



PUBLIC DEFENDER
(OMBUDSMAN) OF GEORGIA

ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

THE SITUATION OF
HUMAN RIGHTS AND
FREEDOMS IN GEORGIA

2017





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საქართველოსთვის

The European Union for Georgia



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(OMBUDSMAN) OF GEORGIA

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INTRODUCTION

This report by the Public Defender of Georgia has been developed under Article 43 of the Constitution of Georgia, Article 22 of the Organic Law of Georgia on the Public Defender and Article 229 of the Rules of the Parliament of Georgia. The report presents challenges and progress in terms of protection of constitutional rights and freedoms in 2017. The report indicates those government and local self-government bodies that violated human rights and freedoms and discusses the situation in terms of compliance with the recommendations/proposals made by the Public Defender.

The respective proposals and recommendations presented by the Public Defender in her report are adapted to the parliamentary format to a maximum extent.¹ Furthermore, the Public Defender deems it important to ensure that local self-government bodies that are recipients of a considerable part of recommendations are directly involved in the discussions of the parliamentary report. In addition, the Public Defender calls upon the Parliament of Georgia to take into consideration and reflect in the parliamentary resolution drafted based on the report those proposals that are addressed to the parliament and are significant preconditions for overcoming challenges existing in the country.

The reporting period mainly covers 2017, however the report also analyses those problems that originated in the previous reporting period and continued to persist in the present reporting period as well.

Throughout the year, within the scope of the competences determined by the Organic Law on the Public Defender, the Public Defender's Office requested information from respective state agencies, conducted monitoring of closed institutions, received explanations from public officials, studied criminal, civil and administrative cases, and conducted independent studies and analyses of legislations. In parallel, the Public Defender of Georgia actively studied researches and recommendations made by human rights NGOs and in certain cases took their findings onboard. General assessments made in each chapter of the Public Defender's parliamentary report are based on the information gathered as a result of these methods.

THE REPORT COVERS THE FOLLOWING TOPICS:

The Public Defender scrutinised particularly thoroughly the **right to life**, namely its procedural limb that implies effective investigation of incidents of deprivation of life and assessment of proportionality of the use of force. Unlike the previous reporting period, the death of Temirlan Machalikashvili during a special operation conducted regarding an act of terrorism in December 2017, in the Pankisi Gorge, brought back the issue of effective protection of the right to life as a matter of concern for the Public Defender.

Within the mandate of the National Preventive Mechanism (hereinafter the NPM), the Public Defender, through lengthy planned and random visits, assessed penitentiary establishments, temporary detention isolators and psychiatric institutions; analysed problems, the existence of which automatically causes ill-treatment (e.g., living space less than the relevant standard) or existence of which is a significant precondition for prevention of ill-treatment (e.g., an operational system of prisoners' responsibility). When it comes to the penitentiary system, the legal status of prisoners held in special risk prison facilities, the terms of storage of video surveillance recordings, the procedures of full, body and strip-search and numerous infrastructural issues are problematic.

¹ The recommendation is worded so that it makes it possible for the parliament or those agencies accountable before the parliament to follow-up accordingly and offer redress for infringed rights.

The main recommendations issued with regard to institutions of the Ministry of Internal Affairs concern clear regulations to be introduced regarding the duty to make video recordings and equipment of respective divisions with body cameras; storing and archiving video recordings; orderly maintenance of various registration documentation and laying down the obligation to transfer an arrested person straight to a temporary detention isolator (hereinafter a TDI).

Conditions are especially hard in psychiatric institutions and recommendations are made to have these conditions changed. In this regard, the obligation of the Minister of Healthcare, Labour and Social Affairs of Georgia is primarily noteworthy; for upholding relevant standards, the ministry should ensure proactive and effective supervision of the aforementioned sphere. The necessity to eradicate extremely dire and degrading conditions existing in the psychiatric institutions is emphasised as well.

Apart from prevention, the parliamentary report highlights **investigation of incidents of ill-treatment**. In 2013-2017, the Public Defender submitted 72 proposals to the Office of the Chief Prosecutor of Georgia concerning institution of investigation of incidents of ill-treatment allegedly committed by officials of police forces and penitentiary establishments. The prosecutor's office has not identified alleged perpetrators in any of these cases. The report discusses how institution of investigation is delayed as well as effectiveness of investigation and problems related to characterisation of crimes. A separate subchapter is dedicated to the draft Law of Georgia on the State Inspector and comments about this institution made with regard to the state's duty to set up an effective and independent investigative mechanism.

Shortcomings have been identified in terms of **liberty and security of person** during application of preventive measures and extradition detention; the European Court's judgement adopted in the case of former Prime Minister Ivane Merabishvili gave rise to the state's obligation to take individual measures in order to restore his right to freedom that had been seriously violated; furthermore, increasing the terms of administrative detention led to unjustified restriction of the right to liberty during a vacation period; and the practice of imposing mandatory drug tests on an individual remains unregulated.

As a result of the Public Defender's activities in 2017 breaches of the **right to a fair trial** were identified in various directions. In the first place, it is noteworthy that the Public Defender assessed the right to a fair trial in an institutional prism and discussed the effect of the problems of institutional nature existing in the judiciary on the quality of the court's independence. The statistics on delayed examinations of cases in appeal courts and frequent changes in the bench compositions were assessed as especially problematic. In addition, there were breaches of equality of arms in 2017; problems regarding the use of inadmissible evidence and reasoning of court decisions were identified as well.

The report discusses **privacy** in terms of the ineffectiveness of investigation of incidents involving disclosure of private life in 2015 and 2016. A separate chapter is dedicated to the Public Defender's arguments about the unconstitutionality of the legislation governing covert wire-tapping and practical shortcomings in this regard.

Protection of the **right to equality** remains a challenge in Georgia; insufficient legislative safeguards, wrong perceptions rooted in the society and scarcity of measures on part of the state to ensure equality hamper effective implementation of existing regulations. In 2017, the Public Defender examined 162 fresh cases on discrimination. The results demonstrate that in terms of exercise of the right to equality the following remain to be the most vulnerable groups: women, persons with disabilities (including children), representatives of LGBT+ community and religious minorities. The incidents of alleged discrimination occur most frequently in pre-contractual and labour relations. Discrimination is identified as a problem in terms of an individual's eligibility for social benefits.

The scales of violence against women, the low indicator of their involvement in the decision-making process and challenges in terms of exercise of the right to equality are negatively reflected on the **women's legal status and gender equality indicator**. Gender violence and high numbers of femicide constitute a problem.

Assessment of the situation existing in the country in terms of sexual and reproductive healthcare rights revealed that low awareness has a negative ramification for accessibility of these rights.

In 2017, the state made a significant step by ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Setting up the Human Rights Department within the Ministry of Internal Affairs of Georgia should be positively mentioned as well. However, achieving gender equality in political and economic life remains a challenge as there has been no gender mainstreaming in these spheres so far.

Responding to violations in terms of **religious intolerance** remains a significant problem. The issue of returning religious buildings to their historical owners has not been resolved. The state has not made any legal or political steps to ensure returning to non-dominant religious groups their historical properties. Non-dominant religious associations still face opposition when constructing new buildings.

Freedom of expression is the foundation of a democratic society. Accordingly, the Public Defender of Georgia continued to monitor the realisation of this right in 2017 as well. It is an assessment of the Public Defender that timely and effective investigation by competent authorities of interferences with this right remains a challenge for exercising the freedom of expression in the country.

For ensuring **more safeguards for freedom of information in the country**, it is necessary to improve the legislation in force and harmonise it with international standards as well as to adopt a special law on freedom of information setting up a mechanism monitoring access to information and freedom of information and introducing sanctions for illegal refusals to impart public information.

In the reporting period, in terms of the **right to property, the process of initial registration of title to land plots** remains a problem. The issue of acknowledging and protecting **title to land plots that are in the so-called “traditional possession” remains without regulation.**

In the Public Defender’s opinion, the constitutional amendments made in 2017 **along with postponing transition to the proportional voting system until 2024 failed to ensure** the realisation of the equality principle and the proportional distribution of votes which are crucial for election law.

Similar to the previous years, the statutory safeguards for the protection of monuments of **cultural heritage** remain deficient. The illegal practice allowing adoption of decisions about large-scale works on land without considering the interest of cultural heritage remains intact as well.

The situation exiting **in terms of labour safety** and disturbingly high indicator of death of labourers at workplaces remain alarming in the reporting period. However, the legislative amendments in this regard should be positively assessed.

Realisation of the right to live in healthy environment in the country still faces critical challenges both in terms of legislation and practice.

It is clearly a step forward that in 2017, the Parliament of Georgia adopted the Environment Assessment Code as well as amendments regarding noise regulation. However, there are still numerous statutory deficiencies in this regard. Among others, there is no list specifying the construction and cladding materials the use of which is prohibited, whereas there are numerous unstable, flammable, toxic or other harmful composite materials. Statutory safeguards for fire safety of buildings are similarly incomprehensive. Sanctions under the Code of Administrative Violations in the field of environment protection are ineffective. Atmospheric air pollution, related deficient legislation and monitoring mechanisms constitute one of the most significant challenges on the national scale.

In terms of the **right to healthcare** the following issues remain problematic: accessibility of medicines, absence of an effective respond mechanism concerning alleged breaches involving quality of medical services and

exercise of the right to healthcare. In the prism of the right to healthcare, the report also discusses problems existing with regard to drug policy. The report analyses the impact of the criminal law bans on healthcare services and makes corresponding recommendations the reflection of which in the legislation is important for the adequate implementation of drug policy.

The Public Defender positively assesses the legislative amendments made to the Law of Georgia on Tobacco Control in 2017 and deems it important that these changes should be effectively implemented in practice.

To this date, the main programme of social security in the country is to provide the population below the poverty line with subsistence allowance and to issue other related benefits. The possible discouragement to seek employment and lack of the feeling of stability among beneficiaries should be considered the main shortcomings of the social security scheme in the country.

In terms of **realisation of the right to adequate housing**, similar to the previous years, the Public Defender discusses the inadequate legislative framework, limited budgetary and infrastructural resources and absence of uniform municipal databases.

The main problems existing in the **field of ecomigration** are still unresolved. There is no special law on ecomigrants to this date and the budget allocated for ensuring them with accommodation is meagre. Return migration of ecomigrants is also an acute problem.

Along with the positive steps made towards **protection of the rights of the child**, enhancement of the existing systems and introduction of new services remain to be problematic. Protection of the child from violence and implementation of effective preventive measures remain problematic. To this date, the state has not set up any national system providing rehabilitation/assistance to the children that are victims of sexual violence; there are no adequate mechanisms of assisting child victims.

The protection of the rights of the children left without education remains a challenge, particularly in the conditions, where the number of children living and working on the streets is high. Providing services as close to family environment as possible for those children that are in the institutions under religious denominations remains a significant challenge as is the functioning of these establishments based on the principles of deinstitutionalisation of state policy.

Child poverty and inadequate standard of life is one of the crucial problems in the country. **There are 150,186 underage individuals receiving subsistence allowance in Georgia, out of whom 43,169 are children aged 1 to 5 years.** In 2017, 11% of children involved in the state care programme were removed from their biological families due to poverty and inadequate socio-economic living conditions.

In 2017, despite the measures taken to protect national minorities' rights and those in the field of civic integration, the steps made towards resolving existing difficulties were not adequate and a greater part of the challenges remain unsolved. The quality of education and the situation in terms of employment and civic integration are particularly problematic. The low indicator of the command of the state language remains to be a pressing problem.

In terms of protection of the rights of national minorities and furthering civic integration, it is important to respect and implement cultural rights comprehensively. Besides, the low indicator of participation of national minorities in the decision-making process remains a challenge. There is no media outlet in Georgia that would impart comprehensive information about current events of the country to national minorities.

A separate chapter of the report is dedicated to the **protection of human rights in the defence field** and the shortcomings existing in this regard. The chapter discusses the infrastructural problems that make it impossible to carry out work in the conditions incompatible with respect for human dignity. The report identifies problems of exercise the rights to medical insurance, holiday and weekly days off.

In 2017, there was no significant progress in terms of protection of the rights of **persons with disabilities** in the country. The previous challenges remained pressing in the reporting period too. The following are some of the problems: adequate realisation of disabled persons' rights to education, healthcare, habilitation-rehabilitation, labour and employment, accessibility, and participation in political and public life. Four years later, since the ratification of the UN Convention on the Rights of Persons with Disabilities (hereinafter the CRPD), effective mechanisms are still not in place, whereas the Parliament of Georgia still has not ratified the Optional Protocol to the CRPD.

Dire socio-economic situation of **elderly individuals** remained a challenge in the reporting period. The number of applications lodged with the Office of the Public Defender of Georgia demonstrate that a many elderly individuals do not have access to social services and adequate housing; targeted programmes needed by the elderly demographic are not sufficient; and the care measures implemented for the well-being of the elderly individuals at the local level fail to address existing needs.

The protection of human rights of the **conflict affected population** living on the territories controlled by Georgia and occupied territories is a subject of particular interest and concern for the Public Defender. 2017 too was most difficult in this regard. Deprivation of life, liberty and security, ill-treatment, restriction of freedom of movement, restriction of receiving education in mother tongue and freedom of expression make up an incomplete list of the violations the population faces everyday, which are discussed in this report.

The Public Defender continues to assess the legal status of **internally displaced persons** (hereinafter IDPs) and observes in the report that 2017, similar to previous years, marked the largest long-term settlement of IDPs. Despite this, many IDPs still live in the direst conditions. The Public Defender, for the long-term solution of IDPs' problems, indicates the necessity to shift to the needs-based approach and expresses her readiness to cooperate actively with the Government of Georgia in this regard.

The quality of reasoning of relevant authorities' decisions about refusals to grant citizenship and residence permits by invoking the argument of state security and/or public order remained a challenge in 2017. Similar problems were revealed in terms of quality of reasoning of decisions adopted concerning **asylum seekers and persons under international protection**.

In conclusion, the Public Defender would like to extend her gratitude to all employees of the Office of the Public Defender of Georgia, due to whose efforts, in 2017, 6,489 applications/complaints² filed with the office were examined, 11 special reports were prepared and 138 recommendations/proposals were drafted.

² In 2017, 9,056 applications/complaints were lodged with the Public Defender's Office. Out of this number, 6,489 applications/complaints have been admitted.

1. FAILURE TO COMPLY WITH THE PUBLIC DEFENDER'S LEGAL REQUEST

All state and local self-government authorities, officials and legal entities shall be obligated to assist the Public Defender of Georgia in every way, and immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.³ It is obligatory to comply with a request of the Public Defender made within the scope of his/her authority vested by the Constitution and legislation in force (legal request). Any obstruction of the activity of the Public Defender of Georgia shall be punishable by law, which is reflected in the report of the Public Defender of Georgia and becomes a subject of special debate by the Parliament of Georgia.⁴

First, it should be noted that, **while the majority of state and local self-government bodies, public agencies and officials comply with legal requests of the Public Defender of Georgia in good faith, there are exceptions as well.** In the latter case, the Public Defender has to resort to statutory leverages to have statutory responsibility imposed on those in breach of their duty. Therefore, the present chapter discusses those cases of failure to comply with the Public Defender's legal requests in 2017.

The legislation in force also determines the means of follow-up to which the Public Defender can resort within his/her statutory powers. Namely, under Article 18 of the Organic Law of the Public Defender of Georgia, when conducting inspection, the Public Defender of Georgia may freely enter any state or local self-government body, enterprise, organisation, institution(including military units), penitentiary institution and other places of detention and restriction of liberty; request and receive all certificates, documents and materials necessary for conducting inspection, from state and local self-government authorities or from officials, immediately or not later than 10 days; request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender; to have expert examinations conducted and/or conclusions prepared by state and/or non-state institutions; invite specialists/experts to perform expert and/or consultation works; and obtain information about criminal, civil and administrative cases, the decisions in which went into effect.

Therefore, the fulfilment of the statutory powers by the Public Defender of Georgia depends significantly on the good faith fulfilment of the obligations imposed on state and local self-government bodies and, most importantly, within the statutory time-frames (10 days for submitting information and 20 days for follow-up).

Based on the Organic Law on the Public Defender of Georgia, in the reporting period, administrative violation proceedings were instituted in the Office of the Public Defender of Georgia with regard to 18 cases.⁵ Reports with the finding of a violation in 16 cases were sent to a court for the consideration of merits, and proceedings were discontinued in 2 cases by the Public Defender's order due to the absence of a violation.

For averting failures to comply with the Public Defender's legal requests, it is important and interesting to note several relevant cases and the respective court practice in the current year.

³ The Organic Law of Georgia on the Public Defender of Georgia, Article 23.1.

⁴ The Organic Law of Georgia on the Public Defender of Georgia, Article 25.1; the Code of Administrative Violations, Article 173⁴.

⁵ Out of this, 14 cases concern failure to provide information required for studying a case; violation of the time-frames determined by Article 23 of the Organic Law of Georgia; 2 cases concern failure to comply with the Public Defender's legal request (invoking personal data protection when refusing to impart information); and 2 cases concern failure to comply with a legal request of the Public Defender's representative invoking Article 18.e) of the Organic Law of Georgia on the Public Defender of Georgia.

1.1. FAILURE TO COMPLY WITH THE PUBLIC DEFENDER'S LEGAL REQUEST BY THE STATE SECURITY SERVICE

Since October 2017, a trend in the failure to comply with the Public Defender's legal request by the State Security Service has been identified. This practice runs counter to the statutory requirements in force.

The Public Defender of Georgia has a guaranteed access to state secrets,⁶ which enables the Public Defender to supervise the State Security Service (and similar agencies) effectively regarding protection of human rights when discharging its functions. The failure by the State Security Service to comply with this obligation and limiting the Public Defender's access to information categorised as confidential undermines the effectiveness of our performance as a constitutional body and makes it impossible to discharge our constitutional functions.

1.2. FAILURE TO PROVIDE INFORMATION REQUIRED FOR STUDYING A CASE

Among the violations identified in terms of the failure to comply with the Public Defender's legal requests in the reporting period, the failure to comply with the Public Defender's requests by the Minister of Justice and legal entities of public law under the Ministry of Justice should be noted. In particular, the recommendation of the Public Defender of Georgia⁷ for the Institute of Development of Freedom of Information was sent to the Ministry of Justice of Georgia and the following legal entities of public law: Justice House, Legislative Herald, National Bureau of Enforcement, Data Exchange Agency, Agency of State Service Development, Crime Prevention Centre, Training Centre of Justice, National Archive of Georgia, Smart Logic, Chamber of Notaries of Georgia and National Agency of Public Registry.

Information about the result of examination of the said recommendation was communicated to the Public Defender only by the Head of the LEPL National Agency of Public Registry.

Accordingly, the Tbilisi City Court found the Minister of Justice of Georgia⁸ and heads of ten legal entities of public law of the Ministry of Justice⁹ to be in breach of the duty laid down in Article 24 of the Organic Law of Georgia on the Public Defender of Georgia.¹⁰ In all the aforementioned cases, the court limited sanctions to a notification.

1.3. PROVIDING AN INTERIM RESPONSE WITHIN STATUTORY TERM AND SUBMISSION OF INFORMATION ONLY AFTER A REPEATED REQUEST

Some public agencies resort to the form of interim responses to not comply with the Public Defender's legal request. According to such interim responses, information is to be submitted to us only after additional clarification of an issue or gathering information. Furthermore, it is necessary to reapply to these agencies.

⁶ Article 18 of the Law of Georgia on State Secret.

⁷ Recommendation no. 04-5/1325 of the Public Defender of Georgia of 31 January 2017 concerning violation of the right of N(N)LE Information for Development of Freedom of Information (IDFI) to access public information.

⁸ Court resolution dated 20.06.2017 in case no. 4/4479-17.

⁹ Court resolution dated 21.06.2017 in case no. 4/4476-17; resolution dated 20.06.2017 in case no.4/4458-17; resolution dated 20.06.2017 in case no. 4/4471-17; resolution dated 21.06.2017 in case no. 4/4470-17; resolution dated 22.06.2017 in case no. 4/4477-17; resolution dated 21.06.2017 in case no. 4/4475-17; 16.06.2017 in case no. 4/4478-17; 20.06.2017 in case no. 4/4472-17; resolution dated 22.06.2017 in case no. 4/4473-17; and resolution dated 20.06.2017 in case no. 4/4469-17.

¹⁰ State and local self-government authorities, public agencies and officials that receive recommendations or proposals of the Public Defender of Georgia shall be obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.

The Organic Law of Georgia on the Public Defender of Georgia not only establishes the duty of the bodies of government and self-government, officials and legal entities to comply with the Public Defender's legal requests but also links this duty with specific time-frames,¹¹ within which these obligations should be carried out. At the same time, depending on the complexity and content of an issue at stake, it is possible that interim responses from agencies could be deemed to be positive. However, it is important to ensure that agencies are aware of the significance of the duties they have to discharge. The agencies should supply information in a timely manner to the Public Defender after clarifications are made or response is prepared so that they do not neglect their statutory duty by limiting their efforts to interim responses.

1.4. REFUSAL TO IMPART INFORMATION BY INVOKING VARIOUS GROUNDS

There were cases identified in the reporting period, where the Public Defender's legal requests were not complied with due to various grounds. These grounds are the following:

a) Personal Data Protection

A letter of the Office of the Public Defender of Georgia¹² was sent to the director of penitentiary establishment no. 3 of the Penitentiary Department of the Ministry of Corrections of Georgia, requesting information required to study an issue raised by convict M.Sh. in his/her application.¹³

The director of penitentiary establishment no. 3 did not impart the information to the Public Defender's Office and invoked the Law of Georgia on Personal Data Protection, under which information related to criminal record is the special category personal data; the Public Defender's Office was requested to submit the convicted person's consent to the director of penitentiary establishment no. 3.

A court concluded that the director of penitentiary establishment no. 3 was in breach¹⁴ of the Organic Law of Georgia on the Public Defender of Georgia and stated the following: "The information requested by the Public Defender did not fall within the personal data of special category under the Law of Georgia on Personal Data Protection, i.e., information related to criminal record. If held otherwise, it must be assumed that any information requested from a penitentiary establishment concerning persons held therein constitutes a document containing information about their criminal record, preventive measure, etc. Such an approach will render it virtually impossible or significantly difficult to discharge the powers determined by the Organic Law of Georgia on the Public Defender of Georgia in the field of protection of human rights and freedoms." Furthermore, the court invoked paragraph 1¹⁵ and 2¹⁶ of Article 37¹ of the General Administrative Code of Georgia, under which the director of penitentiary establishment no. 3 was obliged to provide the Public Defender with the requested information.

11 The Organic Law of Georgia on the Public Defender of Georgia, Article 23.3, Article 24.

12 Letter no. 04-15/7152 sent by the Office of the Public Defender of Georgia on 29 May 2017.

13 Case no. 3697/17, no. 4733/17. The convicted person stated that he/she lodged a complaint with the Tbilisi City Court on 23 January 2017 and appealed a refusal of the Local Council of Georgia on conditional early release. The complaint was handed to the administration of penitentiary establishment no. 3. However, the Tbilisi City Court has not received it.

14 Batumi City Court's Resolution dated 14.09.2017 in case no. 4/1470-2017; Kutaisi Appeal Court's Resolution dated 23.10.2017 in case no. 4/a-407-17.

15 A public institution shall be obliged, based on a relevant written request, to issue to another public institution, as a reference, the personal data and information considered as a commercial secret stored at the public institution if all the above information is necessary for the other public institution to resolve an issue. In this event, the other public institution shall present a written consent of the person who owns the personal data or commercial secret.

16 Written consent referred to in the first paragraph of this article shall be deemed granted if a person expresses his/her consent in a statement or in any other written document that the public institution to which the person has applied for resolving the issue, makes a requisition for that person's personal data or information considered as a commercial secret from the relevant public institution.

Similarly, the director of penitentiary establishment no. 8 of the Penitentiary Department of the Ministry of Corrections of Georgia refused to comply with the Public Defender's legal request concerning a case of convict J.S.¹⁷ A court, similar to the previous case, found the director of penitentiary establishment no. 8 in breach¹⁸ of the Organic Law of Georgia on the Public Defender of Georgia and applied a verbal notification as a measure of responsibility.¹⁹

b) Refusal to Impart Information without Presenting Special Authorisation of the Public Defender

In 2017, there were cases identified, where the Public Defender's legal requests were not complied with due to the following grounds: information required for studying the cases pending before the Public Defender's Office (material, document, other information and clarification) was requested by a letter of the Public Defender's Office, signed by a relevant authorised official of the office. It was stated in the communications received from public agencies²⁰ that the agencies needed special authorisation issued under Article 27.1 of the Organic Law on the Public Defender of Georgia.

