of the Agency for Crime Prevention, Non-custodial Sentence Enforcement and Probation,³²⁹ which they were unable to do because of the movement-related restrictions during the pandemic (especially in time of emergency situation declared in the country).

The special rules introduced in penitentiary institutions and limitation of physical contact certainly are necessary for the protection of lives and health of prisoners but, according to the recommendations issued by the UN Subcommittee on the Prevention of Torture³³⁰ and a statement by the European Committee for the Prevention of Torture,³³¹ alternative means of communicating with the world outside prisons should be offered to balance out the restrictions.

As a compensation to counterbalance visitation restrictions, since 16 March 2020, prisoners have been allowed a 15-minute free phone call time. Extra 20 minutes were added to this in April as a one-off measure.³³² The Public Defender is of the view, considering the extent of limitations imposed on the right to respect for private and family life, that the 15-minute free-of-charge calling time offered by the State to prisoners is an inadequate alternative for maintaining satisfactory contact with the world outside of prison.

Forbidding contact with the outside world as a measure of disciplinary punishment remains a challenging practice in the penitentiary system. Although phone calls were the only means for prisoners to communicate with people outside prison during the pandemic, the right to a phonecall happened to go on the list of restricted rights nevertheless. For example, in March, April and May, when short-term visitation was completely suspended, prohibition of a phone call as a measure of disciplinary punishment

³²⁹ Code of Imprisonment, Article 17¹(3) and Order of the Minister for the Penitentiary, Probation and Legal Aid Affairs no. 55 as of 5 April 2011 approving "Convicted prisoner visitation rules".

³³⁰ UN Subcommittee on the Prevention of Torture, Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic (adopted 25 March 2020), paragraph 9(k), available at <<http://bit.ly/38RUzO6>> [last viewed: 17.01.2021].

³³¹ The European Committee for the Prevention of Torture, "Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic", CPT/Inf(2020)13, 20 March 2020

³³² Which was made possible through financial assistance from the International Committee of Red Cross (ICRC) Georgia Delegation.

was used 124 times. In the period between January and November 2020, the same figure hit 467 in total.³³³ The Public Defender reiterates that disciplining prisoners by cutting them off of the world outside the prison is impermissible,³³⁴ as indicated also by the European Committee for the Prevention of Torture (CPT).³³⁵

Inability to use the right to file a complaint and impediments in sending a complaint without trouble and in a confidential manner have been one of the most frequent concerns expressed by prisoners for years already.

Although complaint boxes are available in all of the penitentiary institutions visited by the National Preventive mechanism representatives in 2020,³³⁶ these boxes are usually located within the coverage area of CCTV cameras, which makes it possible to identify those dropping a confidential complaint into the box. In closed-type penitentiary institutions, a prisoner cannot obtain an envelope for a confidential complaint without identifying themselves first. Registration by social service employees of the envelope number and a prisoner's first name and last name whenever the prisoner asks for an envelope is a flagrant violation of the confidentiality rule.

In order for prisoners to be able to use their right to complain, they must be provided with stationary paper, confidential complaint envelopes and pens. As a result of our interviews with prisoners in penitentiary institutions nos. 8 and 6, it turned out the prison administration is not supplying prisoners with requisite items and is impeding the sending of complaints to their addressees. If a prisoner actually manages to write a complaint and drop it into the complaints box or hand it over to a prison employee for shipment,³³⁷ they are never informed on whether the letter reached who it was meant for. Prisoners suspect that prison officials simply block their letters and complaints prison administration may consider to be against them and the correspondence does not reach the addressees.

In fact, prisoners' suspicion is reinforced by examples detected by the Public Defender's Office. In 2019, while inspecting a penitentiary institution's documents office, a representative of the Public Defender discovered a prisoner's letter addressed to the Public Defender that had been opened and viewed.³³⁸ In 2020, we detected violation of convicted prisoner N.B.'s right to correspondence; in particular, the

³³³ National Statistics Bureau, criminal justice statistics, monthly reports, available at <<https://bit.ly/39CVbb4>> [last viewed: 18.01.2020].

³³⁴ United Nations Office on Drugs and Crime (UNODC), Handbook on Dynamic Security and Prison Intelligence, New York, 2015, p. 22, available at <<https://bit.ly/3bVGGR6>> [last viewed: 20.01.2021].

³³⁵ Report on the visit to Georgia carried out by the European Committee for the Prevention of Torture (CPT) from 10 to 21 September 2018 (CPT/Inf (2019) 16), par. 100, available in English at <<http://bit.ly/2J9leHP>> [last viewed: 20.01.2021].

³³⁶ As we found out during our visit to penitentiary institution no. 10 on 26 June 2020, the administration had not opened the complaint box since March 16.

³³⁷ After emergency rules were introduced in prisons, prisoners hand their letters and complaints over to members of prison security or prison regime instead of social workers as they did in the past.

³³⁸ The Public Defender, 2019 Report to the Parliament, Tbilisi, 2020, p. 74.

prisoner's letter was not sent out from penitentiary institution no. 18, which was later determined to be the guilt of a prison employee.³³⁹

The statute of Special Penitentiary Service's medical facility no. 18 does not envisage inmates' right to long-term visitation. As a result, prisoners who spend their entire sentence in that medical facility are never allowed to receive long-term visits.

Our analysis of the facts told in this chapter obviate that the existing legal framework and infrastructure do not allow for full-fledged implementation of inmates' right to inviolability of private life in penitentiary institutions. Moreover, we regret that measures taken to balance out the pandemic-engendered restrictions on prisoners' privacy rights were insufficient.

Separate attention is to be paid to the conditions of imprisoned foreign citizens and stateless persons³⁴⁰ who face serious and insurmountable obstacles in regard to both maintaining contact with the outside world and communicating locally, inside their penitentiary institutions.

Keeping contact with family members and the world outside the prison³⁴¹ is the greatest problem foreign inmates have. Their situation is exacerbated by nearly insurmountable obstacles in communicating with their families. Prisoners in Georgian prisons whose family members live abroad practically have no possibility of using their right to visitation. Making a phonecall from prison is also not a trouble-free experience. In penitentiary institution no. 8, if a phonecall day for a particular prison cell does not happen to match an international calls day,³⁴² prisoners cannot make outgoing calls to foreign countries. Making international calls is not free of charge for inmates, which becomes an even more serious problem since they are not getting any monetary assistance from their families. Due to long physical distance and high mailing tariffs, foreign prisoners rarely send or receive letters. Receiving a parcel is also related to serious difficulties.

The uneasy conditions of foreign prisoners are aggravated by the language barrier. The staff of penitentiary institutions, except some individual employees, do not speak foreign languages. Inmates do not have the possibility of learning Georgian. The situation became even worse when measures to contain the spread of coronavirus were introduced in prisons. For example, language courses were suspended and inmates could no longer use social workers' assistance in communicating with various agencies. Due to lack of knowledge of the Georgian language and no availability of language translators in prisons, foreign inmates cannot communicate with psychologists. Speaking to healthcare personnel is also made

³³⁹ Letter from the Special Penitentiary Service's monitoring department no. 3465/01 dated 8 January 2021.

³⁴⁰ According to the data as of 1 December 2020, there were 584 inmates who were foreign citizens or stateless persons, which makes 6.3% of all prisoners in Georgia's penitentiary institutions; see National Statistics Bureau, criminal justice statistics, consolidated report, November 2020, annex, p. 116, available at <<https://bit.ly/3oHUBwK>> [last viewed: 15.01.2021].

³⁴¹ By the time of our monitoring in penitentiary institution no. 8 on 3-4 December 2020, two more English TV channels were accessible for inmates, which we certainly welcome. However, our interviews with prisoners revealed a vast shortage of foreign-language books at the prison library.

³⁴² In penitentiary institution no. 8, three days in a week are designated for international phonecalls.

difficult for the same reason. The language barrier also adversely affects relations with prison staff.³⁴³ Foreign inmates are not aware of their rights and obligations. They do not know who to approach when help is needed. It is crucial that the State addresses these issues on time as foreign citizens and stateless persons are experiencing extreme psychological pressure because of the conditions they are serving their sentence in. During their interviews with Public Defender's preventive team, they said they miss talking to human beings and the interviews were one a rarest opportunity to communicate and impart their emotions with other people in a normal way.

5.5. Contact with the outside world in psychiatric institutions

The situation in psychiatric institutions from the perspective of respect for private and family life remains dire.

The Law of Georgia on Psychiatric Care³⁴⁴ authorizes a doctor, when mandated by necessity on the ground, to issue a written decision restricting an array of rights to a prisoner such as the right to use a phone; the right to a short-term furlough from a mental institution; the right to receive letters, parcels and visitors; the right to possess items of personal use; the right to receive information in an audio-visual format; the right to receive information on own health in an understandable manner; the right to view medical documents.

The Public Defender believes the authority of restricting above-mentioned rights outright is overly broad and at odds with human rights protection standards. Imposing limitations on rights such as the right to receive information on one's health or the right to use the phone is unjustified and contradicts the interests of protection of patients' rights.

It should be pointed out that the law does not specify how long these restrictions can last. So, in order to curb doctors' arbitrariness, terms and conditions of imposing restrictions must be articulated in regard to each of these rights separately.

According to the law, patients voluntarily receiving medical treatment are entitled to temporarily leave the hospital without having to be discharged,³⁴⁵ nevertheless, patients in psychiatric institutions are not allowed to take such a leave at all. Doors to units inside the institutions are locked and patients cannot go out in the yard or outside the premises. This is against the background that there is no decision of a doctor to restrict this right for exigent reasons.³⁴⁶

³⁴³ It should be pointed out that foreign prisoners in penitentiary institution no. 8 spoke positively of one of the prison security employees who can speak English and is willing to help prisoners out.

³⁴⁴ Law on Psychiatric Care, Article 15(3).

³⁴⁵ Law on Psychiatric Care, Article 15(2)(d).

³⁴⁶ Law on Psychiatric Care, Article 15(3)

During 2020, the Public Defender's special preventive group paid 5 preventive visits to 3 psychiatric institutions. As a result of the visits, we found out that patients had their right to a phonecall restricted too. In Mental Health and Drug Addiction Prevention Center Ltd³⁴⁷ and Tbilisi Mental Health Center Ltd, patients' cellular phones had been taken away arbitrarily³⁴⁸ without informing their owners reasons thereof as mandated by the law.³⁴⁹ Employees of the medical facilities explained confiscation of cellular phones by the reason that patients' family members are bothered with phone calls. But this justification is not compatible with the law.

Above-mentioned restrictions worsen the conditions of patients in mental health institutions. This is especially true against the background that all visitation in mental health departments have been suspended during the pandemic. While the State is supposed to facilitate patients' re-entry and integration into the society, the above-described treatment makes these objectives even harder for the beneficiaries to achieve.

5.6. Seizure of electronic devices and extraction of information

In response to the high interest on the part of the public, the Public Defender's Office is looking into a number of criminal case files on an exceptional basis. Having examined the files and an application from a citizen, we found out that investigation authorities seize electronic devices and extract information not only from persons linked with pending criminal cases but from anyone who do not have anything to do with alleged crime or a circumstance related to that crime. The prosecution office confines itself merely to showing some sort of abstract nexus, while courts issue authorizing warrants just because the investigative authorities mentioned a person's name somewhere in the case materials for any reason.

As we found out, people can be required to surrender their electronic devices or provide information even if they do not know anyone featuring in a criminal case just because they were driving down a highway in a given stretch of time which the investigation is interested in or drove up to a police station to pick up a person who the police considers to be a witness.

To ensure adequate safeguards for respecting private life and privacy during a criminal investigation, courts should modify their approaches to match the contemporary level of societal and technological development, and to be able to resolve challenges. Due to the level of harm inherent in the having of

³⁴⁷ We must also mention the positive fact that patients at the Mental Health and Drug Addiction Prevention Center had the possibility of using a computer and Internet in the social worker's room.

³⁴⁸ Of the patients we interviewed, only one had a mobile phone. Many patients said their phones were taken away on admission to the institution. Some of them have said they make calls using personnel's phones. But when making a phonecall, staff members do not let patients stay alone which makes a confidential conversation impossible. There were also patients who had not used a phone for a long time. One patient said he/she had been in the institution for a year already and had never used the phone during all this entire period.

³⁴⁹ Mental Health Act, Article 15(2)(b) and Article 15(3).

access to such information, the judiciary should adopt practices and approaches aimed at excluding or minimizing any avenues for arbitrariness.

Proposals

To the Parliament:

- Amend the Imprisonment Code, namely paragraphs 11 and 12 of Article 17, to allow for substitution of short-term visits with video visitation.
- Amend Article 172(9) of the Imprisonment Code to allow substitution of long-term visitation with a phone call and video visitation.
- Amend Article 173 of the Imprisonment Code to allow for substitution of family visitation with a phone call and video visitation.
- Amend the Imprisonment Code to increase the number visits and phone calls inmates in high-risk institutions and closed-type institutions can receive/make.
- Amend the Imprisonment Code to permit inmates in high-risk penitentiary institutions to receive video visitation;
- Amend the Imprisonment Code to repeal the prohibition of contact with the outside world as a disciplinary punishment and as a security measure used against inmates, except when such a contact is related to criminal activity.
- Amend Articles 157 and 157¹ of the Criminal Code to draw distinction between the contents of these two provisions.
- Amend the Law on Psychiatric Care to determine clear procedures for imposing limitations on the rights of individual patients with due regard to requisite legal safeguards (articulate criteria that should be met before a restriction is imposed, the duration for which the restriction applies and how to appeal the decision).

Recommendations

To the Minister of Justice:

- In 2021, amend currently-applicable video visitation rules in a way that prisoners' family members no longer be required to appear physically in a territorial office of the Agency for Crime Prevention, Non-custodial Sentence Enforcement and Probation for visitation; create a safe app (software) that simplifies video visitation.
- In 2021, equip penitentiary institutions no. 2, 3, 6, 10, 12 and 18 with proper infrastructure to support video visitation, as a matter of priority.

- Ensure that prisoners can send complaints from their penitentiary institutions confidentially; to this end, choose locations where complaint envelopes can be picked up without having to ask prison staff for them and without being identified. Ensure to all prisoners requisite materials to write complaints (paper, pens, envelopes); allow prisoners to keep a certain number of envelopes in their cells.
- Inspectorate-General of the Ministry of Justice to conduct a systemic inspection in penitentiary institutions nos. 2, 3, 6 and 8 with a view to looking into violations of confidentiality of outgoing prisoner complaints, investigating any retaliation against prisoners for filing a complaint and punishing those responsible;
- Amend the statute of Special Penitentiary Service's medical facility no. 18 to grant prisoners the entitlement to long-term visitation and equip the institution with requisite infrastructure.
- Have the monitoring service look into any practices hindering the exercise by foreign prisoners in penitentiary institution no. 8 of their right to international calls and take measures to make sure that foreign prisoners are actually able to use their calling time without impediment as mandated by the law.
- Take all necessary measures to ensure to foreign prisoners and Georgian citizens whose families reside outside Georgia the possibility of making international calls at a reduced and more affordable cost.
- Take all necessary measures to ensure to foreign prisoners and Georgian citizens whose families reside outside Georgia the right to a free international call every month in the period of pandemic.
- In period of special conditions introduced due to the pandemic, implement remote Georgian language courses for foreign prisoners and Georgian citizens who do not have command of Georgian.

To the Prosecutor-General:

- Periodically, once every 6 months, inform the public about the progress of pending investigations into violation of the right to privacy.

To the Minister for IDPs from the Occupied Territories, Labor, Health and Social Protection:

- As mandated by the Law on Psychiatric Care, ensure to patients the possibility of enjoying their right to freely use telephones and other communication devices;
- As per the Law on Psychiatric Care, ensure to patients undergoing voluntary medical treatment the possibility of using their right to temporarily leave the hospital unless there is a doctor's decision to restrict this right for exigent reasons.

6. Right to equality

6.1. Introduction

In 2020, the effective realization of the right to equality was negatively affected by the epidemiological situation related to the coronavirus. Beyond the obstacles caused by the pandemic, some of the Government's regulations treated different groups unequally.³⁵⁰

It should be mentioned, that in 2020, significant changes were made to the anti-discrimination legislation - the Law of Georgia on the Elimination of All Forms of Discrimination - the denial to reasonable accommodation was defined as discrimination on the basis of disability, and the Parliament adopted the Law on the Rights of Persons with Disabilities. In the field of protection of the right to equality, labor legislation has undergone substantial changes. Unfortunately, the Ombudsman's suggestion - to limit mandate of the labor Inspector's Office to the general assessment of equality policy in the field of employment and to create referring mechanism for individual cases to - Ombudsman was not taken into account.³⁵¹

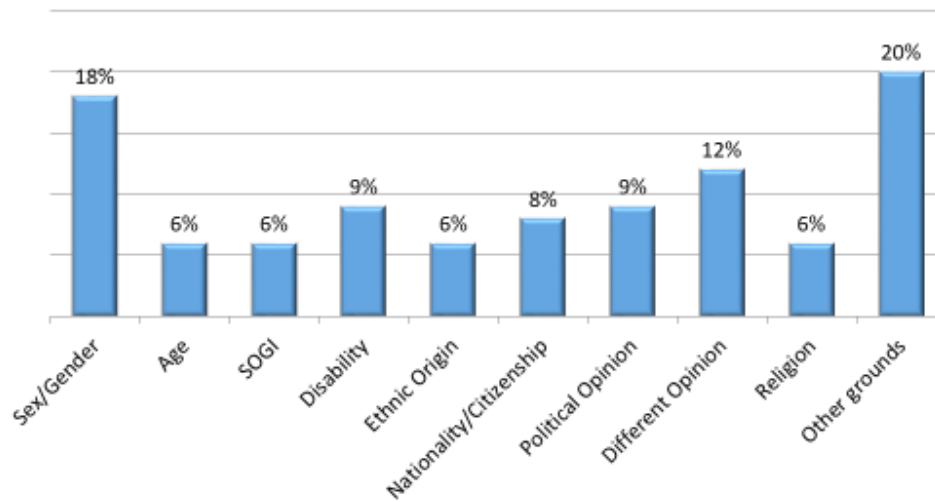
It is not surprising, that state institutions could not allocate time for development of equality policy and a unified vision, creating of environment tailored to vulnerable groups, and raising public awareness of anti-discrimination issues. Instead of tackling systemic inequality practices, the agenda largely was still focused on eliminating individual cases of discrimination.

Women, members of religious minorities, members of the LGBT + community, and people with disabilities faced the most obstacles in terms of equality during the reporting period. In 2020, the Public Defender reviewed 113 new cases of alleged discrimination, of which 18% related to discrimination on the grounds of sex / gender, 9% to discrimination on the grounds of disability, 12% and 9% of all cases were applications related to unequal treatment due to different opinion and political views.

³⁵⁰ According to the decree of the Government of Georgia, the requirement of mandatory quarantine did not apply only to citizens of five EU countries - Germany, France, Latvia, Lithuania and Estonia and persons with permanent residence permits (including Georgian citizens). At the same time, non-dominant religious associations found themselves in an unequal position in terms of both the issuance of permits and the rules of holidays which are celebrated at night time.

³⁵¹ Statement of the Public Defender of Georgia, available at: <<https://rb.gy/6aqtq7>> {last visited: 24.03.2021}.

Applications per protected ground



6.2. State of Equality of Women

Significant legislative changes were made in 2020 to protect women's rights - as a result of the amendments to the Labor Code, the employer was directly obliged to ensure equal pay for equal work to male and female employees. In addition, not exhaustive list of specific issues related to labor and pre-contractual relations (selection criteria, employment conditions, access to training, etc.) to which the principle of equal treatment applies has been identified.

However, maternity leave because of pregnancy/delivery and maternity leave for child care were separated. The old version of the law cumulatively required the existence of three preconditions (pregnancy, childbirth and child care) for the use of the leave, which discriminately excluded the surrogate mother and the mother of a child born through surrogacy. It has also become possible to redistribute maternity leave between mother and father. Though, the same changes were not made to the Law of Georgia on Civil Service. Unfortunately, the change did not affect private sector, and the remuneration of the rest of the salary, beyond the assistance in the amount of 1000 GEL set by the state, is still up to the employer.

The problem of sexual harassment remains a challenge, it mainly took place at workplace and while receiving medical services. Women, victims of sexual violence, still face legal obstacles to terminate pregnancy beyond the prescribed period. During the reporting period, discriminatory practices were also identified in the process of forensic medical examinations for women who were victims of sexual violence, in some cases, they were not allowed to use the services of a female expert.

6.2.1. Sexual harassment

In 2019, significant legislative changes were made to ban sexual harassment - prohibitive norms appeared in the Law of Georgia on the Elimination of All Forms of Discrimination and the Organic Law of Georgia, the Labor Code. In addition, within the framework of the amendments to the labor legislation in 2020, the Labor Code obliges the employer to respond to sexual harassment.³⁵²

As in the previous reporting period, female victims among reported on cases of sexual harassment highest number is related to labor relations.³⁵³ The cases examined by the Public Defender during the current reporting period also concerned the facts of sexual harassment identified in the medical field. One of the cases of sexual harassment by a representative of the medical field took place in a quarantine hotel.³⁵⁴ In another case, the doctor touched the patient in intimate places while providing medical service, although this was not due to medical needs.³⁵⁵

6.2.2. Women victims of sexual harassment

In terms of women's equality, women victims of sexual violence are one of the most vulnerable groups. The issue of pregnancy termination after the expiration of period established by law, in cases of pregnancy as a result of violence, is still problematic, as abortion is possible only after a conviction made by a court,³⁵⁶ and the duration of criminal proceedings usually exceeds the term of the pregnancy. Refusal to terminate a pregnancy in such a situation may cause psycho-emotional stress and social stigma for women.

One more problem that creates a traumatic environment for women victims of sexual violence is the insufficient number of female experts at the Levan Samkharauli National Forensics Bureau. Despite the fact that under legislation the person under examination might be transferred to another branch of the bureau upon his/her request or specialist of the same sex should be invited to examine him/her,³⁵⁷ this provision does not apply in practice. It is critical that the Bureau provides a sufficient number of female experts who, in the event of sexual violence, will be empowered to conduct the examination.

³⁵² "Imposing liability on an employee who commits sexual harassment does not release the employer from the relevant liability. The employer may be held liable if he / she became aware of the fact of harassment and did not report it to the Labor Inspectorate and / or did not take appropriate measures to prevent such action "(Note to Part 78 of Article 78 of the Labor Code of Georgia) Effective from January 1, 2021)).

³⁵³ The ombudsman's April 13, 2020 recommendation to D.A. and "Ras Al Khaima" Investment Authority Ltd. is available at: <<https://bit.ly/361kiCl>> [last viewed 24.03.2021]. See also Recommendation of the Public Defender of 13 April 2020 to L.J., available at: <<https://bit.ly/39bdjsE>> [last viewed 24.03.2021].

³⁵⁴ Recommendation of the Public Defender of June 29, 2020 N.B, LEPL Social Service Agency, non-commercial legal entity "Georgian Medical Holding", Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, available at: <<https://bit.ly/2J8kJSX>> [Last viewed 24.03.2021].

³⁵⁵ The recommendation of the Public Defender of April 13, 2020 to I.Kh. and the LEPL State Agency for Regulation of Medical Activities is available at: <<https://bit.ly/3fwhZum>> [last viewed 24.03.2021].

³⁵⁶ Annex 5 to the Order №01-74 / N of the Minister of Labor, Health and Social Affairs of Georgia of October 7, 2014 "On the Approval of the Rules for Implementing Abortion".

³⁵⁷ Part 9 of Article 111 of the Criminal Procedure Code of Georgia.

6.3. Disability

In 2020, important legislative measures were taken to protect the rights of persons with disabilities - the Parliament adopted the Law on the Rights of Persons with Disabilities, which offers important legal guarantees. In parallel with this law, the Law on the Elimination of All Forms of Discrimination considered denial to reasonable accommodation as a form of discrimination. However, a number of important issues remained beyond the regulation of the law.

Unfortunately, in practice, the situation of equality of persons with disabilities has not improved in the current reporting period either. People with disabilities still struggle to gain access to the environment, as well as to use different public or private services equally. This year, entrants with hearing problems faced numerous obstacles while passing the Unified National Examinations because there were appropriate conditions tailored to their needs. Discrimination was also expressed at the general education level. During the current reporting period, the Public Defender considered as discriminative regulation related to persons with disabilities, who reached the age of retirement. This regulation excludes possibility of cumulative use of a pension due to age and a social package due to disability.

6.3.1. Physical disability

Changes during reporting year have affected and improved physical access standards. On December 4, 2020, the Government of Georgia approved the Technical Regulation "National Accessibility Standards".³⁵⁸ As to the actual situation of people with disabilities, unfortunately, despite numerous responses by the Public Defender to discriminative violation of the right to access,³⁵⁹ availability of various services for people with disabilities is still a problematic, that naturally hinders existence of full life for people with disabilities.

During the current reporting period, the problem of physical accessibility for persons with disabilities was identified in the context of receiving banking services.³⁶⁰ People with physical disabilities have difficulty to access the branch of Liberty Bank, as the adapted environment created by the bank is still inaccessible for them. It is noteworthy that people with disabilities receive social package through JSC Liberty Bank.

³⁵⁸ Resolution №732 of the Government of Georgia of December 4, 2020 on the Approval of the Technical Regulation - "National Standards of Accessibility", available: <<https://rb.gy/dzn8zo>> [Last viewed: 24.03.2021].

³⁵⁹ The recommendation of the Public Defender of Georgia of August 6, 2018 to the Chairman of the Tbilisi City Council is available at: <<https://rb.gy/5uazan>> [last viewed on 24.03.2021]; The recommendation of the Public Defender of Georgia of August 6, 2018 to the Administration of the Government of Georgia is available: <<https://rb.gy/ui1y33>> [Last viewed: 24.03.2021].

³⁶⁰ Recommendation of the Public Defender of Georgia of November 19, 2020 to JSC "Liberty Bank", available at: <<https://bit.ly/31iCJil>> [last viewed on 24.03.2021].

6.3.2. Denial to reasonable accommodation in the context of right to education

Access to education remains challenging for people with disabilities. The protection of right to education is directly related to the exercising of all other basic rights for them. As practice has shown, the realization of the right to education largely depends on the fulfillment of the obligation of accessibility and reasonable adaptation. It is important that the obligation of reasonable accommodation reflected in the legislation is not properly implemented in practice.

Over the years, the Public Defender has pointed out the problem of lack of inclusive education for children with disabilities or hyperactive children in kindergartens³⁶¹ or schools³⁶² and inadequate adaptation of the environment. During the reporting period, the facts of discrimination on the grounds of disability in the field of education, in particular, denial to reasonable accommodation, were revealed again.

In one case,³⁶³ for an entrant with a hearing problem, while completing an English listening assignment on the Unified National Examinations, no conditions were created tailored to his/her needs. In the second case, the problem related to passing of the Unified Masters exams was that the National Examinations Center did not have proper communication with the entrant about his special needs (assisting in the writing process). According to the entrant, similar problems did not take place in the previous years during Unified National Examinations.

As for the general education level, the private school administration did not take into account the special needs of the student with autism spectrum, which led to the exclusion of the juvenile from social activity and indirect discrimination³⁶⁴ - namely excluding from participation in the educational, social summer school, because student needed assistance of parent as it would be difficult for him to stay there alone. While investigation of the case the argument of the school administration that taking into account students' needs will be an excessive financial burden for the school was not confirmed.

6.3.3. The issue of cumulative use of social package and age pension

The general regulations in force in Georgia prohibit the simultaneous receipt of two or more social packages, as well as the inadmissibility of using a state pension (pension package) or state compensation together with the social package.³⁶⁵ Thus, according to this general rule, a person with disabilities at

³⁶¹ The recommendation of the Public Defender of Georgia for April 16, 2018 to "Wonderland Preschool" is available at: <<https://rb.gy/ktjff1>> [last viewed on 24.03.2021].

³⁶² The general proposal of the Public Defender of Georgia for January 23, 2016 to the Ministry of Education and Science of Georgia is available at: <<https://rb.gy/zsczyr>> [last viewed on 24.03.2021].

³⁶³ The appeal of the Public Defender of Georgia of December 7, 2020 to the Ministry of Education and Science of Georgia and the National Center for Assessment and Examinations is available at: <<https://rb.gy/zvthjh>> [last viewed 24.03.2021].

³⁶⁴ The recommendation of the Public Defender of Georgia of July 20, 2020 to the Director of the Newton School of Robotics Ltd is available at: <<https://rb.gy/mubxoe>> [last viewed 24.03.2021].

³⁶⁵ Article 6, Paragraph 1, Subparagraphs a) and b) of the Government of Georgia Resolution № 279 of the Government of Georgia of July 23, 2012 on Defining a Social Package, Article 5, Paragraph 1, Subparagraph "g".

retirement age will not be able to benefit from a social package and an old-age pension at the same time. A group of people with disabilities, as well as the elderly, face significant social and economic vulnerabilities independently from one another.

When planning changes in state policy in this direction, it is crucial to define purpose of the social package on the one hand and the retirement pension on the other. The purpose of the social package is to provide the relevant person with the financial resources that will help him / her overcome the artificial barriers created by the environment and society. Thus, its task is to cover costs due to a specific disability. As for the old-age pension, its general purpose is to replace the recipient's pre-existing income. In addition, the current pension policy in Georgia is based on the principle that older people need more social guarantees, due to their health care costs.³⁶⁶ Thus, for a person with a disability, reaching retirement age in all cases should not preclude the possibility of receiving a social package and an old-age pension at the same time.³⁶⁷

6.4. Religion

Religious minorities in Georgia continue to face obstacles. In the current reporting period, discriminatory treatment was revealed during Unified National Examinations as religious needs of entrants were not taken into account. At the same time, discriminative actions on the religious grounds by public servants while performing their official duties remains problematic, that is mainly related to the lack of awareness on the issue of religious neutrality and principle of equality. If during last years the problem was mainly discussed in the context of Muslims, who were crossing the border³⁶⁸, in 2020 this issue became particularly obvious, when creating obstacles while registration of land ownership by Jehovah's Witnesses.

6.4.1. Ignorance of the religious needs of the entrants

During the Unified National Examinations in 2020, the entrants of the Seventh-day Adventist Church, whose religion forbids them from participating in any kind of events and activities on the Saturday, were prevented from entering. English language exam was scheduled to Saturday, they requested to re-schedule exam for any day - except Saturday. LEPL National Center for Assessment and Examinations refused to do so. The reason for the refusal was that the applicants applied to the center only after the examination was scheduled the process of distributing the entrants was completed. According to center

³⁶⁶ It should be noted that the Government of Georgia has introduced an indexation component with regard to social pensions, although it has distributed it differently to persons under 70 years of age and persons who are 70 years of age or older. A different approach to them is reflected in better indexation of the pension supplement for persons aged 70 and over; See. On Amendments to the Law of Georgia on State Pension, 6728-rs, Paragraph 2 of Article 7 (2/07/2020); See. Explanatory card, available: <<https://rb.gy/lx4zrk>> [Last viewed 24.03.2021].

³⁶⁷ The recommendation of the Public Defender of Georgia of December 28, 2020 to the Prime Minister of Georgia is available at: <<https://rb.gy/9uc3gg>> [last viewed 24.03.2021].

³⁶⁸ See. Special Report of the Public Defender on Combating Discrimination, its Prevention and Equality 2019, Tbilisi, 2020, 18-21.

process of distributing of entrants was carried out by electronic program and interfering in the process would be dangerous the whole examination process.³⁶⁹ It is important that, finally, the entrants were provided the opportunity to pass the exams on other day.

6.4.2. Problems of the religious organization of Jehovah's Witnesses in the process of registering land ownership

During the reporting period, the ongoing proceedings against Jehovah's Witnesses in the public registry were problematic. In particular, the religious organization, LEPL "Christian Assembly of Jehovah's Witnesses in Georgia", pointed to 9 identical cases hindering the process of property registration³⁷⁰ - The regional offices of the National Agency of Public Registry imposed a statutory requirement on a religious organization (in the form of submission of information on the citizenship of the members of the organization)³⁷¹ and, on the basis of non-submission of the relevant document, made decisions to suspend and terminate registration. At the same time, cases of denial to the request on the same grounds were not identified during the review of applications of other (including religious) organizations registered in the form of a legal entity under public law. It should also be noted that, in some cases, the real estate subject to registration was not for agricultural use, which made it even more problematic to request information required by the Organic Law of Georgia on Agricultural Land Ownership to resolve the issue.

The National Agency of Public Registry itself considered such a practice to be a heterogeneous and illegal approach to the issue, and in its decisions the agency satisfied administrative complaints and instructed the regional offices to make a decision on registration. As a result, in the nine cases mentioned above, the applicant's claim was finally granted and ownership of the relevant immovable property was granted. However, the LEPL Christian Assembly of Jehovah's Witnesses in Georgia pointed out that property registration has become a major hassle, as a lot of time and resources have been lost trying to meet each registration requirement as a result of administrative complaints.

6.5. Nationality

The National Bank of Georgia did not work on preparing legislative amendments, and commercial banks did not work practice alteration, in terms of discrimination on the grounds of nationality and citizenship during this reporting period.³⁷² As a result, citizens of several African and Asian countries, due to their

³⁶⁹ The proposal of the Public Defender of Georgia for July 29, 2020 of the Ministry of Education, Science, Culture and Sports of Georgia is available at: <<https://rb.gy/dcnpi9>> [last viewed on 24.03.2021].

³⁷⁰ The general proposal of the Public Defender of Georgia for December 21, 2020 to the Chairman of the National Agency of Public Registry, is available at: <<https://rb.gy/zxcjgr>> [last viewed on 24.03.2021].

³⁷¹ The registering authority requested the submission of this information on the basis of the restrictions established by Article 4 of the Organic Law of Georgia on Agricultural Land Ownership, while the relevant requirements do not apply to the applicant as an organization legally registered as a legal entity under public law.

³⁷² Letter of the National Bank of Georgia dated April 27, 2018 №2-14 / 1389 According to the letter provided, the current legislation in the field of banking services has been adopted by the Parliament of Georgia, and the relevant standards - by the Financial Monitoring Service, which is in line with international best practice. The National Bank also noted that a

background, still face significant obstacles in receiving various banking services from commercial banks without individual check.³⁷³

6.6. Equality of LGBT + people

Members of the LGBT + community also faced violations of human rights during this reporting period. Existing epidemiological situation in the country, reduced even more the right of expression for LGBT + people in 2020 that had a significant negative impact on the critical situation in this regard. While activists have struggled for years to secure public spaces for safe assembly, International Day Against Homophobia, Transphobia and Biphobia on May 17, 2020, was held online.³⁷⁴

6.6.1. Offenses committed on homophobic grounds

This year, despite the fact that due to the epidemiological situation, the community was deprived of the opportunity to hold public gatherings, the threat posed by certain groups to LGBT + people and their supporters and the demonstration of aggression was still noticeable. Throughout the year, various offences systematically took place by the radical groups against the Tbilisi Pride office. The process began on June 1, 2020, when a protest gathering was held in front of the office building and participants announced daily protests until removing of the LGBT + community flag from the building.³⁷⁵ There were cases when the building and the flag displayed on it were painted and eggs were thrown to it.³⁷⁶ In addition, according to information provided by Tbilisi Pride to the Public Defender's Office, illegal actions were revealed, including: homophobic shouting at the organization's employees, accompanied by shouting, swearing and other obscene and threatening expressions of violence; Removing the LGBT + themed flag from the office balcony. The organization also mentions inactivity of police and ineffective response from their side, leaving employees without any feeling of security.

According to the information requested from the Ministry of Internal Affairs of Georgia,³⁷⁷ on May 26, 2020, an investigation was started on the fact of theft of a flag from the Tbilisi Pride office; On June 7, 2020, four people were found guilty for administrative offenses of replacing a flag from the balcony of the office and painting in black and throwing eggs towards the wall of the same office;³⁷⁸ On July 21-22,

number of constraints may arise from preventing the detection and reduction of money laundering and terrorist financing risks.

³⁷³ The general proposal of the Public Defender of Georgia for April 4, 2018 to the National Bank of Georgia is available at: <<https://bit.ly/3o4VS1d>> [last viewed on 24.03.2021].

³⁷⁴ Available: <<https://rb.gy/3sxdc5>> [Last viewed 24.03.2021].

³⁷⁵ Available: <<https://rb.gy/n2jjyu>> [Last viewed 24.03.2021].

³⁷⁶ Available: <<https://rb.gy/n2jjyu>> [Last viewed 24.03.2021].

³⁷⁷ Letter from the Ministry of Internal Affairs of Georgia dated October 7, 2020 № MIA 6 20 02386703.

³⁷⁸ The Administrative Cases Panel of the Tbilisi City Court recognized the above-mentioned persons as administrative offenders for committing an offense under Article 166 of the Code of Administrative Offenses of Georgia (petty hooliganism). Three of them were released from administrative sanction and a verbal warning was issued, while one person was fined to 500 GEL.

2020, the reports of administrative offences on alleged throwing painted eggs on the balcony of the office and throwing eggs in the entrance hall of the building; A report of the offense was also drawn up on August 3, 2020 on the fact of painting of the flag placed on the balcony of the office with painted eggs; Administrative proceedings were initiated on September 24, 2020 in relation to the shooting of dark paint on the Tbilisi Pride office building; Administrative proceedings are ongoing on the facts of throwing eggs to the office entrance on September 20, 2020.

According to the Ministry of Internal Affairs, during any kind of gathering near Tbilisi Pride office to express any kind of protest, the police officers, through patrolling, strengthen protection of the law and order.³⁷⁹ Nevertheless, the above facts could not be avoided, which once again highlights the reasons for the intensification of anti-democratic movements and the need for a proper analysis of the political and social effects of homophobia and a systematic vision of rights protection.

6.6.2. Discrimination against LGBT + people in the housing sector

In the current reporting period, the treatment of LGBT + people in the housing sector was problematic. In some cases, private individuals refused to lease publicly offered real estate if the leaser was a member of the LGBT + community. During the current reporting period, a case of a real estate agent refusing to rent an apartment to a transgender woman was identified. As it was obvious from case the agent acted on pre-established discriminatory considerations and his refusal was not based on rational circumstances.³⁸⁰

6.7. Discrimination in labor relations

Legislative amendments of 19 February 2019,³⁸¹ the Labor Code and the Law on the Elimination of All Forms of Discrimination explicitly stated that the principle of equal treatment applies to labor and pre-contractual relations, including the publication of vacancies. However, unfortunately, labor relations were one of the most vulnerable areas to discrimination during this reporting period.

Despite numerous response³⁸² from the side of Public Defender of Georgia to discriminatory vacancies, posting of such content on separate websites is still a problematic,³⁸³ which reinforces negative

³⁷⁹ Letter from the Ministry of Internal Affairs of Georgia dated October 7, 2020 № MIA 6 20 02386703.

³⁸⁰ Recommendation of the Public Defender of Georgia of December 21, 2020 to LS, available at: <<https://rb.gy/ckvqj>> [last viewed on 13.02.2021].

³⁸¹ Georgian Law of 19 February 2019 "On Amendments to the Law of Georgia on the Elimination of All Forms of Discrimination", available at: <<https://rb.gy/itrcbc>> [last viewed 24.03.2021]; Organic Law of Georgia of February 19, 2019 "On Amendments to the Organic Law of Georgia" Labor Code "of Georgia", available: <<https://rb.gy/jxi5fo>> [Last viewed: 24.03.2021].

³⁸² General proposal of the Public Defender of May 23, 2017: <<https://rb.gy/ibyjp9>> [Last viewed: 24.03.2021].

General proposal of the Public Defender of April 7, 2015, available at: <<https://rb.gy/jtyc4e>> [Last viewed: 24.03.2021].

Recommendation of the Public Defender of March 2, 2016: <<https://rb.gy/hburby>> [Last viewed 24.03.2021].

³⁸³ General proposal of the Public Defender of Georgia for November 19, 2020 to private companies, available: <<https://rb.gy/3uacng>> [last viewed on 24.03.2021].

stereotypes in society based on gender, age or other grounds. It is problematic, on the one hand, to develop discriminatory criteria by employers, and, on the other hand, to spread such statements by websites.

During this reporting period, the facts of discrimination were revealed both in the public service and in the places of private employment. Unequal treatment was often manifested in the creation of a hostile environment for the employee, due to his different views. During the reporting period, the facts of violation of the labor rights of media representatives for the purpose of interfering in editorial policy were also revealed.

6.7.1. Harassment at the workplace

During the reporting period, a large number of cases of discrimination in labor relations were related to harassment while employment in public³⁸⁴ or private³⁸⁵ companies. Creating a hostile and humiliating environment, as in previous years, was largely based on existence of different opinions. However, in one of the cases, the alleged discrimination was also revealed on the basis of health status, this fact was particularly problematic taking into account that actions to be assessed were intensified, during the spread of the new coronavirus.³⁸⁶

Discriminatory actions that constituted harassment in the workplace were manifested in the use of unethical and abusive forms of communication³⁸⁷, non-awarding of monetary rewards,³⁸⁸ creating obstacles in the performance of official rights and duties, etc. Most often, employers tried to cover up discriminatory motives by using formal-legal grounds such as reorganization, disciplinary proceedings, lack of employment obligations. However, an examination of the circumstances revealed that after the reorganization, there were still employees with the same workload or that only one staff unit occupied by the applicant had been reduced under the systemic reorganization.

6.7.2. Discrimination against media workers in labor relations

During the current reporting period, facts of discrimination against journalists were revealed. Employers interfered in independent editorial policy with both publicly funded and privately-owned broadcasters.

³⁸⁴ Ivane Javakhishvili Tbilisi State University, National Parliamentary Library of Georgia, Rustavi Municipality.

³⁸⁵ JSC "Telasi". The Public Defender's Office is also prosecuting other employers for alleged harassment.

³⁸⁶ The opinion of a friend of the court on the fact of alleged discrimination on the grounds of health condition of the Rustavi City Court is available at: <<https://rb.gy/qzcowg>> [Last viewed: 24.03.2021].

³⁸⁷ The recommendation of the Public Defender of Georgia of August 31, 2020 to JSC "Telasi" is available: <<https://rb.gy/isac9o>> [last viewed on 24.03.2021].

³⁸⁸ The recommendation of the Public Defender of Georgia for September 10, 2020 to the National Parliamentary Library of Georgia is available at: <<https://rb.gy/njcxo3>> [last viewed on 24.03.2021].

The facts of mass violations of journalists' rights³⁸⁹ and discrimination on the grounds of different opinions and membership in a trade union³⁹⁰ were followed by the appointment of a new director of the Public Broadcaster Adjara Television and Radio in November 2019. Human rights abuses took different forms, including dismissals, restrictions on access to television, arbitrary changes in the type and functions of work to be performed, and restrictions on freedom of expression. The listed cases further intensified the suspicions related to the attempt to change the free and impartial editorial policy of Adjara TV, which arose after the impeachment of the former director of the TV company, Natia Kapanadze.

The issue of closing down Imedi TV's "Business" program (broadcast on Maestro) was also problematic, due to which the channel's management named the need for reorganization. According to the journalists, the real reason for the closure of the program was not the reorganization, but the censorship imposed by the leaders of Imedi TV, to cover the information in favor of the government. It should be noted that the journalists also appealed to the Charter of Journalists' Ethics, which stated that the director of Imedi TV had interfered in the editorial independence of journalists.³⁹¹

6.8. Equality in social security

For persons with permanent residence in Georgia, who, for the purposes of using social and health programs, make the same contribution to the state budget of Georgia as the citizens of Georgia, state social and health care programs did not become available in 2020 either. Similar gaps were identified in the programs developed by the municipalities as they were in the previous reporting period. In some cases, they establish discriminatory criteria based on gender, disability, marriage status or other grounds. Some of the programs are written in such detail that they unjustifiably exclude an essentially equal group, and some regulations are worded in such a way as to encourage discrimination against people with disabilities, drug addicts or others by referring to a specific term or approach.

It should be noted that during this reporting period, the Public Defender considered the system of unpaid internships in the public service of Georgia discriminatory on the basis of social status. Existing approach puts students and some young people to discriminatory conditions as they are forced to take up unpaid professional internships in parallel with a job that does not contribute to their professional development due to lack of financial resources. In addition to benefits from state-provided programs, access to education and employment is vital to them. It is Paradoxical, that while taking the necessary steps for career

³⁸⁹ On April 24, 2020, the Public Defender found a violation of the labor rights of Shorena Glonti, former head of the News Service, Maia Merkviladze, deputy head of the News Service, and Teona Bakuridze, presenter-reporter of the same service. Available: <<https://bit.ly/3788m18>> [Last viewed 24.03.2021].

³⁹⁰ The investigation revealed that the dismissal of Malkhaz Rekhviashvili, the restriction of Teona Turmanidze's access to television activities and the change of the substantive terms of the employment contract for Sophio Zhgenti resulted in the violation of their labor rights. . At the same time, it is noteworthy that during the interference of Teona Turmanidze and Teona Kharabadze in labor rights, there was also discrimination on the grounds of different opinions and membership in a trade union. The recommendation of the Public Defender of August 24, 2020 is available to the Director of the Public Broadcaster Adjara Television and Radio, Giorgi Kokhreidze: <<https://bit.ly/3fJ9X1d>> [Last viewed: 24.03.2021].

³⁹¹ Available: <<https://bit.ly/2HHHhJz>> [Last viewed 24.03.2021].

advancement, people face substantial obstacles precisely because of their social status. A clear example of this is the internship system in Georgia.³⁹²

6.9. Incitement to discrimination

In terms of incentives for discrimination, unfortunately, this reporting period was no exception. In terms of protecting the right to equality, a significant challenge are the statements encouraging discrimination made by politicians or other public figures. In this regard, the stories in the media were also problematic this year. The environment encouraging discrimination is obvious towards women, ethnic and religious minorities, members of the LGBT + community and people with disabilities.

6.9.1. Incitement to discrimination by public figures

Big number of sexist, xenophobic or other discriminatory public comments makes it clear that many politicians or other public figures do not realize the responsibility they have in the process of upholding equality and combating discrimination.

During the reporting period, in the context of encouraging gender stereotypes, the statement made by Shalva Natelashvili, the chairman of the Georgian Labor Party, on the Facebook page, in response to the change in the criminal law on rape, was particularly harsh³⁹³. He mentioned, that very often the victim itself is provocateur.³⁹⁴ The phrase with a sexist content was also used by one of the leaders of "European Georgia", Davit Bakradze, towards journalists.³⁹⁵ Before recording of the interview, when several journalists were asking questions at the same time, Bakradze said he was happy to be surrounded by excited young girls, but they needed to calm down.

As in the previous reporting period, the sexist attitude towards women involved in public and political life was particularly evident, which was often used as a tool of political struggle against them.³⁹⁶

³⁹² The general proposal of the Public Defender of Georgia for July 20, 2020 to the Parliament of Georgia is available at: <<https://rb.gy/jflukw>> [last viewed on 24.03.2021].

³⁹³ The general proposal of the Public Defender of Georgia for July 20, 2020 to the Chairman of the Georgian Labor Party, Shalva Natelashvili, is available at: <<https://rb.gy/x1evqv>> [last viewed on 24.03.2021].

³⁹⁴ On May 13, 2020, Shalva Natelashvili responded to an article posted on the website of the online publication Radio Liberty via the social network Facebook: "This is complete idiocy. In many cases of rape, during the same period of my investigation, it was finally established that the so-called victim himself was a provocateur, or a provocateur, in order to extort or marry someone. Adoption of the law with this wording will lead to the fact that any man can be caught, if the so-called "victim" is characterized by it at any time. ", Available: <<https://rb.gy/lgn4tz>> [last viewed 24.03.2021].

³⁹⁵ Available: <<https://bit.ly/3rcMPh7>> [Last viewed 24.03.2021].

³⁹⁶ For example, the chairman of the Gori City Council, Davit Razmadze, called the leader of "European Georgia", Elene Khoshtaria, depraved and noted that he has lost a woman's face! The woman is beautiful! A similar assessment by Davit Razmadze was followed by the introduction of the Soviet Union anthem by Elene Khoshtaria and Irma Nadirashvili in the parliament hall, when the speaker of the parliament, Archil Talakvadze, presented his annual report on the Russian occupation. The leader of the "Victorious Georgia" party, Irakli Okruashvili, posted a sexist post on his Facebook page,

Xenophobic remarks also attracted the attention of the Public Defender during the reporting period. Zaza Abashidze, director of the National Center for Manuscripts, made a xenophobic comment³⁹⁷ in the social network Facebook regarding the announcement of the Marneuli-Bolnisi quarantine zone populated by Azerbaijani-speaking people during the first wave of the new coronavirus. At the same time, the criticism of the residents of Marneuli and Bolnisi municipalities by a large part of the society with emphasis on ethnic origin or other personal characteristics was especially alarming.

In the process of fighting the new coronavirus, stereotypical attitudes were also expressed towards people with psychosocial needs. Maka Sologashvili, Chairman of the Supervisory Board of the Vakhtang Bochorishvili Clinic, explained the infection of the medical staff as follows: "Unfortunately, we had to deal with a few inadequate patients who had mental health problems and they had personal contact with staff."³⁹⁸ By this way she facilitated seeing of individuals with psychosocial needs in a negative context.

6.9.2. Incitement to discrimination in the media

Another important challenge in promoting discrimination is the existence of of sexist,³⁹⁹ homophobic⁴⁰⁰ or other discriminative expression in the media. Among them, during the first wave of the new coronavirus, the story on the "Main Channel" was assessed as encouraging discrimination, which spoke about the advantages of a part of the society in relation to the new coronavirus, according to their ethnic origin.⁴⁰¹

6.10. Flows in the investigation of alleged hate motivated crimes

As in the past reporting period, inefficient investigations into alleged hate motivated crimes remain a challenge. In this regard, the number of appeals from Jehovah's Witnesses, whose complaints, including the delay of the investigation, is consistently high. There are also cases when investigating the facts of physical and verbal abuse, beatings or death threats against members of the LGBT + community, according to the investigative body, to investigate the motive of intolerance, however, Despite the

where he mentioned that a man would enter the parliament with one or two pieces of cotton. Another case concerned the sexist comment made by Mariam Mekhrishvili, the representative of the National Democratic Party (NDP), to the representative of the National Democratic Party (NDP), Konstantine Sharashenidze, on the day of the October 31, 2020 elections - you got married and became smart. Zurab Kajrishvili, a member of the Gori City Council from the Georgian Dream, called Vasilisa Jabakhidze, a representative of the United National Movement, a "lying little girl" during the discussion at the City Council session.

³⁹⁷ Comment screen available: <<https://bit.ly/3ghm0Dj>> [last viewed 24.03.2021].

³⁹⁸ Comments are available: <<https://bit.ly/3f7Ub1K>> [Last viewed 24.03.2021].

³⁹⁹ The Danger of Encouraging Gender Discrimination in the Georgian Media - A Brief Overview of Femina, Available at: <<https://rb.gy/6fkqcb>> [Last viewed on March 24, 2021] / iiriti> [Last viewed 24.03.2021]; Rezonansi newspaper article, available: <<https://rb.gy/kynivd>> [Last viewed: 24.03.2021]

⁴⁰⁰ The program "Hidden Envelope" is available: <<https://rb.gy/elpzhm>> [Last viewed on 24.03.2021].

⁴⁰¹ Available: <<https://rb.gy/3bi2fw>> [Last viewed: 13.02.2021].

expiration of a reasonable period of time, no one is known to be the accused or the victim to reveal the motive.

In 2020, an improved trend may be seen in the investigation into alleged hate motivated crimes, especially crimes against Jehovah's Witnesses, in contrast to previous years, the cases are under investigation in relation to the provision of the Criminal Code, which includes hate motives, although it has not sufficient legal effect due to long lasting procedures. However, in most cases, received information indicates that the cases are under investigation in order to identify existence of possible hate motives however, the rate of granting victim status to certain individuals and pleading guilty is significantly low.

Proposals

To Parliament of Georgia

- Legislative amendments should provide transparent regulations ensuring obtaining of commercial banking services without discrimination to foreigners, regardless of the user's nationality.

Recommendations

Government of Georgia

- Any restrictions and exceptions aiming to manage new coronavirus should be developed in a non-discriminatory manner and made in a way and language available to members of ethnic minorities;
- For a person with a disability, the fact of reaching retirement age should not prevent them receiving of social package and a retirement pension at the same time in all cases. The existing rule of social security should be changed in such a way that the issue of simultaneous receipt of these two financial benefits from the state is resolved taking into account the individual needs of the person concerned;
- Develop a national physical access plan in a timely manner, with maximum involvement of persons with disabilities and organizations working on these issues.

To the Minister of Refugees, Labor, Health and Social Affairs from the Occupied Territories of Georgia:

- Make amendments to Annex 5 of the Order 101-74 / N of the Minister of Labor, Health and Social Affairs of Georgia "On Approval of implementation of Rules related to Termination of Pregnancy" of October 7, 2014, according which Criminal investigation started in the case of sexual assault should be enough for financial support and pregnancy termination, which resulted from violence;
- Make existing state social, economic or health programs available to persons with a permanent residence permit in Georgia on an equal basis with Georgian citizens;

- Prepare relevant legislative changes to introduce paid and career advancement-oriented internships in public institutions;
- Draft amendments to the Organic Law of Georgia, the Labor Code, through which the amount of allowance / compensation for maternity leave due to pregnancy and childbirth, child care and adoption of a newborn will substantially approach the standard established by the Law on Public Service and, at the same time, the employers will be empowered to determine the preconditions for receiving leave pay for pregnancy and childbirth, child care and adoption of a newborn;
- To prepare amendments to the Law of Georgia on Civil Service, which will provide possibility of maternity leave due to pregnancy, childbirth and child care by the surrogate mother and the child born through surrogacy.

To Ministry of Education and Science of Georgia and the National Center for Assessment and Examinations:

- In order to properly fulfill the obligation of rational adaptation at the stage of the Unified National Examinations, the procedure of dialogue with the party during the determination of the measure of rational adaptation, selection, determination and change of rational adaptation should be elaborated at normative level;
- To ensure the implementation of such amendments to the Order №19 / n of the Minister of Education and Science of February 18, 2011 "On the Approval of the Statute for Conducting the Unified National Examinations and the Rules for Distribution of State Education Grants" that take into account religious needs in the process of organizing examinations.

To the LEPL Labor Inspection Service:

- In order to raise the awareness of private employers, develop a guide that will include recommendations on how to apply for a job, what terms to use not to discriminate, and how to apply for a job without discriminatory restrictions.

To LEPL Levan Samkharauli National Forensics Bureau:

Ensure the employment of female experts in all offices of LEPL Levan Samkharauli National Forensics Bureau. And in case of sexual violence, these employees will be authorized to conduct examinations.

To the General Prosecutor of Georgia:

The report submitted to the Parliament of Georgia on the activities carried out on the basis of Article 172, Paragraph 2 of the Rules of Procedure of the Parliament of Georgia, shall reflect information on the investigation of the crimes motivated by hate.

7. Gender Equality

7.1. Introduction

The new COVID-19 pandemic has had a negative impact on achieving gender equality and improving women's rights, including in terms of health, economic empowerment, security or social justice.

It should be noted that in 2020, the Parliament of Georgia took into account the recommendation of the Committee on the Elimination of All Forms of Discrimination against Women regarding the introduction of a mandatory quota mechanism. Nevertheless, given the existing gender stereotypes, equal participation of women in public and political life remains a challenge. Also, the number of women employed at and in leading positions in the security sector is critically low.

In terms of women's sexual and reproductive health and rights, full integration of family planning services and contraceptives into primary care, as well as integration of comprehensive education on human sexuality into the formal education system remain challenging. In addition, in 2020 the Public Defender paid special attention to the human rights situation of women employed in the health sector. In this regard, access to regular testing and proper realization of their labor rights was problematic.

During pandemic the risks of domestic violence have significantly increased; at the same time, the possibility of detecting cases of domestic violence has been reduced. Unfortunately, the number of gender-motivated killings of women (femicide) did not decrease in 2020 and, on the contrary, is characterized by an upward trend. Prevention, as well as the effective management of specific cases of early marriage and the proper functioning of the referral mechanism remain problematic.

Also, no significant steps have been taken to improve the human rights situation of LGBT+ persons. With the quarantine caused by the new coronavirus and the state of emergency, the challenges have become even more apparent.

7.2. Women's Equal Participation in the Decision-Making Process

Equal participation of women in decision-making remains a challenge, as the current political environment fails to ensure equality and is characterized by many barriers for women.

According to the 2020 Global Gender Gap Index,⁴⁰² Georgia has risen from 117th to 94th place out of 153 countries in the last 5 years in terms of women's political participation and women's representation in parliament. According to the data of the Inter-Parliamentary Union,⁴⁰³ among 188 countries, Georgia

⁴⁰² Global Gender Gap Index; available at < <https://bit.ly/3pfHeVM> > [last visited on 24.03.2021].

⁴⁰³ Data of the Inter-Parliamentary Union; available at: < <https://bit.ly/3od2Sc0> > [last visited on 24.03.2021].

moved from 140th to 109th place with 31 women in the parliament, due to the introduction of a gender quota mechanism.

Public Defender welcomes that in 2020 the Parliament of Georgia took into account the recommendation of the Committee on the Elimination of All Forms of Discrimination against Women regarding the introduction of a mandatory quota mechanism.⁴⁰⁴ Despite the introduction of a gender quota mechanism, women's involvement in political and decision-making processes in Georgia is still low. During the 2020 elections the anti-gender discourse was significantly strengthened and the number of attacks on women politicians increased. Discriminatory, gender-biased and sexist language was used against female politicians in this period.⁴⁰⁵

Unfortunately, apart from the introduction of the mandatory quota mechanism in 2020, no other important measures have been taken to promote equal participation of women and men in political life. It should also be noted that the Gender Equality sub-section⁴⁰⁶ of the Human Rights Action Plan of the Government itself provides for minimal activities to encourage women's involvement in politics, which in turn is not sufficient.

In 2020, according to the information provided by the Civil Service Bureau⁴⁰⁷, 26,000 people were employed in the Ministries of Georgia as civil servants, out of which 21,262 are men and 4,738 are women, respectively. The gender distribution of employees in leading positions is as follows: 274 women, 474 men, respectively.⁴⁰⁸

The Office of the Public Defender pays great attention to gender mainstreaming in the country. It should be mentioned that Georgia has taken important steps in recent years to improve gender policy and the legislative environment. The National Institutional Mechanisms for Gender Equality have also been established, and periodic action plans on Gender Equality, Violence against Women and UN Security Council Resolution №1325 on "Women, Peace and Security" have been developed and are being implemented. Nevertheless, the study⁴⁰⁹ conducted by the Public Defender revealed that gender mainstreaming tools are formal and fragmentary in nature. It is necessary to mention that the implementation of gender mainstreaming and follow-up monitoring in the process of creating and budgeting state policies in various fields remains as a significant gap.

It should also be noted that the state fails to provide information to its employees at the central, especially at the municipal level, about its commitments. Raising staff awareness of the mechanisms needs to meet

⁴⁰⁴Legislative changes on quotas; available at: <<https://bit.ly/3okclsK>> [last visited on 24.03.2021].

⁴⁰⁵ "Pre-Election Monitoring Report: Sexism and Gender Stereotypes in Social Media", Media Development Foundation, 23, available at <<https://bit.ly/36o6lcm>> [last visted on 9.01.2021].

⁴⁰⁶ National Human Rights Action Plan of the Government; available at: <<https://bit.ly/2Oqs3w0>> [last visited on 24.03.2021].

⁴⁰⁷ Civil Service Bureau, Letter № 84156; 10.03.2021.

⁴⁰⁸ In 2019, the ministries employed 5,707 women and 21,804 men. 294 women and 1004 men were employed in leading positions.

⁴⁰⁹ „Gender Mainstreaming – Overview of the Commitments taken by Georgia and the Status of their Fulfillment“,36, available at: <<https://bit.ly/30MxN5M>> [last visited on 24.03.2021].

such commitments, which in turn significantly hinders the effective implementation of gender mainstreaming, is also problematic.

7.3. Women's Economic Participation and Labor Rights

According to the study⁴¹⁰ of the UN Women, employment of women and men in the informal economy is almost equal in Georgia, although informal employment for women, unlike men, is largely associated with lower incomes, lower levels of mobility and lower self-esteem. Therefore, when talking about the economic development of the country, it is necessary to take into account the gender aspects.

According to the 2020 Global Gender Gap Index⁴¹¹, Georgia ranks 61 out of 153 countries in terms of women's economic participation and opportunities. The average income rate⁴¹² still differs between the sexes, according to which Georgia ranks 118th. According to the same source, Georgia ranks 73rd in terms of equal pay.

In Georgia, women spend 3 times more on unpaid family activities than men.⁴¹³ During the new coronavirus pandemic, the burden of unpaid domestic work has been exacerbated on women. According to a rapid gender assessment of the coronavirus situation in Georgia⁴¹⁴, 42% of women say that in comparison with the situation before the pandemic, they are now doing one more work. In addition, the closure of schools has reduced rest time for women by 31%. An additional challenge is that the spread of the virus has also limited the labor opportunities of migrant women, which leads to the loss of livelihood for them and their families.⁴¹⁵

Promotion of women entrepreneurs constitutes an integral part of women's economic empowerment, which implies planning activities in this area, as well as raising awareness of women and girls. In 2020, 4103 applications succeeded to the business planning stage within the framework of the grant program "Enterprise Georgia", out of which 2056 applications were submitted by women.⁴¹⁶ Nevertheless, the state's awareness-raising campaigns⁴¹⁷ on women entrepreneurship do not fully cover stakeholders, as also evidenced by meetings of the representatives of the Public Defender with women living in rural areas. At the same time, the recommendation of the Public Defender of Georgia is still not fulfilled and

⁴¹⁰ Low economic activity of women and involvement in the informal sector in Georgia, UN Women, 2018, 17, available at: < <https://bit.ly/3r2YZYM> > [last visited on 24.03.2021].

⁴¹¹ Global Gender Gap Index; available at: < <https://bit.ly/3pfHeVM> > [last visited on 24.03.2021].

⁴¹² According to the same source, a man's estimated annual income is twice as much as that of a woman and amounts to USD 13.2 (thousand), while women earn an average of USD 6.5 (thousand).

⁴¹³ Low economic activity of women and involvement in the informal sector in Georgia, 2018 UN Women 34; available at: < <https://bit.ly/36p3SDW> > [last visited on 24.03.2021].

⁴¹⁴ Rapid Impact Assessment of the COVID-19 Situation in Goeriga, 2020, UN Women, 35; available at < <https://bit.ly/39AjXZr> > [last visited on 24.03.2021].

⁴¹⁵ COVID-19 and Women's Rights, 2020, Office of the UN High Commissioner for Human Rights, 9; available at: < <https://bit.ly/3j1TB5F> > [last visited on 24.03.2021].

⁴¹⁶ Correspondence N°EG4/890 of the LEPL Enterprise Georgia.

⁴¹⁷ Ministry of Economy and Sustainable Development of Georgia, Letter N°08/6643.

in the future it is not planned to finance the projects and to prioritize in a way that takes into account the specific needs of a particular region.

In addition to the above-mentioned topics, while working on women's economic empowerment, it is also important to improve the communication/internet access of the rural population/women and to enhance their capacity in information technology. Meetings of the Public Defender with women living in rural areas show that access to the internet and other means of communication remains a challenge for local population.

Public Defender welcomes the introduction of the new rule for determining and reimbursing maternity and childcare leave, as well as the one for adopting a newborn⁴¹⁸, although taking a leave by a father to take care of a child in public sector is still a challenge, as in 2020 only women enjoyed this right.^{419 420}

The issue of the human rights situation of single parent and those with multiple children remains a problem, as the state does not offer special programs, and local programs fail to provide them with full socio-economic support. As of February 22, 2021⁴²¹, 4847 persons were granted the status of single parents in Georgia, out of which 4830 were single mothers. It should be noted that only 1 case of a father adopting a child is revealed. As for parents with many children, the status was determined for 5501 mothers. The Public Defender believes that the state, shall plan gender-sensitive programs in order to help single parents and those with multiple children and take into account their real needs when planning the budget.

7.4. Women, Peace and Security

2020 marked the 20th anniversary of the first UN Security Council resolution on Women, Peace and Security. By adopting this resolution, the UN recognized the important role of women and girls in the processes of security, peacebuilding and conflict resolution. This resolution laid the groundwork for adopting nine additional resolutions⁴²² focusing on women's participation in decision-making, their protection, their access to public services, and the prevention of all forms of violence, including sexual and gender-based violence.

In 2018, in order to implement the UN Security Council resolutions, the Government of Georgia, by Resolution #173, approved for the third time the 2018-2020 National Action Plan to implement UN Security Council Resolution on Women, Peace and Security⁴²³, from which one of the goal is to increase the representation of women in the security sector and peace negotiations. The number of women

⁴¹⁸ According to the amendments to the Labor Code of Georgia, maternity leave and child care leave are divided into two parts: maternity leave and leave for child care. Available at: < <https://bit.ly/3kgRiFE> > [last visited on 24.03.2021].

⁴¹⁹ Civil Service Bureau, Letter №81089; 04.02.2021.

⁴²⁰ For detailed information, please refer to the Chapter on Equality.

⁴²¹ Letter №01/37426 of the Ministry of Justice of 01.03.2021.

⁴²² Resolutions on Women, Peace and Security; available at: < <https://bit.ly/39sU5hN> > [last visited on 24.03.2021].

⁴²³ National Action Plan; available at: < <https://bit.ly/2NNxBQp> > [last visited on 24.03.2021].

employed on senior positions in the Ministry of Defense and Ministry of Interior of Georgia is still critically low.⁴²⁴ There are still no women in the positions of military attaché in diplomatic missions. In addition, in 2018-2020, the representation of women in peace negotiations did not increase, with a rate ranging from 33% to 20%.

One of the priorities of the National Action Plan for 2018-2020 was the localization process, which involves active cooperation with the target municipalities, strengthening their work and involving various target groups.⁴²⁵ The results of the monitoring of the National Action Plan by the Public Defender of Georgia show that the awareness of the municipalities involved in the localization process and their readiness toward various activities have increased, although organizing specific events at the local level still depends on international and non-governmental organizations, especially during the Covid pandemic period. In addition, municipal programs demonstrated to be less effective in reducing the severe impact of poverty during the pandemic.

With the support of the United Nations Development Program, the Office of the Public Defender of Georgia, has prepared a study "The Impact of COVID-19 on Conflict-Affected Women and Girls." The study analyzed the gender impacts of the pandemic on the conflict-affected population, and identified the challenges and problems they face. The study also showed that no early warning system has been put in place so far, including ways to prevent and deal with the security risks associated with COVID-19. Conflict-affected women spoke about the coronavirus-related stigma and psychological violence, including from family members. Stigma forced women to hide their infection status and not to turn to health institutions. In 2020, access to food and medicine was a problem for people living near the occupation line and in the occupied territories. The situation in Akhalkalaki and Gali was especially problematic in this regard.

Despite numerous recommendations of the Public Defender of Georgia, access to the services of a psychologist remains challenging. In some villages, access to maternity hospitals and well-equipped dispensaries is problematic, as is the insufficient number of doctors. Public Defender particularly welcomes that under the Reconciliation and Involvement Policy, the state referral program provides free health care services to individuals living in the Abkhazia and Tskhinvali regions, although this year, access to existing services has been hampered by restrictions to prevent the spread of COVID-virus.

The Public Defender of Georgia positively assesses the practice of financing the education of IDPs and students affected by the conflict, however, according to the population living in the region, the quota for financial assistance is problematic,⁴²⁶ in addition to the challenges related to the access to computer equipment (especially in large families) and internet.

⁴²⁴ The number of women employed on senior positions at the Ministry of Internal Affairs of Georgia was 6% in 2020. Currently, 33% of women are employed on senior positions in the civil office of the Ministry of Defense of Georgia.

⁴²⁵ The municipalities selected in the localization process coordinated by the UN Women include: Dusheti, Gori, Kareli, Kaspi, Khashuri, Sachkhere, Stepantsminda, Tsalenjikha, Tskaltubo; and Zugdidi municipalities.

⁴²⁶ Pupils living in the villages near the occupation line continue their education in the graduating classes of the schools in the village of Perevi, therefore, the pupils living in Perevi are restricted from using this program, as only 5 pupils can be funded due to the established quotas. Meeting in the village Perevi, 2020.

7.5. Women's Sexual and Reproductive Health and Rights

The Public Defender is actively monitoring the development of the human rights situation related to women's sexual and reproductive health in Georgia. Examining the current situation in this area is an important criteria in the process of assessing gender equality in the country.

Despite progress in maternal health in 2020,⁴²⁷ a number of challenges remain. The state maternal health program is still limited to aspects related to physical health and does not include psychological support services for pregnancy, childbirth, and the postpartum period. Also, unlike perinatal services, the state still does not have a systematic vision of postpartum care services for women.

In addition, full integration of family planning services and contraceptives into the primary health care level remains challenging,⁴²⁸ as well as to integrate its funding component into the universal health care program. In addition to the issue of financial access, access to contraceptives is also complicated by the low awareness associated with it. An additional challenge is the fact that there is a lot of misinformation in the public about modern contraceptives, their action and rules of use. It should be noted that according to the information received as a result of the informational meetings conducted by the Public Defender, the disseminators of false information are, in many cases, the gynecologists themselves. Of particular importance in dealing with this challenge is the fact that, according to a multi-indicator cluster survey conducted in Georgia in 2018, the level of unmet family planning needs⁴²⁹ is 23.1%, which by European standards is very high⁴³⁰ and clearly increases the risk of unwanted pregnancies.

The full integration of complex education on human sexuality into the formal education system remains a challenge. Today, this component of education is only superficial part of school education and it fails to provide adolescents with proper information about gender and power inequalities, sexual orientation, gender identity, safe sexual relations and other important issues. It is noteworthy that the lack of a complex education about human sexuality prevents girls from protecting themselves from early marriage, early pregnancy and other harmful practices. In this regard, it is noteworthy that according to the preliminary information provided by the LEPL - L. Sakvarelidze National Center for Disease Control

⁴²⁷ Based on the recommendation of the Public Defender, the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia approved the State Standard (Protocol) for Management of the Clinical Condition and the National Recommendation for Clinical Practice (Guideline) for Management of Perinatal Period During Mental Disorders.

⁴²⁸ Study of the Public Defender of Georgia; available at: < <https://bit.ly/3clXBMN> > [last visited on 24. 03.2021].

⁴²⁹ The World Health Organization provides following interpretation for the term "unmet need for family planning": Women with unmet need are those who are fecund and sexually active but are not using any method of contraception, and report not wanting any more children or wanting to delay the next child. Available at: < <https://bit.ly/3qXAzzS> > [last visited on 24.03.2021].

⁴³⁰ Sexual and Reproductive Health in Georgia; available at: < <https://bit.ly/39tFzGJ> > [last visited on 24.03.2021].

and Public Health, in 2020, 578 cases of pregnancies of adolescents under 18 were registered in Georgia,⁴³¹ which is a reduced figure compared to data in 2019.⁴³²

Lack of this educational component also leads to a lack of skills for juveniles to recognize sexual or other forms of violence conducted against them.

Territorial and financial access to safe abortion services remains a challenge. This barrier is exacerbated by the 5-day mandatory reflection period for abortion services, which is particularly problematic in the case of women living in the regions and rural areas. A study by the Public Defender, as well as other organizations⁴³³ working on the issue, confirms that a 5-day mandatory reflection period does not achieve the goal of reducing the number of abortions or any other legitimate goal and, conversely, creates additional barriers for service seekers.⁴³⁴ Respondents of the study reported cases where a woman did not return to a medical facility after a 5-day period - had an abortion at another facility, or resorted to arbitrary termination of pregnancy and returned to the same medical facility with deteriorated health (bleeding).⁴³⁵

In addition to all of the above, issues related to access to sexual and reproductive health services identified during the pandemic shall also be mentioned.

A survey⁴³⁶ supported by the Office of the United Nations Population Fund (UNFPA) in Georgia found that the number of first antenatal visits by pregnant women under 12 weeks decreased in the spring of 2020 and, in general, fewer pregnant women received a full 8 free antenatal visits during this period, in comparison with the same period in 2019.

This may be due to both mobility restrictions and fears of a high risk of infection, as well as a quantitative reduction in the number of working days of health care providers for antenatal consultations and reduction of number of healthcare specialists during pandemic.⁴³⁷

The same study found that pandemic-related restrictions have become an additional and significant barrier for abortion seekers, which increased the risk of unsafe abortions. According to the study, part of the medical institutions providing abortion services have introduced telemedicine to provide sexual and reproductive health services, which, for example, includes the provision of pre- and post-abortion counseling online. According to the study, one of the clinics, during pandemic, implemented a pilot project to provide abortion services fully in a telemedicine (remote) mode, which fully complies with the

⁴³¹ Letter № 06/249 of the LEPL - L. Sakvarelidze National Center for Disease Control and Public Health; 20.01.2021.

⁴³² According to the Letter (№ 01/629) of the LEPL - L. Sakvarelidze National Center for Disease Control and Public Health of January 20, 2020 this number was 664 in 2019.

⁴³³ "Qualitative Survey of Barriers to Access to Medical Abortion among Rural and Internally Displaced Women in Georgia", Informational Medical-Psychological Center - Tanadgoma, 2020, available at <<https://bit.ly/3qOSf0i>> [last visited on 24.03.2021];

⁴³⁴ Survey report; available at: <<https://bit.ly/3birLj9>> [last visited on 24.03.2021].

⁴³⁵ Ibid.

⁴³⁶ How COVID-19 Related Isolation Measures Impacted Access to Selected Sexual and Reproductive Health Services in Georgia", 2020, available at: <<https://bit.ly/3s7eVKF>> [last visited on 24.03.2021].

⁴³⁷ According to the employers' decision, due to the high risk of infection, health professionals over the age of 70 worked in limited conditions during the pandemic in 2020.

guidelines set by the World Health Organization; according to these guidelines, self-administered abortion is safe for pregnant women who have access to effective medical protocols and access to healthcare, if necessary.

7.5.1. The Impact of the Pandemic on Women Employed in the Health Sector

Women are the vast majority of those employed at one of the lowest levels in the healthcare sector in the world.⁴³⁸ According to the World Health Organization, out of 28.5 million nurses worldwide, 24 million are women. According to the same organization, 70 percent of people employed in the healthcare sector worldwide are also women.⁴³⁹ Consequently, peculiarities of the more complex job of the health sector during pandemic were disproportionately reflected on the women employed in the sector.

In view of the above, the Public Defender in 2020 paid special attention to the human rights situation of women employed in the health sector.

A study conducted by the Public Defender found that the pandemic had led to a significant deterioration in the psycho-emotional state of women employed in the health sector. At the same time, employers did not respond adequately and failed to offer their employees information on the psychologist/stress management, as well as activities to improve these skills.

It is noteworthy that since health care workers often have to take longer shifts than usual during pandemic, it is especially important to adapt their work environment to their needs. The study found that there are frequent cases when medical facilities are not equipped to meet the needs of employees, for example, doctors and nurses do not have showers and rest areas, which is important for administering proper hygiene, as well as for their reproductive health.

The study also found that women working in the health sector had extremely low levels of awareness about sexual harassment in the workplace, its nature and response mechanisms. According to the information provided by the respondents, they do not have information on whom to turn to if they face this problem, the employer has not discussed this issue with them.

The study also found that women employed in the health sector are often victims of exclusion/discrimination on the grounds that they work in the health sector and are perceived by the public as having an increased risk of infection. According to respondents living in the regions, such approach made it difficult for them to transport from a medical facility to home (often in a neighboring village) during periods when their employer did not provide them with transportation. According to them, locals who offered to transport them, and often even taxi drivers, refused to drive them because of the risk of transmitting the virus.

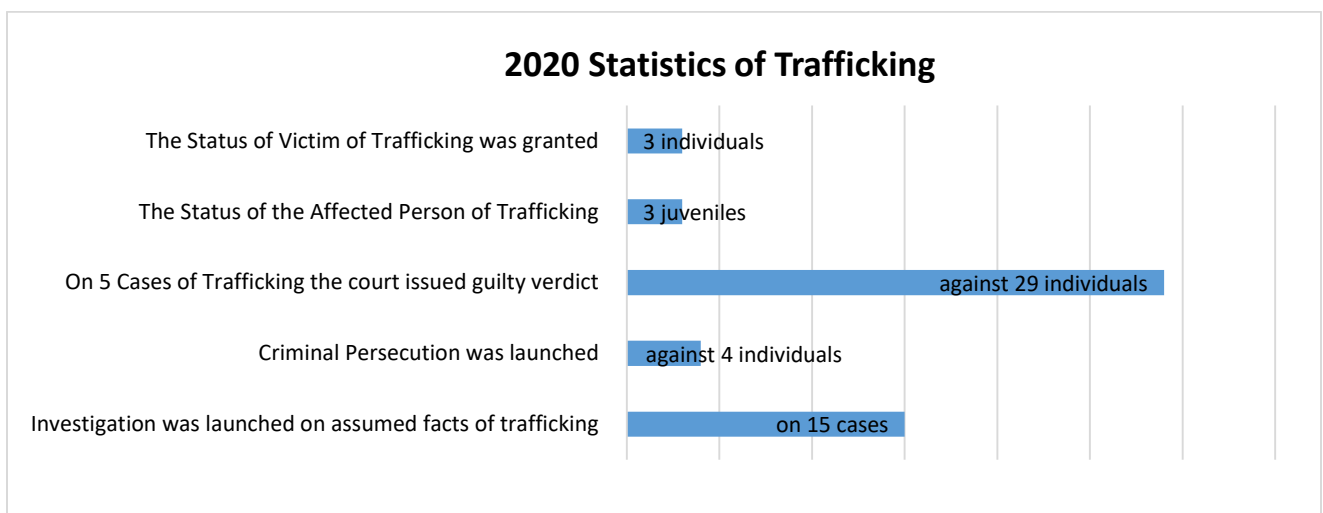
⁴³⁸ According to the World Health Organization, 70% of the people employed in the health sector worldwide are women.

⁴³⁹ Data of the World Health Organization; available at: < <https://bit.ly/3my6G7h> > [last visited on 24.03.2021].

7.6. Human Trafficking

According to the 2020 report of the U.S. Department of State, Georgia fully meets the minimum standards for combating trafficking and still retains its place in the first basket. Nevertheless, the report focuses on a number of issues that are important for the state to intensify work on, including, the proactive detection of crime.⁴⁴⁰ Unfortunately, both the rate of detection of cases,⁴⁴¹ and the number of people using the services are still low.

The report of the Council of Europe Group of Experts on Action against Trafficking in Human Beings on Georgia is also noteworthy,⁴⁴² which focuses on access to justice for victims of trafficking. The Monitoring Group (GRETA) is also concerned about the low number of identified victims due to the complicated procedures for granting the status of a victims.



The results of the monitoring⁴⁴³ conducted by the Public Defender in the shelters of victims of trafficking show that, as in previous years, the situation has not changed significantly. Although the physical environment in Tbilisi and Batumi has improved compared to previous years, the services of victims of human trafficking need to be refined and they shall be tailored to the needs of the beneficiaries.

Public Defender welcomes the adoption of the 2021-2022 Action Plan on Combating Trafficking in Human Beings in 2020, which foresees important objectives such as the prevention of the crime of trafficking in human beings, the improvement of the mechanisms for the detection of the crime of trafficking and its effective criminal persecution; facilitation of the reintegration of victims of trafficking in society, and improving anti-trafficking policies by strengthening coordination and cooperation

⁴⁴⁰ Report of the U.S. Department of State; available at: <<https://bit.ly/3acDJJC>> [last visited on 30.01.2021].

⁴⁴¹ Letter № 1062 of the Ministry of Justice of Georgia; 02.02.2021.

⁴⁴² Assessment Report, available at: <<https://bit.ly/3rb8UeJ>> [last visited on 24.03.2021].

⁴⁴³ Monitoring Report, available at: <<https://bit.ly/39wtVed>> [last visited on 24.03.2021].

mechanisms. The implementation of the activities envisaged by the Action Plan will significantly contribute to the fight against this crime.

