REPORT OF THE PUBLIC DEFENDER OF GEORGIA

First half of 2002

WITH THE FINANCIAL ASSISTANCE OF UNDP
AND GOVERNMENT OF THE NETHERLANDS

Public Defender of Georgia

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

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CONTENTS

Introduction

This Document is the Periodic Report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in the country. The Report is prepared by the Public Defender in accordance with the provisions of the Organic Law on the Public Defender of Georgia.

The Report covers the period from January to June of 2002. However, where appropriate, it refers to earlier periods, which is determined by the specificity of the issues discussed.

In preparing the Report, use was made of different materials, namely, notices and complaints referred to the Public Defender's Office, information provided by governmental agencies, and data collated by non-governmental organisations active in this field. I would like to express my sincere gratitude to the United Nations Development Programme – UNDP Office in Georgia, whose assistance and support were very instrumental in preparing this, as well as the previous, reports.

I want to take this opportunity to make several general comments concerning those issues whose discussion goes far beyond the scope of this Report, but this in no way makes them less relevant.

Way back in 2000, my first report (in the capacity of the Public Defender) raised a number of questions that had to do with the improvement and streamlining of the Georgian legislation. A number of concrete proposals were presented to the legislature to remedy the flaws existing in this area. However, notwithstanding Decree No 543 by the President of Georgia dated 2000, nothing has been done in this field.

The Public Defender has lodged a number of claims with the Constitutional Court of Georgia concerning provisions contained in certain legal acts that appear to violate human rights and freedoms. We look with hope at the results of their consideration. However, there exist such flaws in the legislation that can only be overcome by the Parliament. In this connection, the Public Defender requests the highest legislative body in the country to devote due attention to these issues. To correct one's own mistakes, it is not necessary to wait to international organisations (no matter, UN or the Council of Europe) to come and give their recommendations.

I would like to commend on the law-making activity of the Georgian Parliament, owing to which Article 352 of the Criminal Code of Georgia was brought into conformity with the provisions of Article 4 of the Organic Law on the Public Defender of Georgia. This means that any pressure on the Public Defender or interference in her activities incurs criminal liability, whereas in the event of improper use of position - even more severe forms of punishment, namely, deprivation of liberty for up to 2 years, or removal of the right to hold positions or be engaged in activity for up to 3 years.

The Public Defender's relationship with the judiciary is another very important problem. Under the Organic Law, the Public Defender has the right to examine any instance, any case, either in process or closed, with a view to revealing violations of human rights. If necessary, based on the results of examination, the Public Defender was authorised to present to the judiciary her recommendations, after which the review of the case was instituted.

After the entry into force of the new Code of Criminal Procedure of Georgia, there is conflict between the Organic Law on the Public Defender, and provisions of that Code. Procedurally, the court is no

longer obliged to react substantially on the Public Defender's recommendations, as the mechanism of examination for the purpose of supervising the case, has been cancelled, and the final decision of the Supreme Court cannot be appealed. Thus, the Public Defender's power to formulate recommendations in respect of court decisions has come to be a fictitious statement, and nothing more.

I am confident that it is necessary to overcome this legislative deadlock. We have come to certain considerations concerning the ways to overcome the existing collision. I ask the Parliament to pool efforts in order to settle this entirely unacceptable contradiction of the law.

Finally, the Public Defender notes the extreme politicisation of human rights concept, when "intriguer" politicians misuse this concept for their own political purposes. Needless to say, for a country on its way to democracy this is entirely unacceptable.

The Public Defender of Georgia is of the opinion that now, when only one year is left before the parliamentary elections, it is much more appropriate to spend this time in protecting people's legitimate interests and constitutional rights, and not for petty political purposes. We think that this Report shows clearly that there is a lot to be done in this direction.

Chapter 1.

THE SITUATION OF PROTECTION OF CIVIL AND POLITICAL RIGHTS IN GEORGIA

Crime-Breeding Situation in the Country. Fight Against Crime

In the reference period, the crime-breeding situation in the country deteriorated considerably, which has had a markedly adverse impact on the protection of such an important element of human rights and liberties enshrined in the Georgian Constitution as the inalienable right of every human being to life. Other human rights, such as the right to personal liberty and the inviolability of a person's conscience and dignity, have also become less protected, while the right to property has been increasingly abused, if viewed against a comparable period in the past.

According to the data of the Ministry of Internal Affairs and the Prosecutor General's Office of Georgia, in the period under review there have been 8796 registered cases of crime, compared to 7975 in the 6 months of the previous year, signalling an increase of 821, or 10.3%, in the total number of offences. The number of especially grave crimes showed an increase of 97, or 4%; premeditated murders or murderous attempts increased by 21, or 10.2%, bringing the relevant absolute figure to 226.

Murder without aggravating circumstances was reported in 134 cases and, compared to the same period of the last year, its rise accounted for 28 cases, or 13%; the rate of intentional grievous bodily injury increased by 35 cases, or 31.3%; personal larceny was registered in 2120 cases, showing an increase of 577, or 23.5%; theft of vehicles

increased 147-fold; robbery increased by 67 cases, or 19.6% and was reported in 268 cases; misappropriation of property through fraud showed an increase of 113 cases.

Despite a certain improvement in terms of their identification, the fight against such offences as tax evasion (cf. 131 cases in the earlier half of 2001, 172 – in the earlier half of 2002); abuse of customs rules (24 cases in the earlier half of 2001, 64 – in the earlier half of 2002); bribery (17 cases in the earlier half of 2001, 23 – in the earlier half of 2002) can hardly be seen as satisfactory. Identification rate of crimes related to drug trafficking decreased by 1 and amounted to 11 cases, compared to 12 during the last year.

Neither is the work of the relevant bodies of the Ministry of Internal Affairs, Prosecutor General's Office and the Ministry of State Security in terms of crime solution affords satisfaction. In a six-month period of the current year, investigative bodies of the Ministry of Internal Affairs suspended 3101 criminal cases on allegation of their non-solution, i.e. 883 cases or 50.7% more than in the respective period of the past year. Investigative bodies of the Prosecutor General's Office suspended 247 criminal cases – an increase of 49 cases, or 24.7% when compared to the same period last year, and the Ministry of State Security investigative bodies suspended 6 cases more (54.5%) than during the same period of the past year.

Over the period under review, the criminal situation has become extremely complicated in the regions of Shida Kartli, Samegrelo, Zemo (Upper) Svaneti, Guria, Meskhet-Javakheti and Kakheti; in the cities and towns of Gori, Zugdidi, Poti, Kaspi, Dedoplistskaro, Lanchkhuti, Zestafoni, Tskhaltubo, Adigeni, in the Vake-Saburtalo district of Tbilisi, and the Metro operational territory.

According to the information provided by the General Inspectorate of the Ministry of Internal Affairs of Georgia, 154 files on offences committed by police officers over the reference period were sent to prosecuting agencies, and criminal cases were initiated in respect of 25 police officers. Interestingly, according to the data of the Prosecutor General's Office, over the reporting period the investigative bodies under the Prosecutor General's Office did not receive for investigation any criminal case on unlawful detention or apprehension. As far as unlawful deprivation of liberty is concerned, the above bodies had at hand only one case relating to this offence.

In the earlier half of 2002, general courts in Georgia did not present an indictment in respect of any criminal case relating to beating or torture by police officers or other staff during the exercise of their official powers, and no one was convicted of this crime. As far as unlawful deprivation of liberty is concerned, 33 persons were convicted on a charge of this offence.

Despite the prevailing character of such crime as the taking of hostages, including foreign nationals, in the first half of 2002 only 2 persons were convicted for the commission of this crime.

As mentioned above, according to the data of the Ministry of Internal Affairs, Prosecutor General's Office and the Ministry of State Security, during the 6 months of the current year, criminal action was initiated on a charge of tax evasion in 172 cases, abuse of customs rules – in 64 cases, bribery – in 23 cases, and drug trafficking – in 1 case.

These data by the Ministry of Internal Affairs, Prosecutor General's Office and the Ministry of State Security come into conflict with the data on performance of general courts. Over the reporting period, 48 persons were convicted by the latter for tax evasion, 13 persons – for

abuse of customs rules, 4 persons – for giving or accepting a bribe, and 4 persons for illicit drug import or trafficking, which is indicative of inefficient performance of customs and tax services, the Ministry of Internal Affairs and other law-enforcement bodies leading to serious fiscal problems in terms of mobilisation of budget resources.

Despite increasingly widespread terrorist acts, including the rise of international terrorism, and the ensuing public threat, no criminal was convicted by general courts in Georgia for the perpetration of this crime.

Analysis of general courts' performance shows that the total number of convictions in the first half of 2002 was 4108; of these, 1233 persons (30%) were sentenced to the deprivation of freedom, 8 persons (0.2%)– to imprisonment, 22 persons (0.5%) – to correctional labour, conditional sentence was given to 1730 persons (42.1%); 6 persons (0.1%) were released on amnesty or otherwise, fine was imposed on 1077 persons (20.2%), acquittal was granted to 26 persons (0.6%), no one was deprived of the right to hold specific posts.

As seen, forms of punishment that do not imply deprivation of liberty, such as correctional labour, are not adequately employed by general courts.

In the first half of the current year, 12,991 administrative offences by 12,453 persons were identified: administrative responsibility was imposed on 10687 persons: of these 798 persons were given caution, 350 persons - administrative arrest, 1 person – correctional labour, and 9506 persons received pecuniary penalty of 913,553.57 GEL in total, of which 54,101.91 GEL was collected, and 85,945.2 GEL is outstanding.

On Amendments and Additions to Criminal and Civil Codes of Georgia Concerning Complaints about Violations of Citizens' Rights

The authority of the Public Defender stipulated in Article 43, Para.2 of the Constitution of Georgia and specified further in Para.3 of the same Article and Article 21 of the Organic Law on the Public Defender, to report facts about violations of human rights and fundamental freedoms, are not properly implemented in the Code of Criminal Procedure and the Code of Civil Procedure of Georgia.

More specifically, Georgia's Code of Criminal Procedure and the Code of Civil Procedure do not contain provisions on reversal of a decision/ judgement, its annulment or reopening of a case.

According to Article 594, Para.3 of the Code of Criminal Procedure of Georgia, petition for review of a judgement or other court decision in view of newly discovered facts can be filed by the parties in the case, and in the event of the convict's death – by his/her, relative, defence lawyer or other parties concerned.

According to Articles 422 and 423 of the Code of Civil Procedure of Georgia, petition for annulment of valid judgements and/or their review on account of newly discovered circumstances for the purpose of reopening of the case is only allowed on the basis of a party's application.

Thus, in the event of human rights violations revealed in the course of inspections under Article 12 and Article 21 of the Organic Law on the Public Defender, the Public Defender is deprived of the right to demand the redress of infringed rights, because of the flaws encountered in the Code of Criminal Procedure and the Code of Civil Procedure of Georgia.

Besides, as already pointed out in my previous reports to the Parliament, very frequently courts make substantial errors when judging civil or criminal cases which, in the event of dismissal of cassation, cannot be further appealed in the court. That is why we are frequently confronted with violations of rights guaranteed by the Constitution, and the Public Defender has no mechanisms whatsoever to further protection and restoration of the abused rights. Due to these reasons, the right granted to the Public Defender under the Organic Law on the Public Defender "to approach relevant bodies with a request to examine the lawfulness of a judgement" remains on paper and is not realised in practice.

In order to remedy this situation, in 2000-2001 I repeatedly appealed to the Parliament of Georgia and the respective parliamentary committees with a request to consider making relevant amendments and additions to the Code of Criminal Procedure and the Code of Civil Procedure, however this request has not been granted, which leads to gross violation of the rights of the Public Defender, Georgian citizens and convicts guaranteed to them by the Constitution.

On April 30, 2002 in Recommendation #300/03 I invited the Minister of Justice to consider making relevant amendments and additions to the Code of Criminal Procedure and the Code of Civil Procedure. The Ministry of Justice of Georgia agreed to this recommendation and prepared proposals to be submitted for consideration to the Parliament of Georgia.

In order to further restoration of citizens' rights, the Public Defender of Georgia proposes that the following amendments and additions be made to the Code of Criminal Procedure and the Code of Civil Procedure of Georgia:

Article 21 of the Code of Criminal Procedure and Article 101 of the Code of Civil Procedure shall be amended as follows:

- In the first part of Article 21 of the Code of Criminal Procedure of Georgia, after the word "perform" - to add the words "and the Public Defender makes a recommendation to examine the lawfulness of a judgement; action on the recommendation is mandatory".
- To add to Article 101 of the Code of Civil Procedure of Georgia Article 101^1, with the following wording: "If there exists the grounds provided for in the law, it is possible to reopen a case on the basis of a recommendation made by the Public Defender; consideration of the recommendation is mandatory".

According to Article 12 of the Organic Law on the Public Defender, The Public Defender is entitled on his/her own initiative to examine the status of the protection of human rights and freedoms, if facts come into his/her notice of the violations of human rights and freedoms.

This provision of the law embraces also those cases, where a party has failed, within the period and in accordance with the procedure specified in the law of criminal procedure, to file an appeal for review of a valid judgement made by a district, appeal or cassation court, but the Public Defender believes that in the process of rendering judgement, human rights and freedoms were violated.

As the Code of Criminal Procedure does not provide for such cases, it seems necessary to develop adequate mechanisms to enable the Public Defender to make recommendations for respective courts to examine the lawfulness of a judgement.

On account of the circumstances mentioned above, part 1 of Article 518 of the Code of Criminal Procedures of Georgia must be amended to add the second paragraph reading:

- " Notwithstanding the expiration of a period allowed for appeal, the Public Defender of Georgia shall have the right to ex-

amine the lawfulness of a judgement and demand that it be considered upon cassational appeal".

Errors revealed in the course of examination carried out by recommendation of the Public Defender are to be considered as newly discovered circumstances. To this end, articles 593 and 594 of the Code of Criminal Procedure of Georgia, and Articles 422 and 423 of the Code of Civil Procedure of Georgia must add the following amendments:

- To add item 'c' to Para.3 Article 593, to read: " circumstances that point to a judicial error and that were discovered after the entry into force of a judgement".

Since the Public Defender is not a party to a trial, it is deemed necessary to add in Para 3, Article 594 of the same code after the word 'parties', the following wording:

- "whereas in cases provided for in the law, the right to make a recommendation shall be granted to the Public Defender".

For the same purpose, Para.1 of Article 422 of the Code of Civil Procedure of Georgia must be amended to add after the words "with an application" the following wording "on the recommendation of the Public Defender".

Para 1, Article 423 must be amended to add after the word "demand" the following wording: "also, cases that ended in valid judgements can be reopened in view of newly discovered facts on the recommendation of the Public Defender".

Article 596 of the Code of Criminal Procedure is silent about a decision to be taken in cases where, upon revocation and examination of a court judgement in view of newly discovered and newly revealed facts,

the appeal is deemed to be unfounded. Therefore, it is necessary to add to Para.1 of this article a new paragraph reading:

- " if the petition is deemed unfounded, a party shall refuse to reopen proceeding on the case'.

The said article says nothing of the time allowed for a process reopened on the basis of a well-founded appeal for review on account of newly discovered and newly revealed facts, therefore Para.2 of Article 596 is to be amended to add a final paragraph:

- "Proceedings on account of newly discovered and newly revealed facts have to be completed within a 3-month period. In special cases, considering the complexity of a case, its dimensions and public repercussions, the Prosecutor General of Georgia can extend the process for another 3-month period".

Procedural law of administrative offences requires similar changes to be introduced into the legislation.

Based on the provisions of item 'b" of Article 21 of the Organic Law on the Public Defender and considering that the Pubic Defender is not a party to a trial, Article 234 of the Code of Criminal Procedure shall be formulated as follows:

- "The Public Defender of Georgia is authorised to refer a recommendation to the bodies and officials listed in Para.1 of this Article to examine the lawfulness of a decisions taken by them. Consideration of the recommendation is mandatory."

The same recommendations have been formulated at the 74th Session of the UN Human Rights Committee, and in Paragraph 16 of the

Conclusions concerning the Second Periodic Report of Georgia studied in accordance with Article 40 of the International Covenant on Civil and Political Rights which explicitly states that though the Committee welcomes he appointment of an Ombudsman in Georgia, it expresses concern about the limitation of Ombudsman's power to have his/her recommendations implemented.

On Transfer of the Accused Persons from Police Custody to Pre-Trial Establishments under the Ministry of Internal Affairs with Bodily Injuries and Breaches in Respect of the Duration of Police Custody

In the 2000 and 2001 reports to the Parliament, the Ombudsman repeatedly pointed to a widespread practice of detainees' transfer from police custody to pre-trial establishments with bodily injuries and breaches in respect of the duration of police custody.

Respective appeals have systematically been referred to the leadership of the Ministry of Internal Affairs ad the Prosecutor General's Office with a request to take decisive steps to secure protection of detainees' rights.

According to the information provided by the Ministry of Internal Affairs of Georgia, the respective bodies of the Ministry have undertaken institutional and personnel arrangements to further restoration of detainees' infringed rights, including imposition of disciplinary penalty on officers whose offensive act or omission led to the violation of detainees' rights.

In January 2002 this issue was discussed at the Prosecutor General's Office of Georgia, and a number of steps were taken to remedy the situation. However, as shown by the Public Defender's inspection, notwithstanding the action by the Prosecutor General's Office, still frequent are the cases of detainees' transfer from police custody to pre-trial establishments with bodily injuries and breaches in respect of the duration of police custody.

In the period between January 1 and May 30, 2002, 131 accused persons with visible physical marks of injuries were transferred to prisons under the Department of Execution of Punishment, namely, to Prison #5 in Tbilisi, Prison #2 in Kutaisi, and Prison # 4 in Zugdidi: of these 20 were transferred in January, 18 – in February, 40 - in March, 5 – in April, and 15 - in May.

In the same period, 46 accused persons were transferred from the Tbilisi Department of Internal Affairs to Prison # 5 with different injuries: from Gldani-Nadzaladevi District Division of Internal Affairs – 4 detainees: from Didube-Chugureti District Division of Internal Affairs – 3 detainees; from Tbilisi Department of Internal Affairs – 25 detainees; from Vake-Saburtalo District Division of Internal Affairs – 2 detainees; from Mtatsminda-Krtsanisi District Division of Internal Affairs – 1 detainee; from Isani-Samgori District Division of Internal Affairs – 1 detainee; from the temporary detention isolator of the Ministry of Internal Affairs – 5 detainees; from Transport Police Department – 2 detainees; and 4 detainees listed with the Military Prosecutor's Office.

Persons kept in police custody in other parts of Georgia were transferred to Prison # 5 from: Kvemo Kartli Regional Department of Internal Affairs - 10 detainees; Shida Kartli Regional Department of Internal Affairs – 11 detainees; Kakheti Regional Department of Internal Affairs – 6 detainees; Samtskhe-Javakheti Department of Internal Affairs – 3 detainees.

Persons who arrived in prison with traumatic lesions showed varying degree of their severity. Among the recorded injuries were: cuts, excoriations, excoriations covered with purple scabs, haematomas in the eye socket area. For instance, E.G. Barbakadze arrived to Prison #5 on March 4, 2002 with lesions on the soles of the feet; A. R. Akheiani arrived to Prison #5 on March 3, 2002 with black-and-blue spots round both eyes and nose swelling; T.Metoshvili arrived to prison on March 14, 2002 with haematomas in the left eye socket area, dissected wound in the occipital area, excoriation on inferior limbs; E. Kripin arrived to prison on 17 March 2002 with lesions in the nose, forehead and neck area; M.G.Akubalia arrived on 6 March 2002 with haematomas in the right eye socket area and excoriations on the temple, left zygoma and under the left eyebrow; also dissected wound of the left eyebrow, multiple lesions of left foot toes, lesions on the head inflicted with blunt hard objects.

In the period between January 1 and May 30, 2002, 30 accused persons with visible physical marks of injuries were transferred to Prison #2 in Kutaisi: in January – 6, February – 6, March – 8, April – 6, May - 7 accused. Of these, from Tskaltubo District Division of Internal Affairs – 2; Bagdadi Division of Internal Affairs – 6; Imereti Regional Department of Internal Affairs – 1; Sachkhere Division of Internal Affairs – 1; Chiatura Division of Internal Affairs – 4; Khoni Division of Internal Affairs – 3; Vani Division of Internal Affairs – 1; Martvili Division of Internal Affairs – 1, and Terjola Division of Internal Affairs – 2 accused. Upon examination, A. Khachvani displayed multiple punctured wounds above knee joints on both inferior limbs; G.G.Vardanidze, T.Z.Gorgodze, G.R.Museliani – haematomas in the eye socket area; T.Sh.Bagaturia – gunshot lacerated wound, horizontal lesion of the mandibular bone on the neck lateral surface, also multiple excoriations on the face, haematomas in the eye socket areas on both sides.

Three accused persons were brought to Prison #4 of the Department of Execution of Punishment in Zugdidi with bodily injuries; on 14 March S.S.Mindadze was transferred from Abasha District Division of Internal Affairs. Upon examination, he displayed lesions in the area of the back, both inferior limbs, and bruises in the eye socket area on both sides; M.R.Jijava was transferred from Zugdidi Division of Internal Affairs with lesions in the eye socket and area and on the back. .

During the same period, 200 accused persons were transferred to the prisons of the Department of Execution of Punishment with a breach of the 72-hour period of police custody, namely – 183 accused persons were brought to Tbilisi Prison #5: in January – 51: in February – 31; in March – 69; in April – 18; in May - 14 accused.

More specifically: transferred with a delay of 1 day – 100 persons; 2 days – 16; 3 days – 40; 5 days – 7; 7 days – 1; 8 days – 5; 9 days – 1; 10 days – 2; 12 days – 1; 15 days – 2; 19 days – 3; 23 days – 3; 42 days – 1; 25 days - 1 accused.

47 accused persons were transferred from divisions of internal affairs in different districts of Tbilisi with a breach of the period of police custody: K.S.Chkhetiani – with a delay of 19 days, M.R.Bochorishvili – with a delay of 23 days, G.Z.Abramishvili – with a delay of 12 days, etc.

45 accused were transferred to Tbilisi Prison #5 from the region of Shida Kartli: from Gori District Division of Internal Affairs the accused Z.O.Zaridze was transferred with a delay of 9 days; I.M.Eladashvili – 5 days: A.G.Birvelishvili – 5 days, etc.

45 accused persons were transferred to the same prison from the region of Kakheti: V.I.Megrelishvili – with a delay of 7 days; L.M. Mkervalidze – 25 days; I.Z. Rekhviashvili – 5 days; G.I. Rekhviashvili

– 19 days; M.N. Piranishvili – 5 days; V.T. Kupatadze – 10 days, Z.O. Tibilashvili – 23 days.

23 accused persons were transferred to Tbilisi Prison #5 from the region of Samtskhe-Javakheti: R.V.Jikuri – with a delay of 8 days; A.K.Malkhasiani – 8 days; N.K.Pasternak – 24 days; L.A.Kukhianidze – 8 days; Gogochidze – 8 days; S.Khachaturyan – 5 days, R.V. Zazadze – 5 days.

13 accused were transferred to Prison #5 form Mtskheta-Tianeti region: from Kvemo Karti region – 10 accused persons, including N.M.Chikviladze – with a delay of 15 days.

Over the same period, 14 accused persons were transferred to Kutaisi Prison #2; in January – 7, April – 3, May – 4 persons.

Kutaisi Prison #2 received: from Terjola Division of Internal Affairs – 4 accused persons; Kutaisi Department of Internal Affairs – 5; Martvili Division of Internal Affairs – 1; Kharagauli Division of Internal Affairs – 2; Samtredia Division of Internal Affairs – 1; Lentekhi Division of Internal Affairs – 1 accused person.

In the mentioned period, 3 accused persons were installed in Zugdidi Prison #$ with the breach of the period of police custody established by the law.

The breach of the mentioned rights of detained persons was discussed at the enlarged session of the Collegium of the Ministry of Justice. The Collegium of the Ministry decided to instruct:

P.Mkheidze, Chairman of the Department of Execution of Punishment to: a) strengthen control in Kutaisi Prison #2, Zugdidi Prison #4 and

Batumi Prison # 3, with a view to ensuring protection of human rights in these institutions, so that every fact be recorded of arrival to prison of persons with physical injuries and a breach of the 72-hour period of police custody, stipulated in the Georgian Constitution. Materials of investigation on such facts shall be sent without delay to the respective procuracy, and every such fact shall be notified to the Department of Penal System Reform and Monitoring at the Ministry of Justice, Public Defender, Independent Board of Public Control over Penitentiary System – in order for them to carry out further monitoring; b) establish systematic control in penal institutions over inquiry into notifications and materials concerning the above facts.

G.Janashia, Head of the Department of Penal System Reform and Monitoring: to carry out systematic control over facts of arrival to prison of persons with physical injuries and a breach of the 72-hour period of police custody, and analyse this information on a monthly basis;

A.Borjadze, Head of the Medical Department: to give special attention to the examination of detained persons brought into prison with physical injuries, in order to prevent deterioration of their health status as a result of hidden traumas, or other injury-induced results;

K.Ushikashvii, Head of the Economic Department: to provide necessary funds to ensure the photographing in prisons of bodily injuries of detained persons, in order to support materials of the inquiry with the forensic expert's opinion accompanied by photography;

The Independent Board of Public Control over Penitentiary System of the Ministry of Justice was invited to intensify monitoring over facts of arrival to prison of persons with physical injuries and a breach of the 72-hour period of police custody, in order to react to these facts.

Control over implementation of this decision was entrusted to K.Koberidze, Deputy Minister of Justice.

In his letter #19/1-8-2007 of 17 July 2002, the Deputy Prosecutor General, V. Benidze informed me that, given the relevance of the issue in question, particular attention was given to the elimination of the said abuses. In this connection, the relevant materials were sent to the subordinated procuracies, and control was established over fulfilment of instructions. Apart from that, the Prosecutor General's Office was verifying the materials received from the Public Defender, and upon completion of verification, the assessment had to be made in connection with the issue of liability for abuses. Detailed information on the results of verification was to be sent to the Public Defender.

However, so far, I have not received any conclusive final information concerning the results of the verification.

It is to be noted, that in a number of cases, delays in the transfer of detained persons to pre-trial establishments are caused by irresponsible attitude on the part of the courts, which manifests itself in the fact that court decisions concerning the application of detention as a the preventive measure are not sent in a timely manner to the Ministry of Internal Affairs, and its subordinate bodies or investigation services. Instead of judge's orders, the courts frequently issue a note that the person concerned has been given detention as a preventive measure. This results in delayed transfers of the accused to prisons and the situations where they are subjected to physical or psychological pressure in order to force them to confess.

In the period between 4 and 6 July 2002, the accused Sh.Tinikashvili, to whom the Mtatsminda-Krtsanisi District Court applied preliminary detention, was, in violation of Article 137-e of the Code of Criminal

Procedure, left in police custody of the Ministry of Internal Affairs where, in the presence of F.Kenkebashvii and M.Chapodze, senior officers of the criminal investigation division, he was forced to confess that on 2 June 2002, he had attacked a minibus to steal election ballots which he then burnt on the territory adjacent to Ponichala. In his complaint Sh. Tinikashvili states that he was kept in police custody against the law, and was threatened with torture to confess.

It was found that on 4 July 2002 the court's order concerning Sh.Tinikashvili's detention and his transfer to Prison #5 was not served either to the convoy or to the investigator. The judge's order concerning Sh.Tinikashvili's detention was received by the preliminary detention isolator only next day, i.e. 5 July. However, the order was not fulfilled immediately and the accused was transferred to prison only on the third day, i.e. on 6 July.

Project "Rapid Reaction Group" Final Report

The Project was financed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The period covered was 5 December 2001 to 5 June 2002.

The Project was implemented by the "Rapid Reaction Group" established at the Public Defender's Office. Part 1 of the project aimed to reveal abuses of citizens' rights at the places of preliminary custody, whereas Part 2 addressed violations of the rights of military servicemen (disciplinary units, or the so-called "gauptvachta" at military commandant's offices).

The Project implementation covered the Gldani-Nadzaladevi District

Police Department of Tbilisi and its 8 sub-units, and at the Tbilisi Military Commandant's Office).

Besides, the group also reacted to notices made by phone on facts involving the violation of the rights of residents in other districts or regions of Georgia, namely, in Marneuli District, the regions of Shida Kartli, Mtskheta-Tianeti, different districts of Tbilisi (Vake-Saburtalo, Mtatsminda-Krtsanisi, Didube-Chugureti and Isani-Samgori.

The goal of the Project was to carry out regular monitoring in places of preliminary custody at police stations and the military commandant's office with a view to minimising violations of human rights and freedoms; enhance co-operation and build confidence between the police and the public; ensure better transparency in the work of the police and create conditions conducive to better performance.

The monitoring was performed by way of unannounced visits to police stations and the commandant's office. Also, immediate reaction was provided on facts of which notice was given to the group. The interval between visits was 72 hours – i.e. the period allowed in the Georgian law for keeping a person in preliminary custody. The interval selected enabled the group to effect monitoring of cases known to it and examine the condition of persons in custody, to verify the duration of custody for inmates registered in police files, identify the officer responsible for taking the person concerned into custody; elucidate undocumented cases . The group examined police stations' premises, ascertained the number of persons in police custody, established whether or not they were provided access to defence lawyer, whether or not they were subjected to physical or psychological coercion or other forms of ill-treatment. When appropriate, information was made available to the Public Defender for preparing the necessary recommendations and petitions. The relevant materials were also made available to mass

media. The group examined every case of breach and abuse, systematised the problems revealed, directly contacted the persons who suffered the abuse of their rights, in order to look deeper into the problems and resolve them. The group met with police officers, persons kept in police custody or disciplinary cells at the military commandant's office to raise their awareness of, and educate them on human rights and fundamental freedoms, the role of the Public Defender in the protection of these rights and freedoms (the persons met were provided with the text of the Law on the Public Defender and booklets on the Public Defender's mandate and competence). The group co-operated with non-governmental organisations, namely: Human Rights Activists, the Youth Parliament, Liberty Institute, Former Political Prisoners for Human Rights, Young Lawyers' Association; Where a military component was involved, the group co-operated with the Union for the Protection of Warriors, Union for the Protection of Georgian Soldiers' Rights, the Council of National Guards' Veterans, with the international organisation "White House". A number of conferences and special sessions were held with a view to discussing a number of important facts.

The monitoring exercise showed that over the 6-month period in 2002, the Gldani-Nadzaladevi District Police Department of Tbilisi and its subordinate units apprehended 234 persons, of these:

- 165 persons were placed in police custody; 82 - by the decision on keeping in custody, and 83 – by the judge's order. 43 persons were placed in custody in administrative offenders' cells;
- 69 offenders were released on a written undertaking not to leave (recognisance not to leave) and placed under oversight by police;
- 122 persons were transferred to pre-trial prison;

- 54 persons kept in custody (with no access to lawyer) failed to be afforded timely legal assistance due to the social and economic predicament of their families.

In the course of the project, the Rapid Reaction Group received 118 telephone calls, of these 17 were not relevant to the project focus.

During 6 month the group effected 121 unannounced visits and 15 spot-checks, made to:

- Gldani-Nadzaladevi District Police Department – 11 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 1 – 15 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 2 – 12 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 3 – 8 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 4 – 7 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 5 – 10 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 6 – 9 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 7 – 7 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 8 – 8 visits, 1 spot-check;
- Gldani-Nadzaladevi Police Station No 9 – 8 visits, 1 spot-check;
- Mtskheta-Tianeti region - 2 visits, 1 spot-check;
- Kvemo Kartli region - 4 visits;
- Mtatsminda-Krtsanisi District Police Department – 4 visits, 1 spot-check;
- Isani-Samgori District Police Department – 7 visits, 1 spot-check;
- Didube-Chugureti District Police Department – 6 visits, 1 spot-check;

- Vake-Saburtalo District Police Department – 3 visits, 1 spot-check;
- Tbilisi Military Garrison Commandant's Office – 57 visits.

During the six months of the project, the group covered regions where grievous abuses of human rights occurred; concrete illustrations are given below. The operation of the Project coincided in time with the appointment of a new chief of the Gldani-Nadzaladevi District Police Department. It is to be noted that the share of non-Georgian population in this district is fairly high, and the majority of the population are not familiar with the Georgian Constitution and have no knowledge of their rights, which is conducive to unlawful conduct of certain police officers.

The group became aware of the much-talked-of fact of beating of J.Teloev and D.Kalashyan. To investigate this fact, the group met, on a number of occasions, with T. Anjaparidze, new Chief of the District Police Department who expressed his willingness to co-operate with the group. It was deemed necessary to jointly investigate every relevant fact in order to have the rights of the abused citizens protected, and in so doing, help to "re-build a bridge" between the public and the police. Only a few months later, opinion surveys among residents of the Gldani-Nadzaladevi District and interviews conducted by the group among district residents and persons in police custody, indicated that the new chief of the district department of internal affairs is a highly qualified and knowledgeable professional who works constructively towards ensuring respect for human rights in his department and tries to raise awareness of his subordinates on, and encourage observance by them of the provisions contained both in national and international law regarding the protection of human rights and freedoms.

Information about the group activity and the "hot telephone line" operated by it was made known to the public through mass media,

press-releases published in newspapers: "Akhali Taoba", "Dilis Gazeti", "The Georgian Messenger", "Rezonansi", "Georgian Times", and news programmes of almost all TV companies in Georgia.

During the six months of the project, the Public Defender made 54 recommendations addressed to Prosecutor General, Mr. N.Gabrichidze, and Minister of Internal Affairs, Mr. K.Narchemashvili, concerning violations of citizens' rights and breaches of criminal procedure legislation. Recommendations emphasised the need for law-enforcement bodies to establish the factual circumstances of offence or other unlawful acts, and persons committing them; bring up the question of liability of police officers breaching the law; ensure proper application of the law; not to allow initiation of criminal proceedings in respect of innocent persons; create conditions to rectify investigation errors; protect the rights and freedoms of a citizen, suspect, accused person, victim, all other parties of the criminal procedure; promote among the public respect for the law, humanism and justice.

The Project was financed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) as part of the torture prevention programme. The assistance and support given to the Public Defender's Office by the Human Dimension Office is highly commended, as are recommendations by Mr. Krasimir Kanev, an international expert seconded to the Public Defender's Office, made on issues of concern for the Rapid Reaction Group. Last but not least, the information above compels the group members to emphasise that any action by any citizen needs to be based on the rule of law – an underpinning of the law-governed state.