A court by its resolution in force²¹ opined in a similar case: "The chamber believes that ... submitted letter no. 04-7/11529 that was signed by the Deputy Head of the Justice Department of the Public Defender's Office, stemming from the Statute of the Public Defender's Office, did not require the Public Defender's special authorisation. The chamber believes that even if this authorisation was to be attached, the failure to do so did not absolve the official receiving the correspondence from the obligation to take appropriate measures." The Appeals Chamber invoked Article 23.1 of the Organic Law of Georgia which establishes a duty to assist the Public Defender of Georgia in every way by immediately submitting materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers. The same explanation was given by the Tbilisi Court of Appeals in its resolution of 17 April 2015.²²

Therefore, the Public Defender's Office must be provided with requested material, document or other information or clarification in the form established by law. Requesting a special authorisation when complying or refusing to comply with this obligation based on the abovementioned ground constitutes a failure to comply with the Public Defender's legal request and gives rise to statutory responsibility.

c) Information has not been Processed in the Requested Form

In the reporting period, another ground that was invoked in refusing to comply with the Public Defender's legal request was identified, viz., **requested material and/or information was not provided as this information had not been processed in the form it was requested.**²³

The failure to comply with the Public Defender's legal request on the abovementioned ground contradicts the legislation in force. As already mentioned numerous times, all state and local self-government bodies, officials or legal entities are obliged to assist the Public Defender of Georgia in every way, immediately submit materials, documents and other information necessary for the Public Defender of Georgia to exercise his/her powers.²⁴ The legislation in force does not stipulate the said ground for refusing to comply with the Public Defender's legal request. Therefore, all state and local self-government bodies, officials or legal entities are obliged to process information when there is none and assist unimpeded exercise of the Public Defender's activities.

17 Case no. 3856/17 pending before the Office of the Public Defender of Georgia.

18 The Tbilisi City Court's Resolution of 14.07.2017 in case no. 4/4678-17.

19 Tbilisi Appeal Court's Resolution of 11.10.2017 in case no. 4/1-629-17.

20 Tbilisi Appeal Court's Letter no. 01/301 (a), 23.10.2017, (case no. 105979); Sate Security Services' Letters nos. 287822 (03.02.2017), 546292 (04.03.2017), case no. 74208-17; LEPL Agency of Social Services' Letter no. 04/3833 (23.01.2018), case no. 17388/17; and Letter no. MOC 8 17 00142578 of the Western Georgia Local Council of the Ministry of Corrections of Georgia, dated 23.02.2017, in case no. 1002/17.

21 Tbilisi Appeal Court's Resolution of 14.01.2015 in case no. 4/a-985-14.

22 Case no. 4/a-111-15 pending before Tbilisi Appeal Court.

23 Letter no. 01-1256/4238 of the Tbilisi City Court dated 03.10.2017.

24 Organic Law of Georgia on the Public Defender of Georgia, Article 23.1.

d) Violation of the Obligation to Impart Information Immediately

One of the statutory authorities of the Public Defender implies that when conducting inspection, the Public Defender may request and receive, immediately or not later than 10 days, from state and local self-government bodies or from officials all certificates, documents and materials necessary for conducting an inspection,²⁵ including audio and video recordings.

Based on the abovementioned authority, representatives of the Public Defender often inspect incidents of alleged violations of human rights and freedoms on the spot. Therefore, information required for conducting inspection need to be provided to them immediately. There was an incident identified in the reporting period, where representatives of the Public Defender were not given requested information immediately. Among others, representatives of patrol police concealed their identity and refused to give explanations²⁶ by arguing that this information had to be obtained by the Public Defender's Office from the press office of the Ministry of Internal Affairs.

This act amounts to creating obstacles for the Public Defender's activities and, accordingly, gives rise to statutory responsibility.

PROPOSAL TO THE PARLIAMENT OF GEORGIA

- In accordance with Article 229 of the Rules of the Parliament of Georgia to examine the cases where the agencies referred to in this chapter failed to comply with the Public Defender's legal request and follow up within its mandate.

25 Organic Law of Georgia on the Public Defender of Georgia, Article 18.b).

26 Cases nos. 1791/17, 1831/18, 1935/18 pending before the Office of the Public Defender of Georgia.

2. FULFILMENT OF THE RECOMMENDATIONS MADE BY THE PUBLIC DEFENDER OF GEORGIA IN THE PARLIAMENTARY REPORT OF 2016

The Public Defender of Georgia, along with the assessment of the situation in terms of protection of human rights and freedoms, submits to the parliament recommendations made about shortcomings and systemic violations identified as a result of the work carried out by the office.

The Office of the Public Defender of Georgia, for the course of its existence, has been intensively cooperating with various bodies of the legislative, executive and judiciary branches of the government in improving the state of human rights protection in the country. Recommendations made by the Public Defender of Georgia aim at eradicating systemic violations or individual shortcomings directed against human rights.

The present chapter analyses the state of fulfilment of the recommendations aimed at eradicating systemic shortcomings that were given in the parliamentary report of 2016. It is noteworthy that numerous recommendations are reiterated in the Public Defender's annual reports for years, which emphasises the necessity of comprehensive implementation of these recommendations within short terms.

It is commendable that in the recent years, the Parliament of Georgia established a higher standard for reviewing and responding to the Public Defender's annual report. It is particularly important that after hearing the Public Defender's annual report, there is a practice of adopting a parliament resolution in which the parliament assesses the human rights situation and issues recommendations for the notice of state agencies.

Compared to resolutions of the previous years, the resolution of 2016²⁷ significantly increased the number of adopted recommendations. It is, however, unfortunate that the resolution did not envisage the Public Defender's recommendations aimed at solving systemic problems such as the necessity of setting up an effective labour inspectorate, an independent investigative mechanism, an interim mechanism, the necessity to introduce quota system,²⁸ the necessity to develop a corresponding legislative amendment for eradicating discrimination and to ensure equality, taking measures aimed at improving protection for the rights of LGBT+ persons, etc.

An analysis of the fulfilment of the recommendations aimed at systemic shortcomings that were mentioned in the 2016 parliamentary report of the Public Defender of Georgia is given below.

Protection of Human Rights in Closed Institutions

Despite the recommendation made by the Public Defender over the years, there has been no strategy developed for overcoming the criminal underworld in Georgia. The policy of the Ministry of Corrections of Georgia towards special risk prison facilities is unable to achieve positive changes in convicted persons' behaviour, their rehabilitation or social reintegration.

27 Resolution of the Parliament of Georgia (1181 – II s 2017) on the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia in 2016, available at: <http://parliament.ge/ge/ajax/downloadFile/71413/1181>, (accessed on 7.03.2018).

28 It is noteworthy that despite the fact that the recommendations did not find their way into the parliamentary resolution, in March 2018, the Parliament of Georgia adopted the Law of Georgia on Labour Safety and respective amendments, which is positively assessed by the Public Defender; efforts are underway to set up an independent mechanism for effective investigation of the incidents of abuse of power and ill-treatment in the law enforcement system; also, the Parliament of Georgia discussed a draft law on mandatory gender quotas, which was not adopted by the parliament in the end.

Ensuring rehabilitation and resocialisation of convicted persons remains a problem. Namely, the lack of human, logistical and technical resources, scarcity of offered programmes and lack of diversity remain challenging.

Despite progress in terms of administering medical services, the following remains the main challenge of the penitentiary healthcare system: prevention of non-infectious diseases by popularising healthy lifestyle, environmental recovery and screenings as well as implementation of appropriate mental healthcare services.

It is commendable that following the Public Defender's recommendation, the new procedure of documenting incidents of ill-treatment has been enforced. However, the practical implementation of this procedure remains to be problematic.²⁹ As the monitoring conducted in 2017 showed, medical professionals employed in TDIs maintain documentation with considerable shortcomings.

Out of the recommendations made regarding the Ministry of Internal Affairs of Georgia, the recommendation concerning maintaining a logbook for registering status of visitors to police stations, explaining to them the purpose of bringing them in and their rights, as well as details of citizens entering/leaving police stations has not been fulfilled.

Like in the previous years, it remains problematic to ensure that information about arrests is communicated to family members as well as to document the requests made by arrested persons for lawyers.

The Public Defender welcomes determining 120 hours as the minimum term of storing video recordings made in TDIs. However, the Public Defender deems it reasonable to have video recordings stored for not less than 20 days. The Public Defender's recommendation concerning laying down an obligation of making video recordings about police officers' interaction with a citizen, his/her arrest and the complete process before placing him/her in a TDI and determining the term of storage of recordings has not been fulfilled.

Despite the Public Defender's recommendations, extremely dire conditions exist in psychiatric establishments. Namely, the following issues are problematic: absence of therapeutic environment; physical violence and verbal abuse by personnel; violence among patients; the existing practice of the use of means of physical and chemical restraint; absence of access to timely and adequate treatment of somatic diseases; inadequate psychiatric (bio-psycho-social) assistance; long-term hospitalisation; and involuntary medical intervention under the conditions of neglect.

Investigation of Incidents of Torture, and Other Cruel, Inhuman or Degrading Treatment and Violation of the Right to Respect for Private Life

The Public Defender has been recommending effective investigation of incidents of ill-treatment for numerous years. This implies institution of investigation immediately upon the reception of information about ill-treatment. The Public Defender has been calling upon the Office of the Chief Prosecutor of Georgia for years to ensure that, in the cases of alleged torture, inhuman or degrading treatment of an arrested person by police, investigation is conducted under Article 144¹ (torture) and 144³ (degrading or inhuman treatment) of the criminal Code of Georgia, and all possible investigative actions are conducted within tight time-frames.

Despite the above recommendations, timely and effective investigation of incidents of ill-treatment remains to be a problem. In 2017, the Office of the Public Defender of Georgia identified numerous incidents where a person claimed to be a victim of alleged ill-treatment by police officers. However, investigation was not immediately instituted, investigative/procedural actions were conducted with a delay or they were not conducted at all in some cases. The issue of characterisation of acts is also problematic. Despite the Public

²⁹ Out of 469 cases inspected by the Special Preventive Group in the regions of Georgia in 2017, various bodily injuries found on the persons concerned and they had claims against police in 19 cases. All these individuals were transferred as accused persons from TDIs to penitentiary establishments and only in 4 cases, the facts were documented in accordance with the new procedure.

Defender's recommendation, in most of the cases involving alleged incidents of torture and other ill-treatment, investigation is conducted under Article 333 (abuse of official authority).

In the Public Defender's report of 2016, significant attention was paid to incidents of violation of the right to respect for private life. To this date, a final decision has been adopted in cases where investigation was started in 2016. To this date, Office of the Chief Prosecutor of Georgia has not fulfilled the Public Defender's recommendation regarding great public interest in communicating to the public about the circumstances hindering the identification of perpetrators and adoption of a final judgment in such crimes.

Economic and Social Rights

Ever since the report of 2013 of the Public Defender of Georgia, the Public Defender has been recommending every year to set up a Labour Inspectorate. In March 2018, the parliament adopted the Law of Georgia on Labour Safety and respective amendments. We believe that the adoption of the law is a step forward, even though the Public Defender's numerous comments regarding increasing the effectiveness of the supervisory body have not been taken into consideration.

For many years, the Public Defender has been requesting the Parliament of Georgia and the Government of Georgia to draft and adopt a law on ecomigrants that would be compatible with international standards. The said recommendation is still unfulfilled.

The Parliament of Georgia has been failing to fulfil the Public Defender's recommendation concerning improvement of definition of a homeless person in the Law of Georgia on Social Security. The existing definition gives rise to considerable practical problems and prevents municipalities from identifying and revealing homeless persons.

Solution of the problem of adequate housing and homelessness is one the priorities in the National Strategy of Human Rights Protection (for 2014-2020). However, despite the Public Defender's recommendations, no objectives or activities have been envisaged in the Governmental Action Plan of the Protection of Human Rights (for 2014-2015 and 2016-2017).

In conclusion, the Public Defender's recommendation to the Government of Georgia about conducting an engineering and geological survey of a plot of land before issuing a construction permit has not been fulfilled. Presently, such surveys are carried out after a permit is issued.

Freedom of Information

The initiation of a new draft law on Freedom of Information has been delayed for years and it has been a subject of numerous recommendations made by the Public Defender. The said law will set up a mechanism that will monitor accessibility and freedom of information, introduce sanctions for illegal refusals to impart public information, etc.

Right to Equality

To this date, the Parliament of Georgia has not acted on the Public Defender's legislative proposal presented in February 2015 concerning eradication of procedural shortcomings during inspecting incidents of discrimination and increasing the Public Defender's role regarding private subjects.

Despite the Public Defender's recommendation, to this date, the Ministry of Internal Affairs has not developed guidelines for effective investigation of alleged hate crimes. Therefore, it remains obscure what specific aspects are considered by investigative authorities in the process of investigation of such crimes.

The Ministry of Education and Science of Georgia has not fulfilled the recommendation aimed at improving the legislation governing inclusive education. According to the ministry, draft legislative amendments are being prepared to be submitted to the parliament. However, to this date, the ministry has not submitted these documents either to the parliament or the Public Defender.

The Ministry of Labour, Health and Social Affairs of Georgia has not made any steps to this date towards developing a handbook on equal treatment when recruiting personnel.

The Public Defender has been calling upon the Office of the Chief Prosecutor of Georgia for more than a year to ensure that appropriate investigative actions are conducted when investigating alleged hate crimes to establish whether hate is the motive. According to the statistics of 2017 provided by the Office of the Chief Prosecutor of Georgia, in comparison to 2016, there has been an increase in the number of cases where hate was the motive. However, there is no information submitted as to what investigative actions had been conducted to establish hate as the motive.

Gender Equality

Out of the recommendations that have been fulfilled in terms of gender equality, setting up the Human Rights Protection Department within the Ministry of Internal Affairs of Georgia should be positively mentioned.

It is noteworthy that the Public Defender's recommendation concerning maintaining and analysing statistics on violence against women and domestic violence has been partially fulfilled. The Ministry of Internal Affairs of Georgia analysed the forms of violence (according to restraining orders). It is commendable that the Office of the Chief Prosecutor of Georgia processed information related to criminal aspects of murders committed against women. However, the notifications entering the LEPL 112 concerning alleged domestic violence and domestic conflicts are still not being analysed.

The Ministry of Internal Affairs has not developed risk assessment instructions for the incidents of domestic violence and in most cases repeated violence cannot be prevented.

Psycho-social rehabilitation and educational programmes in the shelters for victims of domestic violence remain insufficient for supporting victims. It is imperative to have more time and recourses dedicated to planning and implementing rehabilitation programmes and activities. Besides, it is necessary for these programmes to be more inclusive.

The recommendation concerning implementation of a prompt, transparent and accessible procedure for reflecting gender identity in all the major documents issued by state and non-state agencies for transgender persons remains unfulfilled.

Freedom of Religion

The state does not demonstrate the will to resolve the systemic problems linked with freedom of religion and right to equality of religious minorities. Accordingly, many recommendations made by the Public Defender regarding these issues are reiterated in the reports each year.

The recommendations made to the Ministry of Internal Affairs of Georgia and the Chief Prosecutor's Office concerning investigations delayed for years are still unfulfilled. Namely, since 2012, numerous incidents of

violation of Muslims' rights were identified in various geographic areas of Georgia. In two cases, the law enforcement authorities themselves allegedly used excessive force. Investigation has been pending to this date without any results. Not a single person has been prosecuted or charged with alleged crimes against Muslims in any of these cases. Besides, not a single Muslim person has been given the victim status. Also, no legal result has been secured in violations against Jehovah's Witnesses that took place in 2016.

The issue of returning religious buildings that were nationalised during the Soviet period to respective religious associations remains unresolved. The Armenian Apostolic Church, Evangelical and Lutheran Church, Muslim and Jewish communities have been requesting the state for years to have the nationalised religious buildings returned to them. Many religious buildings remain in state ownership. Apart from the fact that it is a problem to return the property to their historical owners, the nationalised religious buildings (many of them are monuments of cultural heritage) are not given any attention from the state and are being destroyed.

Religious minorities face obstacles in the process of constructing new religious buildings. This trend continued even after the recommendations made in 2016. The local self-government bodies responsible for issuing construction permits often refuse to grant such permits to non-dominant religious associations without giving any reasons, without following the principle of separation of state from religion and manifest their partial approach towards the dominant religious group.

Those provisions in Georgian legislation that place non-dominant religious associations in unequal positions remain intact. The state still carries out unequal policies in terms of funding religious associations and restitution for damages inflicted in the Soviet period.

The environment in public schools is discriminatory. The Law on General Education prohibits unequal treatment in schools, display of religious symbols without academic use, indoctrination and proselytising. However, the law is not upheld comprehensively. Despite the recommendation made by the Public Defender, no special monitoring group has been set up and no action plan has been developed that would facilitate eradication of discriminatory practices in public schools.

Protection of Rights of the Child

Among the measures aimed at protecting rights of the child in 2016, those directed towards improving the legislative framework are to be mentioned, namely, the Law of Georgia on Early and Pre-School Education was adopted. Adoption of Resolution no. 437 on Approving the Child Protection Referral Procedures, of the Government of Georgia should be assessed positively. It is also commendable that the Optional Protocol to the United Nations Convention on the Rights of the Child on a Communications Procedure was ratified as recommended by the Public Defender.

Child poverty and inadequate standard of living have remained unresolved for years. The process of involving children in state programmes and providing them with corresponding services is often delayed, which considerably undermines the efficiency of these programs. The situation of the children living and working on the streets is of particular concern. Despite numerous recommendations made by the Public Defender, the response from the competent agencies in this regard is inadequate. The situation in terms of protecting the rights of children placed in state care has not changed considerably either.

A high indicator of violence against children in families, foster care and educational institutions has been a challenge faced by the state for many years. Despite numerous recommendations made by the Public Defender, there is no uniform policy of overcoming violence in schools. Furthermore, social rehabilitation services for children that are victims of violence are insufficient. It is imperative to enhance state policy and relevant legislation substantially, as well as internal mechanisms in the field to protect school children from violence and ensure their security and well-being.

Protection of Rights of Persons with Disabilities

The Public Defender's recommendation concerning setting up a mechanism for implementing and coordinating the CRPD for protecting rights of persons with disabilities has not been fulfilled. It is noteworthy that setting up this mechanism should ensure coordination among agencies responsible for implementing the CRPD.

The Public Defender's following recommendations have not been fulfilled for years: developing and implementing a social model, based on which disability status will be given; ratification of the Optional Protocol to the CRPD; and maintaining statistics on persons with disabilities. Developing and implementing a social model based on which disability status will be given is important for individual assessment of a person and for creating/implementing state services/programmes that are tailored to individual needs. On the other hand, ratification of the Optional Protocol to the CRPD will enable stakeholders to apply to the UN Committee on the Rights of Persons with Disabilities. As regards maintaining statistics on persons with disabilities, gathering of survey data is significant for developing and introducing a policy necessary for the effective implementation of the CRPD.

Protection of Rights of Elderly Persons

It is commendable that the National Action Plan for 2017-2018 concerning the Concept of State Policy on Aging of Population in Georgia was adopted. However, since the document was approved by the end of 2017, the responsible agencies only have one year for fulfilling the activities envisaged by the action plan.

Protection of Rights of National Minorities and Civic Integration

The Public Defender welcomes the programmes on teaching state language for various age groups in regions settled by national minorities. It was a subject of the Public Defender's recommendation.

Likewise, the Ministry of Education and Science of Georgia is working towards improving bilingual manuals and study system. It is noteworthy that the requirements to ban discrediting elements, calls for violence or instigating hatred have become mandatory criteria for certifying school handbooks.

The process of developing and publishing handbooks in mother tongue for Armenian and Azerbaijani schools is started in Georgia. However, despite the Public Defender's recommendation, specific and effective models of multilingual teaching and bilingual handbooks for 7th and 12th forms have not been developed.

It is commendable that the Ministry of Culture and Sport of Georgia started rehabilitation of Armenian Drama Theatre in Tbilisi. However, at the same time, the rehabilitation of the Azerbaijani theatre in Tbilisi and monuments of cultural heritage of Christianity related to the Armenian community in Tbilisi remains to be a challenge.

As in the previous years, a number of recommendations in the Public Defender's parliamentary report of 2016 were concerned with informing national minorities about the current events in Georgia and imparting information about national minorities to the population of Georgia. It is commendable that the most significant process in this regard concerning the Public Broadcaster started in 2017. Media strategy for regular broadcasting on the topics of national minorities was developed and a council of national and religious minorities was set up. Furthermore, Armenian and Azerbaijani TV and Radio broadcasting and wide coverage of topics related to national minorities started. The successful implementation of this process will facilitate eradication of the informational isolation in the regions with higher concentration of national minorities.

Protection of Rights of Persons Affected by Conflicts

In terms of protection of rights of conflict affected population, it is commendable that persons living in the occupied territories and hold documents certifying citizenship of Georgia have been included in the State Programme of Referral Services. This has been a subject of the Public Defender's recommendation. The development and implementation of professional retraining of medical and academic personnel working in the occupied territories should also be assessed positively.

The Ministry of Labour, Health and Social Affairs of Georgia partially fulfilled the Public Defender's recommendation concerning logistical equipment of medical establishments and schools operating in the occupied territories. The scarcity of equipment affects the quality of healthcare services and education adversely.

The Public Defender's recommendation to the central authorities concerning restoring houses on the controlled territories, which were damaged by military actions, or compensating damages has been unfulfilled for a third year. The affected local population either is unable to return to their own homes and remain temporarily in the building of a kindergarten or live in damaged houses and face the risk of losing accommodation. The condition of the houses deteriorates from year to year and funds needed for their rehabilitation rise annually.

Protection of Rights of Internally Displaced Persons (IDPs)

Like the previous years, regarding long-term settlement process, the Public Defender recommended in 2016 for making it a priority removing IDPs from dilapidated facilities. It is commendable that from year to year there are more IDPs settled away from dilapidated buildings. Despite the positive trends, there are still many IDPs that live in dangerous buildings.

Furthermore, it is imperative for the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to inspect the stability of closely settled facilities for IDPs or update the existing findings.

Several facilities were inspected in previous years and categorised as habitable at the material time. However, these buildings are deteriorating from year to year. Accordingly, it is imperative for the ministry to verify their stability within certain intervals. Besides, it is necessary to inspect the stability of buildings before their privatisation and not to allow long-term settlement of IDPs in such buildings.

Significant steps have been made in terms of informing IDPs, which has been a subject of the Public Defender's recommendation. The ministry informs beneficiaries continuously through different means. However, it is necessary to ensure that the ministry improves informing IDPs regarding the procedures of shifting from status-based assistance to needs-based assistance that will be closer to the needs of IDPs.

Protection of Rights of Persons under International Protection and Asylum Seekers

The Public Defender of Georgia welcomes the elaboration of the Law on International Protection that has been a subject of the Public Defender's recommendation. However, there remain shortcomings that need to be redeemed. Namely, the law provides for a rather lengthy period of consideration of an application regarding international protection. This has negative implications for asylum seekers, especially for those without livelihood and adequate living conditions.

The Public Defender previously made a recommendation concerning an amendment to the Law of Georgia on Exempting an Asylum Seeker from Criminal Responsibility. Under the amended provision of the law, if a final decision of the relevant authority determines that a person does not require international protection, he/

she will not be exempted from criminal responsibility. This provision runs counter to the Geneva Convention Relating to the Status of Refugees and the Criminal Code of Georgia,

It is noteworthy that the Public Defender's recommendation concerning informing and retraining staff of the respective units of the Ministry of Internal Affairs of Georgia has not been fulfilled to this date.

Protection of Human Rights in the Defence Field

For numerous years, the Public Defender has been recommending making changes to Resolution no. 4 of the Government of Georgia of 11 January 2007 on Monetisation of Social Benefits so that all persons having a veteran status benefited from subsistence allowance. The changes made to this resolution on 4 November 2009 have been placing those beneficiaries that were given a veteran status after 1 September 2012 in unequal conditions.

It is noteworthy that the Public Defender's recommendation concerning providing military servicemen with accommodation and improving their living condition has not been fulfilled. To this date, the state is unable to provide military servicemen and their family members with accommodation. Accordingly, some military servicemen have to abandon their families or in extreme cases refuse to pursue military career when they are deployed to another region.

3. RIGHT TO LIFE

Unlike the previous reporting period, the death of Temirlan Machalikashvili³⁰ during a special operation that was conducted regarding an act of terrorism in December 2017, in the Pankisi Gorge, brought back the issue of effective protection of the right to life as a matter of concern for the Public Defender. The right to life in this case will be protected only if the state carries out the positive obligation imposed on it adequately and investigate effectively, promptly and impartially the incident that could involve state agents as alleged perpetrators.³¹

Combating terrorism is one of the main challenges of the modern world. However, parallel to fighting terrorism, protection of the fundamental human rights remains the central obligation of the state. The recommendation of the Coe Committee of Ministers to member states on special investigation techniques in relation to serious crimes, including acts of terrorism, reminds that it is necessary to have in mind proportionality and sufficient reasons when using such measures.³² It is necessary to mention that in this case an operation to arrest a person was planned and carried out in the context of a criminal case.