7.7. Violence Against Women and Domestic Violence

Despite the positive changes⁴⁴⁴ in the direction of violence against women and domestic violence, a comprehensive approach to the problem and concerted work between government agencies remains challenging.

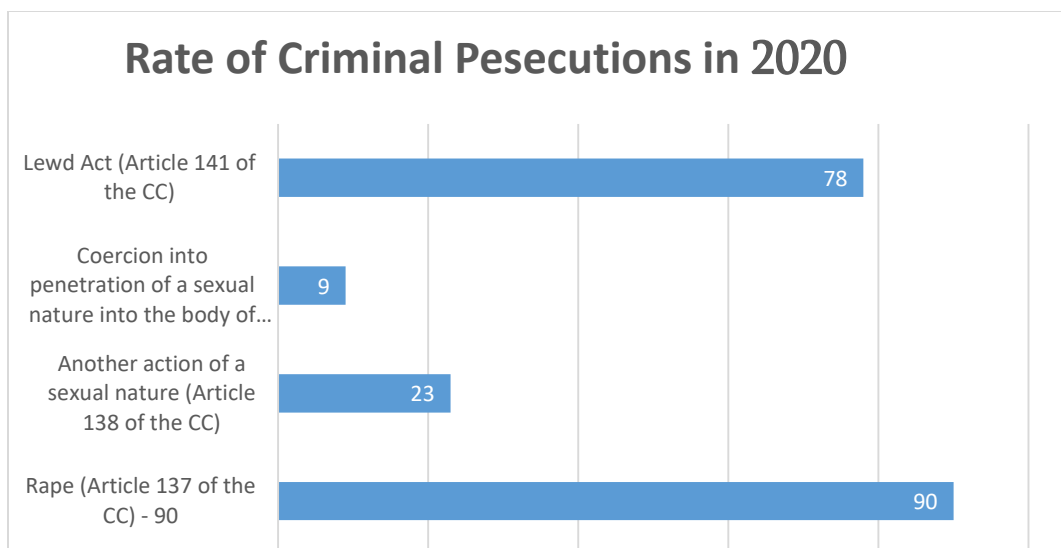
Systemic shortcomings in combating violence against women and domestic violence effectively still remain. In particular, there is still the problem of effective involvement of social workers in the process of investigating cases of domestic violence, no social service guidelines have been developed, which is important for managing cases successfully. It is also problematic for the abuser to take a mandatory training course focused on violent attitudes and behavior change.

Awareness on public services on violence against women and domestic violence is still low. Proper empowerment of victims of violence, their provision with housing and financial support is still problematic. The rule of timely, adequate and effective compensation for the women victims of violence and victims of domestic violence as enshrined under the Article 30 of the Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence has not yet been developed.

In addition, the existing legislation on sexual crimes is still problematic. During the reporting year, the Parliament of Georgia failed to support the amendments to the norm of “rape” (Article 137) in the Criminal Code of Georgia which has shortcomings. As a result, the definitions of sexual violence are still not based on the victim's lack of free and voluntary consent and fail to comply with international human rights standards. According to the cases analyzed by the Public Defender, the current definition of sexual violence articles, in some cases, leaves alleged perpetrators unpunished, because the physical resistance of the victim and the presence of physical injuries on the body can be said to equate to the element of crime.⁴⁴⁵

⁴⁴⁴ As a result of the implemented legislative changes, from September 1, 2020, with the issuance of a restraining order, it is possible to establish electronic surveillance against the perpetrator in case of a real threat of repeated violence. Available at: < <https://bit.ly/36mL4ow> > [last visited on 24.03.2021].

⁴⁴⁵ Administration of Justice on Cases of Sexual Violence Against Women in Georgia, Study Report, 2020, available at: < <https://bit.ly/3t9l3De> > [last visited on 24.03.2021].



According to the cases studied by the Public Defender of Georgia, there is still a tendency by the abuser to manipulate the victim with child to punish her, which causes significant harm to the woman victim of violence and her child. According to the cases studied, the trend is not changed and domestic violence is particularly severely affected by low-income or non-income women, the problem that has emerged especially in the context of the pandemic when women employed in a number of service sectors were left jobless. According to the cases studied, violence also has a severe impact on ethnic minority women, the elderly and women whose partners/ex-partners work in law enforcement agencies.

A study of cases of violence against women and domestic violence shows that the correct identification of violence remains a problem, especially the detection of economic violence⁴⁴⁶ and the study of a number of cases of violence from a gender perspective. The index of detecting gender discrimination is increasing every year, which is undoubtedly welcoming, as it is essential for the proper qualification and for imposing adequate sentence for the crime, although in a number of cases, the detection of such incidence remains a problem.⁴⁴⁷

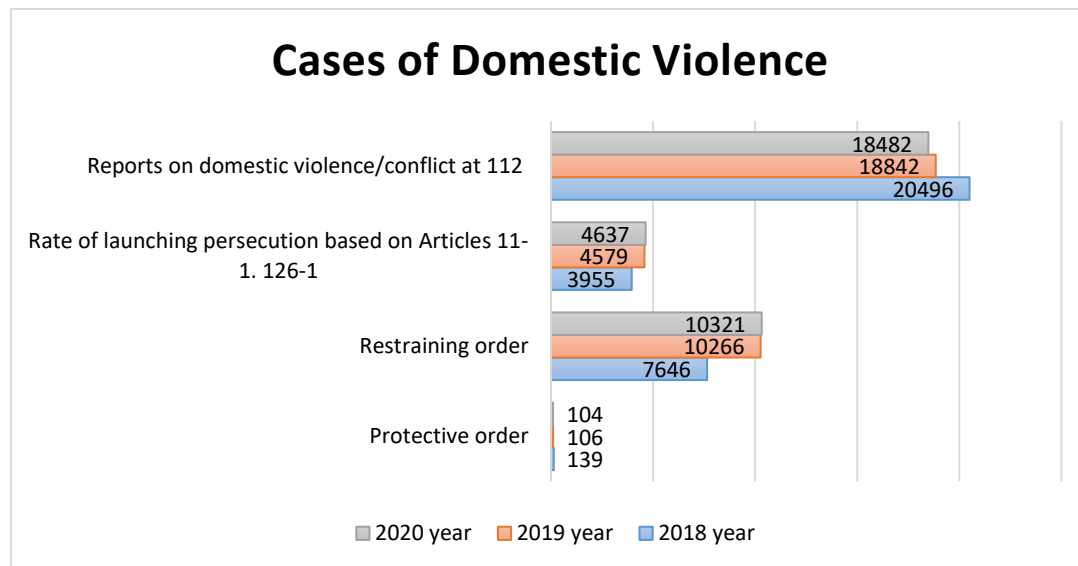
Also, in cases where the witness and victim coordinator is not involved, it is a problem for law enforcement officials to inform the victim about shelter and crisis center services. This is confirmed not

⁴⁴⁶ During the reporting year, the Gender Equality Department of the Office of the Public Defender of Georgia studied the criminal case of allegations of domestic violence allegations against N.B. as an exception. A review of the case file revealed that although much of the evidence was related to economic violence, the indictment did not initially address this form of violence. Systematic economic violence was later reflected in the indictment, in which case the prosecution shared the request of the victim's representative and clarified the charge (Case №75729/20). Also, according to other cases studied, in some cases the law enforcement agency finds it difficult to draw the line between private dispute and economic violence. The problem of detecting economic violence is also confirmed by the statistics of restraining orders, the rate of issuing warrants for this type of violence is low.

⁴⁴⁷ In 2020, 200 individuals were prosecuted for committing a domestic crime on the grounds of gender intolerance. Letter №13/63788 of the General Prosecutor's Office of Georgia; 10.11.2020; available at: < <https://bit.ly/3bkK4Va> > [last visited on 31.03.2021]; This number was 119 in 2019. №13/7878, 07.02.2020.

only by the direct statements of the victims that they were not provided with information about the services, but also by the critically low rate of case referrals to crisis centers in the region.

Cooperation between agencies responding to individual cases of violence against women and domestic violence remains a problem. Agencies are less likely to organize the so-called case conferences involving different specialists, even when responding to cases where, over the years, prevention of violence has not been possible through the efforts of a single agency.⁴⁴⁸ Studied cases, where a restraining order is also issued against the victim are also problematic, as sometimes the perpetrator turns to the police to suppress the victim and tries to present the victim as a perpetrator, in which case it is especially important to properly analyze the case and not to aggravate the situation of a victim.⁴⁴⁹



In 2020, 843 restraining orders and 94 protective orders were issued for violence against women. Also, according to the Ministry of Internal Affairs of Georgia, in 2020, under Article 151¹ of the Criminal Code (Stalking), an investigation was launched into 95 cases.

⁴⁴⁸ Recommendation (№ 08-2/11690) of the Public Defender of Georgia of November 26, 2020 to the Ministry of Internal Affairs of Georgia, the General Prosecutor's Office of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs to respond to domestic violence incidents in the family of M. And M.T.

⁴⁴⁹ The case of T.T. (№ 5165/20), where the police issued a restraining order against the victim. According to the information provided by the applicant, the warrant was later overturned by the court, and T.T.'s spouse was charged under several counts of domestic violence and coercion. The case of B.P. (№ 11404/20, № 3849/20). B.P. also indicated that she herself was a victim of violence by her mother and brother. Police issued a restraining order against B.P. The court later revoked the warrant with the help of the lawyer of the Union Safari. The case of T.G. (№ 3025/20). T.G. indicated that she was a victim of violence from her ex-husband. Police also issued a restraining order against T.G. T.G. was assisted by a lawyer from the Crisis Center, and the issued warrant was also revoked by a court.

As in previous years, the problem is the insensitive, abusive attitude of a number of police officers towards the victim and the secondary victimization of victims during the interrogation process.⁴⁵⁰ In this regard, along with the training of law enforcement officers and the development of guidelines for interrogation, it is important to respond strictly to all cases in order to avoid similar facts in the future.

In the context of the Coronavirus pandemic, it was particularly important to protect the rights of women and girls and to have unhindered access to all services for the assistance of victims. Although all victim assistance services continued to operate, including police using law enforcement tools as usual, an analysis of information obtained by the Office of the Public Defender of Georgia during the pandemic revealed that the pandemic was particularly aggravating the situation of victims of domestic violence, who found themselves in one space with the abuser. As a result, the risks of domestic violence have increased and at the same time, the possibility of detecting cases of domestic violence has decreased.

7.7.1. Gender Motivated Killings of Women (Femicide)

According to the General Prosecutor's Office of Georgia, 24⁴⁵¹ facts of killing of women were revealed in 2020, out of which in 15 cases signs of domestic crime were detected, and 9 cases - other motives. In addition, the attempted killing of 27 women was revealed,⁴⁵² 17 of which were committed on the grounds of domestic crime.⁴⁵³

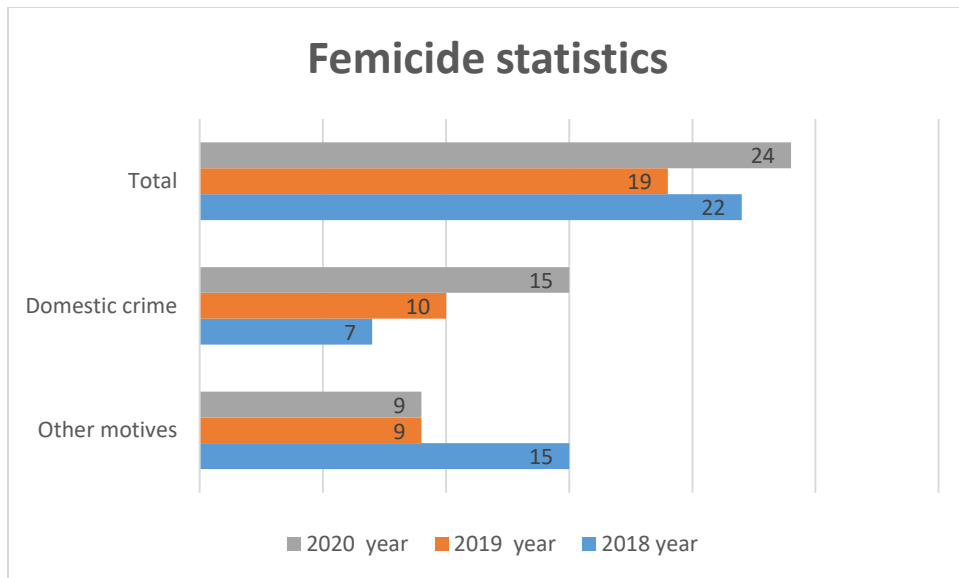
Statistics show that instead of decreasing, the number of femicide cases increases from year to year.

⁴⁵⁰ 89 applications/complaints on alleged domestic violence cases were submitted to the General Inspection of the Ministry of Internal Affairs. Out of this number, misconduct was detected in 46 cases. Letter MIA 5 21 00309898 of the Ministry of Internal Affairs of Georgia; 05.02.2021.

⁴⁵¹ Including two cases of severe damage to health by a family member, leading to loss of life.

⁴⁵² Including 6 cases of incitement to femicide committed by a family member., one case with the gender-discrimination motive.

⁴⁵³ Letter №13/10486 of the General Prosecutor's Office of Georgia; 24.02.2021.



In 2020, the Public Defender of Georgia analyzed the cases of femicide and femicide attempts in 2019. Case analysis shows that many challenges remain in the fight against femicide and the administration of justice in femicide cases. Unfortunately, in 9 out of 10 cases analyzed, various shortcomings are revealed at the stage of investigation or trial.

Among the shortcomings identified, in some cases the problem was timely recognition as the legal successor of the victim. Stereotypical attitude towards the victim was revealed at the stage of investigation as well as getting interested in victim's personal, sexual life, while this was not essential for determining the circumstances of the case. The problem of gathering evidence was also revealed, which ultimately affected the qualification of the action and the court's finding of the accused guilty under a relatively light article. There was also a problem with naming gender-motivated crimes.

It is a welcoming factor that the investigation studied the previous history of violence in accordance with the recommendation of the Public Defender of Georgia. Among the cases analyzed, there were those where, despite systematic violence, the victim did not turn to law enforcement agencies. Unfortunately, there are still cases when, despite a victim reporting a case to the police, an extreme form of violence still cannot be avoided. Femicide could not be avoided in a case too where a person was serving a sentence in a penitentiary institution for a domestic crime. This once again indicates the need to intensify work towards correcting behavior of the abuser.

It is noteworthy that among the cases of killing or attempted killing of women in 2020, there are cases when, despite the reporting of violence by the victim, an extreme form of violence could not be avoided.⁴⁵⁴

Unfortunately, femicide is a direct result of gender and social inequality in society, and it is important that the state takes comprehensive efforts to create and enforce an effective system to prevent it.

⁴⁵⁴ For example, information on a prior history of violence before to murder or attempted killing was reported in cases № 10990/20, № 3312/20, № 3029/20, № 3026/20, № 1979/20.

7.7.2. Assessment of Services at the Facilities for Victims of Violence against Women and Domestic Violence

In order for the victim to escape from violence and prepare for an independent life, service providers for women victims of violence and domestic violence have a crucial role to play, so it is important for these services to work properly.

The Office of the Public Defender of Georgia visited all state shelters and crisis centers operating in Georgia in 2020 to check the response to the shortcomings and implementation of the recommendations issued during the 2019 monitoring.⁴⁵⁵

The monitoring shows that the management of cases of beneficiaries with mental health problems and ensuring peaceful cohabitation of beneficiaries remain problematic. Access to shelter for persons with disabilities is still a challenge. A particular problem is the support and assistance of beneficiaries after leaving the shelter, due to the small number of relevant programs, and in some cases, due to their absence. Access to crisis center services in the regions is still a problem. During the monitoring conducted by the Public Defender in 2020, the crisis centers in Gori, Kutaisi and Marneuli were closed, which indicates that this service is not fully operational in the region and it is important to take effective measures to eliminate the problem and increase referrals.

Although no cases of coronavirus transmission have been reported in shelters and crisis centers, regulations to prevent the spread of the virus in shelters and crisis centers have not been properly implemented.⁴⁵⁶

7.8. Child and Early Marriages

The practice of marriage and engagement at an early age remains one of the most important challenges. Both avoid this practice as well as the management of the specific cases effectively is problematic.

According to the cases of early marriage/engagement studied by the Public Defender of Georgia, the coordination between the Ministry of Internal Affairs of Georgia, the educational institution and the Social Services and the proper functioning of the referral mechanism are still problematic.⁴⁵⁷

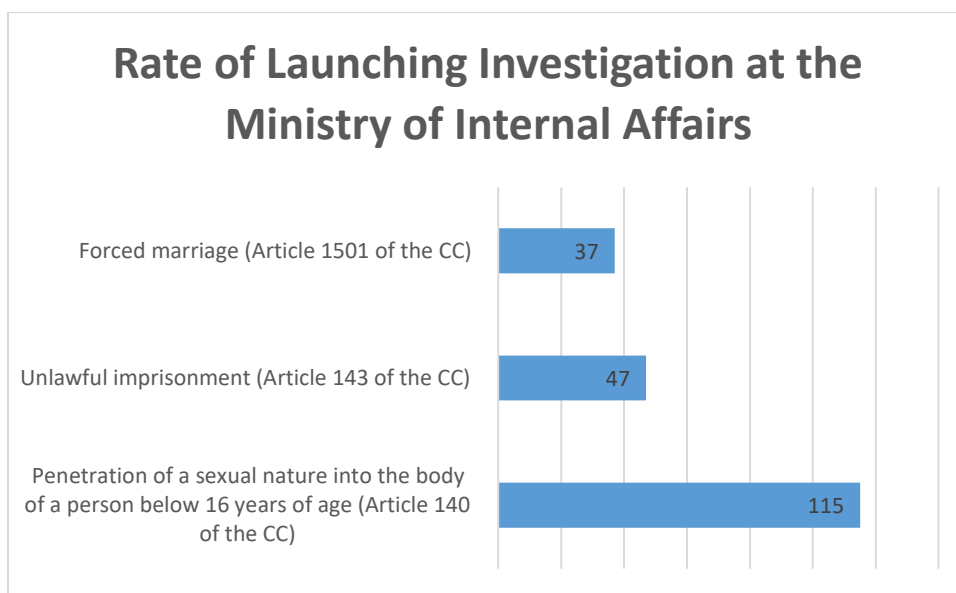
⁴⁵⁵ Monitoring Report of the Public Defender of Georgia of Service Centers for Victims of Domestic Violence and Trafficking, Tbilisi, 2020.

⁴⁵⁶ During the monitoring conducted in 2020, none of the shelters and crisis centers measured the temperature for the staff of the Office of the Public Defender, nor did they treat their hands with a special liquid, which suggests that the health of visitors to the facility was not properly checked and no measures were taken to prevent the risk of spread of the pandemic.

⁴⁵⁷ Case № 10203/20 we received contradicting information from the LEPL Social Service Agency and an educational institution.

LEPL Agency for State Care and Assistance for Victims of Human Trafficking studied 131 cases of early marriage in 2020,⁴⁵⁸ and the Ministry of Internal Affairs of Georgia launched the investigation into 132 cases of alleged crime, which were motivated by child marriage.⁴⁵⁹ A total of 20 cases of school dropouts are reported at the Ministry of Education.⁴⁶⁰ In 2019, Social Services examined 115 cases of early marriage;⁴⁶¹ According to the Ministry of Internal Affairs, in 2019, an investigation was launched on 149 cases, in 105 of which the motive for the alleged crimes was marriage with a child.

During the pandemic, the distance learning mode made it difficult to both detect the cases and to study these cases in a timely manner by the social workers. It should also be noted that the social service still lacks case management guidelines and their response to early/childhood marriage cases is often superficial and fragmented. Among them, access to psychosocial rehabilitation services in case of sexual violence is problematic.



Adequate response to the crimes of unlawful deprivation of liberty and forced marriage of girls belonging to ethnic minorities is particularly problematic.⁴⁶² Study of the cases confirms that when it comes to ethnic minorities, in the case of specific crimes, the state does not pursue a strict policy. Dissatisfaction is often expressed with regard to extended investigative actions against the police, as there is a presumption that law enforcement officials expect the case to end in a settlement between the families. In the Kvemo Kartli

⁴⁵⁸ Letter № 07/764 of the LEPL Agency for State Care and Assistance for Victims of Human Trafficking; 04.02.2021.

⁴⁵⁹ Letter MIA 5 21 00342422 of the Ministry of Internal Affairs of Georgia; 12.02.2021.

⁴⁶⁰ 19 girls and 1 boy terminated studying in 2020 for the purpose of marriage; Letter MES 3 21 0000075490 of the Ministry of Education and Science of Georgia; 08.02.2021.

⁴⁶¹ Letter № 07/769 of LEPL Agency for State Care and Assistance for Victims of Human Trafficking; 24.02.2020.

⁴⁶² Case (№ 13984/21) The law enforcement agency did not have information about the whereabouts of the girl for 3 days.

region, in the case of early marriage, the influence of village elders (Aghsakalebi) is still observed, who are involved in the settlement process.⁴⁶³

Raising awareness of the risks involved is important to avoid early marriage/engagement. In addition, integrating gender issues and vital skills/complex sex education into the education system is essential to prevent early marriages.

7.9. Situation regarding the rights of LGBT+ Persons

No significant steps have been taken to improve the rights of LGBT+ persons in 2020. Against the background of the quarantine and emergency regime caused by the new coronavirus, the challenges have become more visible, including in terms of lack of employment opportunities, increased violence risks, housing and food security. However, the social and economic needs of LGBT+ individuals were not taken into account in the anti-crisis economic plan. During the Covid Pandemic, state aid to LGBT+ individuals was one-time and their needs were not fully addressed. This has a negative impact on the economic situation, health and quality of life of LGBT+ individuals.

It is becoming more and more difficult for LGBT + community members to exercise their right to freedom of expression and assembly every year. Their open talk about their rights and interests and their attempts to gather in public spaces leads to an aggressive response from one part of the public. The activation of radical and violent groups in recent years is especially alarming, whose actions pose a real threat to the lives and health of LGBT+ community members. Unfortunately, the measures taken by the state in response to this are not sufficient.

It is important for the state to develop a comprehensive strategy to address the problems facing LGBT + individuals, taking into account the existing policy on the rights of LGBT + persons. At the same time, it is important to set up an inter-agency working group that will take effective measures to respond to existing challenges.

Despite the recommendation of the Public Defender of Georgia, no working group has been set up to regulate the procedure for changing the gender record in civil acts. This stance has a negative impact on the human rights situation.

7.9.1. Violence against LGBT+ Persons

Homophobia and the influence of anti-gender groups are still strong in the society, due to which LGBT+ individuals continue to suffer oppression, discrimination and often become victims of violence.

⁴⁶³ The alleged problem is confirmed by the cases studied during the reporting period (N2255/20, N11671/21) during which the rural population gathered at the MIA District Division and tried to put pressure on the girl's family in order to solve the case without the police. At the same time, the villagers in Kvemo Kartli region publicly protested against the teacher for condemning the marriage at an early age, forced the teacher to apologize, recorded it all and posted it on the social network in order to damage the teacher's reputation. Available at: <<https://bit.ly/36sz8iw>> [last visited on 24.03.2021].

According to the General Prosecutor's Office of Georgia, in 2020 criminal persecution were launched against 17 people on the basis of intolerance on the grounds of sexual orientation and gender identity. Out of this number, criminal proceedings were initiated against 8 persons for committing a crime on the basis of intolerance on the grounds of sexual orientation; and against 9 persons – for a crime on the basis of intolerance on the grounds of gender identity.⁴⁶⁴

The sensitivity of law enforcement officials towards the LGBT+ community is still low. Representatives of the LGBT+ community, when addressing the Office of the Public Defender of Georgia, indicate in some cases that when they turn to the police about the violence committed against them, they become victims of degrading treatment, homophobic attitude, abuse and/or indifference. As a result, there are cases where LGBT+ individuals refrain from cooperating with law enforcement agencies on specific violence.

According to the studied cases, it is difficult for the General Inspection of the Ministry of Internal Affairs of Georgia to establish responsibility for cases where there was an alleged homophobic attitude by the police. According to the General Inspection of the Ministry of Internal Affairs of Georgia, they have received 50 applications for misconduct against LGBT+ individuals, out of which the misconduct has not been confirmed on any of the facts.⁴⁶⁵

Also, according to the General Prosecutor's Office of Georgia, during the reporting period, the investigation and prosecution of alleged criminal acts committed by law enforcement officers against a member of the LGBT+ community was not initiated.⁴⁶⁶

Violence and neglect by LGBT+ family members also remain major problems, and existing protection and assistance mechanisms, which are applied in cases of domestic violence against women, are not sufficient for LGBT+ victims of domestic and out-of-home violence.

Proposals

To the Parliament of Georgia:

- In order to comply with international standards, improve the legislation on crimes of sexual violence, in particular:
 - Amend the definition of rape (Article 137 of the Criminal Code) and other sexual violence articles (Articles 138 and 139 of the Criminal Code) for these definitions to be based on free, genuine and voluntary consent under the Istanbul Convention
 - Remove violence from the definition of rape (Article 137 of the Criminal Code) and define violence as an aggravating circumstance under this Article

⁴⁶⁴ The information provided by the General Prosecutor's Office of Georgia covers the period from January 1 to September 30, 2020. Letter № 13/9884 of the General Prosecutor's Office of Georgia; 12.02.2021.

⁴⁶⁵ Letter MIA521 00309898 of the General Inspection of the Ministry of Internal Affairs of Georgia; 05.02.2021.

⁴⁶⁶ The information provided by the General Prosecutor's Office of Georgia covers the period from January 1 to September 30, 2020. Letter № 13/9884 of the General Prosecutor's Office of Georgia; 12.02.2021.

- Amend Article 139 of the Criminal Code to expand the list of circumstances that suppress the victim's will
- Remove the fine from Article 139 of the Criminal Code as a form of inadequately light punishment for sexual violence.

.Recommendations

To the Government of Georgia:

- Ensure the proper, effective and efficient operation of the Local Government Cooperation Platform to improve gender equality policy
- Develop timely, adequate and effective compensation rules for victims of violence against women and domestic violence, in accordance with the obligation under Article 30 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
- Establish a special working group to critically analyze the existing prevention system in relation to cases of gender-motivated killings and attempted killings of women, and to work with key agencies, including the Ministries of Health and Education, to develop and refine a femicide prevention system
- Regulate the procedure for legal gender recognition in civil acts in accordance with international human rights standards, and to consider setting up a working group for this purpose
- Consider the social and economic needs of LGBT + individuals in the anti-crisis plans created in the context of the corona virus pandemic.

To the Minister of Internal Affairs of Georgia:

- Continue training of staff in the territorial bodies of the Ministry of Internal Affairs of Georgia on violence against women and domestic violence, develop a follow-up evaluation document of the training, which will make it possible to measure the progress achieved by the trained staff
- In order to effectively protect and assist victims of violence, establish a rule of specialization for investigators on cases of violence against women and domestic violence
- Improve the analysis of statistics on violence against women and domestic violence, in particular, analyze statistical data on violence against women and domestic violence between intimate partners, including same-sex partners, to study specific characteristics of violence
- Ensure the involvement of the Witness and Victim Coordinator in managing each case and inform the victim about crisis centers and shelters
- Strengthen victim protection mechanisms and facilities during the pandemic to increase the capacity of protected communications, including through active cooperation with the private sector
- Take preventive measures, including information campaigns to reduce/prevent forced marriage, unlawful deprivation of liberty and sexual intercourse with a minor
- Ensure the development of guidelines for responding to early marriage cases and strengthen the role of the district inspector to properly inform the local community, especially ethnic minorities.

To the General Prosecutor of Georgia:

- Analyze in detail the crimes related to early marriages and produce sex- and age-segregated statistics on them, in particular, forced marriage, unlawful imprisonment, penetration of sexual nature into the body of a person below the age of sixteen.

To the Minister of Economy and Sustainable Development:

- Promote the professional development of women entrepreneurs living in municipalities and their economic empowerment by training and equipping with project management skills;

To the State Minister of Georgia for Reconciliation and Civic Equality and the Minister of Foreign Affairs of Georgia:

- Ensure the participation of women at all levels of the peace negotiations, including women affected by the conflict and non-governmental organizations.

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

- Develop a sectoral health program to address the needs of conflict-affected girls and women
- Integrate psychological support services into the maternal health program for pregnancy, childbirth and the post-pregnancy period
- Increase the awareness of gynecologists working in maternity hospitals about the mechanisms for detecting the risk of postpartum depression
- Develop a systematic vision for postnatal care services and discuss it broadly with the involvement of experts in the field
- Integrate family planning services into the first level of healthcare; Also, to ensure that women from vulnerable groups have access to contraceptives, they should be covered by a universal health care program
- Abolish the 5-day mandatory reflection period in order to increase access to the safe abortion services
- Identify sexual and reproductive health services as essential services in the framework of Combating the Covid Pandemic Action Plan
- Modify technical guidelines and protocols for sexual and reproductive health services to include telemedicine and other alternative remote service delivery modes to increase access to these services during pandemic and other periods

- Train social workers on violence against women and domestic violence, as well as develop a follow-up evaluation document of the training, which will make it possible to measure the progress made by trained staff
- Develop special guidelines for social workers to deal with cases of violence against women and domestic violence, as well as early-marriages.

To the Minister of Education and Science of Georgia:

- Fully integrate the comprehensive sexuality education into the formal education system and carry out appropriate preparatory work for teachers to develop the teaching skills of this component
- Ensure teacher training to raise awareness and create an assessment document on the legal obligations of persons employed in the education system in relation to early marriage issues.

To the Local Self-Government Bodies:

- Hold regular meetings with IDPs and conflict affected women, young people and the elderly to identify and document their needs
- Strengthen cooperation with shelters and crisis centers and with the involvement of victims of violence develop special support programs tailored to their needs.

8. Freedom of belief and religion

8.1. Introduction

Present chapter discusses key challenges related to freedom of religion and beliefs through 2020, including: discriminative tax and state property regulations in relation to non-dominant religious associations, obstacles to the exercise of the property rights by religious minorities, alleged hate crimes and inefficiency of their investigation, problematic issues related to the State Agency for Religious Issues, unequal approach to religious holidays in the labor legislation. The chapter also reviews the facts of unequal treatment to non-dominant religious associations by the state during the pandemic and discriminative public statements on anti-Semitic and religious grounds, during 2020.

Unfortunately, the vast majority of the recommendations provided in the chapter of the Freedom of belief and religion in the Parliamentary Report of 2019 of Public Defender are not implemented. None of the changes have been made, including amendments to the Ordinance of the Government of Georgia № 117 of 27 January 2014, "On the Rules for Implementing Some Measures Related to Partial Compensation for Damage Caused to Religious Associations in Georgia under the Soviet Totalitarian Regime." The issue of returning religious buildings confiscated during the Soviet period to their historical owners remains problematic. The issues related to the construction of the new mosque in Batumi and the Tandoyants Church are still unresolved.

We would also like to underline, that, unfortunately, during the reporting year, the state did not take effective measures to address the complex problems facing freedom of religion, moreover, the state policy, in some cases, even led to the deterioration of the status quo. In particular, problems with religious freedom and equality of religious organizations in the country became even more obvious during the pandemic. The policy of the state, in many cases, was directed to providing privileges to dominant religious group and to place it in a superior position compared to other religious associations. Also, the state still did not take effective steps to raise public awareness of religious diversity, traditions and on the freedom of religion and to eliminate systemic practices of inequality on religious grounds.⁴⁶⁷

It should be noted that on June 4, 2020, the Constitutional Court of Georgia delivered a judgment explaining the scope of freedom of belief, religion and conscience.⁴⁶⁸ The disputed norm established the rule of introducing of electronic identity cards, which caused religious resistance in certain groups. Nevertheless, the Constitutional Court considered the disputed norms in accordance with the Constitution, taking into account the fact that the definition of the form of identification documents is

⁴⁶⁷ For information on the implementation of the recommendations for improving the protection of the principles of freedom of religion, equality and religious neutrality in the education system, see the chapter on human rights education.

⁴⁶⁸ Judgment of the Constitutional Court of Georgia of 4 June 2020, Nana Sepashvili and Ia Rekhviashvili v. Parliament of Georgia and Minister of Justice of Georgia.

within the state's discretion, as well as refusing to use an electronic identity document does not deprive a person of Georgian citizenship.

8.2. Georgian legislation

Despite repetitive recommendations⁴⁶⁹ from the Council of Religions under the Public Defender to state agencies, unequal approaches to non-dominant religious associations in both tax and state property legislation remain challenging in 2020.

In last year's parliamentary report,⁴⁷⁰ the Public Defender drew attention towards two important decisions⁴⁷¹ of the Constitutional Court of Georgia of July 3, 2018, which upheld the claims of religious organizations and declared certain norms of the Tax Code and the Law on State Property unconstitutional. Parliament did not use the 6-month deadline set by the Constitutional Court to enforce the legislative changes; therefore, the normative content of the norm which was considered as unconstitutional was automatically declared invalid from 31 December 2018. It should be noted that during reporting period the amendments affected Article 170 of the Tax Code, the rule exempting all religions from the right to deduct tax exemption from the restoration and / or painting of a church building, as a result of above-mentioned decisions of the Constitutional Court.⁴⁷² As for the law on State Property, it was amended in 2020 and the Georgian Apostolic Autocephalous Orthodox Church was removed from the list of possible recipients of the state transfers of property free of charge.⁴⁷³

8.2.1. Tax legislation

The Public Defender of Georgia has been referring gaps in the tax legislation for many years, which are manifested in discriminatory approaches to religious associations.

The current version of the Tax Code exempts from the value added tax only the Patriarchate while supplying crosses, candles, icons, books, calendars and other liturgical items by them, if they are used for religious purposes.⁴⁷⁴ The Georgian Patriarchate, unlike other religious associations, is exempt from profit tax for profit received from selling of the above-mentioned products.⁴⁷⁵ The Council of Religions under the Public Defender addressed the Parliament of Georgia with relevant recommendations in order to distribute mentioned privilege equally to all religious organizations.⁴⁷⁶

⁴⁶⁹ Recommendations of the Council of Religions under the Public Defender for 2020, Tbilisi, 2020.

⁴⁷⁰ Public Defender's 2019 Parliamentary Report, p. 216-217.

⁴⁷¹ Judgments of the Constitutional Court of Georgia of July 3, 2018 №1 / 2/671 and №1 / 1/811.

⁴⁷² Subparagraph "t" of the first part (part-ის ნაცვლად paragraph ხომ არ ჯობს?) of Article 170 of the Tax Code of Georgia.

⁴⁷³ Paragraph 1 of Article 6³ of the Law of Georgia on State Property.

⁴⁷⁴ Ibid., Article 170, Part 1, Subparagraph "s".

⁴⁷⁵ Ibid., Article 99, Part 1, Subparagraph "d".

⁴⁷⁶ Recommendations of the Council of Religions under the Public Defender of Georgia, Tbilisi, 2020, 17-18.

As for the claim of nine religious associations to the Constitutional Court on May 7, 2019, through which they were demanding the declaration the norm⁴⁷⁷ of the Tax Code, as unconstitutional. The disputed norm does not exempt all religious organizations from land tax when using land for non-economic purposes, as it is in case of the Patriarchate.⁴⁷⁸ The First chamber of the Constitutional Court of Georgia accepted the mentioned claim for substantive consideration.⁴⁷⁹

8.2.2. Legislation on the state property

Certain articles of the Law on State Property are problematic, as they provide privileges only for the Georgian Orthodox Church, neglecting other religious associations.

On August 12, 2019, 9 religious organizations applied to the Constitutional Court⁴⁸⁰ to challenge the constitutionality of paragraphs 1, 2 and 5 of Article 3 of the Law of Georgia on State Property, which restricts religious associations other than the Orthodox Church to purchase and exchange of state property. Therefore, Article 4 of the Law on State Property is also problematic, it provides the list of state property privatization of which is prohibited (both for payoff and free of charge). These include religious and cult buildings (active and inactive), their ruins, as well as the land on which they are located.⁴⁸¹ It should be noted that most of the religious associations operating in Georgia do not own their own religious property. This legislative provision is one of the obstacles preventing return of historical property which is on the balance of the state. Related to the claim made to the Constitutional Court on August 12, 2019, a regulatory hearing was held on February 20, 2020. The decision of the Constitutional Court regarding the admissibility of the case is still unknown.

In the light of the fact that the state has not solved the property problems of non-dominant religious groups for years, and as mentioned above, religious organizations are appealing to the Constitutional Court against the discriminatory norms of Article 3 of the Law of Georgia on State Property, in May 2020 the Parliament amended⁴⁸² the arguable norms. According to the amendment the Orthodox Church was allowed to take ownership of a 20-hectare forest around the churches. Such privilege does not apply to other religious associations. Unfortunately, the Parliament not only does not change the discriminatory norms in the law on state property, but also, it aggravates the unequal environment imposed on non-dominant religious associations through new amendments.

⁴⁷⁷ Subparagraph "a" of the first part of Article 201 of the Tax Code of Georgia.

⁴⁷⁸ Public Defender's 2019 Parliamentary Report, p. 217.

⁴⁷⁹ Recording Notice №1/2/1422 of the Constitutional Court of Georgia of April 30, 2020 on the case of "LEPL Church of the Gospel of Georgia and others against the Parliament of Georgia".

⁴⁸⁰ Constitutional complaint of 12 August 2019 №1440.

⁴⁸¹ Subparagraph "m" of the first paragraph of Article 4 of the Law of Georgia on State Property.

⁴⁸² Paragraph 6 of Article 3 of the Law of Georgia on State Property.

8.3. Problems related to the property

During the reporting period, the issue of returning of religious buildings to historical owners remained unsolved. That buildings were confiscated from religious associations during the Soviet period. In previous parliamentary reports, the Public Defender of Georgia criticized the transfer of the disputed religious buildings to the Patriarchate without proper study⁴⁸³. Unfortunately, in 2020, the practice of handing over the confiscated religious buildings of minorities to the dominant religious organization - the Georgian Patriarchate – continued. This, once again, illustrates that the state lacks willingness to properly regulate the issue and that its policy toward Patriarchate of Georgia is still based on putting it in the predominant position over other religious organizations. Such approach undoubtedly affects the rights of those religious minorities.

During the reporting year, the Office of Public Defender studied the issue of transferring the right to use part of the Evangelical Lutheran Church in the village of Asureti, Tetrtskaro Municipality, which is also a real cultural heritage monument,⁴⁸⁴ to the Georgian Patriarchate. The church in the form in which it exists today is evangelical-Lutheran. While there is no problem in identifying the historical owner of the property, the municipality has allowed the Georgian Patriarchate to use a certain part of the building. The Evangelical Lutheran Church from its side, asked the municipality several times to hand over church to the organizations to perform religious rituals, however, preference was given to the Georgian Patriarchate. The municipality reported to the Office that the community of the Evangelical-Lutheran Church did not live in the area and based on this circumstance, there was made decision in favor of the Patriarchate.⁴⁸⁵ We believe that the absence of an evangelical Lutheran community in the village does not give the patriarchate the right to use the building, while orthodox church is located in Asureti and the Evangelical Lutheran Church in the village represents a real cultural heritage and it is very important to keep its cultural value.

In terms of the return of historical property, the problem of restitution, in addition to the Evangelical Lutheran Churches, is also crucial for the Armenian Apostolic, Catholic, Muslim, and Jewish communities. However, the list of religious buildings that have not been returned to their historical owners - religious associations - is quite extensive.⁴⁸⁶

According to the Council of Religions under the Public Defender, "the issue of returning the religious buildings confiscated by the communist government during the Soviet era and establishing the historical owner of the disputed monuments is still unresolved for various religious groups."⁴⁸⁷ However, the amount of damage and property confiscated by the Soviet regime from religious associations on the territory of Georgia has not been recorded so far. It should be noted that the main reason for the problem is the lack

⁴⁸³ Parliamentary Report of the Public Defender of Georgia for 2019, p. 219 (The issue of handing over the Tandoyants Church to the Georgian Patriarchate).

⁴⁸⁴ Order №2 / 257 of December 2, 2015 of the Director General of the National Agency for Cultural Heritage Preservation of Georgia.

⁴⁸⁵ Letter №641-13 of 19 February 2020 from Tetrtskaro Municipality.

⁴⁸⁶ Institute for Tolerance and Diversity (TDI), Restitution Policy in Georgia, Tbilisi, 2020, 2020, 38.

⁴⁸⁷ Recommendations of the Council of Religions under the Public Defender of Georgia, Tbilisi, 2020, 36.

of measures taken by the state to develop and implement legislation and policies related to restitution, which the Public Defender indicated the need to correct in the 2019 parliamentary report.⁴⁸⁸ However, delays in resolving this issue also have a negative impact on the condition of the buildings in question, since, they are in danger of damage and demolition due to inadequate attention and lack of measures from the state, as their current owner, to maintain and restore these buildings.

The recommendations of the Council of Religions also specifically state that non-dominant religious associations also face problems in the construction of new religious buildings.⁴⁸⁹ It should be noted that the Public Defender has been observing the ongoing events around the construction of a new mosque in Batumi for years.⁴⁹⁰ During 2020, the Kutaisi Court of Appeals was delaying the hearing of the case of the new mosque in Batumi. A final decision on the case has not been made yet.

During the reporting period, the religious organization, the Christian Assembly of Jehovah's Witnesses in Georgia, applied to the Public Defender's Office and pointed out 9 identical cases of obstacles created during the registration of land ownership in the public register.⁴⁹¹

8.4. Alleged hate crimes

Attempts to violate religious freedom and ineffective investigation of alleged hate crimes remain challenging, during reporting period. In this regard, complaint rate is constantly high from the Jehovah's Witnesses, and complaints include the delay in the investigation among other things.⁴⁹²

It should be especially noted that Constitution of Georgia guarantees freedom to religion to any individual living in Georgia. The freedom to religion includes the right to perform and participate in religious rituals. It is the duty of the state to promote the equality to enjoy this right to everyone. At the same time, the state must maintain social peace among believers neutrally and impartially.⁴⁹³

In this regard, special attention should be paid to the attempts of violation of the freedom of religion of the Muslim population in the village of Buknari in Chokhatauri Municipality in January, this year.⁴⁹⁴ This case has shown once again that in relation to similar types of cases, the government's policy is less focused on their systemic prevention and is mainly limited to one-time approaches and solving of individual cases.

⁴⁸⁸ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 222.

⁴⁸⁹ Recommendations of the Council of Religions under the Public Defender of Georgia, Tbilisi, 2020, 34.

⁴⁹⁰ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 220.

⁴⁹¹ Detailed information is provided in the Equality Rights chapter.

⁴⁹² Detailed information is provided in the Equality Rights chapter.

⁴⁹³ Judgment of the European Court of Human Rights of 25 May 1993 in the case of Kokkinakis v. Greece, § 33.

⁴⁹⁴ Available at: <<https://bit.ly/3w1OfqQ>> [accessed 26.03.2021].

It should be noted that actions in Buknari were not first attempts of violation of freedom of religion in Georgia. In recent years, assumed violations of the rights of Muslim community members had place in Samtatskaro,⁴⁹⁵ Nigvziani,⁴⁹⁶ Tsintsikaro,⁴⁹⁷ Kobuleti⁴⁹⁸ and the village of Mokhe⁴⁹⁹ in Adigeni.

The criminal investigation into the above-mentioned cases in the Tsintsikaro and Nigvziani was terminated due to lack of action foreseen by criminal law. Investigations related to the remaining cases are ongoing, although no specific person has been identified as the victim or accused so far.⁵⁰⁰

Ongoing investigation processes do not meet the standards of transparent and effective investigation. Muslims who have been subjected to physical violence have not been granted the status of victim. This makes it impossible to monitor the investigation process from their side and restricts access to justice for the members of the Muslim community.

The state's inappropriate response to hate crimes creates a threat of repetition of conflicts and future violation of the rights of religious minorities, this issue is stressed in the report of the European Commission against Racism and Intolerance (ECRI).⁵⁰¹ Hence the above mentioned facts, it is important for the state policy to take adequate measures to conduct an effective investigation related to already committed criminal actions motivated by religious intolerance and to carry out adequate preventive steps to avoid new cases.

8.5. The State Agency for Religious Issues

The role of the State Agency for Religious Issues (hereinafter referred to as the Agency) in protecting religious freedom is still unclear. The Agency is a legal entity under public law, which carries out informational, research, scientific-educational and recommendation activities in the field of religion for the Government of Georgia and the Prime Minister of Georgia.⁵⁰² The agency was established in 2014 and is considered to be the main agency responsible for religious freedom issues in the government system.

⁴⁹⁵ 2013 Parliamentary Report of the Public Defender, Tbilisi, 2014, 295.

⁴⁹⁶ 2012 Parliamentary Report of the Public Defender, Tbilisi, 2013, 520.

⁴⁹⁷ *ibid*

⁴⁹⁸ 2014 Parliamentary Report of the Public Defender, Tbilisi, 2015, 432.

⁴⁹⁹ Public Defender's 2015 Parliamentary Report, p. 487. It should be noted that in the case of Mokhe, there were cases of alleged abuse of power against Muslims directly by law enforcement.

⁵⁰⁰ Letter №13 / 13120 of March 10, 2021 of the General Prosecutor's Office of Georgia.

⁵⁰¹ European Commission Against Racism and Intolerance (ECRI), Report on Georgia, Fifth Monitoring Cycle, Adopted on 8 December 2015, published on 1 March 2016, § 71. Available at: <<https://bit.ly/3vkGbgX>> [accessed 15.03 .2021].

⁵⁰² Ordinance of the Government of Georgia of 19 February 2014 №177 "On the Establishment and Approval of the Statute of the Legal Entity of Public Law - State Agency for Religious Issues", Paragraph 1 of the Article 1, available at: <<https://bit.ly/3dFOYh3>> [accessed 27.02.2021]. (მაცნე „დადგენილების“ შესატყვისად ordinance-ს იყნებს და ალბათ სჯობს ჩვენც ასე მოვიხსენიოთ)

It is noteworthy that the establishing of the Agency caused criticism of a significant number of human rights organizations and religious associations. Negative attitude towards the further activities of the Agency did not change either. Moreover, non-governmental organizations working on issues of religion, considering the problematic mandate of the agency, even demand its abolition.⁵⁰³ Particularly concerns are related to the high risks sat by the state to control religious organizations and interfere in their internal affairs using the mandate of the Agency.⁵⁰⁴

The problematic aspects of the Agency's activities are also referred in the recommendations of the Council of Religions, in particular:

"Although, at first glance, the agency has a substantive advisory mandate, it has not submitted yet any progressive human rights-based recommendations and visions to the Government and the Parliament that would lead to a positive change in to the legislation and policies related to freedom of religion. At the same time, beyond the advisory function, the agency is sometimes directly involved in resolving and managing the financial and property issues of religious associations. The most important part of the Agency's work is related to the management of funding of four religious organizations and the financial and property commission."⁵⁰⁵

It is noteworthy that on March 1, 2016, the European Commission against Racism and Intolerance (ECRI) expressed serious concern on the work of the Agency and recalled the government to instruct the newly established Agency to work actively with the Council of the Ombudsman and share its recommendations and experience.⁵⁰⁶ However, the Commission (ECRI) assessed that its recommendation has not been implemented, as the Agency does not take appropriate steps to cooperate with the Council of Religions. The Commission notes that, instead of co-operation, tensions are even observed between the two bodies.⁵⁰⁷ It is interesting that significant part of religious associations are not trusting the Agency.⁵⁰⁸ At the same time same entities have high confidence in the activities of the Council of Religions under the Public Defender.

Above mentioned indicates that the effectiveness of the State Agency for Religious Issues and the appropriateness of its existence raises questions, which further intensifies the tendency of the Agency to

⁵⁰³ For example, Human Rights Education and Monitoring Center (EMC), Georgian Young Lawyers Association (GYLA), Alternative Report on the Implementation of the Civil and Political Rights Pact, Tbilisi, 2020, 37; Institute for Tolerance and Diversity (TDI), Forum 18, The Universal Periodic Review (UPR) submission, 2020, 3. Available.

⁵⁰⁴ Human Rights Education and Monitoring Center (EMC), "Religion, Politics and Social Contexts - Collection of Researches, Reports and Articles", Tbilisi, 2020, p. 87

⁵⁰⁵ Recommendations of the Council of Religions under the Public Defender of Georgia, Tbilisi, 2020, 27-28.

⁵⁰⁶ The European Commission against Racism and Intolerance (ECRI), Report on Georgia (fifth monitoring cycle), CRI (2016) 2, adopted on December 8, 2015, published on March 1, 2016, §§ 97-103.

⁵⁰⁷ ECRI, Conclusions on the implementation of the recommendations in respect of Georgia, Subject to interim follow-up, CRI (2019) 4, adopted on December 5, 2018, published on March 5, 2019, available at: <<https://bit.ly/3pEaBjR>> [accessed 27.02.2021].

⁵⁰⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), Third Opinion on Georgia, ACFC/OP/III(2019)002, Adopted on March 7, § 83.

control religious associations and interfere in their internal affairs. Thus, in order to improve the quality of the Agency's work, it is important for the government to take into account the recommendations of international and local religious or non-governmental organizations, as well as the Council of Religions under the Public Defender.

8.6. Religious holidays

Article 30 of the Labor Code of Georgia is problematic, as it puts non-Orthodox employees in an unequal position compared to Orthodox employees.

In particular, the above article defines 7 secular and 10 religious days, which are declared as holidays. It should be noted that in all ten cases we are talking about the religious holidays of the Georgian Orthodox Church. Thus, none of the religious holidays of the non-Orthodox population living in Georgia is recognized as a public holiday. Nevertheless, there is no alternative legislative provision that would allow non-Orthodox residents to enjoy a guaranteed holiday during their religious days.

According to the second part of Article 30 of the Labor Code, an employee may, on the basis of an employment contract, request other days off instead of the days off provided by law. However, the law does not specify what these days may be. Thus, on the one hand, the Code guarantees orthodox Christians the opportunity to enjoy their right to rest on religious holidays without hindrance, however, on the other hand, in the case of non-Orthodox persons, the law is a matter between the employee and the employer. Thus, the use of the employee's right to rest on his/her religious holiday depends, to some extent, on the will of the employer, which puts the non-Orthodox population in an unequal position in relation to the Orthodox population.

8.7. Pandemic and Freedom of religion

In the situation of worldwide pandemic, the severity of problems of minorities, including religious minorities, has become even more visible.⁵⁰⁹ The state of emergency in Georgia caused by pandemic and subsequent steps taken by the state put the dominant religious group in a privileged position. It should be noted that when introducing restrictions related to the state of emergency, the authorities did not have proper communication with non-dominant religious associations. They did not get explanations how to act during the state of emergency. Representatives of these religious unions believed that restrictions related to freedom of assembly in the country extended to religious assemblies as well and suspended their rituals, while the Orthodox Church continued to conduct religious rituals in a general

⁵⁰⁹ Varennes F., Report of the UN Special Rapporteur on minority issues, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/75/211), July 21, 2020 § 71.

way. To avoid such uncertainties, it is important that the restrictions imposed by the State are accompanied by appropriate explanations for those affected.⁵¹⁰

During the state of emergency, in the period from April 17 to April 27, 2020, the movement by cars was banned in Georgia. The Georgian government named the risk of high mobility of the population in connection with the Easter holiday as the basis for this restriction. On April 17, the Patriarchate of the Orthodox Church said it had found out by telephone communication with the Government that church servants were allowed to drive. While, it took several days for representatives of non-dominant religious associations to obtain a special pass for driving.⁵¹¹

The existence of discriminatory approaches by the state is indicated by the decision of the Government of Georgia, according to which from November 28, 2020 to January 31, 2021, it was forbidden to move and to be in public space from 21:00 to 05:00. The exemption was night of January 6, the Orthodox Christmas, so that the Orthodox Church could celebrate Christmas overnight. Exceptions did not apply to holidays of other religious associations during the same period, which are also celebrated at night (for example, on December 25, the vast majority of non-dominant Christian organizations celebrate Christmas).⁵¹²

It is important that state regulations apply equally to all religious communities so that they can exercise their freedom of religion on an equal basis. It is inadmissible to give preference to only one religious association and to obscure the legitimacy of restricting the same right to other associations. These types of decisions must be made by the state through active communication with various religious organizations.

8.8. Discriminative and anti-Semitic statements

During the reporting period, due to restrictions on the celebration of religious holidays, the public repeatedly witnessed discriminatory statements made by high-ranking state officials.

In this regard, the statements made by the Prime Minister on April 14, 2020, and by the Vice Prime Minister on November 27, are noteworthy. In one case, the Prime Minister, while talking to the Patriarchate about finding a balance in the issue of closing churches, indicated that they would not find it difficult to reach an agreement, as Georgia is an Orthodox state.⁵¹³ As for the second statement, the Vice Prime Minister explained imposing an exception for the restriction of movement only on the night of January 6th with the fact that majority of the population of Georgia is Orthodox.⁵¹⁴

Such statements point to the superiority of a particular religion and are strongly opposed to the idea of a secular state. Like the statement of the Prime Minister, the statement of Vice Prime Minister is also

⁵¹⁰ OSCE Office for Democratic Institutions and Human Rights (ODIHR), Human Dimension Commitments and State Responses to the Covid-19 Pandemic, Warsaw, 2020, 119.

⁵¹¹ Detailed information is provided in the Equality Rights chapter.

⁵¹² *ibid*

⁵¹³ Available at: < <https://bit.ly/3r0OCok> > [accessed 27.02.2021].

⁵¹⁴ Available at: < <https://bit.ly/2NklB9h> > [accessed 27.02.2021].

discriminatory as she assessed the ability of citizens to exercise their fundamental rights from a majority perspective, while imposing unequal conditions on members of religious minorities. Religious and non-governmental organizations quickly responded to the Vice Prime Minister's statement, and criticized it.⁵¹⁵

During the reporting period, unfortunately, anti-Semitic statements also took place. In this regard, Public attention was focused on the statements made by the servants of the Georgian Orthodox Church during the liturgies.⁵¹⁶ It should be noted that the statement of the Mitropolit Gamrekeli was initially only responded by the Georgian Ambassador to Israel, on behalf of the Georgian, who instead of critical assessment of the statement called the criticism of the Mitropolit a slander. Later, the Georgian Foreign Minister noted that "even the slightest manifestation of anti-Semitism will never find a place in the heart and consciousness of Georgians."⁵¹⁷

It is imperative that widespread anti-Semitic rhetoric does not solely remain the subject of discussion for particular individuals, and that the Georgian authorities, immediately condemn any kind of anti-Semitic attitude and express support for the Jewish nation, in order to prevent the development of anti-Semitic sentiments.⁵¹⁸

Proposals

To the Parliament of Georgia

- All religious organizations should be exempted from VAT while delivering crosses, candles, icons, books, calendars and other religious items (used only for religious purposes), like Georgian Patriarchate. For this purpose, the Article 170, Part 1 sub-paragraph "s" of the Tax Code of Georgia shall be amended.
- In order to exempt other religious associations, like the Georgian Patriarchate from the profit tax on the profit from the sale of crosses, candles, icons, books and calendars used for religious purposes, The Article 99, Part 1, Subparagraph "d" of the Tax Code of Georgia should be amended.
- Amendments should be made to the Tax Code of Georgia in order to exempt the property (land), used for non-economic purposes, of other religious organizations like the Georgian Patriarchate from the property (land) tax.
- In order to ensure the possibility of acquiring and exchanging state property by other religious associations, like the Georgian Orthodox Church, amendments should be made to the first, second and fifth paragraphs of Article 3 of the Law of Georgia on State Property;

⁵¹⁵ Available at: < <https://bit.ly/3aQZpMJ> > [accessed 27.02.2021].

⁵¹⁶ Available at: < <https://bit.ly/3kr9e76> > [accessed 27.02.2021].

⁵¹⁷ Available at: < <https://bit.ly/3c4wVP1> > [accessed 05.03.2021].

⁵¹⁸ Statement of the Public Defender of Georgia and the Center for Tolerance on anti-Semitic statements: <<https://bit.ly/2P7Xs6f>> [accessed 27.02.2021].

- Amendments shall be made to Article 4 (1) (m) of the Law of Georgia on State Property to allow privatization of state-owned religious and cult buildings, their ruins, as well as the land on which they are located, through privatization;
- Add an alternative legislative reservation to the Labor Code of Georgia, which will allow non-Orthodox population to have a guaranteed rest during their religious holiday, if they wish;
- Develop a law on restitution with the participation of the Council of Religions under the Public Defender and non-governmental organizations, which sets out the rules, criteria, responsible agencies and deadlines for the return of property confiscated from religious associations during the Soviet era.

Recommendations

To Government of Georgia

- To record the amount of damage and confiscated property of religious associations on the territory of Georgia by the Soviet regime;
- Amend the Resolution of the Government of Georgia №117 of 27 January 2014 on the Rules for Implementing Some Measures for Partial Compensation for Damage Caused to Religious Associations in Georgia by the Soviet Totalitarian Regime, and provide compensation to all religious associations along with the four religious organizations to which this compensation is available.
- To change the practice of financing religious associations. Develop a tax system for the financing of religious associations based on consultations with the Public Defender's Council of Religions and non-governmental organizations, which will meet the requirements of equality and state neutrality;
- Discuss with the Council of Religions under Public Defender and non-governmental organizations the need for changes in the existence of the State Agency for Religious Issues, its activities and mandate.

9. Freedom of Expression

9.1. Introduction

Freedom of expression is one of the foundations of a democratic society, the realization of which is always the subject of special attention of the Public Defender.

Similarly to 2019, the reporting year was active in terms of developments in the media environment. Among them, the cases of violation of labor rights of the employees of Adjara TV Public Broadcaster and unjustified control of the content of media programs were noteworthy. Apart from intervention into the professional activities of journalists, the lack of comprehensive statistics on other criminal acts committed against journalists due to their professional activities remained challenging, and the need to take effective measures to protect media representatives was revealed.

In addition, during 2020, cases of restriction of freedom of expression were identified as a result of misinterpretation of the administrative violation regarding the defacing of the appearance of the Tbilisi Municipality.

9.2. Media Freedom

Traditionally, the Public Defender actively monitored the state of media freedom in the country during the reporting period. In 2020, the media environment in the country was pluralistic, albeit quite polarized. The country's position in the Press Freedom Index remained unchanged, according to which Georgia ranks 60th among 180 countries.⁵¹⁹

9.2.1. Events surrounding Adjara TV Public Broadcaster

Following the events⁵²⁰ in Adjara TV in 2019, during the reporting period, the Office of the Public Defender actively studied the cases of dismissal of employees critical to the management of the broadcaster, their transfer to other positions, change of duties and responsibilities or the workplace and imposition of disciplinary liability against them. As a result of the monitoring, the Public Defender found violations of labor rights and/or direct discrimination of 7 journalists employed by the broadcaster and addressed the Director of Adjara TV with the relevant recommendations.⁵²¹ At the same time, the Public Defender considered that actions taken against the TV employees contained signs of alleged persecution for different opinions, in particular, for openly criticizing management decisions, and called on the Prosecutor

⁵¹⁹ 2020 Press Freedom Index by the Reporters Without Borders available at: <<https://bit.ly/39KI2MT>> [last visited on 10.02.2021].

⁵²⁰ Parliamentary Report of the Public Defender of Georgia for 2019, 227-228.

⁵²¹ Statements of the Public Defender are available on the websites:< <https://bit.ly/3cVvVyR> >[last visited on 10.02.2021]; < <https://bit.ly/3q8NLI> > [last visited on 10.02.2021].

General of Georgia to launch an investigation into the matter.⁵²² Unfortunately, the recommendations of the Public Defender were not fulfilled by the addressees.

It is noteworthy that in April 2020, the Director of Adjara TV adopted the Rules of Conduct on the Internet/social networks,⁵²³ certain provisions of which created the possibility of disproportionate limitation of freedom of expression of persons employed by the broadcaster. Later, the employees of the TV company and the alternative Trade Union filed a lawsuit to the Batumi City Court, requesting the abolition of the disputed provisions reflected in the mentioned Rules. As a result, the Public Defender presented the Amicus Curiae brief to the court, and based on an analysis of the case law of the European Court of Human Rights, outlined the scope of freedom of expression of journalists employed by the state broadcaster and standard of limitation of this freedom, the consideration of which has substantial importance for proper assessment of the case.⁵²⁴

In addition, as the events surrounding Adjara TV in 2019 has cast doubt on the attempt to change the broadcaster's critical editorial policy, the Public Defender informed the UN Special Rapporteur on Freedom of Expression and the OSCE Representative on Freedom of the Media.⁵²⁵

International organization Reporters Without Borders has repeatedly commented on the developments around Adjara TV and linked the current developments to the increase of media control.⁵²⁶ In addition, the OSCE Representative on Freedom of the Media expressed concern over reports of the dismissal of employees of the broadcaster and the interference of the management in its editorial policy.⁵²⁷

It should be noted that according to the results of the media monitoring conducted by the OSCE/ODIHR Limited Election Observation Mission,⁵²⁸ during the pre-election period, Adjara TV focused mainly on local news and provided the limited coverage of the campaign. Nevertheless, the broadcaster devoted approximately equal time to the main election subjects and the tone of the coverage was mostly neutral.⁵²⁹ Along with similar assessments, the Georgian Charter of Journalistic Ethics, which covered a wider period

⁵²² Statement of the Public Defender is available on the website < <https://bit.ly/3rGrUSV> > [last visited on 10.02.2021].

⁵²³ "The Code of Conduct for the Employees of Public Broadcaster Adjara TV and Radio on the Internet/Social Networks" approved by the Order N^o02-03/10 of April 8, 2020 of the Director of the Public Broadcaster Adjara TV and Radio -available at: < <https://bit.ly/3a8YV44> > [Last visited on 10.02.2021].

⁵²⁴ The Amicus Curiae Brief, available at: < <https://bit.ly/3aQWbHN> > [last visited on 10.02.2021].

⁵²⁵ The Statement of the Public Defender available at: < <https://bit.ly/3aXWeBY> > [last visited on 10.02.2021].

⁵²⁶ See the statement of the Reporters Without Borders on the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists: < <https://bit.ly/2OjSIKd> > [last visited on 0.02.2021]; See also the statement of the Reporters Without Borders of February 5, 2020, (renewed on February 14): < <https://bit.ly/30bENbR> > [last visited on 10.02.2021].

⁵²⁷ Available at: < <https://ajaratv.ge/article/56482> > [last visited on 10.02.2021].

⁵²⁸ From 28 September until the end of the election campaign (30 October), the OSCE/ODIHR Limited Election Observation Mission monitored two public broadcasters and five national private TV channels.

⁵²⁹ International Election Observation Mission, Georgia - Parliamentary Elections, October 31, 2020, Report on Preliminary Findings and Conclusions, 26-27, available at: < <https://bit.ly/3tNNKpi> > [last visited on 10.02.2021].

of time than the one assessed by the OSCE/ODIHR, revealed that in some cases the impression was made by Adjara TV's main news program that the editorial content was biased towards the government and the ruling party.⁵³⁰ It should be noted that during the previous monitoring, the OSCE/ODIHR, outlined the balanced and unequivocally neutral coverage of the election campaign by Adjara TV in contrast to other broadcasters,⁵³¹ while the Charter of Journalistic Ethics stressed the progress of the broadcaster and distinguished it among those channels where no bias towards any political force was noticeable on the air.⁵³²

Given the highly polarized media environment, the Public Defender re-emphasizes the role of Adjara TV as a broadcaster funded by the state budget in providing impartial programs,⁵³³ while hoping that the above-mentioned circumstances will not have a negative reflection on the standard of broadcasting events and the company will be able to maintain the free editorial policy obtained through years.

9.2.2. Control of the Content of Broadcaster Programs

Legislation of Georgia sets quite a high standard of freedom of expression and, in some cases, provides less regulation of this right in comparison with some European countries. In recent years, there has been an unfortunate trend of legislative initiatives to limit freedom of expression at the national level,⁵³⁴ which has been replaced by control of the content of programs placed by a broadcaster during the reporting period.

In particular, to monitor the content of the broadcaster's programs the Georgian National Communications Commission (GNCC) has enacted an Article⁵³⁵ banning on posting a program containing obscene content and that violates fundamental rights and dignity, which in the past the Commission itself did not consider as a basis for administrative liability.⁵³⁶ Accordingly, by recognizing Mtavari Channel as

⁵³⁰ Georgian Charter of Journalistic Ethics, Media Coverage Survey of 2020 Parliamentary Elections in Georgia, Final TV News Monitoring Report, June 15 - November 21, 2020, 13-16, Available at: < <https://bit.ly/3jzO72j> > [Last visited on 10.02.2021].

⁵³¹ The final report of the OSCE/ODIHR International Election Observation Mission on the Presidential Elections in Georgia (October 28, 2018 and November 28, 2018), 36, available at: < <https://bit.ly/39vraXT> > [last visited on 10.02.2021] ; The final report of the OSCE/ODIHR International Election Observation Mission on Local Self-Government Elections (October 21, 2017 and November 12, 2017), 33, available at: < <https://bit.ly/2HdskLy> > [last visited on 10.02.2021]

⁵³² Interim Report of the TV News Media Monitoring of the Georgian Charter of Journalistic Ethics (June 18 - October 15, 2018), 22, available at: < <https://bit.ly/38a42jg> > [10.02.2021]; The final election media monitoring report of the Georgian Charter of Journalistic Ethics (2016-2018), 14-15, available at: < <https://bit.ly/2vCl6y6> > [last visited on 10.02.2021].

⁵³³ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 228.

⁵³⁴ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 225, 231-232.

⁵³⁵ Article 56 (4) of the Law of Georgia on Broadcasting.

⁵³⁶ See the statement of the National Communications Commission on November 8, 2017, available at: < <https://bit.ly/2NKdGCI> > [last visited on 02.03.2021].

an administrative offender⁵³⁷ due to the placement of a story⁵³⁸ containing obscene content⁵³⁹ in the socio-political program, the commission established a precedent in the exercise of an oversight function in that regard.⁵⁴⁰

Georgian legislation does not precisely define the concept of "obscenity" and allows for its broad interpretation, which is related to actions contrary to the established ethical norms in society.⁵⁴¹ In such circumstances, in order not to impose an unjustified restriction on freedom of expression by prohibiting the placement of obscene programs, it is necessary to take into account the scope of this right during interpretation, which includes "information" and "ideas" that are offensive, shocking or disturbing to any group of the society or the state.⁵⁴²

Nevertheless, in its decision, the National Communications Commission did not set clear boundaries for the named program restrictions, which would set guidelines for broadcasters in planning and conducting future activities. With this in mind, the Public Defender points out that the standard set for the protection of freedom of expression in the country, in some cases, is consistent with the American model of protection of this right.⁵⁴³ Accordingly, the National Communications Commission, while defining "obscenity", should be guided by the criteria established by the Supreme Court of the United States, according to which, in order to be subject to this notion of action, it must address excessive interests of sexual nature⁵⁴⁴ and shall portray or describe the sexual conduct in an explicitly offensive manner.⁵⁴⁵ Such

⁵³⁷ The decision №8-21-18/22 of the Georgian National Communications Commission of January 28, 2021 on declaring Mtavari Channel Ltd as an organization committing administrative violation and releasing it from administrative responsibility is available at: < <https://bit.ly/2MTmaqm> > [last visited on 10.02.2021].

⁵³⁸ The story is available at: < <https://bit.ly/3qiYJFg> > [last visited on 10.02.2021].

⁵³⁹ Pursuant to Article 2 (z¹²) of the Law of Georgia on Broadcasting, obscenity is an action which is in conflict with ethical norms established in society and which has no social and political, cultural, educational or scientific value.

⁵⁴⁰ Letter №8-21-03/314 of the Georgian National Communications Commission of February 11, 2021.

⁵⁴¹ Article 2 (z¹²) of the Law of Georgia on Broadcasting.

⁵⁴² Judgment of the European Court of Human Rights of 7 December 1976 – Case *Handyside v. the United Kingdom*, Par. 49.

⁵⁴³ For example, the "clear and present danger" test defined by the Supreme Court of the United States in the case *Brandenburg v. Ohio* (1969) (according to which it is prohibited to limit freedom of expression unless it produces imminent lawless action" and there is a high probability of committing such action) is repeated by Article 239¹ of the Criminal Code of Georgia and Article 11 (1) of the Law of Georgia on Assemblies and Manifestations. It shall also be noted that in accordance with Article 9 of the Law of Georgia on Freedom of Speech and Expression, regulation of the content of speech and expression may be established by law, if it concerns not any type of insult, but a direct insult. In this regard, the Resolution №4/ს-889-19 of the Tbilisi Court of Appeals of December 9, 2019 is also noteworthy, according to which the dissemination of obscene/offensive content on the social network shall not be considered as a violation of Article 166 (Disorderly Conduct) of the Administrative Code of Georgia on the ground that this expression does not intend to produce imminent lawless action.

⁵⁴⁴ "appeals to the prurient interests".

⁵⁴⁵ Pursuant to the test established by the Supreme Court of the United States in the case *Miller v. California* (1973), in order for an expression (material) to be considered as obscene, 1. It shall appeal to the prurient interest; 2. It shall depict or describe, in a patently offensive way, sexual conduct specifically defined by the applicable state law; 3. and, taken as a whole, it shall

an interpretation is in compliance with the Georgian Law on Broadcasting, which distinguishes "obscenity" from "offensive language" and gives the former a relatively low degree of protection,⁵⁴⁶ which in turn indicates a more severe nature of obscenity.

In the above-mentioned decision, after considering the disputed components as obscene, the Georgian National Communications Commission discussed, among other things, the damage to the reputation of the addressees of the program - the Minister of Finance of Georgia and the Parliament of Georgia - and deemed that in this case freedom of expression would override the interest protected by the right to privacy of the politicians. In this regard, it should be noted that the purpose of the Georgian Law on Broadcasting is to protect the audience from unethical programs and not to respond to cases of damage to the honor, dignity or business reputation of particular person(s), which is a matter for a civil litigation if the interested person so decides.

Considering the above, Public Defender deems, that the findings by the National Communications Commission's according to which the "Mtavari Channel" is in violation of the law is a result of improper interpretation of the law, which has a chilling effect on the realization of freedom of expression by broadcasters.⁵⁴⁷

In addition, it is noteworthy that, as in the previous reporting year, the cases of imposing liability⁵⁴⁸ on the broadcaster by the National Communications Commission for violating the rules of posting pre-election/political advertisements were also detected, including based on the Law of Georgia on Advertising, which does not apply to political advertisements.⁵⁴⁹

lack serious literary, artistic, political, or scientific value. To interpret the second component, the court refers to examples of what kind of expression can be regulated: a) patently offensive representation or description of ultimate sexual acts, normal or perverted, actual or simulated; b) patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

⁵⁴⁶ Pursuant to Articles 56¹ and 56² of the Law of Georgia on Broadcasting, a program containing obscene acts is considered inappropriate for a minor under the age of 18 and it is prohibited to place it in the broadcasting network from 6 am to midnight. As for programs containing abusive vocabulary, it is considered inappropriate for a minor between the ages of 15 and 12 and may not be posted from 21hr or 23hr, depending on whether the use of such vocabulary is justified by the context.

⁵⁴⁷ According to the Constitutional Court of Georgia, freedom of expression has a "chilling effect" if a person, for the fear of a possible sanction, is forced to refrain from exercising his right fully and self-restraint is reflected in the normatively unrestricted part of freedom of expression.

⁵⁴⁸ Relevant decisions of the National Communications Commission are available at: <<https://bit.ly/3sbWHai>> [last visited on 31.03.2021]; <<https://bit.ly/2M4HsRf>> [last visited on 31.03.2021, <<https://bit.ly/3awNMdB>> [last visited on 10.02.2021.

⁵⁴⁹ Parliamentary Report of the Public Defender of Georgia for 2019, 232-233.

In the reporting year, Reporters Without Borders highlighted the gradual increase of the powers of the National Communications Commission and negatively assessed the activities of the platform, [Mediacritic.ge](https://mediacritic.ge),⁵⁵⁰ established in December 2019.⁵⁵¹

In terms of attempts to influence the content of a broadcaster's program, the fact of interviewing participants and respondents of the story aired on June 20, 2020 on Mtavari Channel (purchased COVID-19) in the framework of the investigation launched on the fact of sabotage within the State Security Service is also noteworthy.⁵⁵² The story addressed alleged facts of offering money to the family members of the deceased from different diseases for naming a new coronavirus as a reason of the death instead.⁵⁵³ According to the interviews, the agency stated that "Azerbaijani-language interviews of respondents were intentionally distorted by the authors of the story through incorrect translation"; nevertheless, it shall be mentioned that the expertise appointed to verify the accuracy of the translation of Azerbaijani interviews has not been finalized yet.⁵⁵⁴

Free media plays a vital role in informing society about developments in the public interest, protecting human rights in the country, promoting good governance and state accountability, which grants it with a special degree of protection. This standard is reflected in the Law of Georgia on Broadcasting, according to which the broadcasting of inaccurate information by the TV company is subject to review only within the framework of the self-regulatory mechanism.⁵⁵⁵ Thus, the Public Defender shares the position of non-governmental organizations that even in case of substantially incorrect facts being reflected in the disputed story, it should have been responded to through the mentioned mechanism or, if necessary, through civil litigation.⁵⁵⁶ As to the criminal investigation under the Article on sabotage, especially when the placement of the story has not in fact interfered with the normal functioning of state institutions or

⁵⁵⁰ Mediacritic is a platform created by the initiative of the Media Academy of the National Communications Commission, which involves the analysis and evaluation of media products to improve the quality of media. More information is available at: < <https://bit.ly/2PJwous> > [last visited on 10.02.2021].

⁵⁵¹ Statement of June 20, 2020 of the Reporters Without Borders is available at: <<https://bit.ly/3a4yMDx>> [last visited on 10.02.2021].

⁵⁵² Statements of the State Security Service are available at: <<https://bit.ly/3qdY2x2>> [last visited on 31.03.2021]; <<https://bit.ly/2MRtgM5>> [last visited on 10.02.2021].

⁵⁵³ Available at: < <https://bit.ly/3jJ8GZZ> > [last visited on 12.02.2021].

⁵⁵⁴ Letter №15804 of the State Security Service of Georgia of February 4, 2021.

⁵⁵⁵ Articles 52 and 59¹ of the Law of Georgia on Broadcasting.

⁵⁵⁶ Statement by the Georgian Democratic Initiative (GDI), the International Society for Fair Elections and Democracy (ISFED) and the Human Rights Center (HRC) on the ongoing sabotage investigation at SSS is available at: < <https://bit.ly/3piw7KS> > [last visited on 10.02.2021].

organizations,⁵⁵⁷ it sets a dangerous precedent of controlling content of the broadcaster programmes and poses a threat of media self-censorship.⁵⁵⁸

9.2.3. Protection of Media Representatives and Crimes Committed Against Them

During the reporting year, the issue of producing proper statistics by the Ministry of Internal Affairs of Georgia on all kinds of alleged criminal acts committed against journalists because of their professional activities⁵⁵⁹ remained problematic;⁵⁶⁰ this prevents obtaining comprehensive information on such facts and complicates evaluating the effectiveness of responding to them.

In particular, the Ministry of Internal Affairs of Georgia records only the number of investigations launched on the facts of unlawful interference with a journalist's professional activities (Article 154 of the Criminal Code of Georgia). The statistics do not include information on responses to violence, persecution, threats or other crimes against media representatives. Thus, the Office of the Public Defender received data⁵⁶¹ from the Ministry only on the number of investigations launched on the facts of unlawful interference with the professional activities of the journalist, which in 2015-2020 are as follows:⁵⁶²

Number of Investigations under Article 154 of the Criminal Code					
2015	2016	2017	2018	2019	2020
0	6	2	12	13	7

⁵⁵⁷ Pursuant to Article 318 (1) (Sabotage) of the Criminal Code of Georgia, interference with the normal functioning of public or other enterprises, institutions, organisations or agencies for the purpose of weakening of Georgia is a crime.

⁵⁵⁸ Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016, par. 33-35, available at: < <https://bit.ly/3tSluB6> > [last visited on 10.02.2021].

⁵⁵⁹ Pursuant to the letter №337264 of the Ministry of Internal Affairs of Georgia of February 12, 2021, the Agency processes statistical data according to the relevant articles of the Criminal Code of Georgia and not the professional activities of the victim. Accordingly, the Ministry maintains statistical information only on investigations initiated under Article 154 of the Criminal Code of Georgia (unlawful interference with the journalist's professional activities).

⁵⁶⁰ Parliamentary Report of the Public Defender of Georgia for 2019, 224.

⁵⁶¹ Letter №337264 of the Ministry of Internal Affairs of Georgia, February 12, 2021.

⁵⁶² According to the Ministry of Internal Affairs of Georgia: "1) According to the methodology applied by the Ministry of Justice of Georgia, criminal statistics reviews the initiation of the investigation statically, only in the framework of the initial qualification, without dynamically considering further changes .2) Statistics on the launch of investigations in 2019 and 2020 are being processed on a pilot basis, as a new version of the Electronic Criminal Case Management System (Crimcase-2) has been partially operational since the end of 2019. Its planned implementation in the investigative agencies, is being carried out gradually according to the appropriate schedule. Therefore, in order to generate a unified consolidated statistical reporting document in accordance with the standard scheme of classification for the initiation of an investigation, the information is currently being processed through two independent versions of the criminal case management system (Crimcase-1 and Crimcase-2)".

According to the General Prosecutor's Office of Georgia,⁵⁶³ in the same years, the rate of termination of the ongoing investigation into the facts of unlawful interference with the professional activities of the journalist and the initiation of criminal prosecutions on the same basis is as follows:

Number of Termination of the Investigation under Article 154 of the Criminal Code					
2015	2016	2017	2018	2019	2020
4 cases (out of this number the investigation on 1 case was launched in 2012)	1 case (the investigation was launched in 2016)	2 cases (investigation on both cases was launched in 2017)	2 cases (investigation on both cases was launched in 2018)	No record	3 cases (out of this number, investigation on two cases was launched in 2018, and one in 2020, respectively)

Number of Criminal Prosecutions Launched under Article 154 of the Criminal Code					
2015	2016	2017	2018	2019	2020
Against 1 person (investigation was launched in 2015)	Against 1 person (investigation was launched in 2016)	No record	Against 2 persons (investigation was launched in 2018)	Against 4 persons (investigation was launched in 2019)	Against 2 persons (investigation was launched in 2020)

In addition, according to the General Prosecutor's Office of Georgia, in 2015-2020, the rate of termination of criminal prosecution was not recorded under the above article.⁵⁶⁴

The statistics show that to date, there have been a number of investigations into allegations of unlawful interference with the journalist's professional activities, in which investigative authorities have not detected and raised the issue of responsibility of the perpetrators.

During 2020, the Office of the Public Defender became aware of a number of alleged criminal acts against journalists and media outlets, including unlawful interference and assault on members of the media,⁵⁶⁵

⁵⁶³ Letter №13/14144 of the General Prosecutor's Office of Georgia of March 15, 2021.

⁵⁶⁴ Letter №13/14144 of the General Prosecutor's Office of Georgia of March 15, 2021.

⁵⁶⁵ Information on alleged cases of unlawful interference with professional activities and assault is available at: < <https://bit.ly/2ZfYcrM> > [last visited on 10.02.2021] (see the story from the minute 27:50); < <https://bit.ly/3pjCeii> > [last visited on 10.02.2021]; < <https://bit.ly/2NraA5H> > [last visited on 10.02.2021]; < <https://bit.ly/3ajp5Bp> > [last visited on 10.02.2021]; 4. < <https://bit.ly/3rNsrSq> > [10.02.2021]; 5. < <https://bit.ly/3jUSEfN> > [last visited on 10.02.2021].

threats,⁵⁶⁶ robberies,⁵⁶⁷ and violation of the secrecy of telephone conversations,⁵⁶⁸ also cyber attacks against the broadcasters.⁵⁶⁹

At this time, according to the information available to the Office of the Public Defender, an investigation has been launched on 5 criminal cases listed above,⁵⁷⁰ although in none of them was a specific person identified as a victim or as an accused.⁵⁷¹

There were alarming reports about the preparation of the assassination of journalist Giorgi Gabunia, the order of which was linked to the name of the Chechen leader.⁵⁷² In this case, the accused was sentenced by the Tbilisi City Court to 4 years imprisonment for harassment, violation of personal information or personal data, illegal crossing of the Georgian state border and use of a forged document.⁵⁷³

⁵⁶⁶ Information about alleged threats is available at: < <https://bit.ly/3b9hDrX> > [last visited on 31.03.2021]; < <https://bit.ly/3jKv3yo> > [last visited on 31.03.2021]; < <https://bit.ly/37dXDDn> > [last visited on 10.02.2021].:

⁵⁶⁷ Information about a alleged robbery is available at: < <https://bit.ly/3jNE8Gu> > [last visited on 10.02.2021].