The Rapid Reaction Group elucidated flagrant violations of human rights and freedoms by certain members of law-enforcement bodies that brought pain and sorrow to the victims. The relevance of these

issues dictates the need for this project to be broadened further, to embrace areas outside Tbilisi, since the low level of legal culture both among general public and the police in the Georgian provinces and complete ignorance about human rights system are a matter of very serious concern.

The monitoring of police operation can be carried out to reveal the facts, and to remedy the situation in respect of:

- torture, degrading treatment;
- unlawful apprehension and custody, warrant less search;
- use of firearms when not strictly needed;
- use of physical force;
- breach of the 72-hour period of custody guaranteed by the Constitution;
- negligence by police of law abuses;
- identification of the so-called "professional witnesses" of arrest and search;
- discriminatory treatment of homeless people, youth, members of religions or ethnic minorities.

Reactions received in response to recommendations made by the Public Defender to relevant government agencies and, particularly, to the leadership of the law-enforcement system, indicate that facts referred to in the recommendations were properly confirmed. However, the investigative bodies protract, on occasion, deliberately, the fulfilment of relevant instructions, to avoid responsibility. Analysis of the short period covered by the project points to its effectiveness and a standing need to react expeditiously to the violations of the rights of public and certain categories of citizens.

At the same time, we cannot bypass the problems confronting members of law-enforcement bodies, such as:

- Low job remuneration and arrears in payment;
- Low level of legal knowledge in the field of human rights;
- Difficult work conditions (power shortage in winter, shortage of duty vehicles, petrol, radio communications, and winter uniforms), lack of financing;
- Inadequate social protection of police staff and their families;
- Non-existence of an individual-specific approach to a detained person; priority attention needs to be given to the selection criteria at the time of recruitment of law-enforcement officials, their education and professional training, to the refurbishment and renovation of police premises.

As far as the military commandant's offices and the problems encountered there are concerned, the relevant recommendation was sent by the Public Defender to the President on Georgia with a view to expediting the implementation of measures to address violations of the rights of persons in military service:

To the President of Georgia
Mr. Eduard Shevardnadze

" Mr. President,

In recent years, serious attention in Georgia is devoted to the protection of human rights and freedoms, which is in the first place guaranteed by fundamental rights and freedoms enshrined in Chapter 2 of the Constitution of Georgia. The protection of human rights and freedoms is supervised by the Public Defender of Georgia.

Proceeding from the authority and mandate given to, and in conformity with the obligations imposed on the Public Defender under the law, let me remind you that under Para. 3, Article 18, Chapter Two of the

Georgian Constitution: "The detention of an individual is permissible in circumstances defined by the law by an official specifically so authorised. The person kept in custody or restricted otherwise is to be brought before the court not later than 48 hours following his apprehension. If, within 24-hours, the court fails to decide that the person concerned is to be remanded in custody or subjected to another preventive measure, this person must be released without delay". At the same time, Resolution # 294 of the Head of State dated 2 September 1994 "On Approval of Disciplinary Regulations of the Georgian Armed Forces" allows in paragraphs 44, 45, 46, 52, 53, 54, 55, 56, 57, 59, and 60 the application to servicemen, as a penal measure, of detention of varying duration (up to 10 days). At the same time, under this resolution, the subjection of servicemen to detention does not require any decision by the court, which is in clear conflict with the country's Constitution.

Proceeding from the above, I recommend to amend the said resolution in order to bring it in line with the Constitution".

On Abuses of Human Right and Freedoms Revealed by the Rapid Reaction Group

The Rapid Reaction Group was approached by the parent of under-aged Z. Golubiani, saying that police officers were deliberately victimising her son in order to extort money. Z. Golubiani's father, V. Golubiani works at the Tax Inspection. In July 2001 Z. Golubiani was apprehended in the village of Kliani, in the Kaspi district, by police officers of the Kaspi Division of Internal Affairs who accused him of making the so-called "managua" – a narcotic substance. Allegedly, he was apprehended immediately after the transfer of the drug. In his application addressed to the Public Defender of Georgia, Z. Golubiani's father pointed out that his son became victim of a deliberately plotted

provocation. At the police station, the person concerned, in clear violation of the procedural norms of preliminary inquiry, was subjected to physical coercion and psychological pressure. The then chief of the Kaspi Division of Internal Affairs conducted the preliminary inquiry into the case without the lawyer and the suspect's parents present during the interrogation, and having the suspect exposed to alcohol. The same official demanded from the suspect's parents to pay a considerable sum of money as bribe, in order to have the "crime" allegedly committed by their son covered up. The parents refused to pay, for which reason they were threatened by the police officer and driven out of the police premises. The provocation that started in Kaspi, then moved to Tbilisi: on 2 April 2002, police staff of the Didube-Chugureti Police station, without any reason whatsoever, apprehended Z. Golubiani at the bus stop, using force in the process and brought him to the Didube-Chugureti Police Station # 2; for unknown reasons, the police officers involved in the previous provocation, were present during the interrogation. Again, a demand was made of paying them money, which Z. Golubiani refused to do. They threatened with aggravating the offence and then handed the case to the procuracy. During the interrogation, preference was given not to his present teachers, but to some Narkodashvili, an IDP from Samachablo, who for three years now has been working as teacher at secondary school # 175 of the Isani-Samgori district of Tbilisi.

After meeting the director of the school at the Public Defenders' Office, the group invited Z. Golubiani's teacher, however the latter did not show up for the meeting. The investigation was delayed. Meanwhile, the teenager was subjected to 3 months of remand, and he was transferred to pre-trial prison # 5, where he was visited by members of the Rapid Reaction Group, and by representatives of a number of NGOs: Former Political Prisoners for Human Rights, Liberty Institute, Young Lawyers' Association. After detailed examination of the case,

it became clear that the teenager concerned was subjected to impermissible pressure and coercion, resulting in the violation of his rights. A recommendation was sent to the Prosecutor General of Georgia, stating that the investigation was not conducted objectively. As a follow-up to this recommendation, the investigation was taken under control, and finally, on 21 June 2002, Z.Golubiani was released from the courtroom, during trial.

The Rapid Reaction Group was also approached by teenager D. Asaturov's mother. According to her allegation, starting from 1999 staff members of the Mtatsminda-Krtsanisi District police had systematically subjected their family to physical violence and coercion. Namely, D.Asaturov, a teenager, was beaten unconscious, which led to *commotio cerebri* (concussion of the brain). The parent declared to the "Inter-Press" that police told the family to pay them 500USD if they wanted their son to be left in peace. The family paid the police 120 USD and 400 Deutsche Marks. As the family failed to pay the remaining sum to the police, D.Asaturov, together with another teenager, M. Gogunashvili, were apprehended on 9 April, allegedly, for "illegal keep of arms ". It is to be noted that the two teenagers were engaged in work in Perovskaya street; they were washing cars to support their socially unprotected families (no one in the family has employment). The minors' case was investigated by N. Dgebuadze, investigator on probation at the Mtatsminda-Krtsanisi Procuracy. The Mtatsminda-Krtsanisi District Court decided to apply 3-month detention. The Public Defender approached the Prosecutor General with the recommendation that the case in question be objectively investigated by the relevant agencies. However, up until now the court trial is delayed, with many breaches evident in the case.

The Public Defender filed a petition to the Prosecutor General of Georgia, and the Minister of Internal Affairs pointing to the breaches

during the teenagers' apprehension and illegal actions by the police that exerted physical coercion in order to force the teenagers to testify. In the response from the Prosecutor General's Office it is indicated that the investigation did establish the facts of overt violence against the minors, which led to the violation of their rights, and pointed to the elements of crime in the conduct of police officers Veshaguridze and Matiashvili. On 20 May 2002, criminal case # 0602853 was filed with the Mtatsminda-Krtsanisi Prosecutor's Office against the officers, accused of committing crime punishable under Article 332, Para.1 of the Criminal Code of Georgia.

Intervention by the Public Defender led to a release of K.Aitsuradze, 16, who was subjected to preliminary detention for stealing two bottles and an aluminium pot. The Public Defender visited the detainee at Prison # 5, and considered it necessary to ask defence lawyer D.Abesadze, member of the Young Lawyers' Association to defend the interests of the person concerned.

In the course of the project, a meeting was held on the initiative of the Rapid Reaction Group with the Head of the Department for Minors' Affairs of the Ministry of Internal Affairs, to discuss the condition of children in a particularly difficult situation – the so called "street children". We believe it would be expedient to invite for co-operation 9 students of the Department of Psychology at the Tbilisi State University who expressed their willingness to work without remuneration, as neglected and difficult children have psychological problems and the work with them requires a measure of delicacy. The meeting was attended by the Director of the Minors' Affairs Co-ordination Centre at the Ministry of Education. Due to co-operative efforts of those involved in the initiative, the so-called "street children" were sent for summer holiday to Children's Rest Home in Kakhreti.

We deem it important for the district local government bodies to:

- Establish the "difficult child" concept;
- Identify the root-causes of the "difficult child" phenomenon;
- Seek practical ways to tackle this problem;
- Promote the family institute.

Facts concerning breach of 72-hour period of custody and physical coercion revealed by Rapid Reaction Group

- 21.12.2002 – attempt to use force against T.Saparova in order to have her delivered to Didube-Chugureti Police Station #2;

- 20. 01. 2002 – the accused N. Chipashvili was subjected to physical coercion by police officers at the Vake-Saburtalo Police Station to force him to give testimony. The said person cut veins at the Tbilisi Prison # 5;

- 29.01.2002. - A.Licheli, brutally beaten by police officers in Gori, was examined by forensic expert. After examination the preventive measure applied to him was cancelled and he was released. After 5 months, in May, he was found drowned in river in unclear circumstances. The case is being investigated;

- 05.02.2002. - V.Markilov was illegally apprehended and kept in custody by officers of the Isani-Samgori Police Department. As a result of beating he received eye lesion and was referred to Tbilisi Hospital # 1.

- 02.02.2002. - G. Khidasheli was brutally beaten by 4 police officers at 12 p.m. at the Samgori underground station exit. He was admitted to Tbilisi Hospital # 1 with a major open wound of the head;

- 25.02 2002. - I. Natroshvili, a student of secondary school No 71, was apprehended at 17.00 hrs. The record of apprehension was made at the Gldani-Nadzaladevi Police department with a 5-hour delay, at 22.00 hrs;

- 20.03.2002. - S. Rostiashvili was illegally apprehended at 18.00 hrs, after which throughout the night he was brutally beaten by policemen in the village of Mukhrani in Mtskheta district;

- 10.04.2002. - D.Sutiashvili, resident in village Digomi in Mtskheta district, was illegally apprehended at 14.00 hrs in Gagarin street, in his personal car, after which he was taken to the Vake-Saburtalo Police Station # 1. As of 17.00 hrs. on 11.04. 2002, no record of his apprehension was present in the police register;

- 09.02.2002. - N. Isakadze was illegally kept in police custody at the Isani-Samgori Police Station # 1. Throughout the night he was subjected to physical pressure and coercion by police. The person concerned was unwilling to undergo forensic examination as he was not guaranteed against a repeated attack and violence by police;

- 09.03.2002. - A.Vardosanidze, born in 1978, was illegally apprehended and kept in custody by police officers of the Isani-Samgori Police Station # 2;

- 20.03.2002. - V. Bezhikoshvili, 21, reared in the orphanage, was illegally apprehended by police of the Didube-Chugureti district. In protest, the person concerned inflicted incisions on his face;

- 14.05.2002. - brothers Gia Gorozia and Lasha Gurgenidze were apprehended in Batumi by staff members of the Gldani-

Nadzaladevi District Department of Internal Affairs. The persons concerned were convoyed to custody in Tbilisi without a court decision.

- 16.05.2002. - at 18.30 the police staff of the Saburtalo District Police Station # 2 apprehended in the street G. Georkhelidze, born in 1982. No record of apprehension was made in the police register.

Special Case

Licheli, accused of misbehaviour and of putting up resistance to police protecting public order, was released by the Tbilisi Regional Court and put under police surveillance. On 29 January 2002, he had been apprehended by police officers of the Gori Police Department and brutally beaten upon arrival to the police station. On 4 February, his lawyer applied to the "Rapid Reaction Group" for assistance. Next day the person concerned was given forensic-medical examination. During the examination, he displayed the following bodily injuries: bruises, crushed wounds, removal of nails from the nail phalanxes on 4 fingers of the left hand by a hard, blunt object. The injuries were qualified as light and resulted in brief deterioration of health condition. Based on the examination conclusion, the Public Defender of Georgia addressed the Prosecutor General with a written recommendation. Criminal proceedings were initiated against the police officers. Although Licheli's case was taken under control by the Public Defender's Office, in May he was found drowned in the river, under unknown circumstances. The "Rapid Reaction Group" intends to re-investigate the case.

In the Report of the Public Defender of the second half of 2001 concerning the situation of protection of human rights and freedoms in

Georgia, a mention was made of the case, revealed by the "Rapid Reaction Group", concerning the violation of human rights of Teresa Saparova and her 74-year old blind father, and the reaction of the Public Defender to this matter. However, I have to revert to this case again. For 9 months the Didube-Chugureti district court has been protracting the consideration of the case, concerning a disputable apartment in Tbilisi. The Court fails to make a decision provided for in the law. On the basis of the materials of the case, the "Rapid Reaction Group" will go back to the case after its consideration by the court.

Citizen Kh.P. applied to the Public Defender and the "Rapid Reaction Group" with a complaint concerning the following case: her child was taken by the grandfather who would not return him to the parents. The Krtsanisi-Mtatsminda district court considered the case concerning the return of the child to his parents but the grandfather would not recognise the action and explained that his daughter, child's mother Kh.P, lived with her former husband - a mentally insane person. We examined the case and met both sides. It became clear that the grandfather was violating the law. According to paragraph 1197 of the Civil Code of Georgia, a child has the right to live and be raised in the family. Paragraph 1198 of the same Code stipulates that the parents have an obligation to raise and take care of the children, protect the rights and interests of their under-aged children. Hence, an under-aged child should live in the family. The judge satisfied the claim and made a decision to return the under-aged child N.B. born on 13 August 1992, to his mother Kh.P. However, the execution of the decision has been protracted up until now. On 21 January 2002, I applied to the Minister of Justice asking him to have the decision of the court implemented in line with the effective legislation, and to have the child returned to the mother. Long-term isolation of the child from the mother causes alienation, which in future may complicate the execution of the court decision. The Ministry of Justice answered that despite multiple

efforts of the officer of justice, the decision of the court, for unclear reasons, failed to be fulfilled. These proceedings were more than once attended by the children's psychologists and teachers. The conflict between the sides has a negative impact on the under-aged child. The Convention on the Rights of the Child states explicitly that the child shall not be an object of illegal infringement on his personal life or his life in the family.

We, for our part, would note that the child's mother is known to be a decent and caring parent. Her child was well taken care of and used to go to school with his lessons always prepared. No one has ever noticed acts of violence by Kh.P against her child. This is reflected in the application of the parents of the 7th Gymnazia to the Public Defender, stating that decency and diligence of the child is to a large extent due to her role, and that no facts of beating have ever been observed.

We are surprised by the fact that the Chairman of the Department applied to the court while, according to the Regulations of the Department approved by the Minister of Justice, the executive shall be guided by resolution "On Execution of Legal Process". Concerning this case, he could have applied Para.3, Article 88 and transfer the child to a neutral zone – a children's institution, to be observed by experts, and from there the child would have been returned to his mother. If, later, the child refused to stay with his mother and wanted to return to his grandfather, his interests would naturally prevail.

Unfortunately, this is not the only case, when due to indifference and partiality of different officials, the decisions of the court are not implemented.

The case in question is taken under control of the Public Defender.

As a result of intervention by the "Rapid Reaction Group", by the recommendation of the Public Defender, the widow of T. Mamiani, who was killed in Abkhazia during the conflict, was not evicted from the house.

And finally, I would like to briefly outline future activities in this direction.

Protection of human rights and freedoms has been among the most important problems for people. However, some of the state institutions violate these rights. In the process of building civil society, it is crucial to continue this project to enable the most vulnerable segments of the country's population to escape the violence that is still widespread.

On Inappropriate Consideration of the Public Defender's Recommendations by the Prosecutor General

On the basis of Article 21, Para. "g", "d", "e" of the Organic Law "On the Public Defender of Georgia", in the period under review I regularly applied to the Prosecutor General of Georgia with recommendations and suggestions on the restoration of the citizens' violated human rights and on the liability of perpetrators.

On September 25 and 26, 2000, on February 22, April 4, May 7, June 6 and 21 and August 15 of 2001, on January 23, February 11, April 2, May 7, June 4, June 7 of 2002 I applied to the Prosecutor General with the recommendation letter concerning the liability of the officials of the Investigation Department of Ministry of Security, Prosecutor General's Office and Military Prosecutor's Office for illegal imprisonment of T. Shapatava and the initiation of unfounded criminal action against him, also for the initiation of unfounded criminal action

on desertion against R. Chaduneli, illegal imprisonment of V.J. Apkhaidze, V.T. Gvenetadze and Sh.J. Tsuleiskiri on charges of murder of V. Bichuk.

On December 20, 2001, on April 4 and 22, May 14, June 7, July 12 and 18, 2002 I applied to the Prosecutor General of Georgia with recommendations #1333/03/897-m, #527/03/897-m, #604/03/897-m, #936/03/897-m, #736/03/404-m, #1182/03/897-m and #1192/03/897-m. concerning an unfounded dismissal of the teachers M. Murusidze and M.Abrakhadze from I. Otskheli Gymnazia in Kutaisi, and the initiation of criminal action against G. Tevdoradze, director of the same educational institution for fraud, also concerning the case on rape of M. Mzagoshvili.

On October 16 and December 20, 2001, on February 8, May 14, June 21, June 24 and July 12, I applied to the Prosecutor General 2002 with recommendations #1041/03/903-I, # 1335/03/903-I, # 14/03 concerning the re-initiation of proceedings in respect of U. Avaliani and T. Kurdiani case on account of newly discovered circumstances. On May 20, July 12 and August 1, 2002 I applied to the Prosecutor General with recommendations #29/03/4, # 30/03/4 and 22/03/4 on complaint of Z. Abashidze, concerning refusal to initiate action against notary of the Lanchkhuti district L. Ramishvili, also on the initiation of action for fictitious delivery of black tea to the English-Israeli-Georgian JV Sun Tree.

On July 20, 2001 and February 8, 2002, April 22, 2002 and June 7, 2002 I applied to the Prosecutor General with recommendations #614/03/624-m, #183/03/624-m, #613/03/614-m and #936/03/624-m on the biased investigation and protraction of the case concerning M. Mikia's death as a result a drop from the window of the premises of the Poti Department of Ministry of Internal Affairs.

On February 7, 2002 and April 25, 2002 I applied to the Prosecutor General with recommendations #153/03 and #667/03-191 requesting to withdraw refusal and to initiate action concerning the dismantling of high voltage power line and the theft in the territory of "Lomtagora" sheep farm in Marneuli district.

Despite multiple detailed recommendations referred to the Prosecutor General, most of them have not been fulfilled. Apart from that, considerations and arguments expressed in the response letters of the Prosecutor General's Office are not based on the provisions of the effective Code of Criminal Procedure and Labour Code. I do not share these considerations. Some of the recommendations have been fulfilled as a result of my persistent demand. These are recommendations concerning the complaints by M. Murusidze's and M. Akhrakhadze's, initiation of action against G. Tevdoradze, director of the Otskheli Gymnasia No1 in Kutaisi for fraud, on the reopening of proceedings on R. Chaduneli's case on desertion on account of newly discovered circumstances.

By the judgement of August 3, 1993 of the Tbilisi district court T. Shapatava was acquitted under Part I, Article 79, parts I and II, Article 160, Articles 213 and 214 and was released from the court room.

After release from unlawful detention, T. Shapatava applied to the court on the compensation for moral damage. In order to avert possible responsibility, on December 29, 1999, the Prosecutor General, under the same motive and on account of new circumstances of the case discovered by G. Parulava, the prosecutor of the Division of Oversight over Legality and Investigation Supervision at the Security Service of the Prosecutor General's Office, initiated proceeding on case #643. Investigation Department of the Ministry of Security was tasked to investigate the case.

We applied several times the Prosecutor General with recommendations stressing the unfounded character of the said decision and asked him to put an end to the procrastinated investigation and close the case.

In view of the above, in letter #765/03/627 of August 22, 2001 to the Prosecutor General, I reserved the right to raise the question on the liability of the Prosecutor General and all the officials of the Ministry of Security in case the court would refuse to satisfy the complaint concerning the review of the court's decision on T. Shapatava. As a result of their unfounded decision, T. Shapatava had been subjected to unlawful imprisonment; and action concerning review on account of new circumstance was unfounded too.

By judgement # 247 of December 26, 2001 of the Criminal Law Chamber of the Supreme Court, the Prosecutor General's motion on cancelling the acquittal on August 3, 1999 of T. Shapatava on account of newly discovered circumstances was not satisfied.

Proceeding from the above, in recommendation #45/03/627 of January 23, 2002, under Articles "b", and "d", paragraph 21 of the Organic Law "On the Public Defender of Georgia", I demanded from Prosecutor General to consider the issue of liability of all officers of the Ministry of Security and Investigations Department of the Prosecutor General's Office, who violated T. Shapatava's rights and the rights of the others by initiating criminal action, subjecting him to unlawful imprisonment, by reopening action on account of newly discovered circumstances and by conducting protracted investigation.

The Deputy Prosecutor General B. Bitsadze on March 13, 2002 by letter #13-28-98/2002 and with the argument, that in accordance with paragraph 136 of the Labour Code, 6 months had passed after the disciplinary error, refused to fulfil the recommendation without any

grounds for such refusal. Nothing was mentioned, deliberately or nor deliberately, on the issue of liability of the people, who, through incorrect decision, reopened proceedings on the case on account of newly found circumstances.

In the recommendation #707/03/627 of June 7, 2002 I drew the Prosecutor General 's attention to the fact, that the opening of proceedings on criminal case and initiating criminal case do not differ from each other as it was pointed out by the Prosecutor General's Office in the aforementioned letter, but represent a certain category of legal proceedings. The re-institution of proceedings on the criminal case on account of newly discovered circumstances represents the action prescribed by procedural criminal law that considers, in the context of criminal proceeding, the institution of proceedings, conduction of investigation, and submission the case to the court, cancellation of sentence by court, returning of the case for additional investigation or the possibility of new court decision, etc. (see Parts I and II of Article # 596 of the Georgian Criminal Code containing this requirement). When complaint on the criminal case on account of newly discovered circumstances is well-grounded, Georgia's Prosecutor General requests the criminal case, institutes proceeding on the basis of the complaint and tasks either investigator or prosecutor with investigation, which may result in a resolution on the review of the case, depending on the results.

On July 7, this year, I drew the attention of the Prosecutor General to this issue with my recommendation # 117/03/329-S (# 117/03/329-S). Besides, I pointed to the circumstances that I outlined in my previous recommendations. They were not only about the responsibility for illegal detention of T. Shapatava, but also about the responsibility of the officials of the mentioned institutions. They re-instituted unfounded legal proceedings against Shapatava reportedly because of newly

discovered circumstances, but in reality they did it for the purpose of having the judgement of acquittal withdrawn and cancelled.

It should be noted that on April 2, 2002 I addressed the Minister of Security of Georgia with the recommendation #502/03/627 on subjecting to disciplinary liability the officers of Investigative Department of the Ministry of Security for the above violations. However, the minister has so far not provided information to this effect in breach of the provisions of Article 24 of the Organic Law "On the Public Defender of Georgia".

Therefore, the leadership of the Prosecutor General's Office and Ministry of State Security by not imposing disciplinary liability on their officers for the violation of the rights of T. Shapatava and others, refuses to fulfil the founded recommendations of the Public Defender, and thus create a precedent of the violations of human rights in their institutions, which I can't comply with in any case.

* * *

Ramaz Chaduneli suffers from congenital dislocation of the hip joint. Difference between lower limbs was 4-5 cm, which caused his lameness. The person concerned was undergoing medical treatment at the Surami traumatological hospital. However, he was conscripted for military service by the Borjomi district military commissariat in 1997. During the service, R. Chaduneli was hospitalised several times. He repeatedly requested assistance from the military unit command, but his request was not granted, which compelled Chaduneli to leave the unit without permission. He was sentenced to 3-years' imprisonment on charges of desertion.

On December 5, 2000, on my request, Chaduneli was given medical examination at the central hospital of the Ministry of Defence of Georgia.

The examination found him only partially suitable for military service, on the basis of diseases specified in Para. 65 of Order # 360 of the Minister of Defence issued in 1996, and he was transferred to reserve.

From there on, I applied to the Prosecutor General of Georgia with recommendations # 114/07/231-Ch on February 22, #251/07/231 –Ch on April 4, #560/04-12/231-Ch on July 6, #215/04-2/231-Ch on February 11 and #909/04-12/23, concerning the review of Chaduneli's criminal case on account of newly discovered circumstances and withdrawal of the judgement. After several reminders, on June 29, 2002, the Prosecutor General informed me in his letter # 22-82-02 of approval of conclusion on May 14, 2002 concerning the review of the case on account of the newly discovered circumstances. By the judgement of Criminal Law Chamber of the Supreme Court of Georgia, of May 30, 2002 the judgement of Kutaisi city court of December 21, 1999 on Chaduneli' criminal case was cancelled. Proceeding was closed in view of the absence of *corpus delicti*, as stipulated in the Criminal Code of Georgia.

Thus, Chaduneli's violated rights have been fully restored. However, the fulfilment of the recommendations of the Public Defender was delayed in the Chief Military Prosecutor's Office and the Prosecutor General's Office for 1 year and 4 months.

* * *

On August 20, 1995, employees of the Kutaisi secondary school #2, including teachers M. Murusidze and M. Akhrakhadze were dismissed from office by the order of the school director A. Sandukhadze.

I considered the order on dismissal to be unfounded, as according to the same order A. Sandukhadze dismissed himself from director's position. Thus, as a formally dismissed employee, he had no authority to issue the order about dismissal of other employees.

I also considered the dismissal of the persons concerned unfounded, because according to part 2, Article 34 of the Labour Code of Georgia, nobody had the right to dismiss them while on holiday. Besides, according to part 3, Article 42^2 of the Labour Code, in connection with the liquidation of the school the Liquidation Commission was obliged to notify job placement institutions about the mass dismissal of the employees 2 months in advance, and indicate the speciality and qualifications of those dismissed. However, the Liquidation Commission failed to do so.

Apart from that, A. Sandukhadze committed fraud, in dismissing M. Murusidze and M. Akhrakhadze, because he issued the dismissal order on August 21, 1995, however, he dated it August 20, which was Sunday. Also, according to the complaining side, A. Sandukhadze officially returned to office only on August 30, 1995. The newly appointed director of the Kutaisi Gymnazia, G. Tevdoradze also committed a fraud, as on September 5, 1995, he issued an order dated August 20, while on August 20 he was not yet appointed as director. According to that order, M. Murusidze and M. Akhrakhadze were appointed as schoolteachers for a limited period of time. Tevdoradze concluded contracts with them and dated them August 21. He did so in order to justify and present in a more convincing way the decision about their acceptance for employment for a limited time, contrary to the teachers' will.

Despite such violations, the Kutaisi City court, Kutaisi regional court and the Department of Appeal of the Georgian Supreme Court refused, without any grounds, M. Murusidze's and M. Akhrakhadze's request to cancel these decisions.
I studied these materials and came to a conclusion that in case the fact of fraud committed by the director of the secondary school # 2 A. Sandukhadze and director of the I. Otskheli Gymnazia G. Tevdoradze

with respect to M. Murusidze and M. Akhrakhadze (dismissal from job and temporary acceptance for employment) were confirmed, there would arise newly discovered circumstances. These circumstances would be the ground for review of the court decisions.

To this end, starting from December 2001, I was referring recommendations to the Prosecutor General of Georgia with a request to examine the violations and fraud involved in this case. The recommendations requested cancellation of refusal by the Kutaisi City Prosecutors' Office to institute a criminal case

Specifically, my recommendations addressed to the Prosecutor General were sent on December 20, 2001 #1333/03897; on February 20, 2002 # 266/03/897-m; on April 22, 2002 # 604/03/897-m; on June 7, 2002 #935/03/897-m; and on July 21, 2002 #1182/03/807.

The Prosecutor General answered systematically that the fraud was unconfirmed. Only on July 3, 2002, I received letter # 5-19g-2002, according to which the Prosecutor General ordered to cancel the resolution issued by the Kutaisi city procuracy, and the materials were sent to Imereti regional prosecutor's office for verification.

Similarly to other cases, it took 7 months before the Prosecutor General fulfilled the Public Defender's lawful request. .

* * *

On July 20, 2001 I addressed the Prosecutor General of Georgia with a recommendation # 614/03/624-concerning non-objective investigation of the murder of T. Mikia as a result of a drop from the window of the police building by officers of the Department of Internal Affairs in the city of Poti.

The letter #19-g-2001 addressed to me by the Deputy Prosecutor General T. Moniava on July 27, 2001 stated that preliminary investigation discovered a number of important circumstances related to the case. After their verification it would be possible to make an objective decision.

However, the non-objective and biased character of investigation was again made known to me by Lamara Mikia, IDP from Ochamchira, residing in Poti in Tabidze Street, #12 who addressed me on April 22, 2002 - nine months after the murder. She pointed out that the investigator of Tbilisi Prosecutor's Office S. Gengashvili was conducting interrogation improperly, he refused to allow a defence lawyer to see materials of the case, concerning theft, etc. She also reported that during the interrogation of G. Ebralidze and M. Kakachadze, the investigator attempted to present the criminal case in such a way as if Kakachadze did not take part in it. The applicant requested that the case be investigated by the Prosecutor General's Office.

The first Deputy Prosecutor General B. Bitsadze in his letter #15-1-8-g-2000, of July 4, 2002 addressed to me, stated that the applicant's request was turned down. In addition, the letter denied any misconduct on the part the investigator - S. Gengashvili, including his attempts to keep lawyer away from the case. Besides, Bitsadze informed me that on June 10, this year, the Prosecutor General in the presence of the victim L. Mikia heard the report on the course of investigation and gave the investigators instructions taking into account the circumstances described in Mikia's complaint.

The answers by the Prosecutor General to my recommendations dated July 20, 2001, February 8, 2002, April 22, 2002 and June 7, 2002 give me every reason to consider that the investigation of the case was biased, unqualified and procrastinated. For more than one year, the

procuracy of Tbilisi, Kutaisi and Poti have failed to establish the real facts and make a final decision. For this reason I addressed the Prosecutor General with another recommendation - # 1369/03/521-m on August 12, 2002.

The first Deputy Prosecutor General B. Bitsadze in his letter #15-1-8g-2002 informed me that the delay in the investigation of the case was explicable on the basis of a long period that the formulation of conclusions by expert institutions took (2 months 4 months and 15 days), during which time all the materials were sent to them.

* * *

On May 14, 2002 I addressed the Prosecutor General with the recommendation # 736/03-404-m concerning a refusal to initiate an action in connection with the raping of M. Mzaghoshvili.

The recommendation pointed out that despite the conclusion of the forensic medical examination that found signs of violence and defloration on Mzagoshvili's body, the police and procuracy of the city of Chiatura did not take any action to establish the facts.

Unfounded refusals to initiate a criminal case only led to the taking of explanations from witnesses, which deprived the investigator of a possibility, in conformity with the provisions of the criminal procedural law, to warn witnesses about criminal liability for false testimony during the face-to-face identification, and medical expert - about similar liability for false conclusion.

Comprehensive investigative actions on the case, which could have allowed investigation to collect indubitable evidence of the crime, have not yet been conducted.

On August 19, 2002, in his letter # 15-1-5g-2002, the first Deputy Prosecutor General B. Bitsadze informed me that on the instruction of the Prosecutor General, the Prosecutors' Office of Imereti region cancelled the November 21, 1999 resolution of Chiatura procuracy, according to which the victim was refused to have her demand granted on the initiation of a criminal case on M. Mzagoshvili' raping, on the basis of the materials collected. A criminal action was instituted under Part 1, Article 117 of the Criminal Code of Georgia, and the case was passed to the Chiatura district procuracy.

Thus, it took four years to achieve the institution of a criminal action on the case of raping of M. Mzagoshvili, and it was only done after the intervention of the Public Defender.

* * *

For more than one year, I was referring to the Prosecutor General recommendations # 206/03-6/222 on March 23, 2001, # 493/04-8/ 222-d on June 22, # 866/03/222-d on September 12, # 1060/03/ 222 on October 19, # 1381/03/222-d on December 26. # 496/03/ 192 on April 1, 2002, # 718/03/192-d on May 8, 2002, #934/03/ 192-d on June 7, 2002, requesting to examine the legality of suspension of the criminal case instituted in connection with M. Doborjginidze's bodily injuries.

M. Doborjginidze disagreed with the conclusion of forensic examination, which qualified the degree of severity of his injuries as "minor". In his repeated complaints to the Prosecutor General, Doborjginidze indicated that he was not informed about the resolution concerning his forensic examination. The investigation did not allow him to familiarise himself with the expert's conclusion, which deprived Doborjginidze of a chance to pass to the investigation the materials necessary for his forensic examination. Besides, he was not notified

about the resolution to suspend the criminal case, and thus he was deprived of a chance to appeal this resolution within the period established by procedural legislation.

I indicated in my recommendations that M. Doborjginidze's rights provided for by the law were violated. M. Doborjginidze, being the victim, had the right to be informed of the resolution to assign a forensic-medical examination and see the medical expert's conclusion. However, the Prosecutor General, while admitting the breaches of the law in the case, explained them by a lack of a possibility of getting into contact with M. Doborjginidze, on his fault. However, M. Doborjginidze repeatedly denied these allegations.

Only on July 15, 2002 i.e. after 1 year and 4 months, the Prosecutor General was compelled to satisfy my recommendations calling the Prosecutor to receive from Doborjginidze all materials necessary for medico-legal examination and take into consideration his opinion about the questions to be put before the medical expert. The Prosecutor General confirmed this by letter #15/2-1-2002 of July 15, 2002.

With respect to this case, I am not discussing the correctness of forensic expert's conclusion concerning Doborjginidze's bodily injuries. For me, the point is that for a long period the Prosecutor General failed to give his evaluation of the violation of Doborjginidze's rights and take necessary steps to have his rights restored.