The arrest plan,³³ from the moment of receiving a court decision authorising the arrest to conducting the operation,³⁴ should be subjected to particularly close scrutiny. The analysis of these factual circumstances will make it clear whether the agency that conducted the operation took into consideration all the means for the use of proportional force to avert death, which is irreversible. This very crucial factor determines the quality of the protection afforded by the state to Machalikashvili's right to life, namely, whether the state establishes through an effective investigation if its agents acted within the strict necessity determined by law.

For assessing the proportionality of the force used, it is also significant to scrutinise thoroughly the circumstances surrounding the actions of the special task unit when conducting the operation, including establishing whether a warning was issued³⁵ about the use of firearms.

Along with the proportionality of the force used, it is also important to scrutinise the grounds of its use, i.e., legal and factual circumstances establishing the necessity of arresting Machalikashvili. Therefore, within the

30 Information is available at: <http://ssg.gov.ge/news/303/sus-ma--terorizmis-dafinansebis--terroristuli-saqmianobis-sxvagvari-materialurimxardacheris-da-resursebit-uzrunvelyofis-braldebit-5-piri-daakava>, (accessed on 4.3.2018).

31 "During his arrest, Temirlan Machalikashvili attempted to resist law enforcement officials; in particular, he wanted to explode a hand grenade. At this moment a shot was taken at him and as a result he suffered a bullet wound to his head." According to Temirlan Machalikashvili's family members, the special task unit entered their son's room and shot him while he was in the bed.

32 "The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law. [...] in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. [...] for an investigation to be effective, its conclusions must always be based on thorough, objective and impartial analysis of *all* relevant elements" – *Enukidze and Girgvliani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights of 26 April 2011.

33 Information is available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680730408, paras. 7-8, (accessed on 4.3. 2018).

34 According to Letter no. MIA91800028681 of the State Service of Security, dated 23 February 2018, on 26 December 2017, a corresponding plan concerning conducting a special operation in the Pankisi Gorge was drafted; according to the situation on the spot, in order to execute the planned measures, the officials of the special task unit entered houses. They ensured a safe environment for conducting investigative actions.

35 Information is available at: <http://ssg.gov.ge/news/306/saxelmtsifo-usaftrxoebis-samsaxuris-gancxadeba>, (accessed on 4.3.2018). According to Letters nos. 13/5135 and 13/14361 of the Office of the Chief Prosecutor of Georgia, dated respectively 23 January 2018 and 26 February 2018 and Letter no. MIA91800028681 of the State Security Service, dated 23 February 2018, Temirlan Machalikashvili was supposed to be arrested based on a court decision (the Tbilisi City Court in its Letter no. 3973, dated 12 February 2018 refused to supply a copy of the said decision to the office). It was also planned to search him and the house.

36 The Law of Georgia on State Security Service of Georgia, Article 26.

scope of investigation of the case at stake, it is important to study the files of the criminal case (documents and material evidence) within which it was planned to arrest Temirlan Machalikashvili. According to the case-law established by the European Court of Human Rights,³⁶ family members of the deceased should be given the status of indirect victims and their participation in the investigation to an extent necessary for securing their legal rights should be ensured.³⁷

At the same time, it is necessary to establish the promptness and quality of medical assistance after the use of firearms.³⁸ It is noteworthy that the LEPL Agency of State Regulation of Medical Activity³⁹ already started to inspect this issue, based on the application of the Public Defender's Office.⁴⁰

The Public Defender of Georgia started to study the case of Temirlan Machalikashvili on her own motion; called upon the Office of the Chief Prosecutor of Georgia to conduct an effective investigation;⁴¹ and met with the family members of the deceased.⁴² The Public Defender requested access to case-files as an exceptional measure.⁴³ This request was declined by the Office of the Chief Prosecutor of Georgia;⁴⁴ however, the later supplied information about the ongoing investigation.⁴⁵

RECOMMENDATIONS:

To the Prosecutor's Office of Georgia:

- To assess the proportionality of the force used, to examine through concrete investigative actions:
 - The plan of arresting Temirlan Machalikashvili and control over the operation;
 - The plan of the special task unit that preceded the arrest of Temirlan Machalikashvili;
 - Factual and legal basis for arresting Temirlan Machalikashvili;

36 *Khaindrava and Džamashvili v. Georgia*, application no. 18183/05, judgment of the European Court of Human Rights of 8 June 2010; *Enukidze and Girgylani v. Georgia*, application no. 25091/07, judgment of the European Court of Human Rights of 26 April 2011.

37 According to Letter no. 13/5137 of the Office of the Chief Prosecutor of Georgia, dated 23 January 2018, the lawyer applied to Tbilisi Prosecutor's Office requesting to acknowledge Temirlan Machalikashvili as a victim. The application was rejected without indicating a relevant legal basis. However, the lawyer was enabled to study the criminal case-files. According to the statement made by the Office of the Chief Prosecutor of Georgia, (http://pog.gov.ge/geo/news?info_id=1507), the Chief Prosecutor met with the family members and lawyers of Temirlan Machalikashvili and provided them with information concerning the investigation. Furthermore, the lawyers are unable to study case-files maintained by the State Security Service, see, <https://emc.org.ge/ka/products/emc-prokuraturas-temirlan-machalishvilis-sakmis-arshit-mtkitsebulebebe-dashvebisen-moutsodebs>, (accessed on 4.3.2018)

38 According to the parents, after the shot was made, they were locked in a room and they did not see how their wounded son was taken from the house. According to Letter no. MIA91800028681 of the State Security Service of Georgia, dated 23 February 2018, an ambulance was called to the spot, however, before the ambulance team arrived, the wounded had been transported to a medical establishment. According to Letter no. MIA11800317286 of the Ministry of Internal Affairs of Georgia, dated 8 February 2018, on 26 December, a telephone call was made to 112 at 04:17 (repeated calls were made at 04:20, 04:30, 04:37, and 04:43) requesting medical assistance in the village of Omalo. According to Letter no. 12/518 of the LEPL Emergency Situations Coordination and Urgent Assistance Centre, dated 28 February 2018, the ambulance team that responded to the notification met the patient on the road at 04:26. Letter no. 02/8152, dated 13 February 2018.

39 Letter no. 15-5/354 of the Office of the Public Defender of Georgia, dated 10 January 2018.

41 Information is available at: <http://www.ombudsman.ge/ge/news/pankisshi-saxlis-chxrekisas-19-wlis-axalgazrda-daichra.page>, (accessed on 4.3.2018).

42 Information is available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-viziti-pankisis-xeobashi.page>, (accessed on 4.3.2018).

43 Information is available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-temirlan-machalishvilis-gardacvalebis-faqtsexmianeba.page>, (accessed on 4.3.2018).

44 Letter no. 13/5135 of the Office of the Chief Prosecutor of Georgia, dated 23 January 2018.

45 According to Letters nos. 13/5137 and 13/14361 of the Office of the Chief Prosecutor of Georgia, dated respectively 23 January 2018 and 26 February 2018, there is an investigation pending in Tbilisi Prosecutor's Office regarding the incidents of alleged abuse of power; witnesses have been interviewed; case-files maintained in the State Security Service have been requested; the firearm has been seized; complex forensic examinations have been scheduled involving toxicological, ballistic and genetic forensic examinations; the results of these examinations have not been out yet; forensic medical examination has been scheduled as well. On 20 March 2018, the LEPL Samkharauli National Forensics Bureau notified the office about the findings of the medical, chemical, technological, and histology forensics examinations.

- Promptness and quality of medical assistance provided;
- The legality of the use of firearms by arresting officials;
- To ensure that the family members of the deceased are informed about the progress of the investigation and introduce relevant documentation to them.

To the State Security Service of Georgia

- To develop detailed instructions for combating acts of terrorism reducing the risk of the use of excessive force to maximum extent as mandated under international standards.

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

The task entrusted to the National Preventive Mechanism, as a part of the global system of prevention of torture, is to identify risk factors of torture and other cruel, inhuman or degrading treatment or punishment and follow up on them, and elaborate recommendations aimed at eradicating these factors.⁴⁶

To this end, in the reporting period, the Special Preventive Group visited the following establishments: 34 visits to 8 penitentiary establishments; 9 visits to 5 psychiatric establishments; 9 visits to 9 small family type homes for children; 9 visits to 9 homes for children run by religious denominations;⁴⁷ 45 visits to 45 police divisions; 21 visits to 19 TDIs; and there were 6 focus group meetings with lawyers and NGOs working in the regions of Georgia.

The TDI for migrants was visited once; and 5 joint operations related to returning migrants from the EU countries were monitored. The main, systemic risk factors revealed by the National Preventive Mechanism of Georgia in the systems of penitentiary and the Ministry of Internal Affairs, and psychiatric establishments, as well as the measures taken and to be taken by relevant authorities to eradicate these issues are discussed below.

4.1. PENITENTIARY SYSTEM

The Public Defender welcomes the reforms that took place in the penitentiary system in 2017, within which important amendments were made to the Imprisonment Code. The significant aspects of the reform such as establishing the penitentiary establishment for preparation for early release, enforcement of a new non-custodial measure, i.e., house arrest, and allowing some categories of convicted persons to receive higher education should be positively assessed.⁴⁸

It should be mentioned from the outset that in 2017, the Public Defender did not request the Office of the Chief Prosecutor of Georgia to institute investigation regarding the incidents of physical violence against prisoners by employees of penitentiary establishments. **Despite this, violence among prisoners, the problem of criminal subculture and informal rule in prisons remain considerable challenges.**

To establish a violence free environment, it is necessary to implement an effective mechanism for identifying incidents of violence, documenting and notifying them to investigative authorities on the one hand and to eradicate the existing various risky practices on the other hand. In this context, in the reporting period, the enforcement of the new procedure of documenting injuries inflicted on a prisoner

⁴⁶ The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 5 (C), twelfth session, Geneva, 15-19 November 2010, available at: https://digitallibrary.un.org/record/699284/files/CAT_OP_12_6-EN.pdf, (accessed on 13.03.2018).

⁴⁷ For more details see chapter on Protection of Rights of the Child.

⁴⁸ Convicted persons placed in the penitentiary establishment for preparation for release, convicted persons of low risk serving their sentence in a low risk prison facility, and convicted persons placed in a juvenile rehabilitation facility may enjoy the right to receive education at the first stage of academic higher education (Bachelor's degree). (The Imprisonment Code, Article 115').

due to alleged ill-treatment can be assessed as a step forward. However, unfortunately, the Public Defender's recommendations regarding further improvement of this procedure have not been fulfilled⁴⁹ and its practical implementation remains a problem. The shortcomings of documenting injuries is confirmed by the fact that injuries were documented according to the new procedure only in 4 cases in penitentiary establishments, whereas in 2017, according to the information received by the Special Preventive Group, there were far more persons with various bodily injuries placed in penitentiary establishments and they claimed that these injuries had been inflicted during either arrest or thereafter.⁵⁰

Apart from the abovementioned, ensuring respect for confidentiality of the doctor-patient relationship remains problematic.⁵¹ In the reporting period, medical personnel still were not fully independent from an establishment's director and other non-medical staff in the decision-making process.⁵²

The Public Defender reiterates that the objective to prevent ill-treatment should not be narrowed down to averting incidents of physical violence alone. It is necessary to fight the forms of psychological violence; prevent suffering caused by inadequate conditions of detention (for the purpose of the present chapter, the conditions of detention imply both material conditions as well as regime and daily activities facilitating normalisation process); and ensure respect for private and family life and avert unjustified interference with these rights. Conditions in this regard are the most unfavourable in high security prisons.

The ministry's policy towards high security prisons runs counter to the spirit of the recommendations given to the states by the Committee of Ministers of the Council of Europe, calling upon the states to apply, as far as possible, ordinary prison regulations to dangerous prisoners.⁵³ It should be unfortunately noted that prisoners held in high security prisons are not allowed to take part in rehabilitation activities that are accessible for prisoners in closed type prison facilities.⁵⁴ Under the existing conditions, high security prisons are based on static security, unconditional restrictions and limitations and strict regime unable to achieve positive changes in convicted persons' behaviour, their rehabilitation and social reintegration.

The practice of use of security measures in penitentiary establishments remains problematic in the reporting period. In particular, there are no reasons given in decisions on the use of visual and/or electronic surveillance of prisoners.⁵⁵

The use of these measures constitutes interference in the right to respect for private life as protected by the Constitution of Georgia. An individual continues to enjoy this right during serving a sentence and therefore, the use of such measures without adequate reasoning can amount to the violation of the right to respect for private life.⁵⁶ The Public Defender believes that it is imperative to assess risk individually in each case and to ensure decisions on the use of this measure demonstrate the necessity and indispensability of its application. It should be noted furthermore that the statutory term of storing surveillance recordings remains 5 days and

49 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 39-40, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 12.03.2018).

50 Out of 469 cases inspected in the regions of Georgia, in 19 cases there were various bodily injuries found on the persons held in TDIs and they had claims against police. All these individuals were transferred as accused persons from TDIs to penitentiary establishments. Furthermore, according to the information received from the Ministry of Corrections of Georgia, out of accused persons transferred to penitentiary establishments in 2017, 75 persons suffered injuries during arrest and 85 persons after arrest.

51 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 39-40, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 12.03.2018), pp. 34-35.

52 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 39-40, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 12.03.2018), p. 39.

53 Recommendation R(82)18 of the Committee of Ministers of the Council of Europe, available at: <https://rm.coe.int/16804fa45e>, (accessed on 07.03.2017).

54 In 2017, only 3 rehabilitation programmes were implemented in establishments nos. 3 and 6 and none in establishment no. 7.

55 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 60-64, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

56 Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 December 2012, para. 52, available in English at: <https://rm.coe.int/168069844d>, (accessed on 02.03.2018).

the Public Defender's recommendation of increasing this term at least to 10 days has not been complied with.⁵⁷ The practice studied by the Public Defender shows that in those cases, where a prisoner decides to lodge a complaint with either the Public Defender or an investigative agency, follow-up involves certain procedure and requires time. In particular, if a prisoner applies to the Public Defender, the Public Defender applies⁵⁸ to an investigative agency and requests seizure of the video recording. The investigative body, in its turn, applies to the Ministry of Corrections and requests to archive the video recording so that it can be seized. Considering this procedure and the limited technical specifications of surveillance systems, the Public Defender deems it reasonable that video recordings are stored for not less than 10 days to enhance the capacities of the system further.

Unfortunately, the practice of placing a prisoner in a de-escalation room remained problematic in the reporting period. During the application of this measure, there is no multidisciplinary intervention on the part of the establishment's personnel to reduce and eradicate risks.⁵⁹ Prisoners are prohibited from maintaining contacts with the outside world and they are not provided with clothes and items of personal hygiene. The environment and conditions in de-escalation rooms remain problematic. The rooms are not safe and not arranged in a way to reduce the risk of self-harm to the minimum. Furthermore, the Public Defender's recommendation about determining 24 hours as the maximum term for placing a prisoner in a de-escalation room has not been complied with.⁶⁰ The statutes of penitentiary establishments determine the duration of placing a prisoner in a de-escalation room (72 hours), whereas there is no limit set to the number of such placements. This allows placement of a person in a de-escalation room without any limits, several times in a row.⁶¹

The Public Defender's position remains the same that a prisoner can be placed in a de-escalation room as an immediate and urgent measure and the establishment's administration should apply other measures, including, ensuring adequate assistance by a multidisciplinary group (a psychologist, social worker, medical worker, and, if needed, a psychiatrist) to the prisoner concerned. Moreover, placing a prisoner in a de-escalation room is a coercive measure aimed at maintaining order and safety, during which there is an increased risk of self-harm or using force against him/her which in turn increases a risk of ill-treatment. Therefore, Public Defender, in the 2016 Parliamentary Report, recommended to the Minister of Corrections to ensure that the recordings made in de-escalation rooms through visual and/or electronic surveillance are stored at least for one month in all cases.⁶² However, the said recommendation has not been complied with. The Public Defender believes that it is technically possible to store the video recordings made in de-escalation rooms through archiving them.

Full search of prisoners is still carried out routinely and not based on assessment of risks posed by a person at particular time. Besides, the law does not differentiate between the grounds of strip search and body cavity search.⁶³ The Public Defender believes that a request for a full body search should only be based on individual risk assessment of a particular prisoner, with due account to the principles of proportionality and necessity. Furthermore, when requesting full body search it is necessary to offer scanning as an alternative screening method; it is also necessary to differentiate clearly between strip-searches and body cavity searches and appropriate procedures should be determined for each measure. Different body parts cannot be stripped at the same time and no requests to do squats during strip-searches should be made.

57 The 2016 Parliamentary Report of the Public Defender of Georgia, p. 64, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

58 There were cases in practice where the Public Defender applied to the Ministry of Corrections directly and requested video recordings to be archived. However, the Public Defender received a response from the Ministry (Letter no. MOC 81700818983, dated 18 October 2017) saying that the Procedure on Surveillance and Control through Visual and/or Electronic Means, as well as the Storage, Deleting and Destroying of the Recordings as approved by Order no. 35 of the Ministry of Corrections, dated 19 May 2015 did not provide for the application of the Public Defender as a ground for archiving video recordings.

59 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 54-59, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

60 *Ibid.*, p. 59.

61 The statutes of penitentiary establishments nos. 2, 3, 6, and 8.

62 The 2016 Parliamentary Report of the Public Defender of Georgia, p. 59, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

63 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 71-81, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

Like in the previous years, guidelines for imposing disciplinary sanctions have not been elaborated. Frequent resort to solitary confinement is problematic in some penitentiary establishments⁶⁴ as is placement of prisoners with mental health problems in solitary confinement, provocation of prisoners and subsequent imposition of disciplinary sanctions. Placing prisoners in de-escalation rooms for punitive reasons, complete ban on contacts with a prisoner's family as a disciplinary punishment, the practice of holding disciplinary proceedings without oral hearing, etc., remain problematic.⁶⁵

The strict regime of spending 23 hours in a cell without any interesting and engaging activities intensifies the feeling of protest, unfairness and despair which creates additional challenges in terms of security. According to the survey conducted by the Special Preventive Group,⁶⁶ 5.7 % of prisoners held in closed type and high security prison facilities have attempted suicide and 12.6 % have experienced suicidal thoughts. According to the findings of the same survey, it is noteworthy that the majority of male prisoners held in closed type establishments cite relationship with prison staff as the main reason for auto-aggressive behaviour. This reason is cited by 37.1% of prisoners regarding self-harm and 20.0% and 27.3% regarding suicide and suicidal thoughts respectively. These indicators in open type prison facilities are far lesser and constitute 11.1%, 3.3% and 7.7% respectively.

The conducted sociological survey revealed statistically credible link between prison conditions and self-assessment of health status by prisoners. This is confirmed by several parameters, the duration of deprivation of liberty and impact on health by a facility type being among them. The survey demonstrates that the longer the deprivation of liberty the lower is self-assessment of health status by prisoners. Besides, a facility type has significant impact on such assessment. As the abovementioned shows, the unhealthy and stressful conditions in establishments give rise to problems in terms of order and security and create a significant burden for the penitentiary healthcare system. Therefore, it is important to allocate more resources for the improvement of the existing environment.

The Public Defender certainly welcomes the ministry's efforts aimed at conducting planned rehabilitation work to avert deterioration of material conditions (caused by infrastructure's wear). However, despite the efforts of the ministry, there are still problems in terms of sanitation and hygiene,⁶⁷ adequate ventilation⁶⁸ and sufficient heating in cells.⁶⁹ Stemming from the poor living conditions existing in the establishment,⁷⁰ the Public Defender's recommendation about closing down establishment no. 7 remains unchanged.

It is the Special Preventive Group's assessment that the large size of the functioning establishments, their architectural design and established practice of accommodation of prisoners are the major problems. It should be noted in the first place that there are still barrack type accommodations (large multi-occupancy cells) in establishments nos. 14 and 17, where smoking and non-smoking prisoners live in the same space and it is difficult to maintain sanitary and hygiene conditions, and the risk of spreading infectious diseases is high. Besides, since the lack of personal space gives rise to higher risk of conflicts among prisoners, maintaining safety is a significant challenge in such accommodations.

64 In 2017, compared to the previous year, the use of solitary confinement as a disciplinary penalty was reduced by 42% (in 2016 – 920 cases; in 2017 – 386 cases). However, solitary confinement is still actively used in establishments nos. 2, 14 and 15. Compared to 2016, the use of disciplinary penalties was reduced in establishment no. 2 by 42%; however, the percentage of placement in solitary confinement has not been reduced significantly (in 2016, placement in solitary confinement constituted 42% of disciplinary penalties, and 39% – in 2017). In 2016, in establishment no. 14, disciplinary penalty was imposed in 60 cases, out of which solitary confinement was used in 57 cases. In 2017, disciplinary penalty was imposed in 50 cases in total and all of them were solitary confinement. In establishment no.15, compared to 2016, the number of disciplinary penalties was reduced by 38%. However, there was an increase in the percentage of the use of solitary confinement (in 2016, placement in solitary confinement constituted 36% of disciplinary penalties and this number amounted to 66% in 2017).

65 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 127-134, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

66 With the financial support of the Open Society Georgia Foundation, sociological survey was conducted in 2017 and 943 prisoners were surveyed.

67 There are problems in establishments nos. 2, 5, 7, 8, 12, 14, 15, 17, 18, and 19.

68 In establishments nos. 2, 3, 5, 6, 7, 8, 9, 14, 15, and 17.

69 Establishments nos. 3, 7, 8, and 14.

70 Establishment no. 7 was initially built as an investigation isolator.

The provision of each convicted person with 4m² as the minimum standard of living space as determined by Article 15 of the Imprisonment Code remains a challenge in establishments nos. 2, 8, 12, 14, 15, and 17.⁷¹ This is not caused by insufficient number of available places in the establishments mentioned above,⁷² but by inadequate planning in allocating prisoners to facilities. In particular, though there are sufficient places within the set limits in other establishments of open type, the number of convicted prisoners in establishment no. 15 exceeds the limit by 328 as of December 2017.

The Public Defender deems it unjustified that the Imprisonment Code determines 3 m² as the minimum standard of living space for remand prisoners, as, stemming from presumption of innocence, remand prisoners should not be kept in more restrictive conditions than convicted persons.

The Imprisonment Code in force does not provide for the right of remand prisoners to long-term visits. In the opinion of the Public Defender of Georgia, this restriction is unjustified and in breach of the well-established case-law of the European Court of Human Rights. Therefore, the Public Defender observes that the Imprisonment Code should be amended with the effect of determining the right of remand prisoners to long-term visits with due account to the interests of investigation.⁷³

The Special Preventive Group assesses negatively the fact that cells in closed type and high security prisons take up practically entire space and adequate infrastructure for daily activities is absent. There are problems in terms of planning, designing and arranging exercise yards. The situation in closed type and high security prisons does not allow adequate physical exercise. There is no exercise equipment in the yards. It is imperative to create appropriate conditions for spending time and exercising in open air. Yards should be equipped with exercise equipment and the duration of time to be spent in open air should be increased. It is also possible to arrange spaces for sports and other recreational activities within closed type establishments, at the expense of rearranging cells according to wings.

It is generally important that, based on the existing situation and resources, to ensure that the ministry develops a concept and a respective action plan for dividing the system into smaller establishments and creating balanced infrastructure. Smaller establishments will make it easier to manage it, maintain order and safety, as well as create better conditions for rehabilitation activities.

Penitentiary establishments face a challenge in terms of the main objective of a punishment, i.e., ensuring rehabilitation and resocialisation of prisoners. Despite certain steps, situation is still difficult in the system. Lack of qualified personnel, lack of diversity in programmes and sporadic nature of the latter as well as low involvement of convicted persons pose a significant problem.⁷⁴ Individual sentence planning for convicted persons are of general nature and fail to reflect work carried out by a specialist after identifying individual needs of a convicted person.

It is the Special Preventive Group's assessment that, in parallel to ensuring diversity of programmes, it is necessary to motivate convicted persons to take part in those programmes. The Public Defender welcomes the initiative made known by the Minister of Corrections. In particular, in 2018, the ministry will start working on introducing new regulations, according to which convicted persons that are employed in a penitentiary establishment will have their sentence reduced according to the days they worked. To make this new mechanism

71 In establishments nos. 2, 8, 12, 14, 15, and 17.

72 As of December 2017, the limit was not full in any establishments except for no. 15.

73 In the case of *Varnas v. Lithuania* (application no. 42615/06, judgment of the European Court of Human Rights of 9 July 2013), the European Court did not share the government's argument that the grounds for imposing pre-trial detention and thus limiting the suspect's contacts with the outside world served to guarantee an unhindered investigation. The Court found that the security considerations relating to any criminal family links were absent in the present case and observed that the applicant's wife was neither a witness nor remanded in the criminal cases against her husband, which removed the risk of collusion or other forms of obstructing the process of collecting evidence. The Court eventually found that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (the right to respect for private and family rights) of the Convention.

74 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 108-127, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

effective, it is important to increase employment opportunities⁷⁵ in establishments.