⁵⁶⁸ Information on alleged violation of the secrecy of telephone conversations is available at: <<https://bit.ly/3qknRLZ> > [last visited on 10.02.2021]

⁵⁶⁹ Information on alleged hacker attacks is available at: < <https://bit.ly/37e1UXr> > [last visited on 10.02.2021]; < <https://bit.ly/3tRpSBg> > [last visited on 10.02.2021].

⁵⁷⁰ The investigation is ongoing of the facts of illegally obstructing the professional activities of journalists and cameramen of the Mtavari Channel and the Public Broadcaster on September 29; on illegally obstructing the journalist's professional activities of the media outlet South Gate on October 14; on unauthorized access to the computer system of Adjara Television on October 28; on the facts of stealing equipment of the crew of the Mtavari Channel on October 29, and on November 8, on the facts of illegal interference with the professional activities of the journalists of Imedi.

⁵⁷¹ Letter № 175161 of the Ministry of Internal Affairs of Georgia of January 26, 2021; Letter № 13/9790 of February 22, 2021 and letter №13 / 9810 of February 22, 2021 of the General Prosecutor's Office of Georgia.

⁵⁷² Available at: < <https://bit.ly/3qkvQYz> > [last visited on 10.02.2021].

⁵⁷³ Available at: < <https://bit.ly/3ear8Ko> > [last visited on 05.03.2021]; < <https://bit.ly/3cL1rOp> > [last visited on 05.03.2021].

Facts of interference into the professional activities of and violence against journalists were also revealed on October 31, 2020, during the parliamentary elections.⁵⁷⁴ As a result, an investigation was launched on 2 criminal cases,⁵⁷⁵ in one of which it became possible to identify the perpetrator and to prosecute him.⁵⁷⁶

At the same time, the issue of protection of media representatives covering the events at the place of assembly during the use of force by law enforcement against the assembly participants remained acute.⁵⁷⁷

Also information was spread about the threats against Avtandil Tsereteli, the father of the founder of TV Pirveli, a TV company critical to the government, and the demands to change the editorial policy of the same broadcaster in the reporting period.⁵⁷⁸ The fact of the matter is still under investigation, although the specific persons in the case are not recognized as victims or accused.⁵⁷⁹

In terms of responding to crimes committed against media representatives, it should be noted that the case of the disappearance of an Azerbaijani journalist, Afghan Mukhtarli, has been under investigation at the General Prosecutor's Office of Georgia for the fifth year.⁵⁸⁰ It is true that the investigation authority received materials from the Federal Republic of Germany in October 2020 in the framework of the request for legal assistance, including the protocol of the interrogation of Afghan Mukhtar, but the investigation has not yet reached concrete results, the accused have not been identified and the journalist has not been granted a victim status.⁵⁸¹

⁵⁷⁴ Information on criminal acts against journalists on the day of the parliamentary elections, is available at: < <https://bit.ly/2TKolqp> > [last visited on 10.02.2021]; < <https://bit.ly/386bUD8> > [last visited on 10.02.2021]; 2. < <https://bit.ly/3jPU5u8> > [last visited on 31.03.2021]; < <https://bit.ly/35SP8fi> > [last visited on 10.02.2021]; 3. < <https://bit.ly/3egqeKg> > [last visited on 10.02.2021]; 4. < <https://bit.ly/2HWFlac> > [last visited on 10.02.2021].

⁵⁷⁵ Pursuant to the letter № 2975112 of the Ministry of Internal Affairs of Georgia of December 23, 2020 and the letter №13/9729 of the General Prosecutor's Office of Georgia of February 22, 2021, the investigation was launched on the fact of violence against a New Post journalist and the observer of the non-governmental organization New Vision and on the fact of violence and unlawful interference into the professional activities of the journalist of the Publika. In addition, according to the letter №645754 of the Ministry of Internal Affairs of Georgia of March 17, 2021, regarding the information about alleged criminal acts against media representatives in Varketili and Marneuli (№14 polling station), the investigation was not launched due to lack of signs of a crime. However, according to the Ministry, at this stage, an additional study of the fact in Varketili is ongoing.

⁵⁷⁶ According to the letter №13/64973 of the General Prosecutor's Office of Georgia of November 17, 2020, within the framework of the investigation on the fact of violence and illegal interference in the professional activities of the journalist of the Publika, the journalist was considered as a victim and one person was charged under Article 126 (1) (violence) and Article 154 (1) (unlawful interference with the journalist's professional activities) of the Criminal Code of Georgia.

⁵⁷⁷ See chapter of this report on freedom of assembly.

⁵⁷⁸ Available at < <https://bit.ly/3deczoO> > [last visited on 10.02.2021].

⁵⁷⁹ Letter №13/9790 of the General Prosecutor's Office of Georgia of February 22, 2021.

⁵⁸⁰ Parliamentary Report of the Public Defender of Georgia for 2019, 224.

⁵⁸¹ Letter №13/3713 of the General Prosecutor's Office of Georgia of January 27, 2021.

The Public Defender specifically points out that the state has an obligation to create a safe and enabling environment for media representatives to carry out their activities without interference, and to ensure that if criminal acts against journalists are revealed, all such cases are investigated in a timely and effective manner in order to prevent impunity.⁵⁸²

9.1. Prohibition of Placing Various Means of Expression on Construction Fences

During the reporting period, the Office of the Public Defender of Georgia studied the cases of fining individuals by the City Hall for defacing the appearance of the municipality through placing political inscriptions, drawings and symbols on the construction fences on the territory of Tbilisi, (Article 150² of the Code of Administrative Offenses of Georgia) and established unjustified facts of interference into freedom of expression.

It is noteworthy that the legitimate aim of imposing restrictions on freedom of expression under this Article is to protect and preserve the image of Tbilisi. On the other hand, the analysis of the construction legislation of Georgia proves that, unlike the standard fence, the temporary construction fence is not part of the unified appearance of the municipality. Therefore, the inclusion of such fences in the sphere of application of Article 150² of the Code of Administrative Offenses of Georgia and the subsequent interference in the scope of freedom of expression is unjustified and contradicts the standard established by the Constitution and international agreements for the limitation of this right. Tbilisi City Hall did not take into account the Public Defender's recommendation⁵⁸³ on this issue. Unfortunately, the Ministry of Internal Affairs of Georgia has the same position, which considers the placement of symbols or inscriptions on temporary metal constructions (barricades) as a distortion of the appearance of Tbilisi Municipality and resorts to the interference with the rights of assembly participants⁵⁸⁴ to prevent this violation,⁵⁸⁵ which considering the above issues is not justified.

Recommendations

To the Minister of Internal Affairs of Georgia

- Based on the experience of the General Prosecutor's Office of Georgia, start producing special statistics, which reflect not only the cases of unlawful interference with a journalist's professional activities, but also all criminal acts committed against journalists related to their professional activities;

⁵⁸² UN General Assembly Resolution (A/RES/74/157) on the Safety of Journalists and the Issue of Impunity, available at: <<https://bit.ly/3qnisnb>> [last visited on 10.02.2021].

⁵⁸³ Recommendation is available at: <<https://bit.ly/30V7GcA>> [17.03.2021].

⁵⁸⁴ Information is available at: <<https://bit.ly/3plU0kl>>, <<https://bit.ly/3tXA1MT>> [last visited on 10.02.2021].

⁵⁸⁵ Letters of the Ministry of Internal Affairs of Georgia №2940735 of December 18, 2020 and №314406 of February 10, 2021.

- Not to interfere with freedom of expression of persons on the basis of Article 150² of the Code of Administrative Offenses of Georgia for the placement of various means of expression on temporary metal constructions (barricades).

To the General Prosecutor of Georgia:

- Periodically provide information to the public on the ongoing investigative and procedural activities into the criminal cases listed in this chapter (alleged criminal acts committed against media representatives and their associates at various times).

To the National Communications Commission of Georgia:

- For the purposes of declaring a broadcaster program or its component(s) as "obscene", consider whether the disputed content appeals to the prurient interests and depicts or describes, in a patently offensive way, sexual conduct.

10. Freedom of Assembly

10.1. Introduction

During the reporting year, assemblies of many political or other contents and of different scales were held in the country. As in the past year, some of them again highlighted the problem of improper fulfillment of the obligations imposed on the state to ensure the full realization of this right. In addition, restrictions in response to the New Coronavirus (COVID-19) pandemic have had significant impact on the exercise of this right.

In particular, in the early stages of the spread of the virus, questions were raised about the proportionality of the blanket ban on holding assembly, and after the abolition of such intensive interference into the right, difficulties with the unimpeded exercise of freedom of assembly became relevant due to restrictions on the movement.

In addition, in 2020, cases of disproportionate use of force against the participants of the assembly and unjustified interference with their rights, as well as injuries of media representatives on the ground to cover the events were identified. As in previous years, law enforcement officials actively resorted to administrative detention of assembly participants for disorderly conduct⁵⁸⁶ and non-compliance with the lawful order of a law enforcement officer,⁵⁸⁷ which the Public Defender considers to be a harmful practice,⁵⁸⁸ it does not meet the necessity requirement most of the times and becomes unjustified interference into the freedom of assembly.

Similar and other challenges related to the exercise of freedom of assembly were assessed by the Public Defender in its special report in 2020 - "Freedom of Peaceful Assembly (protected right and standard of assembly management)".⁵⁸⁹ In order to eliminate the shortcomings in the legislation or practice, the report contains a number of recommendations regarding the exercise of the right, which necessitate timely and appropriate response measures to be taken by the state.

10.2. The Impact of the Pandemic on Freedom of Assembly

The exercise of freedom of assembly has faced particular challenges in light of the new coronavirus (COVID-19) pandemic and restrictions imposed to prevent its spread.

⁵⁸⁶ Article 166 of the Code of Georgia on Administrative Offenses.

⁵⁸⁷ Article 173 of the Code of Georgia on Administrative Offenses.

⁵⁸⁸ Special Report of the Public Defender of Georgia - Freedom of Peaceful Assembly (protected right and standard of assembly management), Tbilisi, 2020, 45.

⁵⁸⁹ Special Report of the Public Defender of Georgia - Freedom of Peaceful Assembly (protected right and standard of assembly management), Tbilisi, 2020.

It is true that restrictions on freedom of assembly are permissible in the legitimate interest of public safety, but in order for a specific restrictive measure to be justified, even in a state of emergency,⁵⁹⁰ it must meet the requirements of legality as well as necessity and proportionality.⁵⁹¹ To meet such requirements during pandemic, when the health of the population is at particular risk, it is important to assess the extent to which allowing to hold assemblies subject to certain restrictions (e.g. Imposing on the participants of the assembly an obligation to observe the relevant distancing rules and security measures and/or limiting their number), precludes the protection of a legitimate interest of safety, instead of its complete prohibition. Meeting these conditions is important to rule out the unacceptable practice of using regulations introduced in the fight against coronavirus as a reason for limiting the right.⁵⁹²

While in the early stages of the coronavirus outbreak, states imposed general restrictions on the assembly of individuals, some of them made specific exceptions to such prohibitions on political and other meetings,⁵⁹³ while others considered them permissible in case obligations with regard to the number of participants and security measures were observed,⁵⁹⁴ to reduce the impact of the pandemic on the realization of freedom of assembly.

At the initial stage of the spread of the virus in Georgia, a state of emergency was declared in Georgia and on the basis of the decree of the President of Georgia,⁵⁹⁵ from March 23 to May 23, the gatherings of individuals in public space were restricted by the Governmental order and all assemblies (including manifestations) foreseen by the Law of Georgia on Assemblies and Manifestations were completely

⁵⁹⁰ European Convention on Human Rights, Article 15, Part 1; International Covenant on Civil and Political Rights, Article 4, Part 1; Judgement of the European Court of Human Rights on the case, *Mehmet Hasan Altan v. Turkey*, Par. 90, March 20, 2018; UN Human Rights Commission, Siracusa principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1984, E/CN.4/1984/4, P. 51, available at: <<https://bit.ly/39tJaEm>> [last visited on 17.11.2020].

⁵⁹¹ Law of Georgia on Assemblies and Manifestations, Article 2 (3); see: Statement of the UN Special Rapporteur to freedoms of peaceful assembly and of association, April 14, 2020, available at: <<https://bit.ly/2UMxFjL>> [last visited on 08.02.2021].

⁵⁹² Statement of the UN Special Rapporteur to freedoms of peaceful assembly and of association of April 14, 2020.

⁵⁹³ European Union Agency for Fundamental Rights, Coronavirus Pandemic in the EU – Fundamental Rights Implications, 1 February – 20 March, 2020, p.8, p.17, available at: <<https://bit.ly/2Kk4CSF>> [last visited on 08.02.2021].

⁵⁹⁴ OSCE/ODIHR, OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, 2020, 107, available at: <<https://bit.ly/3jvkleM>> [last visited on 08.02.2021].

⁵⁹⁵ Decree №1 of the President of Georgia of March 21, 2020 "On the Measures to be Taken in Terms of the Declaration of the State of Emergency on the Entire Territory of Georgia".

forbidden.⁵⁹⁶ Additionally, from March 31, during the state of emergency, the curfew was declared from 21:00 to 06:00.⁵⁹⁷

According to the information available to the Public Defender, during the state of emergency, the Ministry of Internal Affairs of Georgia revealed at least two cases of violation of the prohibition on freedom of assembly.⁵⁹⁸ According to public information, in both cases, there was a dissemination of views and protests individually, without the accompaniment of persons having the same views.⁵⁹⁹ This circumstance indicates that the sanctioned persons exercised not freedom of assembly⁶⁰⁰ but freedom of expression, which was not affected by restrictions and prohibitions during a state of emergency.⁶⁰¹ Thus, the fine imposed by the Ministry of Internal Affairs of Georgia on the grounds of holding the assembly of the mentioned persons was unjustified in both cases.

After the end of the state of emergency, the restriction on freedom of assembly was lifted and the population was given the opportunity to hold a number of political and other rallies and demonstrations in the country. The unhindered exercise of this right was of particular importance both in the pre-election period, when political parties actively held meetings with electorate, including in the format of large-scale meetings, and after parliamentary elections, when numerous rallies were held to protest election irregularities.

In parallel with the deterioration of the epidemic situation, from November 9, 2020, the restrictions were tightened again and according to the Law of Georgia on Public Health, by the decree of the Government of Georgia, movement in different cities⁶⁰² was prohibited from 22:00 to 05:00.⁶⁰³ On the same day, a disobedience rally was planned by the Movement of Shame in front of the Parliament building in Tbilisi to protest this limitation.⁶⁰⁴ The Public Defender of Georgia responded to this fact with a special statement,

⁵⁹⁶ "Measures to be taken to prevent the spread of the new coronavirus in Georgia" approved by the Resolution №181 of the Government of Georgia of March 23, 2020, Article 5 (1) and (2).

⁵⁹⁷ Resolution №204 of the Government of Georgia of March 30, 2020 to amend the Resolution №181 of the Government of Georgia of March 23, 2020 on "Measures to be taken to prevent the spread of the new coronavirus in Georgia", Article 1 (b).

⁵⁹⁸ According to the letter №2940026 of the Ministry of Internal Affairs of Georgia of December 18, 2020, 1 person was fined for not having an identity card and for holding an assembly, and 1 person was fined only for holding an assembly.

⁵⁹⁹ Available at: < <https://bit.ly/2JoGjme> > [last visited on 30.03.2021]; < <https://bit.ly/2KzQkOe> > [available at 30.03.2021]; < <https://bit.ly/3hLsYZ> > [last visited on 08.02.2021].

⁶⁰⁰ The assembly is related to the existence of a certain group of like-minded people, implies the collective ability to express an opinion and thus, for the relevant qualification, requires the presence of at least two people. See. Special Report of the Public Defender of Georgia - "Special Report of the Public Defender of Georgia - Freedom of peaceful assembly (protected right and standard of assembly management), Tbilisi, 2020, 6.

⁶⁰¹ See: Decree №1 of the President of Georgia of March 21, 2020 "On the Measures to be Taken in Terms of the Declaration of the State of Emergency on the Entire Territory of Georgia".

⁶⁰² Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Poti and Zugdidi.

⁶⁰³ Resolution №670 of the Government of Georgia of November 9, 2020 "On Amendments to the Resolution №322 of the Government of Georgia of May 23, 2020" On Approval of the Rules of Isolation and Quarantine ", Article 1 (1); Based on the amendments introduced into the same Resolution on November 26, 2020, from November 28, the movement of persons was banned throughout the country from 21:00 to 05:00.

⁶⁰⁴ Available at: < <https://bit.ly/36KbEaO> > [last visited on 08.02.2021].

calling on the state authorities to respect the freedom of expression of the demonstrators and to refrain from sanctioning protesters for violating the above-mentioned regulation, which restricted movement, including in the capital.⁶⁰⁵ At the same time, the Public Defender addressed to the participants of the assembly to keep their distance, use a facemask and other protective means to prevent the spread of the virus.

It is noteworthy that the organizers of the protest and its participants were allowed to hold the assembly throughout the night, although there were several cases when law enforcement officers imposed administrative sanctions on individuals who left the rally from 22:00 to 05:00.⁶⁰⁶ The possibility of movement is closely linked to the full realization of the right to peaceful assembly. Thus, imposing a blanket ban on the movement of persons and imposing a sanction on protesters for its violation is similar to indirect interference with the freedom of assembly. The analysis of the above cases does not indicate that such interference was due to acute public need and responded to the requirement of necessity.

10.3. Cases of Using Force Against the Participants of the Assembly

Following the events of June 20, 2019, the use of disproportionate force against the participants of the assembly was again revealed during the reporting period. This happened on November 8, 2020, when law enforcers used water cannons twice (at 21:42 and 01:02) to interrupt a rally outside the Central Election Commission of Georgia to protest the results of the parliamentary elections.

The Public Defender specifically notes that only peaceful assembly and not violent acts are protected by freedom of assembly.⁶⁰⁷ Although, according to the Ministry of Internal Affairs of Georgia, a legitimate basis for the termination of the assembly arose at around 21:30, when the participants of the meeting resorted to violence,⁶⁰⁸ however, the Public Defender believes that any force against the participants should be used only in exceptional cases. Instead, priority shall be given to peacefully de-escalate the situation through dialogue and negotiation.⁶⁰⁹ Even if law enforcers consider that special measures should be taken against violent acts, such a measure will be justified if its type and extent represent a proportionate and minimally necessary response measure to the threat posed by the offenders.⁶¹⁰

⁶⁰⁵ Special statement of the Public Defender of Georgia on freedom of expression and quarantine measures is available at: < <https://bit.ly/3ICn06O> > [last visited on 08.02.2021].

⁶⁰⁶ Available at < <https://bit.ly/3hq8kpW> > [last visited on 30.03.2021]; < <https://bit.ly/2KGbWIG> > [last visited on 30.03.2021]; < <https://bit.ly/3pxe83M> > [last visited on 30.03.2021]; < <https://bit.ly/3rB2k2D> > [last visited on 08.02.2021].

⁶⁰⁷ Special Report of the Public Defender of Georgia - Freedom of Peaceful Assembly (protected right and standard of assembly management), Tbilisi, 2020, 14-20.

⁶⁰⁸ Letter №175161 of the Ministry of Internal Affairs of Georgia of January 26, 2021.

⁶⁰⁹ OSCE/ODIHR, Human Rights Handbook on Policing Assemblies, 2016, 38, Available at: < <https://bit.ly/3tCagS7> > [last visited on 08.02.2021].

⁶¹⁰ OSCE/ODIHR and Venice Commission; Guidelines on Freedom of Peaceful Assembly, second addition, 2010, 84, Par. 172, available at: < <https://bit.ly/39Mbuzn> > [last visited on 08.02.2021].

Based on the video footage of the assembly of November 8⁶¹¹ and information received from the Ministry of Internal Affairs, the Public Defender considers that the number of participants involved in the violence and the number of the law enforcement officers on the ground, their equipment (handcuffs, armor, helmet, shield and other special means for bodily safety, (the so called "Robocop")), as well as the scale of violations detected, allowed law enforcement to resort to relatively lighter measures to respond to and prevent violence, which, unlike the use of water cannons, would meet the strict requirements of proportionality.

It is also noteworthy that the use of a cannon at the Central Election Commission at 21:42 was not preceded by a proper warning to the assembly participants, which is contrary to both national legislation⁶¹² and the international standard on the use of force.⁶¹³ The Public Defender could not share the explanation of the Ministry of Internal Affairs of Georgia⁶¹⁴ that given the intensity of the events and violence, as well as the threat to health of the individuals on the ground and of the intrusion into the building of the administrative body, it was impossible and pointless to make a warning directly before using the water cannon. According to the Office, the agency had a practical opportunity to warn of the expected use of force, as the situation escalated, and in the subsequent period, before using a special means against the participants of the assembly. This was confirmed in the second episode of the use of the water cannon, which, in parallel with the escalation of the situation, was preceded by several warnings through a sound amplifier, despite direct physical contact between law enforcement and part of the participants of the assembly.

As a result of the use of force against the participants of the assembly in front of the building of the Central Election Commission, several members of the media and their equipment were damaged,⁶¹⁵ which contradicts the standard of protection of journalists.⁶¹⁶ According to journalists, law enforcement officers fired water cannons targetedly, including on media representatives who were on a minibus to cover the events. In this regard, it should be noted that according to international standards, water cannons should not be used on persons in elevated places/positions when there is a risk of significant secondary injury.⁶¹⁷

The facts of injuries of media representatives present on the ground to cover the events were also revealed as a result of the termination of the assembly on June 20, 2019 in front of the Parliament through

⁶¹¹ Video material available at: < <https://bit.ly/3oZFord> > [last visited on 08.02.2021]; < <https://bit.ly/3alYBZ3> > [last visited on 08.02.2021]; < <https://bit.ly/2OhgG98> > [last visited on 08.02.2021].

⁶¹² Law of Georgia on Police, Article 31 (3).

⁶¹³ Special Report of the Public Defender of Georgia - Freedom of Peaceful Assembly (protected right and standard of assembly management), Tbilisi, 2020, 55.

⁶¹⁴ Letter №175161 of the Ministry of Internal Affairs of Georgia of January 26, 2021.

⁶¹⁵ Pursuant to the Letter №175161 of the Ministry of Internal Affairs of Georgia of January 26, 2021, three media representatives were injured, however, according to media reports, their number might have been higher. Relevant Information is available at: < <https://bit.ly/2N1WG9Z> > [last visited on 08.02.2021]; < <https://bit.ly/3jtfvPp> > [last visited on 08.02.2021]; < <https://bit.ly/3sCPzEM> > [last visited on 08.02.2021].

⁶¹⁶ Special Report of the Public Defender of Georgia - Freedom of Peaceful Assembly (protected right and standard of assembly management), Tbilisi, 2020, 32.

⁶¹⁷ UN Guidelines on Less Lethal Weapons, 2020, Par. 7.7.3, 38.

the use of force.⁶¹⁸ Despite the large number of such cases, only three journalists are recognized as victims,⁶¹⁹ as a result of the ongoing investigation at the General Prosecutor's Office of Georgia on the fact of exceeding official powers by the law enforcement agencies. However, the responsibility of the perpetrators of the relevant crime has not been imposed so far.

As a result of the events at the building of the Central Election Commission of Georgia, the State Inspector's Office has launched an investigation into the alleged fact of exceeding official powers by the use of violence by the staff of the Ministry of Internal Affairs of Georgia,⁶²⁰ although no person is recognized as the victim or accused in the case.⁶²¹

The problems identified during the assembly on November 8, 2020 are essentially similar to the shortcomings identified during the termination of the assembly on June 20, 2019.⁶²² This proves that systemic challenges related to assembly management do not change from year to year, indicating to the need for timely and proper update of legislation and its enforcement mechanisms. In this regard, the standards and recommendations reflected in the Special Report of the Public Defender - Freedom of Peaceful Assembly (protected right and standard of assembly management)⁶²³ are noteworthy. In addition, in the process of direct management of the assembly or the establishment of its new regulatory framework, it is important to consider the two most important documents published during the reporting period that set the latest standards on freedom of assembly: General Comment No. 37 on the Right to Peaceful Assembly of the UN Human Rights Committee⁶²⁴ and UN Guidelines on Less Lethal Weapons.⁶²⁵

10.4. Prohibition of the Use of Certain Items by the Participants of the Assembly

On November 9 and December 2, 2020, there were cases when the participants of the assembly were unjustifiably refused to the possibility of having firewood or the so called pallets on the ground by the representatives of the law enforcement bodies.

In both cases, the Ministry of Internal Affairs of Georgia relied on the argument that the mentioned wooden objects might have been used to endanger the life and health of the persons.⁶²⁶ To confirm this, the agency referred to the fact that occurred on November 8, 2020, when participants in a rally at the building of the Central Election Commission, at some point, deliberately threw a piece of firewood at law enforcement officers and the special colored vehicle.⁶²⁷ Although possession of items or things that are or may be used to the detriment of the lives and health of participants or demonstrators are prohibited

⁶¹⁸ Parliamentary Report of the Public Defender of Georgia for 2019, 238-239.

⁶¹⁹ Letter №13/16829 of the General Prosecutor's Office of Georgia of March 25, 2021.

⁶²⁰ Article 333 (3, "b") of the Criminal Code of Georgia.

⁶²¹ Letter №13/5720 of the General Prosecutor's Office of Georgia of February 4, 2021.

⁶²² Parliamentary Report of the Public Defender of Georgia for 2019, 235-241.

⁶²³ Available at: < <https://bit.ly/3cH1Mmw> > [last visited on 08.02.2021].

⁶²⁴ Available at: < <https://bit.ly/3tCt0kh> > [last visited on 08.02.2021].

⁶²⁵ Available at: < <https://bit.ly/2MOAGiR> > [last visited on 08.02.2021].

⁶²⁶ Letter №114238 of January 18, 2021 and Letter №314406 of February 10, 2021 of the Ministry of Internal Affairs of Georgia.

⁶²⁷ Available at: < <https://bit.ly/3cB6Vwd> > [last visited on 08.02.2021].

by the legislation,⁶²⁸ when applying the relevant norm, it is important to consider the interpretation of the Constitutional Court of Georgia, which defined the extent to which the right could be limited.

According to the court, the term "used" refers to the nature of the item itself and covers cases when, due to the fact of its delivery to the assembly, the suspicion of the peaceful nature of the assembly becomes clear to everyone.⁶²⁹ As for the term "may be used", it refers not to the inherently dangerous nature of a particular item, but to cases where the actions of an assembly participant create a reasonable suspicion that he will use the item to the detriment of a person.⁶³⁰ According to the definition of the Constitutional Court, the prohibition of such items is permissible only when there is an immediate, real threat of harm to people.⁶³¹

It should be noted that the isolated use of the wooden pieces for violent purposes, especially in cases when the law enforcement uses the force, does not create a general practice of its illegal use by persons exercising their freedom of assembly, which, for the purposes of the peaceful conduct of the assembly, would necessitate the need to prohibit its possession because of the nature of the item itself.

In addition, it is noteworthy that in none of the cases above did the Ministry of Internal Affairs of Georgia indicate any intentions or conduct expressed by the participants of the assembly, which in a particular case may have led to suspicions with regard to the use of wooden items for violent purposes. Accordingly, on November 9 and December 2, assembly participants were unjustifiably restricted in their possession of the item.

Proposals

To the Parliament of Georgia:

- Ensure that relevant amendments and additions are introduced to the Law of Georgia on Assemblies and Manifestations in accordance with the recommendations set forth in the Special Report of the Public Defender on Freedom of Peaceful Assembly (protected right and standard of assembly management); In particular:
 - Explain the concept of different types of assemblies (including spontaneous and simultaneous assemblies) and regulate issues related to holding them;
 - Eliminate blanket bans related to the venue of the assembly and allow the authorized agency to resolve the issue individually, in accordance with international and constitutional standards on limiting freedom of assembly;

⁶²⁸ Article 11 (2, "b") of the Law of Georgia on Assemblies and Manifestations.

⁶²⁹ Judgment №1/3/538 of the Constitutional Court of Georgia of June 24, 2014, case "Political Union Free Georgia" against the Parliament of Georgia, II.Par.7.

⁶³⁰ *Ibid*, II.Par.11.

⁶³¹ *Ibid*.

- Establish a standard of action of the law enforcement officers in cases of violence during an assembly. Including, regulate in detail the rule of prior notice to the participants of the assembly about the expected use of force;
- Introduce a mechanism for dialogue and negotiation with the participants of the assembly at the legislative level in order to avoid escalation of the situation and interference into the right;
- Separate and define in detail the competencies of local self-government bodies and law enforcement agencies in the process of managing the assembly.

Recommendations

To the Minister of Internal Affairs of Georgia:

- Instead of Orders №1006 of December 31, 2013 and №1002 of December 30 2015, adopt a single, comprehensive normative act regulating all stages of assembly management, including the collection of relevant information and assessment of potential risks, conducting negotiations, planning and using response measures or means, and taking follow-up actions, in accordance with the latest standards of freedom of assembly mentioned in this report;
- Before restricting the ability of the participants of the assembly to possess certain items, assess the real and imminent threats associated with the delivery of these items to the assembly place in each specific case and, taking this into account, identify the factual and legal grounds for lawful interference into the right.

To the General Prosecutor of Georgia:

- Periodically inform the public about the investigative and procedural actions carried out within the framework of the investigation into the fact of allegedly exceeding official powers by the law enforcers during the termination of the assembly held on June 20-21, 2019.

To the State Inspector:

- Periodically inform the public about the investigative and procedural actions carried out within the framework of the investigation on allegedly exceeding official powers by the law enforcers during the termination of the assembly held on November 8-9, 2020.

11. Freedom of Information

11.1. Introduction

The right to access public information is one of the main values protected by Georgian Constitution. The Constitutional Court also emphasized this fact. According to the Court, it is impossible to ensure vital discussion natural for freedom of opinion and free society, without access to information.⁶³² Access to the official documents of the state facilitates increasing of state accountability and effectiveness of its work – in the conditions of open governance state agencies have expectation, that their work might be doublechecked by anyone.⁶³³

Unfortunately, legislation related to freedom of information in Georgia has gaps and needs in-depth reform, which started almost 8 years ago and has not finished yet. In regard of the realization of the right, closure of information based on the existence of personal data in it and disregarding of existing public interest became the main challenge. This is problematic for individuals/entities interested in access to public information, as well as for public agencies, in order to perform their work effectively.

In the situation of existence of the law on Personal Data Protection in the country, along with oversight body on personal data protection, the disbalance existing between the access to public information and privacy protection is obvious.

11.2. Shortcomings existing in the legislation on the freedom of information

The process of access to public information⁶³⁴ guaranteed by the Constitution, and provided in General Administrative Code of Georgia is very outdated and is not responding to requirements and needs of the modern society, especially in the situation, when in the last decade the legislation related to the right to privacy is significantly updated.

Despite the fact, that legislation regulating access to information recognizes the possibility to make personal data publicly available if the public interest is prevailing,⁶³⁵ the standards for disclosure of the information are not set. State agencies while taking decision on the issuing of information are not assessing whether the disclosure is in the public interest and often refuse to disclose it based on the existence of personal data in it.⁶³⁶ It is also revealed that in number of cases the information is not issued

⁶³² The Decision of the Constitutional Court of Georgia of October 30, 2008 №2/3/406, 408

⁶³³ The Decision of the Constitutional Court of Georgia of June 7, 2019 №1/4/693, 857

⁶³⁴ General Administrative Code of Georgia, Part III

⁶³⁵ Constitution of Georgia, Article 18, paragraph 3; General Administration Code of Georgia, Article 44

⁶³⁶ Complaints registered in the Office of the Public Defender of Georgia №8666/20, №9220/20, №12854/20, №13465/20

according to the rule – as soon as possible; even more, the person requesting information is not able to get it⁶³⁷ within 10 days set by the legislation.⁶³⁸ Timely access to the information is often prevented by lack of appropriate registry of public information in public agencies, this circumstance was also mentioned by the Committee of the Human Rights and Civil Integration of the Parliament of Georgia in its conclusion of 2019.⁶³⁹ Considering the fact that the legislation does not provides the procedure of keeping public information registry, public agencies are interpreting registry in different ways and are keeping the registrar also differently.

In the complaint made to the Office of the Public Defender of Georgia⁶⁴⁰ the applicant was referring that public agency did not provided public information because quality electronic signature was missing on the request.⁶⁴¹ The Public Defender did not receive any other information on the similar cases, but it should be mentioned, that legislation does not require existence of quality electronic signature on request for public information in electronic way.⁶⁴² Requesting such a thing by legislative acts, will significantly hinder the process of access to information and will prevent the realization of the right.

In the national legislation the concept of the public agency is also problematic,⁶⁴³ as entities of private law exercising public authority are refusing to issue public information, based on the fact that they do not fall under the regulations. The scope of information processing is also ambiguous, there is not unanimous court practice related to this issue. The Ruling of the Georgian Government of August 26, 2013 #219 on “Proactive publishing of public information and electronic access” defines the rule of proactive publication of public information, but according to the assessment of organizations working on the issue, there is not oversight body with tangible authority to ensure implementation of the obligation.⁶⁴⁴

All mentioned above refers to the need for reform of legislation related to freedom of information and necessity to create oversight institution. Despite the fact that Georgia committed to adopt Freedom Act in accordance to the reform of public governance⁶⁴⁵, for effective realization of the right to access information, the process is postponed. Besides, it is important that the State should timely ratify Council of Europe

637 Complaints registered in the Office of Public Defender of Georgia №8666/20, №12224/20, №12528/20 and results of researched conducted by USAID Democratic Governance Initiative (GGI) for the Ombudsman.

638 General Administrative Code of Georgia, Article 40, part I

639 Available: <https://bit.ly/3dh30Uw> [last viewed: 12.03.2021].

640 18.06.2020 y. №6591/20.

641 Georgian Law on Electronic Documents and Truthworthy Electronic Services” Article 2, sub-pharagraph “m” (639-III, 21/04/2017

642 General Administrative Code of Georgia, The Ruling of Government of August 26, 2013 #219 on “Proactive publishing of public information and electronic access”

643 General Adminsitrative Code of Georgia, Article 27, s.p. “a”

644 Research of Non-commercial (non-governmental) legal entity “Institute for Development of Freedom of Information”, “Practice of Proactive Disclosure of Public Information in Georgian Public Institutions”, Tbilisi, 2020.

645 Action Plan for Public Administration Reform 2019-2020 approved by the Resolution №274 of the Government of Georgia of June 10, 2019; The Open Government Partnership Action Plan for Georgia for 2014-2015, approved by the Resolution 7557 of the Government of Georgia of September 18, 2014.

Convention of June 18, 2009 on "Access to the Official Documentation", which was signed by Georgia at the time of its adoption.

11.3. Restriction of the right to access to public information during the state emergency situation

Restrictions imposed during pandemic in 2020 related to the realization of the right to access public information. According to the Decree of the President of Georgia #1, of March 21, 2020 on "Activities in Relation to the Declaration of State of Emergency in the all Territory of Georgia", the right to access public information guaranteed by article 18 of the Constitution of Georgia was restricted and the Georgian Government was authorized to adopt the procedure other than established by legislation in relation to this restriction.⁶⁴⁶ On March 23 of 2020 the resolution #181 of the Government issued on "Activities to be held in order to prevent spread of new Corona Virus in Georgia", suspended deadlines for issuing public information.⁶⁴⁷

The right to access public information guaranteed by the Constitution of Georgia is not the absolute right. Though disproportional restriction of the most important tool might prevent realization of other fundamental rights and threat main values for the development for democratic state. According to the Public defender, suspension of the deadlines of issuing all forms of public information in any possible form did not meet legitimate aim named by the government. Public Defender of Georgia considers that there was not necessity to suspend deadlines for the issuing of public information in the electronic form. Besides, because of the high public interest it was extremely important not to suspend deadlines for issuing of the information related to the pandemic; at least to make it possible to check timely information related to bed fund, testing and other issues. It should be mentioned, that the resolution of Georgian Government #181 of March 23, 2020 did not developed the procedure of proactive publishing of information while the deadlines for issuing of public information were suspended. Defining of such procedure could balance the restrictions imposed by the resolution. UN Human Rights Council⁶⁴⁸ and OSCE/ODHIR⁶⁴⁹ refers to the crucial importance to access public information during pandemic. International organizations on Human Rights Protection mentioned, that during pandemic the role of public information is not reduced and accountability of the state before citizens is not decreased. On the contrary the threat caused by pandemic strengthens the importance of the open governance. The state

⁶⁴⁶ The restrictions defined by the Decree of the President, aiming to prevent spread of Corona Virus were prolonged up to May 22, 2020

⁶⁴⁷ Resolution of the Government of Georgia № 181 of March 23, 2020 on Activities which should be held to prevent spread of new Corona virus, Article 13, Pun. 2.

⁶⁴⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Available: <<https://bit.ly/39qc7kE>> [last viewed: 31.03.2021], par. 21.

⁶⁴⁹ OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, available: <<https://bit.ly/2QNY01T>> [last viewed: 31.03.2021], 52-55

should carry out appropriate actions to issue public information within the deadlines established by law,⁶⁵⁰ as confidence to the public institutions is defined through the transparency of their work (the timely and precise providing of the data and statistics).⁶⁵¹

Public Defender of Georgia positively assesses the fact that from Mart 22 to May 22 of 2020, despite suspension of the deadlines for issuing of public information by the Decree of the President and the resolution of the Government Ministries and legal Entities of Public Law were mostly issuing public information within the deadlines established by law.⁶⁵² Besides the practice of timely and detailed provision of information by the Government through daily briefings should be also assessed positively as well as creation of the informational portal - www.stopcov.ge - where information was available on Georgian, Abkhazian, Ossetian, English, Armenian and Azerbaijanian languages, operation of the hotline, providing the information through SMS system.

11.4. Access to the court decisions

During the years issue of access to court decisions related to the criminal cases of high public interest still remains problematic. The Constitutional Court,⁶⁵³ recognized the part 3 of the Articles 5 and 6 of the Georgian Law on Personal Data Protection as unconstitutional, provisions of the mentioned articles are excluding possibility to publish decision of the court after the public hearing. Besides, in the same decision the constitutional court referred that after the annulment of the mentioned provisions of the Georgian Law on Personal Data Protection there will not be any legal bases for refusing to request of public information from the courts, that might relate the privacy of people, accordingly court defined to the legislators term until May 1 of 2020 to eliminate gaps and to regulate issue in accordance to the constitution. It should be mentioned that the changes were not made to the Law on Personal Data Protection until this date.

⁶⁵⁰ Ibid, 56

⁶⁵¹ Ibid, 52, par 1.

⁶⁵² In this assessment, the Office of the Public Defender of Georgia relies on the decision of the National Center for Disease Control and Public Health of 12.11.2020. 06/4694, from the Occupied Territories of Georgia, Ministry of Refugees, Labor, Health and Social Affairs 20.11.2020. 01/14824, Ministry of Defense of Georgia 01.12.2020. 1083214, LEPL Revenue Service 30.11.2020. 21-03 / 151066, Ministry of Foreign Affairs of Georgia 26.11.2020. 01/30983, Ministry of Economy and Sustainable Development of Georgia 27.11.2020. 8/7610, Ministry of Environment Protection and Agriculture of Georgia 26.11.2020. 11137/01, Ministry of Education, Science, Culture and Sports of Georgia 20.11.2020. 1110815, Ministry of Regional Development and Infrastructure of Georgia 13.11.2020. 01/3961, LEPL Land Transport Agency 12.11.2020. 01/630 Information submitted by letters.

⁶⁵³ Judgment of the Constitutional Court of Georgia 71/4 / 693.857 of June 7, 2019, A (A) IP Media Development Fund and A (A) IP Freedom of Information Development Institute against the Parliament of Georgia. Fri. 68.

Recommendations

To Georgian Government

- To finalize draft legislation on freedom of information as well as accompanying legal amendments and to initiate them to the Parliament of Georgia.
- To present to the Parliament CoE Convention on “Access to Official Documentation” of June 18, 2009 in order to recognize it as obligatory for Georgia
- To adopt special rule on proactive publishing of public information during pandemic, as well as to define the rule of publishing important information related to pandemic (number of bed fund, training of medical personnel, vaccination and etc.).

12. Human Rights Defenders

Taking into account the substantial role of human rights defenders in the process of establishing high standards of human rights protection, enhancing rule of law, equality and accountability of the government, the Public Defender still kept a close eye on the challenges faced by them during the reporting period.

Monitoring conducted by the Public Defender throughout the years indicates that the unfortunate trend of verbal and/or physical attacks against human rights defenders is still problematic.

Among them especially warring are the statements of high political officials discrediting organizations working on the most important issues for democratic development.⁶⁵⁴ Such facts took place several times during this reporting period as well.⁶⁵⁵

Besides, in 2020 challenges existing for defenders of the LGBT+ community representatives remain problematic.⁶⁵⁶ In this regards we should refer to the numerous cases of attack at the "Tbilisi Pride" Office. Namely, The Public Defender's Office was informed about 6 facts when paints and eggs were thrown in the direction of the office. In 5 of these cases, the Ministry of Internal Affairs of Georgia has identified the perpetrators of illegal actions. As a result, the court found 8 persons responsible for committing petty hooliganism,⁶⁵⁷ four of whom were reprimanded and four were fined for GEL 500-600.⁶⁵⁸

Furthermore, the case of stealing a flag from the "Tbilisi Pride" Office was revealed. Investigation on this case is still ongoing⁶⁵⁹ in the Ministry of Internal Affairs⁶⁶⁰, but no one has been recognized as a victim or charged with a crime yet.

According to the information received from the General Prosecutor's Office, in 2020, criminal prosecution had been instituted against 5 persons for the crimes against human rights defenders under Article 126 of the Criminal Code of Georgia (Violence).⁶⁶¹ 4 representatives of non-governmental organizations were granted the status of victim.

As to the investigation of facts of threats against defenders of women's rights and rights of LGBT+ community members, which took place in 2017-2019, the issue of responsibility of specific individuals has

655 For example statements available at: < <https://bit.ly/3dC872q> > [last viewed 30.03.2021]; < <https://bit.ly/3190Lhc> > [last viewed: 30.03.2021]; < <https://bit.ly/3x93CFE> > [last viewed: 30.03.2021]; < <https://bit.ly/3yhG14A> > [last viewed 30.03.2021]; < <https://bit.ly/3yhG14A> > [last viewed: 30.03.2021].

655 For example statements available at: < <https://bit.ly/3dC872q> > [last viewed 30.03.2021]; < <https://bit.ly/3190Lhc> > [last viewed: 30.03.2021]; < <https://bit.ly/3x93CFE> > [last viewed: 30.03.2021]; < <https://bit.ly/3yhG14A> > [last viewed 30.03.2021]; < <https://bit.ly/3yhG14A> > [last viewed: 30.03.2021].

656 Parliamentary Report of the Public Defender of Georgia of 2019, Tbilisi, 2020, 251-252

657 Code of Administrative Offences of Georgia, Article 166

658 Letters of the Ministry of Internal Affairs of Georgia 72386703 of October 7, 2020 and 33273361 of February 5, 2021.

659 The investigation is ongoing under the first part of Article 177 (theft) of the Criminal Code of Georgia.

660 Letter № 273361 of February 5, 2021 of the Ministry of Internal Affairs of Georgia.

661 Letter №13 / 8622 of February 16, 2021 of the General Prosecutor's Office of Georgia.

not been raised yet.⁶⁶² This proves once again that despite the positive responses in some cases, the measures taken at the national level to ensure the protection of human right defenders are insufficient. Unfortunately, the representatives of the law enforcement bodies struggle to accurately assess risks of violence against defenders of women and LGBT+ rights and to take appropriate preventive measures. As a result, only those cases which involve actual violence and/or physical injuries against victims yield tangible outcomes.

Taking into account the existing problems linked to protecting human rights defenders, the Public Defender presented “The Guide to Working on Issues of Human Rights Defenders” in 2020, which represents the explanatory-methodological document. In accordance with international standards, the document defines the notion of human rights defenders, the essence of their work and the obligations imposed on the State in this direction. Moreover, the Guide outlines actions taken by the Public Defender’s Office in order to create safe and enabling environment for human rights defenders.⁶⁶³

It should be noted that the national legislation does not define the concept of human rights defenders, which for years has been generating a problem of fully identifying crimes committed against them and processing the relevant statistics by the Ministry of Internal Affairs of Georgia.⁶⁶⁴ On the other hand the lack of such data hinders the planning and implementation of appropriate measures to address systemic challenges, as well as a thorough assessment of the effectiveness of response to similar facts by investigative agencies.

In order to eliminate this problem, the Public Defender welcomes the readiness of the Human Rights Protection and Investigation Quality Monitoring Department of the Ministry of Internal Affairs of Georgia to start monitoring of all criminal cases against human rights defenders from March 1, 2021, where it will be possible to determine the exact status of human rights defenders.⁶⁶⁵ The Public Defender's Office will work closely with the Ministry of Internal Affairs for proper identification and listing of such crimes.

In order to improve the situation regarding security and inviolability of human rights defenders, it is a step forward for the Prosecutor General's Office of Georgia to develop a recommendation to bring the investigation of criminal cases and the quality of procedural leadership in line with international standards. It should be noted that the mentioned document clarifies the concept of human rights defender, which corresponds to the definition provided in the Guide elaborated by the Public Defender.

It is noteworthy that during the reporting period, the Public Defender's Office became aware of the civil dispute over defamation against the non-governmental organization Transparency International

⁶⁶² In 2017-2019, the letter №273361 of February 5, 2021 of the Ministry of Internal Affairs of Georgia was launched. Eka Gigauri, Executive Director of the non-governmental organization Transparency International Georgia; On the facts of threats against activist Ana Subeliani and the organizers of "Tbilisi Pride". For more information, see Parliamentary Report of the Public Defender of Georgia for 2019, p. 251-252.

⁶⁶³ available: < <https://bit.ly/3ydxUG0> > [last viewed: 15.02.2021].

⁶⁶⁴ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 252-253.

⁶⁶⁵ Letter № 442264 of February 23, 2021 of the Ministry of Internal Affairs of Georgia.

Georgia.⁶⁶⁶ In particular, in September 2020, according to the decision of the Tbilisi Court of Appeals, the report of the organization "Corruption Risks in the Judiciary"⁶⁶⁷ which concluded that the trial of one of the cases raised questions about the impartial administration of justice, was considered as defamatory. Considering that the final decision on this dispute might negatively affect the process of informing society by human rights defenders on human rights issues of public interest in the future, the Public Defender submitted an *Amicus Curiae* brief to the Supreme Court and called on it to adjudicate the case not only in the scope of general regulation of freedom of expression, but also in light of the high standard of protection of human rights defenders and their work set by international instruments. Reflecting the above-mentioned approaches in the decision of the Supreme Court of Georgia will significantly contribute to the development of the practice of national courts in supporting the activities of human rights defenders.

Recommendations

To the public officials

- To be guided by internationally-recognized democratic standards in order to ensure maximum support to the work of human rights defenders, and inter alia, refrain from engaging in smear campaigns against human rights defenders.

⁶⁶⁶ For more information on this case, see statement of Transparency International Georgia available at: <<https://bit.ly/3bWhkRB>> [last viewed 02.03.2021].

⁶⁶⁷ Available at: < <https://bit.ly/3whbdPQ> > [last view: 02.03.2021].

13. The right to a healthy environment

13.1. Introduction

The monitoring of the realization of the right to the environmental protection recognized by the Constitution of Georgia⁶⁶⁸, considering all of its aspects: rights to live in a healthy environment, the enjoyment of natural environment and public space, the right to receive full information about the state of the environment, the right to care for the protection of the environment, the right to participate in the adoption of decisions related to the environment remains part of the priority directions of the Public Defender's focus.

The country faced numerous challenges during the reporting period: among them, the challenges related to the energy policy; the gaps in the legislation and the flaws in the enforcement of the environmental impact assessment (EIA) system; disregarding human rights during urban development; the absence of relevant safeguards for the prevention and elimination of environmental damage; problems related to hazardous waste management.

Effective safeguards for the oversight of the safety of internal natural gas system are still absent; the set of draft legislative acts that entail rendering oversight measures more stringent were submitted to the Government of Georgia in 2019⁶⁶⁹, although, they have not been adopted yet. Given that the draft laws establish appropriate oversight mechanisms and prescribe administrative sanctions for the consumption of natural gas in violation of safety norms, their timely review and adoption is necessary.

The use of asbestos containing materials during construction remains an issue. We have been informed⁶⁷⁰ that currently negotiations are underway with potential donors for funding and implementing a relevant project aimed at sharing best practices of European and other developed states in the management of asbestos containing materials and designing recommendations about replacing asbestos containing materials with other alternative materials.

It is commendable that the Ministry of Environmental Protection and Agriculture (MEPA) is drafting amendments⁶⁷¹ to the Technical Regulation⁶⁷² on the Construction, Operation, Closure and After-care of Dumpsites in response to the Public Defender's recommendation. It is important to set forth in the

⁶⁶⁸ Article 29, the Constitution of Georgia.

⁶⁶⁹ The Ministry of Economy and Sustainable Development of Georgia Letter N 23/8176 dated 23/12/2020.

⁶⁷⁰ The Ministry of Environmental Protection and Agriculture of Georgia Letter N 2455/01 dated 16/03/2021.

⁶⁷¹ MEPA Letter №189/01, dated 11/01/2021.

⁶⁷² The Resolution of the Government of Georgia N 421 dated August 11, 2015

Regulation distinct criteria for calculating a 500-meter distance from a residential area to the boundary of a dumpsite.

13.2. The right to clean air

Ambient air pollution is among the greatest challenges facing the world, posing unprecedented risks to the health of the people.⁶⁷³ In 2020, in the UK, a presumably landmark ruling was made linking the death of anyone to air pollution for the first time⁶⁷⁴. In particular, the death of a 9 year old girl from asthma attack was caused by excessive concentration of nitrogen dioxide and particulate matter in the air; these are among significant pollutants in Georgia as well.⁶⁷⁵

During the reporting year, despite a number of significant measures carried out for the improvement of ambient air quality in Georgia, many problems remain. Gradual move to the European standard of monitoring and management of ambient air quality from September 1, 2021 and taking respective commitment to introduce legislation on dividing the territory of the country into zones and agglomerations, developing air quality management plans according to classification based on the degree of pollution and in response to local challenges should be commended.⁶⁷⁶

Nevertheless, it should be noted that the current ambient air monitoring system is flawed and does not present a complete picture of pollution throughout the country; this raises a problem not only with addressing emissions, but also with respect to the assessment of the impact of air pollution on health.⁶⁷⁷ Major challenge in this regard is the lack of monitoring points represented by 7 stationary and 1 mobile automatic stations and 1 non-automatic station.⁶⁷⁸ According to the Ministry of Environmental Protection and Agriculture of Georgia (MEPA), the air quality monitoring system development plan⁶⁷⁹ was designed in 2020; the plan indicates the types of stations, their quantity and locations, it also contains an initial outline for dividing Georgia's territory in zones and agglomerations is provided.⁶⁸⁰ It should be noted that according to this document, the ultimate monitoring system should be considerably broader than the

⁶⁷³ For more information visit the World Health Organization (WHO) website: < <https://bit.ly/2NgMxXi> > [accessed 18.02.2021]; < <https://bit.ly/3avs9KG> > [accessed 8.02.2021].

⁶⁷⁴ Available at: < <https://bit.ly/3u8stXN> > [accessed 31.03.2021]; < <https://bbc.in/3awVyVa> > [accessed 31.03.2021].

⁶⁷⁵ The 2019 Special Report of the Public Defender of Georgia – The Right to Clean Air (the Quality of Ambient Air in Georgia), Tbilisi, 2019, 13; for more information about pollutants see: < <https://air.gov.ge/pages/13/13> > [accessed 8.02.2021].

⁶⁷⁶ The Law of Georgia on the Amendments to the Law of Georgia on Ambient Air Protection №5948-სს May 22, 2020.

⁶⁷⁷ The 2019 Special Report of the Public Defender of Georgia – the Right to Clean Air (The Quality of Ambient Air in Georgia), 16.

⁶⁷⁸ Currently, ambient air monitoring is performed via 8 automatic stations in Tbilisi, Rustavi, Batumi, Kutaisi and Poti. Furthermore, ambient air monitoring is performed in Zestaponi via a non-automatic observation station.

⁶⁷⁹ The mentioned plan that serves as a guide for the activities of the National Environment Agency, LEPL has been developed under the Swedish International Development Agency (SIDA) funded project "Enhancement of Air Quality Management Capacity in Georgia.

⁶⁸⁰ The Ministry of Environmental Protection and Agriculture of Georgia (MEPA) Letter №1430/01 dated 18.02.2021.

existing one and should be made up of 18 stationary and 3 mobile stations. Presently, the Ministry of Environment and Agriculture is planning to purchase 1 new automatic mobile station in 2021.⁶⁸¹

Therefore, considerable improvement of the ambient air quality monitoring system is necessary to effectively enforce the substantial portion of positive amendments in the legislation; and this requires considerable funds. The Public Defender hopes that gradual implementation of the planned system⁶⁸² will be completed within shortest possible timeframes through the state and donor support.

Another step forward in the reporting year has been the drafting of the Voluntary Code – Best Agricultural Practices to Reduce Ammonia Emissions and the Review of International Practice for Reducing Emissions in the Agricultural Sector⁶⁸³. The document entails the measures related to the reduction of emissions from this sector, including manure management, livestock nutrition and the use of fertilizers.⁶⁸⁴ Based on the instruction of the Ministry of Environmental Protection and Agriculture of Georgia (MEPA), until this code is approved as a binding legal act, farmers' awareness should be raised and the sector should be prepared for the compliance with the new requirements.⁶⁸⁵ Importantly, the recommendation to adopt relevant legislative amendments for preventing and reducing air pollution from the agricultural sector had been put forward by the Public Defender.⁶⁸⁶

Regrettably, pollution from the industrial sector is still not regulated appropriately. Notably, the initiation of a draft law at the Parliament on Industrial Emissions for reducing such emissions and the shift to the European standards for emissions control was scheduled for 2019, although it was first postponed for the fall, 2020 session⁶⁸⁷, and now it is planned for the end of 2021.⁶⁸⁸ The Public Defender emphasizes that the enactment of this draft law and timely implementation of its provisions is a major lever for reducing emissions from industrial sites which has been an outstanding problem in a number of municipalities for years.

Among others, ambient air pollution from the industrial sector is one of the major challenges in the Rustavi city. Therefore, the approval of the 2020-2022 Rustavi Ambient Air Quality Improvement Action Plan under the Government of Georgia October 22, 2020 Ordinance N 2059 is an important novelty; the Action Plan envisages a number of effective measures (e.g., increasing sanctions for above-limit emissions from facilities, strengthening the system of oversight over their activities and the passage of the Law of

⁶⁸¹ Ibid.

⁶⁸² Ibid.

⁶⁸³ The documents were developed under the Swedish International Development Agency (SIDA) funded project "Enhancement of Air Quality Management Capacity in Georgia.

⁶⁸⁴ The Ministry of Environmental Protection and Agriculture of Georgia Letter N 1430/01 dated 18/02.2021.

⁶⁸⁵ The Ministry of Environmental Protection and Agriculture of Georgia Letter N10/01 dated 4.01.2021.

⁶⁸⁶ The Special Report of the Public Defender of Georgia 2019 – the Right to Clean Air (the Quality of Ambient Air in Georgia), 37-39; The 2019 Parliamentary Report of the Public Defender of Georgia, 271.

⁶⁸⁷ Ibid., 256.

⁶⁸⁸ The Ministry of Environmental Protection and Agriculture of Georgia Letter N1430/01 dated 18.02.2021.

Georgia on Industrial Emissions) in response to the emission of harmful substances from stationary sources at the local level as well as country-wide.⁶⁸⁹

As regards the ambient air pollution from the transport sector, organizing and improving relevant legislative and material-technical matters has not been completed yet;⁶⁹⁰ it would ensure controlling putting those motor vehicles into service in which emission the content of pollutant substances is above the set norm.⁶⁹¹

It should be considered that the liability for breaching fuel quality norms became more stringent in 2020.⁶⁹² Furthermore, similar to the previous reporting year, the trend of improving quality control over fuel was maintained.⁶⁹³ As a result of performed monitoring, a total of 18 administrative violation protocols were drawn up due to the discrepancies detected in gasoline fuel samples.⁶⁹⁴ As for the materials of the cases of excessive Sulphur content in diesel fuel samples were again⁶⁹⁵ sent by the Environmental Supervision Department to the investigation entity; the investigation body appended the mentioned documentation to the criminal case on alleged counterfeiting of diesel fuel initiated during the previous reporting period.⁶⁹⁶ It should be noted that investigation on this case is still underway and no criminal prosecution has been initiated against specific individuals.

With respect to the regulation of construction or other sources of pollution specific to cities,⁶⁹⁷ it should be noted that legislative regulation for the placement, transportation or processing of particulate matter has not yet become applicable in Tbilisi city municipality area.⁶⁹⁸

13.3. Energy policy and the enforcement of the EIA System

⁶⁸⁹ Action plan available at: < <https://bit.ly/3mhldp7> > [accessed 18.02.2021].

⁶⁹⁰ The Public Defender of Georgia 2019 Parliamentary Report, 257.

⁶⁹¹ The Ministry of Environmental Protection and Agriculture of Georgia Letter N1430/01 dated 18.02.2021.

⁶⁹² Available at: < <https://bit.ly/39KJiQ7> > [accessed 8.02.2021].

⁶⁹³ According to The Ministry of Environmental Protection and Agriculture of Georgia Letter N10/01 dated 4.01.2021, in April, 2020, throughout Georgia, 92 units of fuel samples were drawn from 29 gas stations, among them, 43 units of diesel samples and 49 units of motor vehicle gasoline fuel samples were drawn. While, in May, 2020 additionally 251 gas stations were inspected Georgia-wide, 252 units of 'regular' gasoline fuel samples were drawn. Laboratory tests of the samples taken in April have shown that of those, 14 samples of diesel and 18 samples of gasoline fuel failed to meet legislative requirements. While, as a result of laboratory tests of the samples drawn in May on 1 sample of 'regular' gasoline did not match the envisaged value.

⁶⁹⁴ The Ministry of Environmental Protection and Agriculture of Georgia Letter N10/01 dated 4.01.2021.

⁶⁹⁵ The Public Defender of Georgia 2019 Parliamentary Report, 257-258.

⁶⁹⁶ The General Prosecutor's Office of Georgia Letter N 13/6850 dated 8.02.2021.

⁶⁹⁷ The Special Report of the Public Defender of Georgia 2019 – the Right to Clean Air (the Quality of Ambient Air in Georgia), 33-36.

⁶⁹⁸ Administrative Violations Code of Georgia Articles 152⁴-152⁷ and 152⁹; See the Public Defender of Georgia 2019 Parliamentary Report, 256.

Human rights centered environmental approaches are becoming relevant in a number of fields, infrastructure projects being among the central areas. In this respect, the risks of encroaching on the right to a healthy environment, right to property or other neighboring rights is always high. Therefore, it is important for the state to carry out such policy and establish legal safeguards to enable maintaining balance between human rights and other legitimate interests, ensuring proper and safe living environment. Energy projects have long been a special challenge among such projects and they are constantly on the radar of the public.

Planning and development of the energy sector, first and foremost, requires the development of relevant long-term policy. Based on international commitments⁶⁹⁹ and the Law of Georgia on Energy and Water Supply⁷⁰⁰ the Parliament is required to approve a 10-year state energy policy document; this commitment has not been fulfilled yet.

Moreover, it is important to effectively enforce legislative regulations related to the EIA system in relation to individual projects. In this respect, the attention of the public was primarily directed towards the Namakhvani Hydropower Plant Cascade Project during the reporting year.⁷⁰¹ Throughout the year the residents actively and incessantly protested against the implementation of the planned project, including by means of introducing duty on the site; furthermore, major rallies were held in the Kutaisi city.⁷⁰² Only following long-term incessant protest and after spending 130 days in tents, Government representatives, based on the Prime Minister's instruction⁷⁰³ held a meeting with local activists.⁷⁰⁴ The hearings of government members were held in the committee format as well. Nevertheless, the mentioned specific steps have not been followed by continuous, result oriented, extensive and comprehensive dialogue with the citizens and interested public by the members of the government,⁷⁰⁵ furthermore, given the comprehensive and pressing nature of the matter, one-off hearings of ministers' reports cannot be regarded effective parliamentary oversight either.

Importantly, residents, specialists and the civil society are primarily concerned?? and are incessantly protesting about geological and seismic risks, threats related to landslide zones, expected micro climate changes in relation to the given project.⁷⁰⁶ This results in the expectation of deterioration of ecological

⁶⁹⁹ The Energy Union was founded in 2005 at the initiative of the European Union and it is aimed at the distribution of the EU internal energy market rules and principles in the South-Eastern Europe and the Black Sea Region countries.

⁷⁰⁰ The Law of Georgia on Energy and Water Supply, Article 7.

⁷⁰¹The Namakhvani HPP Cascade Project is one of the major hydro power plant projects for Georgia; it entails the construction of two HPPs on the Rioni River, in Tskaltubo and Tsageri municipalities, for more information, see the Public Statement of the Public Defender <<https://bit.ly/2QJSNlo>> [accessed 31.03.2021].

⁷⁰² Available at: <<https://bit.ly/2Pdi0La>> [accessed 31.03.2021].

⁷⁰³ Available at: <<https://bit.ly/39tf1Vs>> [accessed 31.03.2021].

⁷⁰⁴ Available at: <<https://bit.ly/3sHglfa>> accessed 31.03.2021]; <<https://bit.ly/31LstA9>> [accessed 31.03.2021].

⁷⁰⁵ Available at: <<https://bit.ly/3waLDx7>> [accessed 31.03.2021].

⁷⁰⁶ Available at: <<https://bit.ly/39theAB>> [accessed 31.03.2021]; <<https://bit.ly/3cCUO1A>> [accessed 31.03.2021]; <<https://bit.ly/3diQvYl>> [accessed 31.03.2021]; <<https://bit.ly/31vp2xh>> [accessed 31.03.2021]; <<https://bit.ly/3u8Wp5b>> [accessed 31.03.2021]; <<https://bit.ly/3QTdf9Z>> [accessed 31.03.2021]; <<https://bit.ly/3m4SYcZ>> [accessed 31.03.2021]; <<https://bit.ly/3m66HA9>> [accessed 31.03.2021].

and socio-economic situation in the public; one of the key questions is economic-energy benefit of the planned project; especially, having examined the contract between the state and the investor, the civil society sector speaks about expected heavy fiscal risks and numerous other problematic areas for the country.⁷⁰⁷ Unfortunately, the public review of the Project's EIA report also involved challenges.⁷⁰⁸

This case has confirmed systemic problems identified by the Public Defender's Office over the past years as part of its oversight. For years, government decisions have failed to address legitimate questions of the public and the mentioned challenge remains pressing, despite high legal safeguards for the awareness and participation of the public.⁷⁰⁹ Usually, conducted public discussions fail to provide exhaustive and justified answers to citizens' questions about significant matters. This, in turn, is also due to significant distrust towards the quality of EIA documents and performed studies. Along with the meeting procedural requirements, the government should pay special attention to actual participation of citizens in the processes and maximally utilize all effective means for communicating with them.

The practice has also revealed the challenges related to the quality of EIA reports. Residents and professional groups are primarily concerned about the safety of the planned projects and their expected massive impact on environment, alternative options of project, the aspects of the impact on the property of local residents. Usually, mainly questions arise due to the fact that these matters are not properly addressed or are not addressed altogether in EIA documents; Furthermore, one of the crucial questions that the EIA documents fail to address is that of the cost-benefit of various projects and hence, the feasibility of the implementation of the project itself.⁷¹⁰

In light of the listed challenges, it is even more important to ensure relevant awareness-raising and participation of the citizens in the context of the pandemic. Currently, public discussions around significant documents necessary for taking environmental decisions are conducted remotely, via electronic communication. Aarhus Convention⁷¹¹ should be followed consistently, even during the crisis such as the COVID-19 pandemic, the rights recognized by the Convention may not be restricted; while, any alternative means used for ensuring the participation in the awareness-raising and decision-making process should be in line with the standards set forth by the Convention.

13.4. Legislative matters related to the EIA system

In addition to the challenge of the enforcement of legal safeguards, the practice has also identified the need for the refinement of the existing regulations.

⁷⁰⁷ Available at: <<https://bit.ly/3m3idMS>>[accessed 31.03.2021]; <<https://bit.ly/2PkVvUr>>[accessed 31.03.2021].

⁷⁰⁸ Available at: <<https://bit.ly/3fFt2Uj>>[accessed 31.03.2021].

⁷⁰⁹ During the reporting year, citizens applied to the Public Defender about another project, Bakhvi 2, with concerns related to the conducted public discussions.

⁷¹⁰ For more information about energy and economic benefit of the projects, see the 2018 Parliamentary Report of the Public Defender of Georgia, from 177.

⁷¹¹ UN Economic And Social Council (ECOSOC) Statement, 2020, available at: <<https://bit.ly/3czajaH>>[accessed 31.03.2021].

During the reporting year, the attention of the public and the Public Defender was directed to the organizing of bulk cargo terminal in Batumi. Those opposing the project regard that the implementation of this project is inadmissible, in light of various factors, including environmental threats and the consequences with respect to the right to a healthy environment.

Despite large scale of the project, a decision of screening was taken⁷¹² and the set-up of the bulk cargo terminal and its operation was not subjected to the EIA. Although, it is important to note that the Tbilisi City Court annulled this decision. The court deemed that from the content of the act it could not be established on the basis of which circumstances the administrative authority reached the conclusion that the planned activity did not require an EIA; since, according to the Court, the administrative authority copied into the decision the information from the screening application; still, the reasoning as to why they factored in these circumstances was not provided; furthermore, court made reference to the significant criteria that the administrative body overlooked when taking the decision.

This decision made by the court may play a positive role in the improvement of the practice of the administrative authority in this area. Although, at the same time it is important to also improve the regulations related to the screening procedure itself. Screening is a major stage when the need to conduct an EIA is determined.⁷¹³ Currently, the Code contains general criteria, although the procedures for the review of the screening application and decision making by the Ministry are not prescribed; including, the necessity to verify submitted information is not stipulated. The process of screening decision should be substantive; the screening procedure should be focused on the verification of the information submitted by the performer of works.

Moreover, as has been reflected in the 2019 Parliamentary Report, the listing of activities subjected to screening/EIA is marred with problems and needs to be revisited. In particular, in some cases the thresholds for the activities stipulated under the Annexes of the Code should be refined according to the specificities and the reality of Georgia. For instance, setting a 10 hectare threshold in relation to urban development projects is unjustified⁷¹⁴; it should be considered that in the 2011/92/EU Directive area in relation to the urban development projects is not specified at all.

It is especially noteworthy that the screening does not apply to mining sand and gravel.⁷¹⁵ This is inadmissible, considering the risks of mining sand and gravel in breach of the prescribed rule;⁷¹⁶ Furthermore, this is also contrary to the stipulation of the 2011/92/EU Directive, which comprises the obligation of establishing the need for assessing effect on environment for the mining of construction materials, and including open cast mining of sand and gravel. The matter at hand is fairly problematic for

⁷¹² The Minister of Environmental Protection and Agriculture of Georgia Order N 2-69 dated January 23, 2019.

⁷¹³ The Environmental Protection Code of Georgia, Art. 7, activities stipulated under the Annex II of the Code are subject to screening.

⁷¹⁴ 2011/92/EU Directive does not specify area in relation to the urban development projects at all.

⁷¹⁵ Except for the case when the performer of works is planning open cast mining and the mining area surface is over 25 ha, Annex I.

⁷¹⁶ This is also contrary to the requirement of 2011/92/EU Directive, which stipulates the obligation to set forth the need for the EIA for open cast mining of construction materials, including sand and gravel.

Georgian reality, since, mining inert matter from the rivers is one of the intensive activities⁷¹⁷ and sometimes such activities are carried out absolutely illegally, without legal basis, leave alone the assessment of the effect on environment.⁷¹⁸

13.5.Environmental protection in urban development

The construction sector is one of the directions that requires human rights oriented approaches.

in early 2021, the legislative amendments package was initiated at the Parliament of Georgia.⁷¹⁹ according to the planned amendments, the operation of buildings and structures until their commissioning is prohibited; furthermore, it will no longer be possible to supply electricity and natural gas to a building and structure that has not been commissioned; Furthermore, temporary rule for commissioning a construction that had been performed in breach of permit conditions within Tbilisi Municipality administrative boundaries will be stipulated.⁷²⁰ At the same time, since the entities performing construction are not avoiding high penalty sanctions and continue activities arbitrarily, the planned changes introduce criminal liability for such cases.⁷²¹ According to planned amendments, certain entities that have breached the requirements will be exempted from the imposed administrative liability to facilitate the completion of the constructions that had been stopped and left unfinished over years.⁷²²

The planned construction amnesty envisages major reliefs in relation to those performing construction works. On the one hand, it is regrettable that such radical compromise becomes necessary in relation to offenders. Although, on the other hand, the Public Defender hopes that legislative amendments will contribute to the elimination of existing complicated problems in urban development in the city and the realization of legitimate interests of proprietors. Furthermore, it is commendable that liability for breaches in the future becomes more stringent, and this will contribute to the prevention of such activities and facilitate effective oversight.

⁷¹⁷ For example, see the study “the practice of mining sand and gravel in the Guria Region Monitoring Findings and Recommendations, 2020, available at: <<https://bit.ly/2O8gRgz>> [accessed 31.03.2021].

⁷¹⁸ For example, in one of the cases examined by the PDO during the reporting year (N 6643/20 Application) it has been established that in Tbilisi, in Digomi Groves, at three sites, minerals (sand and gravel) were mined without any license at all; furthermore, based on the information solicited by the Public Defender at own initiative, we have been informed that in Khelvachauri Municipality Village Makho, adjacent to the Chorokhi River, the facts of illegal consumption of sand and gravel were confirmed, while the harm to environment fell in ‘critical’ category.

⁷¹⁹ Available at: <<https://bit.ly/3cD2IYE>> [accessed 31.03.2021].

⁷²⁰ Available at: <<https://bit.ly/3sBfm08>> [accessed 31.03.2021]; <<https://bit.ly/3m46LjY>> [accessed 31.03.2021].

⁷²¹ Available at: <<https://bit.ly/31ut9ts>> [accessed 31.03.2021].

⁷²² Available at: <https://bit.ly/3cG5XPr> [accessed 31.03.2021]; <<https://bit.ly/2PcX07j>> [accessed 31.03.2021].

During the reporting year the matter of the right to live in a healthy environment was still relevant⁷²³ in the field of development. According to the Public Defender, when taking development related decisions, complex challenges emerged as a result of active, chaotic and spontaneous development of large cities, especially of Batumi⁷²⁴ and Tbilisi over years, and current dire condition with respect to spatial planning should be taken into account. Hence, administrative bodies are required to take the decisions that will contribute to the mitigation of the existing situation in the cities where the development is intensive, rather than further aggravating it. When urban planning parameters have already been exceeded next to project territories, it is inadmissible to further aggravate situation, including with respect to the capacity of streets and the movement of transport vehicles. It is commendable that in one of the cases Tbilisi Municipality Town Hall considered the Public Defender's justification and canceled a relevant decision.

13.6. Damage to the environment

The Public Defender welcomes the passage of the Law on Environmental Liability⁷²⁵ at the beginning of 2021 and hopes for its effective and unhindered enforcement in practice. Fundamentally flawed legislation and problematic practice related to environmental damage was addressed by the Public Defender meticulously in the 2018 Parliamentary report.⁷²⁶ The Public Defender specifically underscored the importance of establishing legal safeguards based on the standards set forth under the Directive 2004/35⁷²⁷ and those based on the principles of "polluter pays" and "restitution" for the prevention/mitigation/elimination of environmental damage.

During the reporting year, the PDO has learned about a number of cases of environmental problems resulting from entrepreneurial activity, among them: in Zestaponi Municipality (Georgian Manganese, LLC)⁷²⁸, in Kaspi town (HeidelbergCement Georgia, LLC.)⁷²⁹, in Poti city (Corporation Poti Sea Port JSC and other enterprises),⁷³⁰ in Khelvachauri municipality (various entities)⁷³¹. According to the data available to the Public Defender,⁷³² in the listed cases the Department of Environmental Supervision has detected various cases of infringements of environmental legislation:

⁷²³ The Public Defender of Georgia Recommendation №04-11/4405, 24/04/2020 about the lawfulness of a multi-apartment residential building planned in Marabda Street. As a result, the Tbilisi Municipality City Hall annulled the issued special (zonal) agreement.

⁷²⁴ Additionally, see the report of the International Council on Monuments and Sites (ICOMOS) which focuses on dire challenges of Batumi urban development, available at: < <https://bit.ly/3u7gGYL> > [accessed 31.03.2021].

⁷²⁵ Available at: < <https://bit.ly/2O7s8nX> > [accessed 31.03.2021].

⁷²⁶ For more information, see the Public Defender's Parliamentary Report, 2018, from 172.

⁷²⁷ The European Parliament and Council Directive 2004/35/EC on Environmental Liability.

⁷²⁸ The Public Defender of Georgia Apparatus Report №10138/19.

⁷²⁹ Available at: < <https://bit.ly/2PjGhix> > [accessed 31.03.2021]; < <https://bit.ly/31xHd5n> > [accessed 31.03.2021].

⁷³⁰ Available at < <https://bit.ly/3fpbGL6> > [accessed 31.03.2021].

⁷³¹ Available at: < <https://bit.ly/2PFTe63> > [accessed 31.03.2021].

⁷³² Department of Environmental Supervision Letters: DES 8 20 00024730, 28/04/2020, DES 6 20 00029788, 29/05/2020, DES 0 20 00060435, 29/10/2020, DES 4 20 00029326, 27/05/2020.

- Zestaponi:

In 2015, the monitoring of the compliance with the norms prescribed in applicable environmental legislation was performed at the Ferro Alloy Plant owned by Georgian Manganese, LLC. It has been established that during the operation the enterprise did not comply with the norms established under the applicable environmental legislation and since the breach entailed the signs of a crime, the materials were sent to the Ministry of Finance Investigation Office. We have also been informed that from 2015 to date (28.04.2020), the Department had not examined the state of compliance with the norms prescribed under applicable environmental legislation in the Ferro Alloy Plant owned by Georgian Manganese, LLC.

- Poti:

In Poti, adjacent to Javakhishvili Street, Corporation Poti Sea Port, JSC and other enterprises are stationed. based on a lease agreement, the territory owned by Corporation Poti Sea Port, JSC, has been transferred to terminals where various cargo⁷³³ is handled. Furthermore, nearby there is a motor road that is utilized by the sea port as well as city population which raises dust in the street. As a result of the examination performed in October, 2019, it has been established that the content of dust particles in ambient air is above the allowable limit. According to the location of drawing a sample by the National Environmental Agency, LEPL the identification of a specific stationary source (enterprise) of pollution cannot be established, therefore, additional inspection is planned.

It is important to note that the Public Defender personally visited Poti to meet with local residents.⁷³⁴ During the interview with IDPs living in a compact settlement near the above-mentioned terminals we were informed that their major concern is noise and air pollution resulting from the operations of the terminals; it renders the enjoyment of the right to live in a healthy environment impossible for local residents. Moreover, mass media have also reported about the ecological problems resulting from the operations of terminals and about polluted living environment of citizens living nearby.⁷³⁵

In addition to the aforementioned, the smell of fish is also a severe issue in Poti, leading to periodic protests by local residents. There are 4 fish and sea products processing enterprises in Poti.⁷³⁶ The Department of Environmental Supervision⁷³⁷ conducted an unscheduled inspection of the compliance with the provisions established under the environmental legislation by the enterprises processing fish and sea products. The inspection has discovered the facts of non-compliance with the applicable environmental requirements at these enterprises. The Department inspected these enterprises in 2015-2017 as well and detected numerous breaches, while environmental damage totaled several scores of thousand GEL.⁷³⁸

- Kaspi:

⁷³³ Transportation of copper, clinker, carbamide and other dry cargo;

⁷³⁴ Available at: <<https://bit.ly/31LvAYR>> [accessed 31.03.2021].

⁷³⁵ Available at: <<https://bit.ly/3fpbGL6>> [accessed 31.03.2021].

⁷³⁶ Iceberg 2, LLC; MBM, LLC; Sea Products, LLC; Geofish Company, LLC.

⁷³⁷ DES 2 20 00020323, 25/03/2020 Letter.

⁷³⁸ Geofish Company, LLC (24 057,61.); Sea Products, LLC (364,17); Iceberg 2, LLC (3720,25.); MBM, LLC (33 300,50).

The Department of Environmental Supervision has established that the Company failed to comply with the conditions envisaged under the environmental decision for the fulfillment of which it had been given reasonable timeframes. Following an additional inspection it has been established that the Company had also failed to fulfill the obligations set forth under the administrative correspondence⁷³⁹ and failed to eliminate the violations identified as a result of the inspection. Moreover, based on the report submitted to the Ministry of Environment and Agriculture of Georgia hotline, in June 2020 express measurements were conducted and it was identified that the level of noise resulting from the Enterprise operation (during night hours) exceeds the norms set forth under the applicable legislation. Due to the breach of the respective conditions, an administrative violations protocol was drawn up in relation to the Company, as well as the environmental damage was estimated.

- Khelvachauri Municipality:

In Khelvachauri Municipality Village Makho, near the Chorokhi River, numerous persons⁷⁴⁰ who had obtained construction permits for setting up fish pond, actually are illegally utilizing the mineral resources and are damaging the environment. Among them, in two cases the damage falls under 'critical' category and the case materials contain the signs of a crime.⁷⁴¹

In addition to the afore-mentioned cases, in one of the cases⁷⁴² examined by the PDO during the reporting year it has been identified that during 2017-2020, the Department of Environmental Supervision in Tbilisi, on the territory of Digomi Experimental Farm, has identified 38 law violations involving the pollution of the territory with construction and materials and inert materials.

The listed examples demonstrate that in addition to responding to citizens' complaints or information disseminated via public sources, the supervision authority should proactively and at certain periodicity carry out inspection on the above-mentioned and other large and problem sites/territories; especially that, as practice shows the facts of breaching environmental legislation in such cases are usually systematic.

Proposals

To the Parliament of Georgia:

- Modify threshold indicators for the activities envisaged under the Environmental Assessment Code I and II Annexes considering the area of the country and other specificities, among them,

⁷³⁹ Determine a specific time schedule for monitoring the levels of noise and the concentration of inorganic and cement dust at nearest residential homes, submitting the schedule to the MEPA. After agreeing with the MEPA, determine concentrations of inorganic and cement dust, as well as the level of noise, and if they are found to be excessive, determine additional mitigation measures; manage derived waste.

⁷⁴⁰ Machakhela, LLC, individuals: M. Ts.; O.T.; G.T.: R.B.

⁷⁴¹ Department of Environmental Supervision Letter DES4 20 00029326, 27/05/2020.

⁷⁴² Application of citizens №6643/20.

reduce/cancel urban development projects related indicator, as well as introduce screening requirement for sand and gravel mining activity;

- Introduce in the Georgia Administrative Violations Code the liability for breaching the rules for placement, transportation or processing of dust-producing materials throughout all municipalities;
- Continue and carry out active and effective parliamentary supervision over Namakhvani HPP, among them, based on the Rules of Procedure, 37 Article 3 Paragraph, by examining the activities of government entities in relation to the Namakhvani HPP project and produce a relevant conclusion.

Recommendations

To the Government of Georgia:

- Ensure timely review and passage of draft normative acts submitted for review with the aim to make monitoring of the safety of the internal natural gas network more stringent.