* * *

On June 2, 2002 around 8:00 p.m. during the local elections in the city of Akhalkalaki, many electors gathered at the polling station # 2. They expressed their dissatisfaction with the fact that they were not allowed to vote because of their late arrival to the polling station. While they were there, G. Maitesian, candidate to the Sakrebulo, appeared

at the polling station and called upon members of the electoral commission not to sign the protocols of voting. Policemen present at the polling station heard this, and G. Maitesian was brutally beaten by A. Surenian, head of the Akhalkalaki police staff, R. Meltonian, head of search division, A Melkonian, head of the detention centre and the district police officer. Then the person concerned, with relatively minor bodily injuries, was taken to the district police station.

The incident became immediately known to L. Levonian, representative of the Public Defender in Samtskhe-Javakheti,. Levonian appeared in the police station to verify the fact. He produced his ID card to K. Kokochian, head of the duty personnel division, requested meeting G. Maitesian and demanded that law enforcement bodies react to the incident accordingly.

In connection with G. Maitesian's beating, a criminal case under Part 1, Article 333 of the Criminal Code of Georgia was initiated on July 11 against the Akhalkalaki policemen on the basis of materials of verification conducted by Akhalkalaki district procuracy. The case was passed for further investigation to the Samtskhe-Javakheti regional Prosecutor's Office.

* * *

In the report for the first half of 2001, I noted that on January 16, M. Mamulashvili applied to the procuracy of Mtatsminda-Krtsanisi district of Tbilisi with the application about his forcible hospitalisation to the Tbilisi Psychiatric Research Institute by the policeman A. Shigardelashvili. However, the procuracy gave an unfounded refusal to accept the application.

Only after my intervention, the procuracy accepted the application from the victim. After the examination of the application, the Tbilisi

procuracy instituted on February 23, 2001 a criminal proceeding against A. Shigardelashvili, police officer of the 3rd subdivision of Mtatsminda-Krtsanisi district police, on charges of abuse of authority and police excess.

However, investigation was performed superficially, insufficiently and in a biased manner. As a result, on July 16, 2001 the Prosecutors' Office closed the proceedings, on account of the action not being unlawful, envisaged in Para B, part 1, Article 21 of the Code of Criminal Procedure of Georgia.

I disagreed with this decision and on January 14, 2002, I addressed the Prosecutor General of Georgia and the Prosecutor of Tbilisi with recommendation # 20/03/29-g requesting them to return to the case and make a decision in compliance with the law.

The Prosecutor of Tbilisi fulfilled the recommendation. On February 15, 2002 in his letter #18-5-g-2002 he notified me about cancellation of the resolution, that invalidated the closing of proceedings.

Besides, the case was taken away from A. Barbakadze, senior investigator and passed on to a different investigator who instructed to conduct impartial investigation of the case, as requested in the Public Defender's recommendation, and make the decision in accordance with law and justice.

However, on May 25, 2002, the action against A. Shigardelashvili was withdrawn again. I disagreed, and on July 1, 2002, in accordance with paragraph "B" Article 21 of the Organic Law "On the Public Defender of Georgia", I addressed the Prosecutor of Tbilisi and Prosecutor General of Georgia with the recommendation to invalidate the resolution concerning the withdrawal of action.

On July 26, 2002 in letter #18-g-2002, the Prosecutor of Tbilisi notified me about satisfaction of the recommendation.

However, I would like to note that during 1 year and 6 months the investigation about the abuse of authority by A. Shigardelashvili has been conducted in a biased and unqualified way, which has delayed the making of fair decision up to now.

* * *

I considered the complaint lodged by Zurab Abashidze, director of English-Georgian-Israeli joint venture "Sun Tree." Abashidze complained about the decision of the courts of different levels that imposed on him the repay of the cost of the black tile tea.

Examination of the materials submitted by the applicant in combination with materials received from the Lanchkhuti district court revealed that by the decision of the court on December 17,1998, the claim of "Teka LLC" was satisfied, and the court obliged the joint-venture "Sun Tree" to repay in favour of 'Teka" the cost of 412, 790 tons of black tile tea as well as the penalty interest for each overdue day. The total sum to be repaid by "Sun Tree" made up US$110,826.

On October 28, 1999, the Chamber on Civil, Entrepreneurial and Bankruptcy Matters of the Supreme Court of Georgia did not satisfy the complaint lodged by Z. Abashidze, the founder of "Sun Tree" JV and kept in force the decision made by Lanchkhuti district court on December 17,1998.

According to the materials of the case, L. Ramishvili, the notary of Lanchkhuti district, certified the non-existent signature of Z. Abashidze on the contract about purchase of the tea in violation of the Georgian law "On Notary." Ramishvili certified the contract not bearing the

seal of "Sun Tree" JV and in absence of Z. Abashidze . The court materials did not contain any evidence confirming the delivery and unloading of the mentioned amount of tea to the "Sun Tree." These facts were not taken into account in the consideration of the case and passing of the judgement either by the Lanchkhuti district court or the Chamber on Civil, Entrepreneurial and Bankruptcy Matters of the Supreme Court of Georgia. Neither did the court case contain any materials confirming the delivery and unloading of the mentioned amount of the black tile tea to "Sun Tree."

The resolution issued on May 28, 1999 by M. Sarishvili, deputy prosecutor of Lanchkhuti district, and the resolution issued on November 8, 2000 by G. Mgeladze, Guria regional prosecutor, did not take into account the above circumstances and without any discussion on the case they refused to institute criminal proceeding against L. Ramishvili. Thereafter, the prosecutors withdrew the action and did not allow Z. Abashidze to familiarise himself with the copies of resolutions, having thereby deprived him of a chance to lodge a complaint against these resolutions. This fact is confirmed by the resolution passed on August 3, 2001 by N. Bestavashvili and V. Jankharashvili, prosecutors of the General Inspectorate of the Prosecutor General's Office. However, the Prosecutor General's Office limited itself to confirming the presence of procedural breaches during the investigation on the part of the deputy prosecutor of Lanchkhuti district and Guria regional procuracy. These breaches, however, were left without due reaction because of the expiration of time limitation.

On the basis of the paragraph "D", Article 21 of the Organic Law "On the Public Defender of Georgia", I addressed the Prosecutor General of Georgia on May 20, 2002 with the recommendation # 29/ 03/4 requesting the review of the case and institution of criminal

proceeding against L. Ramishvili for the falsification of notarial agreement and office abuse, which resulted in a fraudulent bill of transportation and customer acceptance of the alleged delivery of tea production to 'Sun Tree".

The reasons for the recommendation were the following: prosecutors of Lanchkhuti district and Guria region left without discussion the violation of notarial law by L. Ramishvili, who certified notary documents in absence of Z. Abashidze and the seal of joint venture "Sun Tree" on the documents; Lanchkhuti district court also left these circumstances without examination and did not notify Z. Abashidze about the court decision and thereby deprived him of the opportunity to lodge complaint on the court decision within the legally prescribed period of time.

B. Bitsadze, first Deputy Prosecutor General of Georgia, notified me by letter # 15-1-s-g-2002 dated June 25, 2002, that Lanchkhuti district court considered legal the refusal to institute a criminal proceeding against L. Ramishvili and subsequent withdrawal of criminal action. By the resolution of June 12, 2001 the court did not satisfy Z. Abashidze's complaint as unfounded. However, the first deputy Prosecutor General overlooked the fact that prosecutors of Lanchkhuti district and Guria Regional Prosecutor's Office did not examine the legality of the contract about delivery of tea product to "Sun Tree", that was certified in absence of Abashidze's signature and the stamp of "Sun Tree".

The Prosecutor General's Office did not take into account the circumstances pointed out in my recommendation, namely, that in case abuse and falsification committed by L. Ramishvili is confirmed there would emerge the newly discovered circumstances under Article 423 of the Civil Procedural Code of Georgia. This would be a ground for Z. Abashidze to request review of the case.

In view of these circumstances, I disagreed with the reaction of the Prosecutor General's Office to my recommendations. For this reason on July 12 and August 1, 2002, I again addressed the Prosecutor General with recommendations #30/03/4 and #22/03/4, requesting the cancellation of the resolution on dismissal of the criminal case and asked the Prosecutor General to consider the re-institution of criminal proceeding.

The Prosecutor General refused to implement the court decision requiring that the convicted **Temur Khachishvili** be convoyed for confinement to Batumi. Moreover, the Prosecutor General invalidated the criminal case concerning the terrorist act plotted against the leader of the Adjara Autonomous Republic initiated in reaction to the allegation of this latter, and withdrew the court decision on the convoying. In so doing, the Prosecutor General breached the provisions of the Code of Criminal Procedure of Georgia. The procedural decision by the Prosecutor on invalidation of the ruling concerning the initiation of a criminal case could not be interpreted as one that would automatically entail the withdrawal of the court decision prescribing the convict's convoying to Batumi, as, according to the criminal-procedural law, the adoption or withdrawal of a decision on coercive measure is solely the prerogative of the court, and not the Prosecutor's Office.

It is to be particularly emphasised that the Prosecutor General of Georgia who, after having invalidated the decision made by the Prosecutor of the Adjara Autonomous Republic, initiated a criminal case on the basis of T.Khachishvili's allegation, committed, for his part, the same breaches that had been the ground for his invalidating the ruling concerning the criminal case initiated in Adjara. Namely, in the absence of Khachishvili's allegation in writing, he failed to interrogate him as is prescribed by Para.3 Article 265 of the Code of Criminal Procedure of Georgia, to warn him about the liability for giving false denunciation; besides, he failed to interrogate Sh. Kviraia and J.

Babilashvili, who were the alleged organisers of the terrorist act referred to by T. Khachishvili.

It is not clear, why J. Bibilashvili, the then Prosecutor General failed, despite an explicit prescription contained in the Georgian law, to initiate a criminal case, while the allegations concerning terrorists acts plotted against A. Abashidze were made in mass media by A. Abashidze himself.

Besides, after having committed the above breaches, the former Prosecutor General G. Meparishvili sticks to his position, which, in my opinion, is a very worrying fact as what we see if an attempt to make a breach of procedural law a matter for politically-charged discussion.

Again, the prosecutor does not have the right to invalidate the court decision based on his own decision, and this has nothing to do with politics. Though, in the country where notwithstanding the absolution by the court, prisoner Arsanidze is still kept in the detention isolator of the Ministry of Security of the Adjara Autonomous Republic, the statements by the former Prosecutor General can hardly be surprising for anyone.

* * *

Under the judgement made by the Collegium of Criminal Law of the Supreme Court of Georgia, **Ucha N. Avaliani**, was convicted for a 15-year period for committing, together with G. Sinjiashvili, T.Efremidze and M. Glonti, a criminal assault on V. Dzeria's family, murdering him and wounding his son, Z.Dzeria with firearms, also for manufacturing and use of fraudulent documents.

The Criminal Tribunal of the Supreme Court of Georgia heard the appeal for review of the case, and decided not to reverse the

conviction. However, the explanation provided by Sh. Kurtauli, G, Samkharadze and T. Kavtaradze residing in Irkutsk, suggests that at the time of the murder, the convicted U. Avaliani was in Irkutsk. This circumstance had not been considered during the hearing of the case by the court. On 7 September 2000, recommendation #600/01-1/ 704 was made to the Prosecutor General of Georgia to reopen the proceeding in view of newly discovered facts. However, this recommendation was not reacted upon.

Later, on 5 March 2002, there emerged new circumstances. Namely, M. Glonti, who jointly with U. Avaliani had been indicted for the violent murderous attack, was acquitted and the criminal case against him was dismissed. This, however, indicates that U. Avaliani could not arrive to V.Dzeria's house in a car, driven by M. Glonti, as is stated in the court judgement. On this ground, on 16 October 201 new recommendation #1042/03/903-I was made to the Prosecutor General to reopen the proceeding on account of the newly discovered circumstances. However, this recommendation without any reason whatsoever, again remained unmet.

Later, on 7 December 2002, by the decision of the Gldani-Nadzaladevi District Court, T. Efremidze, who jointly with U. Avaliani had been accused of violent murderous attack, was discharged of this accusation, which again gave rise to newly discovered circumstances. On 20 December 2001 and 21 June 2002, recommendations #1335/03/ 903-I and #1018/03 903 were again made on the need to reopen proceedings, that were again turned down without giving any grounds whatsoever for refusal to reopen the proceedings.

* * *

On 4 April, 26 June and 12 July 2002, in recommendations #14/03, #1055/03/107-K and #1184/03/107 I requested the Prosecutor

General to consider reopening the proceedings concerning the accusation made in respect of **Temur Kurdiani**.

The recommendations point to the facts of forgery and abuse of office by G. Besiashvili, investigator of the Prosecutor General's Office, T. Moniava, chief of Public Prosecution Department of the Prosecutor General's Office, and J. Leonidze, judge of the Collegium of Criminal Law of the Supreme Court of Georgia, which, under Article 265-e of the Code of Criminal Procedure of Georgia, requires an inspection to be made within 20 days to verify the facts. This notwithstanding, the Prosecutor General's Office has so far failed to examine the case, and the recommendations of the Public Defender have so far not been shared.

* * *

In 2002, on account of the unfounded character of the accusation and illegally obtained evidence concerning the charge on participation of **V. Apkhadze, K. Gvenetadze, Sh. Tsuleiskiri and Z. Pailodze** in the murder of V. Bychuk, I systematically addressed the Prosecutor General with recommendations requesting to consider applying other preventive measures, instead of detention, in respect of V. Apkhadze, K. Gvenetadze, Sh. Tsuleiskiri and Z. Pailodze. I also requested, on the grounds of the complexity of the case, and the fact that the accused expressed their mistrust in respect of the investigation, that the Prosecutor General's Office take the case over.

Recommendations to the Prosecutor General were made on 7 May 2001 (#311/01-1), 21 June 2001 (#479 /03/347-a) and 15 August 2001 (3732/03/347-a); however, these recommendations were not shared, and no reason whatsoever was given to that effect.

On 8 July 2002, the Collegium of Criminal Law (first instance) of the Supreme Court of Georgia passed a judgement of acquittal in respect

of the persons concerned and they were released. On 16 July 2002, on the basis of provisions of Article 2, Para (b) and (c) of the Organic Law of Georgia on the Public Defender, I addressed the Prosecutor General with Recommendation #1203/03/330-6, 347-a , to consider the question on the liability of those officials of the Main Military Prosecutor's Office and regional procuracies, whose illegal actions caused V. Apkhadze, K. Gvenetadze, Sh. Tsuleiskiri and Z. Pailodze to be unlawfully kept in detention for 1 year and 6 months.

No information concerning the results of consideration of this recommendation has so far been provided.

Citizens' Complaints Concerning the Work of General Courts

On Legality of Subjecting A.Paikaev Who Accused Power Officials of Involvement in Drug Trafficking, to Non-Detention for Infliction of Injuries to a Person

The appeal made in April 2002 to the Public Defender by Karina Punyakina, residing in Street 1, Apt 12, Airport Settlement, Tbilisi, stated that her husband, George S.Manashvili was injured by an unknown person who inflicted him knife wounds in the face area.

It was found that on 30 March 2002 G. Manashvili was wounded by Aief A. Paikaev, resident in Argun, Chechen Republic, who was in the state of alcohol intoxication. According to the forensic evidence, during the clash A. Paikaev himself received light injuries. It was also found that A.Paikaev made statements in mass media, namely, by television, accusing officials of the Ministry of Defence of Georgia and

a number of other power structures of being involved in the arms trafficking, pointing specifically to Colonel T. Tsitelashvili.

On 22 April 2002, I filed application #603/03/413-p with the Isani-Samgori District Investigative Service of the Investigation Department of the Ministry of Internal Affairs of Georgia, requesting information concerning the investigation of the case. The said Service informed me that A. Paikaev was accused of, and faced the charge of intentional infliction of light bodily injuries, which under Article 118, part I of the Criminal Code of Georgia is punishable with deprivation of liberty with correctional labour of up to 18 months, restraint of liberty of up to 3 years, imprisonment of up to 3 months, or deprivation of liberty of up to 3 years.

Under the ruling made on 2 April 2002 by judge V.Nachkepia of the Isani-Samgori District Court, Tbilisi, investigator's request subjecting A.Paikaev to a preventive measure in the form of detention was dismissed.

The District Prosecutor's Office lodged a complaint against the judge's ruling, however the complaint was rejected by the Tbilisi Regional Court.

A.Paikaev, subjected to a non-detention preventive measure, hid out, which led to a suspension of criminal proceedings on the case, under Article 29, Para.(b) of the Code of Criminal Procedure of Georgia.

According to forensic evidence made on 18 June 2002, G.Manashvili displayed non-severe incised wounds inflicted by some blunt object.

In the context, where A.Paikaev accused some of high-ranking officials of involvement in drug trafficking, and, consequently, where it was necessary to perform investigative actions with his participation and in

accordance with the procedure established in the law, his, A.Paikaev's, release from custody on the ground of non-availability of forensic evidence seems highly suspicious.

As a result, A.Paikaev evaded investigation and hid out. Mass media published information according to which A.Paikaev was killed. Later, however, A.Paikaev was seized at the Georgian-Turkish border with forged documents. We think, the Isani-Samgori Court should not have taken the decision on the change of preventive measure, which would prevent the results that followed.

On Unfounded Decision made by the Supreme Court of Georgia Concerning Dismissal of Disciplinary Proceedings in Respect of Judge R.Varazashvili

In my Report concerning the protection of human right and freedoms in Georgia and covering the second half of 2001, a mention was made of Recommendation #390/01-1/359-c referred to the Prosecutor General's Office concerning the collusion between judge R.Varazashvili of the Isani-Samgori District Court, G.Mikeladze, court secretary and M.Onashvili, judge's assistant, concerning the dismissal of the case of M.Barbakadze on the pretext of his, and D.Tskhvedadze's non-appearance at trial, also the judge's collusion with the indictee and forgery of minutes of the court hearing on the dismissal of the case and a certificate.

Based on my recommendation, in order to have the question of Judge V.Varazashvili's liability solved in conformity with the organic Law of Georgia "On General Courts", the Prosecutor General's Office of Georgia sent civil and criminal cases together with the materials of investigation, to the Supreme Court of Georgia.

Despite the forgery and breaches committed, the Supreme Court of Georgia dismissed disciplinary proceedings against judge V.Varazashvili. I disagreed with such decision and in my letter #5/03/359-c of 9 January 2002, requested the duly documented information to be made available to me.

In letter #07/235 of 4 February 2002, L.Kalandadze, assistant to the Chairman of the Supreme Court of Georgia informed me about the termination of disciplinary proceedings against V. Varazashvili. I indicated my disagreement in recommendation #689/03/10-c of 30 April 2002, referred to the Chairman of the Supreme Court, and requested that the question of the judge's liability be considered.

In response to my recommendation, the Chairman of the Supreme Court of Georgia, in his letter #01/104 of 20 May 2002, informed me that under Article 8 of the Law of Georgia "On Disciplinary Liability of Judges of General Courts and Disciplinary Proceedings", disciplinary proceedings were initiated against V. Varazashvili and a disciplinary commission was established with a view to investigating the case in the best manner possible. It was expected that the decision made by the commission would be made available to me later.

It follows from the letter #01/131-g of the Chairman of the Supreme Court dated 17 June 2002, that since disciplinary proceedings against V..Varazashvili had already been initiated and that he had not been found liable, and considering that it is impermissible to re-open disciplinary proceedings on the same charges, any disciplinary prosecution in respect of the said person was terminated. The same reasoning was present in the letter #01/158-g form the Supreme Court of Georgia dated 17 July 2002.

The Letter from the Chairman of the Supreme Court of Georgia warrants the following question: if disciplinary proceedings had earlier been initiated against V. Varazashvili, as a result of which the person concerned had not been found liable, for which reason the disciplinary proceedings were dismissed, then what is the grounds for initiating disciplinary proceedings under Article 8 of the Law of Georgia "On Disciplinary Liability of Judges of General Courts and Disciplinary Proceedings" against the same person and why was the disciplinary commission established!? Or, considering that the check-up performed by the Public Defender and the prosecutor's opinion fully confirmed the facts of forgery committed by R. Varazashvili, then what was the grounds for the dismissal of disciplinary proceedings against this person?

The Chairman of the Supreme Court failed to provide a defensible and well-reasoned answer to these questions raised in my recommendation #1019/03/10-c of 21 June 2002.

Thus, during the past year the Supreme Court has grievously violated D. Tskhvedadze's rights, who could have a decision on his unlawful discharge reviewed in view of the newly discovered circumstances, if V. Varazashvili had been subjected to disciplinary liability.

On Refusal to Serve a Court Decision to Defendant

On 4 January 2001 **K. Sepashvili**, residing at 16, Gamsakhurdia Avenue, Tbilisi applied to the Public Defender with a complaint about unfounded refusal by the court to issue a writ to certify that the decision of 26 October 2000 made by the Mtatsminda-Krtsanisi District Court of Tbilisi was served to the defendant.

The follow-up performed by the Public Defender showed that on 26 October 2000 the Mtatsminda-Krtsanisi District Court of Tbilisi satisfied the claim made by K. Sepashvili, and reinstated her in the position of director of kindergarten "Imedi" under the Ministry of Internal Affairs. However, giving non-receipt of the court decision by the defendant as the reason, the Appellate Chamber on Civil, Entrepreneurial and Bankruptcy Matters of the Supreme Court of Georgia by its ruling of 5 December 2001 annulled the rulings of the Appellate Chamber on Civil, Entrepreneurial and Bankruptcy Matters of the Tbilisi Regional Court of 2 and 25 September and returned the case to the same court in order to have its admissibility for appeal established.

In my letter #143/03/142-s of 5 February 2002 addressed to the Chairman of the Mtatsminda-Krtsanisi District Court, the issue was raised on the legality of the refusal by the court to issue a writ indicating that the court decision was served to the defendant. The same issue was raised in letter # 278/03/142-c addressed to the Chairman of the Tbilisi Regional Court.

The Public Defender's letters appeared to expedite the examination of K.Sepashvili's complaint by the court. During the examination it was found that the decision of 26 October 2000 made by the Mtatsminda-Krtsanisi District Court of Tbilisi was served timely to the defendant – Department of Material-and-Technical Supplies and Financial Provision of the Ministry of Internal Affairs that appealed the decision at the court of appeal in breach of the period allowed for appeal. The Ministry had to dismiss its claim.

On Examination of Certain Categories of Applications and Complaints by the Public Defender

G. Gogoladze's Case

In April this year, the Public Defender was addressed by the convicted G.Gogoladze placed in Penal Institution #6 of the Department of Execution of Punishment, with a request to examine the legality of forced eviction of his family from their dwelling housing because of their failure to fulfil the obligation imposed by the court decision.

The follow-up conducted by the Pubic Defender showed that the judgement passed on 15 December 1998 by the Borjomi District Court, convicted Gogoladze under Article 91, Part II of the Criminal Code of Georgia, sentencing him to deprivation of liberty for the period of 2 years and 6 months, and placed an obligation on him to pay 156 GEL to M. Chaduneli to compensate for the damage.

Due to a lack of employment at penal institutions, G. Gogoladze failed to earn the requisite amount of money. The court, however, passed an unprecedented decision to forcibly evict numerous members of Gogoladze's family, including minor children: Lamara, Mamuka, Razhden, Pikria and Lali from their housing.

Having found the eviction of the family, the more so, of minor children, from their housing as entirely unfounded and unacceptable, on 22 April 2002, I addressed the Chairman of the Supreme Court of Georgia with recommendation # 612/03/445-g to consider legality of the court decision.

The acting chairman of the Chamber on Criminal Matters of the Supreme Court of Georgia N. Gvenetadze, in the letter of 9 July 2002, informed me that the decision on eviction made by the Borjomi District Court on 3 May 1999 was not appealed, and hence, the Supreme Court of Georgia was not in a position to examine the legality of the decision concerned.

Thus, on the one hand, illegality of the decision made by the Borjomi District Court and prescribing the eviction of a large family causes no doubt. However, on the other hand, we are confronted with a refusal to have the case reviewed, which is the result of flaws in the law on criminal and civil procedure, that are discussed earlier in this Report.

On the Fulfilment of Recommendations Made by the Public Defender on the Basis of Petitions Concerning the Restoration of Rights and Freedoms of Citizens of Georgia, Including Those Residing Abroad

V. Babayan's Case

On 5 February 2002, A.Palajian, Chairman of a NGO working to promote socio-economic development of the Akhalkalaki District, filed a complaint with the Public Defender of Georgia, concerning illegality of the decision to bring a charge against Vachagan Babayan and his apprehension.

Examination of the complaint showed that V. Babayan who was transferring cigarettes and transporting passengers from Ninotsminda

to Akhalkalaki by vehicle owned and driven by him, was unaware of the fact that the goods being transferred did not carry any excise stamps.

After having been interrogated as a witness, V.Babayan was released without any written recognisance of not leaving.

Later, Ninotsminda and Akhalkalaki investigation agencies initiated criminal proceedings in respect of persons involved in purchase and sales of non-excised cigarettes, and imposed penalties on them.

As no restriction on movement was imposed on V.Babayan by investigative bodies, several weeks after his interrogation as a witness, he left for Sochi in search of employment, and stayed there until the end of 2001, living in a wagon car.

In the meantime, the investigative bodies of the Ninotsminda Department of Internal Affairs came to suspect him of offence and initiated a search for him, which is in conflict with the criminal procedural law, as search activity for a suspect is deemed impermissible.

On 8 February 2000, I referred recommendation # 181/03/150 to the Prosecutor General of Georgia and requested that the decision to initiate a search for V.Babayan be withdrawn.

B. Bitsadze, the First Deputy Prosecutor General of Georgia in his letter #15/2-2-2002 of 3 March 2002 informed me, that since the investigation in respect of V.Babayan was performed in gross violation of provisions of the Code of Criminal Procedure of Georgia, and there was no legal ground for filing a charge against, and initiating a search for him, the prosecutor of the Samtskhe-Javakheti region was instructed to annul the relevant decision, whereas the letter requiring that J. Jishkariani, of the investigation division, be punished was sent to the

Investigation Department of the Ministry of Internal Affairs of Georgia.

The same day, I informed the author of complaint about this decision.

L. Inasaridze's Case

On 21 January 2002, the Public Defender was addressed by Leila Macharadze, residing at 6, Ertso Street in Tbilisi, with a petition to provide assistance in the return to Georgia of her son released from prison.

Levan Inasaridze, born in 1965, was brought before the court in Ukraine for the theft of a vehicle. On 9 August 2001, under the Law of Ukraine on Amnesty of 5 June 2001, he was released with a 2-year probation period.

As the probation period has not yet expired, L. Inasaridze was not allowed to return to Georgia. At the same time, he did not have the Georgian passport or any equivalent document, which rendered it impossible for him to travel to his county.

On 25 January 2001, I addressed N.Gogitidze, the Georgian Consul in Ukraine with petition #65/03/85-m, and N.Karpachova, Commissioner for Human Rights at the Supreme Rada of Ukraine with petition #64/03/85-m, asking them to assist L. Inasaridze in obtaining the necessary documents, and facilitate his return to Georgia.

In her letter # 659/16-02-30 of 10 January 2002, Ms. N.Karpachova informed me that my petition was granted, and by decision of the State Department, by way of exception, L. Inasaridze was allowed to return to Georgia. The latter was issued the passport of the Georgian citizen.

In the letter #02/57-02 of 22 February 2002, N.Gogitidze, the Georgian Consul in Ukraine, expressed his readiness to assist in having my petition granted.

M.Tskitishvili's case

Not infrequently, complaints are filed by Georgian citizens abroad with a request to have the legality of abuses of their rights and freedoms examined.

Starting from September 2001, I maintain correspondence with the Consular Department of the Ministry of Foreign Affairs of Georgia concerning the fact of unfounded deportation from Bulgaria of M.Tskitishvili, and misappropriation of monetary assets of the firm "Medea Hold" by Bulgarian nationals Zlatina Yaneva and Plamena Yaneva.

During this period, the leadership of the Consular Department (Z.Gamsakhurdia) alternately denied or confirmed the receipt of the petition on this issue from the Public Defender's Office. After a number of reminders sent, the Consular Department, on 27 June 2002, forwarded to the Public Defender's Office the copy of the decision passed by the Military Prosecutor's Office of Sofia, made available to the Consular Department of the Ministry of Foreign Affairs by the General Consulate of Georgia in Istanbul.

This kind of attitude on the part of the Consular Department of the Ministry of Foreign Affairs in responding to the application made by the Georgian national, did not allow M.Tskitishvili to timely familiarise himself with the decision passed by the Military Prosecutor's Office of Sofia, and appeal this decision within the time period stipulated by the law.

Z. Vepkhvadze's Case

On 12 February 2002, the Public Defender was addressed by Zoya Vepkhvadze, residing in 2/5 Cholokashvili street, Tbilisi, with a complaint about an unfounded refusal to have the decision #2/817 made by the Isani District Court of Tbilisi on 10 September 1997 carried out. The decision concerned her reinstatement by the Local Council of Isani-Samgori District in a position equivalent to the chief of food laboratory at the Council's Department of Trade.

The examination of the complaint showed that starting from the mentioned period both the former and the present leadership of the Local Council refused, without any grounds whatsoever, to fulfil the decision of the court, thereby grossly abusing her rights.

In response to my petition, the Chairman of the Enforcement Department of the Ministry of Justice of Georgia indicated in the letter #04/01-193 of 13 June 2002 that the Enforcement Office in Tbilisi did not receive Z. Vepkhvadze's case for settlement.

In my recommendation 3220/03/193 of 12 February 2002 referred to the Isani-Samgori District Local Councillor, T, Kurkhuli, I underscored the fact that failure to reinstate Z. Vepkhvadze in office was in conflict both with the court decision, and with the provisions of Article 42 of the Labour Code of Georgia.

Notwithstanding this recommendation, I was compelled to repeatedly refer recommendations to the Isani-Samgori District Local Councillor in order to have them reinstate Z. Vepkhvadze in her rights, namely: recommendation #577/03/193-3 of 17 April 2002, #850/04-7/193-v of 30 May 2002, #1047/03-193-v of 24 June 2002, and #1180/03/193-v of 2 July 2002.

Only after these repeated recommendations, the Local Councillor of Isani-Samgori District, T.Kurkhuli in his letter #4475/15 notified me that starting from 1 August Z.Vepkhvadze was restored in the job and, thus, the relevant court decision was carried out.

Thus, only after 7 months of insistent requests did the Isani-Samgori Local Council reinstate Z.Vepkhvadze in her rights.

Despite the fact that the question on Z.Vepkhvadze's reinstatement in office was brought under my close control, she continued filing applications, even when she was informed that the Council did decide to restore her in the job.

J.Tvalavadze's Case

On 12 February 2002, the Public Defender was addressed by Jemal Tvalavadze, residing in I/3 Vazha Pshavela Avenue, Tbilisi, with a complaint concerning the refusal by the Unified State Fund of Georgia for Social Security to have the court decision concerning the expiration of the length of service carried out.

It was found that by the decision of the Mtatsminda-Krtsanisi Court of Tbilisi of 27 December 2000, the period of service at the Security Police Department, as policeman on point-duty, was included in the length of service, which led to the need to have certain changes made to the money certificate.

The Department of Rear Services and the Security Police Department of the Ministry of Internal Affairs of Georgia refused, without having any grounds for so doing, to make changes to the said financial document, saying that in the period when the court decision was made,

fulfilment of court decisions concerning the pension scheme for persons transferred to the reserve from military service and internal security bodies, and their families was the responsibility of the Unified State Fund of Georgia for Social Security.

I found that the refusal to make changes to the money certificate was completely indefensible and unsubstantiated, for which reason, on the basis of Article 21, Para.(B) of the Organic Law on the Public Defender of Georgia, I referred to the chairmen of the Department of Rear Services and Security Police Department of the Ministry of Internal Affairs (V.Davitaia, T.Sulava) with recommendations #14/01-1/977 and #240/01-977 of 11 January and 18 February, requesting that the court decision be carried out. A reminder was sent to the Chairman of Security Police on 22 March 2002. Representatives of the financial division of the Security Police Department were invited to the Head of the Department at the Public Defender's Office, where they were told that making changes to the policemen's money certificate was solely within their competence.

On 25 March 2002, the Chairman of the Security Police Department in his letter #50/8- 454 informed me that the decision of the court was carried out, and sent the money certificate issued by them. Based on this certificate, the Unified State Fund of Georgia for Social Security awarded him pension of 59, instead of 44, GEL.

G. Khechikashvili's Case

On 12 February 2002, the Public Defender was addressed by Givi Khechikashvili, residing in 13 Ioane Petritsi Street, Tbilisi with a complaint concerning an unfounded refusal by the management of the Agrarian University of Georgia to transfer to him the land parcel located

in the territory adjoining the Didi Digomi Settled Area.

As pointed out in the complaint, this land parcel of 150 sq.m used to be a refuse dumping area. G.Khechikashvili has been cultivating the plot starting from 1990, growing agricultural crops there. As presently no one in his family is employed, they do not have any other means for survival but this plot of land. The ownership of this land parcel by the Agrarian University was, in claimant's opinion, questionable, for which reason he thought that the demand by the Agrarian University management to have the plot transferred to them was completely unfounded.

On claimant's request, under Article 18 (b) of the organic Law on the Public Defender of Georgia, in my letter #498/03/196-6 of 1 April 2002 addressed to the management of the Georgian Agrarian University, I requested to provide the information relevant to this matter. The management of the Agrarian University, in their letter #01-08/50 of 14 April 2002, informed me that the plots of land, that were a matter of dispute between the Agrarian University and the Municipality of Tbilisi and that were returned to the former (the parcel worked by G.Khechikashvili is one of them), would be leased out, if after the subleasing of land to members of the University staff there remains any part not developed. As of now, the dispute between G.Khechikashvili and the Agrarian University management is resolved.

N.Chogovadze's Case.

On 29 January 2002, the Public Defender considered the complaint filed by Nino Chogovadze residing in 1, Moseshvili street, Tbilisi, concerning an unfounded refusal by the relevant authorities to issue her a passport of the citizen of Georgia.

In her complaint, the person concerned indicated that her case was heard by the Supreme Court of Georgia, and she was convicted under Article 17-107-e of the Criminal Code of Georgia; under the President's act she was pardoned and granted conditional early release (for a 4-year period). Because of her record of conviction, passport authorities refused to issue her a passport of the Georgian citizen.

In my judgement, refusal to grant the Georgian citizen's passport on this ground comes into conflict with the right, recognised both by the domestic legislation and the international norms, for a person to have the place of residence of his/her own choice, and freely to enter in, or exit from, a country.