Maintaining contacts with the outside world to an appropriate degree is important for both preventing ill-treatment and facilitating rehabilitation of convicted prisoners. In this regard, it should be positively mentioned that convicted persons held in high security prisons can have long-term visits and more and longer telephone calls. At the same time, window partitions in short visit rooms remain a problem. In such cases, prisoners are deprived of any possibility to enjoy physical contact with their family members.⁷⁶ It is a significant problem that while allocating a person to a particular prison establishment a family's place of residence is not taken into account. There is no confidential environment during family visits and confidentiality of telephone conversations is not respected. There are no periodicals in libraries and TV channels are not diverse (among others, in terms of languages).

Convicted persons held in penitentiary establishment no. 18 are still unable to have long-term visits. Convicted prisoners could be held in establishments for long times.⁷⁷ In such cases, they should be able to have long-term visits according to their respective risk categories.

Video visits (video calls) are significant in terms of maintaining contacts with the outside world as apart from family members, friends and relatives of a convicted person also use it. Convicted persons held in establishments nos. 5, 8, 11, 16, and 17 can have video visits. It is not possible to use this opportunity in other establishments due to the absence of relevant infrastructure. Besides, convicted persons held in high security prisons cannot have video visits.⁷⁸

In terms of organisation of medical services, there was considerable progress made in the recent years, however, the main challenge is prevention of diseases, especially non-communicable diseases. The penitentiary healthcare responds mainly to clinically manifested diseases and considerable resources are spent in this regard too. It is unfortunate that there is no screening for some non-communicable diseases envisaged by the penitentiary healthcare package. Unlike non-communicable diseases, screening for infectious diseases is more systematic and many prisoners have been examined.

Despite progress made, there are several problems regarding the quality of medical services; in particular, arrangement of infrastructure in accordance with relevant standards in establishments, attracting qualified medical personnel, ensuring continuous medical education, comprehensive maintenance of medical documentation, giving consultations in a timely manner, etc.⁷⁹

There are problems in terms of informing prisoners about preventive healthcare and healthcare services in general. In this regard, most of the prisoners have partial or no information at all. Research by the Special Preventive Group confirms that the quality of awareness about healthcare services has an impact on the self-assessment and dynamics of prisoner's health condition.

There are substantial shortcomings in terms of timely identification and referral for corresponding services of persons with mental health problems. Though some prisoners with mental health problems receive inpatient assistance, most of the prisoners with mental health problems remain in penitentiary establishments. Statistics about how many patients have mental health problems and accordingly how many need psychiatric assistance is not maintained in penitentiary establishments.

For establishing the penitentiary system that is based on the principle of prevention of discrimination and ensuring equality it is necessary to identify specific needs of different groups and meet those needs. In this

75 Should not be limited to the possibility of enrolment in the housekeeping service.

76 Short visits are arranged without a window partition in establishments nos. 2 and 5.

77 The unit for long-term care ensures corresponding medical services for accused/convicted persons in need of long-term care, including persons with disabilities.

78 The Imprisonment Code, Article 17¹.1

79 The 2016 Parliamentary Report of the Public Defender of Georgia, p. 175, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

regard, there are certain challenges in penitentiary establishments, among others, the stigma attached to those associated with LGBT+ community, subjecting them to psychological violence, isolation and marginalisation in prison life; inadequate rehabilitation of life-sentenced prisoners;⁸⁰ foreign prisoners' limited access to services due to linguistic barriers; failure to take into account needs of various religious convictions when preparing food; placing juveniles in facilities for adults (establishments nos. 2 and 8); and placing women prisoners in facilities for men (establishment no. 2), where, unlike special penitentiary establishments, corresponding services are not provided.⁸¹

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Imprisonment Code with the effect of determining oral hearing as the only means of conducting disciplinary proceedings in penitentiary establishments;
- To amend the Imprisonment Code with the effect of allowing sentenced persons held in high security prisons to have video visits;
- To determine through the Imprisonment Code the duty to ensure 4 m² as the minimum standard of living space for each remand prisoner; and to amend the Imprisonment Code with the effect of determining the right of remand prisoners to long-term visits with due account to the interests of investigation.

RECOMMENDATIONS

To the Ministry of Corrections:

Issuing sub-laws

- To amend Order no. 131 of the Minister of Corrections of Georgia, dated 26 October 2016, with the effect of determining the obligation of healthcare professionals employed in penitentiary establishments to notify the Office of the Chief Prosecutor of Georgia about incidents of ill-treatment;
- To amend the statutes of penitentiary establishments with the effect of limiting the placement of prisoners in de-escalation rooms to a maximum term of 24 hours;
- To amend Order no. 35 of 19 May 2015 with the effect of determining the minimum term of 1 month for archiving electronic surveillance recordings made in de-escalation rooms;
- To amend Order no. 35 of 19 May 2015 with the effect of determining a reasonable term for storing electronic surveillance recordings (for not less than 10 days);
- To issue a new sub-law or to amend the statutes of penitentiary establishments with the effect of:
 - Determining the duty of following the principles of individual risk assessment and proportionality when conducting full body search;
 - Determining the duty of offering prisoners alternatives to full body search;

80 Prisoners sentenced for life in establishments nos. 6 and 7 were not allowed to be involved in rehabilitation activities. As regards establishment no. 8, here some prisoners sentenced for life participated in educational programmes, which is commendable. However, it is difficult to consider the said programmes as regular, targeted and diverse activities tailored to individual needs.

81 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 207-238, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

- Separating strip-search and body search and establishing the procedures for conducting them;
- prohibiting various body parts to be stripped at the same time and requests to do squats during strip-searches;
- To ensure that the Inspectorate General monitors visual/electronic surveillance in penitentiary establishments to exclude the use of this measure without appropriate grounds and justification.

Infrastructure

- Considering the existing situation and resources, to develop the strategy for dividing the system into smaller establishments and creating balanced infrastructure;
- To abolish establishment no. 7;
- For addressing the problem of overcrowding in establishment no. 15, to ensure transfer of convicted persons to other semi open prison facilities with due account to respective prisoners' families' place of residence;
- To provide each prisoner with 4m² as the minimum standard of living space in establishments nos. 2, 8, 12, 14, 15, and 17; to abolish barrack type accommodations in establishments nos. 14 and 17;
- To ensure that short visits are arranged without window partitions in establishments nos. 2, 3, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, and 19;
- To ensure that long-term visits are organised for convicted persons held in establishment no. 18 by arranging required infrastructure or transferring to other establishments;
- To arrange infrastructure required for video visits in establishments nos. 2, 3, 6, 7, 9, 12, 14, 18, and 19;
- To ensure that telephones in closed type prison facilities are installed at such places where personnel cannot overhear prisoners' telephone conversations;
- To ensure safe environment in de-escalation rooms, including lining the walls and floors with soft material; and
- To ensure adequate sanitary and hygienic conditions,⁸² lighting⁸³ and ventilation⁸⁴ in penitentiary establishments for ensuring prisoners' minimum living conditions.

Prisoners' Rehabilitation

- To increase the volume of rehabilitative activities in 2018;
- To allow prisoners held in closed type and high security prisons to stay for more than 1 hour in the open air;
- To ensure survey of all convicts in 2018 for determining the field of interests of rehabilitation programmes;
- To ensure uniform, basic rehabilitation programmes in the establishments of the same type;
- To ensure that rehabilitation programmes implemented in low risk prison facilities in 2017

82 There are problems in establishments nos. 2, 5, 7, 8, 12, 14, 15, 17, 18, and 19.

83 Establishments nos. 3, 7, 8, and 14.

84 Establishments nos. 2, 3, 5, 6, 7, 8, 9, 14, 15, and 17.

are implemented in semi open type prison facilities; to ensure that rehabilitation programmes implemented in semi open type prison facilities in 2017 are implemented in closed type prison facilities with due respect for infrastructure and security standards; and to ensure that rehabilitation programmes implemented in closed type prison facilities in 2017 are implemented in high security prisons with due respect for infrastructure and security standards;

- To increase the number of psychologists and social workers in 2018;
- To increase logistical and technical resources of social unit in 2018 and inform the Public Defender's Office about improvement of working conditions;
- To allow life-sentenced prisoners in establishments nos. 6 and 7 to be enrolled in similar rehabilitative activities as those prisoners held in establishment no. 8.

Healthcare and Personnel

- To increase the number of staff doctors and nurses, increase the number of visits of doctor-consultants and inform the office about the progress in this regard;
- To carry out screening of non-communicable diseases and inform the office about the progress in this regard;
- To train doctors employed in penitentiary establishments in documenting incidents of alleged ill-treatment and inform the office about the progress in this regard;
- To provide prison staff with medical insurance, ensure their transportation to establishments and adequate catering;
- To train all employees of penitentiary establishments in 2018 in dealing with professional burnout.

Equality

- To ensure that all convicted juveniles are held in establishment no. 11, which is designed for rehabilitation of juveniles;
- To develop a strategy for eradication of hate, stigma and isolation of LGBT prisoners, also those enrolled in prison maintenance unit to provide cleaning services.

4.2. THE SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS

This subchapter presents the results of the monitoring conducted by the National Preventive Mechanism of Georgia in police divisions and TDIs under the Ministry of Internal Affairs of Georgia. In 2017, monitoring was carried out in 45 police divisions and 19 TDIs. Apart from the monitoring visits, the members of the Special Preventive Group visited the regions and met local lawyers and NGO representatives, from whom they obtained information regarding protection of rights of arrested persons and the situation in the regions. In total, six such meetings were held in 2016.

Additionally, visits were made to penitentiary establishments nos. 2 and 8, where the members of the Special Preventive Group interviewed remand prisoners detained in 2017. The members of the Special Preventive Group used the pre-designed questionnaire.

The members of the Special Preventive Group studied the arrested persons' log books in police divisions and registration journals of persons transferred to TDIs. They visually examined the administrative buildings

of police divisions and interviewed division personnel. The monitoring group members inspected isolators' infrastructure and interviewed personnel, detained persons and studied case-files in temporary detention isolators.

For obtaining systematised information from case-files, the monitoring group used a specifically designed questionnaire. In 2017, as in 2016, the group members examined cases of all arrestees placed in isolators from 1 January 2017 to the day of the visit. The questionnaire was filled only in those cases where a particular case-file raised suspicions about the circumstances of an arrest, localisation, number and nature⁸⁵ of injuries. In total, 469 such case-files were studied.

The qualitative analysis of the data obtained through the pre-designed questionnaire was performed using the Statistical Program (SPSS). For interviewing police officers, the Special Preventive Group used a pre-designed questionnaire. Furthermore, the group requested additional information about involvement of lawyers and contacting families in particular cases. The monitoring group examined 463 case-files through the random sampling method in the regions of Georgia.

The Office of the Public Defender analysed statistics received from the Ministry of Internal Affairs of Georgia. The number of persons placed in temporary detention isolators, the statistics of bodily injuries found on the detained persons placed in temporary detention isolators and the number of complaints filed against police according to years are shown in the below tables.

Data According to Years	2013	2014	2015	2016	2017
Number of persons	16553	17087	16416	13081	11812
Persons with injuries	7095(42.9 %)	6908(40.4 %)	5992(36.5 %)	6417 (49 %)	6386 (54.1 %)
Complaints filed against police	111 (0.8 %)	198 (1.1 %)	168 (1 %)	193 (1.5 %)	241 (2 %)

According to the official statistics given in the table, the increasing trend in the percentage of placing injured individuals in TDIs and complaints filed against police is maintained in 2017.

It is particularly noteworthy that the number of complaints filed against police has increased. In 2017, compared to 2016, there are 48 more such cases. This increasing trend is also confirmed by the findings of the survey carried out by the Special Preventive Group.⁸⁶

It is also noteworthy that in 2017, there is an increase in the number of proposals the Public Defender referred to the Chief Prosecutor of Georgia regarding launch of investigation on incidents of alleged ill-treatment by police officers. In 2017, the Public Defender referred proposals to the Chief Prosecutor of Georgia to start investigation regarding 10 incidents of alleged violence by police; there were 6 such proposals in 2016.

According to the survey conducted by the Special Preventive Group, the trend according to which in nearly one third of the inspected cases ⁸⁷ (in 2017 – 30.1 %, and in 2016 – 31.3 %) there is no mention of injuries in arrest reports, whereas they are described in visual examination reports. Obviously, there is a strong presumption in these cases that an arrested person was subjected to physical violence by police.

It is important to analyse cases of detainees admitted in TDIs with bodily injuries by paying attention to the time of inflicting injuries (as alleged by detainees). See the official statistics in the below table.

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

86 In 2017, in 18.6% out of inspected cases, an arrestee had a claim against police, whereas the same indicator in 2016 amounted to 15 %.

87 In 2017, there were 469 cases inspected in the regions, whereas there were 578 cases in 2016.

Number of cases of Bodily Injuries in 2015 and 2017	2015	2016	2017
Before arrest	5635	6009	5923
while arresting	243	254	284
After arrest	52	53	26
Before arrest - while arresting	47	76	114
Before arrest - after arrest	10	20	23
During arrest - after arrest	4	2	13
Before arrest - while arresting - after arrest	1	3	3
	Total: 5992	Total: 6417	Total: 6386

The analysis of the table shows that the number of cases of bodily injuries sustained after arrest has decreased in 2017, subsequently resulting in decrease of percentage of such cases in in the total number of cases of injuries inflicted while arresting and/or after arrest. **The similar indicators have increased in cases of injuries inflicted while arresting.**

During the monitoring, information was requested from the Ministry of Corrections of Georgia concerning persons placed in penitentiary establishments with bodily injuries. The respective statistics are given in the below table.

Year	Before Arrest	While Arresting	After Arrest	Did not Report	Total
2015	818 (86 %)	88 (9.2 %)	37 (3.9 %)	8 (0.8 %)	951 (100 %)
2016	764 (79.3 %)	91 (9.5 %)	103 (10.7 %)	5 (0.5 %)	963 (100 %)
2017	784 (83 %)	75 (7.9 %)	85 (9 %)	1 (0.1 %)	945 (100 %)

As it is apparent from the tables, there is a slight decrease in the number of remand prisoners placed in penitentiary establishments, who claimed they had sustained bodily injuries while being arrested or after arrest. It is noteworthy that the percentage of bodily injuries inflicted while arresting and/or after arrest in administrative proceedings in 2016 amounted to 12.8 % and to 26.4% in 2017. **Accordingly, it can be concluded that treatment of persons arrested by police in administrative proceedings has deteriorated in 2017.**

In order to prevent human rights abuses when being under control of police, it is necessary to ensure corresponding legal safeguards, namely, informing a person about his/her rights, notifying his/her family members about arrest, accessibility to lawyer and medical personnel.

As a result of the inspection carried out by the Special Preventive Group in the reporting period, it was established that, similar to previous years, informing an arrested person by police of his/her rights remains a problem. The notorious practice of “conversations” conducted in police vehicles or police stations without the consent of the persons concerned, an issue that the Public Defender discussed in the previous parliamentary reports, is maintained in 2017. While Article 21 of the Law of Georgia on Police provides for voluntary appearance of a person at the police for interview,⁸⁸ in reality the following is practiced: an individual is summoned to police without any status; he/she is kept at the police station for a certain period (several hours)

⁸⁸ Under Article 21 of the Law of Georgia on Police, a person summoned for an interview shall be informed about the grounds for summoning, the voluntary nature of appearing and giving interview in a police building, his/her rights and a report should be drafted regarding all the above-mentioned issues.

and asked various questions. During this procedure, the person concerned is not informed about his/her rights; there is no document drafted regarding this person either entering or leaving the police division/station which would allow clarifications about the status of this person in a police building, the purpose of him/her being there, or if he/she was there at all.

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment observed that the practice of taking people to a police station for an “off the record” conversation should be abolished, given that it creates room for arbitrary or unregistered arrests and subsequent ill-treatment.⁸⁹ The Public Defender shares this position and considers that the practice of getting persons in police stations or into cars for a “conversation” gives rise to the high risk of unlawful detention and ill-treatment.

Like previous years, the practice of bringing a person to police station as a witness and later formally arresting him/her continues.⁹⁰ As the result of the inspections carried out by the Special Preventive Group, it was revealed that in a number of cases the time of admission of persons to police station precedes the time of their formal arrest. In such cases, usually, a person is summoned as a witness, certain investigative actions are conducted with his/her participation and, after the lapse of certain time, the person is formally arrested. However, the person is not informed of his/her rights (among them, right to a legal counsel) when he/she is brought as a witness to a police station, his/her personal items, including mobile phone, are taken away. This way, these persons are purposefully deprived of an opportunity to contact their family and a lawyer.

It should be positively noted that compared to 2016, in 2017, the dynamics of notifying family members about arrests is improved.⁹¹ However, the Public Defender considers that it is necessary to notify families within 3 hours in all cases.⁹² The exercise of the right to have one’s family informed is directly linked with the right to access to a lawyer, since, as a rule, it is the family that ensures involvement of a lawyer. Access to a lawyer should be guaranteed in the shortest time possible after arrest as the risk for intimidation, pressure, verbal abuse and other ill-treatment is especially high at the initial stage of deprivation of liberty, when a person is especially vulnerable.

It should be positively noted that compared to 2016, the indicator of involvement of lawyers in criminal cases has increased.⁹³ It should however be mentioned that compared to the previous year, the indicator of a lawyers’ involvement within the first 24 hours has not considerably changed in 2017.⁹⁴ Furthermore, the trend continues, where persons arrested in administrative proceedings almost never use their right to a lawyer.

It is a challenge to establish during systemic monitoring what the causes of the low involvement of lawyers in the proceedings at the very first stage of arrest are. In particular, it is unclear in how many cases an arrested person declined his/her right to involve a lawyer and in how many cases he/she wished to contact a lawyer and police officers did not respond to the request. Also is unclear in how many cases the failure of involving a lawyer in proceedings was due to the summoned lawyer not appearing.

It should be noted that in police territorial units, there are no logbooks for registering information about the exercise of an arrestee’s right to contact his/her family/consulate/lawyer. Accordingly, the Public Defender’s position reiterates that there should be logbooks in police bodies registering the details of the person requesting a contact with a family/consulate/lawyer, time of the request and time of contact with family/consulate/

89 The similar recommendation is given in the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his mission to Georgia, 2015, para. 108, available in the UN official languages at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3, (accessed on 10.03.2018).

90 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 272-274, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 19.02.2018).

91 In 56% of cases inspected in 2016, families were notified within 3 hours; in 71% of cases in 2017.

92 Under the Criminal Procedure Code of Georgia, Article 177.1, within 3 hours after arrest, a prosecutor or an investigator under the former’s instructions shall notify an arrested person’s family members or third persons about the arrest.

93 In 54% of inspected cases in 2016, an arrestee had a lawyer; in 83% of cases in 2017.

94 In 2016, within 24 hours after arrest a lawyer was involved in 17% of inspected cases; in 15% of inspected cases in 2017.

lawyer and whether it was possible to contact the addressees. Furthermore, it is imperative that the logs made in the books be confirmed by the person concerned by his/her signature so that police officers do not arbitrarily enter false information. This is important as it will allow monitoring bodies, including the Inspectorate General, to inspect properly within systemic monitoring whether an arrested person's right to contact his/her family/consulate/lawyer is respected.⁹⁵

Furthermore, it is noteworthy that a lawyer of the LEPL Legal Aid Service has to deal with 100 criminal cases on average per year and this may hamper effectiveness of providing legal aid. Legal aid lawyers themselves point come forward pointing to their workload. Taking into account this fact, the Public Defender recommended to the Government of Georgia in the 2016 Parliamentary Report to increase the budget of the LEPL Legal Aid Service for boosting the bureaus' human resources. However, this recommendation⁹⁶ has not been complied with.⁹⁷

It is commendable that the procedure on documenting cases of alleged ill-treatment of persons placed in TDIs went into effect.⁹⁸ However, as the monitoring conducted in 2017 showed, documentations maintained by doctors employed in TDIs are inadequate. In particular, injuries and their origins are not described comprehensively. There are also frequent cases where the documentation does not indicate specific reasons and circumstances of sustaining an injury; however, a doctor assesses the degree of consistency between physical signs of an injury and alleged method of inflicting injury. Besides, it was revealed that medical professionals are unable to take good quality photos of injures and photographic materials are not stored in a systematised manner.

Like 2016, in 2017, the following remains problematic in those TDIs where medical examination is carried out by an emergency medical doctor: established practice of medical examination in the presence of TDI personnel,⁹⁹ quality of describing injuries¹⁰⁰ and TDI personnel notifying injuries to the Prosecutor's Office.¹⁰¹

It is important that the thorough and objective inspection of issues challenged is made possible, whenever an arrested person lodges a complaint. For this purposes, it is necessary to ensure that employees of the Ministry of Internal Affairs maintain documentation comprehensively and the audio and video recording of the entire period of a person being under police control is secured.

Apart from the abovementioned, arrest reports still do not refer comprehensively to arrested persons' injuries;¹⁰² how arrest was effected, whether there was resistance or use of force, etc.¹⁰³ Moreover, there are shortcomings

95 The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his/her custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told about their rights; signs of injury, mental illness, etc.; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person's possession, the fact of being told of one's rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's lawyer should have access to such a custody record. CPT Standards on Police Custody, para. 40, available at: <https://rm.coe.int/16806cea2f>, (accessed on 07.03.2018).

96 The 2016 Parliamentary Report of the Public Defender of Georgia, p. 290, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

97 Letter no. LA 61800001753 of the LEPL Legal Aid Service, dated 26 January 2018.

98 Approved by Order no. 691 of the Minister of Internal affairs of Georgia of 9 December 2016.

99 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 287-288, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

100 According to the inspected cases, compared to 2016, in 2017, there is no considerable change in terms of the number of cases, where there was a bodily injury found on a person placed in a TDI but this injury was not described by a doctor (in 2016 – 14.4%; and in 2017 – 10.1%); however, there are fewer cases where there was a bodily injury found on a person and a doctor stated in the documentation that there were no injuries found (in 2016 – 8.3%; and in 2017 – 1.9%).

101 Compared to 2016, in 2017, there are more cases where a person was found with multiple injuries, including, on the face and in the eye-socket area, however a prosecutor was not notified (in 2016 – 19.2%; and in 2017 – 30.1%).

102 In 2017, like 2016, in one third of the inspected cases, there is no reference to an injury in an arrest report that is described in an external examination report (in 2017 – 30.1%; and in 2016 – 31.3%).

103 Out of 469 (in 2016 – 578) cases processed in 2017, there was disobedience/resistance in 161 (34.3%) cases (in 2016 – 384 [66.4%] cases), whereas information about the use of force is indicated in 32 (6.8%) cases; (in 2016 – 33 [5, 7%] cases) out of which the methods of the use of force is indicated only in 7 (in 2016 – 14) cases.

when filling out visual examination reports in TDIs. In particular, in some cases, there is no information about origin of injuries or whether a person has a complaint.¹⁰⁴

Unfortunately, it should be noted in this regard that the Public Defender's recommendation concerning improving the form of an administrative arrest report by adding relevant columns for describing injuries on the body of an arrestee, resistance and use of force was not complied with.¹⁰⁵

The minimum term for storage of recordings made by video surveillance system is not determined statutorily.¹⁰⁶ According to the ministry's information, the surveillance systems have memory cards with individual capacities, and the terms for storage are from 2 weeks to 1 month.¹⁰⁷

The Public Defender deems it necessary that there should be a statutory obligation determined with regard to 14 days as the minimum term for storing recordings made by video surveillance cameras so that in case of allegations of torture and other ill-treatment, objective evidence could be obtained.

It is noteworthy that the introduction, through a sub-legislative normative act in February 2018, of 120 hours (five days) as the minimum term for storing video recordings made in TDIs is welcomed by the Public Defender as a clear step forward. However, the Public Defender deems it is important that video recordings made in those TDIs where administrative detention is served should be stored for a longer term, for not less than 20 days.¹⁰⁸

It is noteworthy that, compared to 2016, there is no considerable difference in 2017 regarding the duration of holding arrested persons under police control (the period from factual arrest until placement in a TDI).¹⁰⁹ Accordingly, the position of the Public Defender remains the same that it is imperative to place an arrested person in a temporary detention isolator in the shortest period possible as the latter is a relatively safer place.¹¹⁰

Despite the recommendations made in the Public Defender's parliamentary reports, situation has not changed in 2017 and the following remain problematic: providing an arrested person with 4m² as the minimum standard of living space in TDIs;¹¹¹ inadequate natural and artificial ventilation and lighting in some TDIs; unsatisfactory sanitary and hygiene situation and lack of items of personal hygiene; half insulated sanitary knots in cells; absence of exercise yards; inadequate equipment in exercise yards; and inadequate nutrition.¹¹²

For ensuring the treatment with due respect for an arrested person's dignity, it is imperative to ensure that the system of the Ministry of Internal Affairs of Georgia is staffed with honest, humane, competent and gender-balanced personnel whose work schedule and remuneration are in line with the nature of the job. Police of-

104 Out of 469 incidents processed in 2017 (578 incidents in 2016), external examination reports did not indicate any information about the time of inflicting an injury in 40 (8.5%) cases (in 8 [1.4%] cases in 2016) and there was no information about complaints in 34 (7.2%) cases (in 9 [1.6%] cases in 2016).