To the Minister of Environmental Protection and Agriculture, to the Minister of Economy and Sustainable Development:

- Until consensus is reached about the Namakhvani HPP Project, conduct public, matter-of fact and result oriented dialogue, including in mass media, with local residents, professional groups and experts.

To the Minister of Environmental Protection and Agriculture of Georgia:

- In each case ensure effective enforcement of the regulations related to the EIA system;
- Examine the challenges related to the quality of EIA reports and identify best effective measures and carry out all necessary activities for implementing them to ensure quality improvement and control;
- Do not issue condition-based environmental decisions if a project requires additional studies;
- Complete activities for the approval of the Voluntary Code –Best Agricultural Practice for Ammonium Emission Reduction into a binding legal act by the end of 2021.
- Initiate a draft law on industrial emissions at the Parliament of Georgia by the end of 2021.

To the Minister of Economy and Sustainable Development of Georgia:

- Develop on a timely basis state energy policy in accordance with Article 7 of the Georgian Law on Energy and Water Supply and conduct all necessary procedures for its approval by the Parliament.

To the State Sub-Agency Department of Environmental Supervision:

Conduct the inspection of problem sites in Zestaponi Municipality, Kaspi town, Poti city, Khelvachauri Municipality, in 2021, and inform local residents about the results of the inspection and conducted measure.

14. The right to work

14.1. Introduction

The right to work is recognized and protected under the Constitution of Georgia,⁷⁴³ as well as international acts.⁷⁴⁴ The protection of this right is especially important in any democratic state. The labor legislation reform was a prominent development in 2020. In particular, granting a full mandate for the oversight over the protection of labor rights to the Labor Inspectorate.⁷⁴⁵ Since January 1, 2021, the Labor Inspectorate, LEPL has been empowered to inspect workplaces without employer's consent, with the aim to detect breaches of the provisions of the Labor Code of Georgia and the Law of Georgia on Public Service and to impose respective sanctions in case of detection of breach. The Public Defender of Georgia will closely oversee the effectiveness of the activities of the Labor Inspectorate, LEPL under its new mandate. Along with the afore-mentioned, according to the amendments to the Labor Code of Georgia passed by the Parliament on September 29, 2020, the scope of the prohibition of discrimination has been broadened, provisions governing the relations during the pre-contractual stage, leave, night shift, shift work and night work, breaks, etc. have been stipulated exhaustively. The concept of an intern was defined and the provisions governing the goal of internship, remuneration and the duration of internship have been introduced.

The stringent restrictions introduced in Georgia in 2020, following the spread of COVID-19 had direct impact on the realization of the right to work in Georgia. Workers in the tourism and various service sectors lost jobs as a result of the suspension of operations and/or significant reduction of income of business entities. The entities engaged in economic activity who were authorized to continue operations during the pandemic had to comply with special requirements for protecting occupational safety. To prevent the spread of the COVID-19 infection at workplaces, the Labor Conditions Inspection Department (presently the Labor Inspectorate, LEPL), along with other competent authorities, actively monitored the fulfillment of the recommendations⁷⁴⁶ approved by the Ministry of Health for various sectors.

⁷⁴³ The Constitution of Georgia, Article 26.

⁷⁴⁴ The European Social Charter, International Covenant on Economic, Social and Cultural Rights, etc.

⁷⁴⁵ The Law of Georgia on the Labor Inspectorate; the Organic Law of Georgia on the Amendments to the Organic Law of Georgia the Labor Code of Georgia, available at: < <https://bit.ly/3fs8JJJ> > [accessed 30.03.2021].

⁷⁴⁶ The Minister of Labor, Health and Social Affairs of Georgia Order №01 227/მ dated May 29, 2020 on the Approval of Recommendations for Preventing the Impact of COVID-19 at Workplaces; The Minister of Labor, Health and Social Affairs of Georgia Order №01-56/ბ dated June 6, 2020 on the Approval of the Rules and Procedures for Monitoring and Control over the Fulfillment of the Recommendations developed by the Ministry of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia for the Prevention of the Spread of COVID-19 infection caused by the novel coronavirus (SARS-CoV-2), at workplaces, Annex N 1, Article 1, Paragraph 2.

14.2. The pandemic and labor rights

Due to the spread of COVID-19, the stringent restrictions in the country were implemented in two stages, during the state of emergency⁷⁴⁷ and after the termination of the state of emergency⁷⁴⁸. The restrictions were manifested, among others, by the suspension of certain economic activities and the public transport movement, which had direct effect on the realization of labor rights in the country.

The imposed restrictions had massive impact on labor rights of individuals employed in the private sector, and they were rendered especially vulnerable due to the absence of the unemployment benefit. Some of the organizations were compelled to suspend activities and this, naturally, affected the individuals employed there. Furthermore, according to various sources, there were the cases of unjustified dismissal of employees from certain jobs, and/or termination without compensation, laying off on unpaid leave for an unspecified period, assigning overtime work without remuneration, unilaterally amending substantive provisions of labor contract, and other alleged violations.

The pandemic related restrictions affected the public sector as well, where major part of the work continued remotely. Although, the Public Defender's Office of Georgia has not become aware of the facts of the restriction of labor right in the public sector following the imposed restrictions have not come to the attention of the.

The Public Defender of Georgia has no powers to directly respond to the cases of the violation of labor rights in the private sector, except for the cases of discrimination.⁷⁴⁹ Pursuant to the regulations applicable prior to January 1, 2021, the Labor Conditions Inspection Department of the Ministry of Labor, Health and Social Protection did not have the mandate of effective oversight over the protection of labor rights (other than occupational safety norms) either, and thus court was the only mechanism for the protection of labor rights for workers.

The Ministry of Health designed special recommendations to maintain the continuity of operations of business entities engaged in various economic activities while preventing the spread of COVID-19 at workplaces during the pandemic.⁷⁵⁰ To raise awareness of employers and workers about these

⁷⁴⁷ The Government of Georgia enacted the Decree N 181 on the Approval of the Activities for the Prevention of the Spread of COVID-19 in Georgia .

⁷⁴⁸ On May 22, 2020, based on Article 45³(1) of the Law of Georgia on Public Health, the Decree of the Government of Georgia N 322 on the Approval of the Rules of Isolation and Quarantine was published.

⁷⁴⁹ The Organic Law of Georgia on the Public Defender of Georgia, Article 3(1).

⁷⁵⁰ The Minister of Labor, Health and Social Affairs of Georgia Order №01 227/მ dated May 29, 2020 on the Approval of Recommendations for Preventing the Spread of COVID-19 at Workplaces.

The Minister of Labor, Health and Social Affairs of Georgia Order №01-56/6 dated June 6, 2020 on the Approval of the Rules and Procedures for Monitoring and Control over the fulfillment of the Recommendations developed by the Ministry of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia for Preventing the Spread of COVID-19 Infection Caused by the Novel Coronavirus (SARS-CoV-2) at Workplaces, Annex N 1, Article 1, Paragraph 2.

recommendations, with a goal to grant or decline permits to businesses for continuing operations, 88,731 joint activities were conducted as part of more stringent monitoring over the compliance with the Ministry of Health recommendations, by the Labor Conditions Inspection Department, the National Food Agency, the Environmental Supervision Department, sub-agency, the Revenue Service, municipal inspection offices in the regions and the Ministry of Internal Affairs of Georgia, among them, 67,275 awareness-raising activities.⁷⁵¹ As a result of monitoring, 11,817 entities obtained a permit to continue operations, 3,882 entities did not meet the afore-mentioned requirements, while 5,592 entities were found not ready for continuing operations. Moreover, 151 entities were penalized for the breach of the norms prescribed by the protocol. The given data indicate that the competent authorities in Georgia performed extensive oversight aimed at the protection of occupational safety norms at workplaces during the pandemic.

It is important to also note that the Constitutional Court of Georgia, subsequent to the entering amendments in the Law of Georgia on Public Health on May 22, 2020, reasoned on the constitutionality of delegation of the powers to regulate labor rights to the executive government pursuant to Article 45³(1) of the same Law (under the referenced provision, the government acquired powers to prescribe the rule of isolation and/or quarantine, and determine quarantine measures under this rule. The restriction of labor rights was envisaged as one of the quarantine measures) and deemed that it was unjustified to govern the matters regulated by the Organic Law (even if the Organic law itself refers to the option of the regulation of a specific topic by a law) under a law. The Constitutional Court clarified that regulating the matter in this manner is contrary to both the general function and purpose of the delegation of powers and the constitutional logic to govern a relevant specific topic under the organic legislation.⁷⁵²

14.3. The activities of the Ministry of Labor, Health and Social Affairs Inspection Department

In 2020, the Labor Conditions Inspection Department of the Ministry of Labor, Health and Social Affairs performed inspection of labor conditions based on the Organic Law of Georgia on Occupational Safety of considerably less entities (169 sites) as compared to the previous year.⁷⁵³ Although, it should be taken into account that pursuant to Article 2(2) of the Organic Law of Georgia on Occupational Safety, during the state of emergency the above-mentioned Law was not applicable to labor activities. Furthermore, the Labor Conditions Inspection Department was in charge of monitoring the fulfillment of the Ministry of Health recommendations for preventing the spread of COVID-19 infection at workplaces.⁷⁵⁴

⁷⁵¹ The Labor Inspectorate, LEPL, Letter N 09/318 dated February 16, 2021.

⁷⁵² Paata Diasamidze, Giorgi Chitidze, Edward Marikashvili and Lika Sajaia vs the Parliament of Georgia and the Government of Georgia, the Constitutional Court of Georgia Decision №1/1/1505,1515,1516,1529 dated 11.02.2021.

⁷⁵³ In 2019, the Labor Conditions Inspection Department inspected 558 entities for occupational safety, available at: <<https://bit.ly/2Plr4as>>[accessed 30.03.2021].

⁷⁵⁴ The Minister of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia Order №01-56/6 dated June 6, 2020 on the Approval of the Rules and Procedures for Monitoring and Control over the fulfillment of the recommendations developed by the Ministry of the Internally Displaced Persons from the

The increasing of the number of labor inspectors and the upgrade of material and technical resources of the Office was a positive development during the reporting period.⁷⁵⁵ Compared to prior years, the number of fatalities following workplace accidents has declined, although the facts of the breach of occupational safety norms was discovered at all inspected sites. Accordingly, the Labor Inspectorate, LEPL should work more intensively.

As for the facts of the breach of labor legislation (other than occupational safety norms) during the inspection of labor conditions, it should be noted that a fairly small number of sites were inspected as part of the limited mandate. Hence, the results may not be a representation of actual challenges in this field in Georgia.

14.3.1. The state of the compliance with the occupational safety norms

The violations of occupational safety norms were identified at all sites inspected by the Labor Inspectorate in 2020. It can be seen following the examination of the inspection documentation that at sites involving heavy, harmful or dangerous jobs the employers predominantly do not try to identify threats at workplaces and in working space, to assess and manage resultant risks, they do not provide trainings and instruction guidance, employers do not use personal protection gear/the cases of breach of the Technical Regulations on Safety Requirements for Working at Heights approved under the Government of Georgia Decree N 477 dated October 27, 2017 is frequent.

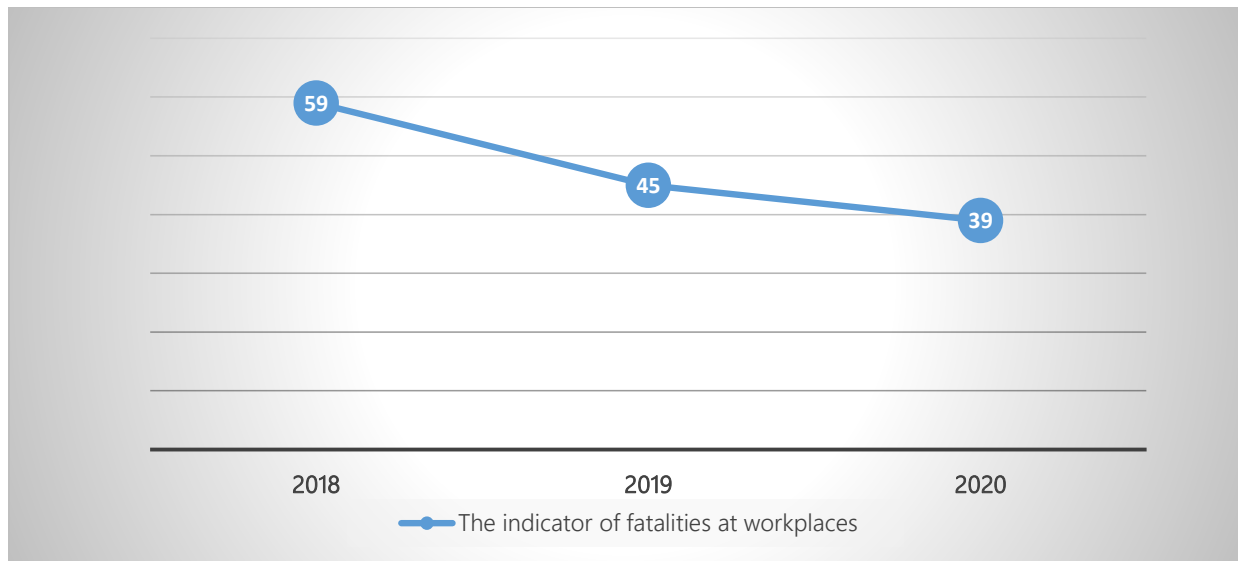
In 2020 there were 39 fatal occupational accidents and 249 occupational injuries. Out of the occupational accidents 2 are massive, 57 are serious and 192 are moderate. It is important to note that for the past two years following 2018, the indicator of fatalities at workplace is falling (there were 59 fatalities at workplace in 2018, and 45 ones in 2019)⁷⁵⁶; this can be linked to the establishment of the body in charge of oversight over the compliance with occupational safety norms⁷⁵⁷ or to the suspension of employment due to the pandemic.

Occupied Territories, Labor, Health and Social Affairs of Georgia for the Prevention of the Spread of COVID-19 infection caused by the novel coronavirus (SARS-CoV-2) at workplaces, Annex N 1, Article 1, Paragraph 2.

⁷⁵⁵ The Letter of the Ministry of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia N 01/902 dated January 22, 2021 and the Labor Inspectorate, LEPL Letter # 09/525 dated March 12, 2021. According to the information provided under the Labor Inspectorate, LEPL Letter #09/525 dated March 12, 2021, there are 112 positions of labor inspectors stipulated (of these, 26 under territorial offices) as of the time of receiving information, 54 labor Inspectors were employed.

⁷⁵⁶ See the Labor Conditions Inspection Department performance 2018-2019 reports, available at: < <https://bit.ly/2O52SPa> >[accessed 25.02.2021].

⁷⁵⁷ The Law of Georgia on Occupational Safety, Article 27, Paragraph 2.



The highest number of workplace injuries is found in the processing industry sector.⁷⁵⁸ According to the authority, for non-compliances identified during the inspection of the occupational safety norms, in all cases during the initial inspection the Labor Conditions Inspection Department used an administrative penalty – warning and prescribed a reasonable timeframe for rectifying the breaches. 8% of the entities inspected at repeated inspection were found to have fully rectified non-compliances, other entities were fined and were given deadline for fixing non-compliance. Over the past two years, along with other sanctions imposed on inspected entities, in 103 cases the decision on the suspension of the operations was made due to critical non-compliance.⁷⁵⁹

The afore-mentioned data indicate that employers fail to implement relevant preventive measures for occupational safety of employees and other individuals; hence, the Labor Inspectorate, LEPL should ramp up its inspections to maximally reduce expected hazards. The staffing of the Labor Inspectorate, LEPL, especially of its territorial bodies should be completed on a timely basis, to ensure effective performance.

14.3.2. Oversight over the state of the protection of labor rights

As a result of inspection conducted for the examination of the state of the labor rights in 2020, it has been identified that the most common violation was the non-payment of salaries to employees. Furthermore, 12% of breaches entail alteration of substantive provisions of labor contract without agreeing with an employee. As a result of monitoring conducted by the competent authority based on the consent of employers, the following cases were also detected: failure to pay workers for sick leave time, the infringement of the rule of taking leave, employees were not familiar with the content of contracts, and/or internal regulations of the organization, failure to pay for overtime hours worked.

⁷⁵⁸ Inquiry process into several accidents is ongoing and the referenced data may be modified, the Labor Inspectorate, LEPL Letter N 09/318 dated February 16, 2021.

⁷⁵⁹ Ibid.

Relevant recommendatory directions were issued to each inspected entity and only two companies acted upon those directions.⁷⁶⁰

There were frequent occasions of spreading information about breaching labor rights in the private sector due to the pandemic related restrictions in the country (*sending employees on unpaid leave an unspecified period, the cases of dismissal without justification and/or without compensation, the facts of unilaterally altering substantive provisions of a labor contract, assigning overtime work without remuneration, etc.*). Nevertheless, only 32 complaints have been registered for the facts of breach of labor rights at the Ministry of Labor, Health and Social Affairs Labor Conditions Inspection Department.⁷⁶¹ The low number of complaints might be due to limited mandate of the Labor Conditions Inspection Department of the Ministry of Labor, Health and Social Affairs. In particular, prior to January 1, 2021, the Department, the authority in charge of the protection of labor rights did not have the powers to monitor the protection of labor rights (except for the occupational safety norms) without the consent of employers and even in cases when it performed such monitoring, its authority was limited solely to issuing non-binding recommendations.

In 2020, the inspection authority inspected 14 companies (employers who agreed to monitoring). Of these, 6 companies are operating in the healthcare sector, 3 are operating in wholesale and retail trade sector, and 2 – construction and installation companies, and the remaining ones operate in the production and services sector. The Public Defender of Georgia hopes that following the amendments to the Labor Code of Georgia on September 29 to grant full mandate to the Labor Inspectorate⁷⁶² will be effectively used by the inspection authority. Furthermore, it is important to carry out intensive awareness raising campaigns to raise the awareness of workers about the mandate of the Labor Inspectorate, LEPL.

Recommendations

To the Labor Inspectorate, LEPL:

- Timely complete the staffing of the Labor Inspectorate, LEPL, including of its territorial offices;
- Conduct effective awareness- raising campaign directed at workers about the mandate in the area of the protection of labor rights applicable from January 1, 2021.

⁷⁶⁰ Ibid.

⁷⁶¹ Labor Inspectorate, LEPL, Letter N 09/318 dated February 16, 2021.

⁷⁶² The Organic Law of Georgia on the Amendments to the Organic Law of Georgia the Labor Code of Georgia, available at: < <https://bit.ly/3fs8JJJ> >[accessed 30.03.2021].

15. The right to healthcare

15.1. Introduction

The novel coronavirus has become a serious threat to humanity and countering it has turned into the topmost priority of the governments of every nation. In 2020, the pandemic further aggravated the situation in the healthcare sector in Georgia, and has created more obstacles in the realization of the right to healthcare.

Along with numerous difficulties resulting from COVID-19 entailing effective management of increased flows of patients, the provision of quality and timely medical services, provision of complete and detailed information to the public and implementation of effective preventive measures, the healthcare sector faced many other challenges. In particular, the inefficiency of the mechanisms for the protection of patients' rights remained a problem, during the pandemic the lack of highly qualified support medical staff became even more pressing. Despite a series of measures, access to quality and cheap medicines was still an issue, furthermore, a unified state program for medical treatment of cancer patients, including in the area of prevention and rehabilitation, was not developed.

15.2. The COVID-19 and the healthcare system

The pandemic is a heavy burden for the healthcare system of any state. Over the decades, health systems and social programs across the world have been weakened and overstrained due to inadequate investments and hence, the response to the pandemic, considering its severity and duration, was accompanied by a number of problems.⁷⁶³ Like many other countries, this has become a major challenge for the healthcare system of Georgia.

In spring, 2020, as a result of the measures implemented by the Government of Georgia⁷⁶⁴, the number of confirmed COVID-19 cases during spring and summer of 2020 was low, epidemiological situation was manageable and predictable; although, there was a spike in new cases from autumn, mortality rate increased as well.⁷⁶⁵

Despite implemented measures, at the initial stage of the pandemic a number of problems related to access to medicines as well as various medical services were identified. Specific state medical programs

⁷⁶³ The UN Committee on Economic, Social and Cultural Rights, available at: < <https://bit.ly/3sEywOK> > [accessed 31.03.2021].

⁷⁶⁴ The Interagency Coordination Council, as well as an operational headquarters for emergency management was founded; representatives of all relevant entities were involved in the operations of these bodies. Within the framework of the operational headquarters, the Office of the National Security Council was tasked with the design of a scheme for the management of the state of emergency at central and regional levels. Pursuant to the developed scheme, local headquarters were established in 10 regions of Georgia, available at: < <https://bit.ly/2QSfwlM> > [accessed 31.03.2021].

⁷⁶⁵ Available at: < <https://bit.ly/2PozX9x> > [accessed 31.03.2021].

had flaws. The Public Defender of Georgia made a statement⁷⁶⁶ about the above listed problems. There was a delay in the provision of healthcare services, resulting in the lack of required medical services (diagnostic tests, ventilators, personal protective equipment for medical staff, medical masks). Although, it is commendable that the government gradually eliminated these deficiencies.

During the pandemic the ease of search for disease related information (including, accurate and authentic statistical data), possibility of obtaining and disseminating such information is important. Furthermore, the accessibility of information should not result in breaching the right to confidentiality of personal health information. In this respect, the launch of the special informational government website www.StopCov.ge where various virus related information was posted was an significant step. Despite introducing this new portal, in the opinion of the Public Defender, it has been and is important to develop versatile, evidence based communication channels for informing residents more intensively about the methods for protecting themselves and their families during the pandemic. National, regional and local health communication specialists should focus on the creation of a flexible, viable informational system to ensure regular delivery of updated information about risk to the residents and target groups.

In late October, 2020, a centralized management mechanism, the so-called "Central Online Clinic" was established. Its goal was to monitor patients with COVID-19 diagnosis as well as their contacts/individuals in self-isolation at their homes; the online clinic is still operational. The duties of the clinic include distant oversight of patients, and taking immediate measures in case a patient's condition worsens.⁷⁶⁷ The Central Online Clinic receives information about cases from the 112 Center. As soon as this clinic started functioning, patients said that they encountered difficulties while making initial phone calls due to long waiting time. Although, according to the information provided to the Public Defender's Office by the organization, during that period average waiting time was 314 seconds (about 5 minutes).⁷⁶⁸ According to the standard⁷⁶⁹ applicable in 2020, the Emergency Situations Coordination and Urgent Assistance Center was required to respond immediately to the calls from 112, the Public Safety Command Center, a legal entity of public law of the Ministry of Internal Affairs and to transfer the callouts within no later than 2 minutes to a nearest available ambulance crew. Although, the time of arrival to an address (from the transfer of the callout to an ambulance crew to their arrival at a patient's location), according to a standard applicable in 2020, as well as currently, is not prescribed by the protocol and depends on the distance between the location of the crew and that of the patient. It should also be mentioned that by the end of 2020, when the daily indicator of detection of new infection cases was high throughout Georgia (except for the occupied territories) the time of the arrival of an ambulance at a COVID-infected/potentially

⁷⁶⁶ Available at: <<https://bit.ly/2XzsqFa>> [accessed 31.03.2021].

⁷⁶⁷ Available at: <<https://bit.ly/3m7O2nl>> [accessed 31.03.2021].

⁷⁶⁸ Public Safety Command Center, 112's Director's Order №2940656 dated November 11, 2020.

⁷⁶⁹ The Order N №12-65/მ dated July 13, 2020 on determining a work standard for contracted employees of the Medical Support and Calls Management Department's Management and Hospitalization Unit (Control Unit) of the Legal Entity of Public Law Emergency Situations Coordination and Urgent Assistance Center.

infected patient's location, according to the information provided to the PDO, varied by districts/by geographical availability and was on average 38 minutes.⁷⁷⁰

The government made a decision,⁷⁷¹ considering the aggravated epidemiological situation in the country due to the pandemic, to temporarily suspend state funding of specific medical services stipulated under the State Universal Healthcare Program, from November 10 2020 to March 1, 2021. The assessments of various international institutions on this matter are worthy of attention -

- "...COVID-19 has long-lasting impact on our health...], [...28 million elective surgeries across the globe may be cancelled during 12 weeks of peak disruption during the COVID-19 pandemic. Study indicates that each extra week of disruption is associated with 2.4 million cancellations. 38% of global cancer surgery has been postponed or cancelled. Backlog could take 45 weeks to clear. "Cancelling elective surgery at this scale will have substantial impact on patients and cumulative, potentially devastating consequences for health systems worldwide. Delaying time-sensitive elective operations, such as cancer or transplant surgery, may lead to deteriorating health, worsening quality of life, and unnecessary deaths. Around the world, the cancellation or postponement of routine procedures risks widening the gap in access to health services. Disadvantaged and marginalized people face worsening health inequalities as a result of the difficult choices made by hospitals in response to the pandemic...]."⁷⁷²

The afore-mentioned restrictions have resulted in limited affordability of often essential medical services, thus compromising the health of the population.

Along with the above-described problems during the pandemic, the cases of late hospitalization and treatment, in some cases -- fatalities during October-November, 2020 merit particular attention.⁷⁷³ The Public Defender deems that all such cases should be examined in a fast and effective manner and systemic recommendations should be developed about the improvement of the quality of management of COVID-19 cases based on the analysis of results. For the fulfillment of this objective, the formation of a Team of Experts⁷⁷⁴ last year, under the Order of the Minister of Health was an important event; the duties of the team entailed/entail clinical audit of COVID-19 infection cases and the development of methodology and recommendations for the improvement of the quality of management of new cases based on the results of the analysis. In the opinion of the Public Defender, developing guidance documents by this team is of critical importance for stopping the pandemic and for comprehensive management of the cases. Unfortunately, despite attempts, we were unable to obtain information about problems identified and

⁷⁷⁰ Emergency Situations Coordination and Urgent Assistance Center, LEPL Letter №12/3964 22.12.2020.

⁷⁷¹ The Government of Georgia Decree N 688 dated November 19, 2020 on the Amendments to the Government of Georgia Decree N 36 dated February 21, 2013 on the Measures for Moving to the Universal Healthcare.

⁷⁷² Available at: <<https://bit.ly/3e25WpW>> [accessed 31.03.2021].

⁷⁷³ Available at: <<https://bit.ly/3kHmq88>> [accessed 31.03.2021].

⁷⁷⁴ The Minister of Labor, Health and Social Affairs of Georgia Order № 01-482/მ dated September 24, 2020.

specific recommendations developed by this team.⁷⁷⁵ Considering major public interest towards this topic, it is important to timely share conclusions made by the team of experts with medical personnel as well as with the general public. The Public Defender made a statement about this topic on December 5, 2020.⁷⁷⁶

In addition to general recommendations by the afore-mentioned Commission and experts, the Public Defender is of the opinion that it is crucial for the Ministry to comprehensively look into whether there were cases of infringements on the part of medical staff in the course of the provision of medical services and follow up with relevant individual response on all those cases when the families of those who died of the novel coronavirus spoke about late hospitalization and delayed medical treatment of their family members. Moreover, considering particularly high public interest towards this topic, the Ministry should also inform the public about implemented measures and relevant outcomes.

At this stage the government should continue the implementation of fast and timely measures for stopping the pandemic considering recognized human rights principles and standards. Furthermore, current evidence indicates that the acceptability of COVID-19 vaccine in the world varies between 55% (Russia) and 90% (China)⁷⁷⁷, while in Georgia, according to the study implemented by WHO and UNICEF in December, acceptability of vaccination is 56% in case the vaccine will be accessible and recommended,⁷⁷⁸ which is a fairly low indicator. Thus, currently, along with preventative measures, the government should also carry out timely and effective activities for awareness raising and informing the public about vaccination.

15.3.Challenges in the primary healthcare during the pandemic

Back in 2019, a document about the role of the universal healthcare program for the improvement of access of population to medical services was developed with WHO support⁷⁷⁹. The provided recommendations envisaged scaling up of the provided medical services that entailed offering more preventative, human centered services and the enhancement of functional capacity of nurses in primary healthcare facilities. The conducted study has revealed that the lack of compliance control and motivating inconsistent payment affects the overall capacity of the system. Moreover, high out-of-pocket payments have had a disproportionate effect on the poorest population, giving rise to increased poverty and sometimes catastrophic healthcare costs. Against the background of considerable rise in the number of COVID-19 infected people⁷⁸⁰, better performance of the primary healthcare has become key. Despite a number of measures implemented by the state, among them, designing new protocols, training staff of

⁷⁷⁵ The Ministry of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia Letter №01/1862 10.02.2021.

⁷⁷⁶ The Statement of the Public Defender of Georgia, available at: <<https://bit.ly/3cA7Qgb>> [accessed 31.03.2021].

⁷⁷⁷ Lazarus, J.V., Ratzan, S.C., Palayew, A. *et al.* A global survey of potential acceptance of a COVID-19 vaccine. *Nat Med* (2020), available at: <<https://go.nature.com/3fuRaZl>> [accessed 31.03.2021].

⁷⁷⁸ The Government of Georgia Ordinance N 67 dated January 21, 2021 on the Approval of the National Plan for COVID-19 Vaccine Implementation in Georgia, 46.

⁷⁷⁹ Primary Healthcare in Georgia: 6 years from the start of the Universal Healthcare Program in Georgia, available at: <<https://bit.ly/3pEgJts>> [accessed 31.03.2021].

⁷⁸⁰ Available at: <<https://bit.ly/2NBiiub>> [accessed 31.03.2021].

primary healthcare facilities, reforming primary healthcare and the improvement of management, as well as enhancing well-functioning infrastructure and socio-economic conditions of personnel, remains a challenge. In the opinion of the Public Defender, it is important to meet immediate needs related to COVID-19 and at the same time bolster essential healthcare services.

15.4. Qualified medical support personnel

With the spread of the COVID-19 pandemic the need for qualified physicians and the lack of nurses has become prominent. In Georgia there are only 0.6 nurses per physician, while in European countries – 2 to 5 nurses. As a result, Georgian physicians are 3-5 times less productive compared to their European colleagues which means that they serve less patients.⁷⁸¹

According to the studies conducted in 2019, support medical personnel work for over 40 hours and their 84.6% receive less than GEL 500 salary, while 100% do not get paid for overtime work performed on working days or days off. There is no regulation about the level of difficulty of work and the workload of workers either at the private or the state level.⁷⁸² According to a new research, support personnel faced the same problems in 2020 like 2019,⁷⁸³ although the pandemic further aggravated their situation. During a pandemic and crisis nurses play significant role in public healthcare response, they provide direct (along with physicians) assistance to patients and reduce the risk of effect of infectious diseases. The experience of nurses and their satisfaction with working conditions is important for the quality of rendered medical services. While low number of nurses has negative impact on the healthcare system and medical services provided to patients.

To develop human resources of nurses and enhance their education, the National Council for the Development of Nursery has been established at the Ministry of Health; furthermore, the Nursery Development Strategy has been approved.⁷⁸⁴ Still, it should be noted that during 2020 the Council has not implemented any activities and it requires substantive update.

Hence, the implementation of evidence based policy in the direction of the human resources of nurses, ensuring equal access of the population to qualified and motivated nurses, enhancement of interagency cooperation for the development of human resources of nurses remains a challenge. The Public Defender deems that the Nursery Development National Council should become more active, furthermore, functional and working standards of nurses/medical assistants should be developed in a timely manner, a sustainable system for continuous professional development and professional regulation should be established.⁷⁸⁵

⁷⁸¹ Research – the Healthcare Sector in Georgia 2020, "Galt & Taggart" Available at: <<https://bit.ly/3jvXX52>> [accessed 31.03.2021].

⁷⁸² The Solidarity Network Study The Working Conditions of Nurses in Georgia, Tbilisi, 2019.

⁷⁸³ The Solidarity Network Study Minimum Wages of Nurses, Tbilisi, 2021.

⁷⁸⁴ The Government of Georgia Decree N 334 on the Approval of Nursery Development Strategy.

⁷⁸⁵ The Public Defender of Georgia, 2019 Parliamentary Report, Tbilisi, 2020, 282.

15.5. Patients' rights

Ensuring the quality of medical services and legal regulation of medical activity contributes to the enhancement of effectiveness of the healthcare system and raised confidence of patients.⁷⁸⁶ Patient's opinion and satisfaction is a criterion used for the assessment of the quality of provided service; it also presents a medical service from the viewpoint of a patient.

The Public Defender noted back in the 2017 report that there is a delay in the examination of citizens' applications at the Professional Development Council, furthermore, applicants are unable to participate in the process of review/examination of applications.⁷⁸⁷ The recommendation on rectifying the deficiencies was provided to the entity. The Professional Development Council has partially rectified the deficiency. In 2020 State Regulation Agency for Medical and Pharmaceutical Activities⁷⁸⁸ procured review services from the Tbilisi State Medical University, the inspection team monitored the fulfillment of the contract.⁷⁸⁹ Although, Tbilisi State Medical University, LEPL, was fined several times due to submitting incomplete conclusions or delayed submission thereof, and the delay in the review of applications and complaints remains a problem. The records management procedure within the Agency should enable the review of patients' applications/complaints based on high level protection of their rights and fast and objective resolution of cases.

15.6. Access to and the quality of medicines

Access to medicines is paramount for maintaining health or overcoming disease. Still, 2 billion individuals in the world have no access to basic medicines.⁷⁹⁰ High cost of medicines is among the reasons why poor individuals are unable to obtain necessary medicines. Notably, better access to medicines may save 10 million lives a year across the world.⁷⁹¹

According to the National Statistics Office of Georgia, prices have increased by 9.7 percent in the healthcare sector.⁷⁹² Based on the Public Defenders' recommendation, the Competition Agency, LEPL, was tasked to develop an annual action plan for detecting and monitoring of unlawful competition on the pharmaceutical market⁷⁹³. The plan envisaged the assessment of the competitive environment of the

⁷⁸⁶ Wilson L. and Goldschmidt P. Quality Management in Health Care. McGraw Hill Book Company, Sydney. 1995; 1-731; Fiscella K., Meldrum S. et al. Patient trust: is it related to patient-centered behavior of primary care physicians? J.Med.Care. 2004; 42(11):1049-1055.

⁷⁸⁷ The Public Defender of Georgia, 2017 Parliamentary Report, Tbilisi, 2018, 218.

⁷⁸⁸ The Regulation Agency for Medical and Pharmaceutical Activities provides organizational-technical support to the activities of the Professional Development Council.

⁷⁸⁹ State Procurement Contract №2020-12/ბ, February 10, 2020

⁷⁹⁰ Available at: < <https://bit.ly/3sDYWUI> > [accessed 31.03.2021].

⁷⁹¹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 11 August 2008, A/63/263, p.15.

⁷⁹² Available at: < <https://bit.ly/39wZ5Sa> > [accessed 31.03.2021].

⁷⁹³ The Parliament of Georgia Resolution №3148-სს on the Report of the Public Defender of Georgia about the Situation of the Human Rights and Freedoms in 2017 in Georgia.

pharmaceutical market in 2020. Moreover, an introduction of an electronic platform for monitoring the prices of pharmaceutical products was scheduled by the end of the year. Although, COVID-19 and ensuing circumstances affected the process of interactions with the donors and the technical process of the implementation of the platform and thus the deadline for the action plan implementation was extended to the end of 2021.⁷⁹⁴

According to the Public Defender, the delay in the assessment of competitive environment on the pharmaceutical market, in issuing relevant recommendations and in the launch of an electronic platform for monitoring prices of pharmaceutical products has negative impact on effective and timely measures for the regulation of the prices of medicines by the government.

From 2017 the government started the state program for the provision of medicines for chronic diseases.⁷⁹⁵ The review⁷⁹⁶ of the program performed by subject matter experts has revealed that the state program fails to ensure the access to quality, safe, effective and rationally selected medicines for beneficiaries. The recommendations from the compliance audit⁷⁹⁷ of the same program concern enhancing effectiveness of monitoring mechanisms in the procurement of medicines, logistical services and expenditures.

The quality, efficacy and safety of pharmaceutical products in the medical treatment process are the indicators that, along with other, equally important factors, determine the quality, duration of treatment, and ultimately, the quality of medical services. For years, the government has been taking steps to protect the pharmaceutical market from falsified, defective, spoilt, expired medicines as well as the medicines that are not authorized for the Georgian market.⁷⁹⁸ Steps have been taken for the introduction of basic standards of pharmaceutical products and active pharmaceutical ingredients. Starting from July 1, 2019, permit for local pharmaceutical manufacturing or permit for additional activities is granted only in case the company is found to be in conformity with Georgia national GMP (Good Manufacturing Practice) standard and based on the verification of compliance. Furthermore, the holder of pharmaceutical manufacturing permit is required to ensure manufacturing in compliance with the Georgia National GMP (Good Manufacturing Practice) international standard from January 1, 2022. The Public Defender deems that despite positive steps taken by the government in this direction, the full-fledged enforcement of the national GMP remains a challenge. The extension of the effective date of the standard several times

⁷⁹⁴ National Competition Agency, LEPL Letter 02/33 dated 02/02/2021.

⁷⁹⁵ The Government of Georgia Decree N 209 dated April 25, 2017 on the Amednemtns to the Government of Georgia Decree N 638 dated December 30, 2016 on the Approval of State Healthcare Programs for 2017.

⁷⁹⁶ Review of the State Program for the Provision of Medicines for the Treatment of Non-communicable (chronic) Diseases, 2020, available at <<https://bit.ly/3trlrv>> [accessed 31.03.2021].

⁷⁹⁷ State Audit Service, Audit Report for the State Program for the Provision of Medicines for the Treatment of Non-communicable Diseases, 2020, available at: <<https://bit.ly/3oVs1bw>> [accessed 31.03.2021].

⁷⁹⁸ The Government of Georgia Decree N 262, dated March 24, 2020, on the Approval of the 2020 Program for State Control of the Quality of Medicines”.

should be assessed negatively (this obligation was first postponed to January 1, 2018, and next, to January 1, 2022.)⁷⁹⁹

15.7. The rights of cancer patients

Oncological diseases represent significant challenge for the healthcare system. Throughout the EU, annually 3.5 million individuals are suffering from cancer, while 1.3 million die of this disease⁸⁰⁰, low and middle income countries account for over 70% of cancer deaths; they do not have sufficient resources for the prevention, diagnostics and medical treatment of cancer.

The provision for the needs of cancer patients in Georgia is attained via several state programs; their design and financing is different.⁸⁰¹ The increase of the amount of reimbursement for non-surgical treatment and treatment with cancer medicines under the universal healthcare program should be assessed positively, as part of which⁸⁰² annual amount subject to reimbursement for the treatment of cancer diseases (chemo, hormonal and radiation therapy) was increased by GEL 8,000. Furthermore, those using basic package, targeted package (socially vulnerable families with scores up to 70,000, teachers, people's artists, IDPs in compact settlements, children deprived of care, beneficiaries of shelters, etc.) and beneficiaries of veterans' package are eligible for services worth of GEL 20,000 instead of GEL 12,000. For the beneficiaries of age specific package (children 0-5 years, retirees, children with disabilities, people with pronounced disabilities, students) the reimbursable amount under the program was increased from GEL 15,000 to GEL 23,000.

Despite these changes, unfortunately, the government does not consider the Public Defender's recommendation and still has not adopted a unified state program for cancer diseases. This program and its effective management would substantially improve the treatment of and access to medicines for cancer patients (irrespective of the special status), and would also create opportunities for working on the prevention of cancer.⁸⁰³ Moreover, the matter of managing side effects and the funding of psychological services also are left beyond these specific programs.⁸⁰⁴ It should also be noted that these programs do not provide complete reimbursement for the needs of patients without a special status which, depending on financial capacity of beneficiaries, gives rise to unequal and different approach. The patients are

⁷⁹⁹ The Strategic Plan for the introduction of the Product Manufacturing National GMP (EC-GMP) standard was approved only in 2018 before the compulsory introduction of Georgia national GMP standard at local enterprises The Government of Georgia 2010 decision (Decree №349; 16.11.2010) on the effective date of January 1, 2016 for the compulsory move to the GMP Standard was postponed to January 1, 2018, and later, to January 1, 2022, for the same reason.

⁸⁰⁰ Europe's Beating Cancer Plan 2021, available at: <<https://bit.ly/3cW73a7>> [accessed 31.03.2021].

⁸⁰¹ State Universal Healthcare Program; referral service; early detection and screening of diseases; oncohematological services for children paliative care of incurable patients; programs funded from local self-gveronment budgets.

⁸⁰² The Government of Georgia Decree N 520 dated August 21, 2020 on the Amendments to the Government of Georgia Decree N 36 dated February 21, 2013 on the Measures for Moving to Universal Healthcare.

⁸⁰³ The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 283.

⁸⁰⁴ The Public Defender of Georgia 2018 Parliamentary Report, Tbilisi, 2019, 196.

compelled to find additional funds to be able to fill the gap between the sum funded under the program and the tariff of a medical facility.

15.8. Drug policy

The Public Defender has underscored several times in the parliamentary reports that it is important to replace the stringent and punitive drug policy with a care and medical treatment oriented approach⁸⁰⁵, although this has not been addressed yet.

On March 5, 2021, under the amendments to the Law on Drugs, Psychotropic Substances and Precursors and Narcological Assistance,⁸⁰⁶ small amounts were determined for 8 drug substances. The previous redaction of the Law did not stipulate small amounts for these drug substances, therefore, any smallest amount of such substances was the basis for criminal liability. In this respect, the adopted amendments are a step forward, although, they are insufficient. Because the law defined small amounts of drug substances based on a single dose of an irregular user, regular consumers would always be considered to have committed a criminal offense.

The Public Defender deems that the law-maker should change approach to these specific drug substances, as well as other drug substances and use a regular consumer's daily dose for defining small amount. Such in-depth change will enable us to replace stringent and punishment oriented drug policy by care and treatment oriented approach, while drug addicts should be regarded as patients, not criminal offenders.

It is worth noting that the State Anti-drug Strategy recognizes the need for human rights centered approach.⁸⁰⁷ In the context of determining the amounts of drug substances, this implies the change of the current formula to use a daily dose of regular users as a reference, instead of a single dose of an irregular consumer.

In the last year report, the Public Defender referred to the problematic practice of common courts in relation to a drug offence; in particular, the low standard of proof when delivering a judgement of guilty by court. In this respect, the decision of the Constitutional Court⁸⁰⁸ dated December 25, 2020 was highly significant during the reporting year. Under the mentioned decision the Constitutional Court recognized unconstitutional the provisions of the Criminal Procedure Code that allow for the delivery of a judgement of conviction based only on the evidences obtained based on intelligence. The Constitutional Court ruled that when assessing the lawfulness of search performed based on urgent necessity, the court should consider the situation as of the time of search without paying regard to the outcome of the search. The

⁸⁰⁵ The Public Defender of Georgia 2018 Parliamentary Report, Tbilisi, 2019, 199-201; The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 285 – 286.

⁸⁰⁶ The Law of Georgia on the Amendments to the Law of Georgia on Drugs, Psychotropic Substances and Precursors and Narcological Assistance, available at: <<https://bit.ly/3lIEF3r>> [accessed 16.03.2021].

⁸⁰⁷ State Anti-Drug Strategy. pg. 5. Available at: <<https://bit.ly/3lz17Gx>> [accessed 16.03.2021].

⁸⁰⁸ The Constitutional Court of Georgia Decision N2/2/1276 dated December 25, 2020 on the case Giorgi Keburia vs the Parliament of Georgia, available at: <<https://bit.ly/3bR4chO>> [accessed 16.03.2021].

Constitutional Court additionally clarified that law enforcement officers are required to verify the credibility of received intelligence. At the same time, there should be another fact or information that indicates to the validity of search, beyond the intelligence. The most important novelty introduced by the court with this decision is that it has made it mandatory that the search process itself and obtained evidence should be supported by other neutral evidences, whether a video recording of a search, testimony of a neutral individual who was present during this investigative measure, or another objective evidence. Otherwise, evidence obtained based on intelligence should not be admitted to a criminal case.⁸⁰⁹ The Public Defender welcomes this decision of the Constitutional Court since it is important for fair and objective investigation.

Furthermore, it is worth noting that in 2015 the Public Defender of Georgia lodged a constitutional claim (Registration N 697)⁸¹⁰ to the Constitutional Court of Georgia. The claim demanded recognizing those legal acts unconstitutional through which police officers are authorized to transfer an individual, against their will, to a forensic institution, for drug testing. The arguments were submitted to the Constitutional Court justifying the unconstitutionality of the current rule in light of fundamental human rights and freedoms. It should also be noted that drug testing limits an individual's freedom guaranteed under Article 18 of the Constitution of Georgia, as well as an individual's right not to give evidence against themselves, since biological material would be used as incriminating evidence against them. Unfortunately, although the court considered the claim on merit, as of December, 2020 it has not yet delivered a decision.

Over the past years the Public Defender supported the draft law authored by the National Drug Policy Platform of Georgia and initiated by the Members of the Parliament of Georgia (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) since it was very much in line with objectives laid down in Georgia's Anti-Drug Strategy. Previous year's Parliamentary reports included the Public Defender's proposal to the Parliament of Georgia concerning timely review and adoption of the draft law.⁸¹¹ Unfortunately, it can be found in the Parliament's February 18, 2021 Resolution⁸¹² that the mentioned draft law will not be reviewed by the Parliament of the 10th convocation (2020), since the Parliament did not deem the continuation of the review advisable. Thus, the process of reviewing this draft law at the Parliament has been concluded.

⁸⁰⁹ The Constitutional Court determined for the Parliament of Georgia timeframe of July 1, 2021 by which it has to pass legislative amendments that will ensure the confirmation that an illegal item obtained as a result of search was possessed by an accused person using other neutral evidences other than the testimony of a police officer involved in the search.

⁸¹⁰ The Constitutional claim of the Public Defender of Georgia on the constitutionality of the so-called "street drug testing", available at: < <https://bit.ly/38KdpGQ> > [accessed 16.03.2021].

⁸¹¹ The Public Defender of Georgia 2018 Parliamentary Report, pg. 201; The Public Defender of Georgia 2019 Parliamentary Report, 286.

⁸¹² The Parliament of Georgia Resolution about advisability of the continuation of the procedure of reviewing the draft laws submitted to the Parliament of Georgia of the previous convocation, available at: < <https://bit.ly/3tvKvSr> > [accessed 30.03.2021].

Proposals

To the Parliament of Georgia:

- Amend the Law of Georgia on Drugs, Psychotropic Substances and Precursors and Narcological Assistance and define small amounts of drugs based on a daily dose of a regular user, not based on a single dose of an irregular user;
- Initiate a draft law on fundamental reform of the drug policy that would be centered on care about drug users and would be focused on the development of medical services.

Recommendations

To the Government of Georgia:

- Implement consistent and effective measures to ensure unimpeded delivery of state healthcare programs (dialysis and kidney transplantation, TB management, provision of medicines for treating chronic diseases) and medical services;
- Develop a unified state program that will ensure timely detection of new cases of cancer, mitigation of the spread of cancer, accessibility of medical treatment for cancer patients.

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

- Raise public awareness about the spread of the COVID-19 virus and expected threats, as well as about the vaccination program and implement effective awareness raising and consultation measures;
- Publish information about the activities of the Team of Experts in charge of the clinical audit of infection caused by a novel coronavirus and about developed methodology/recommendations;
- Develop a clear and result oriented policy document that will set forth functional and working standards of support medical personnel;
- Improve the mechanisms for procurement, expending and control of medicines envisaged under the state programs and bringing in line with existing standards.

To the Regulation Agency for Medical and Pharmaceutical Activities:

- Develop new norms/standards for records management procedure that will stipulate the obligation to timely submit to the Professional Development Council comprehensive documentation for medical service quality assessment.

To the Competition Agency:

- Develop a report on the detection and monitoring of the facts of unlawful restriction of competition on the pharmaceutical market;
- Ensure the launch and full-fledged functioning of an electronic platform for monitoring prices on the pharmaceutical market.

16. The right to social protection

16.1. Introduction

Like previous years, the assessment of the effectiveness of the Targeted Social Assistance (TSA) Program, systematic monitoring and the development of a relevant methodology remains a principal challenge under the social security policy of Georgia. Hence, the recommendation in this area remains the same.

Furthermore, the problem of adequate access to food for disadvantaged population in the regions and the capital of Georgia persists.

During the reporting period the crisis resulting from the novel coronavirus was a particular challenge. A temporary cash assistance program was developed for the alleviation of negative social impact of the COVID-19 pandemic; this is regarded a positive development⁸¹³. Temporary assistance was provided to wage workers who had lost jobs during the crisis, as well as to self-employed individuals who were left without income. Although, the assistance did not encompass all vulnerable groups and self-employed individuals and/or those involved in service provision who failed to get registered for compensation by August 1, 2020 at a dedicated portal created for this purpose; they were left beyond the assistance. The same goes for the individuals who were unable to receive compensation during the first wave due to the afore-mentioned reason and after the end of the state of emergency in the country the economic activity they were engaged in at certain periodicity without tax accounting (e.g., copyright holders whose works were used for theater performance) was not restored.

Along with the afore-mentioned, vulnerable families who did not have gas supply due to living in villages or other reasons and were thus unable to consume natural gas were left beyond the government subsidies⁸¹⁴ envisaged for certain amount of consumed electricity and natural gas. Hence, the families who had consumed high amount of electricity went over the set limit and despite their needs, were unable to benefit from the state subsidy assistance.⁸¹⁵

16.2. The assessment of the effectiveness of the Targeted Social Assistance Program

Due to the economic crisis caused by the pandemic, a concept “the new poor” emerged in the world.⁸¹⁶ These are the middle class representatives who found themselves in a vulnerable state for the first time. Parallel to this, as a result of lost income and sustenance, the dependency of poor families on others increased further. Destitute families have less capacity to cope with this crisis and minimize its impact.⁸¹⁷

⁸¹³ The Government of Georgia Decree N 286 on the Approval of the Targeted State Program for the Alleviation of the Damage from the COVID-19 infection caused by the novel coronavirus (SARS-COV-2), 4/05/2020.

⁸¹⁴ The Government of Georgia Decree N 220 dated April 3, 2020 on the Approval of the Rule and Conditions for Subsidizing Utility Costs.

⁸¹⁵ E.g., compact settlements of IDPs.

⁸¹⁶ Available at: <<https://bit.ly/3dgRSs4>> [accessed 14.02.2020].

⁸¹⁷ United Nations Children’s Fund (UNICEF) Report Vulnerable Children & Risks in COVID times, May, 2020.

The number of families registered in the TSA program database and the recipients of subsistence allowance increased considerably compared to previous years. In particular, as of December, 2020, almost 100,000 more persons benefited from subsistence allowance compared to the previous year.⁸¹⁸ Respectively, the share of the beneficiaries of subsistence allowance relative to total population increased from 11.5% to 14.1%. Moreover, the number of residents willing to participate in the program increased by 83,875, although only 51% of those are the TSA beneficiaries. Unfortunately, it is evident that the number of families willing to receive assistance is considerably higher than the capacity of the program.

It should be noted that during the pandemic crisis assistance appointed following the assessment of socioeconomic condition of families, and in general, regular verification of families was not stopped, respectively, the subsistence allowance of families continued automatically. Furthermore, the assistance amount for children under the age of 16 was increased.⁸¹⁹

According to the study conducted by UNICEF,⁸²⁰ the analysis has showcased that in the long run the TSA is the most effective mechanism for the provision of regular assistance to the families affected by the crisis. During the ongoing crisis, as part of the disbursement of cash transfers under the TSA Program a target group that is poorer than the rest of the population was identified. This was managed without additional resources and administration efforts, simply by utilizing the information available under the program.

Although, the TSA does not have effective administration procedures. In particular, the Public Defender has been emphasizing the problem of the delay in appointing subsistence allowance for years.⁸²¹ The period from the application by a family to getting enrolled in the system and ultimately the transfer of allowance ranges between 3-4 months. The Social Services Agency, LEPL failed to present a justified position about the reason why amount is not transferred to families over the additional two months after the score is assigned following the completion of socio-economic assessment and when they thereby become eligible for subsistence allowance.⁸²² This further aggravates the situation of beneficiaries, since except for the allowance itself, additional in-kind benefits are envisaged for the beneficiaries of the TSA (e.g., soup kitchens, certain medicines, student grants, firewood, utility subsidies) and services (e.g., insurance, subsidies for using transport) that are tied to the receiving of subsistence allowance. This challenge is especially relevant during the ongoing pandemic. In particular, during the first wave of the disbursement of transfers, families who applied for the targeted social assistance during the ongoing

⁸¹⁸ In 2019 427,383 individuals benefited from subsistence allowance, while in 2020 524,598 individuals. Information is available on the Social Services Agency, LEPL website: < <https://bit.ly/39heBBE> > [14.02.2021].

⁸¹⁹ Families with scores between 65,000-100,000 receive GEL 50 for each child under the age of 16. With the changes, all the families with 3 or more children who have less than 100,001 scores will get GEL 100.00 / month.

⁸²⁰ UNICEF Report Georgia Social Protection System Readiness Assessment, May, 2020.

⁸²¹ The Public Defender of Georgia 2017 Parliamentary Report, Tbilisi, 2018, 230.

⁸²² "A poor family becomes eligible for subsistence allowance in the second month after the assignment of a rating score (when calculating months, a month after a rating score is assigned is regarded the first month)", the Government of Georgia Decree N 145 on the Social Assistance, Article 5, 28/07/2006.

crisis and were assigned relevant⁸²³ rating scores, received assistance only for the remaining period instead of full 6 months⁸²⁴, since the procedures for getting into the system took several months.

16.3. Access to adequate food/access to soup kitchens

The Public Defender has long been referring to the challenges in the area of access to soup kitchen in Georgia.⁸²⁵ The Public Defender holds that the majority of municipalities have not studied the needs related to the access to food for the residents and families within their territories. Therefore, there are no allocations in the budget for adequate food, leaving considerable number of the residents without this service.

This problem became more pressing during the pandemic. During the first wave of the pandemic municipalities stopped operations of soup kitchens. The food was delivered to beneficiary addresses. During the second wave of the pandemic the PDO solicited information about access to food from the municipalities⁸²⁶ where transport movement had been suspended under the Governmental decree. It was established from the obtained information that some municipalities stopped services at soup kitchens and provided ready/non-perishable food to homes. In one of the municipalities that serves on average 400 beneficiaries, beneficiaries received food through the take away while the transport movement was suspended in the city. Furthermore, in some municipalities individuals registered at soup kitchens get food via authorized representatives of such families. As for the individuals with movement related needs, food was delivered to their homes based on filed applications. It should be noted that in some municipalities only those living in urban areas were able to use the soup kitchen services. Respectively, such municipalities failed to provide food to beneficiaries throughout their municipalities.

Therefore, it was identified that municipalities do not have uniform approach and rules for using soup kitchens. In some municipalities where transport movement was restricted during the pandemic beneficiaries got food by taking it away from soup kitchens, which was an obstacle for them. Moreover, application for food and ensuring transport takes certain time which causes delay in the delivery of food to beneficiaries.

The number of individuals who were willing to benefit from the soup kitchen services was high even before the pandemic; these individuals are enrolled in additional lists and are unable to benefit from the program. During the pandemic, access to soup kitchens became complicated even for those in the main lists. Hence, it is necessary to assess the needs related to access to food.

⁸²³ Families with a rating score between 65,000 and 100,001 registered in the database of socially vulnerable families.

⁸²⁴ Under the Government of Georgia Decree on the Approval of the Targeted State Program for the Alleviation of the Damages from COVID-19 infection caused by the novel coronavirus (SARS-COV-2), compensation for such families was determined for 6 months from January, 2021.

⁸²⁵ The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 292.

⁸²⁶ Tbilisi, Kutaisi, Rustavi, Gori, Telavi, Zugdidi, Batumi, Poti.

Recommendations

To the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Protection of Georgia:

- Amend relevant acts to reduce the timeframes for appointing subsistence allowance under the TSA Program;
- Develop a regulatory act on updating the TSA program and periodic assessment of its effectiveness.

To local municipalities:

- Examine the needs in their municipalities related to access to food, among them, in respect of territorial accessibility throughout the municipality and collect statistical data (develop a document for assessing the needs related to access to food). Based on this information, use all available mechanisms to increase relevant budget and to secure additional funds. Furthermore, when designing lists of soup kitchen beneficiaries, rely on the needs of their families, rather than the date of registration of beneficiaries; amend relevant acts to ensure this;
- For better administration of access to soup kitchens during the pandemic, develop the rules for safe delivery and take away of food based on municipality-specific needs.

17. The Right to Adequate Housing

17.1. Introduction

The dire situation in the realization of the right to adequate housing in the country is primarily resulting from the fact that this issue has not been prioritized by the government and due to insufficient efforts towards resolving the problems. It is important to note that the fulfilment of the commitments related to the right to adequate housing was among the goals in the National Human Rights Strategy (2014-2020), although even after 6 years, none of the objectives stipulated in the document have been achieved.⁸²⁷ Moreover, none of the government human rights plans envisaged any measures for the fulfilment of the objectives set out in the Human Rights Strategy. Hence, like prior years, the government does not have a government strategy and relevant action plan on homeless individuals, there is no comprehensive legal definition of a homeless person and framework legislation necessary for the realization of the right to adequate housing. The government does not process information to look into the factors causing homelessness in the country and to gauge the scale of homelessness; consequently, the government does not have research-based policy on the prevention of homelessness. There is no unified database, and in some municipalities – there are no local databases of homeless persons, budgetary and infrastructure resources are limited, there are no support programs for individuals accommodated in shelters and residing in social housing, while programs in specific municipalities are ineffective and cannot ensure the improvement of socio-economic situation of beneficiaries.

17.2. Overview of state policy

In 2020, the Thematic Inquiry Group of the Parliament of Georgia Regional Policy and Self-government Committee issued a conclusion about the Situation of the Right to Adequate Housing. The document provides an assessment of situation with ensuring adequate housing, identifies key challenges related to the enjoyment of the right and offers specific recommendations for the improvement of the state of the rights of homeless persons.⁸²⁸ It should be noted that the content of the recommendations is in line with the problems identified by the Public Defender's Office of Georgia following years of activities focused on the protection of the rights of homeless individuals.⁸²⁹ It should also be mentioned that no measures have been implemented for the advancement of the rights of homeless individuals after the results of the study were shared with the Parliament of Georgia and presented to the Government of Georgia. Raising the profile of the rights of homeless individuals by the Parliament of Georgia Regional Policy and Self-government Committee is a positive development, although the Parliamentary authority should exercise

⁸²⁷ Article 21, The Government of Georgia Decree N 2315IIIb dated April 30, 2014, on the approval of the National Human Rights Strategy of Georgia for 2014-2020.

⁸²⁸ Available at: <<https://bit.ly/3tMmSFp>> [accessed 23.03.2021].

⁸²⁹ The Office of the Public Defender presented a report for the Committee inquiry and was actively involved in working meetings.

effective oversight over the fulfilment of the recommendations. The Public Defender of Georgia hopes that the Executive Government will not disregard the results of the study and will implement specific measures to resolve the problems.

The failure to meet the commitments related to designing the policy document and action plan for overcoming the problem of homelessness in the country as part of the Open Government Georgia 2018-2019 Action Plan should be assessed extremely negatively.⁸³⁰ The deadline for the submission of a relevant draft document by the working group formed within the Ministry of the Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to the Interagency Government Commission⁸³¹ was December, 2020, although the group failed to submit the document. In the 2019 Report the Public Defender emphasized that the activities carried out by the Commission and the working group are insufficient and that it is necessary to intensify work.⁸³² Although, unfortunately, in 2020 the working group has not convened at all.

The Recommendation of the UN Human Rights Council to Georgia addresses the necessity of creating a regulatory framework for supporting the right to adequate housing, via the housing strategy and action plan.⁸³³ Due to the absence of the mentioned policy documents homeless individuals are left beyond state care, which is a major violation of the right to adequate housing.

17.3. The realization of the right to adequate housing during the pandemic

Homeless individuals are among especially vulnerable groups of the society and the provision of adequate housing to them during the pandemic has become of vital importance. Individuals living in street are particularly disadvantaged, since they are deprived of the possibility to follow the requirements set forth by the government for avoiding infection (e.g., stay at home, move into self-isolation, follow sanitary and hygiene requirements, etc.) which raises the risk of contracting the COVID-19. Another vulnerable group of homeless persons is those living in overcrowded and non-formal housing/settlements (in a wagon, in a car, garage, basement, those residing arbitrarily in public and private buildings and structures, in Batumi the so-called “Cardboard City” territory, etc.) who are fully or partially deprived of the possibility to access basic communications, including water. Moreover, some of the homeless individuals have developed chronic diseases as a result of living in inadequate environment, therefore, in case of infection with the virus, their life and health is under particular threat.

⁸³⁰ The Government of Georgia Decree N 537 dated November 12, 2018 on the Approval of the Open Government Georgia 2018-2019 Action Plan, Commitment N 14.

⁸³¹ The Government of Georgia Decree N 190 dated April 12, 2019, on Forming the Government Commission to facilitate the Development of the Housing Policy Document and its respective Action Plan and on the Approval of the Commission Statute.

⁸³² The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 294-300.

⁸³³ Recommendations N 148/160 to Georgia following the review of the Georgia National Report about the Situation of the Protection of Human Rights in Georgia as part of the UN Human Rights Council Universal Periodic Review Cycle 3.

It should be stated from the outset temporary shelters for the homeless living in a street are not available in any other municipalities other than Tbilisi and Batumi. According to the Public Defender, usually, the funds allocated in municipal budgets for this purpose, predominantly envisaging the payment of apartment rental, are insufficient and do not cover homeless individuals' groups entirely, while in some municipalities they do not have such targeted programs altogether.⁸³⁴

For the provision of shelter to various homeless people's groups during the COVID-19 pandemic, the Public Defender of Georgia made a public statement and addressed local and central authorities with urgent recommendations.⁸³⁵ The Tbilisi Municipality City Hall partially factored in the recommendations and accommodated homeless people during the pandemic in Lilo shelter on an exceptional basis⁸³⁶ (e.g., individuals who were not registered in Tbilisi). Although, access to shelter services was restricted for homeless individuals who, due to physical or mental health condition were unable to take care of themselves and thus they were left beyond state care. Moreover, due to the absence of a crisis unit and quarantine medical unit at the Lilo shelter it was impossible to accommodate the beneficiaries with drunkenness and those suffering from communicable diseases at the Lilo shelter, while having in place such units are among minimum requirements under the standards of operation of temporary shelters.⁸³⁷

As for the Batumi Municipality, according to the Overnight Shelter regulation, beneficiaries are required to leave the institution during day time, from 10:00 to 19:00 pm. Although, during the pandemic this rule did not apply and homeless persons were allowed to stay at the shelter without any restriction. For examining the situation of the rights of shelter beneficiaries, the Public Defender of Georgia visited both institutions.⁸³⁸ It was revealed as a result of the visit that the Batumi shelter infrastructure fails to meet minimal standards, the building is outdated and requires immediate rehabilitation. The information obtained by the Public Defender's Office shows that rehabilitation works did not take place in 2020, while in 2021 there is a plan to upgrade only small portion of the furniture and equipment, which is not sufficient.⁸³⁹ Similar to the Tbilisi Municipality, there is no crisis unit for individuals under drunkenness at the Batumi night shelter either.⁸⁴⁰

The developed situation has necessitated the support of local authorities by the central government. In the Public Defender's Reports to the Parliament it was indicated numerous times that the problem related

⁸³⁴ The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 294-300.

⁸³⁵ Available at: <<https://bit.ly/37eHCwE>> [accessed 15.02.2021].

⁸³⁶ Tbilisi Municipality Government October 2, 2018 Decree №18.813.1186 Annex №1 Article 2(2).

⁸³⁷ Pursuant to the Government of Georgia February 7, 2014 Decree N131 Annex 1 Article 3(7), "there should be a bedroom, a stockroom, a reception unit, a WC, a laundry, canteen, crisis unit and medical unit (with a quarantine) at a temporary shelter".

⁸³⁸ Available at: <<https://bit.ly/3qrVviW>> [accessed 30.03.2021]; <<https://bit.ly/3u0B8LN>> [accessed 30.03.2021].

⁸³⁹ Batumi Social Services Agency, NCLE Letter №24-147 dated 03.12.2020.

⁸⁴⁰ Ibid.

to the realization of the right to housing, considering the scale of the issue, cannot be resolved only with the resources and endeavours of local authorities alone and active involvement of the central government is inevitable in this process.⁸⁴¹ Nevertheless, the right to adequate housing appeared to be less of a priority for the Government of Georgia even during the pandemic. According to the report of the UN Special Rapporteur on the right to adequate housing, the recommendation on the assessment of the impact of COVID-19 on various homeless groups and the collection of detailed information should be implemented on a priority basis, as soon as possible.⁸⁴² In turn, during the pandemic specific measures focused on the needs of homeless individuals can be determined only in the presence of statistical data. Unfortunately, no steps have been taken in 2020 for the assessment of the effect of COVID-19 on the right to adequate housing and on homeless persons and for the collection of statistical data. Furthermore, the socio-economic support programs approved by the government for the alleviation of damage from COVID-19 did not envisage any measures for ensuring shelter or adequate living conditions specifically for homeless individuals.⁸⁴³

Given the currency of the matter, one of the recommendations of the UN Special Rapporteur on the right to adequate housing concerns the provision of water, WCs, personal items for maintaining sanitary-hygiene conditions and protection against COVID-19 of homeless individuals in informal settlements.⁸⁴⁴ Unfortunately, during the pandemic the present issue was left beyond the agenda and measures have not been taken for the improvement of living conditions of the mentioned individuals and for preventing infection with COVID-19.

Parallel to the challenges addressed above, a positive measure carried out by the state for the prevention of homelessness should be assessed positively; it is related to the moratorium on the eviction until the pandemic is over.⁸⁴⁵

Hence, for full-fledged realization of the right to adequate housing for homeless individuals, it is of principled importance for the government to prioritize the matter, process information and make maximum mobilization of resources available in the country for meeting commitments under national and international legislation.

⁸⁴¹ The Public Defender of Georgia 2017 Parliamentary Report, Tbilisi, 2018, 324-239.

⁸⁴² COVID-19 and the right to adequate housing: impacts and the way forward UN Special Rapporteur on the right to adequate housing, July 27, 2020, available at: <<https://bit.ly/3sDxUfZ>> [accessed 16.02.2021].

⁸⁴³ The Government of Georgia Decree N 286 dated May 4, 2020.

⁸⁴⁴ Protecting Residents of informal settlements, UN Special Rapporteur on the right to adequate housing, April 23, 2020, available at: <<https://bit.ly/37BwMRV>> [accessed: 16.02.2021].

⁸⁴⁵ The Minister of Justice of Georgia July 15, 2020 Decree N 582 Article 8.

17.4. The situation of the rights of homeless individuals in the regions

With respect to the realization of the right to adequate housing, one of the fundamental challenges is the absence of a comprehensive legal definition of a homeless person. This problem is due to two reasons, specifically, vagueness of the existing definition⁸⁴⁶ and deeming only those without shelter as homeless⁸⁴⁷; this is contrary to the essence of the right to adequate housing.⁸⁴⁸ Given this situation, 16 municipalities⁸⁴⁹, in response to the needs of citizens for shelter, approved the instructions for the registration of homeless persons and the provision of a shelter. The efforts of municipalities should be assessed positively, although it is important to also focus on fundamental deficiencies involved in the enforcement of the listed rules in practice. Furthermore, another problem is that other municipalities have not approved the above-mentioned rule and they are not registering homeless persons.

It should firstly be mentioned that the criteria of homelessness vary municipality by municipality, which causes a non-uniform approach, exclusion of various groups of homeless persons from the definition and the incompleteness of local databases.⁸⁵⁰ This situation is certainly due to general/vague and narrow definition of a homeless person at the national level and since in case of legal definition that is precise and is based on international standards, municipalities would be required to consider the framework concept set forth under the unified definition.

Moreover, even among the municipalities where the instructions for the registration of homeless persons and the provision of shelter have been approved, Kutaisi and Martvili municipalities are building social housing for families, while Zugdidi, Mestia and Gori municipalities have the housing purchase programs. In some municipalities,⁸⁵¹ they have only an apartment rental funding program which resolves the problem only for a certain period and is not capable of ultimate elimination of homelessness.⁸⁵² Moreover, critical lack of resources directed at homeless persons is a significant problem in the municipalities. For instance, in Samtredia municipality, up to 200 families are registered as homeless, and GEL 6,000 was allocated in 2020 for the apartment rental program for the provision of shelter to them, this is on average

⁸⁴⁶ The Law of Georgia on Social Assistance, Article 4 (p).

⁸⁴⁷ The Government of Georgia February 7, 2014 Decree N 131 Annex 1 Article 2(2).

⁸⁴⁸ "The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity" the Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 4.

⁸⁴⁹ Tbilisi, Kutaisi, Samtredia, Kharagauli, Mestia, Khoni, Vani, Rustavi, Ambrolauri, Gori, Zugdidi, Tetritskaro, Martvili, Ozurgeti, Senaki and Sagarejo municipalities.

⁸⁵⁰ Broad analysis about the mentioned topic is provided in the policy document about The concept of a homeless person and criteria to qualify as homeless, Human Rights Teaching and Monitoring Center, Tbilisi, 2020.

⁸⁵¹ Tbilisi, Tetritskaro, Ozurgeti, Samtredia, Senaki, Ambrolauri, Kharagauli, Vani municipalities; Khoni, Rustavi and Sagarejo municipalities have not provided information.

⁸⁵² The Public Defender of Georgia 2018 Parliamentary Report, Tbilisi, 2019, 208-211.

GEL 30 per family.⁸⁵³ Out of 170 families registered as homeless in Gori Municipality⁸⁵⁴ 68, while out of 251 families registered as homeless in Kutaisi municipality⁸⁵⁵ 181 are waiting for the social housing space provision. At a social housing in Tbilisi Orkhevi settlement there are 5 free spaces while out of 385 families registered homeless in the capital 240 still have not received social housing space.⁸⁵⁶ Moreover, no measures have been carried out to find location for new social housing and for their construction in 2020, and works in this direction are not considered in 2021 Tbilisi Municipality budget either.⁸⁵⁷

In Kutaisi and Tbilisi, additionally there is a problem of the fitness of infrastructure designated for homeless families for living. The social housing building in Kutaisi Nikea settlement used to house a communications office and this building, according to compliance audit report, despite repair works, fails to meet the functions of a residential space and adequate living conditions are not ensured for its residents.⁸⁵⁸ As for the building in Tbilisi Orkhevi settlement, according to the research Life in Social Housing, major problem is that of isolation, in particular, the set-up of internal walls and the corridor system in a manner as to ensure the protection of residents from incessant household noise.⁸⁵⁹ Noise disrupts the study of children, personal life of families and often becomes the cause of conflict between families, while it affects the possibility of rest for the elderly and individuals with various physical and mental health needs and thus has negative effect on their health.⁸⁶⁰ Hence, the existing condition of Tbilisi and Kutaisi social housing fails to offer adequate and dignified conditions of living for its residents. Moreover, the absence of social-economic support programs for the beneficiaries (development of professional skills/training/development, support with employment, etc.) renders their integration in the society impossible and keeps them in the situation of dependency on state support for an indefinite period.

In case of Tbilisi municipality, high rate of applications for homeless registration and the provision of shelter and the problem of delay in the review of applications has been identified as an additional problem. Currently, 2,062 families and 662 individuals are waiting for the review of their applications by the Tbilisi Municipality City Hall Committee on the Registration of Homeless individuals and the Provision of Shelter.⁸⁶¹ This situation is due to the fact that in 2020 the Commission held only two sessions and during the pandemic they did not utilize the mechanism for holding remote sessions.⁸⁶² Pursuant to

⁸⁵³ Samtredia Municipality Town Hall 22.02.2021 Letter N37/914.

⁸⁵⁴ Gori municipality Town Hall 12.03.2021 Letter N20-2021071102.

⁸⁵⁵ Kutaisi Municipality City Hall 19.02.2021 Letter №44-4421050257.

⁸⁵⁶ Tbilisi Municipality City Hall 119.02.2021 Letter №15-0121050372.

⁸⁵⁷ Ibid.

⁸⁵⁸ The Audit Service of Georgia Compliance Audit Report, Tbilisi, 2019.

⁸⁵⁹ Open Society Georgia Foundation, 2020 Available at: < <https://bit.ly/2NRljab> > [accessed: 04.03.2021].

⁸⁶⁰ Ibid.

⁸⁶¹ Tbilisi Municipality City Hall 19.02.2021 Letter №15-0121050372.

⁸⁶² Ibid.

legislation, session is held on an as needed basis, but at least once every three months.⁸⁶³ The Public Defender is of the opinion that in case of increasing demand for accessing the right the need for more frequent sessions implied by the legislator will arise. It is extremely important that the intensity of the work of the commission to respond to the dynamics of the demand for the enjoyment of this right.

17.5. About the dismantlement of illegal buildings and structures in Tbilisi, Africa Settlement

On December 15, 2020 the footages showing the process dismantling of 12 unauthorized residential buildings and structures in Tbilisi, Africa settlement were disseminated in mass media.⁸⁶⁴ The interest from the public was high about the lawfulness of the activities of the Tbilisi City Hall and whether the owners of the destroyed buildings were under the threat of remaining homeless. In this case the focus of the Public Defender's assessment is not related to the right of property, rather, whether, parallel to the protection of the state property by the Tbilisi City Hall, how much the right to shelter was protected. Importantly, the Public Defender of Georgia responded to the afore-mentioned fact on the same day and emphasized that the local authorities were required to implement activities for the provision of shelter after the assessment of risks of remaining homeless and in case of identification of such need.⁸⁶⁵

On December 16, 2020, the Tbilisi Mayor stated that the families had not lived in any of the demolished buildings and some of them were not homeless since they owned registered movable and immovable property.⁸⁶⁶ According to the same statement, owners of the buildings subjected to dismantling included those living below the poverty line as well.⁸⁶⁷ It is noteworthy that despite the demand, Tbilisi Municipality City Hall has not provided to the Public Defender information/documentation that would prove the fact of owning of movable and immovable property by some of these citizens, as well as that citizens did not live in the buildings subjected to dismantling.⁸⁶⁸ Moreover, the matter of measures carried out for provision of shelter to socially vulnerable families remained absolutely vague, since information about this topic is absent in the above-mentioned statement. The Public Defender of Georgia has not received explanations and clarifications from the Municipal Inspection on this topic either.⁸⁶⁹

The fact of the refusal to provide information has, firstly, raised a question about the validity of the information referenced in the above-mentioned statement of the Tbilisi Mayor's Office, and secondly,

⁸⁶³ Tbilisi Municipality Government December 9, 2015 N49.03.1384 Ordinance Article 5(1), on Establishing the Tbilisi Municipality City Hall Commission for Registration of Homeless Individuals and the Provision of Shelter Space and on the Approval of its Regulation.

⁸⁶⁴ Available at: < <https://bit.ly/3qgrG3U> > [accessed: 04.03.2021].

⁸⁶⁵ Available at: < <https://bit.ly/3riNA7P> > [accessed: 04.03.2021].

⁸⁶⁶ Available at: < <http://tbilisi.gov.ge/news/10940> > [accessed: 04.03.2021].

⁸⁶⁷ Ibid.

⁸⁶⁸ Tbilisi City Municipality Mayor's Office Municipal Inspection Letter №17-01210614168 dated 02.03.2021.

⁸⁶⁹ Ibid.

gave rise to a justified assumption that Tbilisi City Hall examined the matter of dismantling unauthorized buildings and structures only in the context of state property and did not consider the need for the realization of the right to adequate housing in this process. The same assumption is reinforced by information obtained from Samgori district Executive Government where we can establish that the district government was not involved in these processes and they did not carry out any practical measures for examining the fact of homelessness of the owners of buildings and provision of shelter.⁸⁷⁰

The dismantling of unauthorized buildings and structures is among statutory powers of the executive government and is aimed at the protection of state property. It should also be stressed that the dismantlement of unauthorized residential buildings and structures implies the risk of leaving individual/family homeless, while the municipality is also in charge of registration of these groups and the provision of shelter.⁸⁷¹ Hence, meeting legitimate interest of the state should not be achieved at the expense of neglecting the rights of a disadvantaged group. The Public Defender of Georgia specifically notes that parallel to the planning of dismantlement of unauthorized buildings and structures, the measures involved in the commitment related to ensuring right to adequate housing should be implemented proactively.

Proposals

To the Parliament of Georgia

- Oversee the implementation of recommendations provided in the conclusion of the Parliament of Georgia Regional Policy and Self-government Committee Thematic Inquiry Group on the Situation of the Protection of the Right to Adequate Housing;
- Provide a legal definition of a homeless person based on international standards and best practices.

Recommendations

To the Government of Georgia:

- Ensure the fulfilment of commitments under the Human Rights National Strategy (2014-2020) for the realization of the right to adequate housing;
- Ensure the fulfilment of the commitment related to the development of the housing strategy and its action plan based on the Open Government Georgia 2018-2019 Action Plan;

⁸⁷⁰ Samgori District Executive Government Letter №37-01203652420 dated 30.12.2020.

⁸⁷¹ The Law of Georgia on Social Assistance, Article 18(b) and the Local Self-government Code Article 16(2)(u).

- Envisage the provision of adequate residential space to homeless persons throughout the country as one of the directions of the socio-economic support measures adopted in 2021 for the alleviation of the crisis resulting from COVID-19.

To the Tbilisi Municipality City Assembly and the Mayor:

- Allocate funds in the local budget to put in place a crisis unit and medical unit (quarantine) in Lilo shelter and carry out measures necessary for the procurement of services, to ensure the conformity with minimum standards of temporary shelter operations;
- Allocate funds in the local budget for conducting relevant rehabilitation works and carry out necessary activities for the procurement of service to ensure dignified living conditions of beneficiaries at the social housing in Orkhevi settlement;
- Designate the area in the capital city for setting up a new social housing, allocate funds in the local budget for the same objective.

To Kutaisi Municipality City Assembly and the Mayor

- To ensure dignified living conditions of beneficiaries at the social housing in the Nikea settlement, allocate funds in the local budget for conducting relevant rehabilitation works and carry out measures necessary for the procurement of service.

To the Batumi Municipality City Assembly and the Mayor:

- Allocate funds in the local budget to put in place a crisis unit at the night shelter and carry out measures necessary for the procurement of services, to ensure the conformity with minimum standards of temporary shelter operations;
- Allocate funds in the local budget for conducting relevant rehabilitation works of the temporary shelter infrastructure and the building and carry out necessary activities for the procurement of service;

18. Electoral right

18.1. Introduction

Despite the COVID-19 pandemic and the ensuing dire epidemiological situation,⁸⁷² scheduled parliamentary elections were held on October 31, 2020 in Georgia; the electoral campaign started on September 1, 60 days prior to the election day. The Public Defender's Office of Georgia, as a constitutional authority in charge of monitoring the protection of the electoral right in the country, actively observed the processes related to the Parliamentary elections as part of its statutory powers.

In accordance with the agreement reached following lengthy political talks and entered constitutional amendments, October 31, 2020 was the first time when the Parliamentary elections would be held based on the new electoral system.⁸⁷³ Hence, it was particularly important for the introduction of diversity in the parliamentary life and the development of democratic processes in the country.

Unfortunately, a number of significant problems were identified during the pre-election period, as well as during the voting and results tabulation processes. Similar to prior experience the parliamentary elections were held in an extremely tense atmosphere. The physical confrontation and violent incidents, including assaults on mass media representatives⁸⁷⁴ turned into an unfortunate trend. Public sources reported about confrontations between various subjects, breach of the secrecy of the ballot, alleged control of voters' will, alleged voter bribery; all this had negative impact on the public interest to hold elections in a peaceful and calm environment; the realization of the electoral right was also affected by the COVID-19 pandemic.

It is worth noting that local observation organizations and the civil society sector characterized the 2020 Parliamentary Elections as "least democratic and free among the elections held under the Georgian Dream government".⁸⁷⁵

According to the annual report of Freedom House, an international organization, Georgia's score declined by one point as compared to the previous year; which was *due to the violations detected during the elections, among them, voter intimidation, misuse of administrative resources, vote buying, cases of violence and tabulation discrepancies*.⁸⁷⁶ According to Freedom House, Georgia holds regular and competitive

⁸⁷² Scores of countries across the globe have decided to postpone elections due to the pandemic, available at: <<https://bit.ly/3u1oTh8>> accessed 30.03.2021].