N. Chogovadze studies in Moscow, in the 2nd Medical Institute, at the Department of Gynaecology and Obstetrics, for which reason she frequently has to travel to Moscow. Possible non-compliance with the obligations of conditional sentence would lead to the application of penalty stipulated in the criminal law of a relevant country. For this reason, within the authority granted to me under the organic Law on the Public Defender of Georgia, I requested the National Passport-Visa and Citizens Registration Bureau of the Ministry of Internal Affairs to assist N. Chogovadze in obtaining the passport.

In the letter #47/1-145 of 19 August 202, the Bureau informed the Public Defender's Office that on 5 February N.Chogovadze was issued the passport of the citizen of Georgia #081982.

L. Marjanadze's Case

On 12 May 2002, the Saburtalo District Court of Tbilisi, having satisfied the claim of JSC "Khidmsheni" with the writ of execution, passed a

decision for Nino Kapanadze, together with other members of her family, to vacate their dwelling located in 15–II Didi Digomi.

On 12 July 1999, G. Chilaia, the Vake-Saburtaloo Court's officer of justice, executed the court decision.

Several days after the decision were enforced, N. Kapanadze invaded and occupied the said place, and so far it has not been possible to have her vacate the premises.

As the court decision had already been executed, and given the fact of invasion and unauthorised occupancy of the same premises by N. Kapanadze, the obtaining of a new court decision on this matter provided for by the law "On enforcement of court decisions" that would bound N. Kapanadze to vacate the premises, would incur additional difficulties. In order to solve the problem, it was decided for the parties to have a compensation settlement. On 11 July 2002, the act of settlement was drawn up in the presence of A.Svanidze, representative of the Public Defender, K. Gugeshashvili, Chief of Unit at Division 4 of Vake-Sabutalo Department of Internal Affairs, and N. Kapanadze, under which N.Kapanadze should vacate the premises upon compensation by L.Marjanadze, the lawful owner, of the costs incurred by N.Kapanadze for installing the water supply system, etc.

Presently L.Marjanadze, is in full possession of her premises.

Search for Missing P.Kazalikashvili

Starting from May 1999, we have been trying to establish the whereabouts of P.Kazalikashvili, resident of Tbilisi. In 1997, on his way back from Bulgaria, he arrived in the town of Belgorod-Dnestrsk in the Odessa region,

from where on 5 and 7 July he called his mother, Bela Kazalikashvili, then staying in Vladikavkaz (Republic of North Ossetia – Alania) and told her that he would be back home by the end of the week.

Since then, P.Kazalikashvili's whereabouts is unknown,

During this time, the missing P.Kazalikashvili's father has systematically contacted the relevant bodies in Georgia, Ukraine and Chechnya, requesting them to assist in tracing his missing son. On 11 May 1999, I asked Ms. N.Korpachova, Human Rights Commissioner at the Supreme Rada of Ukraine, to provide assistance in tracing P.Kazalikashvili.

On 18 October 2001 and 14 April 2002, I addressed the Ministry of Internal Affairs of Georgia that, under the law of Georgia, is tasked to follow-up the case and carry out the required action to trace the missing person.

This notwithstanding, the Ministry of Internal Affairs has so far failed to establish the identity of the missing person, though, as it indicates, assignments for search have been sent to the Ministry of Internal Affairs of Ukraine, to the relevant agencies in the Russian Federation and Moldova. Relevant instructions have been given to the authorised representative of the Ministry of Internal Affairs of Georgia in the CIS Co-ordination Bureau.

The case, concerning the tracing and search for P.Kazalikashvili is taken under my control.

On Beating of V.Markilov by Police

On 31 January 2002, the representative of the Public Defender of

Georgia interviewed at the Isani-Samgori District Investigation Service of the Investigation Department of the Ministry of Internal Affairs of Georgia V.Markilov, born in 1948, apprehended for theft of aluminium. As pointed out by V.Markilov, he was apprehended on 24 November 2002, and brought to the police station, where he was brutally beaten by several police officers. Therefore, he was taken to Tbilisi Hospital #1, first to the surgery, and then to the ophthalmology departments.

According to the hospital management, V.Markilov was brought to the clinic by ambulance. Upon examination, he displayed multiple excoriations in the face area, right eye socket haematoma, crushed wounds at the right eyebrow. On 28 November 2001, V.Markilov was given surgery.

According to the letter of the Tbilisi Prosecutor's Office, dated 27 August 2002, on 27 November 2001, about 10.39 p.m., V.Markilov, together with the other person unknown to the investigation, was trying to remove aluminium lattices from S.and A.Oganov's graves at the Peter and Paul Cemetery. The noise caused by the exercise, attracted to the scene the spouses A.Margvelani and N.Andriadze. In the clash that followed, these latter inflicted bodily injuries to V.Markilov.

The Public Defender's representative tried several times to ascertain the causes of bodily injuries inflicted to V.Markilov, by way of interviewing A.Margvelani and his wife, but this was not possible, as the persons concerned could not be found at their address of residence.

As far as V.Markilov's condition on arrival to hospital is concerned, according to the latter's lawyer K.Gelashvili, V.Markilov did display visible physical signs, and he was brought to the hospital by him and police officers. However, V.Markilov insists that he did not receive any injuries at the cemetery; in reality, he was apprehended at the

Navtlugi market and taken to the police station, where he was subjected to beating by the police.

On the legality of dismissal of the "Georgian National Mint" Ltd. Employees

In connection with the reorganisation of the enterprise, employees of the "Georgian National Mint" Ltd.: N.Gogoladze, L. Lobjanidze, K.Gvinepadze, L.Tkebuchava, M.Karelidze, M.Obgaidze, and I,Tsartsizde were discharged on the basis of orders issued by the Director of the enterprise on 20, April, 21 April and 18 May 2000.

On the Public Defender's recommendation, the persons concerned filed a claim with the court for their reinstatement in office.

By the decision of the Tbilisi Regional Court, dated 19 October 2000, they were restored in their jobs.

On 14 May 2002, the company's lawyer made known to the 7 persons concerned the demand made by the director to the effect that these employees sign a fixed-term labour contract (2 months) with the company, which they refused to do. Upon their refusal, two of the employees, namely, N.Gogoladze and L.Tkebuchava, were again dismissed from work on the director's order.

On 11 October 2001, the Didube-Chugureti District Court of Tbilisi decided to satisfy N.Gogoladze' claim, concerning the restoration of her labour rights by the defendant, the Georgian National Mint. However, on 22 October 2001, the same court annulled and withdrew its decision. Later, the annulled decision was validated and left in force by the Tbilisi Regional Court and the Supreme Court of Georgia.

N.Gogoladze had been dismissed from job on account of her absence from the workplace for several hours, which was caused by family circumstances. These circumstances were indicated in the application referred to the acting director Khachidze. Despite N.Gogadze's formal request to take into account the mentioned circumstances, it was not granted and she was dismissed on account of the breach of labour discipline. However, the real motive of her discharge from office was her refusal to fulfil the demand by the enterprise's director, D.Lortkipanidze, and sign a fixed-term contract. However, this circumstance was not taken into consideration by the courts of different instances.

In my opinion, the demand to sign a fixed-term contract is not justified, based on the enterprise's specifics. Personnel working with precious metals are audited on a regular basis (annually) and thus, evaluation of work quality and performance after only 2 months would hardly be effective.

On Violation of Human Rights and Freedoms at Police Departments of Imereti Region

On Liability of Police Officers D.Chkheidze and Others

In the reference period, numerous facts were reported of the violations of human rights at police departments of the Imereti Region. These facts were reported by K.Kandelaki, the Public Defender's representative in the Imereti Region to Z.Dzneladze, Chief of the Main Regional Department of Internal Affairs, who promptly considered the materials provided. Consequently, 12 operational officers have been subjected to disciplinary penalty. Chiefs of 4 police stations

(D.Chkheidze, Z.Chitaia, S,Zivzivadze, and G.Bakuradze) have been discharged from office, whereas T.Ioseliani, A.Kobeshavidze, D.Chirgadze, K.Gvelesiani, R.Asanidze and M.Tefnadze have been dismissed from work in the internal security bodies.

On Violation of Human Rights and Freedoms at Police Departments of Samegrelo and Zemo Svaneti

On Legality of Apprehension of J.Kiria

J.Kiria, resident of the village Khamiskuri of the Khobi district was, without any legal grounds, apprehended, and placed in police custody by police officers K.Shushania (former chief of the district's criminal police) and R.Kebularia, where he was beaten. As a result, he was inflicted physical injuries of relatively minor severity.

The Public Defender's authorised representative in Samegrelo and Zemo Svaneti filed a complaint with the Regional Prosecutor's Office and the Regional Police. As a result, the Regional Prosecutor's Office (investigator Z.Kutelia) initiated criminal proceedings, and K. Shushania was dismissed from office by the Regional Department of Internal Affairs.

The above complaint is still under control, as the accused in the criminal case has not yet been identified and the investigation is protracted, whereas the discharge from office of the chief of the Khobi criminal police was only nominal, as some time later he was appointed to the position of inspector of 6th Division of the Poti Department of Internal Affairs.

On Ill-Treatment by B.Ponia

In 2002, Head of Criminal Investigation of the Zugdidi Department of Internal Affairs apprehended K.Vartagava, who was then taken to the police station and beaten there.

A criminal case was filed against B.Ponia concerning abuse of position.

Right to Free Elections and 2002 Local Elections in Georgia

As is known, the right to free elections in enshrined in the Constitution of Georgia. Article 28 of the Constitution guarantees the free expression of the electorate's will. Apart from that, Georgia has undertaken serious commitments under international law to ensure the right to free elections. Georgia has become party to the UN International Covenant on Civil and Political Rights, under which every citizen shall have the right and the opportunity "to elect and to be elected at genuine periodic elections which shall be based on universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors" (Article 25, (b)). Our country has also acceded to Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. According to Protocol No 1, Article 3 to the Convention: "The High Contracting Partied undertake to hold free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

These provisions of the two documents are very important. If the UN Covenant emphasises the right to free elections as the citizen's individual freedom, the European Convention sets forth the requirements

concerning the institutional system that needs to exist in a democratic state in order to ensure the said right. It is to be noted that in both cases, the right to free elections includes also the right to elect local representative bodies.

This stipulation is important, since in the reference period Georgia was a scene for local elections. Regrettably, in retrospect, one has to note that these elections had only one positive side – that despite everything, they were held.

The process of elections and all developments round it clearly point to existing serious shortcomings; moreover, in the Georgian reality the elections, as the institute, appeared to be discredited.

I do not intend to discuss political results of the June 2 local elections. We need to examine those aspects of the elections that have a direct bearing on the realisation of the freedom discussed.

As is known, during the run-up to the elections, there was a lot of agitation about the composition of the Central Electoral Commission and the degree of representation in it of different parties. The Parliament of Georgia adopted the relevant amendments to the Electoral Code, but this only happened on 1 May 2002, i.e. only one month before the elections. Thus, the Central Electoral Commission did not have enough time to properly organise the electoral campaign. The result was the disorderly and chaotic electoral process noted by all observers. "For a long time there have been no such elections. This is in the first place parliament's fault, as the work on amending the electoral law started when there was little time left before the elections. The more so, as nothing changed in reality" - this is how experts evaluated the process (NGO "Caucasian Institute for Peace, Democracy and Development").

When speaking about the atmosphere before the elections, one has to point out the split in the Citizens' Union of Georgia. The question on the participation in the elections of the parties that were formed out of the CUG was finally resolved in the Supreme Court, and this is fully in line with the standards of any democratic state. As noted by Mr. Howard Fanton, Head of the Rule of Law Programme at IRIS Georgia, the decision taken by the Supreme Court of Georgia was a brilliant example of the rule of law translated into real life. However, the losing party was not happy about the decision of the court. The result was the situation, described by Mr. H. Fanton as "distressing" – the reformers opposed this lawful decision by the court in a very insulting tone and expressions only because this result was for them unacceptable.

Our position vis-à-vis this issue can be summed up as follows. If we speak about independence, fairness and impartiality of the judiciary (emphasised by the Constitution of Georgia, and international human rights law), then it is necessary to take care of the authority and prestige of this power. This requirement is equally applicable to ordinary citizens and political parties.

In the period before the elections, representatives of non-governmental organisations, political analysts and lawyers spoke about possible destabilisation during the elections. They even prepared a special appeal to all parties taking part in the elections, in which they urged politicians not to allow possible excesses and public confrontation to happen. Civil sector representatives spoke about the aggressive character of the electoral campaign as a factor that led them to make such statements. An appeal addressed to all political parties taking part in the elections was made by the Women's International Association "Tetri Mandili". In their appeal they called upon the politicians to end with the unceasing disorder, and treat each other in dignity. Unless this happens, they said, any victory would mean failure.

It is to be emphasised that the Georgian Orthodox Church did not stay aloof of these processes. In his appeal "To the Government, political parties and people of Georgia" His Holiness and Beatitude, the Catholicos-Patriarch of All Georgia, Ilya II urged politicians to stop making insinuations against each other and, instead, appear before the public with realistic programmes for future action. Polemics can only be conducted with respect for the norms of political morals, which in the first place means respect for personal dignity.

We were confronted with the use of inadmissible methods of struggle in the electoral process, which had its impact, though indirectly, on the exercise of citizens' right to free elections. One of such forbidden methods will be touched upon later.

As far as the electoral campaign and its results are concerned, a lot has already been said and written about them. Based on the prevailing evaluations and our own observations, one can state that:

1. The elections were so poorly organised that it is hard to say to what extent did people manage to express their will. In contrast to the past years, when the power was active in trying to bring the process of elections under its full and undivided control, on 2 June the developments were let to take their course.

2. Since after the disintegration of the Citizens' Union of Georgia, almost all of political parties had found themselves in a similar starting position, massive and orchestrated falsification did not happen. At the same time, the observers present in polling stations pointed to following abuses: the use of additional lists by the majority of the population, compilation of sick electors' lists in breach of the law, use of envelopes and ballots without signatures and stamps, late opening of electoral stations, the presence of

canvassing posters in polling stations, delayed delivery of ballots, poor knowledge of the law on the part of electoral commissions' members. In the final analysis, the breaches committed were so serious that their evaluation required establishment of a special parliamentary commission.

3. All this led the Delegation of the Congress of Local and Regional Government of the Council of Europe to conclude that "inadequately prepared elections ruled out any possibility to hold them fairly".

4. We believe that in order to hold elections of any level in normal conditions, it is advisable to:

   a. compile the electronic version of electoral lists and place it in the Internet, so that any interested person or political party could check them any time;
   b. revise the section of the Electoral Code that deals with general principles concerning the formation of associated councils. From the point of view of the exercise of the right to free elections, it raises doubt when direct elections of local government end up at the village level, whereas district councils are formed *ex officio* by village councillors. What we see in reality is not the election of district representative bodies, but their staffing;
   c. define clearly the liability for electoral breaches, and have the relevant provisions of the law realised, including those implying imposition of criminal liability;
   d. the Central Electoral Commission should publish the results of elections by every single polling station. Transparency of election results at stations will enhance responsibility and, hence, objectivity.

Breaches and abuses committed in the run-up to elections and in the process of elections had as their inevitable result the situation, whereby the Tbilisi Sakrebulo (City Council) could not start its work on intended time. The decision taken by the court made it necessary to count again the votes cast in Tbilisi. The newly elected Sakrebulo was to start its work on 24 June, which means that the delay was at least several months. A similar situation could be observed in Kutaisi. Furthermore, in the event the number of annulled votes exceeds 20%, it will be necessary to hold new elections to the Tbilisi Sakrebulo.

One can safely state that the state failed to fulfil its affirmative obligation and ensure fair elections. Thus, people were denied their main political right, which is absolutely inadmissible in a democratic state.

I hope that before the upcoming parliamentary elections the power will learn the lessons of the recent local elections, and make appropriate conclusions. To say nothing of other reasons, this will have a direct bearing on the international prestige of the country, whose damaging will bring us no good.

Finally, going back to the methods of electoral struggle, I wish to emphasise that in a multiethnic country on its way to democracy, even in conditions of electoral struggle, certain methods and ways must be considered as absolutely unacceptable and forbidden. I am speaking about the inadmissibility of alluding to some politicians' ethnic origin in trying to give them negative characteristics in the eyes of the public. The Public Defender of Georgia urges every politician to refrain from exploiting this theme, as racist and discriminatory attitudes are alien to our people's mentality, as well as to Georgia's culture and traditions.

On Delays in Compensating Performed Work

Many of the problems raised in my previous report to the Parliament still remain unresolved, and we again have to raise them – namely, how are the promises made by executives of certain agencies and departments fulfilled, and how do we determine the responsibility of those persons whose actions result in the violation of the rights of work teams or individuals?

Thus, for instance, not long ago Construction Trust #13 was considered one of the most competent construction organisations able to perform work at the most difficult and large-scale projects. However, with the "help" of government authorities, it has lost its major function and now the trust employees travel from one department to another in order to have their violated rights restored. More specifically, based on Executive Order #63 dated 17 February 1992 of the Cabinet of Ministers of Georgia, the trust team rehabilitated the destroyed administrative building of the Supreme Council (Parliament), refurbished the conference room, the working room of the Bureau, carried out capital repairs of the roofing of the Cabinet of Ministers' administrative building (State Chancellery), and rehabilitated the Zubalashvili House. However, when it comes to compensating the trust for the work performed, the customer (the Parliament Staff, and the State Provision Service) evade paying the compensation owed to the trust, and start demanding that audit be conducted to assess the volume of the work performed. There is nothing bad in this approach, and the audit did confirm the existence of indebtedness, however no payment has so far been effected. The audit firm "Bega", the *ad hoc* Anti-Corruption Commission of the Parliament, the Control Chamber of Georgia, the Expertise and Investigation Commission of the Ministry of Justice of Georgia on the basis of the Mtatsminda District Court decision, Special Governmental Commission established by the State Minister's Order

#76 of 29 September 2000, concluded on the basis of the audit that the effective debt to be repaid by the customer to the said trust was equivalent of 1878 620 USD payable in national currency, which is significantly less that the limit of expenses envisaged in the design-estimate documentation. The arrears calculated for the reconstruction and rehabilitation of the Parliament building is 942384 USD and 981.6 thousand GEL, for capital repairs of the Cabinet of Ministers' building – 19274 USD and Zubalashvili House – 22088 USD. It is to be noted that the penalty under the contract signed between the customer and the Trust for the breach of contractual obligations is equivalent of monthly 8857 USD payable in GEL.

It is to be noted also that the cost of construction work is substantially reduced and the charged arrears of payment equal 44 % of the estimated value of the work performed. For illustration, in the budget the cost of 1 sq. m was estimated at about 492 GEL, whereas the actual cost was 218 GEL. On 6 August we requested Mr.G.Arsenishvili, the former State Minister, to take measures to restore the violated labour rights of the Trust collective. However, no action has so far been taken. Importantly, the indebtedness does exist in reality, and no court trials are needed to have it repaid. Interestingly, for a number of years court hearings have been held in the Didube-Chugureti, Vake-Saburtalo District Courts, Tbilisi Regional Court and the Supreme Court of Georgia. However, no definite decision has so far been taken by the court, and this, clearly simple, case is being artificially complicated. For this reason, by way of proposal, we asked Mr. L.Chanturia, Chairman of the Supreme Court of Georgia, to consider causes of delays in examining the case and, if appropriate, to consider imposing disciplinary liability on judges, as starting from 1997, the case in question has been examined in the Didube-Chugureti, Vake-Saburtalo District Courts, the Tbilisi Regional Court and the Supreme Court of Georgia, 27 trials were held in the Mtatsminda- Krtsanisi

court; however, no essential examination of the case has so far been effected.

Considering the dire financial condition of Trust #13, in response to our recommendation, the State Minister of Georgia A. Jorbenadze entrusted the Minister of Finance, and the Minister for Construction and Urbanisation to settle the problem.

On Non-Conformity of Resolution Passed on 18 October 2001 by the Autonomous Republic of Abkhazia Supreme Council with the Constitution of Georgia

Under the Constitution of Georgia, the exercise of state power is based on the principle of separation of powers, which is the greatest asset of democracy.

The resolution passed on 18 October 2002 by the Supreme Council of the Autonomous Republic of Abkhazia, makes the Prosecutor's Office, the Supreme Court, the Ministry of Internal Affairs and other power structures of the Autonomous Republic of Abkhazia directly subordinate to the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia. Under Article 82-e of the Constitution of Georgia, the judicial power is independent, and it is exercised by general courts. Also, under Article 91 of the Constitution, the prosecutor's office is the institution of the judiciary, and is one, centralised system. Hence, their placement them within personal jurisdiction of the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia is contrary to the provisions of the Constitution. In Recommendation #421/07 of 25 June 2002, I requested the

Chairman of the Supreme Council of the Autonomous Republic of Abkhazia to amend the Resolution and bring it into conformity with the Constitution of Georgia.

In letter #268 of 26 July 2002, the Supreme Council of the Autonomous Republic of Abkhazia informed the Public Defender that mass media, present at the session of the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia, had obtained the draft resolution of the Presidium, which later was refined, and then signed by the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia. In the final version of the resolution no provision is made for subordinating the general courts and the prosecutor' office of the autonomous republic to the Chairman of the Supreme Council.

Chapter II

THE SITUATION WITH PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

By the Resolution of the Parliament of Georgia adopted on 25 January 1994, Georgia has become party to the International Covenant of Economic, Social and Cultural Rights. By acceding to the Covenant, Georgia recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, to the enjoyment of just and favourable conditions of work and protection from unemployment, the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. Hence, the main goal of the state should be provision of employment, securing a subsistence minimum and taking urgent action to have the rights of citizens protected.

The need to improve protection of citizens' rights is seen from petitions and complaints filed with the Public Defender's Office, telephone calls and private interviews. By way of illustration: When the Rapid Reaction Group was established (for the purpose of carrying out monitoring of places of police custody and military commandant's offices) and its contact information was made available to the public through mass media, it immediately started receiving numerous telephone calls from citizens requesting to react immediately to situations concerning persistent arrears in the payment of pensions and wages, other social problems. The Public Defender's Office considered many complaints concerning the non-availability of the subsistence minimum, extreme poverty and vulnerability, non-payment of pensions, wages and salaries.

Many of complaints concerned unemployment. It is common knowledge, however, that high rate of unemployment directly influences the availability of opportunities for the people, their ability to pay. Thus, upon looking at the applications and complaints referred to the Public Defender's Office, one conclusion readily presents itself: to put it mildly, it is difficult for people to understand why their real income does not increase, when payment for the utilities such as power, water, gas, telephone continuously increase.

It is to be noted, that together with the demand to have their needs met, citizens also emphasise the need to transform every sphere of social life, carry out economic reforms, improve social conditions, perfect the work of state bodies, resolve other vital problems.

This part of the Report addresses problems that were the focus of our work in the reference period. We made use of the information obtained from different non-governmental organisations, applications and complaints referred to the Public Defender's Office, official statistics provided by the State Statistical Department of Georgia.

Even a cursory analysis of the available materials shows that not only did the protection of the citizens' economic and social rights not improve; on the contrary, by some indicators it even worsened.

The Covenant of Economic, Social and Cultural Rights implies that it is not reasonably possible for a state to fully realise the whole array of these rights. The States Parties to the Convention are expected to achieve progressively the appropriate level of protection of concrete rights. In other words, the states shall encourage continuous advancement, and take affirmative action to further it. In this context, it is hardly admissible to give in, to surrender the level and positions already attained, for it is in such case that economic and social rights are violated.

Thorough the prism of such approach, it must be clear what is the cause of the Pubic Defender's discontent in connection with the status of economic and social rights in Georgia. The best illustration is furnished by the statistical information on basic socio-economic indicators.

Population of Georgia, Out-Migration and Poverty

Preservation of human resources potential remains one of the most serious problems for Georgia. In the 90-ies, the outflow of migrants from Georgia reached considerable proportions. Today it is virtually impossible to obtain any accurate and precise figures on the scale of migration in Georgia (according to TACIS data, about 800 thousand persons left Georgia). According to the data of the State Statistical Department of Georgia, as of 1 January 2002, the population inside the country was 4409.8 thousand. Compared to the results of the 1989 general census, the size of the population decreased by almost 1 million persons, i.e. by about 20%. This figure shows the number of persons who left Georgia (labour migrants and emigrants), not the natural population loss. Migrants can be divided into two main categories:

- those who have at least one member of their family staying in Georgia;
- those who left with the entire family.

The root causes of migration are to be seen predominantly in economic difficulties. The daunting socio-economic situation in the country – lack of high-paying jobs, unfavourable business environment – forces people to go abroad in search of better living. The money they send back to Georgia is one of the sources, but more often – the only

source of income for their family. When viewed in relation to poverty, over the short term migration is rather the effect, than the cause, of poverty. However, in case the existing tendencies remain unchanged, it may become one of the factors causing aggravation of the situation. This assumption is based on the following data: the absolute majority of migrants - over 80% - left Georgia in search of employment: 80% of them are 20-25 years of age, over 50% of them have above-secondary education. These data warrant a conclusion that in case the current scale of migration remains unchanged, one would expect a considerable drain of human resources from Georgia, as according to the available information from different sources, every year about 30-35 thousand people "actively" try to leave the country. The main purpose for most of them (70-75%) is to work abroad. Their distribution in terms of age and education is similar to that of the migrants already outside Georgia. This is an extremely serious problem, the more so for a small country, such as Georgia.

As to any future change in the scale of migration, in case the prevailing conditions remain unchanged, the outlook would hardly look hopeful. According to one survey, about 400 thousand persons wish to leave Georgia. One of important motivating factors is gaining permanent residence abroad. This motive was indicated by less then one-fourth of the respondents. The prevailing motive indicated by two-thirds of the respondents is working abroad. Anyway, it is clear that Georgia has lost, either temporarily or for good, one fifth of its population, the main cause being lack of protection of their economic and social rights. Poverty is a major problem. The available data suggest that during the past 5 years there have been no positive dynamics in terms of poverty reduction, which is extremely frustrating for the people, prompting them to leave the country either on a permanent, or a temporary basis (for better prospects of living).

The best way to stop these processes is to further improvement of economic situation, which is clearly dependent on proper economic policy of the state. This would lead to a marked improvement of business environment – the best way *per se* to create necessary conditions to overcome unemployment.

Going back to the problem of poverty, it has been further compounded by the growing social differentiation observed over the past years.

The public is well aware of the negative implications of poverty and inequality. Poverty is a relative concept, and it largely depends on the level of the country's economic development. The main objective of looking at poverty is analysing the well-being. Poverty is looked at against a predefined level of consumption projected for a certain level of well-being.

One of indicators of the standard of living is the pattern of consumer expenditures and the share of food in consumer costs. The pattern of consumption in Georgia is far from being encouraging, as food costs (monetary expenses and consumption of self-produced food) account on average for 60% of total consumption. In cities, in comparison to villages, the share of such costs is somewhat higher, which results, on the on hand, from the shortage of money in rural areas, and on the other hand, from the need of some non-food expenses in towns.

Total expenses (including non-consumer costs) of families living below the poverty line is a monthly 84.4 GEL (32,6 GEL per one person equivalent to a working-age man), which is 3.4 times lower that the same indicator for families above the poverty line. People in poverty spend 11 times less for education and transport, 4-6 times less for health care, food, clothing and other expenses, Household budget is formed by earnings from different sources, such as: land, wages, self-

employment, transfers, relatives, undeclared cash. These sources all have their specific role and function, however, none of them is stable and reliable.

In the wake of the developments of the recent decade, the role of a salary or wages, as a main source of income has become very insignificant, to say nothing of persistent non-payment of salaries.

The self-employed mostly belong to 2 groups – those who work on their own land, and those who work in the non-agricultural sector. The first group comprises 80-85%; they produce natural products. As far as the second group is concerned – those who work in non-agricultural sector, their contribution is not very significant. State transfers are not very considerable, but they do play a role in the formation of budget of households living below the poverty line. Georgia has a rich tradition of neighbours, relatives and friends helping and supporting each other, and this is an important factor for survival in conditions of poverty. It is due to this tradition that private transfers (both money and in kind) make up an important part of incomes of people living in poverty. It is difficult to assess undeclared incomes. All the above leads us to conclude that poverty is an acute problem in Georgia, and it will take a lot of time to overcome it.

About half of the Georgian population live below the poverty line. 13-15% live in extreme poverty, which is a fairly high rate. One third of the population has at least once been below the poverty line during the year (current subsistence minimum is implied). This means that about one third of the population is on the verge of poverty.

Tax Revenues and Income of the Population

It is known that tax revenues represent the major source to implement the budget. How well the revenues part of the budget is executed determines the financing of the state-funded sector, social security, etc. Hence, protection of economic and social rights of the population depends largely on indicators of budget revenues. The situation is hardly commendable: tax revenues of the overall budget for the first half of 2002 accounted for 14.2% of GDP (14.3% in the first half of 2001), which is a setback, though insignificant, compared to the same period of the last year. Tax collection rate in 2000-2002 is even less, and it is significantly lower than the indicator for most countries of the former Soviet Union, to say nothing of Eastern Europe. According to the State Statistical Department of Georgia, this situation is largely due to a very considerable share of informal sector in the Georgian economy. Besides, informal domestic production accounts for about 40% of total added value created the Georgian economy. This narrows considerably the tax base.

The budget process has so far failed to attain the requisite level of efficiency, transparency and fair distribution of resources. No significant results have been achieved in terms of strengthening the public finances; the share of tax proceeds relative to GDP remains law.

In 2001 Georgia found itself confronted with the need to pay out considerable sums to service external debts, which would make the financial situation in the country even more difficult. Under agreements with external lenders within the Paris Club, in 2001 alone, Georgia was to pay out USD 200 million in debt servicing, whereas in 2002 the respective sum was USD 235 million.

External debts have been rescheduled for 20 years, with the interest rate equal to 4%. This has significantly alleviated the country's financial burden, and enabled the government to put to a more effective use budgetary resources to further economic reforms in the country, which is expected to improve, if only partially, the existing social situation.

The dire economic conditions in the country affect and determine the income of the population. This is axiomatic. However, here I would like to address their absolutely legitimate claims concerning the indexation of money deposits they had in savings banks. This problem is the theme of many complaints referred to the Public Defender's Office, and it will most likely persist for a long time to come. The same is true of the funds borrowed by certain bankrupt companies and banks from the population and not repaid. The response by the state has been inadequate: neither has it found an effective way to have the depositors indemnified for the loss, nor has it taken effective steps to draw up a relevant legislative framework to address such situations. Thus, these problems remain unresolved, and no ways to solve them are likely to be found in the nearest future.

It is difficult to draw an all-embracing picture on the status of human rights in a report covering only a 6-month period. The Public Defender has deliberately chosen to focus on negative aspects concerning the situation, as these are our major concern and the focus of our work.

The Public Defender does not, and could not, have any ready, off-the-shelf recipe on the ways to remedy this situation. One thing is clear – this situation is a major source of violations in the domain of economic and social rights.

Labour Market, Unemployment and Employment

Unemployment is one of the most important factors having a direct bearing on poverty.

The labour market in Georgia is unorganised and unstructured, which is due to the structural changes underway in the economy, on the one hand, and imperfect regulatory mechanisms in this area, on the other.

According to international classification of employment, those employed fall into two main categories: hired workers and the self-employed.

Underdevelopment of economy is attested by the fact that the number of hired workers is two times less than the self-employed, and the figure has a tendency to decrease.

A major part of the working age population in Georgia is self-employed. 98% of the self-employed work in their own farm, enterprise or private business, mostly together with their families. The number of employers – one of the most important segments in terms of economic recovery, is declining, which points to unfavourable business environment.

According to 2001 data (the most recent information available to us), total number of unemployed in Georgia was 235.6 th. persons, i.e. 11.1% of the economically active population. The number of unemployed men, both in absolute terms and expressed on a percentage basis, is greater than the number of unemployed females.

At the same time, the number of unemployed registered with the state employment agencies is only 12% of their total number. This, in my

view, suggests that most of the unemployed do not place any hopes on the state in helping them to find a job. The unemployed seek on their own to find employment, or go to private employment agencies. The Public Defender believes that in conditions where the state is not in a position to offer any meaningful help to the unemployed, it should work towards establishing a legal framework to regulate the work of private employment agencies. In 2001, the Parliament adopted the new law "On Employment" and in 2002 the Minister of Labour, Health and Social Protection endorsed the regulation on "On compulsory notification of private employment agencies".

Going back to the issue of the unemployed registered with the state employment services, I want to emphasise that in the period between January to May 2002, their number grew from 1640 to 29779 persons. 64.8% unemployed received higher or vocational education; by the most recent job, 51,1% of them were specialists. Unemployment remains to be the problem that hits specialists the most.

As of 1 July 2002, the number of vacant jobs registered with employment agencies increased by about 23%, compared to the last year. However, in absolute figures, their number is not more 1390, which means that there is only one job for every 20 unemployed applicants. It is clear that unemployed stand little chance to find a job. This is corroborated by statistics. In the period between January to June 2002, the number of job placements through employment agencies decreased by 44.4% compared to the last year, and equalled 2493. Females account for only 38.6% of those employed.

Proceeding from the above, the Public Defender considers that the state fails to fulfil its obligation under the Constitution, namely, that "the State shall assist the unemployed citizens of Georgia to find employment" (Article 32). We are confronted with a serious violation

of the right to work. Speaking generally, there is a direct correlation between the level of employment and the level of protection of other economic and social rights. Thus, violation of the right to work leads to a kind of chain reaction, in terms of adversely affecting the enjoyment of other relevant rights.

On Violations of Labour Rights of Public Servants

The reform carried out in the Tax Office in Tbilisi led to the violation of labour rights of many tax officers. This fact was emphasised in our previous report to the Parliament. Within the authority granted to the Public Defender under the organic Law on the Public Defender of Georgia, I requested the Ministry of Tax Revenues and the Tax Department to restore lawfulness. However, the authorities concerned did not manifest good will. A closer analysis of the problem led me to appeal to the President of Georgia, Mr. E.Shevardnadze to consider the issue on the advisability of Minister L.Dzneladze's and Chairman of Tax Department, L.Chrdileli's continuing in office. Only 2 years later, due to the input on the part of I.Zautashvili, Chairman of Tax Department, was it possible to partially resolve the question pertaining to tax personnel. Most of tax officers listed in the decision of the Vake-Saburtalo Court of 5 September 2001 were recruited in Tbilisi region tax inspections on a contractual basis. I hope that this was only the first step to restore justice, and work towards this end will continue, the more so as the number of tax officers now on stand-by is quite significant.