105 The 2016 Parliamentary Report of the Public Defender of Georgia, p. 301.

106 Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data therein.

107 Letter no. MIA 8 18 00547972 of the Ministry of Internal Affairs of Georgia, concerning video cameras installed in the administrative buildings of the Ministry of Internal Affairs sent to the Office of the Public Defender on 7 March 2018.

108 The recommendation of the Special Preventive Group to have 20 days determined as the minimum statutory term stems from the fact that an individual can be kept in an administrative building for up to 15 days and within this period, he/she might be unable or unwilling due to either stress or fear to lodge a complaint concerning his/her treatment. It is possible that a person concerned is willing to complain after leaving a TDI and, therefore, it is important that there is objective evidence in the form of a video recording confirming prisoner's arguable claim

109 The Special Preventive Group, as a result of inspecting cases, identified those instances where a person was under police control for 15, 16, 17, 22 and 29 hours.

110 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 266-267, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

111 Order no. 423 of the Minister of Internal Affairs of Georgia on 2 August 2016 Approving the Model Statute and Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, Annex 2, Article 26.2.

112 *Ibid.*, pp. 320-331.

fficers' busy work-load¹¹³ and professional burnout¹¹⁴ still posed problems in 2017.

Stemming from all the above-mentioned, it can be concluded that, negative trends in terms of police's interaction with citizens continued in 2017. This requires immediate and complex measures. On the one hand, strict supervision should be imposed on police officers' activities; and their accountability should be increased with appropriate training provided. In parallel, safeguards against torture and other ill-treatment should be implemented effectively.

PROPOSAL TO THE PARLIAMENT OF GEORGIA

- To amend the Criminal Procedure Code of Georgia with the effect of determining the obligation of the arresting authority to bring immediately an arrested person to a TDI.¹¹⁵

RECOMMENDATIONS

To the Government of Georgia

- To increase the budget of the LEPL Legal Aid Service for boosting the bureaus' human resources.

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

- To determine in a sub-legislative normative act the obligation of a doctor of an emergency unit to notify the prosecutor's office of Georgia about information on bodily injuries found on a person placed in a TDI and a description of the injuries.

To the Ministry of Internal Affairs:

- To ensure registering every person through maintaining a logbook specifying visitors' status, the date and time of bringing them to a police department, a division or station, and entering and leaving a building;
- To introduce logbooks in police departments, divisions and stations registering the details of the person requesting contact with family/consulate/lawyer, time of the request and time of contact with family/consulate/lawyer and whether it was possible to contact the addressees;
- To ensure increase in the number of those TDIs in 2018, where medical units are operational and bodily injuries are documented in accordance with Order no. 691 of the Ministry of Internal Affairs of Georgia of 8 December 2016;

113 The employees of police departments, district and city divisions, police units and patrol police offices of the Ministry of Internal Affairs of Georgia mostly work 24-hour shifts and their shift is once in every three days. Some of the police officers work a 24-hour shift in every two days. Considering tourist seasons and other activities, there are frequent occasions where police officers work every alternate day. During interviews with the Special Preventive Group members, some officers mentioned that considering their labour-consuming and tiresome jobs, it would be important to decrease the workload.

114 The 2016 Parliamentary Report of the Public Defender of Georgia, pp. 314-319, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 08.03.2018).

115 The similar recommendation is given in the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his mission to Georgia, 2015, para. 108, available in the UN official languages at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/57/Add.3, (accessed on 13.03.2018).

- To install video surveillance cameras in police departments, divisions and stations, and at all places where an arrested person, a witness or a person volunteering for an interview stay;
- To amend Order no. 53 of the Minister of Internal Affairs of Georgia of 23 January 2015 on Determining the Terms of Storage of File Systems of the Ministry of Internal Affairs and the Data therein with the effect of determining 14 days as the minimum term for storing recordings made by video surveillance cameras installed in police departments, divisions and stations;
- To equip police officers with body cameras with improved technical specifications; to determine by a sub-legislative normative act police officers' duty to record interactions with citizens; and the procedure and terms of storing recorded video materials;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 on Approving the Procedure of Drafting Administrative Offences Report, Administrative Arrest Report, Body Search and Objects Search Report, Penalty Receipt, Temporary Driving Licence, Explanation and Notice and Submitting them to the Authority Examining an Administrative Case, with the effect of adding following information to be registered in an administrative arrest report: the time of drafting arrest report, description of injuries on the body of an arrestee, circumstances under which a person was arrested; whether he/she resisted police; and whether proportional force was used and in which manner;
- To elaborate a unified form of the register for all police stations and divisions registering the date and time of entry/leaving as well as the purpose of the visit of citizens to police stations and divisions;
- To ensure that the Regulations of the Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia, approved by Order no. 423 of 2 August 2016, are amended with the effect of determining that it is the obligation of a healthcare professional to notify investigative authorities;
- To provide each arrested person with 4m² as the minimum standard of living space in TDIs and inform the Public Defender's Office about the progress made regarding improvement of infrastructural conditions referred to in this report;
- To ensure that employees of police departments, divisions and stations within the Ministry of Internal Affairs do not work more than one shift in 3 days;
- To increase salaries of employees of police departments, divisions and stations within the Ministry of Internal Affairs; not less than 10% for managerial positions and not less than 20% for non-managerial positions; and
- To conduct training sessions for police officers on the topics of human rights, including the UN system of prohibition and prevention of torture, CPT standards, non-discrimination and inform the Public Defender's Office regarding these activities.

4.3. TEMPORARY ACCOMMODATION CENTRE OF THE MIGRATION DEPARTMENT OF THE MINISTRY OF INTERNAL AFFAIRS OF GEORGIA

Whether a place where those held during migration proceedings is a place of detention depends on whether the individuals held there are free to leave it at will. If not, these constitute places of deprivation of liberty and all

the safeguards applicable to those held in detention must be respected fully.¹¹⁶ A Temporary Accommodation centre of the Migration Department of the Ministry of internal Affairs of Georgia is a place of deprivation of liberty and individuals held there are not free to leave it.

Aliens may be detained and placed for 3 months in temporary accommodation centres for their removal. This term can be extended to 6 months based on a reasoned motion submitted to a court.¹¹⁷

According to the CPT, conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities. Within the detention facility, detained persons should be restricted in their freedom of movement as little as possible.¹¹⁸

During the visit,¹¹⁹ the members of the Special Preventive Group have not received any information concerning physical violence or verbal abuse of individuals held in the centre by the facility's personnel.

Similar to the visit made in 2015,¹²⁰ the infrastructure in the temporary holding facility and situation in terms of sanitation and hygiene conditions should be positively assessed in 2017 too. However, individuals held in the facility cannot move freely in the facility's premises. Individuals held in the facility are mostly locked in their wings and only at the specified time, together with the security personnel of the facility, can go to the yard, dining room, computer and meetings room. Against the background, where it is not allowed to move freely on the premises, the wings are not equipped with the necessary recreational amenities (e.g. games, table tennis, etc.

Journals and newspapers are not available in the facility. Each wing has a small number of books and one TV set, which often becomes a subject of conflict among individuals held in the facility.

Detained irregular migrants should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day) and outdoor exercise areas should be appropriately equipped (benches, shelters, etc.).¹²¹ In practice, individuals held in the facility spend only one hour in open air. They can use a computer twice a day (20 minutes each time). Though there are exercise, basketball and football playing areas in the yard, it is not covered and, therefore, it is impossible to use it in bad weather.

Shortage of personnel causes extra burden on the staff. Due to the shortage of personnel, the administration is unable to keep persons held in the facility in the open air for longer. Considering the fact that a person could spend 9 months in the facility, in the Public Defender's opinion, the infrastructure and the regime of the establishment is not conducive to reducing psychological and emotional distress for persons held in the facility, who are to be removed from Georgia.

Kitchen menus are not accessible for the persons held in the facility.¹²² Fruits and vegetables are not on the menu. According to persons held in the facility, food is tasteless and monotonous and portions are not enough.¹²³ According to the administration, persons held in the facility are not allowed to buy food in the cafeteria meant for the personnel of the facility.

116 Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, para. 45, published on 7 February 2018, available in English at: http://www.ohchr.org/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf, (accessed on 01.03.2018).

117 Law of Georgia on the Legal Status of Aliens and Stateless Persons, Article 64.

118 The Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Immigration detention, CPT/Inf(2017)3, para. 5 (open regime), available at: <https://rm.coe.int/16806bf12>, (accessed on 01.03.2018).

119 Repeated visit was made on 22 December 2017.

120 The 2015 Report of the National Preventive Mechanism, pp. 313 - 314, available at: <http://www.ombudsman.ge/uploads/other/3/3777.pdf>, (accessed on 01.03.2018).

121 The Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Immigration detention, CPT/Inf(2017)3, para. 5 (open regime), available at: <https://rm.coe.int/16806bf12>, (accessed on 01.03.2018).

122 Menu posted in the kitchen is in Georgian. According to a kitchen worker, the menu is not translated.

123 According to the foreigners that served a sentence in a penitentiary establishment, food was better in prison, both in terms of taste and quantity.

The CPT recommends that strip-searches only be conducted on the basis of a concrete suspicion, in an appropriate setting and carried out in a manner respecting human dignity.¹²⁴ Detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g., a person should be allowed to remove clothing above the waist and get dressed before removing further clothing.¹²⁵

During the monitoring, the Special Preventive Group members were informed that examination/search of persons held in the facility often involves removing all clothes at the same time. Several detainees also mentioned that during strip-searches they were requested to do squats.

The Public Defender deems it imperative that strip-searches should be carried out in an appropriate setting and in a manner respectful of human dignity and within clearly determined procedures. During full body searches stripping different parts of body at once should not be requested and the so-called “doing squats” practice should be eradicated.

It should be mentioned in terms of medical treatment that initial medical examination does not include screening with appropriate tools for infectious diseases and mental health. **As a result of the inspection, the Special Preventive Group members found out that the majority of medicines in the medical room were expired.** There are no procedures for disposing of expired medicines in the facility.

In terms of legal safeguards, similar to the visit made to 2015,¹²⁶ it was revealed that it is still problematic for aliens set for removal to receive legal aid at the state’s expense.¹²⁷ A complaint box is absent in the facility. Confidentiality is not respected when dispatching letters as aliens are not provided with envelopes.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the Law of Georgia on Legal Aid with the effect of determining that an alien set to be removed shall be eligible for legal aid at the state’s expense.

RECOMMENDATION

To the Ministry of Internal Affairs of Georgia:

- To elaborate and approve a detailed statutory procedure determining that strip-searches are only conducted based on a concrete and reasonable suspicion and removal of all the clothes at the same time as well as squats are prohibited;
- To take all the measures, including by increasing the number of employees, to ensure that persons held in the facility are not restricted in being and exercising in open air; to equip the yard with the inventory necessary for physical exercise;

124 The Council of Europe, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014, CPT/Inf (2015) 12, published on 29 January 2015, available in English at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806940c4>, (accessed on 10.02.2017).

125 The Council of Europe, Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 April 2014, CPT/Inf (2015) 18, published on 31 March 2015, para. 22, available in English at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069568c>, (accessed on 02.03.2018).

126 The Public Defender of Georgia, the 2015 Report of the National Preventive Mechanism, p. 318, available at: <http://www.ombudsman.ge/uploads/other/3/3777.pdf>, (accessed on 16.02.2018).

127 An alien placed in the Migration Centre for removal is not on the list of those eligible for legal aid according to the Law of Georgia on Legal Aid.

- To increase the number of TV sets in wings and provide recreational equipment; to increase the number of books in the languages mainly used by persons held in the facility;¹²⁸
- To include various food necessary for health in menu (including fruits and vegetables); to allow detainees to buy food at the facility cafeteria used by the facility personnel;
- To take all necessary measures so that initial medical examination includes screening with appropriate tools for infectious diseases and mental health;
- To implement a procedure for disposing of expired medicines in the facility; and
- To ensure the possibility of submitting confidential complaints on the premises of the facility.¹²⁹

4.4. PSYCHIATRIC ESTABLISHMENTS

Mental healthcare remains a challenge in Georgia.¹³⁰ It is problematic to practically implement bio-psycho-social model of mental health care¹³¹ and to ensure the development of the field in accordance with the strategy and action plan. There are problems both in terms of funding and administration. This subchapter discusses the situation existing in those psychiatric inpatient establishments that were monitored in the reporting period. The major systemic issues that have been discussed by the Public Defender for years are touched upon again; previously made recommendations¹³² remain relevant to this date.

In the reporting period, the Public Defender's Special Preventive Group, together with the employees of the Department of Protection of the Rights of Persons with Disabilities of the Public Defender's Office, visited the Centre for Mental Health and Prevention of Drug Addiction (Tbilisi); the Tbilisi Centre for Mental Health;¹³³ the Surami Psychiatric Clinic; the National Centre of Mental Health (the village of Qutiri); Interregional Psychiatric Clinic (the city of Senaki) and the Clinical Psychiatric Hospital of the Republic (settlement Kakhaberi).

The Special Preventive Group received numerous allegations of physical and verbal abuse by staff from patients of the Surami Psychiatric Clinic, the National Centre of Mental Health and the Clinical Psychiatric Hospital of the Republic. In the Surami Psychiatric Clinic the group found degrading practice of male representatives of the administration asking female patients questions about personal hygiene in incorrect and unethical way and requesting to show intimate body parts.

Like in previous years, the following remain problematic in the Surami Psychiatric Clinic, the National Centre of Mental Health¹³⁴ as well as the intensive care unit of the Clinical Psychiatric Hospital of the Republic:

128 *Inter alia*, such as, English, Russian, French, Spanish, Arabic, Turkish, Hindi and Bengali.

129 It should be possible for persons held in the facility to have a complaint box on the premises and closed envelopes should be available.

130 See subchapter – Mental Health.

131 Under Article 4.c) of the Law of Georgia on Psychiatric Assistance, psychiatric assistance implies a set of measures aimed at examining and treating a person with a mental disorder and preventing aggravation; facilitation of his/her social adaptation and social reintegration.

132 See detailed information in the 2015 Special Report on Monitoring Psychiatric Establishments, available at: <http://www.ombudsman.ge/uploads/other/3/3695.pdf>, (accessed on 02.03.2018).

133 An ad hoc visit was carried out to the Centre for Mental Health and Prevention of Drug Addiction and the Tbilisi Centre for Mental Health on 8 February 2017. The visit was aimed at finding out whether the change in the methodology of funding the Mental Health Programme of 2017 resulting in the denial of multi-profile hospitals to provide psychiatric care had led to increase in the number of applications to the centres and their overcrowding. It was established that there was an increase by one third in the number of applications to the Centre for Mental Health and Prevention of Drug Addiction and the establishment worked on the verge of capacity limit. Furthermore, it appeared that since the monitoring carried out by the Special Preventive Group in 2015, the situation in the centres had not improved considerably.

134 There were a number of constructive and rehabilitative efforts made in the establishments in 2016-2017, which the Public Defender of Georgia welcomes. However, against the background of the existing poor material conditions in the establishment, unfortunately, it should be mentioned that at this stage, there are no substantial improvements.

extremely poor material conditions, the existing practice¹³⁵ of the use of methods of physical and chemical restraint,¹³⁶ inaccessibility of timely and adequate treatment of somatic diseases, long-term hospitalisation and involuntary medical intervention in the conditions of neglect.

In the opinion of the Special Preventive Group, there is no violence-free and safe environment in Surami Psychiatric Clinic, the National Centre of Mental Health and the Clinical Psychiatric Hospital of the Republic. There are frequent conflicts among patients, sometimes with both physical and verbal abuse.

Unfortunately, like in previous years, the patient's consent is obtained without timely providing the patient with full, accurate and comprehensible information. This is confirmed by the fact that interviewed patients do not have any information on their rights and though some of them have signed the informed consent forms when placed in an establishment, they constantly request discharge from the inpatient facility. A patient's consent to placement in an inpatient facility is still understood as consent to treatment. The situation has not changed when formally voluntary but in fact involuntary patients being beyond judicial control are unable to protect their rights. Inarguably, if a person is placed in an inpatient facility on a voluntary basis, he/she has a right to refuse treatment at any time¹³⁷ and leave the facility.¹³⁸ Contrary to this, patients are unable to leave inpatient facilities and they are subjected to forced administration of drugs and physical restraint. This contradicts the position taken by the CPT, which stresses that means of restraint should not be applied *vis-à-vis* formally voluntary patients. If it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately.¹³⁹

Despite the recommendations made by the Public Defender and the CPT for years, the management of mental disorders in psychiatric establishments is still based on pharmacotherapy and bio-psycho-social approach is not adopted. The practice of use of medicines of older generation continues¹⁴⁰ and side-effects of antipsychotic drugs are managed inadequately. There are shortcomings in terms of maintaining medical records and notes; there is no data of individual treatment plan in medical records; the extent of psychosocial rehabilitation is still extremely limited,¹⁴¹ which is preconditioned by the lack of necessary resources and specially trained personnel. Insufficient qualification of staff, poor working conditions and low remuneration remain problems. The issue of prevention of professional burnout is not addressed.

Treatment of patients' somatic (physical) health problems remains a challenge. Supply of patients with therapeutic drugs for somatic diseases is also problematic.¹⁴² Emergency medical treatment of patients is covered by the universal healthcare programme and planned service require partial self-funding, which is often impossible due to lack of financial resources. Besides, in most cases, there is a failure to organise consultation with a family doctor and further medical referral, which makes it impossible to use planned medical service

135 It is an assessment of the Special Preventive Group that the chemical restraint is used frequently and is not adequately documented. Physical restraint is used together with chemical restraint routinely. The necessity of physical restraint is not sufficiently reasoned. Along with medical personnel, unqualified non-medical personnel and sometimes even patients take part in physical restraint. The malpractice of the use of physical and chemical restraint is conditioned by understaffing and the lack of appropriate supervision over patients, as well as by inability to manage mental disorders through medication in the absence of appropriate psychosocial rehabilitation programs.

136 The Law of Georgia on Psychiatric Assistance does not define chemical restraint or the procedure thereof; the law does not determine the obligation to provide reasons for the use of this measure.

137 The Law of Georgia on Patients' Rights, Article 23.

138 The Law of Georgia on Psychiatric Assistance, Article 17.3.b).

139 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 11 December 2014, CPT/Inf (2015) 42, published on 15 December 2015, para. 151.

140 Like in previous years, procurement of medicines remains problematic due to insufficient funding and the legal framework regulating state procurement.

141 In 2017, the funding for psychosocial rehabilitation has not increased (70.1 GEL 1000); Available financial resources are not sufficient for effective research, introduction and actual implementation of effective rehabilitative methods at outpatient and inpatient levels.

142 The members of the Special Preventive Group found expired medicines in the dispensary of the Clinical Psychiatric Hospital of the Republic (the city of Senaki): 3 Sodium Chloride 500 ml. solution bottles; 10 tablets of Amisulpride 400 mg; and 6 tablets of Medilol Darnitsa. There were no best before labels on some medicines stored in the establishment, namely, 7 ampoules of Proserin (1 ml), 5 tablets (400 mg) of Amisulpride and 6 tablets (100 mg) of Fevarin. There were tablets of Cyclodol in the unit for male patients in the Clinical Psychiatric Hospital of the Republic from which the date of expiry was cut off and it was impossible to establish whether the medicine was expired or not.

envisaged by the universal healthcare programme. Furthermore, foreign nationals involuntarily placed in an inpatient facility are not provided medical treatment (of somatic diseases) at the state's expense, which is discriminatory. Therefore, the Public Defender of Georgia believes that it is imperative to ensure that, through amending respective programmes, patients (irrespective of their nationality) placed in an inpatient facility are treated for somatic diseases at the state's expense.

When placed in an inpatient facility, patients undergo general blood and urine tests, screening for hepatitis C, HIV/AIDS and glucose levels in blood are checked. Planned medical examination only covers general blood test which is done once a year. There are no screening examinations in the establishments. Dental services are mainly limited to tooth extraction and administration of painkillers in a number of cases.¹⁴³

The need to enhance state control over psychiatric establishments is a crucial systemic issue. The Law of Georgia on Psychiatric Assistance does not contain a provision that adequately regulates the procedure of examination of complaints and monitoring. Despite this, the Agency of State Regulation of Medical Activity is a legal entity of Public Law that is within the system of the Ministry of Labour, Health and Social Affairs of Georgia, which, among other authorities, controls the quality of medical assistance provided by legal entities and individuals and considers citizens' applications (complaints).¹⁴⁴ The LEPL Social Services Agency is under control of the Ministry of Labour, Health and Social Affairs of Georgia and implements the mental health programme.¹⁴⁵

The monitoring results showed that there is a problem in psychiatric establishments in terms of state supervision of mental health services and monitoring of patients' rights,¹⁴⁶ as the existing control mechanisms are mostly oriented on patients' complaints. In the absence of appropriate, accessible complaints procedure concerning the shortcomings of mental health services and human rights violations, it is impossible to ensure sufficient degree of state control. Therefore, it is important to ensure that the activities of the existing mechanisms become **regular, systemic and proactive**.

The internal complaints and feedback procedure in psychiatric establishments can be deemed as mere formality, as patients almost never use this procedure or complaint boxes. The interviewed patients are not aware of their rights and they have no information as to whom they should address complaints to. It is an assessment of the Special Preventive Group that it is important to take measures to address the following issues: a) to inform patients in the language they understand of their rights; b) to establish a simple and accessible complaints procedure based on patients' needs assessment; and c) to ensure internal and external proactive monitoring. The National Preventive Mechanism also believes that when determining terms and other procedural issues related to complaints handling, it is crucial to take into account the special needs of patients in psychiatric establishments and those practical difficulties they could face when exercising their right to appeal.¹⁴⁷

It is the assessment of the Special Preventive Group that for alleviating the poor conditions in psychiatric establishments, it is important to transfer to shelters those patients who, due to the lack of a shelter and social support are placed in the inpatient facilities for a long time and do not undergo active medical treatment. E.g., according to personnel of the Surami Psychiatric Clinic, one third of their patients do not need placement in the inpatient facility according to their medical condition and those patients should be transferred to a shelter. Unfortunately, the only shelter in the country is in the National Centre of Mental Health (the village of Qutiri)

143 During a visit made to the Surami Mental health Clinic on 25-26 January 2018, the establishment did not have a dentist.

144 Article 2.3.b-c) of the Statute of the LEPL Agency of State Regulation of Medical Activity approved by Order no. 01-64/n of the Minister of Labour, Health and Social Affairs of Georgia of 28 December 2011.

145 Under Article 7 of Annexes no. 12 – Mental Healthcare (programme code 35 03 03 01) of Resolution no. 638 of the Government of Georgia of 30 December 2016 on Approving the State Programme of Healthcare in 2017 and Resolution no. 592 of the Government of Georgia of 30 December 2016 on Approving the State Programme of Healthcare in 2018, the body responsible for the implementation of the programme is the LEPL Social Service Agency subjected to state control by the Ministry of Labour, Health and Social Affairs of Georgia.

146 For the purposes of this report the National Preventive Mechanism is not implied within the System of State Supervision and Control.

147 The problems related to the exercise of the right to appeal are discussed in the 2016 Parliamentary Report of the Public Defender of Georgia, pp. 188-190, available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 13.03.2016).

and can accommodate 100 beneficiaries. Beneficiaries of this shelter are isolated from the community and find themselves in extremely poor conditions. Therefore, the Special Preventive Group believes that, considering the existing situation, it is crucial to pay adequate attention to setting up shelters. Regrettably, despite overall increase of funding for the 2018 Mental Healthcare Programme,¹⁴⁸ in case of the shelter, the allocated daily expenditure per beneficiary has increased only by 2 GEL.¹⁴⁹ It is, therefore, important to maintain increase of funding for mental healthcare and ensure that, in 2019, the amount of daily expenditure for a shelter beneficiary is set equal to that of long-term inpatient care.¹⁵⁰

The Special Preventive Group believes that in 2018, as a minimum, the Ministry of Labour, Health and Social Affairs of Georgia should ensure needs assessment of those held in psychiatric establishments for longer than 6 months for discharging and referring them to community based services. Determining the number and the needs of persons discharged from inpatient hospitals and referring them to community based services will make it possible to estimate required financial resources. It should be borne in mind that when those long-term patients are discharged, the financial resources allocated for their long-term inpatient treatment will be released and it will be possible to use these resources as patient's social benefits. In its turn, this can facilitate the families to assume the role of a social supporter and whenever families fail to do so, the existing financial resources can be spent on providing a shelter.¹⁵¹ It is necessary to develop a plan for setting up shelters based on the estimated number of potential beneficiaries.

In conclusion, the Public Defender once again reiterates that for the purposes of development of mental health sector, it is important to facilitate irreversible process of de-institutionalisation. The budget for mental healthcare programme should be determined so as to facilitate implementation of objectives envisaged by the Strategic Document on Mental Healthcare and the Action Plan for 2015-2020.