⁸⁷³ The Constitution of Georgia, available at: <<https://bit.ly/3cB8zhp>> [accessed 30.03.2021].

⁸⁷⁴ For the journalists related incidents see the present report's chapter on the freedom of expression.

⁸⁷⁵ Joint statement of NGOs about the 2020 Parliamentary Elections, available at: <<https://bit.ly/2PnhYQP>> [accessed 30.03.2021].

⁸⁷⁶ A2, "Were the current national legislative representatives elected through free and fair elections?", available at: <<https://bit.ly/3rEAuB8>> [accessed 30.03.2021].

elections. Georgia's democratic trajectory showed signs of improvement during the period surrounding a change in government, but recent years have featured backsliding.

According to the final report of the OSCE/ODIHR International Observation Mission, elections were competitive and, overall, fundamental freedoms were respected. According to the same report,⁸⁷⁷ intimidation of party supporters and public sector employees was reported widely; moreover, the ruling party representatives made a number of announcements during the electoral campaign that was perceived as vote-buying. Therefore, according to the observation organization, contrary to the OSCE commitment and good practice, the line between the ruling party and the state was often blurred, and this, in turn, reduced public trust towards some aspects of the electoral process. The report distinctly indicates about gaps in various areas of the electoral legislation and the need to implement relevant amendments.

After the elections, the government took political commitment to reform the electoral system. The PDO is also involved in the relevant working group. The Public Defender hopes that the electoral reform will be successful and the legislation will be in full conformity with the international standards and best practices.

Numerous discrepancies identified during the elections and subsequent complicated developments in the country created deep political crisis in Georgia, while the state failed to use the opportunity of starting a rich Parliamentary life. The Public Defender holds that the crisis should be resolved via negotiations with the participation of all electoral subjects and reaching a common solution. Since this is of vital importance for the democratic development of the country and the realization of human rights.

18.2. Summarizing results and review of complains

Considerable delay in the publication of summary protocols and the announcement of preliminary results by the Central Election Commission that was contrary to past experience, gave rise to legitimate founded questions among the public. Initial results of elections were published about seven hours after the closure of polling stations.

Besides, reputable national observer organizations note the discrepancy identified in the summary protocols. For example, according to the Young Lawyers' Association of Georgia (GYLA)⁸⁷⁸, in the majority of the protocols for 109 precincts challenged by them the discrepancies and/or the facts of adjusting protocols had been detected. According to the clarification provided by the Transparency International – Georgia on the day following the election day, after double-checking the copies of summary protocols

⁸⁷⁷ International Election Observation Mission Georgia – Parliamentary Elections, Final Report, March 5, 2020, 2, 3, 15, available at: <<https://bit.ly/3dlE8ux>> [accessed 30.03.2021].

⁸⁷⁸ Available at: <<https://bit.ly/3m4CL7D>> [accessed 30.03.2021]' about the problem of disbalance see also: <<https://bit.ly/39sZcOy>> [accessed 30.03.2021].

received from polling stations observers have identified an excess in 7% of total protocols available to them (about 250 protocols),⁸⁷⁹ furthermore, 1/3 of these cases involved significant imbalances.⁸⁸⁰ Due to the discrepancies in the protocols, the organization put forward a demand to annul summary protocols of 62 polling stations and to recount the votes.⁸⁸¹

It appears that⁸⁸² that there was a trend of designing correction protocols at district election commissions for fixing errors/inaccuracies in voting results summary protocols. Correction protocols at DEC's were mostly developed without recounting data, without written and/or verbal explanation, and this cannot be regarded a reliable mechanism.

Unfortunately, in the course of the consideration of complaints election commissions failed to provide adequate answers concerning substantive violations in summary protocols. It is worth noting that according to the International Election Observation Mission, recommendations made by OSCE/ODIHR and the Venice Commission about the review of complaints and simplifying appeal procedures and bringing this process closer to international standards/good practice have still not been fulfilled. This raises suspicions with respect to impartial and objective review of complaints.⁸⁸³ According to the final report, the consideration of 1,660 complaints after elections was conducted in a tense setting, while effective legal safeguard was largely limited due to the fact that majority of complaints were rejected systematically on formal grounds.⁸⁸⁴ Furthermore, the Mission has clarified that none of the complaints submitted to the commissions were considered by the CEC/District Election Commission Chairs at open sessions; this reduces the degree of collegiality and limits the transparency of the complaints review process.⁸⁸⁵

These circumstances have demonstrated once again that along with addressing the challenges in practice, it is important to fulfil the longstanding recommendations issued by the OSCE Office for Democratic Institutions and Human Rights and the Venice Commission about the simplification of the electoral disputes system and expansion of the rules related to the right to appeal.⁸⁸⁶

⁸⁷⁹ When the sum of the votes received by electoral subjects and the number of cancelled ballot papers is higher than the number of signatures of voters.

⁸⁸⁰ Available at: <<https://bit.ly/3m6oOWD>>[accessed 30.03.2021]; about the issue of disbalance???, see also: <<https://bit.ly/39sZcOy>> [accessed 30.03.2021].

⁸⁸¹ Available at: <<https://bit.ly/3djhVgH>> [accessed 30.03.2021].

⁸⁸² Available at: <<https://bit.ly/3dP9POM>> [accessed 30.03.2021]; <<https://bit.ly/3krK2O2>> [accessed 30.03.2021].

⁸⁸³ International Election Observation Mission Georgia – Parliamentary Elections, Report about preliminary findings and conclusions, October 31, 2020, 4,28, available at: <<https://bit.ly/3laELdV>> [accessed 30.03.2021]; for more see the Final Report of the Observation Mission: <<https://bit.ly/3dlE8ux>> [accessed 30.03.2021].

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

⁸⁸⁶ Joint opinion about the working version of the Electoral Code, 2011, available at: <<https://bit.ly/3sE9gvM>> [accessed 30.03.2021].

It is alarming that observation organizations actively spoke about increased number of cases of pressure over observers,⁸⁸⁷ as well as stated that observers encountered problems with obtaining summary protocols;⁸⁸⁸ furthermore, in the course of the consideration of complaints, according to observation organizations, there was a rise in the cases of offensive attitude towards their representatives; and this often created intimidating environment. Violent incidents and alleged facts of voter bribery.

It should be noted that with the support of the Central Election Commission of Georgia and international partners⁸⁸⁹, the Code of Conduct of Political Parties⁸⁹⁰ was developed for 2020 Parliamentary Elections.⁸⁹⁰ Although, the degree of adherence by political parties with the principles stipulated in the code was very low; this, unfortunately is an indication of low political culture. This has been manifested in numerous areas, among them, in the formation of confrontational electoral environment, high number of cases of physical confrontation and violent incidents; questions concerning alleged voter bribery have persisted as well; the aforementioned, as stated by the Public Defender numerous times, including in 2019 Parliamentary Report⁸⁹¹, considerably damages the democratic development of the country.

The PDO, in relation to scores of⁸⁹² cases of violence identified during the pre-election period, applied to the law enforcement bodies for the examination of the respective cases. Currently, according to information available to us, investigation has been launched on 28 criminal cases⁸⁹³, while in 8 criminal cases⁸⁹⁴ charges have been brought against specific individuals. In 1 case an accused person was found

⁸⁸⁷ Available at: <<https://bit.ly/3cxhb8B>> [accessed 30.03.2021]; <<https://bit.ly/3wbWfvz>> [accessed 30.03.2021].

⁸⁸⁸ Available at: <<https://bit.ly/31uGRwk>> [accessed 30.03.2021].

⁸⁸⁹ Swiss Government, the United States Agency for International Development (USAID) and the International Republican Institute (IRI).

⁸⁹⁰ The number of the political parties signing the Ethnic Principles by the election day - 42.

⁸⁹¹ The Public Defender's Parliamentary Report 2019, Tbilisi, 2020, 302.

⁸⁹² Following the processing of public sources the PDO submitted Letters applied to the General Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia submitted letters №04-11/10096, 13/10/2020; №04-11/10459, 23/10/2020; №04-11/10874, 02/11/2020; №04-11/9677, dated 30/09/2020 concerning 57 around incidents.

⁸⁹³ Criminal cases №084050820001, №015210820001, №010250820001, №002040920003, №024100920001, №004180920002, №007180920009, №008190920014, №002240920002, №019270920001, №001270920005, №031280920004, №031290920004, №031290920003, №008190920014, №040290920001, №004300920002, №019021020002, №021121020001, №041131020006, №019141020001, №011161020005, №006181020002, №019191020002, №019191020001, №024211020001, №015261020001, №04123102000; The Ministry of Internal Affairs Letters MIA 6 20 02482148, MIA 4 20 02709144, MIA 9 20 02800309 and the Office of the Prosecutor General of Georgia Letters №13/59045, №13/62164, №13/62063, №13/64959; furthermore, we have been informed that in some cases investigation was not launched because a fact was not established, or because of the lack of the elements of a crime, or that the inquiry around an issue was underway, or that an administrative measure had been applied.

⁸⁹⁴ Criminal cases №002040920003, №019270920001, №031290920003, №031290920004, №004300920002, №002040920003, №041131020006, №015261020001.

guilty;⁸⁹⁵ for 6 cases substantive examination of cases is underway in court;⁸⁹⁶ on 5 criminal cases investigation is still underway,⁸⁹⁷ while 2 criminal proceedings have been discontinued.⁸⁹⁸

The PDO solicited information⁸⁹⁹ also about 23 alleged unlawful actions on the election day. The General Prosecutor's Office of Georgia⁹⁰⁰ provided information about 5 criminal cases only,⁹⁰¹ it is worth noting that along with the facts of violence, among these cases, on 2 cases investigation is conducted on the case of alleged voter bribery as well.⁹⁰² The Public Defender also inquired about the activities carried out by the law enforcement agencies⁹⁰³ concerning alleged voter bribery during the pre-election period. In particular, the PDO had solicited information about alleged 35 voter bribery cases in relation to the 2020 Parliamentary Elections. According to the received information, investigation was launched about one of the facts⁹⁰⁴, although later it was discontinued due to the absence of an action envisaged by the Criminal law. As for other facts, the enquiry is underway.⁹⁰⁵

The implementation of the rule of law in specific cases is crucial for the reinforcement of the sense of justice among the public, as well as for the prevention of the cases of violence in the future. Therefore, the PDO, within its competence, continues active monitoring in relation to offenses reported during the electoral period.

18.3. Alleged control of voters' will and personal data

The vile practice of mobilization of supporters and coordinators of political parties at polling stations has been observed for years. National and international observation organizations, as well as the Public

⁸⁹⁵ Criminal case №019270920001.

⁸⁹⁶ Criminal cases №015261020001, №002040920003, №031290920003, №031290920004, №004300920002, №041131020006.

⁸⁹⁷ Criminal cases №019141020001, №019191020002, №004180920002, №007180920009, №041231020001.

⁸⁹⁸ Criminal cases №040290920001, №008190920014.

⁸⁹⁹ Letter №04-11/1632, 16/02/2021.

⁹⁰⁰ The General Prosecutor's office of Georgia Letter №13/11851, 2.03.2021.

⁹⁰¹ №010260221801, №088311020801, №041311020005, №012311020001, №001311020005..

⁹⁰² №010260221801, №088311020801, elements of crime envisaged under Article 164¹ (1) of the Criminal Code of Georgia.

⁹⁰³ According to the amendments to the Organic law of Georgia on the Political Association of Citizens and the Criminal Code of Georgia entered in 2020, voter bribery, irrespective of the value of a transaction, is governed under the Criminal Code of Georgia, hence, these matters no longer fall in the purview of the State Audit Office.

⁹⁰⁴ The fact of material support to one of the families in the Khelvachauri municipality by a representative of the political association Georgian Idea.

⁹⁰⁵ The Letter of the General Prosecutor's Office of Georgia №13/11751, 2.03.2020.

Defender have on multiple occasions assessed this as an attempt to influence free will of voters. Often, tense environment at polling stations gives rise to physical confrontation and violence.

According to the International Observation Mission,⁹⁰⁶ the presence of coordinators and activists could be observed at polling stations on the election day in 2020 as well; this, presumably, has caused intimidation of voters, since often the activists were logging the arrival of voters. In the majority of polling stations visited by the Mission local observation groups of party representatives and those associated with parties sometimes stepped in the process.

Pursuant to the amendment in 2020⁹⁰⁷, it is prohibited to physically obstruct the movement of voters who have come to elections within 25 meters radius from the polling station, although, the held elections have evidenced that this amendment has not been followed by positive result in practice, which is again an indicator of low political culture. Although, at the same time, it is notable that the law does not stipulate the mechanisms for the enforcement of this regulation, and this complicates its practical implementation.

On October 31, numerous mass media outlets reported about the use of special application for facial detection and photo shooting of voters during elections. According to the State Inspector's Service,⁹⁰⁸ it was ascertained based on the information solicited from Newpost Ltd. for the examination of the matter that the contracted Estonian company had been tasked to determine facts of participation of the same individuals in elections via the comparison of taken photo and/or video material depicting voters. Considering this, the State Inspector's Service solicited information from the Republic of Estonia supervisory authority concerning the legality of processing of data. The State Inspector's Service is still expecting additional information from the news agency. Hence, the State Inspector's Office continues addressing this matter.

18.4. The impact of the pandemic on the elections

As the election date approached, there was a major rise in COVID-19 infection cases and the epidemiological situation deteriorated further; this has necessitated the introduction of additional restrictions. Among others, the restriction on gathering in open air was introduced.⁹⁰⁹ Although, it is worth noting that this restriction did not apply to an electoral campaign. Direct meetings and discussions with voters are integral and effectively indispensable activities under a pre-election campaign. Therefore, it is commendable that electoral subjects were not deprived of this possibility, although the aggravated epidemiological situation, naturally, affected the intensity and the quality of election campaign; at the

⁹⁰⁶ International Election Observation Mission Georgia – Parliamentary Elections, Report about preliminary findings and conclusions, October 31, 2020, 4, available at: <<https://bit.ly/3laELdV>>[accessed 30.03.2021]; International Election Observation Mission Georgia – Parliamentary Elections, Final Report, March 5, 2020, Final Report, 4., available at: <<https://bit.ly/3dlE8ux>> [accessed 30.03.2021].

⁹⁰⁷ The Electoral Code, Article 45(12).

⁹⁰⁸ The State Inspector's Service Letter SIS 8 21 00002284 11/02/2021.

⁹⁰⁹ The Government of Georgia Decree N 566 dated September 9, 2020.

same time, in turn, activities during the pre-election campaign attended by many people raised additional risks of the spread of the pandemic.

Importantly, central and local authorities implemented numerous social assistance programs to overcome socioeconomic crisis caused by the pandemic; this has created to somewhat unequal electoral environment among the electoral subjects. Therefore, in such cases it is important to draw a clear line between the budget funded projects and the activities of political parties.⁹¹⁰

Given the aggravated situation during the pandemic, in an attempt to regulate safety and security related matters on the election day the Central Election Commission⁹¹¹ set forth compulsory sanitary-hygiene requirements for voters, the electoral administration, observers and mass media representatives for the election day.⁹¹²

12 days before the elections, the Central Election Commission issued another decree⁹¹³ to determine the circle of those individuals who would be entered by the CEC of Georgia in the special and mobile ballot box list.⁹¹⁴ the adoption of the decree just 12 days before the elections and the challenges identified in practice have unveiled the lack of awareness of citizens about adopted procedures and it was followed by public reactions and confrontation;⁹¹⁵ As a result, the CEC was compelled to extend the deadline for applications for the enrolment in the relevant list a number of times. Furthermore, with respect to the realization of the electoral right, the vagueness of the system of registration of individuals in self-isolation and the problem of absence of a unified full-fledged statistics was identified. In particular, given the unexpected major increase of the number of infected individuals, the government was unable to perform timely and systematic registration of individuals in self-isolation; furthermore, these individuals had difficulty with communication with relevant authorities at their own initiative; official data about self-isolation served as a precondition for the entry in a special and mobile ballot box;⁹¹⁶ hence, voters in self-

⁹¹⁰ According to the the International Society for Fair Elections and Democracy (ISFED), majoritarian candidates were actively involved in the delivery of social assistance, available at: <<https://bit.ly/39ryA0H>>[accessed 30.03.2021], 2.

⁹¹¹ The Decree №38/2020 of the Central Election Commission of Georgia dated 18.09.2020, on Setting Forth Electoral Measures and Sanitary-Hygiene Requirements for the election day of the Parliament of Georgia October 31, 2020 Scheduled Parliamentary/Interim Sakrebulo/Snap Mayors' Elections for the prevention of the spread of COVID-19, an infection caused by the novel coronavirus (SARS-CoV-2), available at:<<https://bit.ly/3w7dfDr>>[accessed 30.03.2021].

⁹¹² The decree governed the rules for the entry to/leaving, staying, moving in polling stations, thermal screening, the use of face masks, as well as the rules for the replacement of an authorized individual with another individual at a polling station.

⁹¹³ The Central Election Commission of Georgia Decree №45/2020 dated 19.10.2020 on the Participation of individuals at in-patient medical facilities and those in isolation (quarantine, self-isolation) in October 31, 2020 Elections, the creation of polling stations and special groups, various electoral activities and sanitary-hygiene requirements.

⁹¹⁴ Article 5 of the referenced Decree.

⁹¹⁵ Available at:< <https://bit.ly/2PMYyjq>>[accessed 30.03.2021].

⁹¹⁶ Pursuant to Articles 3, 5 of the Decree of the CEC of Georgia N 45/2020 dated 19.10.2020, the Central Election Commission designed a list of voters of special and mobile balot box, while, the Ministry of the Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Protection of Georgia was required to submit to the CEC data about individuals in isolation (quarantine, self-isolation).

isolation about whom the government did not have information were automatically deprived of the possibility to be entered in a special list.⁹¹⁷

It is worth noting that despite the pandemic, voter turnout was fairly high, among them, even as compared to the previous parliamentary elections.⁹¹⁸

Various observation missions spoke about the problems in the enforcement of the rules for deterring the pandemic during the polling. Violations identified at polling stations, for instance, entailed the cases when registrar or voters' flow regulator did not make voters remove their masks upon presentation of a document,⁹¹⁹ voters were admitted without masks,⁹²⁰ commission members disregarded mandatory rule of wearing a mask;⁹²¹ they also indicated that commission members at many precincts did not wear a protective shield, often, distance was not maintained, while in the second half of the day, especially during the counting of ballot papers, mostly the requirement of wearing a mask was breached.⁹²² At one of the polling stations,⁹²³ a voter who had been entered in a special list voted at a main precinct without presenting a proof of completion of self-isolation.

It should also be mentioned that according to the assessment of OSCE/ODIHR Observation Mission, in visited precincts COVID-19 related requirements were also not adhered to, social distancing was rarely respected or possible.⁹²⁴ While, according to the International Technical Election Assessment Mission, during the pre-election period regulations related to the COVID-19 pandemic were strictly observed, although on the election day adherence to the safety and health was weaker.⁹²⁵

⁹¹⁷ As mentioned above, there was a spike of infection cases as the election date drew closer, epidemiological environment was further aggravated, daily new infection cases was over a thousand; hence, the number of individuals in self-isolation increased further; therefore, presumably, several thousand individuals were unable to get in the special list.

⁹¹⁸ Activity at 8:00 pm: 2020 - 56.11%; 2016 - 51.63%; 2012 - 60.8%, available at: <<https://bit.ly/39vKwP0>> [accessed 30.03.2021].

⁹¹⁹ №30 Kaspi Election District №21 polling station, №29 Kazbegi Election District №7 polling station; №16 Kvareli Election District №29 polling station; Zestaponi №14 polling station; available at: <<https://bit.ly/3m3TQ1s>> [accessed 30.03.2021]; <<https://bit.ly/31EgbcP>> [accessed 30.03.2021].

⁹²⁰ №65 Martvili Election District №25 polling station, available at: <<https://bit.ly/3cxrObA>> [accessed 30.03.2021]; №79 Batumi Election District №54 polling station, See the link: <<https://bit.ly/3weMYDe>> [accessed 30.03.2021].

⁹²¹ #№2 Marneuli Election District №11 polling station; See the link: <<https://bit.ly/3fsPn76>> [accessed 30.03.2021]; <<https://bit.ly/39tdHCb>> [accessed 30.03.2021].

⁹²² Summary of Monitoring October 31, 2020 Parliamentary Elections, available at: <<https://bit.ly/3wfJbVY>> [accessed 30.03.2021].

⁹²³ №32 Gori Election District №23 Polling Station, available at: <<https://bit.ly/3sC7H1j>> [accessed 30.03.2021].

⁹²⁴ OSCE/ODIHR Preliminary Conclusions, 16, available at: <<https://bit.ly/3mdFFak>> [accessed 30.03.2021].

⁹²⁵ IRI Interim Report, 11, available at: <<https://bit.ly/3foDMpP>> [accessed 30.03.2021].

Social distancing and relevant safety rules were not respected during the post-election protest rallies either.⁹²⁶ Despite low turnout⁹²⁷, during the second tour flaws with respect to the adherence to COVID-19 related regulations were identified nevertheless.⁹²⁸

Proposals

To the Parliament of Georgia:

- Develop and adopt the mechanisms for the enforcement of the prohibition to physically obstruct the movement of voters inside a polling station/within 25 meters' distance from a polling station;
- In accordance with the recommendations of the OSCE/ODIHR and the Venice Commission⁹²⁹ ensure the streamlining of complaints review and appeal procedures and the approximation of this process with international standards and good practice.

Recommendations

To the Central Election Commission of Georgia, district election commissions:

- Do not apply strict approach for the admissibility of complaints and maximally ensure substantive examination of complaints, furthermore, the CEC should plan activities necessary for the development and implementation of an online system of filing complaints at election commissions;
- Election commission members should be intensively trained for the examination and review of complaints in an effective, substantive and qualified manner;
- In the future ensure unimpeded transfer of summary protocols to the representatives of observation organizations and create ethical environment for them during the review of complaints;
- In the future, in the course of the examination of complaints related to the violations in summary protocols, ensure steady compliance with the principle of collegiality and the standard of transparency;
- In 2021, for local self-government elections, considering the epidemiological situation, timely plan and implement all necessary activities to maximally ensure the entry of relevant categories of voters in special and mobile ballot box list and the realization of electoral right of all citizens,

⁹²⁶ The Public Defender disseminated a special statement about the emerged difficult epidemiological situation and ongoing protest rallies, available at: <<https://bit.ly/2O676Gi>>[accessed 30.03.2021].

⁹²⁷ Voter turnout in the second round was 26.29%.

⁹²⁸ In some polling stations voter identification procedures are not implemented duly, commission members do not have citizens remove masks according to the prescribed rule, follow the link: <<https://bit.ly/3m3W0ON>>[accessed 30.03.2021].

⁹²⁹ ODIHR and the Venice Commission Joint 2011 Opinion about draft Election Code of Georgia, available at: <<https://bit.ly/2PHUx4q>>[accessed 30.03.2021].

furthermore, effectively and timely manage awareness-raising campaign about the adopted measures;

- Provide substantive training to election commission members around introduced sanitary-hygiene regulations during voting, to maximally enforce established requirements in 2021 local self-government elections.

To the General Prosecutor of Georgia:

- Implement effective investigations of all violent actions and of possible voter bribery identified in 2018, 2019, 2020 during the election period and inform the PDO about the process and progress of investigations;
- In accordance with the Organic Law of Georgia Article 68 and the Rules of Procedure of the Parliament, Article 172, provide argumentation/reasoning in the annual report of the Prosecutor's office to the Parliament about the progress of investigation and implemented activities in relation to all violent actions and alleged voter bribery during the election period in 2018, 2019, 2020.

19. The right to the Protection of Cultural Heritage

19.1. Introduction

The care for the protection of cultural heritage is a constitutional right of all,⁹³⁰ while the creation and enforcement of relevant legal safeguards is an obligation of the state.

The Public Defender deems that the regulations governing the protection of cultural heritage are inadequate and ineffective; challenges are encountered in the course of conservation and rehabilitation, there is also a problem with the consideration of the interests of cultural heritage protection during urban planning and the implementation of infrastructure projects.

During the reporting period the damage of Gelati, a UNESCO World Heritage Site, during its rehabilitation⁹³¹ came under the special focus of the public; unique frescos were damaged considerably.⁹³² The state, being a major guarantor for the protection of a monument, is responsible for any activities on a world cultural heritage site. Georgia has a number of obligations under the Convention for the Protection of the World Cultural and Natural Heritage, as well as the Venice Charter.⁹³³ In this case numerous deficiencies were identified; the Government should take timely and effective steps to respond to these issues, especially that after the removal of the Bagrati Cathedral from the list⁹³⁴, there are only 3 monuments⁹³⁵ in the UNESCO World Heritage sites list from Georgia; and care for and preservation of these monuments should be one of the priorities of the state.

Unfortunately, criminal investigation cases on the damage and destruction of Sakdrisi-Kachagiani ancient gold mine as well as concerning the destruction of archeological artifacts discovered during the construction of Ruisi-Rikoti section of the highway still have not yielded any tangible results.⁹³⁶

19.2. Legislation

The work on the draft Code on Cultural and Natural Heritage has been underway for years. It is important to timely elaborate the draft law directed at the protection of cultural heritage, through the engagement

⁹³⁰ The Constitution of Georgia, Article 20.

⁹³¹ Available at: <<https://bit.ly/3drJfeF>> [accessed 17.02.2021].

⁹³² Reports of the Regular Monitoring of the Gelati Monastery, a World Heritage Monument, by the National Agency for Cultural Heritage Preservation of Georgia, dated March 11, April 30, June 16-19 and August 10-11.

⁹³³ The International Charter for the Conservation and Restoration of Monuments and Sites.

⁹³⁴ Bagrati Cathedral was removed by UNESCO from the list of the world cultural Heritage in 2017, after its reconstruction; the Gelati Monastery faced the similar risk, although it was managed to retain its status.

⁹³⁵ Gelati Monastery, Historical Monuments of Mtskheta, Zemo (Upper) Svaneti.

⁹³⁶ Cases №027291214001 and №074140214801, Letter of the General Proescutor's office of Georgia 9.03.2021, №13/12920.

of professional groups and the public and submit it to the Parliament. And the legislature should pass it in due course.

During the reporting year the matter of the rehabilitation of Gelati, UNESCO world heritage site, was the subject of special focus of the public. One of the problems⁹³⁷ identified in the course of the examination of this case by the Public Defender's Office is a systemic deficiency at the legislation level. In particular, the current legislation mandates permit holders to periodically submit interim report⁹³⁸ to the Agency about the works conducted on immovable monuments of cultural heritage⁹³⁹ and a report about the incremental delivery of works is produced. Although, during the incremental delivery, the legislation does not envisage the obligation to assess the quality of conducted works via an expert conclusion. The aforementioned is implemented only under the Agency funded projects, based on a provision of a contract.⁹⁴⁰ Gelati rehabilitation works were not funded from the Agency budget, hence, the implementing entity did not face such a demand. While the absence of such legislative requirement jeopardizes immovable monuments of cultural heritage and the conformity of the works with the conditions of a granted permit.

Unfortunately, there are still no comprehensive and effective mechanisms for the protection of privately owned cultural heritage,⁹⁴¹ which aggravates difficult condition of such monuments day by day, in some cases accelerates the process of destruction of private property that has a status of a monument and in some cases renders their restoration and reinforcement impossible. Furthermore, this situation makes it impossible for the citizens to access basic services such as water and sanitation, which, in turn, is related to the realization of the right to adequate housing, health, life, prohibition of inhuman and degrading treatment.⁹⁴²

Furthermore, as was specified by the Public Defender in 2019 Parliamentary Report, the easing of the sanctions imposed for the violations related to cultural heritage does not ensure prevention and curbing of illegal actions committed against cultural heritage,⁹⁴³ which is unjustifiable.

19.3. Gelati

As a result of the examination of the Gelati case the PDO has uncovered not only systemic legislative gaps but also problems related to the conservation-rehabilitation process⁹⁴⁴, among others, in relation to

⁹³⁷ For more see the next chapter.

⁹³⁸ The Law of Georgia on Cultural Heritage, Article 52(1).

⁹³⁹ Ibid., Paragraph 5.

⁹⁴⁰ Information was provided as part of a verbal hearing as part of the examination of the case.

⁹⁴¹ For more see the Public Defender of Georgia 2018 Parliamentary Report, Tbilisi, 2019, from 234.

⁹⁴² The Public Defender's №04-11/6440, 2/07/2020 Recommendation to the Tbilisi Municipality Mayor and Krtsanisi District Executive in relation to living conditions of citizens living in Tbilisi, 8, Betlemi Ascent.

⁹⁴³ See the Parliamentary Report of the Public Defender of Georgia, 2019, Tbilisi, 2020, 308.

⁹⁴⁴ The Gelati Monastery Complex rehabilitation project that was developed in 2008 envisaged various works and was implemented in increments, over years. Main activity among the planned measures was the replacement of the roofing of the main church. The roofing works were implemented in several stages. In particular, in 2014-2018 the roofing of upper

the implemented temporary measures. In particular, apparently, there is no assessment of international organizations about the project of roof rehabilitation of the monument carried out in 2018-2019.⁹⁴⁵ According to project documentation, the advantages and needs for the application of a specific methodology for roofing had not been duly justified. Furthermore, during the permit issuance stage the material that would be used was not examined, in particular, the quality of the used tiles⁹⁴⁶ was assessed not during the permit issuance stage, rather, after a positive decision had been taken.⁹⁴⁷ Given that this is the 12th century world cultural heritage monument and there is the practice of the submission of technical evaluation for the rehabilitation of the previous period of the material to be used under the project, in our view, the Agency should have been more attentive during the permit issuance stage and, in consideration of the existing practice and to minimize risks, it should have required the permit seeker to also submit a conclusion concerning the material that would be used. Currently, the roofing methodology (the tiles laying technology) and damaged tiles are cited as one of the possible causes of water infiltration.⁹⁴⁸

Along with the issues at the permit issuance stage, the problems related to the monitoring of implemented works have also been identified. In particular, this is about inadequate and ineffective monitoring of works by the Agency, as well as inadequate involvement in the implementation process. Despite request, the Agency has not provided to the PDO documentation that would evidence the site monitoring by the Agency of the works conducted during 2014-2019.⁹⁴⁹ This is another testimony for the need of expert assessment of incremental delivery of works.⁹⁵⁰

There was a delayed response in the planning as well as implementation of temporary measures. While the Agency was aware of the damages in Gelati in February-March 2020, temporary roofing for the protection against precipitation was completed in December. It is even more alarming that the temporary roofing organized after almost ten months was damaged shortly.⁹⁵¹

Considering all of the afore-mentioned, the Public Defender of Georgia critically assesses the activities carries out by the Agency in relation to Gelati. It is important to accurately establish the reasons that cause

parts of the church were replaced, among them of the dome, while in 2018-2019 the roofing of the lower part of the church, among them, of the chapel, was implemented.

⁹⁴⁵ According to the documentation, in July 2010, the UN Educational, Scientific and Cultural Organization's (UNESCO) World Heritage Committee issued an assessment about the Gelati Monastery Conservation Plan, while ICOMOS technical assessment covers only on the structural reinforcement of the main dome with the ring beam.

⁹⁴⁶ Various types of tiles have been used for the roofing of the church – enameled and ceramic. They differ by manufacturing technology and used material.

⁹⁴⁷ In particular, application for the permit for roofing the church was submitted on March 14, 2018, and a positive decision was issued the next day, on March 15, 2018. While the assessment of tiles was performed on April 30, 2018.

⁹⁴⁸ ICOMOS comments about the State of Conservation of the Gelati Monastery, Georgia 12.10.2020.

⁹⁴⁹ National Agency for Cultural Heritage Preservation, LEPL October 30, 2020 N 11937/20, November 24, 2020 N 12848/20 and March 24, 2021 N 09/901 letters.

⁹⁵⁰ For more see in the sub-chapter on legislation.

⁹⁵¹ Available at: <<https://bit.ly/2OJ46Q4>> [accessed 17.02.2021].

the damage to the church and carry out all necessary measures in the future to prevent damage and correct existing impact.

19.4. Endangered monuments

The Public Defender regards that government entities should take notice of the ICOMOS report published in late 2020⁹⁵² and plan and take steps to address the challenges identified in the report.

According to the afore-mentioned document, the following monuments of Georgia were included in the list of the endangered monuments of the world: Batumi urban heritage, Khada gorge, David Gareja Monastery Complex.

According to the report, in Batumi, many monuments of cultural heritage have lost historic features, while some old buildings were replaced by multistorey, large-scale buildings inappropriate for this area;⁹⁵³ Furthermore, the intimate environment of the old quarters, the urban rhythm, stylistic simplicity, traditional landscaping were sacrificed to the “renovation” of Batumi. The processes in the historic center got out of control. The Project Batumi Riviera is assessed as one of the examples of the lack of the understanding of the values of the historic Batumi, inconsistent positions of local authorities and weak political will.⁹⁵⁴ It is noted that under the project, in 2018 the City Hall removed part of Batumi’s historic harbor area, so-called Batumi Riviera, from the Protection Zone. According to the authors, in case of the implementation of the proposed plan, the identity of Batumi as a historic coastal town will be eventually destroyed.⁹⁵⁵ The referenced report once again evidences difficult challenges; considering those challenges, it is even more alarming that Batumi still does not have Batumi Municipality Spatial Development document, as well as the Batumi City Historical-Cultural master plan.⁹⁵⁶

The cultural landscape of the Khada Gorge⁹⁵⁷ was also included in the afore-mentioned report in conjunction with the Kvesheti-Kobi road project; the Khada gorge is home to major monuments of cultural and architectural heritage. It is worth noting that in the previous Parliamentary Report⁹⁵⁸, the Public Defender, referring to this infrastructure project, clarified that the need to consider the interests of

⁹⁵²ICOMOS, Heritage at Risk, World Report 2016-2019 on Monuments and Sites in Danger, available at: <<https://bit.ly/39qtvWe>> [accessed 30.03.2021].

⁹⁵³ Ibid., 39.

⁹⁵⁴ Concerning the afore-mentioned project, the Public Defender of Georgia approached the Technical and Construction Supervision Agency, LEPL, with the Recommendation N 04-11/12850, 28/11/2019 and demanded taking a decision on administrative proceedings and the protection of the cultural heritage.

⁹⁵⁵ICOMOS, Heritage at Risk, World Report 2016-2019 on Monuments and Sites in Danger, available at: <<https://bit.ly/39qtvWe>> [accessed 30.03.2021], 40.

⁹⁵⁶ Batumi City Hall Letter 18.02.2021. №14-1421077310.

⁹⁵⁷ICOMOS, Heritage at Risk, World Report 2016-2019 on Monuments and Sites in Danger, available at: <<https://bit.ly/39qtvWe>> [accessed 30.03.2021], 48.

⁹⁵⁸ The Public Defender of Georgia Parliamentary Report, 2018, Tbilisi, 2020, 309.

the protection of cultural heritage is especially relevant in case of major infrastructure projects. Hence, it is important to perform comprehensive assessment of expected effect on the monuments/sites of cultural heritage in the course of planning and implementation and consider the interests of the protection of such monuments during the decision-making. ICOMOS report also indicates the necessity of comprehensive study of the risks and the consideration of alternative options for the implementation of the project.⁹⁵⁹

The David Gareji Monastery Complex⁹⁶⁰ has been included in in the same report and the instability of the physical condition was indicated as the principal problem; this is due to the disintegration of the rocks, which causes irreversible deterioration; furthermore, some structures partially collapsed, which aggravates the process. Considering this and other problems, the report underscores the need for the inventory of David Gareji Monasteries and multidisciplinary examination of the complex, in order to determine the status quo and set priorities. And the conservation of the territory and the development of master plans are proposed as next steps.

Proposals

To the Parliament of Georgia:

- By means of the amendments to the Law of Georgia on Cultural Heritage, introduce mandatory expert examination of incremental delivery of rehabilitation works of an immovable monument of cultural heritage;
- Develop and initiate regulations to support maintenance and development of privately owned monuments/sites of cultural heritage that require rehabilitation, by clear delineation of competencies and responsibilities of the authorities in relation to such monuments and bolster active role of the government.

To the Ministry of Culture, Sports and Youth of Georgia, the National Agency for Cultural Heritage Preservation of Georgia, LEPL:

- Complete drafting of the Cultural and Natural Heritage Code and initiate the draft;
- Review the problems detailed in the ICOMOS report concerning the Khada gorge, the David Gareja complex and Batumi, and plan response measures within its competence;
- Implement all necessary studies in the Gelati monastery complex to establish relevant reasons for damage, plan and implement timely and effective activities to eliminate the damages;
- To avoid irreversible damage to Gelati, make sure that the implementation of planned works does not hamper the studies for establishing exact reasons of damages;

⁹⁵⁹ ICOMOS report, pg. 48-49.

⁹⁶⁰ Ibid., from Pg. 44, author: Mariam Dvalishvili, Georgian Arts and Culture Center, Country Representation of Europa Nostra in Georgia.

- For establishing the reasons behind identified deficiencies, as well as when planning future activities in Gelati, ensure the involvement of qualified, independent international/local experts.

To the General Prosecutor of Georgia:

- Periodically inform the public about the process and progress of investigation of the facts of the destruction of archeological sites in the course of the construction of the Ruisi-Rikoti road and the damage and destruction of the ancient Sakdrisi-Kachaghiani gold mine.

To Batumi Municipality City Hall:

- Develop and approve Batumi City Municipality spatial development document and the Historical-cultural master plan of Batumi.

20. Human Rights Education

20.1. Introduction

The Public Defender continues a sustainable, long-term oriented, systemic approach to support human rights education. The activities implemented during the reporting period comprised of the analysis of state policy and legislation for all levels of the formal education and the development of recommendations for addressing the identified gaps. Despite the COVID-19 related restrictions, PDO also continued working in the area of informal education and delivered human rights trainings and awareness-raising meetings for various target groups.⁹⁶¹

The framework document on monitoring the implementation of the UN Sustainable Development Goal #4.7. developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Danish Institute for Human Rights (DIHR) was an important reference point for structuring the endeavors in human rights education.⁹⁶² It should be mentioned that this indicator framework developed for the national human rights institutions was piloted in five countries, in cooperation with the Public Defender.⁹⁶³

For promoting the human rights education at the higher education level, in 2020, in cooperation with the East West Management Institute (EWMI), comprehensive Georgia-wide research was conducted at 5 state and 4 private higher educational institutions. The study assessed the level of integration of human rights in undergraduate law programs. Currently, preliminary analysis of the results of the study is underway.

In cooperation with the National Teachers' Professional Development Center (TPDC), an online training course in human rights was developed for the development of qualifications of academic and administrative staff within the general education sphere.⁹⁶⁴

The cooperation with the main stakeholder - the Ministry of Education, Sciences, Culture and Sports on human rights education in 2020 can be assessed as productive. As a result of the joint work with the Ministry an online educational course was developed for teachers. Under the umbrella of Promoting Democratic Citizenship and Human Rights Education Project, systematic human rights trainings of individuals involved in the academic process are underway; this partially addresses the recommendation of the Public Defender about the implementation of a unified human rights training policy approach.

Importantly, the Ministry factored in significant recommendations for the refinement of the substantive and organizational process of the National Commission for School Textbooks/Series Approval. Although,

⁹⁶¹ The structural units of the PDO conducted a total of 694 informational meetings with various target groups throughout Georgia, furthermore, 20 trainings and seminars were held, thematic brochures and a manual was designed and printed.

⁹⁶² Available at: < <https://bit.ly/3bQTgAR> > [accessed 12.03.2021].

⁹⁶³ Australia, Denmark, Georgia, Philippines, Nigeria, Ecuador.

⁹⁶⁴ Available at: < <https://bit.ly/2Ory6jX> > [accessed 12.03.2021].

in relation to organizational aspects of review, several recommendations remain outstanding. No progress has been achieved in the development of policy documents (human rights education strategy and action plan) and proactive identification of the cases of proselytism/religious indoctrination at schools.

Only a few local authorities partially implemented the recommendations addressed to them concerning the adoption of normative acts envisaged under the Law of Georgia on Early and Preschool Education.⁹⁶⁵

20.2. State Policy for Promotion of Human Rights Education

The introduction of human rights culture in the country is an obligation of the states and requires comprehensive approach, entailing the formation of formal and informal human rights education policy and the implementation of practical measures, through the allocation of relevant resources.

The present chapter focuses on the degree of consideration of human rights education in national policy documents, as well as in the state budget. The chapter also reviews the challenges in the monitoring the effectiveness of the implementation of these documents. Furthermore, this chapter analyzes the impact of the General Education Reform (The New School Model), and, in particular, the resulting of increased autonomy of schools on maintaining religious neutrality principles in schools and on an academic process commensurate with human rights principles.

20.2.1. National Human Rights Strategy and Action Plan

The state policy and vision on human rights education and awareness-raising activities was set out in the National Human Rights Strategy and Action Plan (2018-2020).⁹⁶⁶ Performance indicators for 11 objectives out of the 27 objectives of this document involved informal human rights education activities.⁹⁶⁷ Respectively, thematic trainings or educational activities on human rights represent significant instruments for the implementation of the plan. Although, it is important to note that outcome indicators of the afore-mentioned objectives cannot be measured; furthermore, there are no output indicators and impact indicators that would enable measuring the effectiveness of state policy and programs in informal human rights education. This is also underscored in the EU-UNDP Joint Recommendation for the improvement of Monitoring of National Human Rights Action Plan.⁹⁶⁸

⁹⁶⁵ The normative acts stipulated under the recommendations were approved by the Tianeti Municipality. Kaspi Municipality informed us that they had approved the mentioned document in previous years. The draft decree was developed by Zestaponi, Lanchkhuti, Tkibuli municipalities; although, the mentioned normative acts were not approved during the reporting period.

⁹⁶⁶ The Government of Georgia Decree N 182, dated April 17, 2018, on the Approval of the Government Human Rights Action Plan (2018-2020). Available at: <<https://bit.ly/3csj99a>> [accessed 30.03.2021].

⁹⁶⁷ Ibid.

⁹⁶⁸ Recommendations on a proper monitoring system and ongoing activities for the Georgian National Human Rights Action Plan, EU-UNDP Joint Project "Human Rights for All" In partnership with the Human Rights Secretariat, Administration of the Government of Georgia, September 2017; available at: <<https://bit.ly/2OLIO4n>> [accessed 12.03.2021].

Annual Report⁹⁶⁹ on the implementation of the Government Human Rights Action Plan also refers to the information about implemented educational activities, for example, the number of trainings and the number of training participants. Although, since these quantitative data cannot be compared against the action plan's measurable outcome, output and impact indicators, due to their absence, it is impossible to perform a comprehensive assessment of the effectiveness of the implementation of the action plan.

20.2.2. Unified Strategy of Education and Science of Georgia

Similar tendency is found in the Unified Education and Sciences Strategy (2017-2021)⁹⁷⁰; although there are fewer references to activities supporting human rights education in this document. Such activities are mentioned only in relation to early and general education goals⁹⁷¹ set out in the strategic document, while these goals are not spelled out into specific goals and objectives in the Logical Framework⁹⁷² and the Action Plan.⁹⁷³

Based on the afore-mentioned, the need for unified, coordinated efforts for supporting human rights education in formal as well as informal education is identified. The development of a unified human rights teaching strategy and action plan would be an effective mechanism for this purpose. The development of the national human rights education strategy and action plan will greatly contribute to interagency coordination, as well as the consolidation of the efforts of international organizations and the civil society sector, through preventing possible overlaps and managing effective and needs based allocation of resources. While recognizing the importance of the national human rights education strategy and action plan, the OHCHR developed a handbook for the development of such instrument, as well as for its monitoring mechanisms.⁹⁷⁴ Furthermore, it is important to cite the experience of various countries as well those, which developed and implemented human rights action plans⁹⁷⁵ based on the above-mentioned UN guidelines.⁹⁷⁶

In the 2019 Parliamentary Report the Public Defender put forward a recommendation about the development of National Human Rights

⁹⁶⁹ The report covers 2018-19, 2020 report has not been submitted by the Human Rights Secretariat; available at: < <https://bit.ly/2Q253nv> > [accessed 12.03.2021].

⁹⁷⁰ The Government of Georgia Decree N 533 dated December 7, 2017, on the Approval of the Unified Strategy of Education and Sciences of Georgia 2017-2021; available at: < <https://bit.ly/30H7JbS> > [accessed 12.03.2021].

⁹⁷¹ Ibid., Annex 1, pg. 12, 13, 16, 22.

⁹⁷² Ibid., Annex 3.

⁹⁷³ Ibid., Annex 2.

⁹⁷⁴ OHCHR, Handbook on National Human Rights Plan of Action, Professional Training Series No. 10, 29/08/2002), available at: < <https://bit.ly/3ezdhOa> > [accessed 12.03.2021].

⁹⁷⁵ OHCHR, National Action Plans for Human Rights Education, available at: < <https://bit.ly/3tcr01h> > [accessed 12.03.2021].

⁹⁷⁶ OHCHR, Guidelines for National Plans of Action for Human Rights Education (1997), (A/52/469/Add.1 and A/52/469/Add.1/Corr.1, 20 October 1997 and 27 March 1998), available at: < <https://bit.ly/2OHV3Pr> > [accessed 12.03.2021]; OHCHR, Handbook on National Human Rights Plan of Action, Professional Training Series No. 10, 29/08/2002, available at: < <https://bit.ly/3ezdhOa> > [accessed 12.03.2021].

Education Action Plan.⁹⁷⁷ Although, in the decree concerning the report the Parliament of Georgia cited this recommendation with a substantially different content, without an aspect of the development of the strategy and action plan.⁹⁷⁸

An action plan and its implementation report developed based on the principles suggested by the UN will increase the effectiveness of the state policy on human rights education, will enhance the quality of relevant reports about the fulfillment of the commitments taken by the state under international human rights treaties. Moreover, measurable indicators will contribute to the development of a report by the state on the implementation of the UN Sustainable Development Goal 4.7. Importantly, despite the fact that Georgia nationalized all 17 UN SDGs⁹⁷⁹, Georgia's Voluntary National Review (VNR) Report submitted to the UN on July 13, 2020 does not contain information about the implementation of the Human Rights Education measures as per Goal 4.7.⁹⁸⁰

20.2.3. The Impact of General Education Reform on Maintaining Religious Neutrality in Schools and Instruction in Line with Human Rights Principles

In light of the State Policy for Human Rights Education it is important to analyze the general education reform that was launched in 2018 (the New School Model) offering autonomy and decentralization, shift from a unified to differentiated approach to schools. As part of this reform, the legislation on General Education was amended and schools were granted independence to offer to students additional and optional educational activities not envisaged under the National Curriculum.⁹⁸¹

International organizations working in the education sector (OECD, UNICEF) regard the enhancement of the autonomy of schools a positive development;⁹⁸² although, they identify the risks of decentralization as regards the quality of teaching and recommend the development of powerful accountability and effective control mechanisms for quality control.⁹⁸³

⁹⁷⁷ The Public Defender of Georgia 2019 Parliamentary Report, Tbilisi, 2020, 319.

⁹⁷⁸ The Parliament of Georgia Decree dated June 29, 2020 about the Report of the Public Defender of Georgia, Article 8 (b), available at: < <https://bit.ly/3tkv67L> > [accessed 12.03.2021].

⁹⁷⁹ Available at: < <https://bit.ly/3craROH> > [accessed 12.03.2021].

⁹⁸⁰ Available at: < <https://bit.ly/38zA2NM> > [accessed 12.03.2021].

⁹⁸¹ The Law of Georgia on General Education, adopted on April 8, 2005, as of February 23, 2021, Article 33(4).

Also, Article 22(2) and (3) of the Regulation approved under the Minister of Education and Sciences of Georgia Order N 40/6 dated May 18, 2016 on the Approval of the National Curriculum, as of February 25, 2021.

⁹⁸² UNICEF, Student Performance in Georgia According to the Programme for International Student Assessment (PISA), 2013, 35, available at: < <https://uni.cf/3qN8hHU> > [accessed 13.03.2021].

⁹⁸³ OECD Review of Evaluation and Assessment in Education: Georgia; "The Education System in Georgia", 2019; available at: < <https://bit.ly/38BtKgZ> > [accessed 13.03.2021].

Also, "Assessment and Recommendations", OECD, 2019; available at: < <https://bit.ly/3bJoSrR> > [accessed 13.03.2021].

In its recommendations, the Council of Religions of the Public Defender of Georgia notes the correlation between the enhancement of the degree of independence of schools and the religious neutrality of general educational space.⁹⁸⁴ The Council is of negative opinion about the amendment N 164/6 dated August 8, 2019 in the National Curriculum and indicates that the increase of the autonomy of schools may “result in the introduction of confessional religious teaching on a massive scale and at the same time leave the matter beyond the supervision of the Ministry of Education.”⁹⁸⁵ In its 2019 report the Tolerance and Diversity Institute also describes numerous facts of the violation of religious neutrality.⁹⁸⁶

The Public Defender’s Proposal N 17-1/12888 dated November 29, 2019⁹⁸⁷ and the Recommendation N17-1/2139 dated February 24, 2020⁹⁸⁸ refer to the risk of religious indoctrination and proselytism in the teaching process, and the 2019 Parliamentary Report specifies the facts of ineffectiveness of the existing inspection within the Ministry system, as well as puts forward the recommendation to proactively detect the use of religious indoctrination, proselytism, or coercive assimilation in the academic process.⁹⁸⁹ The response letter from the Ministry of Education, Sciences, Culture and Sports notes that in 2019-2020, in these directions the Ministry had not identified any violations within general educational institutions under administrative proceedings; moreover, no complaints had been submitted.⁹⁹⁰

20.3. Assessment of Needs of Civic Education Teachers in the Regions

The PDO activities during the reporting period included the identification of the risks of human rights violations due to the COVID-19, and minimizing damage. For this purpose, as well as for the assessment of the needs of civic education teachers in the regions, online meetings were held in Shida Kartli, Kakheti, Mtskheta-Mtianeti, Samtskhe-Javakheti, Kvemo Kartli, Svaneti, Guria, Adjara, Imereti, Samegrelo Regions, which were attended by 141 teachers in total.

In addition to general challenges in educational system⁹⁹¹ the civic education teachers discussed the problems related to the civic education per se. They highlighted the necessity to raise awareness about the prevention of cyber bullying, which became highly pressing as classes shifted to the online format

⁹⁸⁴ The recommendations of the Council of Religions by the Public Defender of Georgia, 2020, pg. 50; available at: < <https://bit.ly/3rNr4E1> >, [accessed 13/03/2021].

⁹⁸⁵ The Recommendations of the Council of Religions by the Public Defender of Georgia, 2020, pg. 50; available at: < <https://bit.ly/3rNr4E1> >, [accessed 13/03/2021].

⁹⁸⁶ The Freedom of Religion and Belief in Georgia, the Tolerance and Diversity Institute (TDI), 2010-2019, pg. 158; available at: < <https://bit.ly/30DJcVp> > [accessed 13.03.2021].

⁹⁸⁷ Available at: < <https://bit.ly/3eBB0gk> > [accessed 13.03.2021].

⁹⁸⁸ Available at: < <https://bit.ly/2Ne5Y2U> > [accessed 13.03.2021].

⁹⁸⁹ The Public Defender of Georgia 2019 Parliamentary Report, 2020, 317, 320.

⁹⁹⁰ The Ministry of Education, Sciences, Culture and Sports of Georgia December 7 Letter MES 2 20 001166650.

⁹⁹¹ The problems of social inequality and unequal access to resources which became especially apparent during the pandemic; limited access to computer equipment and the Internet for socially disadvantaged and vulnerable students; furthermore, the difficulties with the teaching of students with disabilities, needs for the prevention of discriminatory environment for ethnic minorities; the facts of missing school (primarily boys) due to rural/agricultural activities.

during the COVID-19 pandemic. Teachers also spoke about the safety of online space and specified various risks, among them, taking shots of students in the online software Google Teams and their dissemination on Internet. Furthermore, the lack of access to teaching materials in minority languages for ethnic minority students was assessed as a challenge; this is an issue for all subjects, among them, civic education.

After the meetings, the PDO communicated with the Ministry of Education, Sciences, Culture and Sports about the mentioned issues. According to the Ministry, Education Management Information System's (EMIS) current activities are focused on the filtration of content, provision of safe Internet to schools, keeping statistics about incidents and the monitoring online resources.⁹⁹² As for raising awareness about digital literacy and cyber security, according to the Ministry, various trainings and webinars were implemented in this direction.⁹⁹³

As regards the access to textbooks in national minority languages, according to the the Ministry, by 2020 approved textbooks for 1-7th grades were translated into national minority languages (Azerbaijani, Armenian and Russian). Furthermore, approved 8th grade textbooks were translated to be introduced in non-Georgian language sector from 2021-2022.⁹⁹⁴

20.4. Degree of Integration of Education on Digital Citizenship in General Education System

The PDO studied the degree of integration of education on digital citizenship in the general educational system of Georgia due to its importance during the COVID-19 emergency by means of observing the project 'Tele School'. It has been identified that the level of integration of education on digital citizenship is not in line with modern standards set by the Council of Europe and the Committee on the Rights of the Child, since it is not fully implemented at all three steps of the general education. Furthermore, the training module for the parents in accordance with the Council of Europe standard has not been developed yet.

In relation to this matter, on June 5, 2020, the Public Defender submitted the recommendation⁹⁹⁵ to the Ministry of Education, Sciences, Culture and Sports of Georgia. In its response letter⁹⁹⁶ the Ministry referred to the webinar on digital citizenship for the parents, although, according to the Ministry, the training module had not been developed and posted on the Tele School platform, hence, training was not delivered to the parents or legal representatives of students.

⁹⁹² The Ministry of Education, Sciences, Culture and Sports of Georgia Pre-school and General Education Development Department Head, Lali Kalandadze's Letter MES 7 20 0000494661 dated June 21, 2020

⁹⁹³ Ibid.

⁹⁹⁴ Ibid.

⁹⁹⁵ The Public Defender's June 5, 2020 Recommendation 17-1/5429 about the Integration of education on digital citizenship in Georgia's general education system and its teaching during the emergency"; available at: < <https://bit.ly/3cySibm> > [accessed 13.03.2021].

⁹⁹⁶ The Ministry of Education, Sciences, Culture and Sports Letter MES 7 20 0000494661 dated June 21, 2020.

Concerning the teaching of digital literacy at every step of general education, the Ministry noted that it had developed an updated Concept on Communication Technologies and was planning to approve the new standards in computer technologies. The Ministry stated that computer technologies will be integrated according to the new standards in 2nd-6th grades and it comprises the following directions: (1) computer technologies, (2) informational and communication technologies and (3) digital literacy. During the current year, the PDO will monitor the implementation of planned activities in 2021 to observe the integration of digital literacy at all three stages of general education and will assess the standards of relevant subjects approved under the national curriculum, as well as their conformity with international standards.

20.5. Monitoring of and Ensuring Conformity of Educational Materials with Human Rights Principles

During the reporting period the process of reviewing of school textbooks continued. The Public Defender nominated the experts working on various thematic rights to the National Commission on School Textbooks/Series Approval. The reviewers with "other specialist" status worked extensively for the prevention of content with discriminatory, prejudiced views and for the reinforcement of the idea of multiculturalism and respect of diversity in the textbooks.

Based on the information obtained as a result of communication with the reviewers involved in the approval process in 2020, the PDO assessed various aspects of the review of the school textbooks / series of 2020 and their conformity with the international and national standards for human rights education. Despite the attained progress, based on a number of identified challenges, on September 23, 2020 the Public Defender submitted the recommendation N 17-1/9393⁹⁹⁷ to the Minister of Education, Sciences, Culture and Sports.

Considering the Public Defender's recommendation, the Ministry made considerable improvements in the review process: the involvement of even more "other specialists" was planned for 2021 for the assessment of all basic education level subjects;⁹⁹⁸ furthermore, the practice of requiring independent consent of each reviewer for all recommendations and justifications developed by the team during the first stage of content review has been discontinued; reviewers of various subjects were trained in human rights; now it is possible to leave a subject specific team session after the assessment/confirmation of authenticity with respect to the criteria falling within the function of a psychologist and other specialist.⁹⁹⁹ The broadening of the scope of this cooperation was further manifested by the organizing a joint training in human rights for the psychologists participating in the review commission. Although, it should be noted

⁹⁹⁷ The Proposal of the Public Defender of Georgia N 17-1/9393 dated September 23, 2020 on the Improvement of the Process of the Review of textbooks/series of General Educational Institutions; available at: < <https://bit.ly/3bL5zi4> > [accessed 12.03.2021].

⁹⁹⁸ The Ministry of Education, Science, Culture and Sports of Georgia Letter MES 7 20 000 1217063 dated December 21, 2020.

⁹⁹⁹ The Ministry of Education, Science, Culture and Sports of Georgia Letter MES 3 21 0000267398 dated March 22, 2021.

that the Ministry has not yet fully incorporated a number of recommendations for the review commission issued by the Public Defender.

Parallel to the afore-mentioned, for ensuring the conformity of higher educational materials with human rights, the Public Defender scrutinized discriminatory texts in the books included in the mandatory reading material at the LEPL - Tbilisi Medical State University. The Medical University modified textbooks and updated the teaching material¹⁰⁰⁰ in response to the Public Defender's recommendation.¹⁰⁰¹

20.6. Supporting Professional Development of Teachers of Educational Institutions and Administrative Personnel Around Human Rights

The role of teachers and administrative personnel of educational institutions is decisive not only for equipping students with relevant knowledge but also for the introduction of human rights culture in schools or pre-school facilities and for the introduction of rights based approaches within the academic space.¹⁰⁰²

The research conducted by the PDO in 2018 identified the need for the advancement of the qualifications of teachers and administrative staff in human rights.¹⁰⁰³ The advisability of the enhancement of the knowledge of future teachers in this field is also reinforced by the fact that out of 56 programs offered by 20 higher educational institutions accredited in Georgia human rights issues are included in only 7 programs, other 35 programs contain cross-cutting issues (e.g., inclusive education, democratic culture, citizenship, principles of fairness, etc.), while remaining 14 programs do not cover rights or related topics at all.¹⁰⁰⁴

The goal of the 2018 Memorandum of Understanding with the National Teachers' Professional Development Center (TPDC) is the cooperation in the development of qualifications of teachers and administrative staff around human rights. Under this MoU an online training course for teachers and school principals/deputies was developed on fundamental human rights and was piloted in several schools of Tbilisi and the regions; 45 teachers and school administration staff took part in the training.¹⁰⁰⁵ Currently, the Ministry of Education, Science, Culture and Sports is deploying the training program online

¹⁰⁰⁰ The Letter MES 8 20 00475326 of the Head of the Rector's Apparatus of the LEPL Tbilisi State Medical University, dated June 19, 2020.

¹⁰⁰¹ The Public Defender of Georgia February 27, 2020 Recommendation 17-1/2419 dated February 27, 2020, available at: <<https://bit.ly/2TByCue>> [accessed 02.03.2021].

¹⁰⁰² Amnesty International, Human Rights Friendly Schools Toolkit, 2017, available at: <<https://bit.ly/2OWKCYf>> [accessed 13.03.2021].

¹⁰⁰³ The research about teaching human rights and the learning environment in the general educational space, pg. 32.

¹⁰⁰⁴ The information is based on the review of programs on the websites of higher educational institutions.

¹⁰⁰⁵ 153 education specialists have been registered for the training of trainers planned under the course.

on the Ministry learning platform.¹⁰⁰⁶ TPDC is planning to implement the afore-mentioned online training course in 2021.

In the resolution¹⁰⁰⁷ about the Annual Report of Public Defender, the Parliament of Georgia reflected the Public Defender's recommendation about the development of a unified training policy document for human rights education of school teachers and other individuals engaged in the academic process. The response letter from the Ministry of Education, Science, Culture and Sports about the implementation of the Parliamentary assignment refers to systematic trainings or other educational activities (for teachers and other individuals engaged in the teaching process) under the TPDC project on Promoting Democratic Citizenship and Human Rights Education Project.¹⁰⁰⁸ This program has addressed the Public Defender's recommendation partially, since its implementation scale and timeframes are to some extent conditioned by financial contribution from international donor organization and it does not represent a long-term, continuous mechanism that would be guaranteed by the development and implementation of a relevant policy document.

In the Parliamentary Report of 2019 the Public Defender referred to reflecting a basic knowledge on human rights in teacher professional standards. Unfortunately, there has not been much progress in the implementation of these recommendations during the reporting period.¹⁰⁰⁹ Only a few of local authorities, have partially fulfilled the recommendation by adopting normative acts envisaged by the Law of Georgia on Early and Preschool Education.¹⁰¹⁰

For the improvement of skills of school administration in mainstreaming rights based approaches in the management process, in cooperation with the Ministry of Education, Science, Culture and Sports of Georgia, the PDO designed 15 close-ended questions about fundamental human rights to be included in the examination tests for school principals and provided them to the LEPL - Education Management Information System.

Recommendations

To the Government of Georgia:

- Set measurable outcome, output and impact indicators for human rights education and awareness raising in the updated National Action Plan on Human Rights;

¹⁰⁰⁶ Available on website: < <https://bit.ly/3licEtG> > [accessed 12.03.2021].

¹⁰⁰⁷ The Parliament of Georgia Resolution on the Report of the Public Defender of Georgia dated June 29, 2020, Article 7 (c). Available at: < <https://bit.ly/3tkv67L> > [accessed 12.03.2021].

¹⁰⁰⁸ December 7, 2020 letter MES 2 20 001166650.

¹⁰⁰⁹ The Minister of Education and Sciences of Georgia Order N 1014 dated November 21, 2008 on the Approval of Teachers' Professional Standard.

¹⁰¹⁰ Normative acts have been developed and approved by Mtskheta, Kazbegi, Khashuri municipalities.

- Develop a unified human rights education strategy and action plan, based on relevant international guidelines;
- Include information about the implementation of Goal 4.7 in the next National Voluntary Review on the implementation of the UN Sustainable Development Goals.

To the Minister of Education and Sciences of Georgia:

- Develop a unified training policy document on human rights for teachers and other individuals engaged in the academic process;
- Develop a strategy/action plan for proactive detection of the encroachment on the religious neutrality of public schools, as well as religious indoctrination in academic process, proselytism, or forced assimilation;
- Amend the rule of school textbooks/series approval for relevant step(s) so as to enable the confirmation of partial compatibility (authenticity) of the material with recommendations issued by a subject-matter team (with the authority to provide recommendations to the subject review team and setting additional deadline for implementing them);
- Through legislative amendments, discontinue the practice of requiring independent consent of each reviewer for all recommendations and justifications developed by the team during the first stage of content review;
- Include an expert with relevant experience in human rights to get fully involved in the decision making process of appeal committee within the textbook approval process.

To local self-government authorities:

- City Halls and Municipalities of Dedoplistskaro, Zestaponi, Lanchkhuti, Signagi, Tkibuli, Chiatura and Khoni shall develop and approve normative acts envisaged under the law of Georgia on Early and Preschool Education Article 28(4)(d) and (e).

21. State of the Children's Rights

21.1. Introduction

In 2020, the country faced challenges in protecting the rights of the children. During pandemic, the risks of violence against children, along with neglect and child poverty, have increased dramatically. At the same time, the mental health of juveniles was endangered in isolation, especially in the situation where access to appropriate child-focused rehabilitation services is remaining problematic in the country for years.

Significant restrictions were imposed on the pre-school and general education systems. Online learning process was related to issues such as children's access to the Internet and computer equipment, access to quality education, support for people with many children living in poverty, disability along with need for special education and proper involvement in the educational process. According to the Public Defender, during the reporting period, the measures taken by the state to manage the teaching process in general education institutions were not sufficiently consistent.

Children have been vulnerable to poverty and the risks associated with an inadequate standard of living for years in Georgia. Due to social and economic problems, child labor and its extreme forms are still relevant. The situation of children who live and work in the streets is also acute. Unfortunately, the current social system and programs in the country do not meet the individual needs of families with children, mostly they are one-time and are not focused on long-term results.

While protecting the rights of the children should be one of the top priorities for the state, the number of professionals who are primarily responsible for responding to violation of their rights is extremely low. 268 social workers and 12 psychologists are employed in the guardianship institutions across the country,¹⁰¹¹ working with thousands of juveniles under state care and under the risk of abandonment, as well as those who have experienced violence, conflict with the law, life in poverty or other problems. Due to the small number of social workers and psychologists, not only the protection of the individual rights of minors but also their lives and development is at risk, because in the absence of rehabilitation and support services, even in the most problematic cases, the response is delayed and ineffective.

Cases of violence against children, including sexual abuse, are subject of special concern. This is as a result of permanent inaction, lack of qualifications and lack of proper rehabilitation services for children who are victims of violence, the Public Defender's Office has been referring the mentioned issues for years.

¹⁰¹¹ Letter №07 / 842 of February 8, 2021 of the LEPL State Care and Trafficking Victims Assistance Agency.

21.2. Children's right to life and health

In the conditions of the coronavirus pandemic, children's right to life, development and health are at particular risk. The risks of children's psychosocial needs, mental health, inadequate care, and neglect are further increased in this situation, when children and families spend most of their time in isolation.¹⁰¹²

According to the United Nations Children's Fund (UNICEF), water, sanitation and hygiene services (WASH) are in danger of being destroyed under restrictive measures imposed to stop the virus. Such a situation puts children at risk and reflects in the problems of access to child services. During pandemic, the risks not to follow WASH standards were particularly evident in Georgian public schools, some of which failed to meet the challenges caused by the virus, which further increased the health risks in this area.¹⁰¹³

Prevention of child suicide remains a challenge in Georgia. According to the Ministry of Internal Affairs of Georgia, in 2020, 14 cases of juvenile suicide and 54 cases of attempted suicide were detected.¹⁰¹⁴ According to the Ministry of Education, Science, Culture and Sports of Georgia, from March 1 to October 31, 2020, 36 cases of students' suicidal thoughts / behaviour and self-harm were revealed.¹⁰¹⁵

Among the risk factors for child suicide are still unresolved systemic problems. Violence against / among children, domestic violence, poverty and inadequate living standards are acute, compounded by the lack of adequate rehabilitation services in the country, the lack of professionals working on such cases, and their low qualifications. Particularly problematic is the lack of social workers and psychologists,¹⁰¹⁶ the need to raise the awareness of teachers in schools, the issue of training of law enforcement officers.

There is no methodological document for assessing and detecting suicidal behaviour of children in children in the country as well as a specific tool that would allow social workers, law enforcement officers and school representatives to assess the risks of suicide in children based on specific indicators, take a multidisciplinary approach to solve their problems.

Despite the severity of the problem, the state has not yet developed a specific strategy and action plan aiming to eliminate the causes of suicidal behaviour among children, and for timely and effective assessment of the individual needs of children at risk.

¹⁰¹² United Nations Document on the Impact of COVID-19 on Children, 15 April 2020, available at: < <https://bit.ly/31sl9cx> > [last viewed 24.03.2021].

Right there.

¹⁰¹³ Ibid.

¹⁰¹⁴ Letter MIA 9 21 00593220 of March 11, 2021 of the Ministry of Internal Affairs of Georgia.

¹⁰¹⁵ LEPL Educational Institution Resource Officer Service, letter of November 5, 2020 MES 2 20 0001071538,

¹⁰¹⁶ The guardianship body employs 268 social workers and 12 psychologists who have thousands of beneficiaries at risk of violence, misconduct and abandonment.

One of the tragic examples of existing systemic problems is the suicide of a 14-year-old girl in Kobuleti,¹⁰¹⁷ which is not an isolated case, but is a part of a whole problem. This case has shown that suicide prevention, risk assessment and timely response remain a problematic in the country.

21.3. Protection of children from violence

The analysis of the cases studied by the Public Defender of Georgia in 2020 shows that in conditions of pandemic and isolation, when it is difficult to identify children victims of violence and part of the services are provided remotely, there is a high risk of domestic violence against minors. Cases of sexual, physical and psychological abuse, bullying and neglect of children were also identified during the reporting period. It is also noteworthy that in the context of the Coronavirus pandemic, child victims of violence were provided with supplementary programs and services remotely, this put the effectiveness of these service at risk.

As in previous years, protection of children from abuse is still linked to challenges such as timely detection of violence, comprehensive and effective response to detected facts, lack of rehabilitation services, inadequate coordination between responsible agencies for prevention of violence, and law qualification of professionals working with minors.

In the situation of reduced public services and human resources, children do not have access to services tailored to their individual needs. The involvement of a psychologist is mostly fragmentary, often delayed and ineffective. A number of cases investigated by the Public Defender have shown that after assessment of psychological needs of juvenile the service of psychologist is provided after several months.

According to the LEPL State Care and Victims Assistance Agency, in 2020, 1818 cases of violence against children were identified. During the reporting period, 422 beneficiaries used the shelter¹⁰¹⁸ for victims of violence against women and domestic violence, of which 48 beneficiaries were minors;¹⁰¹⁹ It should also be noted that these shelters provide services to women and victims of domestic violence; The state has not yet introduced targeted services for children directly affected by violence.

The problem of detecting and responding to cases of violence against / among children is obvious in general education institutions as well. In 2020, 928 beneficiaries were referred to the Centre for Psychosocial Services of the Resource Officer of the Educational Institution to receive services, 221 minors and / or their parents / legal representatives refused to receive the services.¹⁰²⁰

In 2020, 657 cases of violence against / among children were mentioned in the information database of the LEPL Resource Officer of Educational Institution, out of which 432 cases of violence (physical abuse) between students, 210 cases¹⁰²¹ were referred to the Agency for State Care and Victims of Trafficking. LEPL Educational Resource Officer Service is represented in 607 public schools across the country. According

¹⁰¹⁷ Statement of the Public Defender of Georgia, available: < <https://bit.ly/30LABQy> > [Last viewed 24.03.2021]

¹⁰¹⁸ The shelters are located in Tbilisi, Batumi, Gori, Signaghi and Kutaisi.

¹⁰¹⁹ Letter №07 / 842 of February 8, 2021 of the LEPL State Care and Trafficking Victims Assistance Agency.

¹⁰²⁰ Letter #MES 8 21 0000204527 of the Ministry of Education and Science of Georgia dated March 9, 2021.

¹⁰²¹ *ibid*

to information received from educational resource centres, in general education institutions where there are no resource officers, and the contingent of pupil in such schools is therefore small, a total of 11 cases of violence against / among children were detected in 2020, these cases were referred to the relevant authorities.¹⁰²²

21.3.1. Family violence

According to the United Nations Policy Research Document¹⁰²³, the most common form of violence against children is domestic violence. Minors are often witnessing of domestic violence against women, a rate that has increased in many countries under the influence of the coronavirus. Such forms of violence are most likely to occur when families experience stress and anxiety in conditions of prolonged isolation at home. 60% of children worldwide live in countries where full or partial restrictions have been imposed. These restrictions unfortunately allow child abusers to harm minors. Children rarely have the opportunity to inform anyone on this, while, social, legal and protection services for children are suspended or reduced.¹⁰²⁴

According to the General Prosecutor's Office of Georgia,¹⁰²⁵ in 2020, 887 juveniles were recognized as victims of domestic violence. In 2020, 623 restraining orders¹⁰²⁶ were issued on the facts of domestic violence against minors; In addition, 13 protection orders were issued by the district (city) courts of Georgia on the facts of violence against minors.¹⁰²⁷

¹⁰²² *ibid*

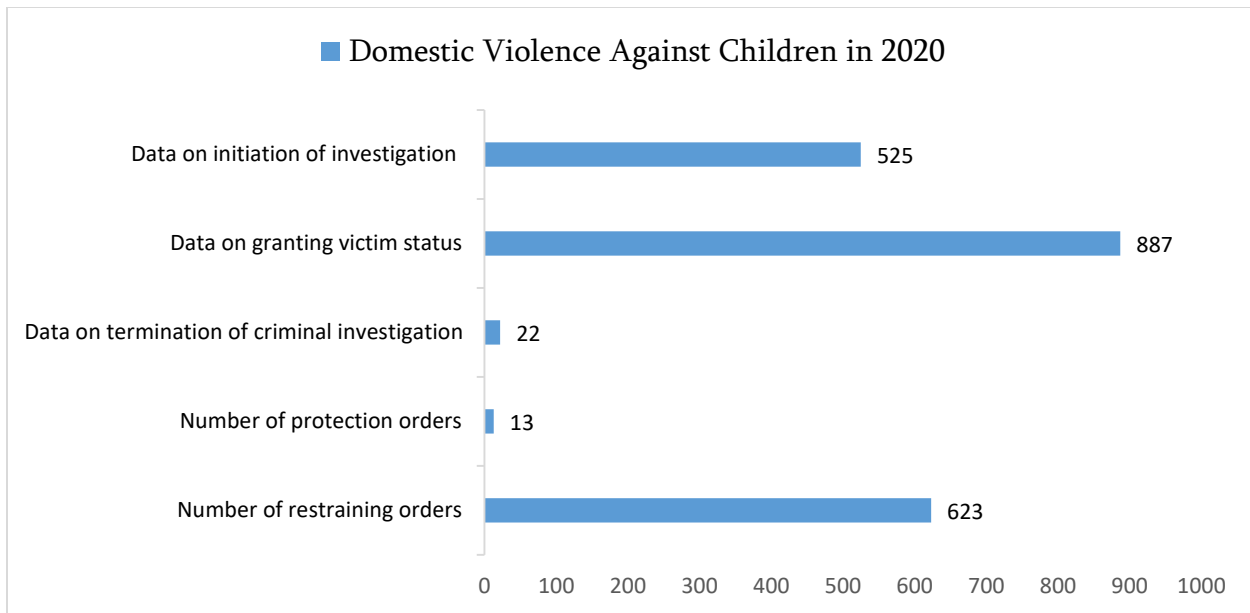
¹⁰²³ United Nations Document of 15 April 2020 on the Impact of COVID-19 on Children. Available: <<https://bit.ly/31sl9cx>> [Last viewed 24.03.2021].

¹⁰²⁴ *ibid*

¹⁰²⁵ Letter №13 / 12360 of March 5, 2021 of the General Prosecutor's Office of Georgia.

¹⁰²⁶ Letter MIA 9 21 00593220 of March 11, 2021 of the Ministry of Internal Affairs of Georgia.

¹⁰²⁷ Letter GP-125-21 of February 26, 2021 to the Supreme Court of Georgia.



In 2020, the monitoring of cases of domestic violence was the subject of special attention from the side of Public Defender. During the reporting period, it appeared that, as in previous years, it is still problematic to prevent domestic violence against children, to protect and assist victims. Revealing facts by social workers and law enforcement bodies is delayed in some cases, and in already identified cases, minor victims of domestic violence do not have access to long-term, therapeutic rehabilitation services. In addition, custodial institutions and investigative bodies do not provide a properly adapted environment for the children.

The increasing of the risk of domestic violence against children has once again shown that it is crucial to increase the staff of social workers and psychologists in the regions in order to detect child abuse and take measures aiming to ensure safety and support for the victims.

21.3.2. Sexual violence against children

Numerous cases which took place in the country have shown that the delayed and ineffective response of the state to the facts of sexual abuse and exploitation of a child can even have fatal consequences¹⁰²⁸. The state fails to identify needs of underaged victims of sexual violence and to carry out effective measures for rehabilitation and support of them.

In 2020, 254 criminal proceedings on sexual violence and sexual exploitation against minors qualified under Articles 137-141, 253-254 and 255-2552 of the Criminal Code of Georgia were launched, 31 of these cases were crimes committed in families.¹⁰²⁹

¹⁰²⁸ Statement of the Public Defender of Georgia, available: < <https://bit.ly/2O5HBoM> > [last viewed on 24.03.2021].

¹⁰²⁹ Letter # MIA 9 21 00593220 of March 11, 2021 of the Ministry of Internal Affairs of Georgia.

Despite the high number of crimes, the lack of staff working on cases of sexual violence against minors, their low qualifications and the lack of rehabilitation services focused on child victims still remains a serious problem in the country.

It is essential to involve relevant juvenile specialists in the investigation and trial and to create a child-friendly environment. Nevertheless, only in six structural units of the Ministry of Internal Affairs of Georgia there is a juvenile interrogation room, and remote interrogation of a child is possible only in the building of the Rustavi City Court. The establishment of the Main Division of Juvenile Affairs in the system of the Ministry of Internal Affairs of Georgia should be mentioned as a positive factor. However, the division operates in the Tbilisi Police Department and there are no similar structural units in other regions.

In addition, although the involvement of appropriate specialists is crucial to prevent secondary victimization related to child, there is no document that would precisely regulate the involvement of a psychologist in child sexual abuse cases, or that would guide investigators and prosecutors in making such decisions. It should also be noted that the responsibilities and powers of the psychologist and social worker at the investigation and trial stage are not clearly and precisely described. In addition, restriction of victims with the strangers is not ensured. In particular, there are cases when different investigators, social workers and psychologists work with the affected child in different investigative actions.

The lack of adequate staff and the lack of rehabilitation services make it virtually impossible to implement timely and effective measures tailored to the victim child. At this stage, across the country, there is only one psychologist in each region within the State Care Agency, which makes it impossible to respond to all cases in a timely and appropriate manner, taking into account the individual approach to the child. Also, especially problematic is the issue of geographical access to psychological services, which often makes it impossible for a psychologist to work with a child on rehabilitation. The lack of social workers employed by the state care agency is also crucial issue, which prevents them from taking timely and effective measures in relation to each case of child abuse.

The lack of the staff and resources is also related to the challenges of medical expertise in cases of sexual abuse of children. In particular, due to the lack of relevant equipment and specialists, the medical examination in cases of sexual violence against minors is conducted only in Tbilisi, at the central office of the Medical Examination Department of the Levan Samkharauli National Forensics Department. Consequently, children victims of sexual violence have to be transported for a long time before a medical examination. In addition, the Levan Samkharauli National Forensics Bureau employs only six female medical experts in Tbilisi branch, this complicates provision of appropriate procedures for a child victim of sexual violence in a timely manner.

Proper and timely detection of risks, requiring special knowledge, is crucial in cases of sexual abuse of a child. Although the training of investigators, prosecutors and judges on juvenile justice is being carried out step by step, the state has not yet been able to provide training to relevant staff through a training module tailored directly to the crimes of child sexual abuse. Social workers do not receive any support in

relation to raise qualification on this issue. At the time when their responsibility is to assess timely the individual needs of the child victim and to provide support and to ensure assistance/strengthening of the children and their families.

21.4. Poverty and inadequate standard of living

Under the Kovid-19 pandemic, the risks of child poverty have increased even more due to the difficulties posed by the global economic downturn.¹⁰³⁰ Risks of poverty and inadequate living standards have also increased in Georgia. In the situation of the socio-economic problems caused by the pandemic, the inadequate standard of living has reached an even more critical level and has caused a significant crisis in socially disadvantaged families with children.

In Georgia, from January to December 2020, the number of families receiving subsistence allowance, with at least one child, increased from 71,766 to 87,527 families. And, the number of families with 3 or more children from 20,750 to 25,782 families. During the same period, in January, 152,353 juveniles were enrolled in the program, and at the end of the year 186,131 juvenile beneficiaries were enrolled.¹⁰³¹

In May 2020, 22 644 children received a compensation within the targeted state program aiming to reduce damage caused by Coronavirus, and in October - 25154 families were involved in this program.¹⁰³² Despite the compensation of the state, during the reporting period, numerous citizens applied to the Public Defender's Office on the issues of children poverty caused by unemployment and inadequate social environment, including adequate food products, clothing, learning items and housing. These challenges are especially relevant for the children living in rural areas and in high mountain regions, where the municipal services of targeted assistance are very small and the social allowance obtained within the state sub-program is insufficient to increase the social function of families and to reduce poverty level.

According to the Assessment of Public Defender the current social security system, the existing state and municipal services did not appear to be sufficient during the pandemic of coronavirus to cope with the poverty challenges arising the families with children, especially when the large part of the families are left without a job. The social allowance received from state is often not enough to buy food, clothes and primary household / educational items for children. One of the reasons which caused such situation is the absence of the targeted social aid program oriented to identify and to eliminate the identified risks of the families with children living in poverty. The current social security system fails to eliminate children's poverty in the country or significantly reduce it.