From the start of tax reform, I have been closely following its course and worked towards restoration of the rights of tax officers that have been violated. Thus, I know well where exactly tax officers' labour rights were violated, who and how shared in these violations, and I

have more than once stated that openly. Analysis indicated that most of applications and complaints submitted to the Public Defender's Office refer to the Didube-Chugureti Tax Inspection. I think, it can be stated with confidence that how work is performed in this district determines, in large measure, the fulfilment of tax revenue related assignment in Tbilisi. During the two years after the reform, there have been many changes in the district management. First, T.Tsirekidze was appointed as chief of the district tax inspection, later he was replaced by T.Kalmakhelidze, still later – by T.Kurashvili, and starting from February this year, - by Z.Melkadze. It is to be emphasised that throughout the period before Z.Melkadze's appointment to the position there had been no such massive violations of lawfulness as are observed during the period after February, when Z.Melkadze installed in the office. He issued a considerable number of unsubstantiated orders paying no attention either to the essence of the matter, or to people's fate. George Iashvili, Nino Alavidze, Dimitri Kvergelidze, Levan Beridze, Besik Meladze, Avtandil Lezhava, Merab Mikeladze, Besik Nozadze and Guli Chibukhashvili were illegally dismissed. On 21 August 2000, these officers had won the competition and had been working as tax inspectors at the collection division of the regional tax inspection, and discharged the functions stipulated by Order #546, dated 27 June 2001 of the Minister of Tax Revenues. By decision of the Didube-Chugureti court dated 28 March 2002 (case #2/848), the unlawfully issued orders were invalidated, and all the persons listed above were reinstated in their positions. This decision was executed by the Inspection's order of 7 May 2002. However, By Z.Melkadze's order, they were again removed from the exercise of their functions without even starting any inquiry that is now being conducted by the General Inspection.

Z.Melkadze's neglect of law is clearly seen in his treatment of Didube-Chugureti regional tax inspectors Ms.J.Pkhakadze and Mr.

B.Tsakadze. On 11 February 2002 J.Pkhakadze was appointed to the position of inspector at the tax collection unit, with remuneration fixed in accordance with the manning table, which means that she was appointed under terms specified in Article 18, Para (a) of the Labour Code, i.e. for an indefinite period. This notwithstanding, by Z.Melkadze's orders of 7 May 2002 J.Pkhakadze and B.Tsakadze were discharged from office. The labour dispute is now being heard by the Didube-Chugureti District Court, and I am confident that the court will pass a fair decision.

All the above leads to concluding that protection of lawfulness in the Didube-Chugureti Tax Inspection is far from satisfactory. In my view, this is due to a lack of shared responsibility for diligent performance of the function entrusted to them, and also because senior managerial positions are filled with persons who are negligent of the law and who lack professional skills and qualifications to duly safeguard the lawfulness.

D.Topeshashvili, acting deputy chief of the Tax Inspection, has not taken any qualification tests. Another deputy, K.Beridze, formerly employed at the Major Taxpayers' Inspection, was hardly successful in his previous job, and his low of professional qualification was even mentioned by the former minister, L.Dzneladze. Nevertheless, he was appointed to the office. Such an approach to personnel selection is observed in other inspections too, and this is probably one of the factors responsible for unsatisfactory performance in terms of fulfilling budget assignments, abusive practices of tax return, excessively charged sums on taxpayers personal cards, transfers of taxpayer's sums from one inspection to another, without analysis of tax base changes and adjustment of respective target figures. Thus, for instance, in January 2002, the Didube-Chugureti Regional Tax Inspection, through banking channels, requested and illegally (without balance)

transferred from social funds and the territorial units' budget to the central budget the sum of 72 280 GEL, thus artificially swelling the execution figure of central budget target parameters. These matters are dealt with in detail in Resolution #12/1, dated 6 June 2002 of the Chamber of Control of Georgia that speaks of number of negative tendencies observable in the tax office – lack of cash revenues, especially in terms of social funds, inadequate delimitation and distribution of sums between various levels, etc. My informed conclusions about the situation was brought to the notice of Mr. I.Zautashvili in which I raised the question on the advisability of Didube-Chugureti Tax Inspection management continuing in their positions. I hope that provisions of the law will be respected.

During the hearing of my previous report to the Parliament, the Chairman of the Economic Policy Committee, Mr.A.Abralava asked for clarifications concerning the violation of Ms. L.Kvekveskiri's labour rights. Analysis of the case makes it clear that here too we see the management ignoring the provisions of the law. L.Kvelveskiri is a finance specialist and a lawyer. She had worked in the tax office since its inception. In August 2000 she stood a qualification test. Since the reform was effected with multiple breaches, many of tax officers, including L. Kvekveskiri, filed a claim with the court. By the decision of the Vake-Saburtalo Court of 21 December 2000, the results of the first round of their tests were accepted as successful, and they were allowed to take part in the second round. Results showed by L.Kvekveskiri were among the best, and both the Ministry and the Department describe her as a qualified professional. She legitimately requested her appointment to the position to which she claimed her right based on competition results. However, the former Deputy Minister L.Mumladze proposed L. Kvekveskiri to take a temporary job as senior inspector of the Didube-Chugureti Tax Inspection, with understanding that if the position of the deputy chief of inspection was

vacated, her candidacy would have been considered. However, despite this promise, when the vacancy appeared, she was not considered as a candidate for the job. This matter became the theme of a petition filed by the Chairman of "21st Century" faction, Mr.V.Bochorishvili, as well as of the Public Defender's recommendation. However, the former Chairman of the Tax Department, L.Chrdileli, did not consider this request. Moreover, the decision of 5 September 2001 taken by the Vake-Saburtalo Court that instructed the Ministry to appoint officers to their positions in accordance with Article 77 of the Law on Public Service, and the Ministry Regulation was completely neglected. L. Kvekveskiri's labour rights were discussed, among other questions, during our meeting with the new Chairman of the Tax Department, Mr.I.Zautashvili. According to him, L.Kvekveskiri is a highly qualified professional. However, the question of her appointment to the position of the deputy chief of the Didube-Chugureti Tax Inspections has so far not been considered.

It took us almost two years to achieve a very minor result, and this happens because so far no one has been called to answer for violation of the law.

One more example of violation of labour rights. The case shows how the Ministry of Justice of Georgia protects Ms.K.Adamia's labour rights. By Order #39 of the Ministry, dated 14 March 2002, Ms. K.Adamia was included into a stand-by reserve, though under Article 30 of the Law on Public Service, it was definitely possible to appoint her, without competition, to the position of the Citizenship and Immigration Department advisor, for which there was an opening. However, the Ministry decided to carry out attestation, and based on the analysis of information concerning people on stand-by, to select the best candidate. There is nothing inherently wrong with such an approach. On 13 April the newspaper "Sakartvelos Respubika"

published a vacancy announcement for the Ministry of Justice, and K.Adamia took part in the selection competition. The Minutes of the Competition and Attestation Commission indicated that she received positive evaluation. However, the question of her appointment to the vacant position was not even considered. From the same minutes we see that it was impossible to give preference to one of the candidates. Therefore, by decision of the Competition and Attestation Commission, the competition was considered null and void. But, under Article 36 of the organic Law on Public Service, a competition can be considered null and void in the absence of applications for participation in the competition, or if the Competition and Attestation Commission refuses to nominate the candidate for a position. In the case at hand, this provision of the law has been violated. Under Article 5 of the General Administrative Code, an administrative body has no right to effect any action contradicting the law. Considering K.Adamia's qualifications, her work with the Ministry in 1992-1998 in different positions, including consultant and, later, advisor of the Citizenship and Immigration Department, her level of professionalism, confirmed with the results of the qualifications test, by way of proposal I asked Mr.R.Giligashvii to appoint K.Adamia to the position, that she applied for during her qualifications test.

Standard of Living, Salaries and Wages, Prices

The standard of living dynamics is clearly seen from the table below showing the subsistence minimum as of June 2002, compared with June 2001.

(GEL)

Size of household	One member	Two members	Three members	Four members	Five members
June 2001	104.5	167.3	188.2	209.1	235.2
June 2002	110.0	176.0	198.0	220.0	247.2

As is seen, the subsistence minimum increased for all types of households. At the same time, the size of minimum subsistence salary remained unchanged and only equalled 40% of the normative salary (which together with other earnings provided for a non-deficit budget of a 4-member household at the level of subsistence minimum). After 1998, despite the inflation there has been no salary increase in budget-funded organisations. Quite the reverse, on the initiative of the former Minister of Finance, starting from 2000, material assistance and bonus funds have been abolished: however, their total equals the size of public servant's remuneration for 5 months. The question of non-taxable minimum wages has not been solved (since 1995 it is 9 GEL), whereas the minimum subsistence salary is 20 GEL, and even this is taxable. As a result, the population has found itself in an inadequate situation, where salary loses its stimulating function and becomes a kind of social benefit not depending in any manner on the amount, or quality, of the work performed. Such a situation is inadmissible and it, no doubt, represents a violation of human rights.

One of important factors that often pushes a person below the poverty line, is age. In Georgia, the age pattern of employment is non-typical. In economically advanced countries, the pension age population is, for the most part, economically inactive. This means that people of this age do not work; neither do they look for any jobs, as they have worked much enough and now they can stop and relax. In Georgia, the situation is entirely different. The retirement age population shoes a greater level of

employment, and this is particularly visible in rural areas.

The segments of population most susceptible to poverty are unaccompanied elderly and families consisting only of non-working-age members.

The condition of the state pension scheme in Georgia is among the most daunting in the post-socialist space, which is reflective of economic pressures and represents the outcome of developments in the field of state administration underway from 1990-ies.

- A drastic decrease in production output due to lower level of employment and labour productivity;
- Rapid growth of informal sector in the economy; low level of fiscal discipline and tax collection;
- Weak servicing capacity of the state.

The results proved disastrous for the pension scheme: the number of actual taxpayers is much smaller than the number of pension scheme beneficiaries, due to which the pension scheme provision coefficient (the employed to pensioners ratio) has dropped from 2.8 in the 1980-ies to a current 0.8. Salaries and wages have decreased, and even these are paid with delays. Tax evasion is widespread. As a result, the pay-roll fund from which taxes are paid (as percentage of taxable salary) dropped in 2000 to 2% GDP, which led to a severe crisis in the pension scheme, hence – increased arrears in pensions.

By 1999, the number of pensioners was 950 thousand, i.e. 19% of the official size of population. By 2000, arrears in pensions were estimated at about 100 million GEL, which is approximately equal to 7-month arrears in pensions.

By the end of 2001, the number of pensioners was 896 thousand, i.e. 20.3% of the population. Arrears in pensions were estimated at 90

million GEL. It is to be noted that the number of pensioners is decreasing. Starting from 1997, the number has decreased by 83.4 thousand persons, whereas compared to 1999 – by 27,7 thousand persons.

Reduction in the number of taxpayers resulted in a reduced amount of taxable salaries. These two factors, taken together, have led to a decrease of the taxable basis. As a rule, a large informal sector and inadequate tax collection are typical of poor countries. Georgia is no exception.

Financing of pensions presents a difficulty also because by its age pattern Georgia is older than other countries with a comparable level of development.

A closer look at the ratio between average per capita pension and income in the former socialist countries shows that Georgia is among the countries at the bottom of the list. In 1996, the ratio of average pension to per capita income was 12 %. This figure can go down if actual consumer costs are taken into account. In 1997, the said ratio was 8%.

As a rule, the government's involvement in the provision of pension scheme is due to two objectives it sets to achieve: 1) preventing poverty at old age, and 2) maintaining approximately even level of consumption over life time, without marked falls. The current economic situation in Georgia is so dire, that in the nearest future the state will hardly be able to meet any of these objectives.

Both the financial capacity and the size of the pension scheme have declined to an extent, greater than in other countries of the former socialist block. Pensions paid out by the system are extremely low, it

faces deficit despite high social taxes, and can provide for a very minor part of the earned income. As already mentioned, today the system is not in a position to attain two main objectives: to reduce poverty among old-age population, and to provide for consumption in the old age. The goal of the state is to create a new scheme that will secure both objectives and further economic growth.

Needless to say, pensioners' social protection requires considerable financial resources. It is self-evident, but I want to emphasise one thing: time will not wait for an elderly pensioner. It is impossible to stop the process of natural loss of population. Therefore, it is imperative to speed up the realisation of the pension reform, introduce differentiated pensions and address the question of their increase.

I raised the question of increase in pensions with the Ministry of Labour, Health and Social Protection. The Ministry informed me that increase in pensions is dependent on the availability of the necessary financial resources, it is necessary to secure a source for financing an increase, which presently seems unrealistic, as the government has to repay 90 million of arrears in pensions accumulated over the past years, and before that is done, it will not be possible to solve the question, concerning increase in pensions. The Public Defender was also informed that the Ministry has drafted and submitted for consideration of the government the law "On compulsory pension insurance" which envisages, *inter alia*, the indexation of the existing pensions. The draft law is expected to become effective from January 1, 2004. It is necessary to have its public discussion, in order to avoid the "effect" similar to the one that followed the introduction of compulsory medical insurance.

Increase in prices for electricity, gas, water, etc., does not fit in the present-day social context in Georgia.

In the period between January and June 2002, the consumer price index was 1.03%, which is equivalent to a monthly inflation of 0.49 %. This figure is high, if viewed against the corresponding figure for 2001 (0.15 %). During 12 months (June 2002 compared to June 2001), prices generally increased by 5.5%, including for food – by 7%. As mentioned already, according to the statistics, in the pattern of average monthly expenditures food comes first, and food expenditures are on a rise.

Health Care and Social Aid for Elderly

At the request of Academician N.Kipshidze,, Chairman of the Supervisory Council of the National Centre of Therapy, and Academician I.Chumburidze, member of the Board of the Georgian Society of Gerontologists, I considered the question of medical and social aid provided in Georgia to the elderly and senior-age people. It turns out that despite the steps taken by the state, the situation at hand calls for radical improvement, the more so as the number of people in this group is growing. By the data of 2000, the number of people aged 60-74 was 1.6 million people, 70-89 years - 207.4 thousand, and above 90 years - 25.6 thousand. The number of women in this age group varies between 60-70%. It is to be noted that a large part of people in this category suffer from chronic diseases, show low psychophysical and social activity, and require urgent medical assistance.

In Georgia there was, and still is, a considerable number of scattered and uncoordinated institutions and societies dealing with the elderly's problems, but the effectiveness of their work was very low, to the extent that the state, represented by the Ministry of Health, undertook to establish the Scientific-Research Centre of Gerontology and Geriatrics which, since 1976, has been a structural unit of the Institute

of Therapy. The Centre works on problems relates to ageing and longevity demography, carries out monitoring of health status of the elderly population, studies mortality and morbidity problems, psychological specificities, etc. It offers medication and treatment, mostly for cardio-vascular patients. Notably, the Centre has its own 10-bed geriatric hospital – so far the only one in Georgia. Thus, the Centre has an important role to play in the examination and rehabilitation of the elderly. However, the centre is confronted with many problems. Firstly, the Institute of Therapy was transformed into a joint stock company, the Centre has become a self-financing institution. However, given the prevailing social situation of the centre's beneficiaries, its earnings are meagre, which negatively affects its work. This leads to an exodus of qualified personnel, and presents a serious impediment for gerontological research. This branch of medicine cannot develop only on its own, without support from the state. The state has an obligation to control all health institutions, provide access to medical care for all groups of population. This requirement represents a constitutional norm. At the same time, by acceding to the International Covenant on Economic, Social and Cultural Rights, Georgia has undertaken to work towards the improvement of the health of the population, both taken as one whole or by groups; work out the national health policy; define priority directions and, accordingly, allocate from the state budget the amounts needed to ensure efficiency of this extremely important sector. Looking at the Centre of Gerontology and Geriatrics through the prism of these requirements, one can state with confidence that the existence and development of both the scientific and practical gerontology is incompatible with the operation principle of the Institute of Therapy as a joint stock company, the more so if viewed against the background of the social and economic predicament. In other republics of the former Soviet Union and elsewhere in the world, these problems are addressed by the state. According to informed estimates, in the event the Gerontology Centre

becomes an autonomous entity independent from the Institute of Therapy, and provision of food, medications and medical care is funded from the state budget, the amount needed at the initial stage to provide medical care to over 1000 elderly appears to be yearly 53.0 thousand GEL. At the same time, we consider it expedient that gerontology be included into the list of priorities in the context of health sector reform. The state is in a position, and has an obligation to its citizens, to do so.

Social Protection for Victims of Political Repression

The "Law on Recognising Citizens of Georgia as Victims of Political Repression, and Social Protection for Repressed Persons" was passed on 12 December 1997. However, the problems of politically repressed persons are still unresolved. This, in particular, concerns the payment of an increased pension (45 GEL) to the children of victims of political repression, restoration of property rights to their families, money compensations, etc.

The Public Defender's Office works in close contact with the families of persons recognised as victims of political repression, with members of the "Memorial" organisation established by politically repressed persons. According to their data and the official statistics, in Georgia there are 18.0 thousand persons who are successors of people recognised as victims of political repression. They legitimately demand the payment to them of increased pensions, however, their request is not granted. One good illustration to confirm this point is the explanation provided by the Krtsanisi-Mtatsminda Division of the Unified State Fund for Social Security. According to them, the recalculation of pensions is suspended for successors of the victims of political repression. In order to look in detail into this problem, on 22 February 2002, I requested the Ministry of Finance to provide clarifications

concerning a concrete normative act that has suspended the recalculation of pensions. According to the Ministry of Finance, recalculation of pensions was suspended based on Article 13, Para.2 of the Law on State Budget for 2000. However, under the law of 14 June 2000 "On Amendments and Additions to Certain Legislative Acts", restrictions were withdrawn from 1 January 2002. Moreover, budget expenditures under Schedule #7 of the State Budget envisage the payment of 6480 thousand GEL, which is sufficient for paying increased pensions not only to victims of political repression but, in the event of their death, to their spouses, parents, and those of children who were staying together with their parents in resettlement camps, etc. The envisaged amount, however, fails to cover fully all successors of victims of political repression. Thus, it is highly advisable for the Ministry of Finance to secure increasing this sum by the amount needed for the provision of an increased pension (45 GEL) to the children of the deceased victims of political repression. It is to be noted that if the Ministry of Finance had no intention to provide an increased pension to successors of politically repressed persons, then, similarly to 1998, 1999, 2000, and 2001 it should have submitted a request to the Parliament to allow postponement (deferral) with regard to the execution of certain items of the law (though, such postponement, *per se*, has for 5 successive years led to violation of the rights of the given category of persons). The Ministry, however, failed to meet this requirement. No amendment has been made to legislative acts on amendments and additions to the law concerning restriction of the size of pension for successors of politically repressed persons Thus, the provisions of the 1997 "Law on Recognising Citizens of Georgia as Victims of Political Repression, and Social Protection for Repressed Persons" remain effective.

At the same time, the Ministry of Finance holds that persons recognised as victims of political repression who were kept in places of deprivation

of liberty, settlement camps, psychiatric institutions, etc., as well as the unfit-for-work spouse, parents, and children of the deceased victim of political repression, irrespective of employment, will receive an accordingly calculated monthly pension. However, no provision to this effect is made in the law on budget. More specifically, Article 13, Para 2 of the law stipulates that: "the size of pension payable in 2002 to persons recognised as victims of political repression shall be equal to the size of pension payable to war invalids, i.e. 45 GEL", but no provision whatsoever is made of the person's spouse, parents or children unfit for work, which clearly contradicts Article 12 of the "Law on Recognising Citizens of Georgia as Victims of Political Repression, and Social Protection for Repressed Persons". All persons are equal before the law, and the state has undertaken an obligation, under international covenants, to afford them equal protection. Thus, the children (adopted children) of victims of political repression are entitled to obtain what is provided by the law. Concerning this issue, I made a request for assistance to the President of Georgia, Mr. Eduard Shevardnadze. The question is awaiting solution.

Internally Displaced Persons and Post-Conflict Zones in Georgia

The conflicts spurred and incited by secessionist forces in Abkhazia and Samachablo (South Ossetia) in 1990-1994, forced more 300 thousand persons (mostly Georgians) to flee from their places of permanent residence and seek temporary shelter in other regions of Georgia. No significant progress has been attained so far towards the political settlement of these conflicts, and thus social protection of internally displaced persons has become a long-term problem, placing a heavy burden on the country, while the territories in question *de*

facto remain outside the jurisdiction of the Georgian state. They are governed by separatist regimes not recognised by any subject of international law.

As a result of these conflicts, the civilian population residing in the conflict zones or in neighbouring regions suffered extensive damages. IDPs are residing in all parts of Georgia, however they are concentrated in great numbers in the regions of Samegrelo and Imereti, and in Tbilisi. Results of the sampling survey, conducted jointly by the International Federation Of Red Cross and Red Crescent (IFRC) and the Statistical Department of Georgia with a view to looking closer at IDP's socio-economic conditions suggest that against the backdrop of a daunting social situation prevailing in the country, the socio-economic situation of IDPs presents an even direr picture (in this context, the most critical situation is observed among IDPs residing in accommodation centres):

- Their average income from labour activity is lower that the average in country;
- The rate of unemployment among IDPs is twice as high as the average in the country, whereas in compact accommodation centres it is three times greater that the country average;
- IDPs' living conditions (particularly in accommodation centres) are on the average poorer than in rest of the country.

IDPs mostly rely on work and relief aid from the government as sources of their income. Other sources, though insignificant, are sums remitted by family members working outside Georgia, self-grown foodstuffs, gifts and donations form friends and assistance from charity organisations, both in cash and in kind. The assistance programme for IDPs is among the most significant ones in terms of scale. In 1998 budget expenditures for this programme equalled 56 million GEL, in 1999 – 51 million GEL, and in 2000 – 42.5 million GEL. According to the data for 2000, an IDP receives from the government monthly

12 GEL, whereas pension-age IDPs receive additionally a pension of 13.4 GEL (regular pension plus 20% bonus to the pension). In accommodation centres, IDPs have 5 GEL deducted from their baseline allowance of 12 GEL - 3 GEL for electricity, 1 GEL for water, and 1 GEL - for sanitary purposes.

The socio-economic condition of IDPs is extremely difficult. The only way out of this critical situation, and the one having no alternatives, is their safe return to their places of residence. The Government of Georgia does all it can to secure peaceful settlement of these conflicts.

Negotiations with the secessionist leadership of these territories are conducted with the participation of international organisations (UN, OSCE), and the Friends of Georgia.

The position of the Georgian leadership shared by the international community and based on standards and practices of the international law, envisions the granting of broad autonomy to these regions, but with observance of basic principles:

- territorial integrity of Georgia;
- unconditional return of IDPs to their original places of residence.

This stance has been repeatedly shared and supported by the UN and OSCE , and reflected in international instruments (resolutions of the UN Security Council, OSCE Budapest, Lisbon, and Istanbul Summits).

Peace talks, as well as the presence of CIS peace-keeping forces in the zone of the Georgian-Abkhazian conflict made it possible for one part of IDPs (about 10%) to return to Abkhazia, namely to the Gali district. Part of IDPs also returned to the Tskhinvali region. However, the returnees have no guarantees for their safety or enjoyment of fundamental rights.

Today the priority task is starting the process of unconditional and dignified return of refugees and IDPs to their homes, the setting up, under the UN auspices, of the special international interim administration, unconditional acknowledgement of refugees' and IDPs' property rights to material assets, as well as movable and immovable property left behind.

In parallel to the process of political settlement, work is underway to re-establish economic links with these regions, which is to be seen as one of important factors for building confidence and trust between the population of the conflicting sides. The Georgian-Abkhazian Co-ordination Council and the Georgian–Ossetian Joint Control Commission jointly established by the sides, co-ordinate, *inter alia*, the implementation of mutually beneficial economic projects.

The process towards the rehabilitation of the post-conflict zones has already started, and it is unfolding mostly through the assistance of the international community. A relatively active work in this direction is being carried out in the Tskhinvali region. Starting from 1997, a number of rehabilitation projects have been launched in the region with the UNDP and EU financial support. Within the framework of the EU Programme for economic rehabilitation of the territories affected by the conflict, 3.5 million EURO has been spent to rehabilitate the water supply and electric power supply networks in Tskhinvali, to repair and refurbish 4 secondary schools, establish a number of agricultural co-operatives. Works (worth 1.5 million EURO) are underway to rehabilitate the railway link between Gori and Tskhinvali, restore the gas pipeline network and provide for power supply to the region from the Enguri Hydro. The talks are underway to consider plans for further rehabilitation projects to be implemented with 2.5 million EURO allocated additionally for this purpose.

It is to be noted that the Government of Georgia and representatives of the Tskhinvali secessionist leadership reached an agreement under which the Georgian Social Investments Fund has started infrastructure rehabilitation activities with the support of the local administration. According to the plan, an advocacy campaign was conducted in Tskhinvali, Did and Patara Liakhvi river valleys, in the Znauri and Java districts The main emphasis in the activities of the Social Investments Fund is on stimulating a more active involvement of the population in identifying concrete problems. The Fund's rehabilitation investment amounts to 80-90 % of the project cost, whereas community involvement accounts for 10-20% (money, materials, workforce).

Community representatives identified the most urgent and relevant problems. Twenty-nine proposals have been submitted to the Social Investments Fund. The next stage envisions social and technical evaluation, and then design and development. Bids have been invited for seven projects; other six are in the evaluation phase. It is to be emphasised that local population is very positive about the Fund's activity in the region.

The Social Investments Fund has started preparatory work for implementation of the second stage of the Project, which is planned for the later half of 2002. The second stage of the Project aims to continue work towards the rehabilitation of the socio-economic infrastructure and build the capacity of local institutions (communities and local government).

The absence of security guarantees hinders the start of rehabilitation projects in Abkhazia. However, despite these difficulties, implementation of the Enguri Hydro rehabilitation project has started. EBRD has allocated 38 million EURO in long-term loan for the rehabilitation of power units at the Enguri Hydro Power Station. In

addition, the EU has allocated a grant of 5 million EURO for rehabilitation of the Enguri dam supporting wall (a pre-tendering procedure is on).

Should the process of political settlement prove successful, the Government of Georgia will face a whole array of tasks to be performed, such as economic rehabilitation, the return of refugees and IDPs, rehabilitation of destroyed housing and damaged infrastructure. Within a certain period, it will be necessary to address such problems as social assistance to returning IDPs, their job placement, and development.

In addressing these extremely difficult problems, Georgia will need assistance and support of the international community, and even at a larger scale than afforded so far. Signals of such support have already been made, for instance, the joint EU-South Caucasus Declaration adopted on 22 June 1999 at the Luxembourg – Caucasus Summit.

As it is impossible at this stage to make any definite prognosis as to how the process of political settlement is going to progress, the Government of Georgia has an intention to implement an effective programme of social support to refugees and IDPs aiming to provide employment opportunities and facilitate their integration into society. To this end, a provision of 69 million GEL is made in the budget for 2002. International financial institutions and humanitarian organisations are actively involved in the provision of assistance to refugees and IDPs.

On the initiative of the United Nations Development Programme, UN High Commissioner for Refugees, and the World Bank, a commission was set up in conjunction with the Government of Georgia to develop new approaches to the problems faced by IDPs, and take steps to secure their practical implementation. The work of the Commission

will be instrumental in facilitating the social and economic integration of IDPs, and providing development-oriented assistance.

Political resolution of the conflicts would further economic recovery in the country, through prevention of illicit imports into the county of contraband from uncontrolled territories, rehabilitation of international communication, broadening of the national currency circulation area, restoration of disrupted economic links between the regions, development of small and medium-size business, attracting additional investments due to a higher international prestige and confidence).

Health Care

The state has an obligation to ensure realisation of one of the most important constitutional rights – the right to life and, hence, to adequate medical care. Health care is one of the cornerstones of the social policy. Fulfilment of this obligation is an important prerequisite for attaining and improving physical and mental health of the population.

After independence, Georgia lacked financial resources to ensure free medical care. Georgia inherited a system with a great deal of excess capacity and inadequately low level of remuneration for physicians and other health workers. Under severe economic and social conditions, patients were not in a position to pay for health services, which led to a significant drop in the workload of health institutions, increasing dissatisfaction of patients with the standard of service, quality of medical implements and equipment, and inadequate supply of medications.

The healthcare reform launched by the Government of Georgia in mid-1995 was dictated by a severe crisis in the sector. The reform aimed to implement, in the period of transition, a new model of health system

that would mould new economic relations in the sector, ensure protection of human rights and make use of democratic mechanisms in the management and state regulation of the sector. The reform envisioned a transition from the state-funded healthcare system to a system based on medical insurance, which entailed significant changes in the role and responsibilities of central and local governance. It was envisioned that the state would maintain its control of the system through stringent regulatory, financial and licensing mechanisms. Limited budgetary allocations were to be channelled to finance priority health programmes and basic clinical package of services. In 1996, with a view to promoting one of the programme components, the Government endorsed a project financed by the World Bank that envisaged reorientation of the health system to the use of new mechanisms; provision of effective mother and child care through rehabilitation and equipment of selected medical facilities; development of human resources; promotion of an independent healthcare fund.

Despite an obvious progress in the course of reforming the sector, the reforms have so far failed to reach the customer level, which indicates conclusively that there is still a lot of work to be done to improve the quality, and increase the accessibility, of health care. Undoubtedly, the problems encountered in the health sector are mostly caused by inadequate financing, which is further compounded by the excess capacity of health institutions both in terms of the number of beds, and medical staff. The situation in this regard is particularly difficult in large cities, whereas urban areas experience lack of capacity, which is conducive to an asymmetric pattern of health care, and shows that the main problem encountered in the process of realisation of state programmes is inconsistent, unregulated, and what is most important, inadequate financing.

Over the recent period, the pattern of nutrition has changed significantly. Caloric value of daily rations for various social groups has decreased,

which results in diseases and early death.

Dire economic situation, declining living standards, widespread indifference and pessimism are all responsible for a sharp increase in tobacco consumption, alcohol and drug addiction, both among the general population, and among the youth, in particular.

These tendencies stem from the emergence, in the transition period, of new risk factors (unemployment, poverty and permanent stress) that led to increased use of alcohol, tobacco and drugs, unhealthy diet, and declining physical activity.

Health is very sensitive to social and economic factors (level of income, education, and employment). Some studies suggest that over 50% of diseases are caused by exposure to adverse social and economic factors.

Given the financial predicament confronted by the health sector, it has to rely on USAID and UNICEF for vaccines and necessary equipment, needed to remedy the disrupted process of planned immunisation. In recent years, no epidemic events have been observed of vaccination-sensitive diseases. Tuberculosis continues to be a threat. TB incidence among children and adolescents is on the rise. It represents a major problem in the penitentiary system, where 5-10% of inmates are TB patients.

Increasingly poor quality of state-provided services has adversely affected the state of reproductive health: mother and child mortality rate increased, as did the number of artificial abortions. The rate of population growth has decreased. The incidence of cardio-vascular diseases, cancer (incidence of malignant tumours has increased, frequently among females, which is the result of a late referral to medical

assistance and indicative of the need to improve early diagnosis), trauma, STD (sexually transmitted diseases), AIDS/HIV shows the tendency to increase.

The number of registered AIDS/HIV cases in Georgia is 131; however, the estimated actual number of HIV-infected persons is 2000. Among 131 AIDS/HIV patients 113 are males, and 18 females. Most of them are 23-40 years of age. The highest incidence of AIDS/HIV is observed in Tbilisi. The number of officially registered cases of AIDS/HIV is not large, though it is to be noted that Georgia represents a high risk country, which is attributable to a high incidence of this infection in neighbouring countries, growing migration, widespread use of drugs, financial problems, etc.

The number of STD registered cases does not reflect the actual figure, as patients seem to prefer to undergo anonymous treatment. It is to be noted that since 1997, after the launching of the Federal Programme for Prevention of Sexually Transmitted Diseases, and implementation of free diagnosis and treatment of venereal diseases, their incidence appears to decrease, which is due to the financial benefits envisaged by the Programme.

Considerable impediments are confronted by epidemiological surveillance, quarantine work, control of dangerous infections, prevention of communicable diseases, management and co-ordination, provision of reagents, disinfectants, etc., which causes serious concern. The incidence of infections has grown due to a deterioration of sanitary and epidemiological situation, widespread poverty and inadequate prevention.

In recent years, there have been an increasing number of cases of the diseases that used to be considered as eradicated, such as rabies, which remains a serious problem.

For many, the radical socio-economic transformation underway since 1990 has been a stressful experience, leading to an increased occurrence of psychosocial and behavioural problems. Occurrence rate of psychic problems shows an increase, especially among internally displaced persons. Armed conflicts forced considerable proportions of population to flee their places of habitual residence in search of safety and shelter. This category of people confronts a host of problems, negatively affecting their physical and mental health. The incidence of reactive psychosis, psychosomatic disturbances and depression has increased. In the past decade the number of suicides increased three-fold.

Against the background of these extremely difficult conditions, the Ministry of Health has undertaken a great deal of work, not very popular among the population, towards reforming the sector. One has to emphasise, however, that unless the financial provision of state and municipal programmes is improved, the reform will be fully and completely discredited.

When discussing the health care sector, one has to note one general tendency, namely, increase in the number of service-providers and beneficiaries. In the former case, this can be explained by personnel optimisation tendency. However, the latter case requires a more serious analysis to make sure that there is no general deterioration of health that, *per se*, represents a major source of violation of social rights of an individual.

By the end of 2001, the number of patients under observation at medico-prophylactic institutions was 741.7 thousand persons, compared to 679.6 in 2000. Out of patients under observation, 103.9 thousand (14%) were children under 14, and 16.9 thousand (2.5%) were teenagers (15-17 years).

In 2001, the number of patients undergoing treatment in hospitals was 208.3 thousand (205.4 thousand in 2000). 1.9% of them died. Out of patients undergoing treatment in hospitals 47.2 thousand (22.4%) are children under 14 (in 2000 the figure was 21.6%).

In 2001, compared to 2001, among children registered at medico-prophylactic institutions (based on the first diagnosis in the lifetime) there was an increase in the incidence of infectious and parasitic diseases (by 47.7%), diseases of blood and hemopoietic organs (by 31%). As far as adult patients are concerned, the dynamics of the number of patients registered at medico-prophylactic institutions (based on the first diagnosis in the lifetime) shows that there was a significant increase in the incidence of digestive system diseases (by 42.9% in 2001, compared to 2000), infectious and parasitic diseases (by 42.5%), diseases of blood circulation system (by 29.2%), diseases of blood and hemopoietic organs (by 25%). A cursory analysis of these figures indicates that incidence of infectious and parasitic diseases, as well as the incidence of diseases of blood and hemopoietic organs have increased both among children and adults. The picture of disease dynamics over a period of 2 years hardly allows making any scientifically grounded conclusions, but these facts do call for serious consideration.