PROPOSALS

To the Parliament of Georgia:

- To ensure amendment of the Law of Georgia on Psychiatric Assistance with the effect of clearly determining complaints procedure and the framework of external supervision/monitoring of psychiatric assistance and patients' rights;
- To amend the Law of Georgia on Psychiatric Assistance with the effect of defining chemical restraint, grounds for its exceptional use and procedure; to determine the obligation of the Ministry of Labour, Health and Social Affairs of Georgia to approve detailed instructions for the use of chemical restraint;
- To amend Article 16 of the Law of Georgia on Psychiatric Assistance with the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook); requirements to be met by a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of his/her right to appeal;
- To amend Article 16 of the Law of Georgia on Psychiatric Assistance with the effect of determining that means of restraint should not be applied *vis-à-vis* formally voluntary patients unless there is an extreme urgency of resorting to physical restraint; If it is deemed necessary to restrain a voluntary patient, the procedure for re-examination of his/her legal status (voluntary/involuntary) should be initiated immediately.

148 Compared to the previous year, in 2018, the funding of the mental healthcare programme is increased by 5 million Lari.

149 In 2017, 15 GEL was allocated for a daily expenditure of a beneficiary; and in 2018 – 17 GEL.

150 Daily expenditure per beneficiary in 2018 amounts to 23 GEL.

151 In the assessment of the Special Preventive Group, shelter component should be considered as a part of community based services.

RECOMMENDATIONS

To the Government of Georgia:

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

To the Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia

- To develop guidelines for interrogation of patients with mental disorders; to ensure training of prosecutors/investigators in specifics of questioning patients with mental disorders.

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

- To develop and implement urgently a plan for the eradication of extremely poor and degrading conditions in the Surami Mental Health Clinic and the National Centre of Mental Health (Qutiri) and ensure that patients are placed in conditions compatible with human dignity and secure therapeutic environment;
- For preventing violence among patients and maintaining safety, create a normative framework governing the following issues: implementation of an appropriate system of preliminary assessment of risks posed by an individual patient by personnel; multidisciplinary work, preventive measures to be taken for protecting patients from violence and ensuring security; appropriate supervision/observation of patients by personnel; adequate training of personnel; elaboration of standard operational procedures and de-escalation strategy; timely and adequate intervention immediately after a threat arises; documentation of incidents of violence and responses; and accountability and responsibility of personnel;
- To amend Instructions for the Rules and Procedures of the Use of the Methods of Physical Restraint against Patients with Mental Disorders as approved by Order no. 29/n of the Ministry of Labour, Health and Social Security of Georgia of 20 March 2007 with the effect of determining the following: maximum duration of physical restraint; obligation of documenting physical restraint in a special register (a special logbook), including the injuries sustained in the process by a patient and/or personnel; layout of a special register (a special logbook); detailed instruction for using physical restraint; specifications of special means to be used during physical restraint; place where physical restraint should be used and who can be present during the process; requirements for a special isolation ward; issues related to the use of video surveillance during physical restraint; obligation to consult a patient after the end of the measure and to inform him/her of the right to appeal;
- To ensure through amending respective programmes that patients (irrespective of their nationality) placed in inpatient facility involuntarily are treated for somatic diseases at the state's expense;

- To ensure needs assessment of patients placed in psychiatric establishments for more than 6 months for discharging and referring them to community based services; to elaborate a plan of setting up shelters based on estimated number of potential beneficiaries;
- To ensure assessment of the effectiveness of the existing monitoring system of psychiatric assistance and patients' rights by independent experts and subsequent elaboration of recommendations;
- To ensure regular, systemic and proactive monitoring of psychiatric establishments by LEPL the Agency of State Regulation of Medical Activity and the Agency of Social Services;
- To control through systemic monitoring the compatibility of conditions of psychiatric establishments with standards established by the statute on issuing licence for medical activity and permission to run inpatient establishment;
- To establish simple and accessible complaints procedure concerning psychiatric assistance and human rights violations; to determine the mandatory and uniform internal complaints and feedback procedure for all psychiatric establishments by adopting a normative act to that effect.

5. INVESTIGATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Effective fight against torture and other ill-treatment remains one of the most important challenges of the country. This finding is corroborated by the annual data summarised by the Public Defender based on numerous criteria. Like previous years, both practice and legislation remain problems in 2017. There is no independent, impartial, effective and timely investigation of the crimes allegedly committed by police officers. Like previous years, positive trend in this regard continue to take place in the penitentiary system as there is a significant decrease in the number of complaints concerning the incidents of ill-treatment. The system of appeals is wanting as isolated incidents of submission of complaints lead to a chilling effect. The submitted draft Law on the Office of the State Inspector is in itself a step made forward, however it contains significant shortcomings.

5.1. PRACTICE

It is commendable that, from year to year, there are fewer complaints concerning the ill-treatment of prisoners. None of the proposals made by the Public Defender in 2017 concerned alleged ill-treatment of prisoners by staff, whereas out of 10 proposals sent in 2016, 3 proposals were about alleged ill-treatment.

However, the effectiveness of the investigation of ill-treatment is a challenge. None of the requests submitted by the Public Defender concerning instituting investigation over incidents of ill-treatment resulted in identifying the perpetrators. In 2013-2017, the Public Defender submitted 72 proposals to the Office of the Chief Prosecutor of Georgia,¹⁵² requesting investigation of incidents of alleged ill-treatment by police officers and prison staff. **In none of these cases did the prosecutor's office identify alleged perpetrators.**¹⁵³

In 2017, the situation has not changed in terms of results as out of 10 proposals requesting investigation the prosecutor's office has not identified a perpetrator in any of those cases. It is noteworthy that there were 2 underage individuals among the alleged victims.

It's noteworthy that an investigation is instituted as a rule following a proposal by the Public Defender.¹⁵⁴ However, since it does not lead to a tangible result, this fact does not make up for the existing problem.

Apart from proposals, the Public Defender of Georgia sends numerous letters to the Office of the Chief Prosecutor of Georgia requesting information about the investigations in progress. The Office of the Public Defender requested information in 2017, too, about investigation against officials of the Ministry of Internal Affairs instituted under the provisions of the Criminal Code sanctioning torture, the threat of torture, degrading or inhuman treatment, abuse of official power, and other provisions.¹⁵⁵ According to the received information, out of 238 criminal cases registered in 2017, prosecution was started in only 3 cases, and

152 The Public Defender requests institution of investigation only in those cases where numerous sources of information gathered confirm the suspicion that a person could be a victim of ill-treatment (Article 21 of the Organic Law of Georgia on the Public Defender). Those cases are when arrestees have bodily injuries that were registered in various documents, including in the reports of external examination drafted when placing an arrested person in a TDI, forensic reports, and other evidence.

153 Letter no. 13/10515 of the Office of the Prosecutor's Office of Georgia, dated 10 February 2018.

154 Investigation was not instituted only in seven cases out of 72 proposals.

155 Letter no. 15-9/525 of the Office of the Public Defender of Georgia, dated 11 January 2018.

investigation discontinued in 19 cases due to nonexistence of a crime.¹⁵⁶ It is unclear to the Public Defender's Office which year's incidents these investigations were concerned with.¹⁵⁷

Ineffectiveness of investigation is also confirmed by lack of involvement of an alleged victim in investigation. Out of 72 cases mentioned above, the victim status was granted only in 2 cases. Moreover, out of this 2 cases, in one case an obligation to grant the victim status was imposed on the basis of court decision.¹⁵⁸ Hence, given the fact that only victim is allowed to get acquainted with pending investigation, only 2 individuals concerned were allowed to use this opportunity.

Another indicator of the ineffectiveness of the investigations is an incorrect legal assessment, i.e., incorrect characterization of an act. In the Public Defender's opinion, out of 10 proposals submitted in 2017, in 6 cases, an investigation was instituted under a wrong article of the Criminal Code.¹⁵⁹ The correct characterization of the incidents of ill-treatment is important, since characterization under other articles involves relatively lenient penalties.¹⁶⁰

The ineffectiveness is demonstrated by incomprehensive, one-sided and delayed investigation as well. Like 2016,¹⁶¹ in 2017 the Public Defender's Office inspected several cases and¹⁶² investigations of case-files in proceedings that were discontinued¹⁶³ and incidents of ill-treatment, and established that none of the cases had been effectively investigated.

In one of the cases,¹⁶⁴ the investigation started with a delay of two weeks.¹⁶⁵ In the same case, the investigation could not dispel considerable misgivings that a citizen sustained injuries in a police station which was obvious from the case-files of the investigation.¹⁶⁶ It is noteworthy that in this case, the investigation was resumed based on a court decision.¹⁶⁷

In one of the cases, the prosecutor's office excluded the facts of the crime and discontinued investigation¹⁶⁸ based on the reports of police officers who conducted the interviews, according to which they were somewhere else during the commission of the crime, and not at the place indicated by the alleged victim.¹⁶⁹ Considering how easy it is to prepare interview reports with altered time-frames, it was necessary to verify police officers' whereabouts with other sources (CCTV cameras, cell phone towers, etc.). However, no investigative acts were carried out to this effect. It is commendable that the prosecutor's office followed the Public Defender's recommendation¹⁷⁰ about resuming the investigation.¹⁷¹

156 Letter no. 13/14364 of the Prosecutor's Office of Georgia, dated 26 February 2018.

157 Letter no. 15-9/3504 the Office of the Public Defender of Georgia, dated 2 March 2018.

158 Prosecutor's denial to grant a victim status was lodged before the court by an individual concerned. By a decision no. 7/6129 dated 2 May 2017, the Tbilisi City Court allowed the applicant's claim and the latter was granted a victim status.

159 Article 333 of the Criminal Code of Georgia (abuse of official power). In other four cases, the acts were characterised correctly under Articles 1441-1443 of the Criminal Code.

160 Unlike the crimes of torture and ill-treatment, for which the domestic and international normative framework imposes a strict regime without allowances, there is a more lenient approach determined for abuse of official power and similar crimes, e.g., there are statutory limitations and plea agreement can be concluded, whereas such allowances are prohibited in crimes of torture and other ill-treatment.

161 Information is available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 11.03.2018), pp. 825–839.

162 Investigation discontinued in those cases that were instituted based on the Public Defender's proposals.

163 In these cases, prosecutor's office discontinued investigation due to nonexistence of crime.

164 Information is available at: <https://goo.gl/11Tq5B>, (accessed on 11.03.2018).

165 The Public Defender sent a proposal to the Chief Prosecutor of Georgia on 27 February 2017 requesting institution of investigation and investigation started on 15 March 2017.

166 According to the case-files of the investigation, the person concerned went to a police station completely healthy. After leaving the police station, the person concerned went home by a taxi, called an ambulance, and was transferred to a clinic. The chronology of these events can be established by a reasonable calculation of time – how much time they would need to reach home according to the address; time for calling an ambulance and later transfer to a clinic. The investigation has no evidence that after I.K. left the police station, there was any other source of injury even remotely suggesting that I.K. could have sustained injuries after leaving the police building.

167 Letter no. 13/77628, dated 30 November 2017.

168 Information is available at: http://pog.gov.ge/geo/news?info_id=1405, (accessed on 11.03.2018).

169 There were no investigative acts carried out for verifying these circumstances and establishing the more credible sources about the whereabouts of police officers; the investigative authorities have not carried out any investigative acts for establishing the degree of injuries sustained by the alleged victim; the police officers identified by the alleged victim have not even been interviewed. There has been no attempt on the part of the prosecutor's office to obtain neutral evidence at the investigative stage.

170 Recommendation no. 15-7/2252 of 9 February 2018.

171 Information is available at: <https://goo.gl/MUwrwY>, (accessed on 11.03.2018).

In one of the cases,¹⁷² though investigation started in the Chief Prosecutor's Office, under a prosecutor's instructions, investigative actions were ordered to be carried out by prosecutors and investigators of the agency, employees of which were alleged perpetrators in the incident.

One of the examples of ineffective investigation in 2017 was the incident involving a physical attack on the Auditor General on 13 May 2017.¹⁷³ According to the Auditor General L.T., former Chief Prosecutor O.P., together with other persons accompanying him, physically attacked him regarding an issue related to official duties. The investigation has not established to this date the persons responsible for the attack and L.T. has not been recognised as a victim.¹⁷⁴

In 2017, there were also problems regarding effective appeal, which is a significant aspect of fight against ill-treatment. In one of the cases, a judge considered an accused person's allegation as not credible, and discussed this issue in the judgment. In particular, the judge heard the case against the accused concerning the commission of a concrete crime, when the accused stated during a hearing that they had been subjected to ill-treatment. The judge, instead of drawing the prosecutor's attention to the matter and requesting the beginning of an investigation, in the reasoning part of the sentence, the judge opined that the accused person's allegations were not credible.¹⁷⁵ It is noteworthy that there is a similar statement by the court in another sentence,¹⁷⁶ which was used by the investigative body as a reason not to institute investigation.¹⁷⁷ This shows that such an approach by a court may have an encouraging effect for ineffective investigation of ill-treatment.¹⁷⁸

There was a positive step made in terms of ensuring effective appeal, when the Tbilisi City Court took into account¹⁷⁹ the Public Defender's *amicus curiae* brief¹⁸⁰ and acquitted an accused person.¹⁸¹ The charges concerned false report of a crime and false statements and was based on the information submitted by the accused person to the Public Defender's Office.¹⁸²

5.2. DRAFT LAW ON THE OFFICE OF THE STATE INSPECTOR

The Public Defender has made numerous recommendations concerning the establishment of an independent investigative mechanism.¹⁸³ The Public Defender's Office prepared a special report¹⁸⁴ and took part in the elaboration of the draft law about establishing a special agency vested with investigative and prosecutorial powers.¹⁸⁵

172 Proposal no. 15-5/10465 of the Public Defender of Georgia of 8 September 2016 with regard to alleged ill-treatment of convict G.B.

173 Information is available at: <https://sao.ge/news/877>, (accessed on 27.03.2018).

174 Letter no. 13/18674 of the Prosecutor's Office to the Public Defender's Office, dated 14 March 2018.

175 For said reasoning, the Public Defender of Georgia sent a proposal by Letter no. 15-5/14708 on 24 October 2017 to the High Council of Justice of Georgia, and requested the beginning of disciplinary proceedings. The proposal was submitted because the manner of the examination of alleged ill-treatment amounted to a breach of judicial ethics.

176 Sentence no. 1/019-15 of Mtskheta District Court of 7 July 2015.

177 Letter no. 13/76186 of the Office of the Chief Prosecutor of Georgia, dated 24 November 2017.

178 For said reasoning, the Public Defender of Georgia sent a proposal by Letter no. 15-5/14708 on 24 October 2017 to the High Council of Justice of Georgia, and requested the beginning of disciplinary proceedings. The proposal was submitted because the manner of the examination of alleged ill-treatment amounted to a breach of judicial ethics.

179 Information is available at: <https://goo.gl/WZjRem>, (accessed on 11.03.2018).

180 Information is available at: <https://goo.gl/bpideH>, (accessed on 11.03.2018).

181 A judge stated in express terms in the sentences that, among other circumstances, they relied on the *amicus curiae* brief of the Public Defender of 24 August 2015. The brief was based on the analysis of the legislation and practice of the Council of Europe member states as well as various international instruments, and reviewed positive obligations undertaken by the state with regard to fight against ill-treatment, according to which it is impermissible to order, apply, permit or tolerate any sanction against any person for having communicated to the human rights protection institutions any information, whether true or false.

182 Sentence no. 3447-15 of the Tbilisi City Court of 10 November 2017, in the case against G.O.

183 Information is available at: <https://goo.gl/anwfjB>, (accessed on 11.03.2018); see also Georgia in Transition, Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, 2013, available at: http://gov.ge/files/288_38635_607369_Hammarbergreport-getm.pdf, (accessed on 11.03.2018.)

184 The Practice of Investigation of Alleged Crimes Committed by Law Enforcement Officials, Legislative Regulations and International Standards of Effective Investigation, available at: <http://www.ombudsman.ge/uploads/other/1/1702.pdf>, (accessed on 11.03.2018).

185 Information is available at: <https://goo.gl/mieVwS>, (accessed on 11.03.2018).

The Ministry of Justice prepared a draft law, according to which the Office of the State Inspector is set up within the Office of the Personal Data Protection, and it will investigate certain crimes (e.g. ill-treatment) committed by public officials. Despite the fact that the draft law submitted by the Ministry of Justice does not provide for vesting prosecutorial authority to the new agency, and requires clarification on a number of issues, the Public Defender believes that in case her comments are taken on board, the draft law might play a positive role in investigating ill-treatment.¹⁸⁶ The Public Defender submitted her own observations concerning various aspects of the draft law, following which could improve investigation of the incidents of ill-treatment and deprivation of life.¹⁸⁷

First and foremost, the scope of the regulation of the proposed draft law is deficient as according to the draft law, the State Inspector cannot investigate crimes committed by the Minister of Internal Affairs and the Head of the State Security Service. The recent experience of Georgia shows that this kind of a restriction is not advisable.

The activity of the State Inspector will be precluded by Article 33 of the Code of Criminal Procedure of Georgia, which authorised the Chief Prosecutor to take one case from one agency and transfer it to another without following investigative jurisdiction requirements. The investigative jurisdiction established by the draft law, therefore, can be limited at any time by the Chief Prosecutor of Georgia. As a result, it might happen so that investigators and officials allegedly involved in the commission of a crime could be again from the same agency.

The main challenge is that the prosecutor's office maintains procedural supervision over investigation conducted by the State Inspectorate. This implies full supervision by the prosecutor's office. Stemming from procedural regulation, a prosecutor's instructions (in both a negative and positive sense) will be mandatory for investigators of the Office of the State Inspector. If the draft law aims at establishing an independent investigative mechanism, it is imperative to allow the Office of the State Inspector to conduct investigation independently, and without a prosecutor's mandatory instructions.

5.3. SPECIAL REPORT ON EFFECTIVE RESPONSE OF GENERAL INSPECTORATES

Effective fight against ill-treatment implies averting the abuse of power at the initial, relatively minor stage. For inspecting this very issue, the Office of the Public Defender examined how general inspectorates of the Office of the Chief Prosecutor, the Ministry of Internal Affairs, the Ministry of Corrections and the State Security Service follow up on citizens' complaints.¹⁸⁸

As the research identified, in most of the cases, there is no disciplinary responsibility established. Citizens' applications are not examined in a comprehensive manner; the procedure is not transparent and often protracted. During some of the official inspections, easily accessible information which is relevant to the case concerned is not gathered, among others; all eye-witnesses are not interviewed, sometimes even an alleged victim is not interviewed, and video recordings are not seized. The reasoning of final decisions adopted by inspectorates is a considerable problem. Besides, applicants are not provided with case-files of official inspections conducted, which affect people's confidence in legality and fairness.

186 Information is available at: <https://goo.gl/4w4jEh>, (accessed on 11.03.2018).

187 *Idem*.

188 Available at: <https://goo.gl/gT86Hm>, (accessed on 11.03.2018).

5.4. COMMUNICATIONS WITH THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

As the effective fight against ill-treatment is a significant challenge, one of the priorities the Public Defender in this regard is to enhance advocacy. In the reporting period, the Public Defender submitted to the Committee of Ministers two communications. These documents concern honoring positive obligations undertaken by the country in terms of the effective investigation of ill-treatment.

The opinion submitted on 5 September 2017 concerns the so-called Gharibashvili Group cases, in which the Committee of Ministers ordered Georgia to resume investigation in the incidents of torture, inhuman treatment and deprivation of life. The document discusses shortcomings of both a legislative and practical nature.¹⁸⁹

The opinion submitted on 7 December 2017 concerns the progress of implementation of general measures identified in the so-called Tsintsabadze Group and Identoba Group cases. The document discusses the practice of the examination of citizens' complaints by the Inspectorate General of the security forces.¹⁹⁰

It is noteworthy that the Committee of Ministers considered the above documents in the monitoring process of honouring commitments by Georgia.¹⁹¹

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To allow the Office of the State Inspectorate to conduct investigative acts independently, without mandatory instructions of a prosecutor;
- To limit the discretion of the Chief Prosecutor concerning transferring cases falling under the competence of the Office of the State Inspector to another investigative authority; and
- In accordance with the Rules of the Parliament of Georgia to set up a working group within a committee to work on the systemic reform of Inspectorate General of law enforcement agencies.

RECOMMENDATIONS

To the Prosecutor's Office of Georgia:

- To process and proactively publish statistics on the dates of receiving information about ill-treatment, and instituting investigations;
- To inform in detail the Public Defender, in case the latter requires about those investigative and procedural acts (indicating respective dates) carried out in response to alleged ill-treatment within ongoing investigations;
- To inform the public periodically about the progress made in the investigation concerning the attack on former Auditor General L.T.; and
- To start working on systemic reform of Inspectorate General with the participation of the Public Defender, and representatives of civil society.

To the Ministry of Internal Affairs of Georgia

- To equip to the maximum extent all units of the Ministry of Internal Affairs with requisite video cameras capable of recording in a continuous fashion in those places where citizens have direct contact with representatives of law enforcement authorities, and to inform the Public Defender's Office about the implemented activity.

189 Information is available at: <https://goo.gl/SV8BPR>, (accessed on 11.03.2018).

190 Information is available at: <https://goo.gl/FfCMe9>, (accessed on 11.03.2018).

191 Information is available at: <http://hudoc.exec.coe.int/eng?i=004-5830>, (accessed on 11.03.2018).

6. THE RIGHT TO LIBERTY AND SECURITY

In 2017, several trends were revealed in terms of the right to liberty and security. In particular, several problems were identified with regard to the application of preventive measures and extradition detention, viz., the judgment adopted by the European Court of Human Rights with regard to former Prime Minister Ivane Merabishvili gave rise to the state's obligation to take individual measures for restoring the seriously violated right to liberty of the applicant; increase in the term of administrative arrest unjustifiably restricted the right to liberty in a vacation period; and the practice of administration of tests for drugs, i.e., subjecting a person to mandatory drug test remains unregulated. The so-called raids carried out by police in the recent period gave rise to numerous misgivings in terms of their legitimacy and proportionality.

6.1. PREVENTIVE MEASURES

The full picture of the application of preventive measures is not considerably different from the previous year. Based on the statistical data of the Supreme Court, the application of preventive measures remains the same in terms of the type and percentage, only with minor changes being noticeable. In particular, detention and bail are the main types of preventive measures and other types of preventive measures are rarely used.¹⁹²

The quantitative indicator of the use of detention as a preventive measure went up slightly but steadily by 5 % compared to 2016.¹⁹³ Accordingly, the percentage of the use of non-custodial measures went down.¹⁹⁴ The use of bail among non-custodial measures went up by approximately 7%, compared to the previous year.¹⁹⁵

In the reporting period, the Office of the Public Defender of Georgia inspected decisions on the application of detention as a preventive measure adopted by several¹⁹⁶ district and city courts¹⁹⁷ and, accordingly, reasoning of interference with accused persons' right to liberty.

The examination of the decision demonstrates that a judge does not assess circumstances individually thus leading to application of a disproportionate and unjustified preventive measure. There is no discussion in the decisions explaining what those specific threats are that need to be neutralised by selected preventive measures. For instance, a court when applying detention indicates *in abstracto* the risks that an accused person will continue criminal activity and will exert influence on witnesses and victims. However, the specific circumstances on which the risks are based are not indicated in the decisions. A judge does not discuss either as to why less strict preventive measures cannot neutralise the identified threats.

192 Information is available at: <http://www.supremecourt.ge/files/upload-file/pdf/2017w-statistic-7.pdf>, (accessed on 4.3.2018).

193 Based on the Supreme Court's data of the previous year, in 2016, detention was applied in 29.1% of the cases; and in 2017, in 34.2% of the cases.

194 Based on the Supreme Court's data of the previous year, in 2016, a non-custodial preventive measure was applied in 70.9% of the cases; and in 2017, in 65.8% of the cases.

195 Based on the Supreme Court's data of the previous year, in 2016, bail was used among non-custodial preventive measures in 85.4% of the cases; and in 2017, in 92.8% of the cases.

196 The Public Defender's Office examined decisions taken within one month by the district courts of Telavi, Gurjaani, Mtskheta, Gori, Khashuri, and Senaki and city courts of Kutaisi and Poti.

197 Since the decisions adopted in the previous years by the city courts of Tbilisi and Batumi were more reasoned compared to other courts' decisions, decisions from these two courts were not requested in the reporting period.

There were cases of unreasonable detention identified, where a court indicated to the circumstance justifying the necessity of applying detention, namely, commission of a white collar crime weakens the confidence of the public in state authorities.¹⁹⁸ The same decision gave reasons for the necessity to apply detention against an accused as “the threats posed against gathering evidence and influencing witnesses were not excluded altogether”. The court further opined that there was information that the accused has committed similar acts in the past and would reoffend unless detained. However, the order is reticent about charges brought (or past conviction) for other acts. Therefore, a judge, when applying detention relied only on the presumption that the accused had committed other criminal acts in the past, though that submission by the prosecution is not confirmed by any document.

There are cases of standard references to judgements of the European Court of Human Rights and other international instruments. However, those standards are not applied to the individual circumstances before the court and proportionate decisions are not reached.