¹⁰³⁰ United Nations Document on the Impact of COVID-19 on Children, 15 April 2020, available at: < <https://bit.ly/31sl9cx> > [last viewed 24.03.2021].

¹⁰³¹ Letter to the LEPL Social Service Agency, February 19, 2021 № 04/1160.

¹⁰³² Families with 100001 rating points registered in the "Unified Database of Socially Unprotected Families", which have 3 or more children from 0 to 16 years.

In the cases studied by the Public Defender of Georgia is revealed that like past years, involvement of children in the sub-program on "the emergency support for families with children who are in the crisis situation" is still delayed. According to the statements of the citizens, that in some cases, it is insufficient and family needs are not covered with the assistance provided for beneficiaries within the sub-program (including food products).

One of the obvious examples of the extremely difficult situation related to the poverty in the country is the fact of death of 4 juveniles as a result of fire in Baghdati municipality.¹⁰³³ It is noteworthy that the guardianship-care body worked before the fire incident, in particular, the social worker has developed a "family assessment conclusion", which was referring to the risk related to lack of social skills, to absence of stable asylum and poverty. However, despite revealing of the risks, it was not possible to raise the social function of the family, avoid poverty and strengthen supporting services.

21.5. Child labor

In 2020, in the conditions of the Coronavirus Pandemic, taking into consideration the common background of the socio-economic condition of the population and existing risk of growth of the poverty of children, the risk of involving children in labor also increased. However, children's work in the country was problematic before the Covid-19 pandemic and afterwards. Due to the poverty, inappropriate level of life and other social factors life, children are at a risk to be involved in the work inappropriate with their age and threatening their development. Despite the severity of the situation, the state does not react efficiently on this problem. Responsible agencies have not elaborated effective mechanism to respond to such cases, to prevent them and to assess risks.

In 2020, the Office of the Public Defender of Georgia conducted research with the support of the UNICEF "Children's labor in the new Corona virus pandemic and beyond", within the research it was studied whether national legislation is in line with international standards along with existing challenges in this regard. The results of the study show that the practice in the regions is to involve juveniles in seasonal works that puts at a risk the development of children and their availability. Children, in order to get rid of poverty, are performing hard works such as collecting of scrap, work on trucks and cargo and farming works.

Responsible agencies are still unable to eliminate children's labor in the streets, to prevent participation of juveniles in anti-social activity, to coordinate work on identifying needs of children living in the streets and improving the situation. From the side of custodian-care body mobile groups¹⁰³⁴ are working with children in the streets, the groups consist of social workers, psychologist, education specialist and driver. However, mobile groups are not functioning in large cities such as Batumi, Kobuleti, Telavi, Akhaltsikhe, etc. The children working in the streets are offered to provide service to shelters and day centres for

¹⁰³³ Statement of the Public Defender of Georgia is available: < <https://bit.ly/3ffc3z> > [end Views 24.03.2021].

¹⁰³⁴ Mobile groups operate in three cities - Tbilisi, Kutaisi and Rustavi.

homeless children, but it is not an effective means of avoiding children's labor and rehabilitation, because in most cases, children are still returning to the street and continue to work.

In terms of realizing children's rights, labor migration is one of the most important challenges. The labor migration occurs on seasonal basis, as well as for short-term and long-term period, the age of children ranges from 14 to 18 years.

Involvement in labor activities leads to abandonment of school by juveniles. During seasonal works, households and temporary labor migration, juveniles are not involved in the educational process. Employees of educational institutions, teachers and administration, in some cases, do not record the facts and reasons for the absence of juveniles. As a result, they cannot identify all the facts of involvement of children in labor activities and the facts remain beyond any respond. During this period, children perform severe works for their age and physical development, have a loaded schedule in unhealthy environment; Often they do not have adequate living conditions, food, sleep and leisure regime.

The absence of an appropriate mechanism for responding to children's labor, in practice, is more complicated by delayed identification of labor, especially hard labor cases from the side of responsible agencies, and effective response to the cases, especially if juveniles are involved in informal labor activities; As a result, children's labor issue is still unsolved.

21.6. Children working and living in the streets

Under the reality caused by Coronavirus, the most vulnerable group are children living and working in the streets. Besides the fact that they are particularly vulnerable to violence, the acute problem is to provide to them such basic needs as shelter and proper meals, as well as effective access to education, health and other services. In addition, the homeless children are at high risk of spreading the infection.

Within 2020, within the framework of the Sub-Program of "Providing shelter for homeless Children" 277 beneficiaries used provided services, 177 took advantage of the day center, and 100 of day and night shelter,¹⁰³⁵ this unfortunately, cannot cover the full contingent of homeless children. It is also noteworthy that in 2020, five criminal cases were launch under the Article 171 of the Criminal Code, involvement of children in an anti-social activity, and seven criminal cases were launched under Article 1432 of the Criminal Code, which implies trafficking (trafficking) of children.¹⁰³⁶

The Public Defender's Office has carried out monitoring of all day centers and day/night shelters within the sub-program of "Providing shelter for homeless children" within its mandate. According to the current information, the quarantine space for homeless children aiming to to prevent the possible distribution of Coronavirus (COVID-19) was functioning only in Tbilisi, and from March to May, 2020 only 18 children were placed there.¹⁰³⁷ In addition, the results of the monitoring of day centers and day/night shelters revealed that psychosocial needs of homeless children were not properly met in the quarantine space.

¹⁰³⁵ LEPL State Care and Trafficking Victims Assistance Agency No. 07/8/842 of 2021.

¹⁰³⁶ MIA 9 21 00593220 of the Ministry of Internal Affairs of Georgia of 2021.

¹⁰³⁷ LEPL State Care and Trafficking Victims Assistance Agency No. 07/8/842 of 2021.

Also, despite the fact that the mobile groups of sub-programs in Tbilisi, Rustavi and Kutaisi have established contact with 234 children in the streets, the problem of identifying homeless children, establishing contact with them, caring out the measures aiming their protection is still relevant. The problem is particularly critical in the Adjara region where despite numerous recommendations of the Public Defender, the sub-program does not apply. In addition, there is no methodology and form of quality assessment of mobile groups activities allowing to identify needs and all possible risks for each child living or working in the streets.

The children are living and working in the streets because of different reasons, but one of the main reasons is poverty.¹⁰³⁸ According to the existing data, the reality caused by Coronavirus has reduced income of significant part of the families and lead them to poverty: compared to the period before pandemic revenues of approximately of quarter of the families (23%) were reduced.¹⁰³⁹ The risk of finding children themselves in the streets will not be reduced by the existing social systems and services.

Services for children living and working in the streets did not foresee providing of services for the beneficiaries when they become 18 years old. Municipalities are still unable to assess need of the families with children living in the poverty and to implement effectively existing programs. This situation is now also more problematic as from March 22, 2020 day service centers temporarily suspended their services due to prevention of possible spread of Coronavirus.

The results of the study conducted by Public Defender reveals that the sub-program on providing of shelter for homeless children is suffering from the lack of material-financial and human resources. In addition, institutions require support to solve infrastructural issues. It is also problematic for the absence of additional support services for homeless children and their families and their geographical access.

21.7. Child protection in the villages nearby the occupation line

Children living in villages nearby the occupation line have significant needs in relation to the access to education, social integration, health care services, psychosocial well-being and proper level of life.¹⁰⁴⁰

The study of this issue by the Public Defender of Georgia shows that unlimited use of the right of school and preschool in the villages near the occupation line is related to many challenges. Among them are the physical availability of schools, improper infrastructure, problems of encouraging informal education, the lack of early and preschool education institutions. In some villages kindergarten does not work in kindergartens and schools, the infrastructure and the physical environment does not meet standards of educational process in a safe environment. Schools, mostly, do not have a buffet, playground and

¹⁰³⁸ "Children Living and / or working in the street in Georgia" UN Children's Fund report is available: < <https://uni.cf/332lq7n> > [end Views 24.03.2021].

¹⁰³⁹ "Knowledge, Risk Perception, Preventive Behavior and Public Trust Monitoring during Coronavirus Pandemic" UN Children's Fund report is available: < <https://uni.cf/2zyj5bo> > [finally Views 24.03.2021].

¹⁰⁴⁰ The Public Defender's Office examined the rights of children living in 6 villages of Gori municipality and in 2 villages of Kareli municipality and their basic needs.

assembly hall. The problems of school infrastructure were especially identified in the villages of Gori municipality - Mereti, Kerale and Nikozi public schools. Similar problems are also visible in the villages of Kareli municipality including Gnoleev, Avlevi and Bredzi.

Children are mostly involved in the general education process, however, according to the local population, people are migrating from villages, that leads to the closure of public schools and the abolition of education facilitating services, including the abolition of art circles, cognitive, sports, art and other types of informal activities. In many cases, the absence of informal cognitive activities in the village, which is added to municipal transport problems, juveniles are not properly integrated into societies.

The main concerns of the population living in the villages near the occupation line are the post-control stress and psycho-emotional needs, fear and tension caused by the threat of conflict situations in children. In the most part of the villages nearby to the occupation line, local medical services do not operate in terms of realization of health rights, this fact creates many obstacles to local population, especially children. According to the local population, due to poverty and improper living conditions, they have problems related to purchasing of necessary food and medical staff.

21.8. The rights of children under state care

In terms of the protection of children under state care, the state faces challenges such as prevention of violence against children in the care system, identification of victims, response to their needs, rehabilitation of children's victims of violence, protection of education and health, support of beneficiaries who left the state care system. In addition, the problem still exists in relation for the protection and monitoring of juveniles living in religious school-boarding schools.

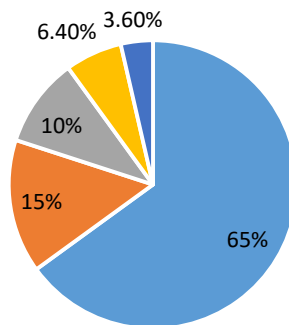
There are 45 small family type houses and 774 persons are registered as foster carers. In this regard, the supply of services is the small in Racha-Lechkhumi - Kvemo Svaneti region, there is only one small family type house and 4 foster carers. In the foster education there are 1571 juveniles, and in small family-type homes - 280. In 2020, 315 minors were placed in the state care, and 112 juveniles are returned to the biological family 521 juveniles are in the process of reintegration.¹⁰⁴¹

In 2020, the main reason for placement of 315 juveniles under state care was violence and neglect, however, there the cases of state care caused by inadequate level of life and poverty are also frequent.¹⁰⁴²

¹⁰⁴¹ LEPL State Care and Trafficking Victims Assistance Agency No. 07/8/842 of 2021.

¹⁰⁴² LEPL State Care and Trafficking Victims Assistance Agency, 10/1918 of March 10, 2021.

The Reasons for Placing Juveniles Under State Care in 2020



- Violence and negligence
- Poverty and inadequate standard of living
- Child behaviour
- Abandonment from parent
- Due to health reasons

Children living in state care require special support from the state in terms of pandemic, especially in the situation when the agency is working remotely¹⁰⁴³ for the purpose of preventing spread of the virus. According to the information¹⁰⁴⁴ provided by the Victims of State Care and Trafficking, the Victim Assistance Agency, in small family-type homes, the standards for prevention and control of the infection caused by a new Coronavirus for the 24-hour care institutions exist. Small family type homes are closed for third persons and movement is restricted, temporary withdrawal to biological families and meetings with family members are also restricted.¹⁰⁴⁵

The existence of insulating room in small family-type homes depends on the resources of home. In the majority of small family-type homes integrated in commune, the quarantine room cannot be separated and, if necessary, the infected beneficiaries are placed in their own rooms. In addition, in the part of the homes,¹⁰⁴⁶ where monitoring was conducted, infrastructural problems have been identified: damaged furniture, roof, heating system, toilet and bath inventory.

The results of the monitoring of the Public Defender have shown over the years that part of the beneficiaries in the state care system does not have access to internet and digital technologies at all. In

¹⁰⁴³ Social workers working remotely monitor beneficiaries online or through phone. They go to the place in case of revealing of problem and in emergency cases.

¹⁰⁴⁴ LEPL State Care and Trafficking Victims Assistance Agency No. 07/56/56 of January 29, 2021.

¹⁰⁴⁵ In case of enrollment in the institution and in the case of long-term withdrawal, all beneficiaries are undergoing PCR testing for Coronavirus infection. beneficiaries and caregivers are tested once in 2 weeks.

¹⁰⁴⁶ Non-governmental (non-commercial) legal entity Association "The beam of the future," Ozurgeti; "Batumi Education, Development and Employment Center," Batumi.

the process of distance learning, the technique of small family type houses was dependent on the financial possibilities of the provider organizations. In addition, a large part of the children has a lack of motivation for education, they have special educational needs and need additional support in the remote teaching process, that is extremely difficult in the conditions of human resources. For juveniles in state care, especially in the regions, access to additional, informal activities is problematic, which has been reduced due to conditions of the pandemic.

Monitoring conducted in small family-type homes showed that no rehabilitation is provided for victim children, there is no effective, therapeutic and outcome-oriented rehabilitation programs that are aggravated by the emotional state of children. This problem is common in general for juveniles in state care and their life conditions depend on the personal skills of the caregivers and recipient families. The state is still unable to provide access to services for beneficiaries who reached age of 18, and young people are returning from the care to the same environment they were before the state care. It is noteworthy that 133 beneficiaries left state care system because of reaching of age 18 in 2020. In this regard, the condition of persons with disabilities is especially acute, sometimes young people are not even able to have any self-sufficiency, they are left without support and care, and are fully dependant on the resources of the provider organization, which in most cases is very reduced in the situation of small vouchers.

According to the information provided by the Agency, as of today, 3 licensed religious school-boarding homes are operating in the country and 163 juveniles are registered there.¹⁰⁴⁷ Despite the licensing, it is still problematic to monitor the rights of children in such homes. Monitoring is prevented in Ninotsminda Boarding school¹⁰⁴⁸, according to the provided information representation of the school is against the visits of the social worker. Which is imposed on the protection of the rights of juveniles living in the boarding and increasing the risk of high institutional violence in the boarding house. This threatens protection of the rights of juveniles living in the boarding school and increasing the risk of high institutional violence in the boarding house. It is still problematic for the License of Muslim Boarding houses. The state has not properly studied the circumstances that should be taken into consideration in the Muslim Boarding houses Licensing process, this increases the risk work of such boarding entities without state control. In addition, it is important for the state to develop unified policy and approach, in general, in relation to religious boarding schools, taking into account the best individual interests and needs of children.

During pandemic, the risks related to large institutions became more visible. According to the information¹⁰⁴⁹ provided by the Agency of State Care and Trafficking Victims/affected Assistance Agency the personnel of the non-commercial legal entity “the Apostle Matata Batumi City Fund” has switched to

¹⁰⁴⁷ LEPL State Care and Trafficking Victims Assistance Agency No. 07/8/842 of 2021.

¹⁰⁴⁸ “Ninotsminda St. Nino Boarding house for the careless children of the Patriarchate of Georgia”.

¹⁰⁴⁹ Letter of the State Care and Trafficking Victims Assistance Agency of LEPL, December 4, 2020 № 07/10550.

the 10-day service regime. Contact of children with family members is mostly remote. However, due to the large number of children, their access to electronic and computer facilities is problematic. At the same boarding school, as of February 2021, 58 juveniles and 20 employees were infected.

21.9. Protection of the right to education

The pandemic has further highlighted the challenges related to education existing in Georgia over the years, among them as access to education, severe infrastructural problems in educational institutions, and the full inclusion of children with disabilities and special educational needs, children living in poverty, children under state care, children in regions and especially in mountainous regions in the process of education. Children who do not have access to the Internet and computer equipment are not able to fully engage in the distance learning process. According to the United Nations Children's Fund,¹⁰⁵⁰ 15% of school-age children in Georgia do not have access to the Internet at home. According to the National Statistics Office of Georgia,¹⁰⁵¹ only 61.8% of households are provided with computers.

According to the information provided by the Ministry of Education, Science, Culture and Sports of Georgia,¹⁰⁵² the model of synchronous, asynchronous and mixed teaching is used in the distance learning process to ensure equal access to education. Also, the distance learning project is "Teleschool", which is implemented by the Ministry in cooperation with the First Channel of Georgia. According to the information provided by the Ministry,¹⁰⁵³ in case if the student is not able to join the "Teleschool" or participate in the online learning process through a special electronic platform offered by the general education institution, the teachers are obliged to give assignments to the students in accordance with the National Curriculum. For this purpose, the teacher may also use telephone communication.

According to the Public Defender, the long transition to the distance learning regime, without providing adequate technical support to families, has put at risk the protection of the right of some children to education. This issue has been particularly acute in relation to minors living in the regions and in poverty. No specific action plan was developed during the reporting period, in which the state planned activities are outlined. This was extremely important as the distance learning process has been extended in several major cities in Georgia.

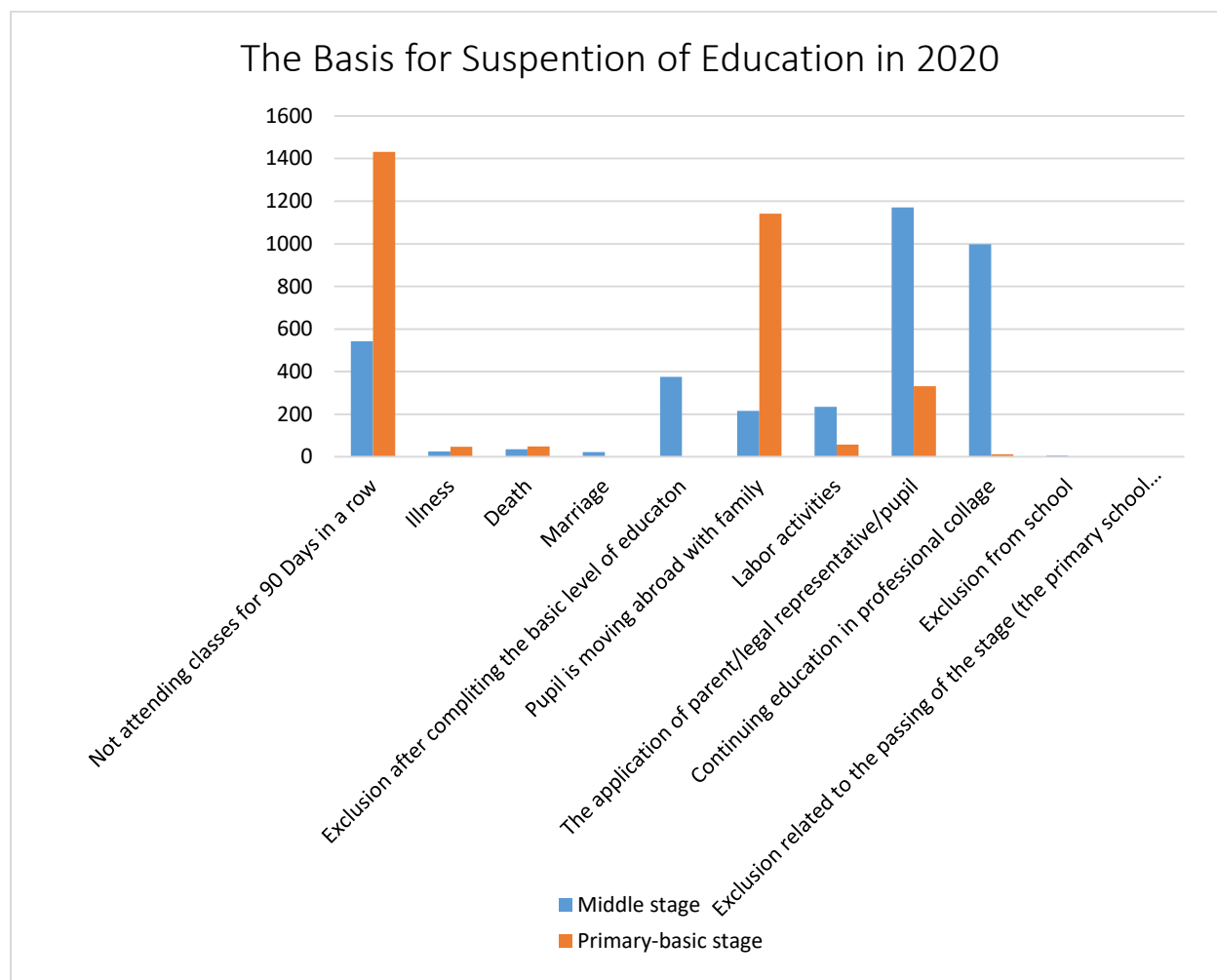
¹⁰⁵⁰ According to a report by the United Nations Children's Fund and the International Telecommunication Union (ITU), 15% of school-age children in Georgia do not have access to the Internet at home, available at: < <https://uni.cf/3cyzES8> > [last viewed 25.03.2021].

¹⁰⁵¹ "Indicator of the use of information and communication technologies in the household," National Statistics Office of Georgia, available at: < <https://www.geostat.ge/media/> > [25/03/2021].

¹⁰⁵² Letter MES 0 20 0001216418 of the Ministry of Education and Science of Georgia of December 21, 2020.

¹⁰⁵³ Letter MES 1 20 00352893 of the Ministry of Education and Science of Georgia of April 29, 2020.

The high education suspension rate remains a problem in the country for years. In 2020 (01.01.2020 - 31.12.2020), 6704 minors stopped studying across the country. 2777 of them were girls and 3927 were boys.¹⁰⁵⁴



The most common reason for suspension of the education is not attending of classes for 90 days in a row by child. This may be due to a variety of reasons, including child neglect, other forms of violence against them, poverty, child labor, and etc. However, the statistics this information is not reflected in the statistics. There are similar risks when a student travels abroad with a parent or when termination is based on an application. Unfortunately, although dropout rates have been high over the years, coordination between general education institutions and responsible agencies on the issues of protection of rights of the children and on reduction of existing risks is not effective and systematic, especially in the case of dropouts before the end of basic education.

¹⁰⁵⁴ Letter MES 1 21 0000075489 of the Ministry of Education and Science of Georgia of February 8, 2021.

As in previous years, in 2020, the highest dropout rates were found in Tbilisi, Kvemo Kartli and Kakheti, which may indicate problems that are specific to a particular region and require in-depth study.¹⁰⁵⁵

21.9.1. Pre-school education

According to data of 2020, there are 1,621 preschools and educational institutions in Georgia, although access to pre-school education and education for children remains challenging, especially geographical access for rural children and the lack of appropriate equipment and internet for distance learning. The physical environment of the educational institutions, as well as the issues of providing it with proper inventory and overcrowding are problematic. The state has not yet been able to fully adapt the kindergarten environment to the standards existing in the country and to ensure a smooth running of the full-fledged educational and upraising process in pre-school and educational institutions. This problem is especially acute for children with disabilities, as most kindergartens fail to provide even physical access for them.

The physical environment in kindergartens, in many cases, not only does not correspond to the number of children and their needs, but in some cases, it is even dangerous for them. Damaged infrastructure of the building, polluted air and lack of inventory directly affects the health of the children and the staff of the kindergarten. Due to the lack of ventilation in the buildings or its malfunction, most of the children are exposed to the dangerous effects of solid particles throughout the day.¹⁰⁵⁶ The risk of health problems for children is increased by the lack of yards and improper arrangement of kindergartens, which makes it impossible to take children out into the fresh air and carry out outdoor activities. The problem is especially acute in kindergartens that do not have a heating system and use a wood-burning stove, which is often installed in nurseries without observing safety rules and extremely pollutes the air in the building. Overcrowding caused by insufficient space in buildings also has a negative impact on this issue. In addition, the small space of the buildings of the educational institutions does not allow to allocate all the rooms for the full course of the educational and upraising process.

Despite the problems in pre-school and educational institutions, which are relevant for all regions of the country, the Government of Georgia has not yet approved the technical regulation "On the arrangement of buildings, infrastructure and material and technical base and buildings". This hinders the identification of measures needed to improve the physical environment in kindergartens and then their implementation.

According to the data of 2020, totally 164,605 children are enrolled in pre-school and educational institutions, the number is significantly smaller in 2021 (158,062 children). However, this is the number of children enrolled in kindergartens and does not fully reflect how many children actually do not have access to pre-school education in the situation of pandemic. As a result of of the virus, it became clear

¹⁰⁵⁵ 2545 juveniles stopped studying in Tbilisi, 1345 in Kvemo Kartli and 588 in Kakheti.

¹⁰⁵⁶ "Health Challenges Related to Indoor Air Pollution in Georgia; Interim Report on Indoor Air Pollution in Kindergartens" WECF GEORGIA, WECF International, NCDC, available: < <https://bit.ly/3sVbKFK> > [last viewed 25.03.2021].

that most kindergartens could not implement the recommendations¹⁰⁵⁷ developed to protect the health of children in pandemic conditions. In addition, because the learning and upbringing process is carried out remotely and there is particular difficulty to access it, with the closure of kindergartens, a large proportion of children are left out of preschool and education. The distance learning curriculum is provided only to a group of school-ready (5-6-year olds). However, even in this case, it is important to consider children for whom it is impossible to participate in education process due to the lack of appropriate equipment or access to the Internet.

The rate of retraining of kindergarten teachers, educators and their assistants is still low, including trainings on violence against children, management of children with difficult behavior and children with disabilities. At the same time, although the remote educational and upbringing process is a rather new and specific issue, the state has not yet developed a precise methodology nor has trained kindergarten educators. It should be noted that at the initiative of "World Vision Georgia", a practical guide for kindergartens was created, "Kindergartens during the pandemic: A Practical Guide for Preschool Institutions", a pilot version that aims to facilitate compliance with health regulations in kindergartens and provide them with methodological support. However, the document does not accurately describe the methodology and plan for conducting each educational activity remotely. The problem is especially acute for children with special educational needs and disabilities, whose specific needs are not met at all by the existing methodology document.¹⁰⁵⁸

Recommendations

To Georgian Government

- Prepare a national strategy and action plan for the prevention and response of child suicide, which will describe the functions, rights and responsibilities of the involved entities;
- To approve the technical regulation "On the Arrangement of Buildings, Infrastructure and Material-Technical Base and Buildings of Educational Institutions", in accordance with Article 28 of the Georgian Law on Preschool Education.

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

- To provide access to health services, psychology and primary health care for children living in the villages nearby the occupation line;
- Together with the Government of Georgia, the State Agency for Care and Victims of Trafficking, other government agencies and child care organizations develop a strategy to

¹⁰⁵⁷ General recommendations for infection with the new coronavirus (SARS-CoV-2) (COVID-19) for early and preschool institutions are available at: < <https://bit.ly/3dhNwzq> > [last viewed 25.03.2021].

¹⁰⁵⁸ Letter MES 4 21 0000165167 dated 25 February 2021 of the Ministry of Education and Science of Georgia.

support 18+-year-old beneficiaries of the out-of-care as well as homeless child support sub-program, which will provide services tailored to the needs of young people;

- With regard to religious boarding schools, with the involvement of the civil sector and the participation of religious organizations, an action plan should be developed, which will formulate a unified policy of the state towards such institutions. The steps to be taken by the state should be specified in the process of splitting of large institutions and the measures to be taken to mitigate the existing risks in case of activities of such institutions beyond the control of the state;
- Together with the provider organizations involved in the state care system, review the issue of voucher financing for small family-type houses and take the necessary measures for the financial support of the houses in accordance with the identified problems;
- According to the needs of the region, to take the necessary measures to implement the services provided by the sub-program on "Providing shelter for homeless children" in the Adjara region;
- Allocate the necessary administrative and financial resources for the effective functioning of the Sub-Program on "Providing shelter for homeless children", as well as develop an effective and efficient tool for assessing the quality of mobile group activities;
- Develop and introduce additional services for the families and parents of street children and working children, both in terms of mobilizing their emergency material support funds and developing the necessary skills to increase employment motivation and opportunity;
- In terms of strengthening families with children living in poverty:
 - Identify gaps in state programs in terms of strengthening families with children living in poverty;
 - Develop ways and methods to solve the identified problems.
 - In coordination with the law enforcement agencies and the High School of Justice of Georgia, develop a document on the investigation and participation of the social worker and psychologist in the court stage, which accurately and in detail defines their role in the process, measures to be taken, guidelines and responsibilities.

To LEPL State Care and Assistance Agency for Victims of Trafficking:

- In order to improve the working conditions of professionals in the field of child care, to respond effectively and to prevent violations of rights of the children, the number of professionals employed in the system, especially social workers and psychologists, should be gradually increased;
- In order to reduce the workload of social workers and ensure timely and adequate response to cases, their functions should be separated into thematic areas;
- To elaborate unified document and methodology for revealing and responding to the facts of violence against/among children, which will describe the functions and obligations of social

workers in details in relation to issues of identification, prevention and responding to the cases of violence against children and besides, will regulated the field of work with children, their interviews, monitoring and further respond.

- Based on a multidisciplinary approach, the needs of children involved in labor should be assessed individually and special attention should be paid to monitoring the situation of juveniles affected by severe forms of labor through the involvement of a social worker and a psychologist. In the context of the COVID-19 pandemic, special attention should be paid to the families of children at risk in terms of their social empowerment.

To the Minister of Education and Science of Georgia:

- In coordination with the Government of Georgia and the civil sector, develop an action plan that addresses the issues of managing the teaching process in general education institutions during pandemic. In addition, allocate both financial and human resources to enable schools to implement preventive measures effectively and improve infrastructure; The Ministry should ensure the monitoring of the mentioned process;
- Identify children who do not have access to equipment and the Internet by regions. Develop statistics to plan specific activities to integrate them into the distance learning process in a timely manner;
- Assess the causes of high school dropout rates at the regional level and, based on this, work with local municipalities, public schools and the guardianship authority to plan future steps to reduce the risk of children dropping out of school as needed;
- Develop a distance learning methodology for preschool and educational institutions;
- Develop a module on distance learning for preschool and educational institutions on distance learning methodology and support local governments in retraining of learners.

To the Minister of Internal Affairs of Georgia:

- Develop a training module on sexual violence against children for investigators and witness / victim coordinators and train them;

To the Prosecutor General of Georgia:

On the topic of sexual abuse of children, develop a training module for prosecutors working with juveniles and witness / victim coordinators and train them.

To Local self-governments:

- In order to identify needs for families with children living and working on the streets and living in poverty, assess at the documentary basis the services necessary to be provided.

- Introduce additional support and social programs for families living on the streets and working with children living in poverty;
- To improve the infrastructure of municipal transport, kindergartens and schools in order to improve the rights of children living in the villages nearby the occupation line, as well as to promote non-formal education;
- Preschool educators should be trained on the needs of children who are victims of violence, management of children with difficult behavior and children with disabilities;
- Kindergarten educators should be trained in distance learning methodology in coordination with the Ministry of Education and Science of Georgia.

22. Human Rights Situation of Persons with Disabilities

22.1. Introduction

In 2020, effective protection of the rights of persons with disabilities was still a challenge. The condition was aggravated by the coronavirus pandemic. The quarantine and isolation regime, various restrictions imposed to prevent the virus had a negative impact on the human rights situation of persons with disabilities. The current situation has threatened the provision of necessary services to them.¹⁰⁵⁹ In some cases, the remote service was not effective because it could not ensure proper provision of services to these individuals.

Special attention should be paid to the ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, which will allow persons with disabilities to apply to the relevant UN Committee on facts of human rights violations. Public Defender also welcomes that the Parliament of Georgia has adopted the Law of Georgia on the Rights of Persons with Disabilities, which is a step forward to bring the domestic legislation of the country closer to the international standards. However, despite the recommendations of the Public Defender,¹⁰⁶⁰ several important issues were not taken into account when adopting the law.¹⁰⁶¹

It is important that in 2020 the Government of Georgia approved the technical rules, "National Accessibility Standards".¹⁰⁶² The document is based on the principles of universal design and contains technical criteria for accessibility of sites, facilities, buildings and elements.

No significant steps have been taken to implement the UN Convention on the Rights of Persons with Disabilities.¹⁰⁶³ This year the process of establishing a national mechanism for implementation of the UN Convention on the Rights of Persons with Disabilities has begun, but has not yet been completed.

The state anti-crisis plans to combat the pandemic do not adequately address the needs of persons with disabilities. The Public Defender negatively assessed the effectiveness of the government's anti-crisis action plan in this regard and considered it necessary to review/amend the planned activities.¹⁰⁶⁴ Nevertheless, the request of the Public Defender was not taken into account.

¹⁰⁵⁹ Especially in the case of services that require face-to-face delivery.

¹⁰⁶⁰ Proposal of the Public Defender on the Draft Law of Georgia on the Rights of Persons with Disabilities, available at: <<https://bit.ly/38HMo6H>> [last visited on 25.03.2021].

¹⁰⁶¹ Statement of the Public Defender on the Law of Georgia on the Rights of Persons with Disabilities, available at: <<https://bit.ly/3lfM11L>> [last visited on 25.03.2021].

¹⁰⁶² Resolution №732 of the Government of Georgia of December 4, 2020 on the approval of the technical rules - "National Accessibility Standards", available at: <<https://bit.ly/3lODHwC>> [last visited on 25.03.2021].

¹⁰⁶³ The United Nations Convention on the Rights of Persons with Disabilities, A/RES/61/106 (adopted December 13, 2006, entered into force on May 3, 2008), available at: <<https://bit.ly/2CqO7wZ>> [last visited on 25.03.2021].

¹⁰⁶⁴ The opinion of the Public Defender on the proper consideration of the needs of persons with disabilities in the anti-crisis economic plan, available at: <<https://bit.ly/3rlqSD3>> [last visited on 25.03.2021].

Measures taken by the state during the reporting period in the field of mental health are not sufficient to protect the rights of persons with mental health problems. The number of community services and their geographical coverage have not been increased significantly. A strategy for deinstitutionalization of the field has not been developed yet. Problems arose in terms of observing preventive measures against the spread of the virus in state care facilities. Protocols for the treatment of persons with mental health problems during coronavirus are not effectively applied in inpatient and outpatient facilities.¹⁰⁶⁵

The challenge was the proper involvement of students with disabilities and special educational needs in the inclusive educational process. In addition to the difficult social background and problems with communication and Internet access, conducting the distance learning process in accessible formats for students with disabilities, and mobilizing relevant human resources in a timely and effective manner are still problematic.

In 2020, the process of transition to a social model for assessing a person with disabilities was ongoing with some delays. In addition, the social package defined by the current assessment model fails to meet the needs of persons with disabilities even to the minimum extent, especially considering the rising prices, rising inflation and pandemics.

22.2. State Program for Social Rehabilitation and Child Care

Every year, by the ordinance of the Government of Georgia, the "State Program of Social Rehabilitation and Child Care" is approved, which combines targeted social services for persons with disabilities in the country. In early 2021, the Public Defender monitored this program, and examined the impact of restrictions on the operation of the program caused by the new coronavirus pandemic.¹⁰⁶⁶

Over the last decade, the overall volume of the program has increased significantly, although the quality of individual services and the lack of beneficiaries involved remain challenging. Some of the services provided by the program are implemented without a service standard, which poses a serious problem for both the quality of their delivery and the monitoring of the services provided.¹⁰⁶⁷ The fact that the state

¹⁰⁶⁵ Order №01-222/მ of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of May 27, 2020 on the approval of state standards (protocols) for the management of clinical conditions - "Mental Health and COVID-19" – "National Recommendation for Clinical Practice (Guideline)" and "Safe Management of Patients in outpatient Mental Health Care Services during COVID-19"; "Safe Management of Patients in Inpatient Mental Health Care Services during COVID-19" Annexes №1, №2, №3, available at: <<https://bit.ly/3vw00kn>> [last visited on 25.03.2021].

¹⁰⁶⁶ The monitoring was conducted by an invited expert with the support of the United Nations Development Program (11.2020-02.2021). The implementation of the activities of the sub-programs envisaged by the state program in 2018-2020 was assessed, a comparative analysis was carried out, the main problems were identified and recommendations were developed.

¹⁰⁶⁷ Early development sub-program, child rehabilitation/habilitation sub-program, means of assistance sub program (wheelchairs, prosthetic-orthopedic means; hearing aids, smartphones for the deaf and those with hearing loss, walking crutches, white cane for people who are blind and walking frames), sub-program to promote communication of deaf.

care agency is not properly involved in the program oversight process and its function is limited to the formal procedure of issuing a voucher and involving beneficiaries in the program also has a negative impact on the proper functioning of the program.

Geographical coverage of subprograms remains a challenge. Most of the target groups living in the country are deprived of the opportunity to receive services according to their place of residence. Most of the sub-programs still have waiting lists.¹⁰⁶⁸

Despite the demand, it is not possible to fully utilize the funds allocated in the state program every year, which is partly due to the fact that the sub-programs are not based on statistical data and the needs of specific groups. Bureaucratic barriers to unequal geographical distribution of services and inclusion in the program also pose problems. Nor is the amount allocated to the sub-program distributed effectively within the sub-program.

Year	Amount foreseen by the Program (GEL)	Factual Completion (GEL)	“Economy” of the Program GEL
2018	28 100 000	26 500 800	1 599 200
2019	35 890 000	31 792 600	4 097 400
2020	37 400 000	29 869 513	7 530 487
2021	40 000 000	-	-

Among the systemic problems encountered in the implementation of certain components of the state program are: the problem of timely detection of target groups and referral to the sub-program,¹⁰⁶⁹ lack of information about the sub-programs among interested parties, as well as lack of communication and exchange of information between agencies involved, indefinite waiting time between submitting an application and involvement in the program and search for the places at the service delivery institutions,¹⁰⁷⁰ significant difference between the number of beneficiaries actually involved in the sub-program and the number of beneficiaries foreseen by the sub-program,¹⁰⁷¹ bureaucratic barriers while involving in services (submission of the same documentation all the time, territorial access, waiting time for inclusion),¹⁰⁷² and last but not least the inaccessible environment (both in terms of services,¹⁰⁷³ as well as access to physical environment).

¹⁰⁶⁸ As of December 2020, the number of persons in the waiting list are as follows: early development sub-program - 555, habilitation/rehabilitation sub-program - 279, day center sub-program - 71 children with disabilities and 36 persons with disabilities.

¹⁰⁶⁹ Early Child Development Sub-Program - Medical staff do not have information about the program, the number of children over 3 years registered in the program significantly exceeds the number of children aged 0 to 3 years.

¹⁰⁷⁰ In cases of early child development, habilitation/rehabilitation, day care centers, community organizations, means of assistance sub-programs.

¹⁰⁷¹ Early child development sub-program, habilitation/rehabilitation sub-program, separate components of the means of assistance sub-program, day care services sub-program.

¹⁰⁷² Habilitation/rehabilitation sub-program, early development sub-program, day care service sub-program.

¹⁰⁷³ Habilitation/Rehabilitation, day care service delivery sub-program.

In order to provide shelter for persons with disabilities and to help them live in close proximity to their family environment, the sub-program for ensuring services in community organizations operates within the State Program for Social Rehabilitation and Child Care. This service also includes the provision of independent family type support services for persons with disabilities.¹⁰⁷⁴

It should be noted that the community service is designed for a large number of, 24 beneficiaries, which creates a barrier to the effective involvement of persons with disabilities in public life and their preparation for independent living. The family-type independent living support component of the sub-program needs to be strengthened.

In order to ensure raising of the child with disabilities in the environment close to family, the program also has sub-programs for foster care and services in Family-type small group homes,¹⁰⁷⁵ the implementation of which reveals a number of challenges. Although foster care is one of the priorities of the childcare system, there is still no proper system for finding and training/strengthening of foster care givers, which is especially important in the case of specialized foster care services. Particular problems are faced by service provider families where children with disabilities with difficult behaviors and mental health problems are accommodated, as the provision of rehabilitation services for them in the country is still not ensured.

Providing beneficiaries with services foreseen by the state program has been particularly difficult in the context of the coronavirus pandemic. Remote access to the service due to lack of appropriate technical means (computer, telephone)/lack of knowledge of their use, as well as lack of Internet access, has become a challenge for many beneficiaries. In some cases, it was impossible to manage the service remotely¹⁰⁷⁶ due to the disability and the specifics of the service, which left this circle of persons/children with disabilities beyond the necessary services for months and created a real risk of losing the results already achieved.

During pandemic, restrictions on public transportation are significant barriers to program beneficiaries.

In parallel with the mentioned problems, the provision of food vouchers (in the amount of 80 GEL per month) by the state to the day center service recipients should be positively assessed. This is also true regarding the provision of necessary funds to the service providers during the period of their suspension in order to maintain the services.

¹⁰⁷⁴ As of December 2020, community services for persons with disabilities are intended for 191 persons with disabilities, and family type community services for 30 persons with disabilities.

¹⁰⁷⁵ In 2018, funding for children with disabilities in family-type small group homes was 20 GEL per day, which from 2019, increased to 30 GEL per day. In foster care - 30 GEL per day, and in foster care with relatives a fixed amount of 375 GEL per month (21 children as of December 2020). As of December 2020, there were 40 children with disabilities registered in small family-type homes, and 310 children with disabilities in foster care.

¹⁰⁷⁶ Especially in the case of persons with difficult behavior and severe and profound intellectual disability; also in the case of children with disabilities in need of physical rehabilitation.

22.3. Rights of Persons with Disabilities in Residential Institutions

The UN Convention on the Rights of Persons with Disabilities obliges the member states to take appropriate measures to ensure the independent living of persons with disabilities and their effective inclusion in society. According to the provisions of the Convention, persons with disabilities are not obliged to settle in specially designated areas.¹⁰⁷⁷

Despite the deinstitutionalization policy announced by the state, a certain number of persons with disabilities in the country still continue¹⁰⁷⁸ to live in large residential institutions.

In 2020, the monitoring conducted by the Office of the Public Defender in these institutions revealed that the institutional arrangement of boarding houses for persons with disabilities and children's houses, the volume of services, the number of enrolled persons¹⁰⁷⁹ and the living conditions there could not create an environment closer to family, and fail to provide opportunity to persons with disabilities for individual development and independent living. With these challenges that do not change from year to year, it is still problematic to identify and respond to violence at the institutions.

During the visit to the mentioned institutions, it was found that in order to avoid the virus, the isolation room is allocated in all the institutions, however, their arrangement does not create appropriate conditions¹⁰⁸⁰ for long-term¹⁰⁸¹ accommodation. Existing desobstacles are not properly maintained. Keeping distance between beneficiaries and staff is generally impossible, including in the dining area, as well as while dealing with the beneficiaries who need assistance in the self-care process. There are no hygiene items in the bathrooms.¹⁰⁸²

¹⁰⁷⁷ UN Convention on the Rights of Persons with Disabilities, A/RES/61/106 (adopted on December 13, 2006, entered into force on May 3, 2008), Article 19.

¹⁰⁷⁸ Branches of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking: Martkopi Boarding House for Persons with Disabilities, Dzevri Boarding House for Persons with Disabilities, Dusheti Boarding House for Persons with Disabilities, Tbilisi infant house and Kojori childrens' house for children with disabilities – these are large-scale residential services for 70 children with disabilities and 185 persons with disabilities.

¹⁰⁷⁹ Kojori childrens' house for children with disabilities; Limit 24 beneficiaries (during monitoring - 22); Dzevri Boarding House for Persons with Disabilities - limit 69 beneficiaries (during monitoring - 64); Martkopi Boarding House for Persons with Disabilities - Limit 69 Beneficiaries (66 during monitoring); Dusheti Boarding House for Persons with Disabilities - Limit 47 Beneficiaries (46 during monitoring). Tbilisi infant house – 46 During Monitoring.

¹⁰⁸⁰ There are 3 beds, 1 small and 1 medical bed, a chair, an adapted table, a pump, a refrigerator in the isolation space of the Kojori childrens' house. There is no TV or other resource in the room. There are only 2 beds, 1 medical bed and a pump in the isolation space of Dzevri boarding house.

¹⁰⁸¹ For one or more days before coronavirus test results will be received.

¹⁰⁸² Toilet paper, soap, towel.

Drinking water problems were detected at all facilities, including at children's houses. The situation is especially alarming in Dzevri Boarding House for Persons with Disabilities, where intestinal sticks are found in the water.¹⁰⁸³

22.4. Right to Health

Following the announcement of the coronavirus pandemic, the World Health Organization recognized persons with disabilities as one of the most vulnerable groups to the virus, both because of their health status and the barriers that these individuals face in their daily lives.¹⁰⁸⁴ Consequently, states were faced before the need to take additional measures to ensure equal protection of the rights of persons with disabilities during the pandemic.¹⁰⁸⁵

According to the Coronavirus Human Rights Impact Assessment Report of the Government of Georgia, access to coronavirus treatment is provided to all individuals in the country, without segregation and discrimination.¹⁰⁸⁶ However, the report does not provide information on what additional measures were taken by the state to ensure equal access to the right to health by persons with disabilities.

The Study of the Georgian Young Lawyers' Association's focuses on the problems identified in the realization of the right to health of persons with disabilities and access to medical services.¹⁰⁸⁷ According to the study, although the state has developed several documents that address the interests of persons with disabilities in health care during pandemic, most of the recommendations in the documents are general in nature, lack specific action and omit some components necessary for full realization of disability rights.¹⁰⁸⁸

During the pandemic, the following systemic problems were identified in terms of access to health care for persons with disabilities: access to medical facilities and services, difficulty in communicating with medical staff. Additional barriers were created by the restriction of public transport, unadapted medical services, the lack of a flexible system for priority testing of persons with disabilities, and the suspension of targeted rehabilitation programs (face-to-face rehabilitation/therapy), causing a threat to lose positive outcomes reached by persons with disabilities.

¹⁰⁸³ Which is confirmed in the conclusions of the analysis of water samples taken (31.10.2019), as well as as a result of the inspection of the laboratory of the Ministry of Environmental Protection and Agriculture of Georgia (13.07.2020).

¹⁰⁸⁴ "Disability considerations during the COVID-19 outbreak", WHO, available at: < <https://bit.ly/3lfdiYI> > [last visited on 25.03.2021].

¹⁰⁸⁵ UNSDG Policy Brief: A Disability-Inclusive Response to COVID-19, May 2020, available at: < <https://bit.ly/2Owr0ub> > [last visited on 25.03.2021].

¹⁰⁸⁶ Report on the actions taken by the Government of Georgia - Protection of Human Rights during the Crisis Caused by COVID-19. 28, available at: < <https://bit.ly/3b3ydKG> > [last visited on 25.03.2021].

¹⁰⁸⁷ Study of the Young Lawyers' Association of Georgia on COVID-19 and Rights of Persons with Disabilities, 9, available at: < <https://bit.ly/3lfeQlk> > [last visited on 25.03.2021].

¹⁰⁸⁸ Study of the Young Lawyers' Association of Georgia on COVID-19 and Rights of Persons with Disabilities, 10, available at: < <https://bit.ly/3lfeQlk> > [last visited on 25.03.2021].

In light of the shortcomings identified in accessing health services, it is important to note that due to existing social barriers, persons with disabilities should not find themselves in an unequal position with others in the distribution of the coronavirus vaccine. Given the problems with the physical environment, access to information and services in the country, it is important that the state takes additional measures and ensures equal inclusion of persons with disabilities of the relevant age in the vaccination process.¹⁰⁸⁹

22.4.1. Mental Health

Mental health and providing quality mental health services to the population remained significant challenge for the state during the reporting period.

The Strategy on the Development of Mental and the 2015-2020 Action Plan expired in 2020. According to the information¹⁰⁹⁰ received from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia on the implementation of the action plan, a strategy for the prevention of suicide of persons with mental health problems has not been developed. There have been no significant changes in the development of social integration and rehabilitation-based services for persons with mental health problems. There is still no strategy for deinstitutionalizing the field.

It should also be noted that the state has started the process of developing a new strategy without assessing the results of the implementation of the 2015-2020 action plan.¹⁰⁹¹

In 2020, the situation caused by the coronavirus created the need to take additional measures to protect persons with mental health problems and to prevent mental health problems.¹⁰⁹² In the current situation, Public Defender welcomes the approval of the guidelines for the management of patients receiving psychiatric services for their safe treatment during Covid-19.¹⁰⁹³ However, its implementation in practice has become a problem.

Monitoring conducted by the Office of the Public Defender at the inpatient and community outpatient mental health services to assess the quality of compliance with the Guidelines on Safe Management of

¹⁰⁸⁹ Statement of the International Disability Alliance on prioritizing persons with disabilities in accessing COVID-19 vaccinations. Reach the furthest behind first: Persons with disabilities must be prioritized in accessing COVID-19 vaccinations, available at: <<https://bit.ly/3bN6Xj0>> [last visited on 25.03.2021].

¹⁰⁹⁰ Letter № 01/1747 (09.02. 2021) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

¹⁰⁹¹ Letter №01/3073 (02.03.2021) of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

¹⁰⁹² UN Policy Brief: COVID-19 and Need for Action on Mental Health, available at: <<https://bit.ly/3rbAnh>> [last visited on 25.03.2021].

¹⁰⁹³ Order №01-222/მ of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of May 27, 2020 on the approval of state standards (protocols) for the management of clinical conditions - "Mental Health and COVID-19" – "National Recommendation for Clinical Practice (Guideline)" and "Safe Management of Patients in outpatient Mental Health Care Services during COVID-19; "Safe Management of Patients in Inpatient Mental Health Care Services during COVID-19" Annexes №1,№2,№3, available at: <<https://bit.ly/3vw0Okn>> [last visited on 25.03.2021].

Patients at Mental Health Services During COVID-19 found¹⁰⁹⁴ that most of the staff employed at the psychiatric institution are not familiar with the mentioned document and the coronavirus prevention rules are based on "logical knowledge", the general recommendations of the National Center for Disease Control and the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. Even in this case the observance of the rules is not documented almost anywhere.

Most outpatient psychiatric facilities did not change their protocol and did not switch to remote operation. It is not an established practice to contact patients in advance to schedule a visit and such approach is only applied in exceptional cases, mainly when patients are living in remote regions. Consequently, the flow of patients could not be controlled. The only accepted practice is to provide patients with a 2-month supply of medicines, although this also depended on the availability of a sufficient supply of a particular medicine.¹⁰⁹⁵

As a result of monitoring, compliance with the sanitary and hygienic conditions at most of the inspected facilities is complicated: these include improperly maintained desobarriers, insufficient disinfectants available to patients, periodicity for cleaning and disinfecting various surfaces, and application and recording of thermoscreening despite its formal existence. Patients were also not surveyed about the virus symptoms. In addition, the difficult infrastructural situation at some of the facilities¹⁰⁹⁶ does not allow to follow the established rules to prevent the virus. The overcrowded inpatient psychiatric facilities make it impossible to fully adhere to the rules of avoiding the virus.

22.5. Inclusive Education

During the reporting period, conducting the learning process by educational institutions in a distance (remote) format¹⁰⁹⁷ for the period of state of emergency as a result of the covid-pandemic posed serious challenges to inclusive education.¹⁰⁹⁸

22.5.1. Situation at the General Education Level

As of January 2020, 9721 students with special educational needs (disabilities) were enrolled in the general education institutions under the Ministry, although the Ministry does not have accurate data on how

¹⁰⁹⁴ The monitoring was conducted with the support of the United Nations Development Program in January-February 2021 with the participation of experts (psychiatrists). Inpatient and outpatient psychiatric services (18 institutions in total) were inspected during the monitoring.

¹⁰⁹⁵ Due to the shortage of some commonly used drugs (cyclodol and depot drugs), the 2-month supply of this medication could not be issued in some cases.

¹⁰⁹⁶ Akhaltsikhe Outpatient Psychiatric Service (Evex Hospitals).

¹⁰⁹⁷ Resolution of the Government of Georgia № 181 on the approval of measures to be taken to prevent the spread of new coronavirus in Georgia. Article 3, available at: < <https://bit.ly/2Owrxbw> > [last visited on 25.03.2021].

¹⁰⁹⁸ Correspondence MES 0 20 00323533-31.03.2020 of the Ministry of Education and Science of Georgia.

many of them were involved in one form of education or the other.¹⁰⁹⁹ On September 9, 2020, the "Rules and Conditions for Remote Management of the Educational Process at the Georgian General Education Institutions and Evaluation of the Results Achieved" were approved by the Order of the Minister of Education, Science, Culture and Sports of Georgia.¹¹⁰⁰ However, the mere adoption of a document is not enough to fully involve students with disabilities in the educational process, and it is necessary to properly supervise its implementation in terms of providing appropriate services to students with special educational needs (disabilities).

It should be noted that in 2020, the Government of Georgia approved the "State Program for Monitoring Children Out of School",¹¹⁰¹ which made it possible to identify out of school adolescents aged 6-16 based on data exchange between involved agencies. However, it is important that the state takes further steps to involve pupils with disabilities left out of school in the educational process in a timely manner. It should also be noted that in the reporting period, the issue of adequate access to school infrastructure and teaching materials remained problematic, together with the number¹¹⁰² and qualification of inclusive education specialists in different areas.

An additional challenge to resource schools was the fact that the TEAMS platform used in public schools was not tailored to the needs of the blind; as a result #202 public school students in Tbilisi needed special support¹¹⁰³ and the use of alternative platforms became necessary. It should be noted that the Ministry did not conduct an in-depth study to identify gaps in the distance learning of students with disabilities at resource schools.¹¹⁰⁴ Out of 540 students of boarding schools, 528 students were involved in the distance learning process. 12 students (students with severe intellectual and multiple disabilities) could not be contacted, and in case of 5 students, family counseling was provided.¹¹⁰⁵ Periodic supervision by the multidisciplinary team revealed that involvement in the distance learning process was mainly hindered by: lack of internet or insufficient frequency, lack of appropriate equipment/communication tools and passiveness of parents. Problems of engaging in online learning due to the complexity of student conditions were also identified.¹¹⁰⁶

¹⁰⁹⁹ According to the Ministry of Education, Science, Culture and Sports of Georgia (MES 6 21 0000075394-08.02.2021), it is possible to use several means at the same time to involve each student in the distance learning process. Also, due to the confirmed cases of coronavirus detected in school, the form of teaching may change. The student may spend some time attending the school in person, then distance learning, which makes it difficult to produce statistics.

¹¹⁰⁰ Available at: < <https://bit.ly/3vy8mTE> > [last visited on 25.03.2021].

¹¹⁰¹ Resolution №573 of the Government of Georgia of September 10, 2020 on the approval of the state program for monitoring children left out of school, available at: < <https://bit.ly/3rO2dQH> > [last visited on 25.03.2021].

¹¹⁰² In 2020, a total of 186 specialists were employed at schools. 11 of them - language and speech specialists, 150 – assistant to the person with special educational needs and 25 psychologists. Correspondence MES 2 20 000116650-07.12.2020 of the Ministry of Education, Science, Culture and Sports of Georgia.

¹¹⁰³ According to the Ministry, in order to improve the access of the educational process for the students of №202 public school in Tbilisi, the school started to introduce a computer skills training course from 2020-2021, which will enable school students to develop or improve their skills in using computer office programs.

¹¹⁰⁴ Correspondence MES 7 20 0001055342-02.11.2020 of the Ministry of Education and Science of Georgia.

¹¹⁰⁵ Correspondence MES 8 20 00344303-22.04.2020 of the Ministry of Education and Science of Georgia.

¹¹⁰⁶ Correspondence MES 3 20 0000772974-04.09.2020 of the Ministry of Education and Science of Georgia.

There was also a problem with the provision of food vouchers for resource school students. Despite the fact that students¹¹⁰⁷ receiving such boarding school services still needed support, the Ministry was unable to provide them with food and/or food vouchers.¹¹⁰⁸

22.5.2. Vocational Education

In order to prevent the coronavirus, some changes have been made in the vocational education agenda, including the need to manage some components remotely was revealed.

In 2020, 190 applicants registered for vocational education programs were confirmed to have special educational needs. In the same year, 161 students with special educational needs and disabilities were enrolled in vocational programs. However, only 155 students have active status and continue their studies.¹¹⁰⁹ Following measures were used to provide individual support at vocational institutions: transfer of college laptops to a student/teacher in need in temporary use,¹¹¹⁰ provision of college space and equipment, assistance to IT specialists, and more. However, despite the existence of these support mechanisms and some positive changes made by the Ministry in the development of vocational education,¹¹¹¹ challenges still remain in terms of attendance and format of distance learning.¹¹¹²

In particular, based on the information provided to the Office of the Public Defender by the Ministry, it is clear that by the end of November 2020, due to various obstacles, 45 vocational students could not engage in online education. In the case of 125 students, low motivation for distance learning was identified, while 25 students planned to suspend their status.¹¹¹³ The trend that as of December 2020, 9 vocational students with special educational needs and disabilities suspended their status, while the status of 4 was terminated shall be assessed negatively.¹¹¹⁴

¹¹⁰⁷ Who were provided with food during the teaching process.

¹¹⁰⁸ According to the Ministry of Education, Science, Culture and Sports of Georgia (correspondence: MES 2 20 0000512331-24.06.2020; MES 8 20 00344303-22.04.2020) there was not enough money in the budget of the boarding schools to provide this.

¹¹⁰⁹ Correspondence MES 6 21 0000075394-08.02.2021 of the Ministry of Education and Science of Georgia.

¹¹¹⁰ By the end of December 2020, 7 vocational education students with disabilities were provided with Internet and/or computers by the institutions (computers were given to students on the basis of a temporary receipt order). Correspondence MES 6 21 0000075394-08.02.2021 of the Ministry of Education, Science, Culture and Sports of Georgia.

¹¹¹¹ According to the Ministry of Education and Science of Georgia (correspondence MES 7 20 00394082-20.05.2020), the Ministry has developed special recommendations and a plan, which were discussed with the representatives of vocational colleges. By the coordination of the Ministry, various field groups were established, which named the separate components of the programs, which can be taught remotely, if necessary. In parallel, the issue of access to the Internet and relevant devices for vocational education teachers and students was explored. The members of the multidisciplinary team of the Ministry supporting the inclusive vocational education, held consultative meetings in the distance format with the specialists of the inclusive education to effectively involve the students with special needs in distance learning.

¹¹¹² Correspondence MES 7 20 0001055342-02.11.2020 of the Ministry of Education and Science of Georgia.

¹¹¹³ Correspondence MES 6 21 0000075394-08.02.2021 of the Ministry of Education and Science of Georgia.

¹¹¹⁴ According to the ministry, not all cases of suspension and termination of status are related to pandemics and distance learning. Correspondence MES 6 21 0000075394-08.02.2021 of the Ministry of Education, Science, Culture and Sports of Georgia.

22.5.3. Higher Education

Pursuant to Article 3 of the ordinance № 181 of the Government of Georgia,¹¹¹⁵ the educational process in all higher education institutions of Georgia started in a remote form, both in synchronous and asynchronous mode. In the educational/administrative process, universities used different programs and platforms.¹¹¹⁶

It should be noted that during the pandemic, the support measures for disability students with special educational needs at the higher education level were fragmentary and unsystematic in nature.¹¹¹⁷ Also, not all higher education institutions have studied the needs of students with disabilities. According to the Ministry,¹¹¹⁸ during the reporting period, some universities allocated specialists to mentor students with special needs/ensured their involvement in lectures and seminars, and several universities took measures to make the learning process accessible directly to persons with disabilities.¹¹¹⁹ Some higher education institutions also provided them with personal computers and special computer programs.

A study conducted by the National Center for Educational Quality Enhancement of the main trends and needs of blended/e-learning in Georgia, revealed that institutions should be strengthened in the following areas: organizing webinars, trainings with international experts, sharing information and experience between educational institutions in Georgia, as well as between the Ministry, the Center and these institutions; it also revealed the necessity to make legislative changes regarding online/blended learning and to improve digital infrastructure and internet access in the regions.¹¹²⁰

22.6. Accessibility

Ensuring combined access is essential to realizing the rights of persons with disabilities. The Public Defender also focused on this issue in its last years' reports.¹¹²¹

¹¹¹⁵ Available at: < <https://bit.ly/38Dt62a> > [last visited on 25.03.2021].

¹¹¹⁶ Including: Google-meet, Classroom Hangouts, Microsoft teams, Moodle, ZOOM, CISCO WEBEX, SMART, Skype, Facebook.

¹¹¹⁷ According to the Ministry of Education and Science of Georgia (correspondence MES 6 21 0000075394-08.02.2021) students with disabilities study in more than fifteen higher education institutions. For the current period, 109 students with special educational needs (disabilities) are enrolled in higher education institutions.

¹¹¹⁸ Correspondence MES 6 20 00337516-13.04.2020 of the Ministry of Education and Science of Georgia.

¹¹¹⁹ For example, a special program is used for blind students - NVDA, which makes the material in PDF format perceptible to students.

¹¹²⁰ Correspondence MES 7 20 0001055342-02.11.2020 of the Ministry of Education and Science of Georgia.

¹¹²¹ Parliamentary Report of the Public Defender of Georgia for 2018, Tbilisi, 2019, 267; Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 356.

On December 4, 2020, the Government of Georgia approved the Technical Rules “National Standards for Accessibility”,¹¹²² which declared the Resolution №41 of the Government of Georgia of January 6, 2014 invalid. These rules set out the technical criteria that must be taken into account to ensure access to sites, facilities, buildings and elements. In addition, the document addresses the needs of people with such physical disabilities as the inability to walk, difficulty walking, reliance on walking aids, blindness and visual impairment, deafness and hearing impairment, in coordination, reaching and manipulation disabilities and others. According to the decree, the public facilities already constructed and under construction must align to the named document within the time frames specified in the National Access Plan.

The obligations under the named document came into force on March 1, 2021. It is important to continue working on accessibility in an uninterrupted manner. Among them, it is important to timely approve the National Access Plan and monitor its implementation.

Despite some changes, the access needs at the national level, both at the central and municipal levels, are still not studied and no statistics on the improved physical environment are produced. The need to train architectural and supervisory staff in accordance with universal design principles and standards is still on the agenda. It should also be noted that persons with disabilities and organizations working on these issues are not properly involved in the preparation of strategic access documents and decision-making.

No effective steps were taken during the reporting period to create the necessary conditions for persons with disabilities to access information, means of communication and various services. Consequently, these issues still need to be regulated in detail at the normative level.

22.7. Participation of Persons with Disabilities in Political and Public Life

During the reporting period, the involvement of persons with disabilities in political and public life, both in terms of the work of local councils and the participation of persons with disabilities in elections, was problematic.

The monitoring of the activities of local councils working on issues of persons with disabilities¹¹²³ revealed that in spite of the obligations enshrined by the Government’s Human Rights Action Plan approved by the Decree №182 of the Government of Georgia on April 17, 2018 and a number of recommendations of the Public Defender,¹¹²⁴ effective operation/functioning of the councils working on rights of persons with disabilities is problematic. It is true that in most of the municipalities there is a council¹¹²⁵ and it more or less represents persons with disabilities and/or organizations working on their rights, but the information

¹¹²² The Resolution N732 of the Government of Georgia of December 4, 2020.

¹¹²³ Analysis of information received from municipalities.

¹¹²⁴ Reports of the Public Defender of Georgia on Situation of Human Rights and Freedoms for 2014-2019.

¹¹²⁵ Council is established in 57 municipalities.

received shows that during the reporting period, council meetings were held only in 11 municipalities.¹¹²⁶ Due to the state of emergency in the country caused by the pandemic, the members of the council were not able to gather, however, the fact that a large part of the municipalities did not provide online sessions could not be positively assessed. In addition, several municipalities¹¹²⁷ have not considered the recommendation on the establishment of a council for years.

As for the participation of persons with disabilities in the elections, according to the letter received from the Central Election Commission of Georgia,¹¹²⁸ it is clear that the Commission has taken a number of measures for the October 31, 2020 Parliamentary Elections of Georgia. Particularly significant positive changes were made in terms of ensuring access to information about the election process for persons with sensory and mobility impairments and adapting the election environment to their need,¹¹²⁹ although some shortcomings were identified despite measures taken by the Central Election Commission. Among them, the issue of adapting the polling stations remains a problem. In particular, out of 3,657 polling stations in 30 majoritarian constituencies across Georgia, only 1,134 polling stations were adapted/accessible to voters with disabilities.¹¹³⁰

According to the commission, the CEC does not have information on the status of persons with disabilities and refers to the Law of Georgia on Personal Data Protection as a reason behind. According to them, during the elections, the Election Precinct Commissions provide statistics on the number of voters with disabilities participating in the elections. Statistics are produced only by visual assessment of voters with disabilities.

At the same time, in the run-up of the October 31 parliamentary elections, the problem was initially to provide people who are blind with a form of a ballot paper that would allow them to fill in the ballot independently. This problem was later eliminated. However, on election day, when the Public Defender arrived at the polling station, it was found that the members of the commission were not informed/trained on the main issues of using the special form.

¹¹²⁶ Baghdati - 2 meetings, Gurjaani - 3 Meetings, Lanchkhuti - 1 Meeting, Signagi - 1 Meeting, Kutaisi - 2 Meetings, Shuakhevi - 2 Meetings, Chkhorotsku - 2 Meetings, Akhaltsikhe - 1 Meeting, Dedoplistskaro - 1 Meeting, Oni - 3 Meetings, Rustavi - 2 Meetings.

¹¹²⁷ Dusheti, Tianeti, Kasbi, Kazbegi, Tsalka, Chiatura, Khashuri.

¹¹²⁸ Reciprocal correspondence of the CEC №01-07/161 – 15.02.2021.

¹¹²⁹ Information necessary for the registration of election subjects was posted on the adapted website of the CEC. In case of necessity translation into sign language was provided; In order to inform the voters using wheelchairs, a video was broadcast on various TV channels, videos prepared to inform the voters were available for the deaf and those with hearing impairments, the CEC information briefings were covered live, accompanied by a translation into a sign language. After registering on the website of the Central Election Commission of Georgia, deaf voters and those with hearing impairments were able to receive information via video call from a sign language operator. As part of the campaign, members of the election precinct commission distributed flyers containing information about the services offered to persons with disabilities, according to the place of voter registration. Also, the instructions of the members of the district election commission and election precinct commission were developed and a distance e-learning course was created.

¹¹³⁰ Correspondence of CEC №01-07/161 – 15.02.2021.

In connection with the same issue, the Office of the Public Defender received an application¹¹³¹ from the citizens, who said that despite the request, instead of two forms at the polling station, they were given one - an assistance tool tailored to the proportional ballot, which prevented them from exercising their right to vote independently. According to the response received from the Central Election Commission regarding the case,¹¹³² the mentioned election precinct commission was given forms for both proportional and majoritarian ballot papers. The letter stated that members of the election precinct commission had been instructed on how to use the form to fill in the ballot paper. Nevertheless, as already mentioned, citizens who are blind still had a problem on the voting day.

22.8. Support Activities for Persons with Disabilities at the Municipal Level during Pandemic

During the reporting period, in the context of the spread of coronavirus, taking appropriate measures by local governments in accordance with the needs of persons with disabilities was challenging.

Monitoring of this issue¹¹³³ revealed that in most municipalities, both in the first,¹¹³⁴ and second¹¹³⁵ stages of the spread of the virus, measures adapted to the individual needs of persons with disabilities were not taken. Their activities mainly included measures provided for by the local self-government budget and, in addition, the provision of food baskets for persons with disabilities. It should be noted that 12 municipalities,¹¹³⁶ which carried out various actions in the first stage of the spread of the virus were exceptional.

Recommendations

To the Government of Georgia:

- Accelerate the process of establishing a national mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities;
- Take the necessary measures to ensure proper realization of the right of access for persons with disabilities. Including:
 - Conduct information campaign for the general public and responsible entities on current universal design and accessibility standards;
 - Develop a national access plan, with appropriate oversight mechanism, with maximum involvement of the persons with disabilities and organizations working on their rights;

¹¹³¹ Case №12219/20, 12101/20.

¹¹³² Reciprocal correspondence №07/1727- 27.11.2020.

¹¹³³ Information was requested from 64 municipalities in two phases: in April and January 2020.

¹¹³⁴ Period of March and April, 2020.

¹¹³⁵ Period of October-December, 2020.

¹¹³⁶ Municipalities of Gurjaani, Dmanisi, Tetrtskaro, Oni, Tkibuli, Khulo, Baghdati, Rustavi, Poti, Chokhatauri, Khelvachauri and Mestia.

- With the participation of persons with disabilities, ensure the development of the necessary standards for access to information, means of communication and various services for persons with disabilities.

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

- Ensure maximum access to medical services for persons with disabilities, during restrictions to prevent coronavirus, including:
 - Provide training of medical staff on effective communication with persons with disabilities;
 - Provide access to the physical environment of medical facilities and services;
 - Provide access for persons with disabilities, for persons with all types of disabilities (physical, sensory, mental) to coronavirus vaccination areas;
 - Ensure the dissemination of information about vaccination in a format accessible to all;
- Provide information and training to psychiatric inpatient and outpatient service providers on the guidelines regarding safe management of a patient with a mental health problems during coronavirus;
- Prepare the new mental health development strategy and action plan in a timely manner and with the broad involvement of experts in the field;
- Ensure the approval and implementation of the deinstitutionalization strategy in the field of mental health;
- Ensure the development and approval of a suicide prevention strategy;
- Develop referral mechanisms for medical institutions to identify children at the risk of delays in development, their timely inclusion in the early development state program, as well as referral of persons in need of prosthetic and orthopedic facilities to the relevant sub-program;
- Develop and implement a rehabilitation program for adults with disabilities.

To the Minister of Education and Science:

- Ensure the development and implementation of mechanisms for the inclusion of children with disabilities outside of school in formal education. Including:
 - Oversee the study of the educational needs of children with disabilities beyond formal education and their inclusion in relevant services;
 - Oversee coordinated work between relevant authorities/institutions to respond effectively to cases of children with disabilities being left out of school;

- Take appropriate measures to improve access to infrastructure and learning materials of educational institutions for students with disabilities and ensure statistical processing of activities in this area;
- Take necessary measures to fully integrate students with disabilities into the distance education process. Including:
 - Take appropriate measures to meet the educational needs of pupils/students with special needs (with disabilities) living in the regions, including improving digital infrastructure and Internet access;
 - Develop and initiate legislative changes related to online/blended learning;
 - Provide statistical processing of activities implemented for the full inclusion of students with disabilities in the distance learning process.

To the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking:

- Provide continuous provision of social and child care rehabilitation services to persons with disabilities during the period of pandemic-induced limitations, in person or remotely according to the individual needs of the beneficiaries;
- Ensure the creation/operation of an effective monitoring mechanism for each sub-program of the state program, which will be based on the assessment of the situation of the beneficiaries instead of the financial reporting system;
- Ensure access to the targeted sub-programs for persons/children with disabilities provided for in the state program of social rehabilitation and child care for all persons/children with relevant needs. Including:
 - Provide geographical coverage of subprograms, and introduce compensation mechanism for transportation and accommodation of beneficiaries where services are not currently operational;
 - Ensure that the sub-program target groups - persons with disabilities, their legal representatives, parents of children with disabilities are informed about the inclusion in the program and the services provided by the program;
 - Plan services in sub-programmes for early child development, habilitation/rehabilitation, day care services, community organizations, or for services ensuring assistance means, based on relevant statistics, study of the needs, existing databases, implementation of the program in previous years, and analysis of various evidences;
- Take necessary measures to ensure persons/children with disabilities with modern, internationally compliant housing standards and an adequate standard of living in the framework of the relevant sub-programs of the State Social Rehabilitation and Child Care Program. Including:
 - Reduce the maximum number of community service beneficiaries defined by the current standards (24 persons);

- Strengthen and expand the component promoting independent family life of the community service;
- Develop effective mechanisms to find/interest specialized caregivers, especially for children with complex behavioral and mental health problems;
- Ensure timely development and implementation of the deinstitutionalization plan for large residential institutions;
- Prior to the completion of deinstitutionalization, ensure boarding houses for persons with disabilities and children's houses (branches) with adequate resources to meet the requirements of the current standard. Including:
 - Carry out repair works and equip the institutions with the necessary furniture/inventory;
 - Urgently regulate the water supply system of boarding houses for persons with disabilities and strictly control its work; Ensure safe drinking water supply to institutions;
 - Monitor the implementation of measures to prevent the virus in boarding houses for persons with disabilities and children's houses.

To the Central Election Commission of Georgia:

- Ensure production of official statistics on voters with disabilities.

To Self-Governing Bodies:

- Ensure that councils for persons with disabilities work effectively by conducting online sessions during pandemic.

To the Municipalities of Dusheti, Tianeti, Kaspi, Kazbegi, Tsalka and Chiatura:

- Ensure the establishment/operation of councils working on the rights of persons with disabilities.

23. Situation of Rights of Older Persons

23.1. Introduction

Georgia is an aging country - the percentage of older persons is growing annually in the country.¹¹³⁷ The percentage of the population aged 65 and above is 15.1% of the total population in 2020¹¹³⁸ and it will reach 21% by 2030.¹¹³⁹

Nowadays, challenges related to aging are one of the most important issues on international agenda. The adoption of a new international instrument - a convention for the protection and promotion of the rights of the older persons - is being discussed actively around the world.

Despite the ongoing international discussions, a state policy document on older persons – a new action plan for the Concept of state policy on population aging has not been developed in Georgia to this day. According to the National Action Plan for 2017-2018, more than half of the commitments have not been fulfilled. Despite this negative trend, it is commendable that work has begun on the standards and the concept of long-term care for older persons and the term – long-term care for elderly has been defined.¹¹⁴⁰

Furthermore, absence of statistical data and detection of violence against elderly people is an important problem. Another significant challenge further aggravating the socio-economic situation of the elderly is the practice of withholding more than 50% of monthly pension because of high-interest loans given to older persons against their pension. It has been found out that there is no statutory regulation/restriction on withholding pension. The 2020 pandemic in Georgia also aggravated the situation of older persons; especially older persons living alone had difficulties in accessing various services.

23.2. Situation of rights of Older Persons during the Pandemic

In Georgia, older persons are a vulnerable group and find themselves at a higher risk of poverty compared to the rest of the population. They often depend on social benefits and pensions and live in difficult socio-economic conditions.¹¹⁴¹ More than 25% of the population registered in the Social Assistance Program are older persons.¹¹⁴²

¹¹³⁷ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 18.

¹¹³⁸ The data of the National Statistics Office of Georgia, available at: <https://bit.ly/30tBqj1>, [accessed 29.11.2020].

¹¹³⁹ Georgia's National Action Plan on Ageing for 2017-2018.

¹¹⁴⁰ The Law of Georgia on Healthcare, Article 3.S7.

¹¹⁴¹ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 38.

¹¹⁴² Available at: <https://bit.ly/2PsBbjP>, [accessed 22.02.2021].

Older persons are one of the most marginalised and vulnerable groups in Georgia. Therefore, it is very important to study the living condition of older persons during the pandemic in Georgia. It is especially important to analyse the needs of older persons living alone in the regions and the impact of the pandemic on their daily lives.¹¹⁴³ The Government of Georgia launched a study on the management of COVID-19 and the impact of the pandemic.¹¹⁴⁴ However, there is no data on the impact of the pandemic on older persons yet.

The pandemic puts older persons at the risk of poverty, discrimination and social isolation.¹¹⁴⁵ The UN study brief identifies the following six areas in which the impact of the pandemic on older persons may be reflected: economic well-being, mental health, responders, life and death, vulnerability, abuse and neglect.¹¹⁴⁶

The Public Defender maintains that special attention should be paid during the pandemic to socially vulnerable and dependent on care older persons living alone. There are 41,995 socially vulnerable older persons, living alone in Georgia.¹¹⁴⁷

Restrictions imposed to prevent the spread of the virus among the elderly on the free movement of older persons aged 70 and above as well as stay-at-home regulations and social distancing, led to a threat of social exclusion of older persons living alone. Long social isolation has a negative impact on the mental health of older persons. The risk is higher with those suffering from cognitive decline and dementia and those dependent on care.¹¹⁴⁸ To avert this threat, psychosocial support programmes should be implemented for older persons. It is also important to improve the access of older people to mobile telephone and modern technologies in general to increase their access to digital technologies.¹¹⁴⁹ According to UNFPA, “technology takes an increasingly prominent place in modern economic and social relations, the lack of technology or the ability to use it further aggravates the vulnerability of older people.”¹¹⁵⁰

Furthermore, digital exclusion significantly obstructs the access of older persons to essential information regarding the pandemic and related health and socio-economic measures.¹¹⁵¹ For responding to this

¹¹⁴³ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 6.

¹¹⁴⁴ Available at: <https://bit.ly/39akOPK>, [accessed 22.02.2021]

¹¹⁴⁵ The United Nations, Policy Brief: The Impact of COVID-19 on Older Persons, available at: <https://bit.ly/2KTAHAU>, [accessed 22/02/2021].

¹¹⁴⁶ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 17.

¹¹⁴⁷ Letter no. 01/14727 of the Minister of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 19/11/2020.

¹¹⁴⁸ WHO, Infection Prevention and Control Guidance for Long-Term Care Facilities in the Context of COVID-19, (2020).

¹¹⁴⁹ The United Nations, Policy Brief: The Impact of COVID-19 on Older Persons, available at: <https://bit.ly/2KTAHAU>, [accessed 22/02/2021].

¹¹⁵⁰ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 24.

¹¹⁵¹ Report of the United Nations Independent Expert on the Enjoyment of All Human Rights by Older Persons, Impact of the Coronavirus Disease (COVID-19), 21 July 2020, para. 56.

challenge, the Independent Expert on the Enjoyment of All Human Rights by Older Persons recommends developing learning programmes and alternative ways of reaching older persons who have no digital skills.¹¹⁵²

In order to provide older persons, placed in care establishments, with psychological support and enable them to cope with the stress caused by the high risk of disease, they were given the opportunity to have remote sessions with psychologists.¹¹⁵³ However, older persons who live outside the facilities did not receive such support. Increasing the access of older persons to counselling, especially of those living alone, is very important for their mental health. According to a UNFPA survey, fear, stress and anxiety are high in older persons. Against this background, very few used the services of a psychologist.

23.3. Violence against Older Persons

The analysis of the cases studied by the Public Defender shows the systemic nature of problems, which remain the same over the years, are related to important issues such as how violence is perceived by the victims themselves, a small number of complaints lodged by victims with relevant authorities and the lack of existing psychosocial and economic rehabilitation programmes for victims. In the Public Defender's opinion, protecting older persons from violence for long periods and launching support services are problematic.

The Ministry of Internal Affairs of Georgia does not register incidents of domestic violence against older persons. The Public Defender has been addressing this issue in parliamentary reports for years.¹¹⁵⁴ The ministry has been producing unified statistics on violence against people above the age of 45, which, of course, does not reflect accurate data on violence against older persons. According to the United Nations Independent Expert on the Enjoyment of All Human Rights by Older Persons,¹¹⁵⁵ the lack of detailed information about mistreatment and abuse and violence against older persons made it impossible to identify the circumstances triggering violence, thus impeding the development of adequate prevention measures and their further improvement.

According to the analysis of statistics on domestic violence maintained by the Ministry of Internal Affairs of Georgia,¹¹⁵⁶ since April 2020, there has been an increase in restraining orders applied in the incidents of domestic violence (against persons aged 45+). Because of this surge in domestic violence during the pandemic, it is most important to study the situation of older persons living in Georgia in this

¹¹⁵² *Ibid.*, para. 55.

¹¹⁵³ Letter no. 07/10235 of LEPL Agency for Protection and Assistance to Victims and Persons Affected by Human Trafficking, dated 26 November 2021.

¹¹⁵⁴ The 2019 Parliamentary Report of the Public Defender, p. 371.

¹¹⁵⁵ Report of the Independent Expert on the Enjoyment of All Human Rights by Older Persons on Her Mission to Georgia, para. 31.