In 2001, the number of medical doctors in Georgia was 19.5 thousand (in 2000 – 21.1 thousand), and the number of nursing personnel stood at 23.4 thousand (in 2000 – 26.2 thousand). Calculated per 100 thousand population, there were 443 medical doctors and 532 nursing personnel (in 2000 – 474 and 532, respectively). One has to assume that a decrease in the number of medical staff, and hence, an increase in the workload of every single physician or nurse is a positive development, particularly at a time, when the number of patients has increased significantly. We are well aware of the fact that a number of federal and municipal programmes are being implemented in the health

sector. At the same time, health expenses incurred by the population were 4.2% of total expenses, compared to 3.9% in 2000. It turns out that despite the programmes, the population has to pay more for medical services.

Education System and Education Reform

A large-scale undertaking, such as a reform of the education system, gives rise to acute problems. Structural changes are attended with marked changes in the number of the system's subjects, leading to deterioration of social conditions, exacerbation of unemployment problem and increase in the number of children left out of school. In this context, the project aiming to support the reform implemented in the education sector is an interesting exercise.

With a view to furthering the reform of education, the Ministry of Education of Georgia started the implementation of the "Education System Realignment and Strengthening Programme" ratified by the Parliament in October 2001. The programme will be realised through the Adaptable Programme Loan allocated by the World Bank. The above programme aims to carry out activities to facilitate and further the programme aiming to realign and improve the system of elementary and secondary comprehensive education, in line with the provisions of the 1997 Law on Education and the Government's Letter of Development Policy for Education Sector.

The Adaptable Programme Loan envisions allocation of 60 million USD over three 4-year periods. The programme consists of three components: 1. Transformation of the objectives pursued by elementary and general secondary education, with a view to improving the transfer of knowledge and standard of teaching; 2. Improving policy efficiency

and management at the central and local levels, with a view to furthering fair use of human and financial resources, launching pilot activities in a number of districts with a view to improving efficiency, and elaborating the tools necessary to enhance decision-making, improve transparency and accountability; 3. Support in project implementation.

The first stage of the programme envisions the allocation off 25.9 million USD in loan. The sum of loans envisaged for the second and the third stages, if approved, will be 20 million and 14.4 million, accordingly. Upon completion of the third stage of the project the elementary and general secondary education sectors will be better prepared to meet those requirements, concerning teaching and learning, that have come to the fore in the process of transition to a market economy and building a democratic society. This will lead to a more efficient system of education, better equipped to make the best possible use of material, financial and human resources, whose goal is to afford quality education to every citizen.

It is to be noted that despite these impressive and far-reaching plans, the project aiming to promote the current education reform, does not envision developing of standards, study programmes and assessment systems for all categories of children. Children with disabilities are left beyond the scope of the project. According to the statistics, there are about 8500 disabled children of Georgia (including about 500 IDP children). Unfortunately, the number of disabled children shows tendency to increase. It is imperative to revise the programme of education reform, ensuring a higher measure of transparency.

It seems relevant to look at the growth of non-state (private) sector in higher and secondary education that has aroused a lot of scepticism, with many hurdles put on its way, if only in the regulation of property

relations. This results in the violation of the rights of the people involved. In my view, such attitudes are unwarranted; to say nothing of other factors, there are regions where the functioning of non-state higher educational institutions has certain political implications. With a well-functioning and objective licensing mechanism, the market will itself resolve this problem. One also has to note one thing: in conditions where highly skilled teachers and research professionals have found themselves on the verge of extreme poverty, the non-state sector has helped them to survive.

Finally, when discussing the problems of education, one should note that the Law on Education that created the necessary basis for the transformation of the system, envisaged development of a normative and regulatory framework that is absolutely necessary to ensure full implementation of a law. Unfortunately, the process of developing such a framework dragged on, which in turn impeded the reform and on many an occasion was a source of confusion, including in terms of protection of the rights.

In 2001-2002, by the beginning of the academic year there were 3187 general education schools, including 3142 day-time (including 787 elementary, 688 basic, 1666 secondary – of these 45 gymnazies and 28 lycées), 16 schools for mentally and physically handicapped children, one special school, and 28 independent evening schools, with total enrolment of 688.2 thousand pupils. Of these, 682.9 studied at day-time schools (including 2000 in schools for physically and mentally handicapped children), and 5.3 thousand - in evening schools.

Analysis of data over the recent years shows that the number of schools and enrolment figures are going down. This is illustrated by the table below:

	Number of schools					Number of pupils (thousand)				
Acad. Year	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002	1997/ 1998	1998/ 1999	1999/ 2000	2000/ 2001	2001/ 2002
	3 223	3 237	3 201	3 201	3 187	721,8	722,5	714,4	704,5	688,2

According to the statistics, enrolment is going down both in Georgian-language and non-Georgian schools. However, judging by the data on the past 10 years, reduction in enrolment has to a greater extent occurred in Russian-language schools. Thus, for instance, if in 1990/91 academic year the enrolment in Russian language schools was 180.3 thousand pupils, in 1995/96 it went down to 51.8 thousand, and in 2000/2001 – to 38.1 thousand (4.7 times less). This is partly explicable by migration, due to which a considerable proportion of the Russian-speaking population left Georgia. However, it is hardly possible that this is the only factor responsible for such a significant reduction in enrolment figures for Russian-language schools. Most probably, this is also due to other factors: the Russian language has become less attractive (compared, say, with English), and its role in the Georgian society has become less significant.

In this context, one has to emphasise that Russian is one of the official working languages of the United Nations and the OSCE. It is the language spoken by the population of 150 million people in our neighbouring state. It is the language used in human, scientific, and cultural contacts between our states. One also has to consider the position the Russian language has in Abkhazia and the Samachablo region – inalienable parts of or country. Finally, the interest to new languages should by no means imply the neglect and oblivion of the old one. This is unjustifiable in any respect.

According to the official data of the Ministry of Education, in 2000/2001 13.7 thousand pupils dropped their school studies. Of these, 10.0 thousand pupils (out of 62.2 thousand) gave up their studies and

did not return to school after the 9th grade. The Public Defender believes that this situation is a matter of serious concern, as:

- The provision of the law concerning universal compulsory elementary education is not fulfilled (in 2001/2002, compared to the previous year, the enrolment in grades 1-4 decreased by 20.9 thousand, i.e. by 7.7%. Interestingly, the enrolment in other grades has increased, though insignificantly);
- Oftentimes, children and teenagers are not properly registered by their place of residence;
- There is no system for statistical accounting of school-age children not going to school.

Compared to 2000/2001 academic year, the enrolment in vocational schools decreased by 2536 students, i.e. by 7.8%. The enrolment in budget-funded groups decreased by 3487 students (by 15.9%) whereas in fee-paying groups it increased by 1298 students (23.5%). In our opinion, this is an important indicator signalling the need to address the problem of financing this sector of education. In this context, it is necessary to point out one more fact: the number of students receiving a scholarship is decreasing by year. In the last four years alone, it dropped from 886 (1997/98) to 0 (2000/2001).

Environment

The decline of economic activity since the 90-ies has had a varying degree of impact on the state of environmental protection in Georgia. On the one hand, the harmful impact of the industrial sector on the natural environment has decreased, but, on the other hand, the population pressure on the environment to satisfy need in food, energy, etc has increased. The deteriorating condition of the existing

infrastructure (such as potable water supply and sewerage systems, waste water treatment facilities and bank fortification facilities, motor roads/highways, etc.) has brought about an increasing pressure of the non-industrial sector on the environment. Economic and financial predicament has manifested itself in various forms in relation to the environment.

The surface water contamination with industrial wastewater and agricultural chemical discharges decreased significantly, as a result of decline in industrial activity. The contamination of atmospheric air with the emissions from power and industrial plants also decreased considerably. However, due to the out-dated technologies used, the contamination rate per one production unit has increased rather than decreased. The contamination rate of atmospheric air resulting from vehicle emissions has considerably grown, compared with previous years. The atmospheric air pollution is still on the rise, thus posing serious threat to large cities (particularly, the capital) and to public health.

The collapse of the water supply, sewerage and wastewater discharge systems is still continuing on a national scale; the domestic waste collection system has almost completely collapsed; garbage and domestic waste are being disposed of in residential areas or at inadequate arranged waste dumps, at best. No waste treatment facilities for either domestic refuse or industrial waste exist. Neither industrial enterprises, nor the population is able to allocate the funds necessary to resolve the problem. Due to a weakening of the state control system, partially through economic reasons, the use of natural resources often occurs in absence of an appropriate license, which naturally leads to the environmental degradation, disturbance of natural habitats of different species, and the decline in biodiversity. Financing of erosion-control is almost an insurmountable problem, causing the

shrinkage of fertile agricultural lands area. Electricity shortages, the inaccessibility and high cost of mineral resources and fuel lead to an increased consumption of firewood, resulting in the woodcutting. Due to power shortages, individual heaters are widely used in cities, leading to increasing air pollution in buildings and causing the deterioration of public health.

The state is not in a position to allocate funds necessary for environmental monitoring and operation of environmental services, which hampers adequate control of the environment by the state, and regulation of the use of natural resources. For their part, environment quality and the availability of natural resources determine the economic development of the state. More specifically, the worsening state of the environment leads to the deterioration of public health, pushing down labour productivity. Prospects for tourism development, largely depending on the existence of healthy environment in the country, are also threatened. Contamination of rivers, lakes and the Black Sea, improper fishing practices, and poaching jeopardise fishery development in Georgia. Illegal and non-systemic woodcutting decreases productivity of Georgian woods, and impairs soil-protection, water storage, recreational and other functions they have. Soil erosion, salinization and desertification processes present in eastern Georgia, impede the development of agriculture. Drought has become a new threat for agriculture. For instance, the 2000 drought caused a damage of over 400 million GEL to the agricultural regions in eastern Georgia. The scarcity of financial resources available at the regional level to carry out preventive activities has increased the scale of the damage. In a longer term, considering the anticipated change of the global climate, the situation may deteriorate further, impairing the availability of potable and irrigation water in some regions of eastern Georgia.

Situation in the Energy Sector

The issue of electric power supply remains the most acute problem in Georgia. The situation observed in the fuel and energy sector over the recent years, has been conditioned by a variety of problems, the most important among them being the deficiency of domestically produced fuel and energy resources, and low collection of payments for the electricity consumed. In the course of structural reforms (a radical reform of the fuel and energy sector has been underway since 2000), the latter has become a chronic problem, leading to the current financial crisis in the electricity sector.

Growing prices for resources have constrained import. According to recent statistics, the overall energy consumption has declined by 4.3 times, compared with 1989, whereas the consumption of such important resources as natural gas, oil products and electric power, has declined by 6, 3.5 and 2.4 times, respectively.

There have been other difficulties in the energy sector, too, and many of them are a legacy of the planned economy. Despite the structural reforms in the sector, it has so far proved impossible to fully transform the vertically integrated structure into a horizontal system.

It is to be noted that reform of the energy sector was seen as an integral part of the overall process of reforms in the country. Restructuring resulted in the separation of commercial and regulatory functions, restriction of monopoly and creation of a competitive environment. Two independent entities were established to regulate the sector: the Electric Energy Wholesale Market and the Georgian Energy Regulatory Commission (GNERC); with the view to improving the tariff policy; appropriate measures were implemented with respect to energy resources (electric power and gas).

Privatisation of the distribution network began. Telasi, one of the largest distribution companies, was privatised by AES, an American company that managed to mobilise considerable foreign investments and improve the collection rate for the electricity consumed. In 2001, on the basis of a management contract, the Georgian Electric Energy Wholesale Market was transferred to a Spanish-Scottish-Canadian consortium. The Spanish "Ibedrola", the major participant in the consortium, is one of the largest companies in Europe.

In the context of the structural reform, the merging of power transmission and dispatch enterprises and their establishment as a single legal entity, was an extremely important development. This consolidation was designed to improve the management of the power grid and contribute to electric power distribution in accordance with payments by customers for the electricity consumed, which means that electric power should only be delivered to paying customers. Four large distribution companies were established in Georgia (in Tbilisi, Kakheti, Adjara and the rest of Georgia).

Despite these measures, the sector failed to attain financial recovery. According to the estimates, the arrears accumulated over the last years are in excess of approximately 550 million USD which is the result of a low collection rate, weak management, improper policy and widespread corruption in the sector.

According to the information provided by the Energy Regulatory Commission, important steps have been made in the tariff policy. For the first time in the last 5 years, the consumer tariff for electricity decreased, though insignificantly, (from 8.4 tetri to 8.1 tetri) across Georgia (with the exception of Tbilisi). However, consumer contracts between "AES-Telasi" and individual customers have so far not been concluded.

According to the Commission, the Department for Protection of Civil Rights was established under the Commission, to review the incoming claims and complaints. The Department has made a record of a considerable number of unlawful disconnections, hundreds of applications concerning miscalculated old debts, etc.

Customer rights are being violated up to date. The problem of timely payment of wages is still unresolved, which results in frequent actions of protest and massive disconnections effected by employees of the electric energy system living at the poverty line. Thousands of people employed in the energy complex (generation-transmission-dispatch) do not get their wages for months. Labour and property rights of people are grossly violated. Article 26 of the Law "On Energy", as well as GNERC decision of 12.04.02 are violated. According to the provisions of these documents, the energy sector representatives have an obligation to disconnect non-paying companies. It is the responsibility of the wholesale market to instruct the generator to restrict power supply to non-payers. However, sector representatives have so far failed to compel the wholesale market to make orders concerning the restriction.

AES-Telasi and other consumer companies have only paid 5% of the cost of electricity generated. This is the main factor responsible for arrears in wages. I think, the Ministry of Fuel and Energy needs to bring the relations within the sector, both generation-related and financial, in conformity with the law, so that the rights of the sector employees, and the general population could be protected.

Water Supply and Sanitation

Georgia has for a long time been well known for the abundance of water resources, and a well-developed drinking water and sewerage

infrastructure. About 97 % of the urban population and 72 % of the rural population receive drinking water from the centralised water supply system. However, serious problems have manifested themselves in this sector, too. Chronic lack of funds over the last decade has made it impossible to maintain in order the existing infrastructure, and the system has come to a break-down. Eighty percent of the country's water supply system is in need of capital repairs. Interrupted water supply impairs water quality and raises the level of water contamination. Considering the importance of water for life and health (according to WHO, the length of human life is 70 % dependant on water quality), it becomes obvious how important it is to take urgent measures, which means both the rehabilitation and improvement of the existing system, and creating the necessary prerequisites for its long-term development. As is known, the regulation of water supply and sewerage sector, and its normal operation has a bearing on a number of factors: economy and governance, public health (epidemiology and sanitation), environmental protection and protection of nature).

Economic regulation is carried out directly by the state and by local authorities. Inefficient governance has driven the sector to a most dire situation. Water piping and sewerage are in a deplorable state, giving rise to cases of infectious diseases. A large part of population receives an interrupted water supply. There are instances when water is not supplied for several days and even weeks. In this respect, the situation is much more severe in the regions.

Control over the quality of supplied water has weakened; wastewater control is erratic. The situation in the sector is extremely difficult, the more so as the scarcity of finance and low paying capacity of the population create serious obstacles on the way of successful implementation of the necessary reforms. Furthermore, the situation in the sector is further aggravated by inadequate capital investments.

Therefore, the situation in water supply and sewerage goes beyond the sector as such, and represents a serious social problem.

Situation of the People Affected by the Earthquake in Tbilisi

As is known, the governmental commission headed by the State Minister, Mr. Jorbenadze was set up on April 25, 2002. The commission was tasked to eliminate the damage caused by the earthquake to residential buildings. The Municipality of Tbilisi established the headquarters and a special municipal emergency fund to assist the people affected by the earthquake. According to information provided by the head of the fund, Mr. Zurab Gudavadze, 1.8 mln GEL have been raised by the emergency fund by July 1, 2002. However, this amount is not sufficient to provide full value assistance to people affected by the earthquake. It is expected to raise additional 3.0 mln GEL by the end of the year. The fund account featured 50 apartments, whereas the number of families left without homes was about 700. The Municipality undertook an obligation to provide housing for these people by the end of the year. The money available in the fund would allow purchasing 550 apartments, and it was expected that this housing would be provided to those whose houses was included into damage category 3. It is to be noted that many citizens affected by the earthquake apply to the Public Defender. They complain of having received no responses concerning their applications to the relevant bodies. They feel completely uncertain. The problem of these people is urgent, the more so, with the coming autumn. Let me give you one example.

Not to go too far; living conditions of one of our employees, Ms. M. Shashiashvili are extremely bad. The house where she lived had been registered as the one in emergency condition (Chugureti district, 1, Chitadze St.). The house was further damaged by a fire that broke out on January 30, 2002 by the fault of AES-Telasi (evidenced by the ruling of the Didube-Chugureti Court of June 24, 2002). After the earthquake of April 25, it was impossible to live in the house, and Ms. Shashiashvili has found shelter with one of her close relatives. For your information: according to the official conclusion of the specialists of the Institute of Structural Mechanics and Seismology, the house displays a significant damage of the load-carrying structure. The degree of damage is 75%, and it falls in damage category 3. This means that it is not possible to rehabilitate the house. The conclusion of the commission has been submitted to the Tbilisi Municipality and the Didube-Chugureti district administration board, but no measures have so far been taken. Citizen M. Shashiashvili has filed an application with the special fund and appealed for assistance. There has been no response from there either. I have addressed the State Minister, Mr. Jorbenadze with a recommendation. The case is still being considered.

The 25 April earthquake caused a serious damage to educational and pre-school institutions in Tbilisi. Based on the joint conclusions by the representatives of the Ministry of Construction and Urbanisation, Tbilisi City Design Authority (Tbilkalakproekti) and the Municipal Education Service, it was established that out of 417 facilities currently existing in Tbilisi, 382 received damages of varying degree of severity, including damage category 3 found in 7 schools and 8 kindergartens and nurseries, where the educational process has been suspended and is expected to resume only upon the strengthening of the structures. Category 2 damages were found at 202 facilities including 115 schools and 87 kindergartens. According to the information of the Municipal Education Service, the rehabilitation of schools and pre-school facilities

will cost 20 mln GEL. The source of financing has not yet been established. The situation at the damaged facilities is not satisfactory, the degree of preparedness of Tbilisi education system to the new academic year has not been fully adequate.

Chapter III

WORK OF THE PUBLIC DEFENDER'S OFFICE

Strategy Department

Over the reference period, the Strategy Department prepared this Report, and considered 117 draft laws.

The Public Defender paid special attention to the powers entrusted to the Public Defender under Article 21, Para.i) of the relevant organic law. Namely, a constitutional action was brought to the Constitutional Court, in which the Public Defender requested to abrogate those normative acts that restrict the human rights and freedoms enunciated in Chapter 2 of the Constitution of Georgia. To this end, in constitutional claims filed on 24 May and 26 June 2002, the Public Defender requested to invalidate those articles of the Code of Criminal Procedure of Georgia that deny the right to have an immediate access to a defence lawyer to persons kept in custody or detention, and the right to be released upon expiry of a 9-month period of remand to accused persons. Under Article 18, Para 5 of the Constitution of Georgia, "the detained or arrested person may demand the assistance of a lawyer. This right must always be granted." At the same time, Article 145, Para 1 of the Code of Criminal Procedure does not envisage the obligation to inform a suspect of his right to demand the assistance of a lawyer. Also, Article 146, Para.1 of the same Code makes a provision on the protocol of detention, that has to be filled in upon the arrival of an apprehended person to a police station or to a duly authorised officer of the body of inquiry. However, the obligation on the part of police staff to immediately inform a suspect of his right

to a lawyer is not envisaged in the protocol either. Under Article 146, Para. 2 of the CCP (Code of Criminal Procedure) the verification of suspicion in a police station or other body of inquiry shall be completed not later than 12 hours after his arrival, and under Para 3 of the same Article, after completion of verification, the head of the body of inquiry or other authorised officer formally declares the person concerned a suspect. Under Article 73 of the CCP, the apprehended person has the right of access to a lawyer only after he is formally declared as suspect. Thus, it turns out that a person apprehended and brought to a police station or other body of inquiry has the right of access to a lawyer only after 12 hours. Another violation is observed in respect of Article 18, Chapter 2, Para.6 of the Constitution of Georgia, under which "the accused person cannot be held on remand for more than 9 months". This provision is also formulated in Article 162, Para.3 of the CCP, under which in special cases, by way of exception, upon investigator's substantiated petition and with consent of the Prosecutor General, a judge of the Criminal Law Collegium of the Supreme Court of Georgia may extend the period of preliminary detention for up to 9 months. Upon the expiration of his period, the accused shall be released. However, according to Article 162, Para. 7 and Article 406, Para. 4 of the CCP, in the calculation of the term, the time spent by the accused and his defence lawyer in familiarisation with materials of the case is not considered.

It is to be noted also, that the Public Defender co-operates actively with representatives of the executive power with a view to changing and amending those normative acts that restrict the human rights and freedoms enunciated in Chapter 2 of the Constitution of Georgia. I shall adduce one example by way of illustration. According to the Constitution of Georgia: "The detained individual or otherwise restricted person must be brought before the court not later than 48 hours following apprehension. If within the next 24 hours the court

has not made a decision concerning the remand or other kind of restriction of liberty, the individual must be released without delay". At the same time, effective Order #294 of the Head of State dated 2 September 1994 "On approval of disciplinary regulations of Georgian Armed Forces" envisages, as a measure of punishment, detention of military servicemen for periods of varying duration (up to 10 days). Application of detention to military servicemen does not require a court decision to that effect, which is clearly in conflict with the Constitution. In order to have this contradiction resolved expeditiously, I brought it to the attention of the President of Georgia in the letter of 29 June 2002. Reaction by the President came immediately. On 30 June 2002, the President of Georgia invited power ministers to prepare proposals concerning this question. Clearly, the President of Georgia attaches paramount importance to the protection of human rights and freedoms. However, I have to state with regret that so far the respective executives have failed to address this issue.

The Public Defender of Georgia also addressed the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia, concerning the resolution adopted by the Presidium of the Supreme Council of the Autonomous Republic of Abkhazia that, in Para.2, that makes the Prosecutor's Office, the Supreme Court, the Ministry of Internal Affairs and other power structures of the Autonomous Republic of Abkhazia directly subordinate to the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia. Under Article 82-e of the Constitution of Georgia, the judicial power is independent and is exercised by general courts. Also, under Article 91 of the Constitution, the prosecutor's office is the institution of the judiciary, and is one, centralised system. Hence, their placement under personal jurisdiction of the Chairman of the Supreme Council of the Autonomous Republic of Abkhazia is contrary to the provisions of the Constitution.

In our previous Report, we spoke about the establishment, within the Public Defender's Office, of special centres to focus on priority areas of the Office's work, where members of the staff would work in conjunction with local and foreign experts.

Below are given the reports on the work performed by these centres in the period under review.

Centre for Child's Rights – Report

Children's legal status in Georgia

Against the background of the problems observed in the field of protection of human rights in our country, the issues related to the child's rights are among the most sensitive. Georgia has joined the UN Convention on the Rights of the Child of 20 November 1989. This gave a certain impetus to the state to take more effective steps towards the protection of children's rights. In this respect the role of international organisations, as well as of the Georgian NGOs active in this field, is crucial. The fact remains, however, that the acuteness and relevance of the problem, has not diminished. On the contrary, it has increased.

The work undertaken during the period under review shows that the situation in the country in terms of protection of the children's rights is alarming. The number of homeless minor beggars in the streets of Tbilisi has increased significantly. Many of them earn their living by prostitution, and thus support their families. Continuous attention to this category of juveniles needs to become one of the essential priorities for the state. To be sure, what is implied here is not only moral support provided by the state, but a well-targeted and well-considered social

policy. However, the existing situation pictures the opposite. Children's rights are violated in almost all fields, which often is abetted by irresponsible and deliberately negligent attitude on the part of state bureaucracy. The citizens' notices and telephone calls testify to the nihilism prevailing in the society. People have lost every hope for assistance, or the improvement of their situation.

Our analysis shows that the main problem is the dire financial constraints experienced by families, which is the result of the difficulties of social character. Especially severe is the problem of employment and low wages. One of the main objectives to be pursued by the state is overcoming poverty, addressing it not only through creating conditions for physical survival. One of the ways to effectively address the problem is to promote development of family business as one of the essential inputs to overcome unemployment. The strong family not depending on the state for its survival is to be seen as a guarantor of socio-economic stability, and of a powerful state. The more so, as Georgia has centuries-old experience of family business – weaving, pottery, souvenirs, etc. Apart from new forms of family business, there are traditional forms of family-based manufacturing, especially widespread among families residing in high- mountainous areas. However, the tendency of breaking with traditions can be seen here as well. Moving the border in Khevsureti resulted in a loss of pasturelands, leaving no opportunity for the population to engage in sheep breeding.

Grave economic and social situation affected children's health as well. It should be noted that children's health mainly (almost 80-85%) depends on socio-economic and biological environment. As far as the medical factors are concerned, their role only accounts for 15%. To earn living and to solve socio-economic problems have become the first priority for the population; care about health has moved to the backburner. According to the last ten years' statistics, the per capita

number of referrals to doctors has reduced 7 times and of calling ambulance – 10 times. Similar dynamics can be observed in terms of referrals to children's polyclinics. In view of the above, the morbidity among children in 2002 equalled 3375.5 and sickness rate – 2496.0 per 10,000. According to the available information, in 2001 the incidence of various diseases increased significantly. For instance, infectious parasitic diseases - by 47.7%, diseases of blood and hemopoietic organs– by 31.0%, traumas and poisoning – by 13.6%, respiratory diseases – by 4.8%. For the first time during the recent 5 years, perinatal mortality has decreased, but it still remains high. There is a range of reasons both of medical and of no less important social character.

Though the Georgian Parliament ratified, in October last year, the World Bank Education Reform Programme Loan to the amount of 60 million USD, the project in support of the current reform does not provide for creating standards, programmes and assessments system for all children; disabled children are not included in the project. According to the statistics, there are about 8500 disabled children in Georgia (among them about 500 are IDPs). This statistics tend to increase. Last year the UN Commission for the Rights of the Child, while discussing the report from Georgia, expressed its concern about the fact that the country has failed to make adequate efforts to integrate disabled children in general schools and in the society as a whole. It is necessary to revise the education reform support programme, and shorten the timeframe for its implementation.

Currently, in addition to parents' payments allowed by the law, there occurs the practice of putting into the school development fund (so called "school fund") informal payments of various kinds, including payments for additional (above standard) educational services, which is a heavy burden for low-income families. In 2002, as compared to 2000-2001 academic year, the enrolment in secondary schools has

decreased by 16.3 thousand. 986 children who dropped out of school deserve special attention, as does the education of the so-called "street children" and children in conflict with the law. Intensive programmes have to be created immediately to help these children to overcome difficulties and to return to school to continue their studies. Particularly important for this category of children is vocational education. It is necessary to revitalise this type of educational institutions and encourage intensive training in those professions that are most in demand in conditions of the market economy.

Adoption of Law of Georgia "On socio-economic and cultural development of mountainous and high-mountainous regions of Georgia", as well as changes and amendments introduced in the law "On Education" have helped to improve learning conditions in mountainous areas. In order to ensure access to education in mountainous areas, 3-4 children classes were opened, while the existing norm is 25 children. Students of 10^{th} –11^{th} forms are exempt from paying fee for learning. However, there still remain problems to be solved – some provisions of the law are not fully met. In particular, teachers and other school personnel are not granted the so-called "hypherometric" allowances: up to 1200 m - 50%, and above 1200 m - 70%. Neither do they have any utility benefits. Besides, the requirement concerning the payment to pensioner teachers of their full pension in addition to salary is not fully implemented. Logistics needs to be improved.

The situation with pre-school institutions is alarming. Currently, there are 1195 pre-school institutions in Georgia. It is almost half of what it used to be in 1990, which is caused by aggravation of economic situation. Correspondingly, the proportion of children in these institutions has gone down from 41.6% to 22.6%. Most of these institutions (99%) are general ones. Three of them are special and two – of the sanatorium type. In 22 pre-school institutions there are

55 special groups, with the total of 947 children. Of these, 827 children have problems with verbal communication, 110 – with hearing and 37 – with eyesight. Despite a clear need to have this kind of institutions operational, their financing from the state budget has reduced, as a result of collapse of central procurement system. This resulted in rapid deterioration of logistics. 75.1% of pre-school institutions require capital renovation, 16.7 % are in breakdown condition. After removal of state subsidies, pre-school institutions are financed from local budget, which differs across regions. Local authorities are not in a position to finance all items requested by these institutions. Only salaries are paid. As far as food products are concerned, only funds necessary to buy bread and, partially, heating materials are allocated. In this respect, the situation is better in towns and regional centres.

It is still unclear when the schools and pre-school institutions damaged during the 26-27 February storm and 25 April earthquake will restart functioning. According to expert information from Tbilisi Municipality, 382 out of 417 institutions suffered damage of varying degree. Of these, 15 institutions (7 schools and 8 kindergartens) received category 3 damage; in 6 institutions (4 schools and 2 kindergartens) the teaching process has been suspended. In the remaining 9 institutions, the teaching process will restart only after the foundation and structural reinforcement. 202 institutions received category 2 damage (115 schools and 87 kindergartens). At 44 schools, where staircases, floors and classrooms are damaged, the teaching process is only allowed with strict limitations. Category 1 damages have been revealed at 168 institutions (79 schools and 89 kindergartens). Estimated costs for their rehabilitation equal about 20 mln. GEL.

The situation with the financing of nursing homes for newly born children (Tbilisi, Makhinjauri) is relatively better. However, the rights of newly born children - to develop fully and harmoniously - cannot be limited

only to creating certain standard of living conditions for them. Despite the fact, that Georgia's law "On the procedure of adoption" provides for the right of a child to live and grow up in the family, the same law creates hurdles with regard to giving children for adoption. According to the law, a single mother can agree in writing to abandoning her child only after six months of delivery. Often women, who have just given birth, escape from maternity homes. As a rule, they enter there without any ID, or give false address of residence. In most cases, legal bodies cannot establish the identity of parents whose child was thus found. At present there are 22 neonates whose mothers have abandoned them in writing, but they cannot be given out for adoption as the time of refusal comes into conflict with provisions of the law. In 2000, at Tbilisi Children's Home alone, 69 neonates were accommodated on the basis of parents' applications (34 – at physiological department, 15 – neurological department; 49 of them came from different maternity homes, 12 – from different clinics, 8 were left in children's homes). In 2001, 74 neonates were accommodated (48 – physiological department, 16 – neurological department; among them 64 came from different maternity homes, 7 – from different clinics, 3 were left in children's homes).

There are difficulties with giving children for adoption both in, and outside, the country. Recently, the number of direct deals concerning the adoption of children both in, or outside, the country has increased. In 1999, only 6 children were given for adoption outside the country, whereas last year this number increased to 58, and this year 39 children have already been given for adoption outside Georgia.

Although the Ministry of Justice believes that the existing law fully regulates the procedure of adoption, the reality testifies to the need to perfect the law, to elaborate appropriate mechanisms, which would put an end to existing facts of violation and corruption.

Children's rights are often sacrificed to private interests of one of the parents. The facts of kidnapping children by one of the parents have grown in number. There are several cases under investigation concerning such situations.

The Ministry of Justice is now in the process of considering the application of Mamuka Shikhashvili, a citizen of Georgia, concerning the return of his two under-age children – George and David Shikhashvili. On 20 September 2001, Ether Shvelidze, using false documents, left for Prague with her two minor children.

These issues are not adequately regulated by the Georgian legislation. Although the law fully regulates the procedure of leaving and entering the country by under-age children, it fails to provide for special prohibitive norms concerning the illegal transfer of children by their parents.

In this connection, I would like to refer to George Toradze's case. This case has been taken under the Public Defender's control. George Toradze received the decision by the Didube-Chugureti district court ruling that the child be returned to Georgia. The execution of this decision is the responsibility of the Ministry of Justice of Georgia that at present is negotiating on this matter with the Ministry of Justice of Greece. According to Mr. Kuzeli, Head of International Legal Co-operation Department of the Ministry of Justice, the case is being heard by a Greek court, where the act considered is qualified as kidnapping. I, personally, do not agree to such a qualification concerning the case, as in Georgia the case concerns the illegal transfer of a child. We see two different legal qualifications.

The Ministry of Justice of Georgia will need to consider the redistribution of responsibilities between parents in upbringing the child.

My representative met with Mr. Irakli Menagarishvili, Minister of Foreign Affairs of Georgia, and presented the relevant legal documents to him. With the Minister's direct assistance, the recommendation of the Public Defender was delivered to the head of Georgian Consular Department in Greece, Mr. V. Gabelaia. We are waiting for his reply.

Especially distressing is the increase of the number of children who earn their living in streets. They are surviving by begging, prostitution or criminal acts. Often adults prompt children to commit such acts. Unfortunately, we still lack accurate statistics on the problem of the "street children"; there are no reliable data on the number of "street children" in Georgia's large cities; no adequate methodology has so far been worked out; there is no mechanism to monitor the situation. Several studies carried out in recent years have revealed that the number of children with asocial behaviour reaches 2500 in Tbilisi alone. Psoriasis and pediculosis (lousiness) are widespread among these children, most of them are illiterate, and they increasingly commit crime.

According to the Ministry of Internal Affairs, in the first half of 2002 there were 384 registered crimes committed by juvenile delinquents. This number accounts for 4.5% of all registered crimes in Georgia. Despite a certain stabilisation of the situation, the rate of property-related offences is still high; during 6 months of this year this type of crime accounts for 80% of all crimes committed. Analysis of the available data suggests that the problems of drug-addiction, drug-use and prostitution among children are particularly acute. During the reporting period, among children registered with the Inspectorate for Minors' Affairs, 9 were found to be using drugs, 15 were alcoholics, 28 – prostitutes and 788 – beggars. However, the actual numbers are far greater.

At the beginning of 2002, the (latent) problem of unaccompanied minors has acquired new aspects. The number of teenager prostitutes has

increased significantly. Most of them are victims of sexual harassment or domestic violence. Many of them suffer from posttraumatic stress syndrome, personality disorders, deviant sexual and self-destructive behaviour, and attraction to drugs.