Details of properties owned by accused persons are unclear in the decisions on the application of bail. Similarly, the consent and financial situation of those who might undertake to post bail for accused persons is not apparent. In those cases where an accused person is unable to post bail due to his/her financial situation, this could become a ground for application of detention. To avert this risk, it is imperative that judges examine in advance whether accused persons could post bail.

In addition to preventive measures, the legislation of Georgia allows the application of various measures to achieve the objectives of justice.¹⁹⁹ This allows for the application of more lenient preventive measure.

6.2. EXTRADITION DETENTION

In the reporting period, the Office of the Public Defender of Georgia also revealed the problem of reasoning of extradition detention (in particular, the failure to comply with the statutory standard of application of detention to those charged with a crime committed on the territory of Georgia²⁰⁰). The Public Defender of Georgia discussed this obligation to provide reasoning based on international and national standards in one of the *amicus curiae* briefs submitted regarding one of the cases.²⁰¹

The problem of lack of reasoning of extradition detention is demonstrated particularly acutely by the high statistical data on its application. In particular, out of motions submitted to the Batumi City Court from 1 January to 31 July 2017, the court upheld 100% of the motions,²⁰² whereas the Tbilisi City Court upheld 89.5% of the motions.²⁰³

In 2017, extradition of Turkish national E.M.C. to Turkey was a case of particular significance, enforcement of which could create imminent physical threat to the accused person.

In May 2017, based on the request of competent authorities of the Republic of Turkey, Turkish national E.M.C. was arrested for extradition to Turkey. The extradition detention of E.M.C. was extended twice and finally, based on prosecutorial motion, extradition detention was replaced by bail after which E.M.C. was released from detention.

198 “The very high risks posed by the crime itself that undermining normal functioning of state agencies, their prestige as well as the quality of confidence in the public that should be a subject of particular concern for a public official and not only.”

199 The Criminal Procedure Code of Georgia, Article 199.2.

200 The Law of Georgia on International Cooperation in Criminal Matters, Article 30.

201 Information is available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-curiae2/sasamartlos-megobris-mosazreba-saeqstradicio-patimrobastan-dakavshirebit.page>, (accessed on 4.3.2018).

202 7 motions were examined.

203 19 motions were examined.

During court hearing on extradition, in particular, when the prosecutor's office of Georgia filed at the Tbilisi City Court a motion for extraditing E.M.C. to the Republic of Turkey, the Public Defender of Georgia submitted to the court an *amicus curiae* brief,²⁰⁴ emphasising those threats that the accused person could face in the receiving country:

- Ill-treatment;
- Persecution on account of political opinions;
- Failure to exercise the right to a fair trial.

The abovementioned threats were corroborated by numerous reports of international organisations which resulted in European countries' refusal to extradite Turkish nationals to Turkey.²⁰⁵ It is also noteworthy that, stemming from the high likelihood of threat, on 19 February 2018, the UN Committee against Torture requested Georgia to abstain from extraditing E.M.C. to Turkey before the case was discussed in the committee.²⁰⁶

6.3. THE CASE OF IVANE MERABISHVILI

In the case of Ivane Merabishvili, the European Court of Human Rights found a serious violation of the right to liberty and security of person for the purposes other than those prescribed by the European Convention on Human Rights.²⁰⁷ For the restoration of this right, Georgia has yet to carry out effective measures. The violation of Article 18 taken in conjunction with a serious interference with the right to liberty of person is a rare occasion in the European Court's practice.²⁰⁸ In such cases, the respondent states mostly respond with the domestic measures involving the applicant's release.²⁰⁹

The Public Defender of Georgia deems that for the enforcement of the European Court's judgment regarding Ivane Merabishvili, the Georgian authorities, under the supervision of the Committee of Ministers of the Council of Europe, should take all necessary individual and general measures for comprehensive and timely execution of the judgments as required by article 46 of the European Convention.²¹⁰

6.4. INCREASE IN THE TERM OF ADMINISTRATIVE ARREST

Amendment of the Code of Administrative Violations of Georgia in the reporting period²¹¹ could give rise to violation of the right to liberty and security of person.

204 Information is available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-curiae2/saqartvelos-saxalxo-damcvelma-sasamartlos-megobris-mosazrebit-mimarta-tbilisis-saqalaqo-sasamartlos.page>, (accessed on 22.3.2018).

205 The Public Defender's *amicus curiae* brief no. 15-2/1905, dated 5 February 2018 reflects in detail the information on threats by analysing various authoritative resources, information is available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/amicus-curiae2/saqartvelos-saxalxo-damcvelma-sasamartlos-megobris-mosazrebit-mimarta-tbilisis-saqalaqo-sasamartlos.page>, (accessed on 15.3.2018).

206 Information is available at: <http://justice.gov.ge/News/Detail?newsId=7621>, (accessed on 7.3.2018).

207 *Merabishvili v. Georgia*, application no. 72508/13, judgment of the Grand Chamber of the European Court of Human Rights of 28 November 2017.

208 The violation of Article 18 of the Convention for the Protection Human Rights and Fundamental Freedoms were only found in 7 cases: *Gusinskiy v. Russia* (application no. 70276/01); *Cebotari v. Moldova* (application no. 35615/06); *Lutsenko v. Ukraine* (application no. 6492/11); *Tymoshenko v. Ukraine* (application no. 49872/11); *Merabishvili v. Georgia* (application no. 72508/13); *Rasul Jafarov v. Azerbaijan* (application no. 69981/14); and *Ilgar Mammadov v. Azerbaijan* (application no. 919/15). All the applicants, except for Ilgar Mammadov have been released from the places of deprivation of liberty.

209 Among other examples, the following cases are noteworthy: Ukraine released former Prime Minister Tymoshenko by a parliamentary resolution and released former Minister of Internal Affairs by a presidential pardon; Azerbaijani journalist Rasul Jafarov was also released by a presidential pardon. Information is available at: <https://rm.coe.int/compilation-decisions-2014-2018-en-/168077e33a>, (accessed on 4.3.2018).

210 Under Article 46.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

211 Article 247.1; and Article 247.2.

The wording of the Code of Administrative Violations of Georgia that has been in effect as of 1 November 2017 gives rise to the risk of unlawful restriction of the rights of those arrested in administrative proceedings and worsens their legal status. In particular, despite the 12-hour statutory term of administrative detention,²¹² a person arrested in a vacation period, can be placed in a TDI for no less than 48 hours before the consideration of the case starts.²¹³

While the Constitution of Georgia allows 48-hour arrest,²¹⁴ it does not mean that this term should be automatically applied in all cases. Any arrest even for an hour requires a self-standing relevant ground substantiated by evidence.

Besides, it should be borne in mind that the procedural legislation of Georgia counts a vacation period against procedural terms.²¹⁵ Days-off, holidays and night hours are not impediments for bringing an arrested person charged with a crime before a court.

According to the established case-law of the European Court of Human Rights, the ECHR requires the Contracting States to organise their legal systems to enable the courts to comply with its various requirements. It is incumbent on the judicial authorities to make the necessary administrative arrangements, even during a vacation period, to ensure that urgent matters are dealt with speedily and this is particularly necessary when the individual's personal liberty is at stake.²¹⁶

Accordingly, a vacation period of state agencies cannot justify extending the arrest term and allowing administrative arrests for an unreasonably lengthy period.

6.5. TESTING FOR DRUGS

Like the previous years, interference with the right to liberty and security of person for administration of drug test remained problematic in 2017 too. According to the information submitted by the Ministry of Internal Affairs of Georgia to the Office of the Public Defender of Georgia, in 2017, 13,175 individuals were brought to the Forensic Department for administration of drug tests. 1,261 persons refused to submit biological samples and out of those who submitted biological sample for testing for drugs (11,914 individuals), the test results of 5,318 individuals were negative.²¹⁷

Law of Georgia on Police imposes an obligation on police officers to discontinue legal action in those cases where it is clear that an objective is unattainable.²¹⁸ Despite the express requirement of the law, there are frequent cases, where police officers do not take accused persons' refusal to submit biological samples into account and bring them against their will to a forensic building for administering drug tests or they do not release them after they refuse to undergo a drug test in a forensic building. Therefore, if a person is brought to a forensic building for administering a drug test, even though the person refuses to submit biological samples, restriction of a person's freedom by police officers will be unjustified and disproportionate.

In 2015, the Public Defender of Georgia lodged a constitutional complaint²¹⁹ with the Constitutional Court regarding this problem and requested a pronouncement on those legislative acts that allow law enforcement

212 The Code of Administrative Violations of Georgia, Article 247.1.

213 The Code of Administrative Violations of Georgia, Article 247.2.

214 The Constitution of Georgia, Article 18.3.

215 The Criminal Procedure Code of Georgia, Article 86.2.

216 *Inter alia*, see, *E. v Norway*, application no. 11701/85, judgment of the European Court of Human Rights on 29 August 1990, para. 66.

217 Letter no. MIA 8 18 00118482 of the Ministry of Internal Affairs of Georgia, dated 16 January 2018.

218 The Law of Georgia on Police, Article 12.5.

219 Constitutional complaint no. 697, dated 25 November 2015, information is available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/sakonstitucio-sarchelebi/saxalxo-damcvelma-ew-quchis-narkotestirebis-kanonierebastian-dakavshirebit-konstituciuri-sarcheli-waradgina.page>, (accessed on 22.3.2018).

officers to transfer individuals to a forensic institution for the administration of drug tests without their will as unconstitutional. The Constitutional Court was presented with observations arguing about the unconstitutionality of the impugned procedure with regard to fundamental human rights and freedoms. Among others, it is noteworthy that administration of a drug test gives rise to interference with the right to liberty under Article 18 of the Constitution and the privilege against self-incrimination as the biological samples are used to incriminate him/her. As of March 2018, the Constitutional Court of Georgia has not adopted a final judgment in this case.

6.6. SPECIAL STOP AND SEARCH PROCEDURES BY POLICE (THE SO-CALLED RAIDS)

Like the previous years, the measure of special stop and search procedure was carried out several times across Georgia in 2017.²²⁰ Particular outcry was caused by the measure carried out on 22-24 December. There were numerous considerable shortcomings found out by the examination of the ground and the result of this measure as well as the study of the case-files of Z.R.

The special stop and search procedure is a specific measure of policing which is carried out only in particular cases and should be aimed at preventing a concrete crime.²²¹ In practice, it is used for general prevention of crime throughout the entire territory of Georgia and results in unjustified interference with the right to liberty of citizens.²²² Carrying out of a so-called raid without a concrete purpose renders it ineffective.²²³

Interference with the rights of any person based on dubious grounds, for 36 hours, throughout the entire territory of Georgia is a disproportionate response to a threat. It is noteworthy that the law does not require giving reasons for an order authorising a stop and search measure, which makes it practically impossible to challenge it before a court. There is no prosecutorial or judicial control applied to conducting stop and search.

To make up for intensive interference with citizens' rights, the law requires police to maintain communication with citizens by video recording technology attached to officers' uniforms.²²⁴ It should be noted that, despite the requirement to wear body cameras, numerous employees²²⁵ of the Ministry of Internal Affairs are not officially equipped with the said devices.²²⁶

The statutory provision on the use of video recording device is imperative and does not allow different interpretation or exception. Because of this, the Public Defender has been recommending to the Ministry of Internal Affairs for years to equip the ministry's units with body cameras.²²⁷ However, this recommendation has not been complied with fully as of 2017.

The failure to comply with the express statutory requirement is obvious in the case of Z.R. Considerable force was used when arresting Z.R., which resulted in numerous bodily injuries.²²⁸ Police officers were not equipped

220 In particular, on 16-17 January 2017; on 26-27 January 2017, on 14-15 February 2017; and on 22-24 December 2017.

221 The Law of Georgia on Police, Article 24.1.

222 See, e.g. Order no. 74 of the Minister of Internal Affairs of 14 February 2017 and Order no. 604 of the Minister of Internal Affairs of 21 December 2017. There is no reference in either of the orders to a specific crime.

223 E.g., during stop and search carried out on December 22-24, 52,000 individuals were inspected, out of whom 127 individuals were arrested for various crimes/violations (0.002% of the total number).

224 The Law of Georgia on Police, Article 24.5.

225 The ministry's territorial agencies, the Central Criminal Police Department, Special Task Department and Patrol Police Department.

226 The Public Defender's Office has requested information as to which units have the necessary equipment. However, the Ministry of Internal Affairs, in its Letter no. MIA01800398574, dated 19 February 2018, did not submit detailed information. It is noteworthy that at Z.R.'s court trial held on 27 December 2017, attended by the Public Defender's representative, a representative of the Ministry of Internal Affairs confirmed that employees of the Criminal Police Department are not equipped with body cameras.

227 See the 2016 Parliamentary Report of the Public Defender of Georgia, p. 293; also, the 2015 Parliamentary Report of the Public Defender of Georgia, p. 218.

228 When placed in a TDI, there were 11 injuries of various kinds found on various parts of Z.R.'s body (upper and lower limbs, head and back); see medical examination form no. 55342 filled out upon placing an arrested person into a TDI, pp. 8-9.

with body cameras. Neither had they recorded the arrest with their mobile phones. Due to refusal to document the arrest, to this date there are serious misgivings in the public regarding the legality and proportionality of the physical force used.

The Public Defender's Office requested detailed information about stopping, transferring for identifying/subjecting to drug test; searching, seizing, arresting and other acts carried out within police control; and information about court decisions that were adopted after these acts had been carried out and citizens' complaints had been lodged. According to the letter received from the Ministry of Internal Affairs, citizens applied to the Inspectorate General on 190 occasions, however, no violation was found in any of these cases.²²⁹

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To amend the Code of Administrative Violations of Georgia with the effect of prohibiting administrative arrest for longer than 12 hours, without bringing arrestees before a court and without a court decisions, invoking a vacation period
- To amend the Law of Georgia on Police with the effect of making it obligatory to provide reasoning about the purpose and grounds for carrying out special stop and searches in the minister's written order

RECOMMENDATIONS:

To the Government of Georgia

- To take individual and general measures for restoring in full Ivane Merabishvili's violated right

To the Prosecutor's Office of Georgia

- To conduct new, effective, thorough and detail investigation concerning the incident of taking Ivane Merabishvili out of his cell and hold all responsible persons accountable

229 Letter no. MIA01800398574 of the Ministry of Internal Affairs of Georgia, dated 19 February 2018.

7. THE RIGHT TO A FAIR TRIAL

The Public Defender's practice identified the violation of the right to a fair trial in various regards in 2017. The following are noteworthy in this context: institutional problems in the judiciary; frequency of delays in the consideration of cases by a court of appeals; and numerous changes in the composition of the court which results in questioning the principle of direct examination of evidence. There were occasions of violation of the right to equality of arms as well in 2017. These problems were related to the use of inadmissible evidence and the lack of reasoning.

7.1. INSTITUTIONAL PROBLEMS IN THE JUDICIARY

Court is a means to protect fundamental human rights and freedoms. It is instrumental to influence any group with any interests. According to the Constitutional Court of Georgia, "individuals' access to a court is the means of initiating the administration of justice and, therefore, its constitutional weight is closely related to the effective administration of justice in general."²³⁰ A functioning judiciary is a precondition for effective and independent activity of an individual judge, which has great significance for the protection of human rights.

The Public Defender is particularly concerned about the events unfolding in the High Council of Justice of Georgia (the HCoJ). Confrontation about judicial and non-judicial members of the council, accusations about violence exerted towards various members;²³¹ council hearings behind closed doors and lack of transparency of these proceedings and heightened confrontation with NGOs working on issues related to the judiciary demonstrate the crisis the council finds itself in. In the Public Defender's opinion, it is necessary to introduce complex institutional reforms directed at the judiciary. The Parliament of Georgia in turn should study the issue from parliamentary perspective.

In the Public Defender's opinion, without an institutional reform that is necessary for the judiciary, it will become impossible for the courts to function effectively. For this very reason it is advisable to give a general assessment of the court system. The arguments submitted below are based on the analysis of the legislation, statutory problems and individual shortcomings identified, information about these issues were received from individual judges and researches of various organisations.

• *Independence of the High School of Justice (HSoJ)*

The HSoJ is an important link in the structure of the judiciary. For the judiciary to be effective the HSoJ should be independent of the executive and the legislature; also, to shield the HSoJ from inappropriate outside influence, it should be distanced from judicial bodies.²³² In the CCJE's opinion, the same authority should not be directly responsible for both training and disciplining judges.

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

231 Information is available at: <http://liberali.ge/articles/view/32270/nino-gvenetadze-me-var-dzaladobis-mskhverpli>, (accessed on 20.03.2018).

232 Consultative Council of European Judges (CCJE), Opinion no. 4, 27 November 2003, para. 13, 17, and 18; information is available at: <https://rm.coe.int/1680747d37>, (accessed on 15.03.2018).

Under Article 3 of the Law of Georgia on the High School of Justice, out of the 6 members of the independent board, 5 are appointed by the High Council of Justice of Georgia,²³³ whereas the HCoJ also appoints judges. In parallel, the HCoJ takes the following decision regarding the school: conducting qualification examinations of judges;²³⁴ determining the total number of trainee justices to be admitted to the HSoJ;²³⁵ conducting a competition for school admission;²³⁶ and admission of applications of those willing to take part in the competition and admission to the HSoJ.²³⁷

Stemming from the fact that the HCoJ is in charge of disciplinary proceedings, responsible for its implementation and has influence in general over the entire process, which *inter alia* implies suspension of the proceedings,²³⁸ it is necessary to decentralise the school and make it functionally autonomous. This implies both forming the independent board and determining its autonomous competences.

• *Judicial Selections and Appointments*

Selection and appointment of judges is the most important issue. The HCoJ was created to solve this central problem and there are judicial reforms underway at various stages. The Public Defender and the NGOs that have been observing the judicial selection and appointment process have been discussing various institutional problems for years that make it impossible to appoint judges in a manner that would dispel the public's doubts.²³⁹ The Office of the Public Defender of Georgia also observed the process of judicial appointments several years ago.²⁴⁰

The statutory criteria for selection of judges do not meet the standard of objectiveness. There is no previously published list of the information and sources required for verifying the criteria based on which judges should be selected. The process of judicial selections does not meet the transparency standard, namely, the procedure of selecting candidates is not adequately governed with due regard for transparency.²⁴¹

Apart from obscurity of criteria, the possibility of holding interviews with judicial candidates behind closed doors gives rise to even more doubts in the public.

The appointment of judges for a probation period is particularly problematic. This period allows for manipulation of judges as the decision about appointment is yet to be taken and a judge may worry about how a particular judgment reflects upon the chances of life-time appointment. On the other hand, the decisions taken by probationary judges have less credibility in the public. Therefore, it is imperative to abolish appointments for a probationary period or to determine that judges appointed for a probationary period cannot act as single judges or to increase the training period to be spent at the HSoJ so that judges spend the probationary period there.

233 Under Article 47.1 of the Organic Law of Georgia on the Common Courts, the High Council of Justice of Georgia shall be created to ensure the independence of courts (judges) and the quality and effectiveness of justice, to appoint and dismiss judges, to organise judicial qualification examinations, to formulate proposals towards implementing judicial reform and to accomplish other objectives determined by law.

234 The Law of Georgia on the High School of Justice Article 13.

235 *Ibid.*, Article 14.

236 *Ibid.*, Article 11.

237 *Ibid.*, Article 15.

238 The Law of Georgia on Disciplinary Responsibility of Judges of the Common Courts of Georgia and Disciplinary Proceedings.

239 The Public Defender's statement is available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-exmaurebamamartleta-sherchevadanishvnis-process.page>, (accessed on 16.03.2018).

240 The Public Defender of Georgia criticised appointment of a judge based on the past statements made by this individual, available at: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-iusticiis-umaglesi-sabchos-gadawyvetilebas-tanasworobis-principitan-sheusabamod-miichnevs1.page>, (accessed on 16.03.2018).

241 Coalition for an Independent and Transparent Judiciary, Court System: Reforms and Perspectives, 2017, p. 47 et seq., information is available at: <https://goo.gl/xuqiFY>, (accessed on 15.03.201).

• *The Role of Court Presidents*

The position of a court president exists to facilitate court administration. A court president is not the “head” of a respective court.²⁴² Their competence should stay purely administrative and their activity should be aimed at creating a comfortable environment for judges as much as possible. In parallel, a court president should be hearing cases like ordinary judges (considering the respective work-load).

Under the Organic Law of Georgia on the Common Courts, presidents of the first and second instance courts, their deputies, presidents of sections and chambers are appointed by the HCoJ for a fixed term. For years, NGO representatives have been requesting introduction of the practice of judges electing court presidents, rather than being appointed by the council.

The problem regarding court presidents was revealed in the statements of Irakli Shavadze, judge at the Batumi City Court.²⁴³ He alleged that the court president had exerted pressure on him. When meeting with the Public Defender on 7 March 2018, he indicated, along with other facts, that the court president kept changing his assistant to put pressure on him and created a non-collegial and hostile environment. He also alleged that there was manipulation with court rooms.

Stemming from the fact that there is indignation in the public regarding the incidents involving pressure from court presidents over judges, also considering that court presidents are appointed by the HCoJ, legislative amendments and decentralisation of designation of court presidents are necessary. Courts themselves should be electing their presidents, which will make the process healthier and make judges more accountable.

7.2. DELAY IN CONSIDERATION OF CASES BY APPEAL COURTS

In 2017, like the previous year,²⁴⁴ there was delay in the consideration of cases by appeal courts. The right to a fair trial implies the possibility to have court considerations carried out in reasonable and short terms.²⁴⁵ To comply with this principle, there are specific statutory terms of examination.²⁴⁶ It is noteworthy that delays are characteristic to all categories of cases (civil, administrative and criminal cases).

In 2017, out of 739 registered and finalised cases by the Chamber of Criminal Cases of the Tbilisi Court of Appeals,²⁴⁷ violation of statutory terms was found in 216 cases; in the Kutaisi Court of Appeals²⁴⁸ the terms were not followed in 60 cases out of 653 appeals. It is noteworthy that the Kutaisi Court of Appeals did not provide us with the information about terms of proceedings. However, the analysis of the presented data made it possible to establish the indicator.²⁴⁹ Besides, in the Kutaisi Court of Appeals the period of delay is from 4 months to 8 months involving 58 appeals. However, there were longer delays in two cases (1 year and 8 months respectively).

It should be noted that one of the major reasons behind delays is work-load of judges and it should be addressed by a complex approach. The HCoJ should develop the appropriate procedure and methodology to

242 Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate of Human Rights and the Rule of Law (DGI) of the Council of Europe, on the draft Law on Amendments to the Organic Law on General Courts of Georgia, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014), CDL-AD(2014)031-e, para. 93, available at: <https://goo.gl/ck2ckv>, (accessed on 10.03.2018).

243 Available at: <https://goo.gl/EpwkpF>, (accessed on 21.03.2018).

244 The report is available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 10.03.2018), p. 394.

245 Citizens of Georgia: Vakhtang Masurashvili and Onise Mebonia v. Parliament of Georgia, judgment of the Constitutional Court of Georgia of 15 December 2006.

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

247 Letter no. 01/17(δ) of the Tbilisi Court of Appeals, dated 18 January 2018.

248 Letter no. 39-2/10 of the Kutaisi Court of Appeals of 24 January 2018.

249 According to the letter, the court does not maintain statistics about the terms of considerations of the cases and the Public Defender's Office was supplied with registration numbers of appeals specifying dates of the start and the end of examination in 2017.

tackle work-load. This information will assist the council in announcing the competition for vacant judicial positions if needs be. This will be a step made towards systemic solution of the problem.

7.3. PERMANENCE OF THE COMPOSITION OF THE BENCH

In the reporting period, another practical problem, namely, violation of permanence of the composition of the bench was established in one of the cases inspected by the Office of the Public Defender of Georgia. It is revealed that in numerous cases, substitute judges are not appointed in the very beginning of a trial. In most of the cases, whenever there is a change in the composition of the bench, consideration of the case does not start from the beginning.²⁵⁰

It should be borne in mind that the principle of permanence of the composition of the bench safeguards the principle of direct examination of evidence by a judge. Appointment of a substitute judge simultaneously with the trial judge²⁵¹ ensures the direct involvement of the latter in the process of examination of evidence. In the abovementioned case inspected by the office,²⁵² during the trial, even though a substitute judge had not been appointed from the beginning, the case was transferred to another judge and the hearing resumed instead of starting it from the beginning. **In the end, conviction was based on those pieces of evidence that had been directly examined by the other judge.** Accordingly, the statutory requirement²⁵³ that conviction must be based on evidence directly examined by a judge during a hearing was violated.

This problem in the change of the composition of the bench is identified in the general practice of common courts. The Tbilisi and Batumi City Courts have not submitted information in this regard.²⁵⁴ However, according to the information submitted by the Kutaisi City Court,²⁵⁵ out of 73 cases in 2017, in which a trial judge was changed, the principle of permanence in the composition of the bench was upheld in 16 cases only.