¹¹⁵⁶ Available at: <https://bit.ly/3m5o6ZS>, [accessed 22.02.2021].

regard to detect and respond to violence in a timely manner. It is also important to inform older persons in detail about how to act in case of violence against them.¹¹⁵⁷

Restrictions introduced for older persons in terms of staying at home have had a disproportionate impact on those experiencing some kind of conflict within families or establishments. The strict restrictions have increased the risks of neglect and violence against older persons; in time of crisis, especially older women are targets of violence.¹¹⁵⁸

23.4. Care for Older Persons by Local Self-Governments

The cases examined by the Public Defender's Office in the reporting period revealed that the issue of placing older persons in specialised day care facilities takes lengthy consideration.¹¹⁵⁹ Based on an application drafted by an older person, his/her family member, or the findings of a social worker, an applicant has to wait for a long time to be admitted to a specialized long-term care institution. There is no time limit determined for the period from filing an application to the placement. Furthermore, there is no statistical information maintained on the period of placement in the facility. This deficiency makes it difficult to assess the situation.¹¹⁶⁰

For years, the Public Defender has been discussing the challenges faced by older persons at the local level. These are the difficult socio-economic and living conditions, the threat of poverty and homelessness, inadequate targeted programmes, the lack of measures for the welfare of older persons, the necessity for the assessment of the needs of older persons living in municipalities as well as for planning targeted programmes tailored to their interests.¹¹⁶¹

The pandemic has made the need for long-term care for the older persons even more evident. An important problem in implementing a homecare programme for the elderly is the scale of access to the service.¹¹⁶² In addition to homecare services, it is important to ensure access to palliative care for older persons. In this case, too, the problem is the limited availability of the programme; in particular, the state programme of palliative care provides only specific services for beneficiaries in six cities.¹¹⁶³

¹¹⁵⁷ UNFPA, the Situation of Retired Older Persons Living Alone Under the Poverty Line During the COVID-19 Pandemic, p. 11.

¹¹⁵⁸ Report of the United Nations Independent Expert on the Enjoyment of All Human Rights by Older Persons, Impact of the Coronavirus Disease (COVID-19), 21 July 2020, para. 56.

¹¹⁵⁹ Nine cases examined by the Public Defender's Office.

¹¹⁶⁰ Letter no. 01/3369 of the Minister of Georgia of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 10/03/2021.

¹¹⁶¹ For more details, see the Special Report of the Public Defender of Georgia on the Legal Status of Older Persons in Georgia, p. 26.

¹¹⁶² According to the information obtained by the Office in 2020, the homecare social programme was implemented only in several big cities.

¹¹⁶³ Available at: <https://bit.ly/3uav42K>, [accessed 04.03.2021]

Recommendations

To the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

- To develop a new action plan, incorporating activities of 2021-2022, taking into account the results of the review of the report on the implementation of the Georgian National Action Plan for Aging for 2017-2018;
- To elaborate a technical protocol for homecare;
- To maintain statistics on the period from the application filed by an applicant or an interested party to the placement of older persons in a specialised establishment. Among others, to process separately the statistical data concerning older persons enrolled on emergency basis;
- To provide mental health and psychosocial support services to older persons who have become especially isolated socially as a result of the COVID-19 pandemic prevention regulations, in particular to those with limited mobility, cognitive decline or dementia, as well as older persons living alone; and
- In order to ensure maintaining contact with the outside world and access to information during the period of social isolation caused by the regulations for the prevention of the COVID-19 pandemic, to provide improved access to digital technology for the elderly and ensure they are taught the skills required for its use.

To LEPL Agency for Protection and Assistance to Victims and Persons Affected by Human Trafficking:

- To ensure uninterrupted and adequate care services for the older persons, such as psychiatric services, palliative care and geriatric care, as well as monitoring in long-term care establishments, in order to prevent and control the spread of COVID-19 in specialised day care facilities.

The Minister of Internal Affairs of Georgia:

- Maintain statistical data on incidents of violence against the elderly aged 65-80 and above.

Local Self-Governments

- To collect statistical data to assess the needs of older persons living in their jurisdictions (Older Persons' Needs Assessment Document). Based on this information, to develop targeted programmes for older persons, incorporate them in the budget, if needs be, increase the budget and seek additional fund.

24. Protection and Civic Integration of National Minorities

24.1. Introduction

The present chapter discusses the following challenges in terms of protection of national minorities and civic integration during the reporting period: political integration of national minorities and participation in decision-making, problems in terms of access to education, scarcity of activities to protect and promote national minority culture as well as the main challenges in terms of media accessibility. In addition, we review the xenophobic statements prevalent during the reporting period that stir up a hostile environment towards national minorities in the country.

It is commendable that a number of (more than 80) cultural-educational events were held in remote municipalities and villages of the regions inhabited by national minorities, in accordance with the recommendations given in the Public Defender's 2019 Parliamentary Report on the Protection of National Minorities and Civic Integration. This especially deserves a positive assessment considering the Covid-19 pandemic.

The steps taken by the Public Broadcaster to increase media accessibility for national minorities are also noteworthy. Preparing, filming and airing lessons on TV-school in the languages of ethnic minorities is commendable. Granting the status of a monument to several cultural heritage sites is also commendable.¹¹⁶⁴

Unfortunately, we observed no positive dynamics in terms of national minorities' right to education. The full realisation of the right to education at all levels of instruction, the quality of textbooks, the condition of cultural monuments related to national minorities, the involvement of national minorities in the political process, etc., remain problematic.

24.2. Informing National Minorities during the Pandemic

The issue of access to information by national minorities in a language they understand has become particularly relevant during the pandemic. Although the state took some steps, the linguistic barrier for national minorities has made problems of informing national minorities even more evident.

In this regard, a survey published by the Open Society Georgia Foundation reveals a link between knowledge of the Georgian language and the rate of receiving news.¹¹⁶⁵ According to the survey, respondents with the highest level of Georgian language proficiency receive information about current

¹¹⁶⁴ The former Russian school located in Kobuleti municipality; Islamic-Muslim Samarovani-I in Aspindza Municipality; Muslim Samarovani-II in Aspindza Municipality.

¹¹⁶⁵ Open Society Georgia Foundation, Survey of Participation of Representatives of Ethnic Minorities in Political Life, Tbilisi, 2019, p. 41.

socio-political developments in Georgia on a daily basis, while those with low Georgian language proficiency watch mostly non-Georgian language TV channels and get the news about socio-political events in Armenia, Azerbaijan and Turkey.¹¹⁶⁶

On 23 March 2020, strict quarantine measures (including a ban on entering and leaving the area) were announced in Bolnisi and Marneuli districts to prevent the spread of COVID-19. Until now, the First Channel of the Public Broadcaster has not aired any information about the pandemic in its news programmes in Azerbaijani or Armenian.¹¹⁶⁷ Therefore, the only way for national minorities to be informed about the pandemic was through the Public Broadcaster's web portal or the simultaneous translation of the 9 p.m. edition of the news programme *Moambe*.¹¹⁶⁸ Considering the fact that access to and use of the Internet are still problematic for national minorities, we do not consider the provision of information through the web portal as an effective source of information. In light of the above, it can be concluded that national minorities were virtually unaware of pandemic related issues prior to the introduction of the quarantine measures.

24.3. Political Integration and Participation in the Decision-Making Process

In 2020, the situation of national minorities in terms of participation in decision-making process and in public life has not changed. Despite the urgency and importance of the issue at stake, government agencies have not launched any programme to increase the participation of national minorities and have not implemented any effective activities for many years.

It should be noted that national minorities are still very rarely and/or mostly not represented in the central government (except for the Office of the State Minister for Civic Equality and Integration). In contrast, the participation of national minorities in local self-governments in areas densely populated by national minorities is ensured.

The situation in the governance of the capital has not improved in terms of the participation of national minorities. About 11% of the population of the capital belongs to national minorities. However, there is still not a single representative of national minorities in the Tbilisi City Council *Sakrebulo* or the Tbilisi municipal government.

Problems related to the participation of representatives of national minorities in the political process became evident during the parliamentary elections of October 2020. The majority of the political parties' election programmes omitted issues related to national minorities completely or presented them only superficially.

¹¹⁶⁶ *Ibid.*

¹¹⁶⁷ EMC, Needs of Ethnic Minorities, the Public Broadcaster and the Pandemic, Tbilisi, 2020, p. 23.

¹¹⁶⁸ *Ibid.*

Compared to the parliament elected in 2016, the number of representatives of various ethnic groups in the parliament elected in 2020 has decreased from 11 to 6.¹¹⁶⁹ After the 2020 elections, there are no representatives of the Abkhazian and Ossetian communities in the parliament.

24.4. Consultative Mechanisms

The Framework Convention for the Protection of National Minorities requires the Contracting Parties, Georgia, being among them, to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs. It aims above all to encourage real equality between persons belonging to national minorities and those forming the majority.¹¹⁷⁰

According to the OSCE High Commissioner on National Minorities (HCNM), states should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between the authorities and national minorities.¹¹⁷¹ Therefore, in order to promote the proportionate and equal participation of national minorities in the decision-making process by the central and local governments, it is necessary to have an effective body to conduct consultations with representatives of national minorities.

The main consultative mechanism for national minorities in Georgia is the Council of Ethnic Minorities set up under the auspices of the Office of the Public Defender of Georgia. It should be noted that the existence of the council under the auspices of the Office of the Public Defender of Georgia is a powerful safeguard for its institutional independence and plays a major role in identifying the challenges that national minorities face. However, it does not serve as a channel for dialogue between governmental authorities and national minorities as recommended by the HCNM.

In this regard, the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities is noteworthy. According to the committee, the consultative mechanisms established under the auspices of the Public Defender provide a favourable context for national minorities to express their concerns and interests, but lack systematic and formalised consultation mechanisms with the authorities.¹¹⁷² The parliament and the government are not obliged to hold regular, open and democratic consultations with the Public Defender's Council on Ethnic Minorities.¹¹⁷³

¹¹⁶⁹ According to the 2014 census, national minorities make up about 13% of the population of Georgia. As a result of the 2020 elections, 4% of the members of parliament are representatives of national minorities.

¹¹⁷⁰ Framework Convention for the Protection of National Minorities (FCNM) Explanatory Memorandum, Strasbourg, 1995, para. 80.

¹¹⁷¹ The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Memorandum, 1999, para. 12.

¹¹⁷² The Third Opinion on Georgia of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), 2019, para. 21.

¹¹⁷³ EMC, Ethnic Minority Consultation Mechanisms, the Reality in Georgia and International Experience, Tbilisi, 2020, p. 21.

In 2017, consultative (deliberative) councils were established and became operational under the auspices of the administrations of State Representatives of Kvemo Kartli and Kakheti.¹¹⁷⁴ According to the Office of the State Minister of Georgia for Reconciliation and Civic Equality, the meetings of these consultative councils are held regularly, taking into account the needs and interests of the local population. However, according to the Council of National Minorities under the auspices of the Office of the Public Defender, the consultative councils do not sufficiently ensure regular dialogue between the representatives of national minorities and the state. Furthermore, these councils usually have civic engagement functions and are not designated to act as minority consultation mechanisms. Furthermore, their mandate is rather ambiguous.¹¹⁷⁵

The Advisory Board under the State Minister of Georgia for Reconciliation and Civic Equality, whose members are organisations representing national minorities, is also problematic. The board does not have an outlined mandate. The convening of council meetings is at the discretion of the State Minister.¹¹⁷⁶

Based on the above, the activities of the consultative mechanisms are not materialised as platforms for formalised dialogue with the legislative and executive authorities in Georgia. Therefore, it is important to take effective steps to strengthen the consultative mechanisms; among others, the Council of National Minorities under the auspices of the Office of the Public Defender of Georgia should become a platform for regular and formalised dialogue with relevant authorities.

24.5. Right to Education

24.5.1. Early and Pre-School Education

Similar to the previous years, the steps taken by local self-governments to promote early and pre-school education are insufficient. For years, developing the Georgian sector of the kindergarten in Akhalkalaki Municipality has remained a challenge.¹¹⁷⁷ This problem impedes receiving education in the state language and social integration as well.

The Public Defender believes that, as in previous years, the challenge in 2020 was the lack of a unified conceptual approach and vision, training of bilingual teachers, provision of establishments with appropriate training-methodological programmes, supporting them with textbooks and other necessary

¹¹⁷⁴ The Tolerance Centre, the Council of National Minorities, under the Auspices of the Public Defender of Georgia, Report on Monitoring the Implementation of the State Strategy and Action Plan on Civic Equality and Integration for 2017-2018, Tbilisi, 2020, p. 15.

¹¹⁷⁵ EMC, Ethnic Minority Consultation Mechanisms, the Reality in Georgia and International Experience, Tbilisi, 2020, p. 21.

¹¹⁷⁶ *Ibid.* p. 20.

¹¹⁷⁷ The Public Defender's Recommendation, available at: <https://bit.ly/3bCokB8>, [accessed 17.02.2021].

logistical resources. The Public Defender has been discussing these problems for years.¹¹⁷⁸ However, no effective steps in this regard were taken in 2020.

24.5.2. Secondary Education

Bilingual education is an essential foundation for the comprehensive civic integration of national minorities. In the reporting period, practically no effective steps were taken to improve the teaching of state and minority languages in the pre-school and secondary education establishments and to introduce bilingual education in the regions densely populated by national minorities. According to the Ministry of Education, Science, Culture and Sport (hereinafter the ministry), LEPL National Centre for Teachers' Professional Development (which is within the ministry's system) has developed a bilingual teaching model since 2015 and created some resources for primary education as well. According to the information supplied by the ministry to the Public Defender in 2019, the bilingual teaching model was being piloted in five non-Georgian language schools, selected in cooperation with the United Nations Children's Fund. The information received from the ministry on the same issue in 2020 does not differ from the previous information. In particular, we were informed that four schools and four kindergartens have been selected for bilingual pilot programmes in Kvemo Kartli and Samtskhe-Javakheti. It can be concluded that the introduction of a multilingual (bilingual) teaching model, which is one of the priorities of the state, is still unfulfilled.

It is commendable that LEPL Education and Science Infrastructure Development Agency distributed certified textbooks for I-VI grades translated into national minority languages (Azerbaijani, Armenian and Russian) for the 2020-2021 academic year and they are already incorporated in the teaching process.¹¹⁷⁹ Furthermore, the translation of textbooks for the eighth grade that were certified in 2020 has started. These textbooks will be introduced in the non-Georgian language sector from the 2021-2022 academic year.

Unfortunately, in the reporting period, as in previous years, no effective measures were taken to develop and publish textbook on language and literature for Armenian, Azerbaijani and Russian-speaking schools and to incorporate these textbooks in the teaching process in Georgia.

The qualification of teachers and the lack of a unified strategy for their training and retraining and the lack of curricula remain problematic as is attracting bilingual teachers and involving them in the education system.

24.5.3. Teaching Native Language to Small Ethnic Minority Groups

Languages of national minorities have been taught since 2015. Developing textbooks in the languages of small ethnic minority groups (Ossetian, Chechen, Khundzuri/Avaric, Udi, Assyrian, and Kurdish/Kurmanji)

¹¹⁷⁸ The 2019 Parliamentary Report of the Public Defender, 2020, p. 380, see the citation: "The Public Defender mentioned these issues in the 2007-2018 parliamentary reports but, nevertheless, no effective steps have been taken in this regard."

¹¹⁷⁹ Letter no. 2200001166650 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 7 December 2020.

and training teachers in these languages remained a systemic problem in the reporting period. It is commendable that, according to the ministry, some efforts have been made in this regard. For example, in 2020, with the financial support of the Open Society Georgia Foundation and the involvement of the ministry, a textbook in the Udi language was published.¹¹⁸⁰

24.5.4. Higher Education

According to the results of the Unified National Examinations in 2020, in total 1,223 students gained the right to continue their studies based on Armenian, Azerbaijani, Russian and Ossetian language exams. Out of them, 255 entrants passed the general skills exam in Armenian, 956 entrants in Azerbaijani, 8 entrants in Russian and 4 in Ossetian.¹¹⁸¹ In total, only 10.4% of the 1223 entrants received a state education scholarship. This shows that a large proportion of students belonging to national minorities remain without funding. The Public Defender stated in previous years that it is important for the state to increase student funding as a large proportion of students are left without funding and, therefore, in many cases, left without access to higher education.¹¹⁸²

24.6. Protection and Promotion of National Minorities' Culture

According to the Ministry of Education, Science, Culture and Sport, in 2020, despite the pandemic, a number of cultural and educational events were held online in the regions populated by ethnic minorities. It is important to note that some of them were directly dedicated to the culture of ethnic minorities. The ministry organised a competition named Promoting Creative Activities to Preserve the Identity of Ethnic Minorities. Six projects won the competition and their funding amounted to 96,875 GEL. Within the framework of the competition, four books/catalogues were published and an electronic version of one book was developed; numerous lectures/seminars were held, etc. The publication reflects the development of cultural traditions and customs of ethnic minorities living in Georgia.

In 2020, the condition of cultural monuments related to national minorities was still dire, having been fortified for many years and in need of rehabilitation. These are Saint Gevork Monastery of Mughni, the Church of Shamkhoretsos Karmir Avetaran, the Basilica of Tandayan Surb Astvatsatsin, Church of Surb Nshani (Surb Nikoghaios) and the Basilica of Surb Minas.¹¹⁸³ Unfortunately, the rehabilitation of these monuments is not envisaged in 2021 either.¹¹⁸⁴

As for the rehabilitation of the Petros Adamian Tbilisi State Armenian Drama Theatre and the Heydar Aliyev Azerbaijan State Academic National Drama Theatre in Tbilisi, according to the ministry, the

¹¹⁸⁰ Letter no. 5 21 00000068607 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 5 February 2021.

¹¹⁸¹ *Ibid.*

¹¹⁸² The 2019 Parliamentary Report of the Public Defender, Tbilisi, 2020, p. 382.

¹¹⁸³ The 2016 Parliamentary Report of the Public Defender, 2017, p. 433.

¹¹⁸⁴ Letter no. 5 21 00000068607 of the Ministry of Education, Science, Culture and Sport of Georgia, dated 5 February 2021.

construction of the former is scheduled to be completed in 2021.¹¹⁸⁵ The latter is in a serious state of dilapidation, according to the inspection carried out by the LEPL Levan Samkharauli National Forensics Bureau. The main structural components are so damaged that the rehabilitation of the building is unprofitable and it needs to be dismantled.¹¹⁸⁶

The Public Defender believes that, before the restoration and rehabilitation of cultural heritage monuments, it is important to conserve them to prevent further damage and destruction.

24.7. Accessibility of Media

Compared to 2019, the Public Broadcaster's online television airs more daily news programmes in 2020. In 2019, there was one news programme in the Azerbaijani language and the prime-time programme of *Moambe* was aired with simultaneous translation in Azerbaijani as well as one news programme in Armenian and the prime time programme of *Moambe* with simultaneous translation in Armenian. Since 2020, there have been four news releases per day in Azerbaijani and Armenian and prime-time news releases with simultaneous translation in Azerbaijani and Armenian.

It should be noted that, from the day of the declaration of the state of emergency, the Public Broadcaster posted on its website information about the pandemic-related situation and restrictions in the Azerbaijani and Armenian languages. Video clips about COVID-19 that were translated into minority languages were broadcast and the website in seven languages is accessible 24/7. Furthermore, from 10 August 2019, the Public Broadcaster started airing news in Armenian and Azerbaijani through WhatsApp.¹¹⁸⁷

The Public Defender maintains that the above activities are important; however, considering the Public Broadcaster publishes information in minority languages only on its online platform, and since the national minorities in the regions do not have access to the Internet, these activities do not provide access for ethnic minorities to the media.¹¹⁸⁸

A survey of TV Viewers in Kvemo Kartli and Samtskhe-Javakheti, the regions densely populated by ethnic minorities, commissioned by the Public Broadcaster and conducted on 2-5 December 2020, demonstrates this problem rather well. According to the survey, only 10% of the interviewed persons from Kvemo Kartli received information from web portals and only 4% from the websites of TV channels.¹¹⁸⁹ According to the same survey, only 6% of the Samtskhe-Javakheti inhabitants received information from web portals

¹¹⁸⁵ *Ibid.*

¹¹⁸⁶ *Ibid.*

¹¹⁸⁷ Letter no. 74/07 of the Public Broadcaster, dated 8 February 2021.

¹¹⁸⁸ The Tolerance Centre, the Council of National Minorities, Under the Auspices of the Public Defender of Georgia, Report on Monitoring the Implementation of the State Strategy and Action Plan on Civic Equality and Integration, 2017-2018, Tbilisi, 2020.

¹¹⁸⁹ Kvemo Kartli and Samtskhe-Javakheti - a Survey of TV Viewers in Regions Densely Populated by Ethnic Minorities, available at: <https://bit.ly/3qf5uHe>, [accessed 04.03.2021].

and only 4% from the websites of TV channels.¹¹⁹⁰ It is also noteworthy that, according to a study by the Institute of Social Studies and Analysis, television is the main source of information in the regions populated by national minorities.¹¹⁹¹

We commend the conclusion of a memorandum between the First Channel of Georgia and regional media outlets in January 2021. Within the scope of this memorandum, the Public Broadcaster will provide the media product in Azerbaijani and Armenian languages free of charge to several regional TV stations.¹¹⁹² We hope this project will be implemented effectively in practice and will help increase access to media for national minorities.

24.8. Xenophobic Statements

In the reporting period, various xenophobic statements were made about ethnic minorities. The Public Defender described the comment by the director of the National Centre of Manuscripts, Zaza Abashidze, which was posted by him on the social network Facebook and which concerned declaring Marneuli-Bolnisi municipalities a quarantine zone, as a xenophobic statement.¹¹⁹³ It should be pointed out that Marneuli-Bolnisi area is inhabited by Azerbaijani-speaking population and, at the material time, the emphasis made by many members of the public on the ethnicity and other personal characteristics of the residents of Marneuli and Bolnisi municipalities was particularly worrying. The Public Defender of Georgia and the Councils of National Minorities and Religions under the auspices of the Public Defender responded with a statement on 26 March 2020. According to the statement, discussing the problem in terms of the ethnicity of citizens living in the territories of Marneuli and Bolnisi municipalities is against the paramount principle of the respect for human dignity; it reinforces the stigma towards ethnic minorities, stirs up the disintegration process and encourages their social exclusion.¹¹⁹⁴

The Public Defender also found an episode of the television programme *Post Factum*, aired by the TV Company Main Channel on 5 April 2020, to be xenophobic. It was argued during the episode, titled *Genes Against the Coronavirus*, that certain sections of the community have advantage, based on their ethnicity, in terms of the new Coronavirus. Giorgi Gabunia, the host of the programme, also made an Armenophobic statement after the storyline.¹¹⁹⁵ The Public Defender believes that focusing on any ethnic group in a positive or negative context when discussing medical issues is detrimental to the process of

¹¹⁹⁰ *Ibid.*

¹¹⁹¹ Institute of Social Studies and Analysis (ISSA), *Research on the Participation of Ethnic Minorities in Political Life*, Tbilisi, 2019.

¹¹⁹² Letter no. 121/07 of the Public Broadcaster, dated 15 February 2021 to TV Parvana, ATV 12 and Marneuli TV.

¹¹⁹³ In particular, Zaza Abashidze cursed and called upon the public to annihilate the residents of Marneuli and Bolnisi (a screenshot is available at: <https://bit.ly/3ghm0Dj>, [accessed 25.01.2021]).

¹¹⁹⁴ Available at: < <https://bit.ly/3yv6qfv> > , [accessed 26.01.2021].

¹¹⁹⁵ Available at: < <https://bit.ly/3hHzVVZ> > , [accessed 26.01.2021].

multifaceted social changes that the Georgian community is going through to achieve equality. It also reinforces xenophobic stereotypes and presents specific ethnicities in a degrading light.¹¹⁹⁶

Recommendations

To the Government of Georgia:

- To present a strategy and a concrete action plan to promote the proportionate and equal participation of national minorities in the decision-making process carried out by state authorities of Georgia;
- For the 2021-2022 academic year, to increase the amount of funding allocated within the State Scholarship Programme for students enrolled only on the basis of the results of the general skills exam in the Azerbaijani and Armenian languages;
- For the 2021-2022 academic year, to allocate funding within the State Scholarship Programme for students enrolled only on the basis of the results of the general skills exam in the Russian and Ossetian languages;
- To develop new recruitment programmes to increase the employment rate of national minorities in state agencies;
- To establish effective systematic and formalised consultation mechanisms for minorities at the executive level; and
- To promote learning of the state language by national minorities through the development of targeted programmes.

To the Minister of Education and Science of Georgia:

- To introduce a model of multilingual teaching in the schools teaching in the languages of national minorities; to develop textbooks for multilingual teaching; to ensure training/retraining of bilingual teachers;
- To ensure the translation and publication of textbooks issued in accordance with the National Educational Plan of Georgia in the languages of national minorities and supply schools with these textbooks;
- To start the implementation of effective measures for the development and publication of textbooks on the language and literature for Armenian, Azerbaijani and Russian-speaking schools and incorporate these textbooks in the teaching process in Georgia and to provide the schools with these textbooks;

¹¹⁹⁶ *Ibid.*

- To ensure the development and publication of textbooks in the languages of national minorities (Ossetian, Chechen, Khundzuri/Avaric, Udi, Assyrian and Kurdish/Kurmanji) as well as training programmes for teachers;
- For promoting diversity programmes, as well as the cultures of national minorities specifically, to support the implementation of cultural and educational activities and strengthen student and pupil exchange programmes within the country; and
- In cooperation with local self-governments, to facilitate the activities of culture centres, their renovation and implementation of educational programs in the municipalities and villages of the regions densely populated by national minorities.

To the Minister of Culture, Sport and Youth of Georgia:

- To ensure an inventory of cultural heritage monuments related to national minorities is developed and to start conservation and/or restoration of these monuments.

To the Public Broadcaster:

- To ensure the television broadcasting of major news and analytical programmes in the languages of national minorities and to promote access to media products prepared in the languages of ethnic minorities in the regions densely populated by national minorities.

To the Municipalities of Sagarejo, Lagodekhi, Telavi, Gardabani, Marneuli, Bolnisi, Dmanisi, Tsalka, Tetrtskaro, Akhaltsikhe, Akhalkalaki and Ninotsminda:

- To train teachers, including non-Georgian speaking teachers, to create and provide them with educational resources to increase the quality of teaching and the effectiveness of activities in preschool establishments.

25. Human Rights in the Defence Field

25.1. Introduction

The purpose of the activities of the Public Defender of Georgia in the defence field is to monitor the Human Rights situation of army recruits, military servicemen and veterans of defence forces. To this end, within the monitoring carried out in 2020, representatives of the Public Defender's Office visited the following: 16 units of the Ministry of Internal Affairs;¹¹⁹⁷ 4 establishments of the Special Penitentiary Service;¹¹⁹⁸ 8 military units of the Ministry of Defence;¹¹⁹⁹ regional offices of the Autonomous Republic of Ajara; Samegrelo-Zemo Svaneti and Imereti of LEPL State Service for Veterans; meetings were held with local veterans. We also visited three checkpoints set up by defence forces.

The Public Defender positively assesses the information received from the Ministry of Defence regarding the implementation of the recommendation made in the 2019 Parliamentary Report regarding the reduction of the duration of the daily shift and increasing the number of personnel to allow equal use of holidays by military servicemen.¹²⁰⁰ According to this information, as a result of the various recent measures taken by the Ministry of Defence of Georgia, compared to previous years, the turnover of professional (contracted) military servicemen was significantly reduced (by about 45-50%) in 2020. This positively altered the turnover balance, which eventually increased the actual number of staff in subunits.

The Ministry of Defence took into account the Public Defender's recommendation made over many years to change the existing practice of food tasting/inspection at the Ministry of Defence. As a result of the adoption of the charter of the Internal Service of the Ministry of Defence of Georgia, the old regulation in the Ministry of Defence was abolished.¹²⁰¹ Under the previous regulations, a physician was supposed to inspect the quality of food before its distribution. Under Article 30 (f) of Resolution no. 519 of the

¹¹⁹⁷ Facilities Protection Department: 1st and 2nd subunits of Division I; 1st, 2nd and 3rd subunits of 1st Unit of Division I; 1st, 2nd and 3rd subunits of 2nd Unit of Division I; 1st and 3rd subunits of 1st unit of Division II; 1st subunit of 2nd unit of Division II; 1st and 2nd units of 1st unit of Division III; 2nd subunit of 1st unit of Division III; the Subunit of the Unit for Combat Training of the Personnel of the Facilities Protection Department; 5th and 6th units of Division I of the Special Tasks Department; 5th and 6th Units of Division III of the Special Tasks Department; Samtskhe-Javakheti Subunit of the Special Tasks Department; Division II of the Special Tasks Department.

¹¹⁹⁸ Unit no. 17 of the East Division of the Main Division of the External Protection and IT Security of the Special Penitentiary Service; Units nos. 2, 3, and 14 of the West Division of the Main Division of the External Protection and IT Security of the Special Penitentiary Service.

¹¹⁹⁹ 1st Infantry Brigade of the Eastern Command of Defence Forces; 5th Mechanised Brigade of the Eastern Command of Defence Forces; 13th Battalion of the 1st Infantry Brigade of the Eastern Command of Defence Forces; 10th Cadre Brigade of the National Guard of Defence Forces; Special Operations Battalion WEST of Defence Forces; 2nd Infantry Brigade of the Western Command of Defence Forces; 6th Artillery Brigade of the Western Command of Defence Forces; 3rd Infantry Brigade of the Western Command of Defence Forces.

¹²⁰⁰ Letter no. MOD 42001130535 of the Ministry of Defence of Georgia, dated 11/12/2020.

¹²⁰¹ Statute of the Internal Service of the Georgian Armed Forces, approved by Order no. 295 of the Head of State of Georgia of 2 September 1994.

Government of Georgia of 21 August 2020 on Approving the charter of the Internal Service of the Ministry of Defence of Georgia, a duty officer of the infirmary/medical unit is no longer obliged to check the quality of the food. Under the new regulations, a duty officer of the infirmary/medical unit, together with a duty officer of the subunit, supervises taking a sample of the ready food, how it is sealed and stored in accordance with the established procedure. At this stage, a respective food company responsible for food quality provides the Defence Forces of Georgia with food.

As for the Public Defender's recommendation to increase the salaries of conscripts in the armed forces, according to the supplied information,¹²⁰² the Ministry of Defence developed alternatives to compulsory military service in 2020. The change in the conscripts' monthly salary was among them. However, it should be noted that nothing changed in this regard in 2020.

The lack of an interpreter in military units where ethnic minorities undergo compulsory military service remains an unresolved issue. During the initial combat training, visiting educators teach the Georgian language to ethnic minorities. However, the lessons conducted during this period alone are not enough to learn speaking Georgian independently. Furthermore, it can be concluded that such a method of teaching the Georgian language is not effective as, during our monitoring of the military units of the Ministry of Defence in 2018-2020, interviews with representatives of ethnic minorities were possible only with the help of other military personnel (who had the command of both languages). This was despite the fact that at the initial stage of combat training each conscript had undergone the above-mentioned programme.

The Public Defender's recommendation made to the Government of Georgia regarding initiating amendments to the Tax Code and increasing the existing income tax-cut for veterans up to GEL 6,000 (GEL 9,000 for veterans with acute and significant disability) as of 2021 has not been fulfilled. According to the Administration of the Government of Georgia,¹²⁰³ various options are being discussed with the Ministry of Finance of Georgia to improve the social situation of veterans. However, nothing has changed to date.

25.2. The Ministry of Defence of Georgia

The Public Defender assesses positively the quarantine measures taken by the Ministry of Defence of Georgia against the new Coronavirus (COVID-19), including those measures taken at the specially arranged checkpoints in the municipalities of Mtskheta, Rustavi and Marneuli. On 12 March 2020, the Minister of Defence issued Order no. 231 on the Measures to Prevent the Possible Spread of the New Coronavirus in Georgia, based on which a large part of the employees of the Ministry were instructed to work from home. Starting from 21 March 2020, to prevent the possible spread of Coronavirus and protect the military servicemen and their family members, the Defence Forces of Georgia stationed for 24/7 at their respective places of service. In this period, all military servicemen and civilians, including support

¹²⁰² Letter no. MOD 42001130535 of the Ministry of Defence of Georgia, dated 11/12/2020.

¹²⁰³ Letter no. GOV 22000018366 of the Administration of the Government of Georgia, dated 25/05/2020.

staff working in a special mode, were provided with three meals a day. In accordance with Order no. 37 of the Minister of Defence of Georgia of 22 April 2020, the personnel were provided with items of personal care and hygiene. Those stationed at the place of service for 24 hours were provided with communication with the outside world and their families as well as access to media outlets. To this end, the Ministry of Defence has provided wireless modems to the military units to provide Internet access; the personnel as of today (March 2021) have access to the Internet 24 hours a day.¹²⁰⁴ However, it should be noted that Internet access is not available to conscripts in some military units.

Furthermore, the significant changes made in the Ministry of Defence in 2020 to tackle the existing infrastructural problems¹²⁰⁵ are commendable. In all the military units of the Defence Forces visited in the reporting period,¹²⁰⁶ residential barracks, bathrooms and canteens were being repaired, old furniture was being replaced and new facilities (canteen, kitchen, bath, etc.) were added to meet the needs of a specific military unit. For years, the Public Defender had recommended improving the infrastructure and providing decent working conditions.

Our visit to the Ministry of Defence and interviews held with conscripts revealed that the use of arbitrary and collective punishments remains an unresolved problem in a number of military units of the Defence Forces.¹²⁰⁷ These punishments are not determined by respective regulations. These measures are used, in case of disciplinary misconduct, in the form of additional physical exercise for punitive reasons based on the motto “one for all, all for one.”

25.3. The Main Division of the External Protection and IT Security of the Special Penitentiary Service

Similar to the previous years, the legal status of the conscripts serving in the 17th Unit of the Main Division of External Protection and IT Security of the Special Penitentiary Service remains alarming. They work in shifts once in three days and their duty is to be on 24-hour shifts on the towers and checkpoints on the perimeter of a penitentiary establishment. The conscripts are mostly unable to use their leave due to the

¹²⁰⁴ Mixed Aviation Squadron of the Aviation and Air-Defence Command of the Defence Forces; The Krtsanisi Training Centre of the Training and Education Command of the Defence Forces; Ammunition and Military Technical Property Bases of the Army Logistics Command of the Defence Forces of Georgia.

¹²⁰⁵ Damaged and unsuitable air conditioning, plumbing, exhaust and ventilation systems, as well as poor artificial lighting, outdated furniture or lack of any furniture, cramped, messy kitchens and dining rooms.

¹²⁰⁶ 1st Infantry Brigade of the Eastern Command of the Defence Forces; 4th Mechanised Brigade of the Eastern Command of the Defence Forces; 13th Infantry Battalion of 1st Infantry Brigade of the Eastern Command of the Defence Forces; 10th Cadre Brigade of the National Guard of Defence Forces; Special Operations Battalion WEST of Defence Forces; 2nd Infantry Brigade of the Western Command of Defence Forces; 6th Artillery Brigade of the Western Command of Defence Forces; 3rd Infantry Brigade of the Western Command of Defence Forces; Sergeant Zaza Peradze Basic Combat Training Centre of the Training and Education Command of the Defence Forces.

¹²⁰⁷ Mixed Aviation Squadron of the Aviation and Air-Defence Command of the Defence Forces, the Krtsanisi Training Centre of the Training and Education Command of the Defence Forces.

insufficient number of the military personnel. During our visit to the 17th Unit in 2020 (June 2020), it was supposed to be staffed with 150 military personnel whereas only 27 military personnel had been enrolled.

In such conditions, the division management gives priority to soldiers with exemplary behaviour and gives them a three-day leave as an incentive and not a full leave to which they are entitled.

According to the received information,¹²⁰⁸ only two military servicemen fully used their leave in 2017; ten military servicemen partially used and 92 military servicemen did not use their leave at all. Out of 35 conscripts recruited in the Autumn 2017 conscription period, 11 conscripts took leave for spring 2018, while none of the conscripts in 2019-2020 used the two-week leave fully.¹²⁰⁹

Conscripts who have to work once every three days are not provided with food. They have to bring food from home. Furthermore, transportation costs from their residence to the military unit are not covered and items of personal hygiene are not provided. They have to buy those items at their own expense despite their monthly salary being only 52 GEL. The Public Defender made a recommendation in the 2016 Parliamentary Report¹²¹⁰ that food and transportation costs had to be reimbursed to the conscripts. This recommendation has not been implemented to date. The monthly salary of conscripts stationed for 24 hours at the place of service in the 17th Division is only 5 GEL. Considering the fact that, the majority of the conscripts enrolled in the 17th Division are from regions, their monthly salary cannot cover the transportation costs from their residence to the military unit, twice a year.

In terms of living conditions, the military units in a number of penitentiary establishments remain unsatisfactory.¹²¹¹ Conscripts have to keep their civilian clothes in their personal backpacks as there are almost no individual wardrobes and they only have nightstands. The rooms have central heating. Natural lighting and ventilation are satisfactory, but artificial lighting is rather poor. Ceilings and floors in most of the rooms are damaged. Bathrooms and dining areas are dirty and there is no running hot water in the washbasins. From the start of the pandemic to the time of our visits (March 2020 to August 2020), there were no cleaners in penitentiary establishments nos. 3 and 14.

25.4. The Ministry of Internal Affairs of Georgia

In 2020, as a part of the monitoring, we inspected the situation (living and working conditions, physical environment) in the paramilitary units of the Ministry of Internal Affairs and held group and individual interviews with conscripts. Furthermore, to examine disciplinary proceedings in the Facilities Protection Departments and the Special Tasks Department of the Ministry of Internal Affairs, we requested and studied legal documentation (disciplinary case-files produced in 2019-2020; in total, 340 cases).

¹²⁰⁸ Letter no. MOC 41800493448 of the Ministry of Corrections and Probation.

¹²⁰⁹ Letter no. 153947/01 of the Special Penitentiary Service, dated 25.06.2020.

¹²¹⁰ Available at: <https://bit.ly/2Z34QBz>, [accessed 30.03.2021], p. 358.

¹²¹¹ Penitentiary establishments nos. 2, 3, 8 and 14.

25.4.1. The Facilities Protection Department

The main task of conscripts serving in the Facilities Protection Department (hereinafter referred to as FPD) is to protect and secure administrative buildings within the system of the ministry, as well as other strategic facilities, to participate in the activities aimed at protecting public order and safety.

During the compulsory military service, conscripts either are stationed at the place of service for 24/7 or do once in three-day shifts. In the former case, the monthly salary is 40 GEL, and in the latter case – 24.85 GEL, which is not enough to cover the transportation costs, as the conscripts have to commute at their own expense.

The food provision for conscripts is regulated differently in the FPD subunits. Military personnel permanently stationed at the place of service are provided with three meals a day whereas those working once in three-day shifts¹²¹² have cards. This means that 12 GEL is deposited on a special food card for each working day. The money deposited on the card can be used in the canteens located at the place of service. During interviews, conscripts observed that 12 GEL is enough for only two meals a day. As for the 1st subunit of the 1st unit of Division I, which is deployed at several locations in Batumi and Poti, it provides military servicemen only with a meal ready to eat (MRE).¹²¹³ In other departments, military personnel are provided with cooked meals.¹²¹⁴

As for the living conditions of conscripts in the FPD, in all the subunits visited, there is a shortage of space and the minimum living space of 2.5-4² metres per person is not provided in the bedrooms.¹²¹⁵ At one of the locations of the 3rd subunit of the 2nd unit of Division I deployed at the administrative building of the Border Police, classrooms and bedrooms are arranged in the same area; as there is no canteen, conscripts dine at the classroom desks. At the second location of the same subunit, the classroom and bedroom spaces are arranged in a small building, which is so cramped that it is impossible to accommodate enough nightstands or individual wardrobes for the staff.

There is no cleaner in the 3rd subunit of the 1st unit of Division II and the military personnel themselves clean the bedrooms/classrooms. The upholstery of the beds is damaged and useless. There are no insect screens on the windows of the bedrooms and classrooms in the 1st subunit of the 1st unit of Division III (in Batumi). The ventilation system is out of order.

There is a particularly dire situation in one of the stations of the 1st subunit of the 1st unit of Division II, which is deployed at the Migration Department of the Ministry of Internal Affairs of Georgia. The bedroom

¹²¹² FPD: 2nd subunit of 1st unit of Division I; 1st subunit of 1st Unit of Division I; 3rd subunit of 2nd unit of Division I (one of the locations of deployment); 1st subunit of 2nd unit of Division I; 2nd subunit of 2nd unit of Division I; and 1st subunit of 1st unit of Division II (one of the locations)

¹²¹³ Canned meat - 2 pieces, pate - 1 piece, bread - 600 gr., chocolate bar. - (50 gr.) - 2 pieces.

¹²¹⁴ 3rd subunit of the 2nd unit of Division I (one of the deployment locations); 1st subunit of the 1st unit of Division II (two deployment locations); the Training Support Subunit of the Personnel and Training Unit of the Combat Division; 3rd subunit of the 1st unit of Division II; 1st subunit of the 2nd unit of Division II.

¹²¹⁵ Regulations of the Internal Service of the Armed Forces of Georgia, Article 144.

is located in the basement, where there is no window or any natural ventilation, and the room has built-in ventilation ducts that run over the bunk beds. The ceiling is too low and the distance between the beds and the pipes is very small. It should be noted that the system of artificial ventilation is out of order and it is impossible to ventilate the room naturally. The condensation tube of the AC installed in the room is placed in a bottle in the bedroom; there are various pipes installed right above the headboard of one of the beds. The pipes are not properly insulated. The working and living conditions in the 2nd station of the same subunit are dire. There is no sewerage system. The bio-toilet is located in the yard, away from the house. It cannot be flushed and conscripts have to clean it with a toilet hose. The washbasin installed in the yard is primitive and it is connected only to running cold water. They also do not have a cleaner. Therefore, military personnel clean the military barracks and the area around the barracks. Some subunits do not have a TV, which is why they have limited access to news media in their free time.¹²¹⁶

25.4.2. The Special Tasks Department

Conscripts are stationed permanently at the Special Task Department (hereinafter STD), except for the subunit of Samtskhe Javakheti Division, where conscripts work on alternate days. Some military servicemen are enlisted in the guard platoons.¹²¹⁷ It is their task to guard the territory of the military base and be on guard duty. The tasks of conscripts enrolled in the other units include one-week secondment to the relevant deployment site, and during the second week, they are in the base area, where they undergo training and do the guard duty. They also carry out special tasks to prevent illegal acts, protect public order and ensure public safety. They ensure the safety of participants at mass events such as demonstrations. Their monthly salary is 24.85 GEL. They also receive remuneration as a supplement for participating in various types of events.

Recruits undergo special theoretical and practical training for military service in the ministry for a period of two weeks to one month.¹²¹⁸ However, upon enrolment in the STD, some recruits have 45 days to complete their training and some – about 20 days. According to them, this is due to the fact that, in order to recruit conscripts in an organised manner, the conscripts in a particular group (spring or autumn conscription) must take the military oath at the same time. Accordingly, recruits admitted at the initial stage of conscription often have to wait for the full staffing to be completed, for another period of up to 2 weeks on average, even though they have already undergone initial special theoretical and practical training and are ready to take the military oath. A recruit is not allowed, before taking the oath, to perform combat tasks (combat action, combat duty, combat service and guard service). Military service starts from the date of enrolment.¹²¹⁹ This shows that conscripts enrolled in the same unit have to undergo

¹²¹⁶ 2nd subunit of 1st unit of Division I; 1st subunit of 1st unit of Division II; 1st subunit of 1st unit of Division III; 2nd subunit of 2nd unit of Division III.

¹²¹⁷ FPD, Divisions I and III.

¹²¹⁸ Order no. 1009 of the Minister of Internal Affairs of Georgia of 31 December 2014 on Approving the Regulations on Compulsory Military Service in the Ministry of Internal Affairs of Georgia, Article 5.

¹²¹⁹ *Idem*.

compulsory military service in an unequal position because, before taking the oath, they are permanently stationed at the place of service and certain conscripts spend more time in the military than others do.

25.4.3. Communication, Disciplinary Proceedings and Protection of Personal Data in the Subunits of the Ministry of Internal Affairs

In the FPD, conscripts working once in three days hand over their mobile phones before work and take them back after the shift ends. During the rest period, if necessary, military servicemen are allowed to use their mobile phones. Furthermore, family members can call the person on duty or contact the conscript's immediate supervisor on his mobile phone. In the 3rd subunit of the 1st unit of Division II, a phone can be used only in the presence of a superior officer and, unlike other military units, confidentiality is not respected.

The situation of the military personnel permanently stationed at the place of service is particularly noteworthy,¹²²⁰ since the phone is the only means of communication for them. While in case of necessity they are given the opportunity to use the telephone of the immediate supervisor, they cannot apply to their supervisor in every case they wish to use his phone. It should also be borne in mind that many of them are stationed far away from home and telephone communication is crucial to maintain contact with their family members.

As regards disciplinary misconduct cases, according to the information received from the Ministry of Internal Affairs, the STD did not register incidents of disciplinary misconduct committed by conscripts in 2019-2020.¹²²¹ Examination of cases of disciplinary misconduct by the personnel of the FPD showed various shortcomings. In particular, it was found that out of the 340 cases inspected:

- In 193 cases, the order on imposing a disciplinary measure does not contain information on the right to appeal;¹²²²
- In 34 cases, there is no order on the imposition of the disciplinary measure contained in the case-files;
- In 113 cases, there are no explanations of the persons questioned as witnesses who were eye-witnesses of the disciplinary misconduct and are indicated in the report of the Inspectorate General as persons interviewed during the official enquiry; and
- It is not clear from any of the cases whether the order on imposing a disciplinary measure was handed to the conscript concerned.

¹²²⁰ Training Support Subunit of the Personnel and Training Unit of the Combat Division of the Facilities Protection Department, Divisions I and III of the Special Tasks Department.

¹²²¹ Letter no. MIA 82001880752 of the Ministry of Internal Affairs of Georgia, dated 12/08/2020.

¹²²² The General Administrative Code of Georgia, Article 52.

Interviews with conscripts revealed that, in some subunits of the Ministry of Internal Affairs,¹²²³ the use of arbitrary punishments such as an additional physical activity (jogging, push-ups, and squats) for disciplinary misconducts committed by conscripts unfortunately remains a problem. These punishments are not determined by regulations in force and are used for punitive reasons based on the motto “one for all, all for one”, which means that in case of disciplinary misconduct by one individual the entire platoon will be punished.

It is important to note that the FPD and STD of the Ministry of Internal Affairs have video surveillance cameras installed in the barracks of military servicemen, including the bedrooms. We requested the Ministry of Internal Affairs¹²²⁴ to inform us based on which legal provision the video surveillance was carried out in the barracks and bedrooms. According to the information provided by the ministry,¹²²⁵ the legal basis for video surveillance in the barracks of military units, including bedrooms, is the Law of Georgia on Personal Data Protection. In particular, under Article 12 of this law, public and private agencies may carry out video surveillance on their premises for corresponding monitoring, if it is necessary for the protection of the security and property of the person, the protection of confidential information and examination/testing purposes, and if these objectives cannot be achieved through other means. Furthermore, in accordance with paragraph 5 of the aforementioned article, military personnel are informed in writing about the video surveillance and their rights. We were also informed that the requirement of Article 12.4 of the above-mentioned law is observed, notably, video surveillance is prohibited in changing rooms and areas designated for maintaining hygiene. However, the monitoring revealed that the bedrooms of the military units of the FPD and STD are also designated as changing rooms, and conscripts spend most of their free time in the bedroom. Therefore, the requirements of Article 12.4 of the Law of Georgia on Personal Data Protection are not followed.

Recommendations

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 2021.

To the Minister of Defence of Georgia:

- To increase the remuneration of conscripts at least to cover fully the food expenses and the costs of transportation from their residences to the military unit;
- To eradicate the practice of imposing arbitrary punishments (additional physical activity for punitive reasons) not determined by the statute and collective punishments for disciplinary

¹²²³ FPD, Division III, 1st division, 1st subunit (Batumi); Training Support Subunit of the Personnel and Training Unit of the Combat Division.

¹²²⁴ Letter no. 14-1/9100 of the Office of the Public Defender of Georgia, dated 16/09/2020.

¹²²⁵ Letter no. MIA 72002336169 of the Ministry of Internal Affairs of Georgia, dated 01/10/2020.

misconduct. To this end, the Military Police Department of the Defence Forces of the Ministry of Defence of Georgia should be instructed to monitor systematically the use of arbitrary and collective punishments in military units;

- To ensure representatives of ethnic minorities in military units are able to communicate with military personnel and commanders; to this end, to consider provision of those military units with interpreters, where representatives of ethnic minorities serve; and
- To ensure Internet access for conscripts in military units on equal footing with professional military servicemen.

To the Minister of Justice of Georgia:

- To increase the monthly remuneration of conscripts enrolled in the 17th Unit of the Eastern Division of the Main Division of External Protection and IT Security of the Special Penitentiary Service;
- To enable conscripts enrolled in the 17th Unit of the Eastern Division of the Main Division of External Protection and IT Security of the Special Penitentiary Service to use their vacation;
- To reimburse additionally the military servicemen enrolled in the divisions of the Main Division of External Protection and IT Security of the Special Penitentiary Service (except for the 17th Unit) for food, hygiene items and transportation costs; and
- To eradicate infrastructural problems in the Main Division of External Protection and IT Security of the Special Penitentiary Service and to improve the observance of sanitation and hygiene standards.

To the Minister of Internal Affairs of Georgia:

- To increase the remuneration of the conscripts on once in three-day shifts at the Facilities Protection Department;
- To provide full three-course meals to each military servicemen being on 24-hour shift at the Facilities Protection Department;
- To eradicate infrastructural problems at the Facilities Protection Department and improve the observance of sanitation and hygiene standards;
- To ensure that special theoretical and practical training for military service in the Special Tasks Department is conducted for all conscripts for the same duration;
- To eradicate the practice of imposing arbitrary punishments (additional physical activity for punitive reasons) not determined by the statute and collective punishments for disciplinary misconducts. To this end, the Inspectorate General of the Ministry of Internal Affairs of Georgia should be instructed to monitor systematically the use of arbitrary and collective punishments in military units;

- To ensure that conducting and examining disciplinary cases as well as imposing disciplinary sanctions are in accordance with the Regulations of Disciplinary Proceedings approved by Resolution no. 615 of the Government of Georgia of 3 November 2016; and
- To arrange separate change rooms for conscripts in all paramilitary units of the Ministry of Internal Affairs, with no CCTV cameras.

26. The Human Rights situation of the Conflict -affected population

26.1 Introduction

For the population living in the occupied territories and affected by the conflict, 2020 revealed to be even more difficult due to the pandemic.

The facts of illegal violation of the right to life in the occupied territories are still alarming. This is confirmed by facts of illegal violation of right to life of Davit Basharuli in 2014, Giga Otkhozoria in 2016, Archil Tatunashvili in 2018, by violation of right to life of Georgian citizen Irakli kvaratskelia in 2019 at the Russian military base in the village of Nabakevi, in Gali, occupied Abkhazia and by the fact that participants of murder, representatives of occupation regime are still not punished.

In 2020, unpredictable closure of of both Enguri and Akhagori checkpoints by de facto government has further aggravated the socio-economic situation of people living in the occupied territories. In the situation of the new coronavirus pandemic, the dire humanitarian situation and artificial isolation, the population living in the occupied regions was in particular danger.

Particularly noteworthy is the dire situation and humanitarian crisis in the occupied district of Akhagori since September 4, 2019, as a result of the closure of checkpoint. A clear example of this is the death of a number of people due to inadequate access to medical services during 2019-2020.¹²²⁶

Also, one of the most important challenges was the illegal detention of Georgian citizens by so-called regime for facts of border cross. An obvious example of this are cases of Vazha Gaprindashvili,¹²²⁷ Genadi

¹²²⁶ 1 year has passed since the closure of Akhagori. Information available: <<https://bit.ly/2Lt0jVB>> [Last viewed 30.03.2021]

¹²²⁷ Vazha Gaprindashvili was sentenced to imprisonment. Information available: < <https://bit.ly/3k5MCZK> > [Last viewed 30.03.2021].

Bestaev,¹²²⁸ Irakli Bebug,¹²²⁹ Zaza Gakheladze,¹²³⁰ Ramaz Begeluri,¹²³¹ Mirian Taziashvili¹²³² and Khvicha Mghebrishvili.¹²³³

The situation in the occupied territories is still difficult in terms of freedom of expression, the Public Defender has been mentioning this issue in annual reports for years.¹²³⁴ Human right activist Tamar Mearakishvili has been under pressure since 2017 and is being persecuted by *de facto* government due to her public expression of critical opinion. During this period, she was deprived of her identity documents and other personal belongings, her freedom of movement has been restricted and fundamental rights were deprived.

On January 21, 2021, the European Court of Human Rights made very important decision on the case of Georgia v. Russia (II) related to serious human rights violations committed against Georgian citizens during and after the August 2008 war. This decision is of great legal and historical importance for Georgia. In this decision, the court unequivocally affirmed the effective control of the Russian Federation over the uncontrolled territories of Georgia and recognized Russia in charge for all violations of human rights within those territories. The court found that the presence of Russian military forces in the occupied territories and *de facto* subordination of the authorities to Russia indicate the existence of effective Russian control. Accordingly, the court clarified that the Russian Federation is responsible for the human rights violations committed in occupied Tskhinvali and Abkhazia.

26.2. Pandemic conditions and protection of the right to health in the occupied territories

With severe humanitarian conditions and artificial isolation, the population living in the occupied regions during the pandemic was in particular danger. From the very first days of the spread of the coronavirus, the Georgian authorities have expressed their full readiness to help people living in the occupied territories.

¹²²⁸ Genadi Bestaev, arrested near Zardiantkari, has been sentenced to imprisonment. Information is available: <http://www.rosbalt.ru/eng/2021/03/30/2103300001.html> Also, one of the most important challenges was the so-called For crossing the border, facts of illegal detention and detention. An obvious example of this is Vazha Gaprindashvili, Genadi Bestaev, Irakli Bebug, ps: [//bit.ly/3qEdoLq](https://bit.ly/3qEdoLq) > [last viewed 30.03.2021]. [Last viewed 30.03.2021]

¹²²⁹ Irakli Bebug was sentenced to 9 years for burning the separatist flag. Information available: < <https://bit.ly/37wO62G> > [Last viewed 30.03.2021].

¹²³⁰ Statement from the State Security Service, available at: < <https://bit.ly/3bm8dt7> > [Last viewed 30.03.2021].

¹²³¹ Detained Ramaz Begeluri has been transferred to Tskhinvali, available at: < <https://bit.ly/3aAwQD1> > [last viewed 30.03.2021].

¹²³² Mirian Taziashvili was sentenced to 2 months of pre-trial detention in Tskhinvali, available at: < <https://bit.ly/3aDWzdX> > [last viewed 30.03.2021].

¹²³³ Khvicha Mghebrishvili was sentenced to 2 months imprisonment by Tskhinvali court, available: < <https://bit.ly/3qFFN3w> > [last viewed 30.03.2021].

¹²³⁴ The 2019 report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia is available at: < <https://bit.ly/3pH7fg2> > [last viewed 30.03.2021].

During 2020, totally 892 patients were transferred from both occupied regions to the controlled territory of Georgia. From Abkhazia 256 were infected with Covid and 24 were from occupied Tskhinvali region.¹²³⁵

As of December 31, 2020, there were 8,920 confirmed cases of the new coronavirus in occupied Abkhazia, 7,682 people had recovered, and 123 had died.¹²³⁶ As for occupied Tskhinvali, 2,409 cases of infection had been identified. 1,647 recovered, 27 people died.¹²³⁷

Despite the readiness of the Georgian authorities, the position of *de facto* authorities on receiving this assistance was different. As soon as the pandemic started, *de facto* government of Abkhazia expressed its interest in receiving information from Georgia through international organizations, on the one hand (which was later expressed through online consultations between Georgian and Abkhazian doctors) and, on the other hand, in getting material assistance (medical equipment). The occupied Tskhinvali regime still categorically refuses to accept aid from the Georgian-controlled territory and demands that the cargo to be imported from Russian Federation. In addition, *de facto* government refused to allow specialists to enter Tskhinvali if they entered from Georgian-controlled territory and not from the Russian Federation.¹²³⁸

Since March 2020, the Georgian authorities have provided assistance to the population living in occupied Abkhazia in several directions: timely delivery of information, sharing of expertise, on-site delivery of medical supplies, and treatment of transferred patients. Relevant material was also promptly translated and disseminated in Abkhazian and Ossetian languages. Infectionists, remotely, provided advice if needed. Abkhazia has been repeatedly provided with various medical supplies, equipment and hygiene items to protect itself from the new coronavirus through various channels. This process continues till this date.¹²³⁹ Also, 235,000 doses of seasonal flu vaccine purchased by the Georgia were transferred to occupied Abkhazia.¹²⁴⁰

The categorical negative position of the occupied Tskhinvali regime, in relation to receiving help from the Georgian authorities and complete closure of the checkpoint, further complicates access to medical care locally and the number of people who have died in the occupied territories due to lack of access to such services has increased.¹²⁴¹ Despite the difficult situation, transferring patients from Akhgori to the Georgian-controlled territory is also problematic. *De facto* government continues to impose illegal and discriminatory restrictions on the issuance of movement permits. In particular, according to the information provided to the Public Defender, it was much easier to transfer a patient from occupied Akhgori to Tbilisi in previous years. Initially, the doctor of Akhgori Hospital made a decision, based on which the patient's family applied to the governor of Akhgori. He was preparing a "letter", which was

¹²³⁵ Letter of the Office of the State Minister of Georgia for Reconciliation and Civic Equality №78-1-2-202101291750 of January 29, 2021.

¹²³⁶ *De facto* Abkhazian news agency Apsnipress is available at: < <https://bit.ly/3wbGnJw> > [last viewed 30.03.2021].

¹²³⁷ New Cases Revealed in Tskhinvali, 2020, October 16, Available: < <https://bit.ly/3w5zHg2> > [Last viewed 30.03.2021]

¹²³⁸ Tskhinvali Refusal to Assist International Organizations, available at: <<https://bit.ly/33YRcCv>> [last viewed 30.03.2021].

¹²³⁹ The report of the Government of Georgia on the measures taken against COVID-19 is available at: < <https://bit.ly/3gyOkkM> > [last viewed 30.03.2021].

¹²⁴⁰ 10,000 doses of influenza vaccine were delivered to Abkhazia, available at: < <https://bit.ly/2W5YYpy> > [last viewed 30.03.2021].

¹²⁴¹ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 405.

enough to be presented to the Russian border guards at the checkpoint. The current situation is much more complicated. In order to transfer a patient to a controlled area of Georgia, it is necessary to go through several stages: 1. Meeting of a group of doctors from occupied Tskhinvali and their consent; 2. Consent of Akhgori local municipality and doctors to transfer the patient to Tskhinvali; 3. After transfer to Tskhinvali, assessment of the patient's condition by Tskhinvali doctors; 4. After the permission of the doctors, the family has the right to apply to de facto agencies for a "permit" to transfer the patient to the controlled territory of Georgia; 5. At the last stage, the International Committee of the Red Cross is involved, which ensures transportation of patient.¹²⁴²

Due to the lack of medicines and products due to the closure of the movement, drugs with Georgian inscriptions have been completely removed from the pharmacy chains of the occupied Akhgori. The situation in the region is complicated by the fact that no international organization has access to territory except for the Red Cross. It should be noted that de facto government is opening road to the Red Cross more often to transport patients from Tskhinvali, unlike isolated Akhgori. De facto government continues to impose illegal and discriminatory restrictions on the issuance of movement permits. Taking into account current crisis situation, timely access to health services is critical for the local population.

According to the Public Defender, improper medical services and infrastructure in the occupied territories, unfavorable level of qualifications of nursing staff and high prices for services, as well as complicated movement of patients on the dividing line, have a negative impact on the population's access to right to health. In these circumstances, most of the population living in the occupied territories seek for medical care outside the occupied territories.

According to the Public Defender, in the existing difficult situation, it is important for the Georgian authorities to continue intensive negotiations with the de facto government of occupied Tskhinvali, with the assistance of the international community, in order to simplify the regime of freedom of movement and prevent ethnic restrictions on access to health services. Also, as in the case of occupied Abkhazia, the state should spare no effort to share medical experience and ways to manage the epidemic between Georgian and ethnic Ossetian physicians.

Taking into account existing situation, state programs for health and social protection existing in Georgia are vital for people living in the occupied territories. During 2020, 871 patients from the occupied territories were funded under the Referral Services. 756 persons of them - from occupied Abkhazia (including 74 children) and 115 of them (including 14 children) - from occupied Tskhinvali.¹²⁴³

26.3. Security issues

¹²⁴² Information provided by a confidential source to the Public Defender, September, 2020.

¹²⁴³ Letter №01 / 2159 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, February 15, 2021.

26.3.1. Illegal detentions

Unacceptable practice of detaining people living in Georgian-controlled and occupied territories continues along the occupation line in both Abkhazia and South Ossetia. Officers of the occupation regime and de facto security service regularly detain civilians for crossing the administrative border. Such arbitrary arrests violate the rights to liberty and security. The ombudsman also described in details security issues of individuals moving along the occupation line in the parliamentary report of 2019.¹²⁴⁴

According to official data, in 2020, 64 people (including 6 women and 1 minor) were detained on the occupation line in the direction of the Tskhinvali region, and 13 people were detained in the direction of occupied Abkhazia (including 1 woman and 2 minors).¹²⁴⁵

It is especially alarming that de facto court of the occupation regime illegally sentenced a Georgian citizen, Zaza Gakheladze, to 12 years in prison. On July 11, 2020, Russian occupation forces wounded Zaza Gakheladze in the leg with a firearm and detained him illegally.¹²⁴⁶ According to the Public Defender, the illegal deprivation of liberty of Zaza Gakheladze clearly shows that the occupation regime has aggravated so-called Illegal practice of detaining individuals for illegal border cross. Unlike previous years, when the release of illegally detained persons was limited to the imposition of an administrative offense and the imposition of an appropriate fine, cases of long-term illegal detention have recently increased. The cases of Vazha Gaprindashvili,¹²⁴⁷ Genadi Bestaev,¹²⁴⁸ Irakli Bebuia,¹²⁴⁹ Zaza Gakheladze,¹²⁵⁰ Ramaz Begeluri,¹²⁵¹ Mirian Taziashvili¹²⁵² and Khvicha Mghebrishvili¹²⁵³ are obvious examples of this. The Public Defender also issued a public statement on the mentioned issue.¹²⁵⁴

¹²⁴⁴ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 395.

¹²⁴⁵ Letter №SSG42100015800 of February 4, 2021 of the State Security of Georgia.

¹²⁴⁶ Statement from the State Security Service, available at: < <https://bit.ly/37yPSYz> > [last viewed 30.03.2021].

¹²⁴⁷ Vazha Gaprindashvili was sentenced to imprisonment, available: < <https://bit.ly/3k5MCZK> > [Last viewed 30.03.2021].

¹²⁴⁸ Genadi Bestaev, arrested near Zardiantkari, has been sentenced to imprisonment, available at: < <https://bit.ly/3qEdoLq> > [last viewed 30.03.2021].

¹²⁴⁹ Irakli Bebuia was sentenced to 9 years for burning the separatist flag, available at: < <https://bit.ly/37wQ62G> > [last viewed 30.03.2021].

¹²⁵⁰ Statement of the State Security Service. Available: < <https://bit.ly/3bm8dt7> > [Last viewed 30.03.2021].

¹²⁵¹ Detained Ramaz Begeluri has been transferred to Tskhinvali, available at: < <https://bit.ly/3aAwQD1> > [last viewed 30.03.2021].

¹²⁵² Mirian Taziashvili was sentenced to 2 months of pre-trial detention in Tskhinvali. Available at: < <https://bit.ly/3aDWzdX> > [last viewed 30.03.2021].

¹²⁵³ Khvicha Mghebrishvili was sentenced to 2 months imprisonment by Tskhinvali court, available at: < <https://bit.ly/3qFFN3w> > [last viewed 30.03.2021].

¹²⁵⁴ Statement of the Public Defender of Georgia of February 6, 2021, available: < <https://bit.ly/3aD5vjS> > [last viewed 30.03.2021].

One of the alarming facts is that Irakli Bebug, a Georgian citizen illegally detained in the Gali district occupied by de facto regime, was illegally sentenced to 9 years in prison.¹²⁵⁵ Irakli Bebug has burned the flag of de facto republic, although law enforcement agencies in occupied Abkhazia have also accused him of deliberately destroying someone else's property and illegally possessing ammunition.¹²⁵⁶ The Public Defender believes¹²⁵⁷ that due to the alleged nature of the action committed by Irakli Bebug, there is a high probability that de facto government has artificially aggravated the charges against him. According to the Public Defender, the occupation regime's illegal deprivation of liberty for Bebug was aiming to intimidate Georgian population living in Abkhazia and putting them in unbearable conditions. The issue of Irakli Bebug, as well as the unconditional release of Georgian citizens illegally detained in the occupied territories, should be the subject of discussion for the Georgian authorities in all possible international negotiations.

Similar illegal actions committed by the occupation regime significantly violate the rights and freedoms of the population living in the occupied territories, reaffirming the need for international human rights observer missions to be allowed into the occupied territories.

At the same time, according to the principles of state responsibility approved by UN resolution, de facto authorities are responsible for the protection of human rights, even though they are not subject of international law. In particular de facto government, as a non-state entity controlling a certain territory and population, is obliged to respect the rights of the population under its control, including the ethnic Georgian population.¹²⁵⁸

26.3.2. Inappropriate treatment

In addition to the illegal detentions of citizens, the ombudsman has for years also reported¹²⁵⁹ on the beating, ill-treatment¹²⁶⁰ and torture of prisoners in temporary isolators or prisons in the occupied territories.

On July 3, 2020, Khvicha Mghebrishvili, a resident of the village of Mejvriskhevi, was arrested and transferred to Tskhinvali.¹²⁶¹ Later, the Tskhinvali de facto court sentenced him to 3 months of pre-trial

¹²⁵⁵ Statement of the State Security Service of October 1, 2020, available at: < <https://bit.ly/39qTMnx> > [Last viewed 30.03.2021].

¹²⁵⁶ Irakli Bebug, detained in occupied Abkhazia, is accused of storing ammunition, available at: < <https://bit.ly/2JM98JL> > [last viewed 30.03.2021].

¹²⁵⁷ Statement of the Public Defender of Georgia on October 5, 2020 regarding the illegal detention of Irakli Bebug by the occupation regime. Available: < <https://bit.ly/2M8LsQJ> > [Last viewed 30.03.2021].

¹²⁵⁸ Responsibility of States for Internationally Wrongful Acts, UN General Assembly Resolution 12 December 2001 N° A / RES / 56/83, 28 January 2002, Article 9.

¹²⁵⁹ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020.

¹²⁶⁰ Statement of the Public Defender of October 25, 2019 on the facts of beating and ill-treatment of prisoners in the Tskhinvali DMI is available at: < <https://bit.ly/37P3SNj> > [last viewed 30.03.2021].

¹²⁶¹ Available: < <https://bit.ly/3rAB42L> > [Last viewed 31.03.2021].

detention. He was accused of so-called attempt to cross the border illegally and obtain rare bats listed in the Red Book.¹²⁶² On September 25, 2020, after his release from 86-day imprisonment, the information on beating, ill-treatment and torture of Khvicha Mghebrishvili in a temporary detention center of Tskhinvali was spread.¹²⁶³ On October 10, 2020, Mghebrishvili told a representative of the Public Defender that on July 3, 2020, representatives of the occupation regime had detained him in the Adzvisi area. During the arrest, they beat him, handcuffed him, put a bag on his head and took him to the so-called occupied Tskhinvali. He was taken to the isolator, where he remained for 12 days. During this period, he was escorted daily by officers from the Occupied Tskhinvali Security Service, who were putting bag over his head and taking him to the security department, where he was videotaped. He was recorded about 9-10 times. During this period, they constantly beat and humiliate him. According to him, various text of admitting of different crimes were brought to him, and he was forced to sign them. Due to pressure, Khvicha agreed to admit any crime. Finally, the text of the "bat trade" was brought to him. De facto security service broadcasted this particular admitting on TV.

The unbearable conditions of the occupied Tskhinvali prison are confirmed by the fact that 28-year-old Inal Jabiev was beaten to death by the occupation regime.¹²⁶⁴

The Public Defender of Georgia uses all international formats to provide the international community with as much information as possible about the dire human rights situation in the occupied territories.¹²⁶⁵

It should also be noted that the whereabouts of five ethnic Ossetians who went missing after the 2008 war, including the case of a minor, who went missing in August-October 2008, allegedly in Georgian-controlled territory, remain unclear.¹²⁶⁶ These cases are constantly discussed in the format of the IPRM and Geneva discussions. For years, the Public Defender has been appealing to the Prosecutor's Office to provide the public with information on the progress of the investigation related to missing persons.¹²⁶⁷ It is important that investigative bodies conduct effective investigations into alleged crimes committed during and after the August 2008 hostilities, including the cases of missing persons, in an efficient, short-term manner.

¹²⁶² The case of Khvicha Mghebrishvili is being considered in Tskhinvali court, available: < <https://bit.ly/3n8FHHzH> > [last viewed on 30.03.2021].

¹²⁶³ Khvicha Mghebrishvili 86-day detention. Life in Tskhinvali Prison, Available at: < <https://bit.ly/37VoVOK> > [Last viewed 30.03.2021].

¹²⁶⁴ According to the information spread in Tskhinvali, a young man was beaten to death in the isolator, available: < <https://bit.ly/3qQh5OK> > [Last viewed 30.03.2021].

¹²⁶⁵ Statement of the Public Defender of Georgia of October 25, 2019, available: < <https://bit.ly/2W7hYEI> > [Last viewed 30.03.2021].

¹²⁶⁶ See details. 2014 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2015, 848.

¹²⁶⁷ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020.

26.4. The issue of documentation and freedom of movement

26.4.1. Closed exits

As already mentioned, regime established by the de facto authorities and the Russian border forces, restricts the movement of local resident due to artificial reasons and periodically, the so-called. Checkpoints are fully locked.

From September 4, 2019, in the direction of occupied Akhgori, the de facto government completely closed¹²⁶⁸ the so-called A checkpoint used by up to 400 people daily.¹²⁶⁹ As a result, local population was completely isolated and the situation of the residents there worsened. After a 5-month lockout, on January 24, 2020, de facto government opened so-called checkpoints for 10 days for those pensioners¹²⁷⁰ of Akhgori district who are receiving pension only in the territory controlled by Georgia.¹²⁷¹ However, it should be noted that this exception only affected a very small part of the population and most of the people living in Akhgori are still in complete isolation. So-called border has been closed in previous years as well, but closure in 2019-2020 of Akhgori checkpoint has had far more heavy consequences.

As to occupied Abkhazia, most part of the people using so-called Enguri bridge checkpoint, are ethnic Georgians living in Gali. In conditions when the road is open, about 1400-1500 people use this passage daily.¹²⁷² On March 14, 2020, de facto government closed Enguri Bridge to prevent the spread of a pandemic. Since then the bridge has been unilaterally opened and closed several times by de facto government. The first case of infection with the new coronavirus was detected on March 30, 2020 in occupied Abkhazia.¹²⁷³ De facto government enacted strictly restrictive norms to prevent the spread of the coronavirus.¹²⁷⁴ Everyone except the employees of Enguri HPP was banned from entering and leaving Abkhazia. Later, de facto government of Abkhazia changed its position and so-called border was opened unilaterally three times in a few days,¹²⁷⁵ which meant only the possibility of returning to the occupied region.

¹²⁶⁸ The situation has been tense since the end of August 2019 after the occupation regime demanded from the Georgian authorities to take over the police checkpoint opened near the village of Chorchana in Khashuri Municipality.

¹²⁶⁹ Letter of the State Security Service of Georgia dated October 21, 2020 №SSG 6 20 00131318

¹²⁷⁰ The road is open for pensioners from Akhgori for ten days, available: < <https://bit.ly/375GnAs> > [Last viewed 30.03.2021].

¹²⁷¹ De facto government closed the so-called Akhgori River. Border mode softened, available at: < <https://bit.ly/37QQYOP> > [Last viewed 30.03.2021].

¹²⁷² Letter of the State Security Service of Georgia of October 21, 2020 №SSG 6 20 00131318.

¹²⁷³ Emergency and patient route from occupied Abkhazia are available at: < <https://bit.ly/3408xLm> > [last viewed 30.03.2021].

¹²⁷⁴ Galiens applied self-isolation before tde facto government ordered it. < <https://bit.ly/2Kg9mbC> >

¹²⁷⁵ On May 26, June 22, and July 13, 2020, the de facto government unilaterally opened the so-called Checkpoint, which meant only the possibility of returning to the occupied region. In particular, until July 17, 2020, several dozen citizens who

By the end of November 2020, de facto government of Abkhazia opened checkpoint after an 8-month blockade, only for pensioners, though with some restrictions. In particular, three times a week, pensioners are able to come to the end of the Enguri Bridge, where a bank car for pension withdrawal is waiting for them.¹²⁷⁶

By March 2021, the Enguri Bridge, which had been closed by de facto government of occupied Abkhazia due to a pandemic, was open on both sides, but still with some restrictions.¹²⁷⁷ Only large families, the socially vulnerable and people with disabilities are able to move at this stage.¹²⁷⁸ While the Enguri Bridge is open, residents are refraining from crossing the occupation line as they will have to undergo a mandatory 5-day quarantine as soon as they cross the controlled area.¹²⁷⁹

The Public Defender believes that the arbitrary restrictions imposed by de facto authorities on freedom of movement will negatively affect the exercise of various rights by the local population. These include the right to health, education, security, a decent standard of living, the right to family life and freedom of religion. As a result of the imposed restrictions, citizens living in the occupied Gali and Akhagori districts may gradually leave their homes, leading to ethnic cleansing. The Public Defender, made numerous statements in relation to cancellation of the so-called checkpoints and appealed to the Georgian authorities to work in close cooperation with the international community to protect the freedom of movement guaranteed by a number of international documents.¹²⁸⁰

26.4.2. Documents necessary for movement

As for the issues related to the documentation, despite the fact that Abkhazia or the so-called Citizenship of South Ossetia or passports issued by de facto authorities are not legal documents recognized by Georgia or the international community; their possession is linked to realization of basic rights by the population living in the territory. The Public Defender talked in details about the challenges related to the necessary documentation in the occupied territories in the report of 2019.¹²⁸¹

Last year and at this stage, movement through the so-called checkpoint impossible only with the following documents: 1) so-called Form N99; 2) de facto (new) passport;¹²⁸² 3) so-called certificate of residence; 4)

were in the rest of Georgia for various needs, including medical treatment, were given the opportunity to return to their homes. The returnees to the occupied region had to spend two weeks in self-isolation.

¹²⁷⁶ After an 8-month closure, the Enguri Bridge opened to retirees, available at: < <https://bit.ly/3m7LcgV> > [last viewed 30.03.2021].

¹²⁷⁷ The Enguri Bridge has been opened bilaterally for certain categories of persons, available at: < <https://bit.ly/3uCqvPM> > [Last viewed 30.03.2021].

¹²⁷⁸ The Enguri Bridge, opened bilaterally for certain categories of persons, is available at: < <https://bit.ly/3shjEsZ> > [last viewed 30.03.2021].

¹²⁷⁹ Statement of the Public Defender of November 15, 2019, available at: < <http://bit.do/fyqqb> > [Last viewed 30.03.2021].

¹²⁸⁰ Statement of the Public Defender of November 15, 2019, available at: < <http://bit.do/fyqqb> > [Last viewed 30.03.2021].

¹²⁸¹ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 397.

¹²⁸² Old de facto passports were confiscated in 2014.

for persons under 14 - birth certificate; 5) Movement with a Georgian passport is also allowed for those who have a permit to enter the territory of Abkhazia (so-called visa).

In the population of Gali district, full information on number of so-called Abkhazian passports and so-called resident permits is not available. However, in 2019, more than 13,400 Gali residents applied for the so-called "residence permit". Up to 6,000 from those applications were approved. As for 2020, specific data on Gali is not available, but in the whole of occupied Abkhazia, 27,230 applications were made and more than 19,500 so-called certificates of residence were issued.¹²⁸³ As to the de facto passport, in 2019, 372 so-called Abkhazian passport" were issued in occupied Gali and in the past months of 2020 - more than 700 units.¹²⁸⁴

As to the issues related to documentation in Akhgori district, since March 29, 2019, the Russian occupation forces had prohibited movement with so-called passports. There is not data on applications from Akhgori residents to the de facto administration on receiving of so-called passports available by years. However, as of today, most of the 600 residents living in Akhgori were handed over so-called "Passport of South Ossetia" by the de facto administration in 2019-2020.¹²⁸⁵

For the movement through so-called "checkpoint", it is necessary to have a "permit" issued by de facto Tskhinvali Security Service. According to the procedure, the interested person makes an application, justifying the need for this "document". In fact, this so-called "Permits" are issued as a result of paying a certain amount of money as a bribe, which is required by so-called Security officials from locals.¹²⁸⁶

Unfortunately, people living in the Kodori Gorge are in a similar situation. They can only move with a special permit issued by de facto security service on the spot for a period of 2 weeks.¹²⁸⁷

26.5. Right to education

The right to education is a right guaranteed by international human rights law. It is envisaged in binding treaties of both the UN and the Council of Europe. The International Covenant on Economic, Social and Cultural Rights gives extensive explanation of the right to education and its objectives, according to which education should be directed to "the full development of the cognition of the human person and his dignity" and to "strengthen respect for human rights and fundamental freedoms".¹²⁸⁸ In addition, the

¹²⁸³ Letter № 1310 of October 27, 2020 of the Office of the State Minister of Georgia on Reconciliation and Civic Equality.

¹²⁸⁴ Letter № 1310 of October 27, 2020 of the Office of the State Minister of Georgia on Reconciliation and Civic Equality.

¹²⁸⁵ Letter № 1310 of October 27, 2020 of the Office of the State Minister of Georgia on Reconciliation and Civic Equality.

¹²⁸⁶ Letter № 1310 of October 27, 2020 of the Office of the State Minister of Georgia on Reconciliation and Civic Equality.

¹²⁸⁷ Information provided by the Representation of the Government of the Autonomous Republic of Abkhazia in Upper Abkhazia, January, 2021.

¹²⁸⁸ United Nations International Covenant on Economic, Social and Cultural Rights, Article 13 (1).

European Court of Human Rights has clarified that getting an education also includes the opportunity to learn to write one's own language without hindrance.¹²⁸⁹

Realizing the right to education in the occupied territories still faces many challenges. In all schools of Gali and Akhagori, teaching in Georgian is completely prohibited in primary classes, and Georgian as a foreign language is taught only in some schools. This has a negative impact on students' knowledge of the Georgian language and the quality of education. Regarding the access to education in the mother language, the Public Defender has been talking in detail in annual reports for years.¹²⁹⁰

As in previous years, the fact of intimidation of entrants by the de facto Tskhinvali Security Committee was revealed during the reporting period.¹²⁹¹ The Public Defender of Georgia also issued a public statement regarding this issue.¹²⁹² Unfortunately, this information is another clear example of the challenges which our fellow citizens living in the Occupied Territories are facing while access to education in their mother language. Violations of the universally recognized rights of children, ethnic persecution of schoolchildren and teachers, and psychological pressure continues.

According to the data of the 2020-2021 academic year, there are 30 full secondary schools, 9 pre-schools, 5 art schools in the occupied Gali district. As of January 2021, there are 3828 pupil enrolled in schools from the preparatory to the 11th grade.¹²⁹³ Their number for the 2019-2020 academic year was 3861.¹²⁹⁴ All 30 schools employ 960 teachers and technical staff¹²⁹⁵. There are 557 children enrolled in kindergartens.¹²⁹⁶

¹²⁸⁹ In *Katani and Others v. Moldova and Russia* (para. 144), the Court held that the language policy of the self-proclaimed Transnistrian Republic was to Russify the language and culture of the Moldovan community in the region, violating the European Convention on Human Rights and the de facto Russian government. Originated because the latter was controlled by the Russian Federation.

¹²⁹⁰ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, 402

¹²⁹¹ KGB pressure on Akhagori entrants, attempt to depopulate the region, available at: <<https://bit.ly/2NM2IkT>> [last viewed 30.03.2021].