The survey carried out by an independent board of the Parliament of Georgia and relevant agencies with the support of the UN Children's Fund (UNICEF), revealed a high rate of crime and prostitution among girls. Unfortunately, they commit crime with greater brutality than boys, which needs to become a matter of serious concern and close attention. It is imperative to perfect the legislative framework, girls need to receive basic education, undergo psycho-social rehabilitation, acquire appropriate professions.

Despite the fact that law-enforcement bodies became more active in addressing this problem in the first half of 2002, the work with "street" delinquents was nevertheless not sufficient. Local law-enforcement bodies revealed 3474 juvenile delinquents, and 355 children were sent to the Minors' Reception, Crime Prevention and Orientation Centre of the Ministry of Internal Affairs. It should be noted that most of them were not new there and were referred to the Centre for the second time. This is indicative of the fact that the possibilities of commissions for juveniles' affairs working under local governments in preventing juvenile delinquency are not fully employed.

Despite the measures taken in addressing the problem of juvenile delinquency, and multiple petitions by the Public Defender (that were often taken into consideration by the courts), its magnitude is a matter of serious concern. There are cases when juveniles commit crimes several times. This problem is rooted in the social situation. Children are often led to crime by unhealthy atmosphere in their families – low, or complete absence of, income, various forms of domestic violence,

etc. In such cases children often abandon home, they commit violence in street, at school, and easily become delinquents. One of the ways to solve this extremely sensitive problem is their job-placement. Alongside with the state support and guardianship programmes, business community could also provide invaluable help in line with international norms, and provisions of the Georgian legislation (so far, an untapped reserve). Employment of juveniles will become one of the prerequisites for their socialisation. Entrepreneurs need to be prepared to rely on them, give them jobs in accordance with their abilities and skills. The child is like a boomerang, that is sure to return and what we do today will largely determine what we receive tomorrow.

Still unsettled is the problem of women prisoners meeting with their children accommodated in children's homes. The management of penal institution No. 5 of the Ministry of Justice cannot provide for such meetings to take place because of the lack of finance. Besides, it is still unclear which state structure has the responsibility to address the problem. It should be noted that since these children are raised without their mothers caring for them, the state is confronted with a host of difficulties in integrating these children in the society. Hence, these children fall in the high-risk group and their involvement in crime becomes highly probable. Directors of children's homes sometimes find the way out of the problem. They, at their own expenses, bring children to see their mothers in the prison. In one case, a 9-year-old son of the convicted Abdulaeva left the Martkopi children's home and arrived at the prison at 9.00 p.m. He was received there and stayed in the prison premises during 5 days. The prison administration then contacted the director of the children's home. It turned out that no one there had any attention to look for the missing child. The prison administration paid for the child to return to Martkopi. Unfortunately, this cannot become an accepted practice. It is the Ministry of Education's prerogative to address this problem, and children's visits

to their mothers serving their sentences at penal institutions should be co-ordinated with the prison administration.

The situation with juvenile convicts has improved significantly. It took almost one year to fulfil multiple recommendations and requests of the Public Defender, and on May 31, a juvenile institution was opened in Avchala. Out of 31 juveniles kept there, 6 received a pardon. However, the psychological condition of juvenile convicts raises serious concern; which brings to the fore the need to place emphasis on psycho-diagnostic and educational work with them. According to the Association of Psychologists and Psychotherapists, these children display over-positive attitude to drugs, they are hypersensitive to all developments round them, and experience constant discomfort. This can increase the likelihood of deviant behaviour. Thus, unless these juveniles realise what they strive to attain, and unless certain adjustment is made, if necessary, of their goals and values, their attitudes may develop into destructive behaviour, making them less manageable.

I think, that the 2001 Ordinance by the President of Georgia concerning the setting up of a state commission to prepare a comprehensive national programme of action aiming to address the problems faced by children, will be helpful in solving the existing problems. The programme envisions comprehensive implementation of civil, economic, social and cultural rights enshrined in the Convention on the Rights of the Child. The operational project for implementation of the programme has been designed in 2002, envisioning joint and co-operative efforts on the part of governmental entities and NGOs.

The Centre co-operates actively with UNICEF Office in Georgia, with the state bodies and NGOs.

During the reference period, the Centre continued selective monitoring

of the situation in the Kachreti psycho-social rehabilitation centre, at boarding schools and children's homes, as well as the Avchala juvenile institution. The Centre studies the educational situation at schools, analyses the problems conducive to massive drop-out from schools, etc.

The Child Rights' Centre co-operates actively with the Church of St. Panteleimon the Healer. The joint plan of action was devised in conjunction with the priest, Father George (Chachava). The plan envisions interviews with the parents of street children, their psychological rehabilitation, analysis of the root causes of the existing situation, ways to assist the children concerned. This, I believe, will help to address the problem of parents' violence against children forcibly pushed to begging, prostitution, etc.), and reduce the number of children in the risk group.

Centre for Women's Rights – Report

One of the main goals pursued by the Public Defender's Office is to work towards the protection of women's rights, promotion of equality of men and women, securing their fuller participation in the political, socio-economic and cultural life of the country.

To this end, the Centre for Women's Rights was established as part of the Strategy Department. In conjunction with the "Open Society – Georgia" Foundation, work is underway to establish the women's rights national service whose main goal will be to implement new approaches and practices in protecting children and women from violence; networking, co-ordination and integration with various governmental and non-governmental organisations. The Report of the Centre is based on the applications and complaints, received by the

Public Defender's Office, telephone calls, interviews with citizens, materials obtained from various governmental entities and NGOs.

Georgia is now in its period of transition and like any other country in a similar situation, is confronted in full measure with a host of extremely acute problems. It is living through a period of transformation of the social, political and economic order, which is always full of difficulties and challenges. In such situations, the groups most hit are those that are most vulnerable – women, children and the elderly.

In the present-day Georgia, any discussion of the women's legal status has to do with the issue of gender development. Gender is sex seen in social terms – social, and not biological. The concept of gender embraces biological sex and its social dimension – i.e. the role, status and other distinctions associated with sex.

Thus, gender is a multidimensional concept. It is the gender, and not the biological sex that underlies the gender gap. Many people consider the gender gap as something that is not inherently present in the society, something artificially created. Oftentimes, discussion of these problems even causes annoyment, as in the minds of the people it is associated with the feminist movement that sometimes takes pathological forms, to put it mildly. However, the gender gap does have its underpinning in the reality. It is the result of centuries-long discrimination of women, and it is therefore unavoidable. Starting from the sixties of the 20th century, i.e. with the onset of radical feminism, it came to be felt particularly sorely. Woman's situation has improved significantly both within the family, and outside it. The improvement is so marked that now many tend to think that the problem is no longer relevant, as women's rights are not abused. Still more think that now time is ripe to start working towards the protection of man's rights.

How relevant is this problem for Georgia?

The impoverishment of the population, now widespread, has further compounded and exacerbated the already existing gender misbalance in the society. Increasing poverty has led to new, specific, problems in terms of woman's participation in political or economic decision-making. There has been a marked drop in the rate of birth, the access to education and health for women has deteriorated, and unemployment has grown, as has the violence against women.

Women account for 52 % of Georgia's population. Among the population, families with many children, single mothers, disable women, IDP women are, alongside with children, are considered to be the high-risk group, most susceptible to poverty.

A closer look at gender determinants of poverty (skills, opportunities, material security, and support) readily demonstrates the detrimental effect the growth of poverty has on the women's social and economic situation, demographic processes, etc.

Shrinking social security guarantees, elimination of those branches of manufacture where most women worked resulted in high unemployment rates among women. It has become increasingly difficult for them to combine the reproduction-related and economic functions: busy with the care of the family, women fail to secure for themselves a strong financial standing, because the access to, and control of, the resources available in the country, is for them fairly complicated.

The poverty phenomenon has affected the woman, both as an individual and as part of the socium. Reduction in the number of pre-school institutions, fewer opportunities of out-of-home care for small children, has made it increasingly difficult for women to solve the problem of

employment. The energy crisis in the country, interruptions in gas supply have had a particularly detrimental affect on women's health and psychological condition. Woman's economic and labour rights are often abused (a woman returning from her maternity leave becomes an unwelcome worker both in the private and public sectors). In budget-funded organisations, women are more frequently dismissed during staff reductions than men are, which is due to a stereotyped role of the man as a wage earner. However, the realities of the recent decade point to the reverse – often it is the woman who is the only breadwinner for the family.

The problem of employment and social assistance for women is an extremely sensitive issue in Georgia. Over the last ten years, the number of employed women has grown; at the same time, numbers of jobs are shrinking. Today, the number of employed women is 40% of their total number. The number of working women has grown in the informal sector – the so-called "closed" economy, in part-time employment. In addition, not infrequently women work illegally, and in such situations they are entirely unprotected.

According to the Georgian Constitution, every person has the right to hold any position, if he/she meets the eligibility criteria. However, in real life, there are many obstacles and impediments for women preventing them to attain high positions. Oftentimes, there are various discriminatory pronouncements, and the government has so far failed to respond adequately and remedy this situation.

Women in rural areas lack information about their rights, and more often than not, they live more according to traditional perceptions about their role, than women in cities. Divorced and childless women are seen as socially inferior.

Women's participation in the decision making on economic or societal matters is very limited.

There are no assistance programmes for women living in villages. Neither is there any state policy addressing the problem of family planning for women residing in rural areas.

Starting from the sixties of the past century, international community has come to realise, and recognise, the fact that woman is the object of discrimination. It proved difficult, however, to arrive at the definition of what discrimination is. Starting from 1946, the UN Commission on the Status of Woman worked to study the issues related to the situation of women. Its main goal was to define all those cases and situations where women are most severely discriminated. The Convention on the Elimination of All Forms of Discrimination Against Women, signed on 18 December 1979, defined "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Georgia joined the Convention in 1994.

Despite the recognition, by the Constitution of Georgia, of everyone's equality, both by the reason of birth and before the law, so far there is no legislation in Georgia that would prohibit discrimination on the basis of sex distinctions or marital status.

Formally, the Georgian legislation provides for the right to equality. However, these norms are for the most part implemented only partially,

and the main reason for that is to be seen in the traditional approach to women's issues. Both the state and the society tend to look at women's issues through the prism of their role as mothers, rather than in the context of independent human rights.

In the recent decade, women the world over have started an unprecedented movement towards the promotion of women's rights. In 1985, the UN World Women Conference in Nairobi, Kenya, emphasised the protection of women's human rights as the key issue. After the 1995, UN World Women Conference held in Beijing, women's human rights issues were taken up by thousands of women everywhere in the world, and included in action plans of many governments as essential priorities. The conferences that followed, held in Vienna (Human Rights), Cairo (Population) and Copenhagen (Social Development) gave a significant impetus to efforts aimed to overcome the neglect of women' rights, and emphasised that improvement of the status of women is dependent on the realisation of their rights in every field.

The effect of this movement was unprecedented. For the first time in history, the states and their governments undertook, as a matter of top priority, to further and promote women's rights.

However, despite these undertakings, as well as the developments in international law and politics, women across the globe still face the situations whereby their fundamental rights are denied to them. Furthermore, very often they lack the necessary knowledge and experience to enable them to adequately employ the human rights' system to protect themselves from violence, and uphold their rights. Often, they know nothing about the world-wide movement to promote women's rights, and tend to look at the system of human rights as something abstract and hardly accessible for them.

Transition to the market economy has had a significant impact on women. It is to be noted that the number of women employed in budget-supported organisations decreased by 60%, whereas the respective figure for men is only 29 %. Most women are unemployed, and their level of labour remuneration is somewhat lower than that of men.

In the transition period, the level of employment for men, compared to women, is more stable. It proved much more difficult for women to adapt to the new economic circumstances. In the production sphere, 292400 women found themselves out of jobs. Such a high rate of unemployment is due to a shutdown of enterprises in the light, food and chemical industries that traditionally were the branches with the prevailing number of women employed. Many of the women lost their jobs because of reforms carried out in the education and health sectors. Sociological surveys revealed an extremely low level of women's involvement in the entrepreneurial activity.

In recent years, about 46 % of women in Georgia lost their jobs. According to the recent data, women's pay is 1.6 times lower than that of men. This is due to a widespread segregation both in terms of profession, and in terms of employment opportunities. Women are mostly employed in education and health sectors as well as in the service industry, where the level of remuneration is significantly lower than in other spheres of economy.

Poverty has particularly affected access to health for women. A differentiated analysis of the poverty effect on pregnant women, nursing mothers, disabled women and single mothers shows that the health reform carried out in Georgia has so far failed to improve access to health for women and children. There is no preventive healthcare for women that would serve as a guarantee for their and their children's

health. Particularly striking is the correlation between poverty and access to education. In addition, a marked gender disproportion in this sector resulted in massive impoverishment of women whose concentration in the education sector has always been very significant.

The market economy has significantly altered the share of female labour both in the formal and informal sectors. Women are mostly busy in small enterprises or are self-employed. Hence, they are unable to participate actively in the decision making in various sectors.

Poverty has lead to increased violence against women in various forms, including domestic violence, which is explicable on the basis of disruption of role functions.

According to the information provided by the Ministry of Internal Affairs of Georgia, district police inspectors have revealed and registered 8658 cases of family conflicts and domestic violence; of these, 4534 were revealed in 2001, and 4121 – in 2002. 1183 conflicts have been settled.

The process of women's labour migration is on the rise; however, they often become victims of trafficking. When abroad, Georgian women mostly work in jobs that are entirely incompatible with their professional qualifications, which leads to the devaluation of labour. Women in such situations are deprived of any guarantees of social or legal protection. All these factors put together, lead to catastrophic results both in terms of demographic situation, and in terms of family values. It should be noted, however, that with all these dire circumstances, women's labour migration has played a certain role enabling their families to survive (labour migrants send back to their families an average of 200-250 USD monthly).

Clearly, the poorer the family, the higher the significance of the woman's inputs. Hence, the role of women's productive activity in the family budget is increasing.

In Georgia, issues related to discrimination against women are often swept under the carpet, or simply ignored. Frequently, the understanding of gender-related problems by the government does not transcend the traditional approach boundaries. There is no legislation or political agreement to define the discrimination against women, and regulate the relevant response by the state structures or private institutions.

Neither is the crime committed against the woman on the basis of sex defined in the law. Only a few claims concerning the discrimination against women have been filed at the court. There are no means and mechanisms of special legal protection to enable women to have their rights protected.

The Georgian legislation does not provide for the protection of women against violence. No provision is made in the law to protect women against violence committed by the partner. The rape by husband, or partner is not qualified as crime. There is no law concerning domestic violence. Proceeding from the patriarchal character of the Georgian society, most of domestic offences go undeclared.

In Georgia there is no knowledge concerning domestic violence and in-family offences, and many women are not aware of their being victims of domestic violence. Though, even if such acts are realised by the persons concerned as violence or offence, such cases, more often than not, remain obscure. The actual picture concerning domestic violence is unknown, and this is to a large measure due to the non-disclosure of such acts by the women themselves.

As already mentioned, the Constitution of Georgia provides for equality of men and women in the enjoyment by them of civil and political rights. However, only insignificant proportions of women find their way to senior positions in the legislature and the executive.

Despite its rich culture-related history, Georgia remains a patriarchal society. Hence, like in any patriarchal-masculine society, the man and the woman, by definition, cannot be equal. A discourse about "women's rights" or "equality of men and women" only provoke an ironic smile. Women's rights are often violated by those bodies whose responsibility is to prevent such abuses.

Prostitution

The main factor that leads to increased prostitution in Georgia is to be seen in the exacerbation of economic and social situation in the country after 1991, reappraisal of values by the society.

Under the effective legislation, prostitution is not qualified as a criminal offence. At the same time, establishing a "brothel", woman's abetting to such occupation is strictly punishable under the law. The number of under-aged prostitutes is increasing.

There is no statistics available on the acts of violence committed against prostitutes. Thus, the problem is to be seen as comprising several aspects: women's rights of the victims of prostitution are grievously violated, as the economic hardships forced them, against their will, to engage in prostitution; the rights of family members - children, spouses, parents – of "commercial sex workers" are grossly violated too, they demand from the state to provide guarantees necessary for stable

family relationships, i.e. conditions enabling individual family members to be able to fulfil their functions as members of the family; the gene pool of the nation is threatened; it is highly questionable whether women "working" as prostitutes will be capable of raising a child, to say nothing of severe health risks involved, such as AIDS, which is a dire threat for them, and others, too.

The number of documented cases of AIDS –infected persons is 4000. Thirty-three patients died. It is likely that the officially registered number of AIDS patients is not reflective of the actual situation.

For the last 2 years, a lot has been said about the need to legalise prostitution. The public discussion on this issue has started. The prostitution legalisation concept has both supporters and opponents. In my view, the way to resolve the problem is to be seen not so much in legalisation, but rather in regulation, which will make the process a controllable one.

It is the responsibility of the state to give very close attention to the problem, and take various measures to eliminate it. It seems advisable to establish a group (commission) to take stock of the situation and work out recommendations for the follow-up by authorities. Mass media should also engage in the work. Special attention is to be given to issues concerning assistance to mothers with many children, women residing in high-mountain areas, IDPs, including women and children.

On Granting Pardon to Women

According to Article 73, Para.1 (m) of the Constitution of Georgia, the President of Georgia is authorised to grant pardon to a sentenced convict, which *per se* is a humane act.

As a rule, the act of pardon is granted to those persons who are convicted for relatively minor crimes. Unfortunately, despite many an appeal, I failed to persuade the Commission for Pardon established by the President, to consider expanding privileges (such as, for instance, shortening of the remaining term of imprisonment) to cover women convicted for grave crimes (drug trade, accompliceship in murder, etc.), although we do realise that some of them committed serious crimes and are serving a well-deserved punishment. However, we also need to consider what was the reason causing a person to perform a criminal act – to commit a crime. Physical or verbal violence and aggressiveness displayed by family or by society give rise to reciprocal aggressiveness that sometimes manifests itself in outrageous acts – murder, robbery, etc. Economic hardships force women to commit extremely grave crimes, such as trading in drugs and other dangerous psychoactive substances.

As of now, 131 women are serving their sentences, Their condition in some cases causes serious concern. One has to consider their behaviour, attitude to work, gravity of crime, family circumstances, heath condition, crime record and other factors; some of them are ill and are in need of special care; still others have disabled family members confined to bed for whom they are the only supporters; their children are deprived of motherly care, for which reason it is difficult for the state to fully integrate these children into society. The result is a high-risk group, whose involvement in crime is highly probable.

It is to be noted that as a result of 1997 amendments to the Criminal Code of Georgia, under Article 54.2, a person may be released conditionally for a probationary period; these privileges are allowed: 1. for convicts whose term is up to 10 years - if a convict has actually served not less than 1/3 of the term imposed ; 2.. for convicts whose term is over 10 years - if a convict has actually served not less than

1/2 of the term imposed; 3. for convicts who were convicted for crimes listed in Article 54, part 6 - if a convict has actually served not less than 2/3 of the term imposed. This change, instead of alleviating, has in fact aggravated the position of people serving their sentences., which is in conflict with all international norms and standards. The European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 7(1) states that "no heavier penalty shall be imposed than the one that was applicable at the time the criminal offence was committed".

Thus, the state does not fulfil the obligations it has to women prisoners, nor does it grant them pardon.

Centre for the Rights of Military Servicemen - Report

Situation in the Army

So far there has been no universal definition of a small state, though there have been many an attempt to make a classification of states by the size of their population, or their territory. Apart from these two main distinctions in the typology of states, the emphasis is on a state's political, economic and military strength, determining the "weight" of the state in the international setting.

A small country may have a powerful and stable foundation in terms of its statehood and, hence, be a powerful state (for instance, Sweden, Norway, the Netherlands, etc.); on the other hand, a large and, seemingly, strong country may be a weak state confronted with the same challenges and set-backs in terms of national security, as small states. Inherent weaknesses, lack of social cohesion and ethnic

integration, coupled with weak economy and non-existence of stable institutional capacity create serious problems in terms of national security for any state, particularly, a small one.

Looking back to the processes and developments of the past decade in the Georgian history, one may see that military operations conducted by the armed forces often ended in failures. Flawed and thoughtless policies, as well as emphasis on tactical warfare took a heavy toll of life and well being. Inconsistent policy and lack of co-ordination in military matters led us to a situation whereby hundreds of thousands of people were forced to flee their homes, thousands died. All this left a deep imprint in our consciousness moulding the "lost war" syndrome (concerning Abkhazia). The public is tired of endless struggle for national values. The prevailing view is that our country's fate is determined somewhere, far away, and we are waiting for the world's leading powers to decide and agree between themselves whose sphere of interests will Georgia belong to – the reason for such a view being the absence of the national idea. Paradoxical as it may sound, but because of lack of employment opportunities and means for survival, some feel nostalgia for the Soviet times. Democracy is associated for them with corruption, lack of employment – with poverty, social rights are not even discussed. There is an exodus of population from small towns and villages. Those who found the way to leave the country settled abroad, others are surviving by petty trade in the capital's streets and the underground.

Unfortunately, when we start referring to social problems, the "powers that be" say we are populists. Herewith I want to emphasise that a strong army is not the only guarantee for the state's security; it is only a component, and not the only one, of an array of factors conducive to security. Increasing corruption leads to a weaker security.

The same approach is prevalent today with respect to the army. One can frequently hear the question: If our fate is a matter that is decided somewhere, far away, what do we need the army for? It is a luxury for the country confronted with the heavy burden of external and domestic debts. None of the sectors, be it education, health or any other, is successful, whereas still others are only token, and meaningless, attributes of a state. And if they are not, of what real import are they, if there is no security concept, no clearly defined foreign policy priorities, and no adequate resources to ensure the viability of the army.

The relevance of this problem is explicable, in the first place, by a dire socio-economic situation in the country, political difficulties it faces. The public is almost unanimous about the need to have a strong army, especially now, when the top priority issue is for Georgia to restore its territorial integrity, the more so as almost 10% of the Georgian population is forcibly driven out of their homes. In such conditions, the state is reluctant to make minimum allocations from the budget for the army to be viable. Moreover, it exposes people in the military service to unbearable hardships, which is a cause of resentment both among officers and among rank-and-file soldiers. Because of the state's failure to pursue any prudent policy vis-à-vis the army, today there are about 2000 deserters. Despite the 1997 and 2001 amnesties, this problem has not so far been solved. In order to eliminate this problem, it is first of all necessary to effectively address its root causes. Lack of essential base-line conditions when serving in the army, is a factor conducive to desertion, thus putting at stake the country's security.

Oftentimes, military units lack the most basic medications. For this reason, in case of a serviceman's sickness, he has to rely on his parents for funds necessary for medical treatment. For instance, on 6 April 2002, as a result of a car accident, Private Tamaz Mgvdliashvili was brought by an ambulance to No 9 Hospital of Tbilisi, and then, in a

most severe condition, transferred to the resuscitation block of the military hospital of the Ministry of Defence of Georgia. From interview with the parents, it turned out that in the course of 2 weeks, Private T. Mgvdliashvili's parents had to pay almost 9000 GEL in medications alone. In order to be able to pay for their son's medical treatment, they had to sell almost all of their possessions – house, car, etc. However, the sum available to them was not sufficient to cover the treatment costs, driving them into a desperate situation.

It is to be noted that knowing of such facts, many parents are reluctant to send their children for military service, in order to ensure themselves against similar situations. Let us try to imagine what T. Mgvdliashvili's fellow soldiers would feel, knowing that if their parents have no money to pay for treatment, they will be condemned to death. It must sound indeed cynical for them to hear calls to patience "in the hope of bright future", knowing that sons of those who make these calls are awaiting that "bright future" abroad.

The Pubic Defender's Office addressed the Deputy Commander of Internal Forces, Colonel T. Kukhianidze with a request to make a transfer of the sum necessary for Mgvdliashvili's treatment. However, we were told that the Ministry of Internal Affairs did not have the requisite sum, and that it was necessary to convince the Ministry of Finance of the need to allocate the necessary amount. Relations between the Ministry of Finance and the Armed Forces are a separate, and extensive, theme. I think that people's security should in no way be dependent on this entity bureaucrats' vision of the "priorities".

On 10 April 202, Private N.Mamedov hit the landmine in the territory adjoining the Vaziani military unit. Consequently, he had both arms and the right leg amputated. His medical treatment confronted the same problem. Our Office repeatedly requested the leadership of the

Ministry of Defence to allocate funds needed for Private Mamedov's treatment, which eventually was done by allocating the sum from the protected items of the budget, but, unfortunately, on 14 April N. Mamedov died.

Despite our recommendation made to the Ministry of Defence and the Ministry of Education last year, they failed to include in the school and university curriculum special lessons intended to raise awareness on mines and explosives, the danger they present and means to avoid that danger (55 explosion cases were recorded). **Special attention is to be given to the training of conscripts (in conjunction with the Ministry of Defence), as they represent a high-risk group.** The recommendation was not acted upon due to lack of funds. The results, however, are fatal.

On 29 March 2002, the Public Defender's Office was approached by Private Z.Gogoladze (the Ministry of Defence military unit). In February, he was sent to the Kodori Gorge on a special mission. In his complaint, the person concerned pointed out that due to severe climatic conditions, he developed *alopecia staphylogerma* (massive baldness), for which reason he was referred to the Main Military Hospital of the Ministry of Defence. There he was told that the hospital lacked the requisite medications and necessary funds to give him medical treatment, and in case Z.Gogoladze secured the necessary sum himself (monthly 200 GEL), he would be given treatment. Private Z.Gogoladze explained that his salary (5 GEL) was in no way sufficient to enable him to save the needed sum.

Our Office applied to the Minister of Defence with a request to provide, without delay, free medical treatment for Z. Gogoladze. Most likely, this issue will be left again to the Ministry of Finance's discretion.

One of the factors causing desertion from the army is lack of medications. Neither hospitals, nor power structures have funds to provide, if necessary, for prompt procurement of drugs and medications.

Neither are hospital patients insured against bureaucratic hurdles. By way of illustration: The Public Defender's Office received an application from parents of Private B.Kitoshvili concerning the establishment of an alternative medical expert commission.

It was pointed out in the application that their son, Private B.Kitoshvili was undergoing treatment at the Main Military Hospital of the Ministry of Defence., to which he was referred for examination by the Central Military Expert Medical Commission of the Georgian Armed Forces (Chairman T. Avazashvili). The non-staff Military Medical Commission of the Ministry of Defence (Chairman A. Jorbenadze) diagnosed "Peptic ulcer, acute phase, duodenal ulcer". This diagnosis qualified Private B.Kitoshvili for retirement from the army.

The Central Military Expert Medical Commission of the Georgian Armed Forces questioned the diagnosis established by the non-staff Military Medical Commission of the Ministry of Defence, and subjected B.Kitoshvili to another endoscopic examination at the hospital of the Georgian Internal Forces, where the patient received the following diagnosis: "Superficial gastritis. Marked duodenitis". This diagnosis caused a difference of opinions. The applicant indicated that the dispute between the Central Military Expert Medical Commission of the Georgian Armed Forces and the non-staff Military Medical Commission of the Ministry of Defence was harmful for their son's health, as he was subjected to endoscopic examination 5 times, and the examination is a very unpleasant procedure.

Our Office requested Mr. A.Gamkrelidze, Minister of Labour, Health

and Social Protection of Georgia, to appoint, considering the factual circumstances, a medical expert commission composed of competent professionals.

Neither do officers attract much notice on the part of the state. Their pay falls short of the subsistence minimum, and even this is not paid on time. Many officers applied to the Public Defender's Office for help in solving such problems. They feel humble trying to secure their pay, not given to them for months, as they have to apply to various means to get it, such as connections, patronage, etc. In private interviews, officers were saying that they are virtually abandoned by the state, they even had their privileges cancelled. All this naturally leads to resentment over helplessness, both their own, and the state's, in addressing their everyday problems. Many officers even had their marriage broken, as they simply could not support their families. These problems caused many qualified professionals to leave the army. Unfortunately, not infrequently one can see at the "labour exchange" near the Eliava Market in Tbilisi officers awaiting someone to hire them.

Today there is a lot of discourse among government officials about the need to assist the army. It is the obligation of the public to assist the authorities in their efforts to build the armed forces. Though, one can frequently hear a legitimate question: Why is the government calling for help when it possesses all the necessary levers to effect the reform? The society that pays taxes, elects and "hires" the government that has an obligation to live up to people's expectations and not to betray their confidence. The people have no responsibility, at times of crisis, to take upon themselves and bear the burden of mistakes that caused the situation to deteriorate.

According to the Association "Law and Liberty", the monitoring carried out in units and sub-units of the Georgian Armed Forces showed that

the situation there is basically the same, though in some units the situation is daunting, whereas in others it is relatively decent. Speaking about the army's social situation, here again conditions differ. In the State Security Guards, the servicemen do not live in barracks, they have their duty service as security guards once every three days, and receive a larger pay – 60 GEL (whereas drafted soldiers in other military services only get 5 GEL). The situation in the internal forces is very similar to the one observed in the units under the Ministry of Defence, though such problems as lack of food, petrol, personal items, are almost unknown to them, though this, too, depends on the specific unit, its prestige, etc. In the border-security forces, conditions are basically the same as in the rest of services, the difference being that servicemen carry out their service in the borderline zones, i.e. in field conditions.

As is seen, the situation in the armed forces displays certain differences; in some units, conditions are relatively good, whereas in other they are dire. This leads to the perceptions of inequality, which may be due not only to difference in the available financing, but also to difference in the management of these departments. However, differences are observable in different subordinate units of the same department, which shows that still a lot depends on the ability and skill of the command.

Barracks

Most buildings and premises in military units are worn out and in need of urgent repairs; however, no allocations are envisaged in the budget for this purpose.

In some military units, barracks and other premises have dripping walls, which makes the threat of collapse real. A number of such facts did happen in the army, and the danger is still there.

In wintertime, barracks are heated with wood stoves, which are not adequate to maintain the necessary level of temperature, and soldiers have to sleep with their clothes on.

As far as the bedclothes are concerned, they are, for the most part, changed after bath. However, considering that in some units bath is not a frequently afforded exercise, no wonder that bedclothes leave much to be desired both in terms of their colour, and quality.

Soldiers are supposed to be issued a new set of bedclothes once every 6 months, which they do not get for understandable reasons. Multiple washing turns them into rags.

Oftentimes, having found themselves in such conditions, soldiers improve their conditions on their own. They collect money to do some repairs in their premises, painting walls and floor, installing window-glass and buying bulbs, as well as personal use items.

Over a certain period, the state was not in a position to provide servicemen with uniforms and accoutrements, and these were provided through donations. However, today, too, one can see a soldier, wearing jeans and trainers instead of a uniform. There is nothing new in the fact that most of military servicemen come from socially vulnerable families. However, despite a lack of financial capacity, they, out of pride, choose to buy a military uniform in the market where officers sell them to second-hand dealers to get some money. Not infrequently, rear services officers sell uniforms intended for "dead souls".

It is important also to discuss the problem of soldiers receiving their pay. The survey conducted by the NGO "Law and Liberty" showed that only 50% of soldiers have received their pay, but only several times. Sanitary norms in the kitchen are not observed. In some of

military units, kitchens lack the necessary implements. They have no gas and electric power supply. Food in such units is cooked in field kitchens. At the same time, mess halls, despite regular washing and cleaning, are not clean enough.

In my previous report, I mentioned repeatedly the problem of inadequate nutrition and poor quality of the ration in the army. I want to bring to your attention the procurement pattern by which foodstuffs reach the soldier.

1. Rear Service - defines the type and quantity of food products;
2. General Staff - devising a plan of food products procurement;
3. Ministry of Finance – makes decisions concerning the allocation of money the Ministry of Defence (financing specific budget items) ;
4. Treasury of the Ministry of Defence - receives money form the Ministry if Finance;
5. Finance Department – organises procurement;
6. Procurement Department – negotiates with private firms;
7. Signing an agreement between the Ministry of Defence and private firms;
8. Legal Department – performs expert examination of the agreement;
9. Rear Service – accepts products;
10. Storehouse of the Rear Service – stores the products;
11. Military units take out the products using their own transport;
12. Military unit's deputy commander for rear service – accepts products at the unit;
13. Military unit's storerooms - storing;
14. Chief of military unit's mess – prepares schedule for cooking;
15. Chief of staff – approves menu for the week;
16. Mess kitchen – cooking, according to the schedule
17. Soldier

Brief Analysis of Programme Budget Requested by the Ministry of Defence, Budget Approved Parameters and Actual Execution of Budget

With a view to improving the combat readiness of the armed forces, and further the reform of defence, the planning by the Ministry of Defence this year was based on the principle of programme–based financing and envisaged the allocation of 71 million GEL. Unfortunately, neither the budget parameters, nor the planning principle were accepted. In the Law on the State Budget, the approved budget for the Ministry of Defence stood at 36 million GEL (plus 2.5 million GEL of non-budgetary revenues). In the first quarter of 2002, none of the parameter was fully financed, and budget debt was over 2 million GEL.

It might be interesting to look at some of the parameters, and compare the budget requested by the Ministry of Defence, and the approved budget:

- Employee salaries: budget requested by the Ministry of Defence – 10 million. 350 thousand GEL; approved budget – 7 million 805 thousand GEL (difference – 2 million 545 thousand GEL. Items such as bonus and allowance have been withdrawn;
- Office costs: budget requested by the Ministry of Defence – 4 million 413 thousand GEL; approved budget – 1 million 735 thousand GEL;
- Transport and equipment operation and maintenance - budget requested by the Ministry of Defence – 18 million 101 thousand GEL; approved budget – 8 million 935 thousand GEL;
- Medications - budget requested by the Ministry of Defence – 1 million 521 thousand GEL; approved budget – 391 thousand GEL;
- Special programmes - budget requested by the Ministry of Defence – 10 million 300 thousand GEL; this item was not approved. It might be interesting to list some positions: ammu-

nition costs, upgrading, arms reserve, capital overhaul of buildings and structures, etc.;
- No budget was approved for construction, military research, and a number of other important activities;
- We deem it necessary to have a special budget reserve to be used in case of necessity, during emergencies. In order to ensure transparency of reserve spending, it is desirable for control over the disposition of the reserve to be entrusted to the Defence and Security Committee of the Parliament;
- Strengthening of the country's defence capacity requires the realisation of the air defence system programme. To this end, the Ministry of Defence has carried out intensive work. A draft of the relevant presidential decree has been prepared.