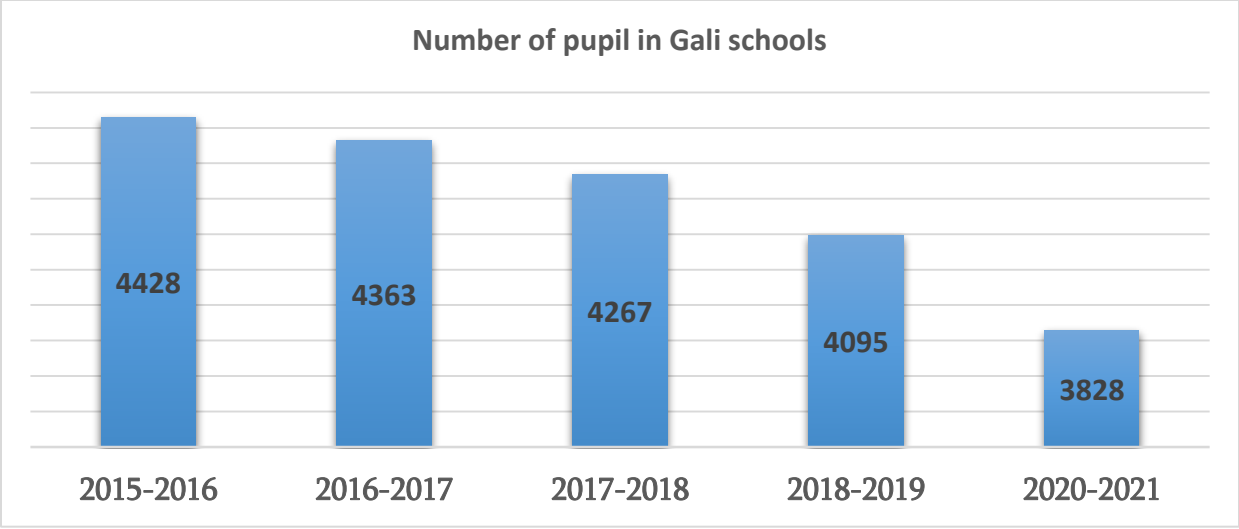
¹²⁹² Statement of the Public Defender of Georgia on January 24, 2020, available: <<https://bit.ly/2ZD1CoD>> [last viewed 30.03.2021].

¹²⁹³ Information provided by the head of the Gali District Educational Resource Center. January 2021.

¹²⁹⁴ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020.

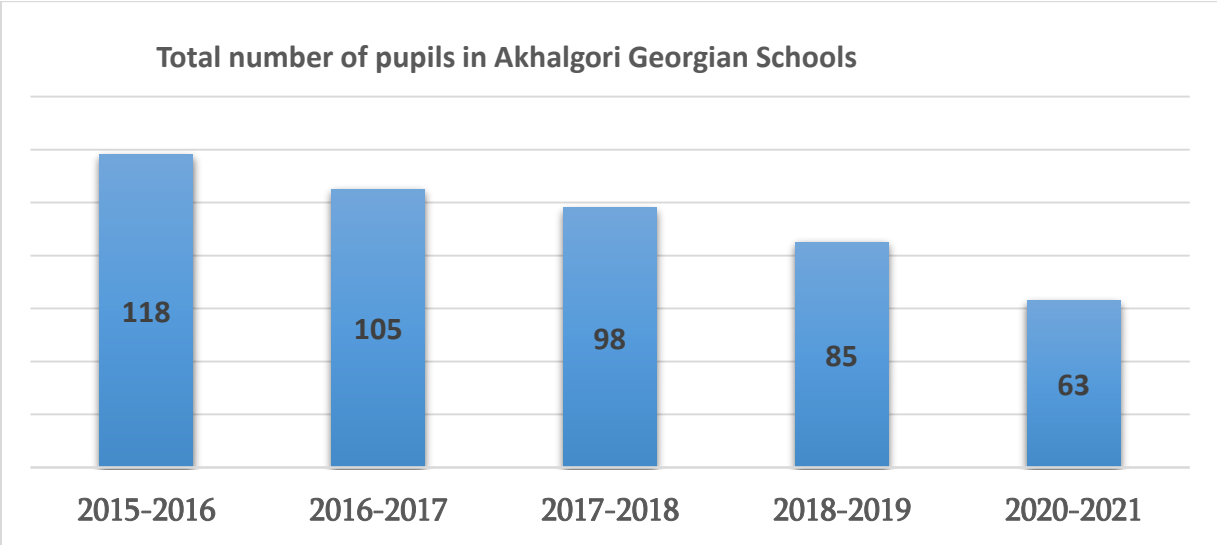
¹²⁹⁵ Among them: teachers - 773, administrative-technical staff - 187. 28 of them in 28 secondary schools - 913 teachers and administrative-technical staff; 2 public schools - 40 teachers, 7 - administrative-technical staff.

¹²⁹⁶ Information provided by the head of the Gali District Educational Resource Center. January 2021.



One of the major challenges facing occupied Gali region during pandemic was online education. The survey found that only 1648 pupil had access to the Internet and computers from all 3861. Out of these 1648 pupils only 873 were taught remotely because the remaining 775 students, due to their difficult economic situation, could not afford to buy the internet package frequently.¹²⁹⁷

As for the occupied Akhalgori, according to the data of the 2020 academic year, a total of 63 pupils are enrolled in the Georgian schools of Akhalgori and 121 teachers are employed. There are currently 7 schools operating there. From here, Georgian is taught in 6 schools and only from the 7th to the 11th grade. In other cases, Georgian language is allocated only five hours a week. From the first to the sixth grade, education in all schools is allowed only in Russian.¹²⁹⁸



¹²⁹⁷ In April 2020, the Gali District Education Resource Center conducted a survey to determine how much internet was available to students and teachers in Gali, as well as how many of them had computers.

¹²⁹⁸ Information Provided to the Public Defender by the Education Service of the South Ossetian Administration, February 2021.

The number of first graders in Akhagori schools is decreasing every year. In the 2020 school year, four schools (Balaani, Korinta, Akhmajavi, Zemo Bolo) out of all seven schools in Akhagori, did not have first-graders at all. The Public Defender has been talking about the challenges in the field of education in occupied Akhagori for years in previous annual reports.¹²⁹⁹

Name of school / number of pupils according to the grades	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	Total
Akhalgori Georgian	0	2	4	1	2	7	1	5	1	5	9	37
Akhalgori Russian	11	10	4	4	7	6	6	6	3	6	3	66
Ikhoti	1	2	1	2	1	1	2	1	1	1	2	15
Balaani	0	0	0	0	0	1	0	1	0	0	1	3
Korint	0	0	0	0	0	1	0	0	1	0	0	2
Akhamji (basic)	0	0	0	0	0	0	0	0	1	0	0	1
Zemo Bolo (basic)	0	0	0	1	1	0	1	1	1	0	0	5
Total	12	14	9	8	11	16	10	14	8	12	15	129

As for higher education in the occupied territories, by the order of the Minister of Education, Science, Culture and Sports of Georgia,¹³⁰⁰ 2462 entrants from occupied Abkhazia and 145 entrants from Tskhinvali region (out of 12 from Akhagori) were enrolled in higher education programs without unified national exams, in 2020. 484 applicants were enrolled in professional education programs, 173 of them in private and 311 in public professional education institutions.¹³⁰¹

448 students from the occupied Abkhazia and Tskhinvali region received state education grants in 2020, according to the exam scores, from the entrants enrolled in higher education institutions.¹³⁰²

Recognition of higher education diplomas issued by Georgia in the occupied territories, remains a challenge. De facto authorities do not recognize them. Consequently, young people find it difficult to find

¹²⁹⁹ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020.

¹³⁰⁰ By order #7 77 of July 7, 2020, the rule of enrollment and financing of entrants in higher education institutions in the occupied region without passing the Unified National Examinations was approved. According to the above rule: Persons living in the occupied territories of Georgia who have studied for the last 2 years and received a certificate of general education in a general education institution in the occupied territories and whose full general education is recognized by the Ministry of Education of Georgia have the right to enroll in higher education institutions without unified national exams.

¹³⁰¹ Letter of the Ministry of Education, Science, Culture and Sports of Georgia dated February 10, 2021, N: Mes 1 21 0000085550

¹³⁰² ibid

employment in the occupied territories. With all this in mind, they are trying to establish themselves in Tbilisi or another city, which leads to the artificial division of families.

26.6. Rights of women and girls living on the occupied territories

2020 turned out to be quite difficult for women and girls living in the occupied territories. Covid Pandemic has created additional barriers in terms of accessing basic services. The area of economic activity was restricted, due to the pandemic regulations, construction, trade, tourism was stopped, that significantly worsened their economic situation. According to the information provided to the Public Defender of Georgia, the population has not received any assistance from de facto government of Abkhazia.

For women affected by the conflict in the occupied territories during the reporting period, one of the most problematic issues was access to information on virus prevention and existing regulations. For example, the main source of information were medical facilities and schools in Gali. As a result of their closure, they found themselves in an information vacuum.¹³⁰³

As in previous years, the right to sexual and reproductive health remains a challenge. After de facto parliament of Abkhazia supported the complete ban on abortion in 2016, the current so-called Law on Health Care does not provide for artificial termination of pregnancy even if there is medical conclusion. The Public Defender overviewed these challenges in detail in report of 2019.¹³⁰⁴ Access to contraceptives is also a problem for women. Consequently, they still resort to various prohibited means to obtain abortion services. The pandemic also had a negative impact on access to maternity homes. Women did not have the opportunity to receive this service in the controlled territory of Georgia.¹³⁰⁵

In 2020, the social isolation caused by COVID 19 also increased gender-based violence. Residents affected by the conflict in the occupied Tskhinvali region say¹³⁰⁶ that cases of domestic violence have increased, but this has not been reflected in the increased appeal, as de facto law enforcement agencies are not sensitive to the problem; international and local non-governmental organizations whose work makes the situation little bit easier in the region are working remotely, .

According to the information provided to the Public Defender,¹³⁰⁷ during pandemic, the number of people living in the occupied Abkhazia region, the number of non-governmental organizations operating in Gali, increased significantly. It should be noted that in the crisis centers located in the region it is possible to use only day services, which includes consulting a lawyer and a psychologist.¹³⁰⁸ Especially in the context

¹³⁰³ In-depth interview with women living in Gali. 19.01.2021.

¹³⁰⁴ Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020.

¹³⁰⁵ According to the information provided to the Public Defender, it was possible to leave the territory of Abkhazia only in cases of maternity complications, 1 case was revealed when the newborn needed oxygen and he was taken to Kutaisi Medical Institution without a parent.

¹³⁰⁶ In-depth interview with women living in Tskhinvali, 27.01.2021.

¹³⁰⁷ In-depth interview with women living in Gali, 19.01.2021

¹³⁰⁸ In-depth interview with women living in Gali, 19.01.2021

of the pandemic, the need for shelter for victims of violence in the occupied territories became more obvious.

Recommendations

To the Government of Georgia and the Minister of Foreign Affairs of Georgia:

- Negotiate, using all possible formats, in order to ensure protection of freedom of movement by occupation regimes by removing illegal restrictions along the entire perimeter of the occupation line, and by smooth operation of so-called checkpoints;
- Negotiate using all possible international formats to ensure full and unrestricted access to international monitors in the occupied territories of Georgia by Government of Russian Federation.

To the Minister of Education and Science of Georgia:

- Increase the number of non-formal education projects in the occupied territories, with the involvement of donors or non-governmental organizations;
- Continue teaching Georgian language to children and young people from the occupied territories in summer camps and summer schools organized or funded by the central government; Offer Georgian language curricula to students while studying in educational institutions;
- Develop a scholarship and / or housing program for students from the Occupied Territories so that if they pass the exams, they can continue their studies at the University;
- Continue to build new dormitories while allocating the appropriate quota for students in the existing dormitories from the occupied territories.

To the Office of the State Minister for Reconciliation and Civic Equality:

- Negotiate with various donors and international organizations to facilitate informal education opportunities for schoolchildren and young people in occupied Abkhazia, and especially in the Gali district;
- To develop certain projects with the support of international organizations, aiming to reduce damage for the population living in the occupied territory caused by the unpredictable closure of so-called checkpoints by occupation regime.

To the Minister of Refugees, Labor, Health and Social Affairs from the Occupied Territories:

- To renew funding for ambulatory diagnostics for the population living in the occupied regions, which was funded until 2017;
- To take appropriate measures to effectively provide emergency medical care for patients from occupied territories. Review the decision-making time of the referral commission and consider cases as soon as possible;
- Involve physicians working in the Occupied Territories in the training programs provided by physicians working in the rest of Georgia, as well as increase support for medical facilities and medical staff in the Occupied Territories.

27. Human Rights Situation of Internally Displaced Persons (IDPs)

27.1. Introduction

By the end of 2020, there were 288,146 IDPs and 91,023 IDP families registered in Georgia. Human rights situation of IDPs in the country has not improved substantially. In addition to the problems of the past reporting period, other challenges were also identified.

For the current year, the state has resettled 42,370 families, while 40,131 families have duly filled out an application for housing and are awaiting resettlement.¹³⁰⁹ In the reporting year, 1,977 IDP families were provided with durable housing.¹³¹⁰ Unfortunately, the practice of unsubstantiated resettlement decisions has not changed. In addition, improper planning of resettlement according to number of individuals in newly built or rehabilitated buildings and delays in the implementation of certain housing programs were also identified.

The pandemic also had a negative impact on the human rights situation of IDPs, which further aggravated their social conditions.

27.2. Durable Housing of IDPs

Durable housing of IDPs is implemented through several programs such as in, newly built or rehabilitated buildings, purchase of private housing – so called “house in the village”, the resettlement of veteran IDPs, the construction of housing on land owned by IDPs, and the legalization of living space in lawful possession. Although a separate program for the resettlement of veteran IDPs has been in place for almost 2 years, no families have been resettled under this program in 2019-2020. Even though 1,301 veteran IDP families have applied to this program¹³¹¹ and have expectation of the resettlement, the consideration of applications submitted in 2019-2020 will continue in 2021. This should be unequivocally assessed as a delay in the veteran IDP resettlement program, which will have a negative impact on the human rights situation of IDPs on standby.

During 2020, durable housing of IDPs in newly built or rehabilitated buildings was provided in different regions of Georgia - 72 families were accommodated in Gori and Khashuri, 255 in Tbilisi, 140 in Tskaltubo, 274 in Kutaisi and 360 in Zugdidi.¹³¹² Observations on resettlement have revealed that the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency does not consider the requirements of resettlement according to the number of individuals before durable housing in a particular city. Even though the agency informed the Office of the Public Defender in its written communication that it takes

¹³⁰⁹ Letter №03/2073 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 12, 2021.

¹³¹⁰ Letter №03/3334 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of March 1, 2021.

¹³¹¹ Letter №03/2073 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 12, 2021.

¹³¹² Letter №03/2073 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 12, 2021.

this requirement into account when planning resettlement,¹³¹³ the practice indicates otherwise. For example, during the reporting period, apartments for families with 3-4 people were not distributed in the framework of durable housing in Tbilisi, while a large part of the applications submitted to the Office of the Public Defender concerned such apartments. For its part, the Agency failed to provide the Office of the Public Defender with information on the demand for the resettlement according to the number of individuals for the entire territory of Georgia, including per the specific region. In case of absence of such information, the interests of IDP families may remain unforeseen and the durable housing process may not be properly planned. Before starting the durable resettlement of IDPs, it is necessary to find out the needs in this or that region and take them into account when buying apartments for IDP families.

27.3. Resettlement of IDPs from Facilities that Pose Increased Threat to Life or Health

In 2020 more so-called “collective centres” at risk of being ruined were closed than previous years. In particular, 96 buildings were closed and 711 families living in such kind settlements were relocated. This fact is positively assessed by the Public Defender. However, despite the efforts made, challenges remain. In particular, the number of facilities with increased risk to life and health is still high. Of the 90 facilities currently in critical condition assessed on the basis of expertise, 71 are at increased risk to life and health. The other 19 facilities have been transferred to private ownership of IDPs¹³¹⁴ and the agency is no longer checking their condition.

The expert assessment of the sustainability of buildings continues to be based on IDP applications and is not proactive. During the reporting period, the sustainability of only 35 facilities was checked on the basis of IDP applications. As one of the challenges is the lack of accurate data on deplorable compact settlements, the Public Defender of Georgia once again emphasizes the need for intensive and proactive expert assessments, which will make it possible to determine their exact number. In the absence of accurate data, part of the families under the increased threat to life or health are being left out of care by the state, and timely identification and accommodation of their needs becomes impossible. Thus, it is important to expand the number of buildings to be inspected through expert evaluation.

During the study of individual cases at the Office of the Public Defender of Georgia, shortcomings in the durable housing of IDPs from facilities with increased risk to life and health were also revealed. Due to the fact that so far there are no so-called written criteria/procedures to confirm living of IDP families in a deplorable compact settlement, in some cases the family was unjustifiably denied accommodation. Thus, there is still a need to define rule of resettlement of IDPs from facilities with increased risk to life and health in an Act, which sets out all the necessary procedures for monitoring the building and for examining the possibility of actual domicile there.

¹³¹³ Letter №03/3334 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of March 1, 2021.

¹³¹⁴ Letter №03/1578 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 8, 2021.

27.4. Problems Caused by Restrictions Imposed to Prevent the Spread of the New Coronavirus

To prevent the spread of the new coronavirus, one of the key recommendations is to maintain good hygiene (frequent hand washing with soap and water). According to our information,¹³¹⁵ there are problems with water supply and sewerage systems in some of the former IDPs' "collective centers." In addition, some IDPs use shared bathrooms, in particular, IDPs are not provided with water in some cases, and some accommodation facilities have a faulty/depreciated sewerage system.¹³¹⁶ IDP families living in such facilities do not have the opportunity to follow the important recommendation to prevent the spread of the new coronavirus, as they do not have access to and/or have little access to the necessary means of hygiene (frequent hand washing). The use of shared bathrooms also increases the risk.

As a result of the IDPs' applications, social problems were additionally revealed. In particular, the state has subsidized a certain amount of electricity and natural gas for three months.¹³¹⁷ The former collective centres of 493 IDPs¹³¹⁸ has not yet had gas supply for various reasons (some buildings have not had gas supply due to lack of safety standards, while some are not intended for durable housing of IDPs). In such cases, the families consumed a large amount of electricity and the cost exceeded the set limit, as a result of which they could not benefit from the state aid.

Another problem is the loss of income. As part of the restrictions imposed to prevent the spread of the pandemic, part of the Georgian population lost their jobs and, consequently, their incomes, including the IDPs. According to the IDPs, as most of them were informally employed and did not have a stable job, they were not able to confirm the fact of employment. Consequently, they found themselves behind the assistance provided by the state, which, obviously, further complicated the situation of the already socially disadvantaged - vulnerable IDP families.

Recommendations

To the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency:

- To implement a veteran IDP resettlement program in 2021;
- To register IDP housing facilities without expert assessment and the sustainability of which may be dangerous for the residents, and to check them through expert assessment;

¹³¹⁵ Information obtained as a result of citizens' applications submitted to the Office and monitoring conducted at different times.

¹³¹⁶ For example, former sanatorium "Tbilisi" and "Friendship" in the city Tskaltubo, collective center on Parnavazi Str. № 5, in the city Tetritskaro, etc.

¹³¹⁷ Resolution № 220 of April 3, 2020 and Resolution № 655 of October 30, 2020 of the Government of Georgia.

¹³¹⁸ Letter № 03/7003 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of May 29, 2020.

- To provide durable housing to at least 450 IDP families in 2021, living at the former collective centres that pose an increased threat to life and health;
- To provide rent to IDP families living in former collective centres that pose an increased risk to life and health, whose durable housing will not be possible this year due to lack of relevant resources;
- To record IDPs who have lost income under restrictions imposed to prevent the spread of the new coronavirus, and who could not benefit from the compensation provided by the state, and to include these individuals in the agency's self-employment programs.

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

- To amend the Order №320 to the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia and to determine relevant rules for the resettlement of IDPs from life-threatening and health-threatening facilities, which define all necessary procedures for monitoring the building and for examining the possibility of actual domicile there.

28.Human Rights Situation of Ecomigrants

28.1.Introduction

In 2020, the human rights situation of eco-migrants was not improved. The main challenges are the lack of funds allocated for resettlement and the lack of preventive measures against the causes of eco-migration. Local municipalities, for the most part, respond to the already established results and the work carried out by them is not of a preventive nature. In addition, municipalities do not inform the LEPL National Environment Agency about the measures taken by them to avoid geological processes.

28.2.Resettlement of Ecomigrants

Unfortunately, the number of eco-migrant families in Georgia is growing every year. According to the data by the end of 2020, 6 749 eco-migrant families were registered in the database of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency (hereinafter the Agency), while in 2017 there were 5 009 eco-migrant families, 5 457 families in 2018, and 6 187 families in 2019, respectively. By the end of the reporting year, 2,391 families have been provided with housing by state agencies and international organizations.¹³¹⁹ However, in 2020, the state purchased an even fewer households to eco-migrant than in 2019.¹³²⁰ During the reporting period, a positive decision was made on accommodation with respect to 482 families, but only 270 households were purchased.¹³²¹ Given the growing number of eco-migrant families, and necessity of their timely relocation to a safe place, it is important to identify the problems that have delayed household procurement procedures for other families. In addition, in order to avoid danger for more families, it is important to increase the financial resources available to buy a home.

It is problematic that household has not yet been transferred into the private ownership of some of the eco-migrants who resettled in 2004-2012. During the mentioned period, out of 1062 families¹³²² resettled in different regions of Georgia, only 757 families¹³²³ have been transferred real estate to ownership, while the rest are waiting for the transfer of the property in possession into private ownership after resettlement.

¹³¹⁹ Letter №03/1610 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 9, 2021 and Letter №21/229 of National Environment Agency of February 4, 2021.

¹³²⁰ In 2019, 281 families were resettled.

¹³²¹ According to the Letter №03/1610 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February, 9, 2021. 422 positive decisions were made and 210 households were purchased. According to the Letter №05/383 of the Ministry of Health and Social Protection of the Autonomous Republic of Adjara of February 3, 2021, 60 households were purchased.

¹³²² Parliamentary Report of the Public Defender for 2013, Tbilisi, 2014, 620.

¹³²³ Real estate was transferred into ownership to 311 families in 2016, to 101 families in 2017, to 117 families in 2018, to 20 families in 2019, and to 111 families in 2020. Letter №03/1610 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of February 9, 2021.

With the increase in the number of eco-migrant families, the number of families living in high-risk environments has also increased. In 2019, 219 families received a concluding report on living in high-risk environment, whereas this number was 357 in 2020,¹³²⁴ which is an increased rate compared to 2019. Only 50 families living in similar conditions were resettled in the reporting period. Along with the increase in the number of families at risk, it is of utmost importance to increase the number of resettled families.

28.3.Prevention of Ecomigration

As in previous years, challenges remain in terms of prevention of eco-migration. It is very important for local governments to pay special attention to the prevention of eco-migration and not only on the elimination of the consequences, which has been a trend for years. Considering that the prevention of eco-migration remains a challenge, the Public Defender of Georgia will once again emphasize the great importance of preventive measures, which may lead to the resettlement of families or the avoidance of such tragic cases as the one in the village Jocho,¹³²⁵ Khelvachauri municipality in the Autonomous Republic of Adjara. The analysis of the obtained information reveals that the majority of local self-governments do not take care in terms of prevention of eco-migration and only respond after the damage has occurred. In some cases, the measures taken to compensate the damage are not sufficient to ensure the safety of the family. In particular, only the fortification of the house, without eliminating the cause of the damage, will not yield the desired result and the building may be damaged again.¹³²⁶ Thus, the Public Defender of Georgia considers it important to take necessary measures to stop the ongoing geological processes, so that the efforts to repair the damage are not of a one-time nature and are foreseen for a long-term solution.

Part of the municipalities do not have any funds foreseen in the budget for prevention,¹³²⁷ despite the fact that there are families living in their territory,¹³²⁸ with respect to whom the National Environment Agency has issued specific recommendations to stop the geological processes. The Public Defender of Georgia has repeatedly emphasized the importance of preventive measures. In order to implement them, it is necessary to have adequate financial resources. In this regard, it is important that municipalities have information on the amount of funding needed to take preventive measures in order to be able to mobilize them afterwards. According to our information, some of the municipalities have not processed such information.¹³²⁹ In the absence of information, the necessary measures cannot be planned and, consequently, not taken. It shall also be mentioned here that some municipalities¹³³⁰ are implementing

¹³²⁴ Letter №21/119 of the LEPL National Environment Agency of January 23, 2020.

¹³²⁵ Available at: <<https://bit.ly/3bMlvj1>> [last visited on 15.03.2021].

¹³²⁶ For example, a family living in Baghdati municipality was assisted only to fortify their house, but nothing was done to stop the landslide. Eventually, a conclusion was made about the resettlement of the family.

¹³²⁷ Chokhatauri Municipality City Hall, Kareli Municipality City Hall, Gurjaani Municipality City Hall, Tsalenjikha Municipality City Hall, Chkhorotsku Municipality City Hall, Zugdidi Municipality City Hall, Zestafoni Municipality City Hall.

¹³²⁸ Tsalenjikha Municipality City Hall, Shuakhevi Municipality City Hall, Terjola Municipality City Hall.

¹³²⁹ Baghdati Municipality City Hall, Lanchkhuti Municipality City Hall.

¹³³⁰ Khulo Municipality City Hall, Ambrolauri Municipality City Hall.

certain preventive measures within their existing funding. However, informing the agency about the measures taken is not of a systemic nature. Therefore, in order to collect uniform systematized data on the measures taken on the basis of the Agency's recommendations, it is important that the recommending body - the LEPL National Environment Agency - has information about the work done by the municipality. This will make it possible to introduce the repercussion principle and to inform the Agency about the expected developments as a result of the work done and the need for additional examination.¹³³¹

Recommendations:

To the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency:

- To complete in 2021 the process of transferring housing into private ownership to 305 eco-migrant families resettled in 2004-2012;
- To identify families living under high-risk as a result of the analysis of geological findings obtained from the LEPL National Environment Agency and to spend at least 30% of the amount allocated for resettlement to accommodate such families.

To Local Municipalities:

- To provide information to the LEPL National Environment Agency on the measures taken to prevent eco-migration;
- To calculate the estimated cost of preventive measures to be taken against eco-migration.

To the Municipalities of Chokhatauri, Lanchkhuti, Kareli, Gurjaani, Chkhorotsku, Zugdidi, Tsalenjikha, Shuakhevi, Zestafoni and Terjola:

- To take into account the mobilization of relevant funds when preparing the budget, in order to take preventive measures in the geologically active areas identified by the National Environment Agency.

¹³³¹ For example, the LEPL National Environment Agency did not have information about the public school in the village of Dimi, Baghdati Municipality, in relation to which certain preventive measures were taken to stop landslides.

29. Human Rights Situation of Aliens in Georgia

29.1. Introduction

In 2020, in the context of the new Coronavirus pandemic, the Office of the Public Defender actively continued studying the human rights situation of migrants, asylum seekers and persons with international protection. However, due to the epidemic situation in the country, and considering the restrictive measures imposed by the government, the planned monitoring and other activities were limited.

The pandemic posed a threat to human health and life, regardless of citizenship and migration status, but it particularly affected those groups who were vulnerable before the spread of the coronavirus. This category includes asylum seekers, persons with refugee or humanitarian status, irregular or undocumented migrants, and informally employed migrant workers. That is why it is extremely important for the state to take into account the interests of foreigners in the coronavirus prevention and management policy documents, as well as in humanitarian and socio-economic support programs, in order to ensure that human rights recognized by international and national law are protected.

29.2. Involvement in Socio-Economic Support Programs

Together with the citizens of Georgia, the recipients of socio-economic support programs approved by the government in May 2020 to alleviate the damage caused by the new coronavirus included stateless persons, those with the refugee or humanitarian status, as well as the permanent residents.¹³³² One of the components of the program was the provision of monthly financial assistance to those left without salary.¹³³³ It is noteworthy that the beneficiaries of this grant were not foreigners residing in Georgia under work permit, while, according to the Skills Enterprise Demand Survey, as of September 1, 2019, 8% of enterprises (3,989 enterprises) employed a total of 41,359 foreign nationals, which amounts to 5% of total employment.¹³³⁴ At the same time, 40.7% of the residence permits issued to aliens in 2015-2018 were work related residence permits.¹³³⁵ The statistics show that foreigners with work permit have made a positive financial contribution to the economic development of the country and the formation of the state budget. Consequently, the complete exclusion of them from socio-economic support programs, let alone beyond the targeted benefits discussed above, is unjustified and puts them in socially vulnerable position. According to the UN Policy Brief on COVID-19 and People on the Move, it is possible to revitalize the

¹³³² Article 1 (2) of Annex №1 of the Resolution №286 of the Government of Georgia of May 4, 2020.

¹³³³ Ibid, Article 2 (1, "a").

¹³³⁴ Enterprise Skills Demand Survey, Section 7: Employed Foreign Citizens, Ministry of Economy and Sustainable Development of Georgia, 2020.

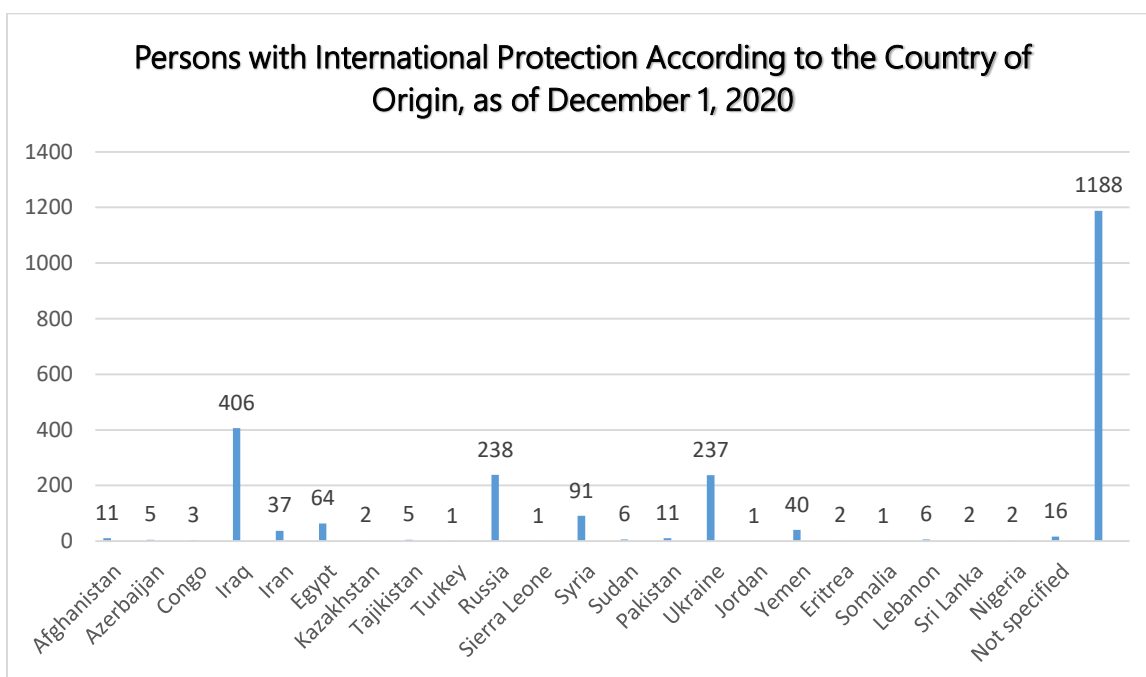
¹³³⁵ "Migration Profile of Georgia 2019", available at: <<https://bit.ly/3wbSGWe>> [last visited on: 30.03.2021].

state economy and maintain the course of achieving the goals of sustainable development through the inclusion of migrant workers in socio-economic recovery programs.¹³³⁶

Another major challenge is the exclusion of migrants from municipal shelter programs. In particular, aliens (except asylum seekers) do not have access to services such as compensation of the housing rent, social housing and/or temporary shelter services for the homeless. The damage caused by the Coronavirus pandemic, threatens the stability of migrants' incomes, like that of Georgian citizens, which puts them at high risk of not being able to pay their rent and to be left homeless. This creates the need to adequate housing, which requires the state to take appropriate emergency measures.

29.3. Human Rights Situation and Key Challenges of Asylum Seekers and Persons with International Protection

As of December 31, 2020,¹³³⁷ there were a total of 1,188 persons with international protection living in Georgia, among them 494 refugees and 694 persons with humanitarian status, respectively. Statistics on persons with international protection by country of origin (citizenship) are as follows:

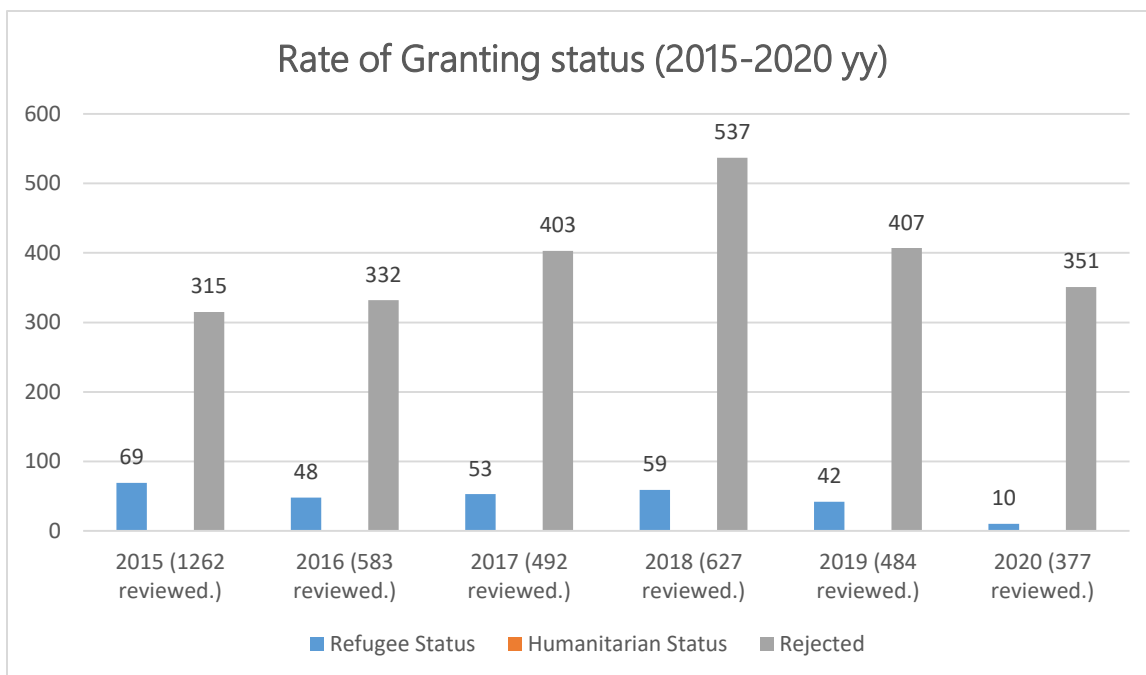


The low rate of granting international protection was still a challenge during the reporting period. According to the relevant statistical information, out of 377 cases reviewed in 2020, 355 were rejected.

¹³³⁶ UN Policy Brief on COVID-19 and People on the Move, June 2020.

¹³³⁷ Letter N^oMIA 8 21 00544133 of the Administration (Department) of the Ministry of Internal Affairs of Georgia of March 5, 2021.

Most of them - 327 cases - were rejected due to lack of grounds for requesting international protection, while 19 cases were rejected on the basis of state security.



In this regard it is noteworthy that all 11 cases considered during the reporting period, where citizens of the Syrian Arab Republic were rejected to be granted the status, were based on state security. In the context of decisions based on the state security reasons, the assessment of the UN Secretary-General is important, according to which Syria has been at war for ten years, human rights abuses are still alarmig, and life there is still a nightmare.¹³³⁸

During the reporting period, asylum seekers and persons with international protection faced a new challenge in restricting the issuance and extension of identity cards. The Office of the Public Defender of Georgia examined dozens of cases during 2020, where the LEPL Public Service Development Agency did not make a decision on the issuance of the identification document requested by them.¹³³⁹ It is true that in most cases the issue was resolved later, but in all of these cases, the statutory deadline for deciding the case was violated, and in some cases individuals are still waiting for the document to be issued, for example, a temporary asylum seeker identification document, humanitarian residence permit, or issuance of the identification document for a new term for the permanent residence permit holder. Such practices can have alarming consequences during coronavirus pandemic, as a person without access to a valid identification document is denied access to primary health care, new coronavirus testing and treatment services, and socio-economic support programs. Similar problems have arisen with the issuance of migrant residence permits, which will be discussed below. Obtaining appropriate status by aliens living in

¹³³⁸ Available at: <<https://bit.ly/3cAVtzB>> [last visited on: 11.03.2021].

¹³³⁹ These included asylum seekers, persons with refugee or humanitarian status, and aliens interested in obtaining a residence permit. In total, the case of 25 aliens was examined in 2020.

Georgia and using identification documents is a precondition for the realization of other important rights.¹³⁴⁰

Another challenge is the overload of the status determination procedure. During coronavirus crisis, the state needs to pay due attention to ensuring access to asylum seeker procedures and their proper functioning. According to the government's migration strategy, "the national asylum system is functioning effectively in a given way with up to 1,000 applications per year. Upon receipt of more than 1,000 applications, the system is overloaded and fails to effectively execute the relevant procedures, which results in the accumulation of applications under review, the inability to conduct an expedited procedure or priority review, etc".¹³⁴¹ It is noteworthy that 1237 applications were received in 2019,¹³⁴² while this number amounted to 864 in December 2020.¹³⁴³ Despite last year's low rate, as of December 18, 2020, 1,321 applications for international protection were being considered.¹³⁴⁴ This once again indicates that receiving more than 1000 applications per year leads to an increase in the number of cases under consideration for the following year and it can be concluded that the national asylum system is overloaded. This poses risks of professional burnout, disruption of the proper functioning of the shelter system, and deterioration of the quality of the rationale for the decisions made. In addition, the reduction in the number of people seeking international protection in 2020 was affected by restrictions on crossing the state border to prevent the coronavirus pandemic, although after lifting the restrictions, the number of asylum seekers may increase. Given the current situation, it is necessary to make efforts to create a reserve of professionals trained in asylum issues, to introduce regular internships, to carry out regular activities aimed at improving the qualifications of employees, and other measures.

29.4. Restriction to Issue Residence Permit on the Grounds of State Security

In order to systematically assess the issue in 2020, the Office of the Public Defender of Georgia analyzed the statistics available at the Public Service Development Agency regarding the issuance of residence permits and the application of the grounds related to state and/or public security.

¹³⁴⁰ Law of Georgia on the Legal Status of Aliens and Stateless Persons and the Law of Georgia on International Protection.

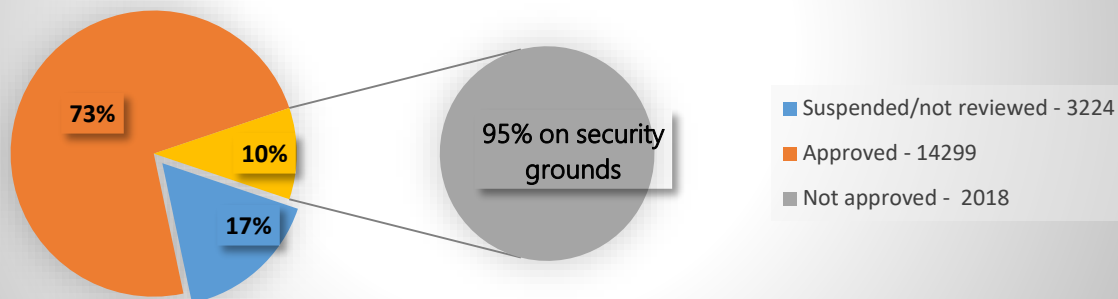
¹³⁴¹ Chapter 6 of the "Migration Strategy of Georgia 2021-2030" approved by the Resolution №810 of the Government of Georgia of December 30, 2020: Development of the Asylum System.

¹³⁴² Parliamentary Report of the Public Defender of Georgia for 2019, Tbilisi, 2020, Chapter: Legal Status of Aliens in Georgia

¹³⁴³ Letter №MIA 8 21 00544133 of the Ministry of Internal Affairs of Georgia of March 5, 2020.

¹³⁴⁴ Letter №MIA 92002940782 of the Ministry of Internal Affairs of Georgia of December 18, 2020.

In 2020 Total Amount of Cases Reviewed with regard to Issuance of Residence Permits - 19 541



According to the present statistics, 95% of the negative decisions made on the residence permit are based on reasons of state security and/or protection of public order.¹³⁴⁵ In parallel with this information, the statistics of cases considered in the common courts on the legality of the named acts are especially noteworthy, according to which the decision in 168 cases entered into force.¹³⁴⁶ Out of this number, 161 decisions were returned to the Agency for reconsideration, and in 7 cases the Agency was instructed to issue a residence permit in favor of an alien.¹³⁴⁷ Thus, in 2020, the courts did not reach a satisfactory decision in any of the cases in favor of the state authorities. The current situation clearly indicates to the problem of substantiation of the decision on state security and/or protection of public order reasons and raises the real risks of arbitrary use of the mentioned legitimate purpose.

29.5. Integration and Challenges of Persons with International Protection and Migrants

One of the important components of the realization of the rights of aliens is their integration in the country. For this purpose, at the end of 2019, the Internally Displaced Persons, Ecomigrants and Livelihood Agency was established, where the Reintegration and Integration Service was created. The Service provides the integration program for persons with international protection, aliens legally residing in Georgia and holders of the status of the stateless person in Georgia and ensures the functioning of the integration centre.¹³⁴⁸ The Integration Center program consists of 4 components, namely: Georgian language courses, socio-cultural awareness raising, civic education and consulting services. In addition,

¹³⁴⁵ Letter №01/46640 of the LEPL Public Service Development Agency, 15.03.2021.

¹³⁴⁶ Ibid.

¹³⁴⁷ Ibid.

¹³⁴⁸ Article 2 (1) of the Order №01-109/5 of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of October 31, 2019.

in the fourth quarter of 2020, in cooperation with the United Nations High Commissioner for Refugees, a joint project "Support to the Integration of Persons with International Protection in Georgia" was developed, which was implemented in the period of 01.11.2020-31.12.2020.¹³⁴⁹ The program funded 15 IDP enterprises, each with a budget of approximately GEL 7,500, which in turn employed 15 refugees and persons with humanitarian status.

It should be noted that, as in previous years, the main challenge was the lack of integration programs and the low rate of beneficiary involvement. In this context, the lack of knowledge of the Georgian language was still the main problem, which consequently led to a decrease in the involvement of beneficiaries in education, employment and health programs. In the period 18.07.2020 - 31.12.2020, teaching of Georgian language for persons with international protection within the program was provided by the LEPL Zurab Zhvania School of Public Administration, which included 60 beneficiaries,¹³⁵⁰ which is insufficient. It is noteworthy that free Georgian language courses are not available at all for migrants who are in the country legally.

The 2021-2030 Migration Strategy Policy Document provides a systematic assessment of the existing integration mechanisms of aliens and defines goals of the state, the implementation of which is necessary to achieve positive results in this direction. In particular, the document recognizes that there is no complex and targeted integration program for aliens residing in the country yet, while implementation of individual integration measures is fragmentary in nature.¹³⁵¹ As a result, it is necessary to establish a unified approach to the integration of aliens living in Georgia with different statuses at a state policy level, which will define the role of state agencies and local self-government bodies.¹³⁵² Before defining a unified integration approach, it is necessary to conduct thematic research and, to assess the needs and capabilities of the state to determine the resources needed for integration in addition to identifying the needs of groups of foreigners living in Georgia with different statuses.¹³⁵³

Recommendations

To the Government of Georgia:

- To ensure the inclusion of migrants having work residence permits in Georgia in approved socio-economic support programs to mitigate the damage caused by the coronavirus.

¹³⁴⁹ Letter №03/3970 of the LEPL Internally Displaced Persons, Ecomigrants and Livelihood Agency of March 11, 2021.

¹³⁵⁰ Ibid.

¹³⁵¹ Chapter 7 of the "Migration Strategy of Georgia 2021-2030" approved by the Resolution №810 of the Government of Georgia of December 30, 2020: Integration of Aliens.

¹³⁵² Ibid.

¹³⁵³ Ibid.

To the Minister of Internal Affairs:

- To develop and implement specific measures to address the problem of overloading of the national asylum system.

To Local Municipalities:

- To make legislative changes in the local municipalities where the budget provides for adequate housing programs for the homeless, in order to include vulnerable migrant groups therein.

30. Protection of the rights of stateless individuals

For the last two years Public Defender of Georgia dedicates separate chapter to the assessment of rights of stateless persons in the report, due to their special needs. Unfortunately, the field of the problems related to them and recommendations issued in order to resolve the existing challenges are same to those which were mentioned in the previous parliamentary reports of the Public Defender of Georgia.¹³⁵⁴ Today, there are 529 stateless persons registered in Georgia.¹³⁵⁵

At the meeting of the Executive Committee of UN High Commissioner of Refugees, Georgian Government committed to the document consisting of six-paragraphs aiming to reduce number of the stateless persons and to improve state of their rights. According to the mentioned document, the fee for determining the status of stateless person should be halved by the end of 2020, this commitment was not fulfilled.¹³⁵⁶ It is noteworthy that the state should fulfil four other obligations by the end of 2021, these obligations involve following directions: facilitation for issuing citizenship of Georgia to stateless persons through naturalization and reducing 10 year term established by law for the mentioned purpose; ensuring free legal support in the process of determining of the status, in administrative bodies and common courts; involvement in the state healthcare program in relation to emergency and ambulatory services and to implement so-called "door to door" campaign in order to reveal stateless persons and their registration.

Thus, the deadline to fulfilment of the most international commitments taken by the state is the end of 2021, special attention and effective work during the rest period from side of relevant authorities is needed.¹³⁵⁷ Public Defender of Georgia continues to oversight activities of the state in this direction.

In order to improve state of rights of the stateless persons along with fulfilment of the obligations it is important to implement state programs enabling full integration of mentioned persons in the society. Unfortunately, in the integration centre of the LEPL "Agency for Refugees, Ecomigrants and Ensuring of living resources" there are no complex and targeted programs tailored to integration of stateless persons as it is in case of migrants.¹³⁵⁸ They also have no access to free courses of Georgian language,¹³⁵⁹ that is the main thing for integration of person in society. This situation makes protection of rights of the stateless persons harder, taking into account that they are already vulnerable. It is important to strengthen institutional resources to solve existing problems, namely it is necessary to strengthen abilities of the

¹³⁵⁴ 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, Chapter "Legal Status of Stateless Persons; Parliamentary Report of the Public Defender of Georgia 2018, Tbilisi, 2019, Chapter "Legal Status of Stateless Persons."

¹³⁵⁵ Letter №01 / 46640 dated 15.03.2021 of the LEPL State Services Development Agency.

¹³⁵⁶ As in the previous period, according to Article 45, Paragraph 45 of the Resolution of the Government of Georgia of December 29, 2011 № 508: "For determining the status of a stateless person - the service fee is 50 GEL."

¹³⁵⁷ Letter №01 / 46640 dated 15.03.2021 of the LEPL State Services Development Agency.

¹³⁵⁸ Chapter 7 of the "Georgia Migration Strategy for 2021-2030" approved by the Resolution 10810 of the Government of Georgia of December 30, 2020: Integration of Foreigners.

¹³⁵⁹ *ibid*

integration centre and its further development, to ensure real and practical opportunity for those persons to benefit from rights provided by legislation.

We should assess positively the fact of consideration by the state of stateless persons in the social-economical programs approved in order to reduce damage caused by new coronavirus.¹³⁶⁰ Although stateless persons with the permanent residence permit were actually deprived from the right to use anti-crisis government package ensured by the program, which was issuing monthly support to the socially vulnerable families. The reason for this was the problem already discussed in the parliamentary reports - the mentioned stateless persons were limited to use the state program for persons below poverty line. The problem was solved in the February of 2021, when the stateless persons with permanent residence permits were allowed to be registered in the database of socially vulnerable families.¹³⁶¹ Accordingly, despite the fact that protection of rights of stateless persons improved, in the context of response to the coronavirus pandemic those improvements turned out to be delayed.

Recommendations

To the Minister of Justice of Georgia

- Fulfil commitments before the United Nations High Commissioner for Refugees by the end of 2021 in order to reduce number of stateless persons and to improve the state of their rights.
- Fulfil international obligation to halve the fee for the determining of the status of stateless person as soon as possible.

To the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs:

- Ensure strengthening of abilities of the Integration Centre of the LEPL Agency of Refugees, Ecomigrants and Ensuring by living resources and to elaborate integration programs for stateless persons.

¹³⁶⁰ Paragraph 2 of Article 1 of the Annex #1, of Resolution № 286 of the Government of Georgia of May 4, 2020.

¹³⁶¹ Paragraph 5 of Article 7 of the Order №01-14 / n of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of February 11, 2021.

31. Implementation of recommendations provided in the Parliamentary Report of 2019, of the Public Defender

31.1. Introduction

The Annual Parliamentary Report of the Public Defender of Georgia contains recommendations and proposals, addressing relevant state authorities and aiming to improve human rights situation in a specific field by eliminating the identified violations of that rights. This chapter analyzes the state of implementation of the recommendations aiming to eliminate systemic shortcomings set out in the previous year's parliamentary report (reporting year 2019).

Unfortunately, some recommendations and proposals are repeated over the years, indicating a low quality of their implementation. Unsatisfactory quality of implementation of the issued recommendations is also indicated in a special report prepared by the Public Defender of Georgia last year, which assesses the state of fulfillment of the mandatory tasks issued by the Parliament of Georgia on the basis of the Public Defender's recommendations¹³⁶². According to the report, state agencies were able to fulfill only 20% of the tasks set by the Parliament of Georgia. 57% of the assignments were not completed and 19% were partially completed. Taking into account the fact that performance of the tasks based on recommendations is mandatory for government agencies, this figure is assessed as unsatisfactory.¹³⁶³

During 2020, in the situation of pandemic, state and local governments had to work in a not ordinary manner, that was hindering the implementation of certain recommendations and proposals. Nevertheless, revealing the problems in our reports and necessity of their resolution aim to protect human rights, and their constant presence on the agenda is important.

In the parliamentary report of 2019, the Public Defender of Georgia issued 335 recommendations to state agencies and local self-government bodies, and 35 proposals to the Parliament of Georgia. Out of 335 recommendations, 302 were addressed to state bodies, while 33 recommendations were issued to local self-governments.

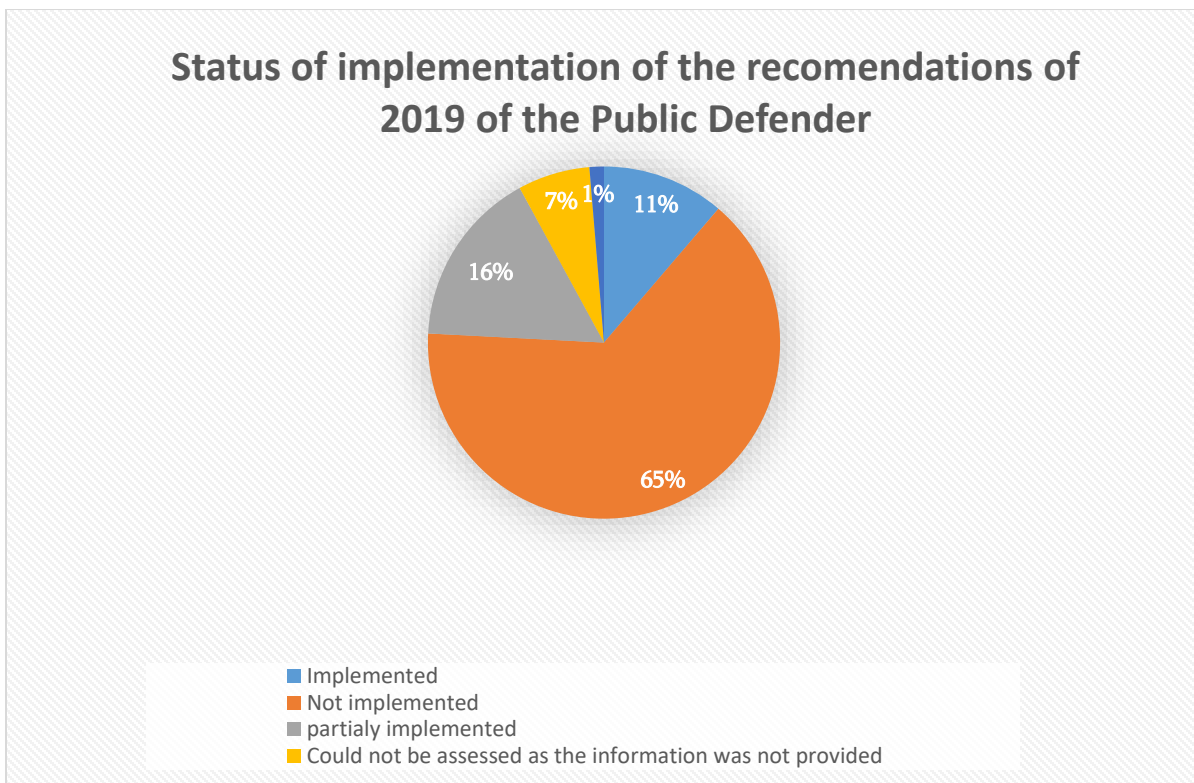
11% of the recommendations issued to state bodies were fully implemented, 16% of the recommendations were partially implemented, and 65% were not implemented at all. It is noteworthy that a small proportion (1%) of the issued recommendations, mainly due to the epidemiological situation, could not be implemented for objective reasons. The degree of cooperation of the state agencies with the Public Defender needs to be mentioned separately. Implementation of 7% of recommendations could not be

¹³⁶² The special report of the Public Defender of Georgia "On the state of fulfillment of the tasks reflected in the Resolution #5003-Ilv of the Parliament of September 20, 2019" is available < <https://bit.ly/3tZXT1y> > last viewed [28.03.2020].

¹³⁶³ The Office of the Public Defender of Georgia will present a special report on the situation of the protection of human rights and freedoms in Georgia in 2019 in the report of the Public Defender of Georgia on the status of implementation of the tasks issued by the parliamentary Resolution N6679 of June 29, 2020.

assessed due to not providing of information by the agencies for the Public Defender. These percentages look like follows:

- Implemented: 34 recommendations;
- Partially implemented: 49 recommendations;
- Not implemented: 195 recommendations;
- Due to the lack of information provided by the agency, the status of implementation of 20 recommendations could not be assessed;
- For reasons beyond the agency, it is impossible to assess the implementation of the 4 recommendations.



As already mentioned, the Public Defender of Georgia addressed 35 proposals to the Parliament of Georgia in the Parliamentary Report of 2019. The legislative body implemented only 6 (17.7%) of them.

The analysis of the above data shows¹³⁶⁴ that the state agencies did not implement the main part of the Ombudsman's recommendations during the reporting period. Consequently, the quality of implementation of the Ombudsman's recommendations, as in previous years, is unsatisfactory in 2020.

¹³⁶⁴ The state of implementation of the recommendations is assessed on the basis of the information available in the Office of the Public Defender of Georgia as of March 26, 2021.

The Public Defender of Georgia reminds all state agencies that in the process of exercising their powers, they are bound by human rights and freedoms as a directly applicable law. According to Article 35 of the Constitution of Georgia, the protection of human rights in Georgia is overseen by the Public Defender and the obligation to provide information to the Public Defender's Office is obligatory for all state bodies in accordance with the Organic Law of Georgia on the Public Defender of Georgia. It is important that central and local governments express the political will to protect human rights and freedoms, that will ensure further resolving of problems existing over the years. A brief overview of the quality of implementation of the Ombudsman's substantive recommendations issued in the Parliamentary Report of 2019 by state institutions, according to rights and particular groups are provided below. Additional information on these issues can be found in the relevant thematic chapters. The state of implementation of the recommendations by the local self-government bodies will be presented separately.

31.2. Status of implementation of recommendations by state Agencies

31.2.1. Court System

In the Parliamentary Report of 2019, the Public Defender of Georgia addressed 6 proposals to the Parliament of Georgia and 1 recommendation to the Government of Georgia and the High Council of Justice, in order to ensure the right to a fair trial, as well as the institutional development of the judicial system. Unfortunately, the Parliament of Georgia implemented only one the proposal of the Public Defender, all other proposals and recommendations are not implemented.

We positively assess the amendment to the Law on Legal Aid in 2020, as a result of which witness children are provided with legal aid.¹³⁶⁵

The selection procedure for an Independent Inspector of the High Council of Justice is still problematic. Also, amending of the Code of Administrative Offenses, adopted during the Soviet period, has become an unresolved problem.

In the Parliamentary Report of 2019, the Ombudsman also highlighted the need to train psychologists in juvenile justice and to introduce a quality control system, and suggested that parliament release financially disadvantaged prisoners from the obligation to pay court fees. Unfortunately, none of the above-mentioned recommendations / suggestions have been implemented.

31.2.2. System of the Prosecution

In the Parliamentary Report of 2019, the Public Defender of Georgia issued 16 recommendations and one parliamentary proposal to the Prosecutor's Office. Despite the Public Defender's proposal, the Parliament of Georgia did not even start discussing the reform of the Prosecutor's Office, which would improve the contribution of the Prosecutorial Council to the activities of the General Prosecutor's Office.

¹³⁶⁵ Article 4¹ of the Law of Georgia on Legal Aid.

Unfortunately, it should be noted that most of the recommendations issued have not been implemented. The Prosecutor's Office of Georgia did not implement the 12 recommendations issued by the Public Defender, partially implemented 1 recommendation, and fully implemented only 2 of them. Despite the efforts of the Public Defender's Office, due to not providing information by the Prosecutor's Office of Georgia, 1 recommendation could not be assessed.

Like the Parliamentary Report of 2018, the Public Defender of Georgia paid special attention to the cases of murder of Temirlan Machalikashvili and murder at Khorava Street. Unfortunately, it should be noted that the situation in these criminal cases is still the same as last year.

Despite the recommendation of the Public Defender, the General Prosecutor's Office of Georgia did not consider it necessary to launch an investigation under Article 352 of the Criminal Code on the disclosure of confidential information on January 23, 2020, related to the visit of the Public Defender to the penitentiary institution.

31.2.3. Penitentiary System

In order to improve the human rights situation in the penitentiary system, the Public Defender of Georgia issued 53 recommendations to state agencies, and addressed 5 proposals to the Parliament.

Unfortunately, none of the proposals made to the Parliament of Georgia were fulfilled. The issues such as the provision of minimum living space for prisoners, as well as the connection of prisoners with the Public Defender of Georgia and the State Inspector are still unresolved.

The Public Defender gave 50 recommendations to the Minister of Justice of Georgia from all the recommendations issued to the state agencies, 2 recommendations were issued to the Government of Georgia and 1 to the General Prosecutor. Unfortunately, 47 recommendations of the Public Defender have not been implemented, only 2 recommendations were fully implemented, the same number of partially implemented recommendations was determined. Despite the efforts of the Office of the Public Defender to assesses the implementation of all recommendation, assessment of the status in one case was impossible due to low level of cooperation by the Ministry of Justice. It should be noted that one of the Public Defender's recommendations, which meant to conduct short-term visits without dividing glass barriers was not implemented due to epidemiological situation by objective reasons.

The Public Defender of Georgia positively assesses the amendment reflected in the bylaw, according the amendment in case if doctor working in a penitentiary institution finds an injury on the body of a prisoner and there is a suspicion of violence against a patient, regardless the patient himself confirms it or not, the doctor is obliged to apply to the State Inspector through electronic document flow.

Despite the above positive change, the penitentiary system still faces severe challenges. As in previous years, in 2020, informal management of penitentiary institutions remains a serious challenge in terms of protection of prisoners from violence, although despite the recommendation of the Public Defender, the development of a strategy to combat criminal subculture is not considered. Also, despite the recommendation of the Public Defender, the Ministry of Justice of Georgia did not set a maximum period

of 24 hours for the placement of prisoners in the de-escalation room, nor did it eliminate the practice of placing juveniles in the de-escalation room. As in previous years, management of special high risk and closed institutions is still based on static security principles, including the strict limitations, regime of restrictions and it is not focused on a positive change of behavior of the prisoners. Unfortunately, "barrack" type dwellings have not been canceled in the penitentiary institution #17.

As in 2019, the ombudsman of Georgia also indicated in last year's parliamentary report that the Georgian government needed to conduct a forensic examination in accordance with the principles of the Istanbul Protocol in order to effectively document and investigate torture and inhuman treatment, but agencies did not take any steps to implement this practice.

31.2.4. The System of the Ministry of Internal Affairs

In the Parliamentary Report of the Public Defender 33 recommendations were issued to the Ministry of Internal Affairs of Georgia. The Ministry fully implemented the 5 recommendations issued by the Public Defender, and partially - 3. In 24 cases, the Ministry of Internal Affairs of Georgia did not implement the recommendations of the Public Defender.¹³⁶⁶

The systematic recommendations issued to the Ministry of Internal Affairs of Georgia in recent years, such as the continuous audio-video recording of the interrogation of detainees in several police stations, are still unfulfilled; as well as determining the obligation of video recording for patrol inspectors while interacting with citizens, etc.

The Public Defender positively assesses increasing of the number of Temporary Detention Isolators (TDIs) by the Ministry of Internal Affairs. Persons placed in such isolators will be provided with medical service, the doctors of such isolators are trained on the instructions for photographing bodily injuries and on the storage of such pictures.

31.2.5. Psychiatric Organizations

In order to improve the situation in psychiatric institutions, in the parliamentary report of 2019, the Public Defender of Georgia issued 1 proposal to the Parliament, which was implemented. Based on the amendments to the Law of Georgia on Psychiatric Care, the application of physical restraint to patients on voluntary treatment will be immediately followed by a review of their status (voluntary / involuntary).

20 recommendations from all 21 issued to the government agencies, was issued to the Ministry of IDPs from Occupied Territories, Labor, Health and Social Affairs and one recommendation was issued to the government, which has not implemented.

Unfortunately, the Ministry of IDPs from Occupied Territories, Labor, Health and Social Affairs was able to implement only one recommendation partially. In particular, the Public Defender positively assesses

¹³⁶⁶ Due to the lack of relevant information, 1 recommendation issued by the Public Defender of Georgia cannot be evaluated.

the fact that in 2020, a small number of patients will be transferred to psychiatric institutions close to family environment aiming the deinstitutionalization. As for the other 19 recommendations, unfortunately, all of them are unfulfilled at this stage.

31.2.6. The status of rights of the children

The Public Defender of Georgia issued 47 recommendations in the parliamentary report of 2019 on children's rights, 8 recommendations were addressed to local self-government units. As to the remaining 39 recommendations, state agencies did not implement 22 of them. Only 1 recommendation can be evaluated as fully implemented. 10 recommendations were partially implemented by the state agencies, and in the remaining 6 cases it was impossible to determine the status of implementation due to the lack of relevant information from the agencies.

According to the recommendation of the Public Defender of Georgia, the Government of Georgia should set up a special group within the Interagency Commission responsible for the implementation of the UN Convention on the Rights of the Child, which would be responsible for preparing measures, strategic visions and action plans for suicide prevention. Unfortunately, the government did not implement this recommendation of the Public Defender. The recommendation related to the adoption process was not also implemented, by this recommendation in this process state authorities should take into account not only the order in the registry but also the needs and best interests of the child.

The Public Defender positively assesses the provision of education, health care and other state services to internationally protected, asylum seekers and stateless minors in Georgia in accordance with the recommendation.

31.2.7. The Rights of persons with the disabilities

The Public Defender issued 35 recommendations in the Parliamentary Report of 2019 in relation to the people with disabilities. 8 of these recommendations were issued to local self-government agencies. As to remaining 27 recommendations, as a result of the activities of state agencies, 3 recommendations of the Public Defender were fully implemented, and 6 recommendations were partially implemented. In 16 cases, the Ombudsman's recommendations were not implemented, and in 2 cases assessment of status of implementation was not possible, as the respective information was not provided to the ombudsman's office.

As in previous years, the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia did not carry out any tangible activities in order to develop a deinstitutionalization strategy and introduce a community-based service in accordance with this strategy. The recommendation issued to the Government of Georgia, according to which significantly and moderately disabled people employed in the public service should be provided with an appropriate social package, is also considered unfulfilled.

Based on the recommendation of the Public Defender of Georgia, the Ministry of Education, Science and Culture of Georgia has provided statistical information on both children with disabilities left out of formal education and students with disabilities enrolled in the education system, which is welcomed by the Public Defender.

31.2.8. Rights of elderly persons

In order to improve the legal status of the elderly, the Public Defender of Georgia, in the parliamentary report of 2019, issued 9 recommendations to the highest state bodies and 1 to the local self-governments. Only one, from all recommendations issued to the state bodies, was fully implemented and 3 were partially implemented. The same number of recommendations were not implemented, and in the other 2 cases, due to the non-submission of the requested information, it became impossible to assess the status of implementation.

An important problem for the elderly is the state contract with JSC Liberty Bank, according to which the amount stipulated in the loan agreement is deducted from the pension account, due to which the elderly receive only 50% of the monthly pension. Their interests are clearly not taken into account under this regulation. Despite the recommendation of the Public Defender, state agencies have not acted in this direction.

Public Defender welcomes the fact that in accordance to the recommendation the mental health status of the beneficiaries in the boarding houses is assessed and relevant mental health services are provided to them.

31.2.9. Gender Equality

In order to ensure gender equality, the Public Defender of Georgia issued 30 recommendations to state bodies in last year's parliamentary report and 3 proposals to the Parliament of Georgia. The Parliament of Georgia shared only one of the proposals and determined the mechanism of mandatory gender quotas. As for the recommendations issued to the highest state bodies, 9 of them can be considered implemented, and 2 recommendations can be considered partially implemented. The other 14 recommendations are unfulfilled. Due to the non-submission of relevant information to the Public Defender's Office, the status of implementation of 4 recommendations could not be assessed. It should also be noted that the recommendation issued by the Public Defender of Georgia regarding the improvement of shelters, inventory and child-oriented infrastructure could not be implemented due to objective reasons.

Unfortunately, the provision of timely and adequate compensation in accordance with the obligation under Article 30 of the Council of Europe Convention on the Prevention of Violence against Women has not yet been ensured. Also, the Ministry of Internal Affairs of Georgia has not yet determined the rules for the specialization of investigators in order to effectively protect and assist victims of violence.

The Public Defender welcomes the activities carried out by the Ministry of Economy and Sustainable Development of Georgia during the reporting period, which assisted women entrepreneurs living in rural areas in the field of professional development and economic empowerment.

Despite the recommendation, the Ministry of Education, Science and Culture of Georgia has not established a working group for the full integration of complex education on human sexuality in school curricula. In addition, the Prosecutor General's Office does not thoroughly analyze early marriage-related offenses, nor provides relevant, segregated statistics.

31.2.10. The Rights of individuals affected by conflict

In the parliamentary report of 2019, the Public Defender issued 13 recommendations to improve the legal status of people affected by the conflict. 5 recommendations of the Public Defender have been fully implemented by state agencies, while 4 are assessed as partially implemented. 2 recommendations of the Public Defender were not implemented at all and the implementation of one, due to the created epidemiological situation, was objectively impossible.

In the parliamentary report of 2019, the Public Defender of Georgia recommended to the Interim Governmental Commission for Response to the Needs of the Affected Population in the Villages nearby to the Demarcation Line that the agency should step up rehabilitation and compensation for property damaged during the August War of 2008. Besides the agency was recommended to develop programs aiming to ensure employment and income for the local population. Unfortunately, these recommendations have not been implemented.

The Public Defender positively assesses the implementation of the recommendations issued in the Parliamentary Report of 2019, by the Office of the State Minister for Reconciliation and Civic Equality, this was reflected in negotiations with various donor organizations aiming to promote non-formal education opportunities for schoolchildren and youth in Abkhazia. We also appreciate the participation of doctors living in the occupied territories in vocational training programs.

Unfortunately, costs of ambulatory diagnostic are not still founded for the population living in the occupied region of Georgia as they were before 2017.

31.2.11. Freedom of Belief and Religion

The Public Defender of Georgia issued 6 recommendations to the highest state bodies and 2 recommendations to the local self-governments in the Parliamentary Report of 2019 on Freedom of confession and religion. Only 1 recommendation, from all recommendations issued to the state agencies, was partially implemented and 5 recommendations were not implemented at all.

State activities in relation to returning of the religious buildings confiscated in Soviet-era remain problematic. Also, the practice of financing religious associations, despite numerous calls from the Public Defender, has not changed. The Public Defender, referred to the General Prosecutor's Office of Georgia and the Ministry of Internal Affairs through recommendations to necessity of analyzing and publishing

statistics on crimes motivated by religious hatred. Unfortunately, the state agencies did not fulfill the mentioned recommendation either.

31.2.12. Protection of national minorities and civil integration

In order to solve the problematic issues related to national minorities, in the parliamentary report of 2019, the Public Defender of Georgia issued 12 recommendations to the highest state bodies and 2 recommendations to the local self-governments. State agencies did not implement 2 recommendations of the Public Defender, 6 were partially implemented, and 5 recommendations were fully implemented.

The activities of the Ministry of Education, Science, Culture and Sports of Georgia are positively assessed. In particular, according to the information provided to us by the agency, in cooperation with local self-governments, the implementation of certain educational programs was provided in the municipalities and villages of the regions tightly populated by national minorities. The Ministry has also implemented the recommendations issued for the promotion of the cultures of Georgian and national minorities, which is welcomed by the Public Defender.

Unfortunately, no measures have been taken so far to compile, publish and provide textbooks for native Armenian and literature textbooks for Armenian, Azerbaijani and Russian-speaking schools in Georgia, and to provide textbooks for the teaching process in Georgia.

31.2.13. Social and Economic Rights

For the purposes of this subsection, the quality of implementation of the recommendations made in several¹³⁶⁷ chapters of the Parliamentary Report of 2019 of the Public Defender will be assessed. In order to ensure social and economic rights, the Public Defender of Georgia issued 18 recommendations to state agencies and 2 proposals to the Parliament of Georgia.¹³⁶⁸

State agencies have fully complied with only one recommendation issued by the Public Defender. 2 recommendations are assessed as partially implemented, while the remaining 11 are not implemented.¹³⁶⁹

The Public Defender positively assesses the amendments made by the Parliament of Georgia to the Organic Law of Georgia - "Labor Code", on the basis of which the Labor Inspector is equipped with mechanisms that will make him more effective in overseeing compliance with labor safety standards.

In order to ensure adequate housing for vulnerable groups, in the Parliamentary Report of 2019 3 recommendations were issued. Unfortunately, none of them were performed. Tbilisi City Council did not take into account the recommendations issued by the Public Defender and did not cancel the records in

¹³⁶⁷ "Right to social security", "Right to adequate housing", "Right to health care", "Right to work".

¹³⁶⁸ The right to social security - 4 recommendations; The right to adequate housing - 3 recommendations; Right to health care - 8 recommendations and 1 proposal; Right to work - 3 recommendations and 1 proposal.

¹³⁶⁹ One recommendation could not be assessed due to lack of information.

Annex 1 of the City Council Resolution №37-14, which poses significant obstacles to individuals during the homeless registration process.

The picture is similar in terms of implementation of the recommendations issued in the field of socio-economic rights. 4 recommendations of the Ombudsman are not fulfilled. An interagency government commission has not yet been set up to assess needs related to food access, to determine state policies responsible for response to challenges related to this right, and oversee the activities of government agencies responsible for its implementation.

Due to current epidemiological situation, the right to adequate health care has become particularly important. Public Defender issued one parliamentary proposal and 5 recommendations in this direction, only one of them was implemented. In particular, the Public Defender of Georgia welcomes the activities of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor Health and Social Affairs, which have created important preconditions for the development of nursing human resources.

The Public Defender recalls once again the Parliament of Georgia to initiate a draft law on fundamental changes in drug policy, which will be based on consumer care and will focus on the development of medical services.

31.2.14. Legal status of foreigners in Georgia

In order to improve the legal status of foreigners, the Public Defender of Georgia issued 5 recommendations in the parliamentary report of 2019, 2 of which were fully implemented, and the state agencies did not take appropriate action to implement the other three recommendations.

The Order of the Minister of Internal Affairs of Georgia N99 of 2020 replaced the joint order of the Ministry of Internal Affairs of Georgia and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. The new legal act more clearly defines the rights and responsibilities of the patrol and border police on receiving and redirecting an asylum seeker at the border. The ombudsman also assesses positively the trainings provided to border police officers on the practice of identifying asylum seekers by Ministry.

Unfortunately, it should be noted that the statistical data related to refusal to enter Georgia is not still processed, providing information on the citizenship of individuals and legal grounds for refusal to enter county. It should also be noted that foreign nationals and stateless persons in a penitentiary institutions are not provided with copies of a special application for asylum, which prevents them from accessing asylum procedures.

31.2.15. Legal status of stateless persons

In order to improve the legal status of stateless persons, the Public Defender of Georgia issued 2 recommendations, and addressed 2 proposals to the Parliament of Georgia, none of which, unfortunately, were not implemented.¹³⁷⁰

Despite the proposal of the Public Defender of Georgia, no changes were made to the Organic Law on Citizenship of Georgia, which would reduce one of the preconditions for obtaining citizenship through naturalization - 10 years of life in Georgia. In the proposal, the Public Defender of Georgia also called on the Parliament to amend the same law to ensure that the decision made by the President can be appealed in court.

Despite the recommendations Action Plan for the end of Statelessness of 2020 and next years, which would reflect actions to be carried out to resolve problematic issues related to legal status of stateless persons.

31.3. Status of implementation of recommendations by local self-governments

In order to improve the state of human rights and freedoms in local self-governments, Public Defender of Georgia issued 33 recommendations in the parliamentary report of 2019. To assess the state of implementation of the recommendations, the Public Defender's Office addressed 63 self-governments with a request to share the relevant information. Unfortunately, 15 municipalities¹³⁷¹ did not respond to any of the letters of the Public Defender's Office.

Below is the general state of implementation of the essential recommendations issued by the Public Defender to local self-governments in the Parliamentary Report of 2019, which were addressed to all self-governing units.

The implementation of educational activities for the members of the Gender Council, which was provided in a significant part of the self-governing units, is positively assessed. Nevertheless, municipalities have not implemented tangible activities to introduce gender mainstreaming tools. Some of them explained this fact with the situation related to new coronavirus pandemic.

In local self-governments it is still problematic to research the specific needs of women and to reflect their results in action plans and policy documents. In the vast majority of municipalities, gender budgeting is not implemented on a practical level, only in isolated cases self-governing units ensure the implementation of targeted programs aimed at improving the legal status of women.

It should be noted that women living in district centers are mostly given the opportunity to receive professional education, although local self-governments should make more efforts in this direction, as

¹³⁷⁰ One recommendation could not be assessed due to lack of information.

¹³⁷¹ Adigeni, Aspindza, Bolnisi, Dusheti, Tianeti, Kaspi, Lentekhi, Mestia, Mtskheta, Ozurgeti, Sagarejo, Tsalenjikha, Tsalka, Chiatura and Kharagauli municipalities.

support programs for rural women, such as child care and transportation services, are an important prerequisite for professional education and they are not ensured in majority of municipalities.

Municipalities typically make registry of single parents and parents with many children; segregated statistic is collected. However, there are a number of challenges in terms of publicity of information. It is important that self-governing entities post the data obtained from the census on the website, requiring compliance with the relevant personal data regulations.

Cooperation of the municipalities with the Public Defender's Office and various organizations is assessed positively; as with the direct participation of such organizations several awareness raising activities were held in several municipalities. Despite the explicit reference to the need to raise awareness about reproductive health services in the Ombudsman's recommendation, the number and geographical distribution of measures taken in this direction are unsatisfactory.

Based on the responses received from the self-governing units, the Office of the Public Defender determined that a significant part of the municipalities did not consider it necessary to carry out monitoring in order to maintain religious neutrality at the level of early and pre-school education. The reason for this is the affiliation of the beneficiaries with only one religion. The Public Defender once again re-calls on the self-governments to ensure the protection of religious neutrality at the pre-school level.

According to last year's parliamentary report, the Public Defender of Georgia recommended to several self-governing units¹³⁷² to ensure the adoption of normative acts provided for in Article 28, Paragraph 4, Subparagraphs "d" and "e" of the Law of Georgia on Early Childhood and Preschool Education. It involves setting the qualifications and professional standards of the director of educational institutions. Unfortunately, none of the self-governing units that provided the requested information to the Public Defender's Office complied with this recommendation.¹³⁷³

The Public Defender of Georgia also gave recommendations to the municipalities to improve the rights of children. Self-governing units should work harder to identify and make registry of families with children living in poverty. In vast majority of municipalities local programs are aiming to support children living in poverty and not on the prevention of poverty itself. The Public Defender of Georgia welcomes the existence of social programs to help children living in poverty, but notes that such assistance is not a self-sufficient mean in the process of reduction of poverty and requires more efforts. The Public Defender also reminds to the self-governments that the activities aiming poverty reduction are important for the implementation of the recommendation, but none of municipalities have took such activities so far.

Unfortunately, a majority of the municipalities does not recognize the existence of children living and working on the streets. According to them, the self-governing unit does not face this problem. While the monitoring conducted by the Office of the Public Defender of Georgia in local self-governments

¹³⁷² Dedoplistskaro, Zestaponi, Lagodekhi, Lanchkhuti, Sighnaghi, Tkibuli, Chiatura and Khoni municipalities.

¹³⁷³ Chiatura Municipality did not answer the questions of the Public Defender; Khoni Municipality refrained from answering a specific questions.

represents the different picture. In particular, there have been a number of cases where minors have had to sleep or work on the street under conditions of heavy physical activity.

Due to the existing epidemiological situation, most of the self-governing units were not able to implement the recommendations given for the infrastructural and functional arrangement of the buildings of pre-school and educational institutions, as well as did not allocate adequate funds to increase human resources in most kindergartens. The reason for this is the measure taken by the municipalities in the process of prevention of the created epidemiological situation - distance education. According to them, there is no need to hire additional teachers in terms of online teaching.

Providing professional training services to those employed in the kindergarten was one of the recommendations of the Public Defender. We welcome the fact that despite the epidemiological situation, several municipalities have been able to provide such services,¹³⁷⁴ although it should be noted that these cases are an exception in relation to the general trend.

None of the self-governing units has fully complied with the Public Defender's recommendation to study the needs of pre-school and educational institutions in the field of inclusive education and to include the results in the financial plan. Unfortunately, the partial implementation of this recommendation is also a rare exception in relation to the general trend.

In 57 local self-governments advisory board on the issues of people with disabilities is created. However, their workflow and effectiveness creates expectation for more. During 2019, the Advisory Board meeting was held in only 9 municipalities,¹³⁷⁵ which is explicitly unsatisfactory. Despite the recommendation of the Public Defender, the municipalities of Dusheti, Tianeti, Kaspi, Kazbegi, Tsalka and Chiatura have not yet established relevant councils.

Municipalities explain non-compliance with the recommendation on the training of architectural and supervisory services staff with the epidemiological situation. Local self-governments do not elaborate statistic on the improved physical environment, despite the recommendation of Public Defender.

The vast majority of municipalities have various elderly support programs, although it is noteworthy that none of them is based on a survey of the needs of the elderly living in the municipalities.

The Public Defender addressed a recommendation to the self-governing units tightly populated with national minorities. They should provide training for pre-school teachers, create and deliver teaching resources. The training activities conducted by the self-governing units are positively assessed, however, the Public Defender emphasizes the need for training of non-Georgian language teachers and the creation of teaching resources.

¹³⁷⁴ Abasha, Adigeni, Gurjaani, Zugdidi, Tetrtskaro and Kobuleti municipalities.

¹³⁷⁵ Baghdati - 2 sessions, Gurjaani - 3 sessions, Lanchkhuti - 1 session, Signaghi - 1 session, Kutaisi - 2 sessions, Shuakhevi - 2 sessions, Chkhorotsku - 2 sessions, Akhaltsikhe - 1 session, Dedoplistskaro - 1 session.

Based on the above data, it can be said that the quality of implementation of the recommendations given to the local self-governments in the Parliamentary Report of 2019 of the Public Defender is unsatisfactory. It is important that local governments make more efforts on these issues, and the Public Defender, in turn, expresses full readiness, if necessary, to share knowledge and experience in the field of human rights with the municipalities.