In 2002, the Ministry of Defence submitted the programme budget for 71 million GEL (31.4 million USD), which would be sufficient to maintain the combat readiness of the Georgian armed forces at the existing level. By the Law on the State Budget, the budget approved for the Ministry of Defence was 38 million 500 thousand GEL (17 million USD), in which budgetary resources comprise 36 million GEL (15.9 million USD), and non-budgetary proceeds were estimated at 2.5 million GEL (1.1 million USD).

Approved budgetary spending for the first quarter of the current year was 7 million 900 thousand GEL, of which the sum actually received was 5 million 900 thousand GEL, i.e. 74% of the planned indicator (about 39% of the requested budget).

During 3 months, 2 million GEL accumulated in arrears.

The scheduled character of allocations withdrawal is beneath all criticism. It renders impossible any meaningful training process. The

situation is even more alarming if viewed against the backdrop of the recent critical developments in Georgia.

Data on financing of some basic items

- Personnel costs: planned target – 6 million 280 thousand GEL; financing - 4 million 630 thousand GEL, i.e. 74% (deficit – 1 million 652 thousand GEL);
- Formations' operational costs: planned target – 1 million 125 thousand GEL; financing - 945 thousand GEL, i.e. 84% (deficit –180 thousand GEL);
- Operational costs of military equipment: planned target – 513 thousand GEL; financing: 318 thousand GEL, i.e. 62% (deficit –195 thousand GEL);
- Work remuneration: planned target – 1 million 950 thousand GEL; financing - 1 million 300 thousand GEL, (deficit –650 thousand GEL);
- Food: planned target – 2 million 285 thousand GEL; financing - 1 million 992 thousand GEL, (deficit –293 thousand GEL);
- Food compensation: planned target – 1 million 700 thousand GEL; financing - 1 million 124 thousand GEL, (deficit – 577 thousand GEL);
- Vehicle fleet - maintenance and lubricants: planned target –824 thousand GEL; financing - 529 thousand GEL, i.e. (deficit – 295 thousand GEL);
- Procurement of medications: planned target –77 900 GEL; no allocation made

Non-budget revenues

As already mentioned, by the 2002 state budget, non-budget revenues were established at 2.5 million GEL (1.1 million USD). In the first

quarter, mobilisation target was 500 thousand GEL (220 thousand USD), real revenue was 147 thousand GEL (65 thousand USD), i.e. 27% of the target.

This money covered the following costs

Work remuneration – 19 000 GEL;
Food – 8000 GEL;
Procurement of medications – 5800 GEL;
Office costs – 45600 GEL;
Transport operation and maintenance – 15200 GEL;
Other costs – 17000 GEL.

By the end of the quarter, the balance was 24600 GEL.

In the first quarter of 2002, no funds were provided from the President's Fund and State Reserve Fund.

Data Provided by the Georgian Chamber of Control

On referral by the Georgian Chamber of Control in 2000 – 2001 of materials featuring signs of crime to the Chief Military Prosecutor's Office, and the respective reaction

Materials on including in revenues and distribution in military units of the oil brought in by the Main Procurement Authority of the Ministry of Defence of Georgia. Facts revealed: purchase of 5410 kg of poor quality oil. The Chamber of Control sent letter # 7PR-1-03/29 to the Chief Military Prosecutor on 22.05.2000. The case was initiated under Article 274-e, Para 5 of the Criminal Code.

Materials on the check-up of Tbilisi fuel and lubricant central case of the Main General Service Department of the Ministry of Defence of Georgia

518.2 litres of petrol was used not for the intended purpose, which resulted in a damage of 2.6 thousand GEL to the Ministry of Defence; unlawful alienation of 7.6 tonnes of zinc-plated PMTP-100 piping; unlawful write-off of 84 tonnes petrol, and 55.4 tonnes diesel fuel. The materials were appended to the materials of documentary audit performed in the Main General Service Department of the Ministry of Defence of Georgia. Criminal case #22101003 was initiated on 12.03.2001. The case is suspended on the motive of investigation.

Materials of documentary audit of the Main Economic Department of the Ministry of Defence of Georgia

Facts on the existence of unrecorded rock-processing enterprise worth 92 thousand GEL and unaccounted spending of 42.2 thousand GEL were revealed. The Chamber of Commerce referred case #7-PR-01 4/3 to the Chief Military Prosecutor's Office 10.01.2201. The materials were appended to the materials of check-up conducted at the central base of fuel and lubricants of the Ministry of Defence of Georgia. Criminal case #22101003 was initiated. The case is suspended on the motive of investigation

Materials of check-up at the Sea Division of the Border Protection Department of Georgia

Fats revealed: inadequate accounting of fuel and lubricants, unlawful write-off and stock shortage. Letter # 7PR-11-04/37 was sent to the Chief Military Prosecutor on 13.04.2001. Criminal case #22101010 was initiated on 12.03.2001 under Article 177-e, part 2 of the Criminal

Code of Georgia. Proceedings on the case are in progress.

Materials of comprehensive check-up of the Army Accommodation and Construction Department of the Ministry of Defence of Georgia

The check-up revealed facts of unlawful accommodation at military stations, unlawful dismantling of buildings and structures, misappropriation of construction materials, unlawful spending of 132 thousand GEL and misappropriation of 1.3 thousand GEL. Proceedings on the case are in progress. Criminal case #22101014 was initiated on 12.03.200 under Article 177-e, part 2 of the Criminal Code of Georgia

Materials of comprehensive check-up of the Main Department of Armed Forces of the Ministry of Defence of Georgia

The check-up revealed facts of inadequate inventory accounting of arms and ammunition, unlawful selling of scrap metal, illegal functioning of non-military facilities on the territory of a military base, and misappropriation of state funds. Criminal case # 22101014 was initiated on 03.09.2001 under Article 332, part 1 of the Criminal Code of Georgia. The case is suspended on the motive of investigation.

Notably, most of the cases are referred to the Chief Military Prosecutor's Office for their investigation by the management of the departments concerned.

Military Servicemen's Complaints

Privates' Leonid Filipenko and Dmitry Kogtev of the Russian Army Group in Georgia applied for assistance to the Public Defender of

Georgia. On 29 April they left their military unit without permission and were hiding first in the streets of Tbilisi, and later – with one Georgian family. According to their allegations, in the unit they had been beaten, assaulted, deprived of sleep for five days, forced to commit theft in order to buy cigarettes and food products to bring them to the unit. The persons concerned were very depressed by exposure to such treatment and requested assistance, saying that they were prepared to continue military service, but not in their unit, and not in Georgia, as they were afraid of redress by commanders.

The Public Defender made these facts known to her colleague in the Russian Federation; she also contacted Mr.Alexander Lutskevich of the Russian Embassy to Georgia, and handed over to him the servicemen.

Eventually, the incident was resolved. Private Kogtev continues his military service in the Russian Federation, and Private Filipenko, on his own request, continues military service at the Staff of the Russian Army Group.

On 24 May 2002, Nodar Efremidze, the Public Defender's Representative on Military Matters was addressed by 22 soldiers who, together with other servicemen (59 persons), left their military unit without permission and took shelter in the forest. In their letter they alleged that they could no longer bear the humiliation, physical and verbal assaults. They deserted the military unit in token of protest and in order to protect their dignity and health. Apart from that, they demanded that three officers: M.Badurashvili, Z,Bliadze and D.Shatirishvili be dismissed from office.

The deserters did not refuse to continue military service. They also requested not to separate them to disperse in different military units.

After the intervention by the Public Defender, they returned to their unit, and all their demands were granted.

Centre for Protection of Religious Rights - Report

Freedom of thought, conscience and religion is among the greatest achievements of the civilised humanity, and a cornerstone for building the civil society and the law-governed state. As such, it needs to be cherished and protected. In Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, this right is formulated as follows:

"Everyone has the right to freedom of thought, conscience and religion".

In modern jurisprudence, this right is interpreted clearly to include "freedom to change his religion or belief and freedom, either alone or in community with other and in public or private, to manifest his religions or belief, in worship, teaching, practice and observance".

The Georgian Constitution adopted on 24 August 1995 declares "complete freedom of religious belief and confessions" (Article 9). It does not, however, limit itself only to this provision concerning the right to religious freedom. In article 19, it expands the provision contained in Article 9. Article 19 declares:

1. Every individual has the right to freedom of speech, thought conscience, religion and belief.
2. The persecution of an individual for his thoughts, beliefs or religion is prohibited, as is compulsion to express opinions about them.
3. These rights may not be restricted unless the exercise of these

rights infringes upon the rights of other individuals.

Unfortunately, the forms that manifestations of religious extremism have taken in our country, throw doubt on the implementation of the rights and freedoms enshrined in the Constitution of Georgia, increasingly widening the gap between constitutional rights and freedom, and the reality of religious life in the country.

For the third year, we have been expressing our concern about the continued organised mob violence against minority religious groups. Georgia's administrative bodies have so far been unable to end the attacks and violence against representatives of minority religious groups.

Over the recent period, a dangerous tendency has been evident in the attitude of administrative bodies to religious minority communities. Namely, police refuses to restrain attackers seized with religious fanaticism. Sometimes it actually participates in the violence. For no valid reasons, court trials against extremists are postponed, which, unfortunately, is testimony of moral support for the perpetrators.

Instead of providing for the adequate security of religious minority communities, certain political leaders openly speak against religious minorities, exacerbating further the already tense situation in the country.

This failure to confront transgressions means not only the violations of the rights enunciated in the Constitution, but eviscerates Georgia's commitments as a participating state in international organisations such as the United Nations, the Council of Europe, and the OSCE.

I have repeatedly stated and I want to emphasise again that today it is imperative for representatives of the legislature, the executive and the

judiciary, for outstanding workers in science, education, and culture to engage in broad-based dialogue with all religious denominations in our country, which will, beyond any doubt, contribute and lead to the atmosphere of religious tolerance. It is necessary to expedite the adoption of the law "On Religious Associations", to be preceded by a broad-based discussion of the draft law across Georgia. The more so, as today there are already several versions of the draft law, including the most recent one, prepared by the Ministry of Justice.

In this context, the Centre for Protection of Religious Rights is now working on its version of the law "On Religious Associations", that will be submitted for consideration of the broad public in the nearest future.

Herewith, I would like to note that the idea on adoption of the law on religious associations has both supporters and opponents. The main argument employed by the opponents to this idea is that the freedom of religious belief is already guaranteed by the constitution, and it is impossible for any law to offer stronger guarantees. In this connection, I would like to emphasise: if we take such an approach to creating a system to guarantee the human rights and freedoms, then there will be no need in having any legal acts that detail the safeguards to guarantee respective rights and freedoms that are enunciated in the Constitution.

Firstly, the Constitution does declare the right to freedom of thought, conscience and religion, but it does not detail the safeguards to ensure the enjoyment of this right (Article 19). This article of the Constitution only points out prohibitions, namely, that the persecution of an individual for his thoughts, beliefs or religion is prohibited; that the individual shall not be forced to express opinions about beliefs or religion; that these rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals. The Constitution is silent

about other guarantees. Neither does it detail the forms of manifestation of the freedom of conscience, beliefs and religion that determine the registration of a religious association, its legal status, etc.

True, the prohibition of persecution and of restriction of the freedom of belief *is per se* a legal guarantee. However, unless these freedoms are regulated concretely, this opportunity offered by the Constitution will only remain on paper. The freedom of conscience, beliefs and religion has a number of nuances that need to be formulated in detail in the legislation.

In this context, I think, the Ministry of Justice needs to take another critical look at the draft law it presented, and make it a subject of public discussion.

The Centre for Protection of Religious Rights that has been operational for 6 months already, will have to address many serious issues. At the same time, given the fact that the Centre is the first and, by far, the only entity of its kind within a state body, it seems expedient to look at its work.

The Centre carries out its work along several directions: receiving and handling notices and complaints referred to the Office, co-operation with representatives of different confessions, organising round table meetings, collaboration with NGOs. Apart from that, the work of the Centre envisages: the study and analysis of the root causes of violations of the freedom of beliefs and religions, and the actual situation on the ground; sociological surveys; mobilisation of the relevant literature and materials and creation of a library; studying the forms and methods of activity of various religious organisations and the impact they have on the population; publishing journals and information bulletins; looking at work efficiency of various state bodies, and conformity with relevant

international norms; analysis of effective legislation and information provided by mass media. The work of the Centre for Protection of Religious Rights will help identify the existing problem areas and work towards the protection of the freedom of belief.

The Centre for Protection of Religious Rights, working within the Strategy Department, participated in the working meeting concerning the establishment of the clergy service within the penitentiary system and the system of defence.

A milestone in the work of the Centre was the holding of two extremely interesting training seminars: the first seminar was held by the experts of the Council of Europe and it focussed on issues related to practical implementation of the Provisions of the European Convention (May 2002), the second seminar was organised by the UN Development Fund and it focussed on issues such as conflict settlement, peace building, the role of women in the building of peace. Both training seminars were extremely useful for the Centre.

Under the auspices of the Public Defender's library, the Centre for Protection of Religious Rights put out an analytical publication "State and Religion" prepared by the Institute of State, Law and Religion. The publication looks into the situation in Georgia concerning violations of the freedom of beliefs and religion, and offers consistent analysis of the role religious associations play in the life of society, describes the roots of religious tolerance in Georgia, addresses the negative influence of religious extremism on the situation with the protection of human rights; touches upon the essence of the freedom of belief, identifies legal foundations of its protection; emphasises the need for the relevant legislative framework necessary for handling the question concerning the registration of religious associations, their relationship with the state, etc.

The Public Defender's Office works intensively with the non-governmental sector. Joint seminars, conferences and discussions are organised on issues of relevance to the protection of the right to freedom of religion.

In the earlier half of 2002, the Centre for Protection of Religious Rights received 31 notices and complaints concerning the violations of the freedom of conscience and religion. Prevailing among these were such complaints and notices that, despite our intervention, were not followed up duly.

For instance: On 18 February 2002, the Public Defender's Office received a notice from members of the Jehovah's Witnesses religious organisation residing in Kvareli, Z.Japashvili and U.Tsutsunashvili. In their allegation, they described the fact of physical and verbal assault against them by police officer Z.Bliadze, occurring in Kareli. The Public Defender applied for follow-up to the Chief of the Department of Internal Affairs of Kareli district. The response took a long time to reach us (12 August 2002), and stated that a decision was issued to initiate criminal proceedings in relation to the described fact.

On 2 April 2002 the Public Defender's Office received a notice describing the beating on 9 March 2002 of E.Valieva, member of the Jehovah's Witnesses religious organisation, by E.Akhalkatsi, member of Basil Mkalavishvili's mob. E. Valieva was referred to hospital. The beating of E.Valieva was witnessed by L. Grigoriani who happened to be there and tried to help E.Valieva. On 3 April the Centre referred the allegation to the procuracy that informed us that E.Ahalkatsi is an IDP from Abkhazia, and it was not possible to locate and interrogate her.

On 2 April 2002, the Public Defender's Office received a group notice from members of Jehovah's Witnesses, which alleged that on 28 March

they were attacked and assaulted in Tskaltubo. The Centre for Protection of Religious Rights applied to the Prosecutor General's Office that informed us on 27 May that a pre-investigation examination was performed in Tskaltubo procuracy that decided not to open criminal prosecution for the absence of crime in the act.

On 17 May 2002, the Public Defender's Office received a group notice from citizens residing near the Rustavi highway and Ponichala, where they alleged that on 7 April the assembly of the Jehovah's Witnesses' members at 133 Rustavi Highway was attacked by members of the "Cross Patriotic Union". We informed about this fact P.Zhgenti, chief of the Mtatsminda-Krtsanisi Department of Internal Affairs. Up until now, the said notice has travelled between the Mtatsminda-Krtsanisi and Rustavi Departments of Internal Affairs.

In the reporting period, there has been an increase in the number of notices addressed to the Public Defender by the Orthodox population alleging acts of violence against them. On 30 April 2002, the Public Defender's Office received a notice from M.Gigilauri, residing in Rustavi, and other Orthodox Christians (40 citizens) alleging the facts of pressure on them and their families by the Jehovah's Witnesses' members. In order to follow up on this notice, we applied to the chief of Didube-Chugureti Department of Internal Affairs, who informed us on 14 June that the case was taken under control and law-enforcement measures were being carried out to identify persons committing the acts.

Particularly alarming is the fact that religious confrontation has become a source of most bitter conflicts in a number of families. More specifically, individual members of such families having become followers of non-traditional religious beliefs, tend to force the remaining members of their families to renounce traditional religion, which causes protest on the part of the latter, leading to family conflicts.

Very bitter conflicts are also observed in cases where followers of a non-traditional religions (Jehovah's Witnesses, in our case) try to forcibly involve children into the activity of their religious organisation and change their belief, without permission of the other parent. In this connection, one has to note the application referred to the Office on 8 April 2002, by citizen N.Gogitidze residing in Rustavi. The application was also signed by several other citizens.

Proceeding from the existing situation, it is extremely important to expand the power of the Public Defender and provide for practical implementation of her recommendations, the more so as this has been clearly stated in the Concluding observations on the second periodic report of Georgia. (74th Session, 18 March – 5 April 2002) submitted under Article 40 of the Covenant (International Covenant on Civil and Political Rights), made by the Human Rights Committee of the Office of UN High Commissioner for Human Rights. Paragraph 16 of these Concluding Observations states that:

> "Although the Committee welcomes the appointment of an Ombudsman, it notes with concern that her functions are not clearly defined and the power to implement her recommendations is limited.
>
> The State party should clearly define the functions of the Ombudsman, ensure her independence from the executive, and direct reporting relationship with the legislative and give her authority in relation to other State agencies in accordance with article 2 of the Covenant."

The need to have the actual authority of the Public Defender ensured has clearly manifested itself in relation to recommendations made by me to various executive bodies with a view to preventing the increasingly frequent acts of violence committed by religious extremists.

In connection with the rise in manifestations of religious intolerance, Paragraph 17 of the Above Concluding Observations states:

> The Committee notes with deep concern the increase in the number of acts of religious intolerance and harassment of religious minorities of various creeds, particularly Jehovah's Witnesses.
>
> The State party should take the necessary measures to ensure the right to freedom of thought, conscience and religion as provided in article 18 of the Covenant. It should also:
>
> (a) Investigate and prosecute documented cases of harassment against religious minorities;
> (b) Prosecute those responsible for such offences;
> (c) Conduct a public awareness campaign on religious tolerance and prevent, through education, intolerance and discrimination based on religion or beliefs.

In conclusion, let me note that the Government of Georgia must do all it can to end the increasingly frequent acts of violation of the religious freedom. Otherwise, the striving, and the ability, of Georgia to develop democracy and protect human rights, will be put in question.

Chapter IV

COOPERATION WITH INTERNATIONAL ORGANISATIONS

Speaking about our co-operation with international organisations, I would first like to emphasise the importance of the UNDP Programme "Capacity Building of Public Defender's Office in Georgia". The Programme was launched on 1 January 2001. It involves partnership with the Government of the Netherlands. In the reporting period, with the support and financial assistance of our sponsors, we undertook the following activities:

- A series of 20-minute TV programmes "Your Rights" was launched on Channel I of the Georgian State Television. Six programmes have already gone on the air. The programmes focus in issues of special relevance for the country, such as: pensioners' rights in Tbilisi and in provinces; rights of men and women in the family, and outside the family; violation of the right to freedom of speech during the periods of repression (communist, post-communist periods); violations of the Labour Code; community problems in the regions – the rights of national minorities, the rights of various religious minority groups – on the example of Javakheti; human rights' violations during local elections.

The programmes were relayed to other regions of Georgia, and shown by cable TV;

- Six radio programmes were put on the air by the Georgian State Broadcasting Company. Through these programmes, the Public Defender is capable of having direct contacts with citizens, at the time when the programme is on, the "hot telephone line" is operational;

- The newspaper group prepares and publishes articles; it prepares digests containing materials from local newspapers for seven newspapers: 5 central and 2 local;
- The Information and Documentation Centre is expanding its stock of materials;
-Work has started to collect the stock for the video-library. Currently, the video-library has 25 video-films provided by the Helsinki Citizens' Union, Rustavi-2 TV Company, Studio RE and UNICEF. We want to thank these organisations for donating these films to us. The films are now being dubbed.
- Work has started to establish a regional network of human rights libraries. Book packages were prepared for regional libraries in Shida Kartli, Imereti and Samegrelo;
- The English language courses are provided for the staff of the Public Defender's Office;
- The publication "State and Religion" was prepared and published (B.Gelashvili, V.Loria, M.Bendeliani);
- In the period between 18 February and 1 March, 2-weak seminars were held at the Training Centre of the Prosecutor General's Office in Georgia - "Legal Foundations of Human Rights and Freedoms". The programme covered the Georgian Constitution, domestic legislation and international norms. The trainees were given certificates.
-In the period between 22 April and 30 May, at the Training Centre of the Prosecutor General's Office in Georgia, 300 investigators on probation and 30 prosecutors on probation were offered a training on the "Problems of Fight against Corruption and Drug-Related Crime, and Protection of Human Rights and Freedoms";
-In the period between 14 March and 24 June, a seminar was held at the Police Academy for 30 senior executives of the Ministry of Internal Affairs - "Legal Foundations of Fundamental Human Rights and Freedoms".

Surveys (through questionnaires) conducted during the seminars demonstrated the keen interest of the target group and a wish to have such seminars continued.

All these seminars had one common goal – implementation of universal and regional instruments in the law-enforcement system – both at the level of legislation, and in practical work.

I take this opportunity to thank Mr. N.Gabrichidze, Prosecutor General of Georgia; Mr. K. Narchemashvili, Minister of Internal Affairs of Georgia; Mr. G.Karkashadze, Rector of the Police Academy and Mr.G.Lobzhanidze, Vice Rector of the Police Academy, who gave their support in organising the seminars.

It is planned to publish the lectures presented during the seminars, and continue seminars with the Military Academy, and other target groups.

Three students of the Law Department - probationers with the Strategy Department were sent to London, to Westminster Kingsway College, for a course in human rights. This will, undoubtedly, contribute to the training of young professionals who will use the knowledge and expertise they gain in their work at the Public Defender's Office. Our students have successfully completed the course.

I would like to take this opportunity and express my sincere thanks for all the invaluable support that has been provided to us within the framework of this Programme implemented by UNDP in partnership with the Government of the Netherlands. I want to express our heart-felt thanks to those without whose active and competent support it will hardly be possible for the Public Defender's Office to develop into a credible and efficient institution, and to continuously expand its activities. Suffice it to say that this Report is published, translated into

English and distributed within the framework of this Programme. I wish to express my gratitude to Mr. Lance Clark, UNDP Resident Representative in Georgia, UN Resident and Humanitarian Coordinator; H.E. Mr.Harry Molenaar, the Ambassador, Royal Netherlands Embassy to Georgia; Mr. Bill Chapman, Project Technical Advisor, and Ms. Louise Nylin, new Programme Co-ordinator. Their active co-operation with the Public Defender and the PDO, their valuable consultations and dedication determine, to a large measure, the success in implementing the project. Their support and encouragement help us to map our plans to enable the Public Defender's Office to be more efficient in future, and what is most important – to expand its geography.

OSCE – more specifically, its Office for Democratic Institutions and Human Rights (OSCE/ODIHR). It was with their support that we successfully realised the 6-month pilot project "Rapid Reaction Group" discussed in one of the chapters.

The Council of Europe –Directorate General on Human Rights. Together with the Council of Europe we organised on 16-17 May 2002, a two-day seminar for the staff of the Public Defender's Office: "The Use of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Public Defender". The seminar was organised by the Strategy Department, with financial support of the Council of Europe. The seminar benefited greatly from the participation of CoE experts: Mr. Benjamin Narain and Mr. Ireneus Cezar Kaminski, as well as Mr.Kshistof Ziman of the CoE Secretariat. Their input was very significant. I also wish to express my gratitude to Ms. Natia Japaridze, Director of the Council of Europe Information Office in Georgia, who always stands ready to support us in all out joint endeavours.

We owe a debt of profound gratitude to the British Embassy in Georgia and, in particular, to H.E. Mrs. Deborah Barnes Johns, the Ambassador. With the assistance and financial support of the Embassy we were able to launch two projects that focus on assistance to the Public Defender's regional representations in Samegrelo-Zemo Svaneti, and in Javakheti regions. Particularly important is the second project that supported the Regional Office development in such a complicated area as Javakheti is. I also wish to thank Ms. Lali Meskhi, Head of Development Division at the British Embassy who always actively assists us in our joint activities.

In addition, I would like to express profound gratitude towards Mr. Badri Patarkatsishvili, President, A. Patarkatsishvili Independent Charity Fund, who showed his usual cordiality and financed an action organized by the Public Defender in May, 2001- the delivery of B Hepatitis preventive vaccine to prisoners of prison # 5 subordinate to the Penitentiary Department of the Ministry of Justice of Georgia. This assistance should be particularly mentioned as it was especially important to the Public Defender against the background of constant lack of state budgetary financing.

We have our plans and prospects for the future mapped out. They will be the subjects of the next Report.

Amnesty International's 2002 Annual Report on Georgia

There were numerous allegations of torture and ill-treatment in custody. Two people died in custody in circumstances, suggesting torture and ill-treatment may have contributed to their deaths. The authorities failed

to investigate allegations adequately and bring those responsible to justice. Attacks against members of non-traditional religions continued unabated. Prison conditions were often extremely harsh. In the disputed region of Abkhazia, conscientious objectors to military service continued to face imprisonment. Abkhazia retained the death penalty but no new death sentences were passed and there were no reported executions.

Background

President Eduard Shevardnadze dismissed the entire government on 1 November. His action followed mass protests over an attempted raid two days earlier by the Ministry of State Security personnel of offices of the independent television channel *Rustavi-2*. The raid was widely interpreted as an act of political intimidation and rekindled debate over the freedom of the media in Georgia, an issue that had come to the fore in July, following the murder of Giorgi Sanaya, a well-known journalist with *Rustavi-2*. The disputed regions of Abkhazia and South Ossetia remained out of the control of the Georgian authorities and peace talks to regulate their status made little progress. Fighting flared up in October in the Kodori Gorge in Abkhazia between armed groups, said to include Georgian and Chechen fighters and the Abkhaz forces. In November, Georgian authorities claimed that the Russian military bombed the Pankisi Gorge, a border region where the Russian authorities accused the Georgians of sheltering Chechen fighters.

Torture and ill-treatment

Reports of torture and ill-treatment in detention, particularly in order to extract confessions, continued. Allegations persisted that police and investigators obstructed detainees' access to defence lawyers,

independent medical personnel, and that complaints of torture and ill-treatment were not pursued impartially and with vigour.

- On 6 November, Zezva Naduradze was arrested in the village of Samtavisi in Kaspi district. Police officers in Tbilisi reportedly tortured him with electric shocks to his genitals, burned him with a cigarette and beat him, in an attempt to force him to confess to a robbery. One of them allegedly attempted to rape him. On 19 November, a medical examination reportedly found bruises, burns and abrasions. At the first court hearing, the judge ordered his release because of his injuries. The criminal case against him remained open. Following a television report of the case, a criminal investigation was opened into his allegations. No one had been charged by the end of 2001.
- Revaz Bzishvili, a traffic police inspector sentenced in July 2000 to two years' imprisonment for "exceeding his authority" in connection with the death in 1999 of David Vashakmadze, was released in February, nine months early. The court ordered his release on the grounds of "exemplary behaviour when in detention". David Vashakmadze had been stopped by officers in November 1999 in Tbilisi and reportedly been beaten so severely by them that he died in hospital two days later.

Deaths in custody

Two people died in police custody; one after a fall from the window in unclear circumstances during police interrogation, the other after reportedly being severely beaten by police.

- Gia Chichakua died in January, reportedly six hours after being taken into custody. According to the reports, police beat him with truncheons during interrogation in Ozurgeti, western Georgia. Reports cited Gia Chichakua's wife as stating that four drunken

policemen, who said they were acting on the orders of their superiors, took him into custody for questioning about a theft. The television report quoted the police chief as saying that Gia Chichakua died suddenly and there were no traces of violence on his body. It also cited an unidentified official as saying that "when he was giving evidence, he suddenly felt unwell and died". No independent post-mortem examination was known to have been performed. A police officer was reportedly detained in January in connection with the death, but no one was known to have been brought to trial by the end of the year.

Human rights defender

In May the head of Isolation Prison No.5 in Tbilisi threatened to "physically annihilate" Nana Kakabadze for criticising conditions in pre-trial detention. Nana Kakabadze, a member of the non-governmental human rights organisation Former Political Prisoners for Human Rights, had given an interview to the newspaper *Alia* after visiting the prison on May 2. She commented that while cells in isolation prisons were overcrowded, some were empty. The head of the prison telephoned her at her organisation's office, apparently incensed at what he believed was an implication that empty cells were kept for rich prisoners able to bribe officials for the privilege of avoiding extreme overcrowding. The Minister of Justice is reported to have verbally reprimanded the head of the prison within hours of the threat.

Attacks on members of religious minorities

Members of minority religions, such as Evangelical Christians, Jehovah's Witnesses and Pentecostalists, were attacked by radical

supporters of the Orthodox Church. In the majority of cases, police officers reportedly failed to take action to protect the victims of such attacks, and in some cases they allegedly took part in the violence themselves. Basil Mkalavishvili and another alleged leader of these attacks, Petre (or Gia) Ivanidze, were charged on 3 September in connection with the attacks, but on minor charges which did not involve serious physical assault. Further attacks continued. For example, on 28 September, a group of around 100 people reportedly set up a road block on a main road leading out of Tbilisi towards the town of Marneuli, where a Jehovah's Witnesses convention was due to be held that day. The Jehovah's Witnesses had reportedly informed the authorities in advance of the convention and received guarantees from the police that proper measures would be taken to protect their right of assembly. However, according to the Jehovah's Witnesses, the police stood aside and watched as the group stopped the buses carrying Jehovah's Witnesses delegation. They dragged men, women and children outside, and kicked and punched them and beat them with rods. Up to 40 people were said to have been injured, around 12 seriously. Police also allegedly stopped and watched as the group looted and set fire to the convention site, and confiscated film and a camera from the Jehovah's Witnesses.

UN Committee against Torture

In May the Committee against Torture reviewed Georgia's second periodic report on its implementation of the UN Convention against Torture.

The Committee expressed concern that the failure to launch prompt, impartial and full investigation into all the numerous allegations of torture, as well as the lack of sufficient efforts to prosecute offenders, resulted in a state of impunity for the perpetrators of torture and ill-treatment.

The Committee also stated that certain powers of the procuracy and the way in which this institution functions gave rise to serious doubts about its objectivity and the existence of an independent mechanism to hear complaints. It also stated that prison conditions were unacceptable and that provisions for detainees' access to a lawyer, to a doctor of their own choice, and to family members were inadequate. The committee also expressed its concern about instances of mob violence against religious minorities and the failure of the police to intervene and take appropriate action to bring the perpetrators to justice.

The Committee welcomed legislative reform aimed at safeguarding human rights, and the transfer of the prison service from the control of the Ministry of the Interior to the Ministry of Justice.

Abkhazia

In a meeting in Yalta in March, the Georgian and Abkhaz sides formally restarted their commitment about creating the necessary conditions for the safe and voluntary return of refugees and IDPs to the disputed region. However, the region, in particular the southern district of Gali, remains volatile, and high levels of crime and lawlessness added to the insecurity of the local population.

In October there was a serious outbreak of hostilities between armed groups, said to include Georgian and Chechen fighters, and the Abkhaz forces. Reports of casualties were difficult to verify, although estimated were that 60 members of armed groups, 16 Abkhaz troops, and at least 21 civilians had been killed. These casualties were in addition to those killed when a UN helicopter was shot down over the Gulripsh district of Abkhazia. There were nine unarmed people on board.

Human rights defenders

According to reports, Anri Dzhergenia, the Abkhaz Procurator General, stated in May that a Georgian citizen currently living in Bryansk in the Russian Federation had been identified as the suspect in the murder of Zurab Achba, a legal assistant to the UN Human Rights Office in Abkhazia who was shot dead in Sukhumi in August 2000. Anri Dzhergenia stated that the suspect was searched by the Russian police and that two other suspects had been detained in connection with Zurab Achba's death but had not been charged with murder. There were allegations that some official structures were implicated in the killing of Zurab Achba.

Death penalty

No death sentences were reported to have been passed during this year. At least 15 death sentences were believed to have been passed since Abkhazia declared independence in 1992. The *de facto* moratorium remained in force.

Prisoners of conscience

One person, Elgudzha Tsulaya, was known to be in prison during the year for refusing on religious ground to perform his compulsory military service. He had been sentenced to 4 years' imprisonment in October 2000 by the Military Court for desertion, reportedly in connection with steps he had taken earlier in this year to avoid forcible conscription, on the grounds that military service was incompatible with his religious beliefs. No alternative civilian service was available in 2001.

Statistical Data	Total Number	%
1. Total number of the received persons	6772	
2. Number of oral and written applications	1934	
- From Tbilisi	1390	71.9
3. Applications according to context		
-Proceedings on criminal cases (inquiry-investigation)	330	17.1
Including unlawful imprisonment	84	4.3
Proceedings on civil cases	297	15.4
Including complaints on non-execution of court decisions	65	3.4
- Restriction on freedom of religion	43	2.2
- On military service	27	1.4
-Women's rights	3	0.2
-Children's rights	7	0.4
- Discrimination of ethnic minorities	0	0
- Questions of pensions and social assistance	231	11.9
- Labour rights	208	10.8
- Problems related to living space	240	12.4
- Land disputes	20	1.0
- Questions related to education and culture	39	2.0
- Medical issues	15	0.8
- Questions related to banking and finance	25	1.3
- Conflicts between neighbours	21	1.1
- Pardoning	75	3.9
- Family issues	159	8.2
- Other questions and issues	194	10.0
4. The complaints against:		
- State bodies	126	6.5
- Governance	76	3.9
- Courts	312	17.9
- Local self-government	39	2.0
- Ministry of Internal Relations	184	9.5
- Prosecutor's Offices	144	7.4
- Penitential system	15	0.8
- Subdivisions of Ministry of Defence	53	2.7
- State Security Service	1	0.1
- Tax authorities	9	0.5
- Election commissions of every level	2	0.1
- Healthcare and social security system	123	6.4
- Other bodies	526	27.2
5. Recommendations and mediations of the Public Defender	462	23.9
- Positively resolved cases	115	5.9
- Not shared	118	5.6
- In process of study and/or investigation	239	12.4

Cover design by Irakli Maisuradze

Printed in Georgia
Publishing House "Tobalisi"