According to the case-law of the European Court of Human Rights, unexpected change in the court's membership immediately before the hearing commenced when the important pieces of evidence are not adequately adduced and discussed at the trial does not meet the requirements of a fair hearing.²⁵⁶ The same goes for the repeated and frequent replacement of members of the trial bench in the criminal case, which is carried out for unascertainable reasons and not circumscribed by any procedural safeguards.²⁵⁷

Even though the statutory provisions²⁵⁸ unequivocally show the imperative nature of the principle of permanence of the bench, it is necessary to specify this issue in the legislation to avert the abovementioned shortcomings in the future. It is necessary to amend the Criminal Procedure Code with the effect of prohibiting reliance on the evidence that was not directly examined in the presence of the judge (hearing the case or acting as a substitute judge in the proceedings).

250 The Criminal Procedure Code of Georgia, Article 183 and Article 184.

251 The same principle applies to jury trials; the president of a jury trial appoints substitute jurors along with regular jurors that take part in the examination of the case and attend court hearings (the Criminal Procedure Code of Georgia, Article 224.1 and Article 224.2).

252 On 22 September 2017, the Public Defender sent proposal no. 15-5/13261 to the President of the Supreme Court of Georgia and the Secretary to the High Council of Justice of Georgia concerning the violation of the principle of permanence of a court composition in the criminal case against L.L., G.G., B.G., S.J., T.E., L.S., and L.T.

253 The Criminal Procedure Code of Georgia, Article 259.3.

254 By Letter no.2254626 of the Tbilisi City Court, dated 12 January 2018 and Letter no. 52g/k of the Batumi City Court, dated 24 January 2018, the Public Defender's Office was refused to be given the data on the cases where court composition was changed; the offered reason was that such statistics had not been maintained in the courts.

255 Letter no. 699-1 of the Kutaisi City Court, dated 18 January 2018.

256 *Barberà, Messegue and Jabardo v. Spain*, applications nos. 10588/83, 10589/83, and 10590/83, judgment of the Plenary of the Court of 6 December 1988, para. 89.

257 *Moiseyev v. Russia*, application no. 62936/00, judgment of the European Court of Human Rights of 9 October 2008, para. 184.

258 Criminal Procedure Code of Georgia, Article 183 and Article 184.

7.4. PRACTICE OF CONDUCTING DISCIPLINARY PROCEEDINGS AGAINST JUDGES

Disciplinary proceedings against judges remained inadequate in 2017 too. To a certain degree, this is preconditioned by the lack of clarity in the legislation. These problems have been voiced by the Public Defender of Georgia in the parliamentary reports of previous years too.²⁵⁹ It is imperative to determine the grounds for judges' disciplinary responsibility²⁶⁰ in an exhaustive manner, with due account for the principle of foreseeability. Particular practical problems are caused by the definition of "improper" judicial performance. A breach of an imperative statutory requirement is not considered as "improper performance". The document prepared by non-judicial members of disciplinary board for the judges of the common courts also emphasised the need for legislative amendments.²⁶¹

According to the practice of the Office of the Public Defender, the deficiency of the disciplinary proceedings is manifested in delays and lack of reasoning of decisions adopted by the HCoJ.

Out of 18 proposals of the Public Defender of Georgia²⁶² (against 23 judges) sent to the HCoJ in 2013-2017, concerning institution of disciplinary proceedings, none of the decisions adopted in 12 cases (against 15 judges) imposed disciplinary penalty on judges and proceedings were discontinued. Reasoning was not provided in any of these cases. In 3 cases, a final decision was not adopted as of 2 February 2018.²⁶³ The majority of 12 decisions are of general nature, given in a standard pattern and lacking reasoning. Only one decision indicates to factual circumstances and legal provisions.

The terms of disciplinary proceedings instituted by the HCoJ based on the above proposals of the Public Defender of Georgia are problematic. Only one decision based on one proposal was adopted after more than a month; whereas the period from 5 to 13 months elapsed after the HCoJ was communicated 11 proposals. Regarding the activity of the independent inspector in terms of disciplinary proceedings, the inspector has been appointed for a short period and it is impossible to judge the effectiveness of the work done at this stage.²⁶⁴

7.5. PRINCIPLE OF LEGALITY

The Public Defender's Office examined court practice that is incompatible with the principle of legality. By declaring the principle of legality, the state undertakes the duty of determining crime and punishment in clear statutory terms and the law must be foreseeable to allow an individual to know what actions will entail criminal responsibility. Though being a self-standing safeguard, the principle of legality is closely linked with the right to a fair trial.

259 The 2016 Public Defender of Georgia, p. 401. Available at: <http://www.ombudsman.ge/uploads/other/4/4494.pdf>, (accessed on 11.03.2018); the 2015 Report, pp. 443-444, available at: <http://www.ombudsman.ge/uploads/other/3/3891.pdf>, (accessed on 11.03.2018).

260 These are the following types of disciplinary misconduct under Article 2.2 of the Law of Georgia on Disciplinary Responsibility of Judges of the Common Courts of Georgia and Disciplinary Proceedings: corruption offence or misuse of one's official status to the detriment of the interests of justice and the office held. An infringement provided for by the Law of Georgia on Conflicts of Interest and Corruption in Public Service shall constitute a corruption offence unless it entails criminal or administrative liability; any activity incompatible with the position of a judge, or conflict of interest with the duties of a judge; any action inappropriate for a judge that disgraces the reputation of, or damages the confidence in, a court; ungrounded delay in proceedings; failure to fulfil or improper fulfilment of the obligations of a judge; disclosure of secrecy of deliberations of judges or professional secrecy; impediment to or disrespect for the activities of bodies having disciplinary powers; and breach of judicial ethics.

261 Available at: <http://dcj.court.ge/uploads/Reforms-and-Major-Projects/Major-Projects/DCJAmendments.pdf>, (accessed on 11.03.2018).

262 In 2013 – 7 proposals, in 2014 – 4 proposals, in 2015 – 1 proposal; and in 2017 – 6 proposals.

263 Letter no. 196/199-o3-o of the High Council of Justice of Georgia, dated 2 February 2018.

264 In November 2017, an independent inspector of the HCoJ was elected. The inspector's powers are determined by Article 7 of the Law of Georgia on Disciplinary Responsibility of Judges of the Common Courts of Georgia and Disciplinary Proceedings.

One of the aspects of the principle of legality implies prohibition of deliberate aggravation of responsibility and punishment for an act different from the *corpus delicti* determined by law: “if an act is determined by general and special provisions, there is no conjunction of crimes and responsibility shall be imposed under a special provision.”²⁶⁵

There was an occasion where responsibility was imposed under the conjunction of general and special provisions of the Criminal Code in the reporting period.²⁶⁶ The Public Defender of Georgia submitted an *amicus curiae* brief to the Tbilisi Court of Appeals,²⁶⁷ according to which one and the same crime was assessed under several articles, creation of artificial conjunction of the crimes and aggravation of responsibility in violation of the principle of legality.

Furthermore, the breach of the principle of legality is identified in 4 cases examined by the Public Defender’s Office. In these cases, a specific act was no more a crime as a result of the Constitutional Court’s judgment no. 1/13/732 of 30 November 2017 and the court hearing the case had to discontinue proceedings under the law in force.²⁶⁸ Under the decisions of the Senaki district court of 1 December 2017, criminal prosecution against an accused charged under Article 273¹.2 of the Criminal Code was not discontinued despite the fact that the court referred to the abovementioned judgment of the Constitutional Court of Georgia²⁶⁹ declaring criminal responsibility for the acts used to incriminate the accused persons as unconstitutional.

7.6. EQUALITY OF ARMS

One of the accused persons, G.M., could not fully enjoy the right to a fair trial and it was revealed in numerous aspects. The Public Defender communicated in detail the results of the study of the case-files to media outlets in accordance with Article 21 of the Organic Law of Georgia.²⁷⁰

Imposition of the duty of non-disclosure on lawyers, which, in the Public Defender’s assessment, did not serve the purpose of procedural legislation, put the defence in an unequal condition. During court hearings, prosecutors maintained that it was in the interest of investigation not to make the details of criminal prosecution against G.M. known to the potential accomplices. The prosecutor’s office also indicated the legal interest of protecting security of third persons.²⁷¹ The breach of the principle of equality of arms was obvious in those conditions where the Office of the Chief Prosecutor of Georgia made public the main pieces of evidence and identity of witnesses in the case.

This case showed that the legislation gave rise to problems from another perspective too. A prosecutor or an investigator is obliged, for protecting investigation details, to impose a duty on a participant to proceedings not

265 The Criminal Code of Georgia, Article 16.2.

266 The Tbilisi City Court convicted G.O. on 7 November 2017. The factual circumstances from two different counts of charges were correlated by the court and characterised in conjunction: organising deliberate illegal arrest for political motives (the Criminal Code of Georgia, Articles 25, 147.1) and persecution concerning professional and political activity by virtue of using official capacity (the Criminal Code of Georgia, Articles 156.2.b) that was manifested in an arrest; also conjunction of general (abuse of official power, the Criminal Code of Georgia, Article 333.1) and special articles (organising deliberate illegal arrest, the Criminal Code of Georgia, Articles 125, 147.1 and fabrication of evidence, and the Criminal Code of Georgia, Articles 369¹.3).

267 *Amicus Curiae* Brief no. 15-5/899 of the Public Defender of Georgia of 18 January 2018, available at: <https://goo.gl/4YfLJa>, (accessed on 11.03.2018).

268 The Criminal Procedure Code of Georgia, Article 105.1d): criminal prosecution must be discontinued if the law on which charges are based is declared unconstitutional.

269 The normative connotation of the following words in Article 273 of the Criminal Code of Georgia was declared unconstitutional regarding Article 16 of the Constitution of Georgia: “the use without a doctor’s prescription”. In particular, the normative connotation that envisages criminal responsibility for the use of marijuana as determined in 92nd row of Annex no. 2 to the Law of Georgia on Drugs, Psychotropic Substances, Precursors and Drug Assistance.

270 Information is available at: <http://www.ombudsman.ge/uploads/other/4/4906.pdf>, (accessed on 10.03.2018).

271 Letter no. 13/28292 of the Office of the Chief Prosecutor of Georgia, dated 29 April 2017.

to disclose information in the case-files.²⁷² The provision does not provide for a safeguard allowing lawyers to carry out the same procedural act. In case of extensive interpretation of this provision, a lawyer is not entitled to give a document from the case file to an expert for examination. A lawyer is devoid of any mechanism that would ensure that carrying out a procedural act would not result in his/her criminal responsibility.

Even in those cases where a lawyer is giving material from a case file for a procedural act, he/she is obliged to notify either a prosecutor or an investigator about the aforementioned, which is in breach of the principle of adversarial proceedings. Moreover, the term of the provision at stake is also problematic. Since it is imposed in the interests of investigation, it should not be extended to further stages of proceedings after investigation is over.

7.7. THE USE OF INADMISSIBLE EVIDENCE

There were occasions where inadmissible evidence was used in violation of the right to a fair trial in the cases studied by the Public Defender's Office.

In one case, the Court of Appeals admitted the evidence that was correctly deemed inadmissible by the trial court.²⁷³ In another case, the court based conviction on the evidence that had not been admitted.²⁷⁴ There also was a case, where contrary to the imperative statutory provision²⁷⁵ (about placing accused persons in different cells), a court admitted testimonies of the co-accused placed in one cell, did not question their credibility and based conviction on those testimonies.²⁷⁶ The court was obliged to make sure that the evidence was not obtained in serious violation and was not deemed inadmissible.²⁷⁷ There was another noteworthy case where the prosecutor wire-tapped the phone conversation between an accused and the lawyer for a month and the court still admitted the recording and attached it to the case-file.²⁷⁸

272 The Criminal Procedure Code of Georgia, Article 104.1.

273 In the criminal case against I.T., a judge of the Investigative Board of the Tbilisi Court of Appeals admitted as evidence a mobile phone seized during examination of clothes, carried out without judicial control, whereas the clothes themselves were considered to be inadmissible evidence. In the decision, the judge observed that examination without judicial control can be carried out if a person owning (possessing) the property consents in writing. However, in this case, examination was conducted without the consent of the person owning (possessing) the clothes but with the consent of an employee of the medical establishment who had the patient's clothes. Such a person cannot be deemed to possess an item under the Civil Code of Georgia. The court observed that "if an item is seized during examination, only a report on examination should be drafted with a respective reference to seizing a concrete item (object, etc.), their number, category, individual and generic features". However, the court stated in the reasoning part that the clothes seized as a result of the examination was inadmissible as there was no requisite judicial control over the procedure and the report of examination of clothes was partly inadmissible with regard to the clothes; however, the mobile phone seized within the same investigative act was admitted as evidence.

274 When convicting G.O., the court substantiated an assumption voiced about the accused person's behaviour ("the court does not exclude that it could be the accused person who was motivated to exert influence on a witness) and the court relied on the evidence that had not been admitted and stricken out by the court itself at the trial stage and later used against the accused.

275 Criminal Procedure Code of Georgia, Article 205.4, the Imprisonment Code of Georgia, Article 74.4.

276 In the case of I.F., and G. T., 7 members of the special task unit who were co-accused in the same case were placed before the pre-trial hearing in the same cell in penitentiary establishment no. 9, in violation of the statutory requirement. After being placed together, they expressed their desire to cooperate with the prosecutor's office and gave testimonies against I.F., and G. T. As a result, the case of the special task unit members was separated and despite serious charges against them, criminal prosecution against them was discontinued after they had given testimonies. The trial court did not pay attention to this issue. The Public Defender of Georgia adduced to the Tbilisi Court of Appeals the evidence confirming that the special task unit members were placed in the same cell (notice by penitentiary establishment no. 9, dated 22 April 2015; Letter no. MOC01700290611 of the Ministry of Corrections of Georgia, dated 19 April 2017). The Public Defender's representatives were also questioned before the court. Despite this, the Tbilisi Court of Appeals, in its judgment of 21 June 2017, did not rule on the inadmissibility of illegally obtained testimonies and upheld the convictions. Placing the co-accused in one cell casts doubts on the credibility of their testimony in any case, in which they will be questioned as there is a threat of collusion. The Supreme Court of Georgia dismissed a cassation appeal of I.F. and G. T.

277 Criminal Procedure Code of Georgia, Article 72.1.

278 The same problem is discussed also in the chapter concerning The Right to Respect for Private Life of this report.

7.8. THE RIGHT TO A REASONED SENTENCE

The problem of the failure to give reasons for a sentence was again identified in the reporting period. There were contradictory pieces of evidence²⁷⁹ in a case and the court failed to discuss the relevant circumstances indicated by the defence; the court did not give sufficient reasons for why it based the conviction on the testimonies of police officers exempted from criminal responsibility²⁸⁰ when all the abovementioned was the court's duty in order to ensure fairness of the proceedings.

In the same case, unfortunately, significant shortcomings were identified in the process of a court assessing the Public Defender's testimony. Under the legislation of Georgia, the Public Defender of Georgia has the right not to testify on information that has been confided to him/her as the Public Defender of Georgia.²⁸¹ Giving a testimony before a court is the Public Defender's extraordinary power and when deciding in favour of testifying, the Public Defender's objective is to assist administration of justice.

In the reporting period, the Public Defender took such a decision several times and for submitting an information of particular importance to the court when administering justice, the Public Defender was questioned before the court and the Public Defender's representatives were questioned several times. Despite this, there was an occasion where refusing to take into account the Public Defender's testimony the court provided an argument running counter to law.²⁸²

7.9. SHORTCOMINGS IN EXAMINATION OF THE ADMINISTRATIVE VIOLATION CASES

There are fundamental deficiencies in administrative proceedings that the Public Defender of Georgia emphasised in the reports of the previous years,²⁸³ which remain problematic to date. In particular, the code does not regulate comprehensively the procedure of conducting examination of administrative violations;²⁸⁴

279 In the case of G.O., even though the court indicated the difference between the consistency and texture of raw and dry marijuana it stated that it was objectively impossible for the drugs fit in those sheets of paper that had been mentioned by the police officers' testimonies participating in search and arrest. When establishing this fact, the court did not discuss at all the expert's testimony read out at the trial and did not give reasons for not accepting this evidence though the expert (chemist) unlike witnesses has a specific competence.

280 In convicting G.O., on 7 November 2017, the court accepted the testimonies of police witnesses (similar to the accused, the police officers were charged based on the same facts and later criminal prosecution against them was discontinued by virtue of the use of prosecutorial discretion) and emphasised the cooperation of the abovementioned persons with law enforcement agencies and criminal prosecution against them and also the possibility of the defence to ask them questions. The court did not discuss the benefits gained from the discontinuation of criminal prosecution and the objective of the testimonies (averting possible criminal responsibility). It is to be noted that the same judge in another case (no. 1/1863-13, judgment of 16 October 2013) assessed the testimonies of police officers (against whom criminal prosecution was not instituted as a result of the use of prosecutorial powers) differently. The fact that the majority of witnesses worked for police corroborated the court's doubt that they were partial and biased.

281 The Organic Law of Georgia on the Public Defender of Georgia, Article 5.4; Criminal Procedure Code of Georgia, Article 50.1.e).

282 In the case of G.O., the court did not accept the Public Defender's testimony (the Public Defender explained the information obtained when meeting the witness concerning alleged influence over the witness) and maintained that the Public Defender has not applied to the investigative authorities for the institution of investigation and identifying a perpetrator in the incident. **Therefore, the court considered that the Public Defender's testimony did not give rise to any suspicions concerning the investigative body exerting pressure on the witness.** Since the witness did not give an express consent, under a statutory requirement (Article 20.2 of the Organic Law of Georgia on the Public Defender of Georgia: The Public Defender of Georgia may not disclose the information about torture and other cruel, inhuman or degrading treatment towards persons without explicit consent of those persons), the Public Defender was not authorised to apply to investigative authorities requesting further investigation. When assessing the Public Defender's testimony, it was necessary to take into account the abovementioned requirement of the organic law when assessing the evidence (for accepting or declining it). Any evidence indicating an alleged pressure exerted to overcome free will that was read out during a trial might have significance in terms of assessment of credibility and authenticity of a witness testimony. **Institution of investigation does not either confirm or deny the Public Defender's testimony regarding the fact of pressure allegedly exerted on a witness.** Accordingly, it is imperative to provide strong and clear arguments regarding accepting evidence when there is a doubt regarding credibility and authenticity of a witness testimony.

283 The Public Defender discussed legislative and practical shortcomings in the consideration of administrative violations in the parliamentary reports of 2012-2015. See the parliamentary report of 2012, pp. 448-450; the parliamentary report of 2013, pp. 271-277; the parliamentary report of 2014, pp. 303-307; the parliamentary report of 2015, pp. 462-467.

284 The Code of Administrative Violations of Georgia, Chapter 17.

does not provide a person adequately with the elements making up the right to a fair trial; and does not determine the procedure of gathering, examining and assessing evidence. The nonexistence of the standard of proof required for holding a person responsible creates significant problems in practice. Besides, the nonexistence of the duty to refer to evidence substantiating the circumstances established during examination of the case²⁸⁵ along with other factors causes the lack of reasoning of court decisions; the majority of court decisions lack reasoning and are rendered in a formulaic template; all pieces of evidence are gathered by one body/official and there is only formal unity of evidence. Due to the nonexistence of sharing burden of standard of proof, the formal legality of the report is verified without referring to accepted or rejected evidence.

Regarding evidence, the shortcomings regarding the use of body cameras are noteworthy. Patrol police has the right, not the obligation, to carry out audio and video recording in accordance with a procedure prescribed by law. Besides, despite an express statutory obligation to record stop and searches by the police with either a body camera or a video camera,²⁸⁶ arrests are not recorded with this equipment. This issue is particularly problematic due to the nonexistence of neutral pieces of evidence in case-files. The right to a fair trial is violated by the practice of common courts holding individuals responsible without neutral pieces of evidence. This contradicts the case-law of the European Court of Human Rights and shifts the burden of proof to a citizen.²⁸⁷

7.10. RIGHT TO FREE LEGAL AID IN CONSTITUTIONAL PROCEEDINGS

Under the Law of Georgia on Constitutional Proceedings, the assignment of a representative to the Constitutional Court of Georgia is mandatory if the person filing a constitutional submission is in a penitentiary establishment. According to the procedure established by the same law, a constitutional claim shall be prepared in accordance with the claim form approved by the Constitutional Court of Georgia and shall be annexed to a document issued by a banking institution confirming the payment of the state fee and an electronic version of the constitutional claim.

Under the Law of Georgia on Legal Aid, unlike constitutional proceedings, the state bears the cost of legal aid in administrative, civil and criminal proceedings.

A person placed in a penitentiary establishment, who lacks the knowledge and experience required for preparing a constitutional claim properly, access to a computer and/or cannot carry out bank operations for paying tax, will not be able to file a constitutional claim independently.

According to the established practice of the Constitutional Court, the right to access to court under Article 42.1 of the Constitution of Georgia, which that also includes the right to access to the constitutional court, should not be illusory but allow a realistic possibility for appropriate restoration of a person's rights and be an effective means of protection of a right.²⁸⁸

285 *Ibid.* Article 266.2.

286 The Law of Georgia on Police, Article 24.5.

287 On 23 December 2017, Z.R., was arrested for minor hooliganism and resisting police. Despite the fact that the special stop and search procedure was being carried out on the entire territory, police officers did not comply with the express statutory obligation and did not record the process either by body cameras or video cameras. Besides, none of the neutral witnesses confirmed that Z.R. had breached order before the arrest. To emphasise the probative force of body cameras as evidence before the court, the Public Defender submitted an *amicus curiae* brief to the Tbilisi Court of Appeals. The Public Defender observed in the brief that holding a person responsible without neutral evidence violates the case-law of the European Court of Human Rights and shifts the burden of proof to a citizen, in violation of the right to a fair trial. Both instance courts having examined Z.R.'s case neglected the constitutional principle that nobody is obliged to prove his/her innocence. In the resolution of 30 January 2018, the Tbilisi Court of Appeals did not discuss the issues brought up by the Public Defender at all. As a result, the express statutory requirement was left beyond the court's attention and the decision was only based on police officers' statements.

288 N(N)LE Human Rights and Monitoring Centre and Citizen of Georgia, Vakhushti Menabde v. the Parliament of Georgia, judgment no. 3/2/577 of the Constitutional Court of Georgia of 24 December 2014.

It is the state's duty to organise its legal aid system with rules and guarantees, and to make sure that the content of the assistance provided meets the requirement of effective access to a court.²⁸⁹ Legal aid should be accessible in case of constitutional proceedings as well.²⁹⁰ Comparative legal examples confirm the significance of legal aid for the purpose of constitutional proceedings.²⁹¹

Stemming from the fact that constitutional proceedings are specific and require legal education and relevant experience, it is imperative to amend the law with the effect of determining the eligibility of persons placed in penitentiary establishments for legal aid in constitutional proceedings when they do not have sufficient means to hire a lawyer.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To carry out reform of the legislation governing the High School of Justice with the effect of ensuring its institutional independence and determining its autonomous competences
- To carry out reform of the process of selection and appointment of judges so that criteria are envisaged objectively; to ensure transparency and abolish judicial appointments for probationary period
- To reform the procedure of electing presidents of courts (a section or a chamber) so that individual judges can elect presidents
- To determine statutorily the duty of the High Council of Justice to adopt the procedure and methodology for assessing judges' workload
- To determine disciplinary responsibility of judges that will be based on clear and foreseeable grounds
- To establish by the Criminal Procedure Code that conviction cannot be based on evidence that was examined by another judge, except for those cases where a substitute judge has been appointed in the proceedings
- To adopt the new code of administrative violations complying with international and constitutional standards on human rights
- To amend the first sentence of Article 104.1 of the Criminal Procedure Code so that the duty of non-disclosure is not applicable to the defence
- In accordance with the Rules of Parliament, to establish a working group within a committee for examining in detail problems existing in criminal proceedings before common courts²⁹² and for narrowing down and specifying relevant legislative amendments
- To amend the Law of Georgia on Legal Aid with the effect of determining the eligibility of persons placed in penitentiary establishments for legal aid in constitutional proceedings

289 Aurescu B. Report "European Standards and the Right to Legal Defence in Civil Matters", Venice Commission, Strasbourg, 16 May, 2008, p. 4.

290 Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice, Strasbourg, 2015, 49, Opinion on the Draft Constitutional Law on Introduction Amendments and Additions to the Constitutional Law on the Constitutional Chamber of the Supreme Court of Kyrgyz Republic, 2014, p. 6, Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice (updated), Strasbourg, 2017, pp. 50 and 67.

291 The Constitutional Court of Hungary declared unconstitutional the impugned provision of the Law on Legal Aid that excluded receiving legal consultation and appointment of a legal representative in constitutional proceedings at the state's expense. The Law of Hungary on Constitutional Proceedings provided for mandatory appointment of a legal counsel in constitutional proceedings, whereas, the Law on Legal Aid despite a person's dire social situation did not envisage for appointment of a legal representative in constitutional proceedings at the state's expense. See: <http://www.ajbh.hu/en/web/ajbh-en/>.

292 To convict a person under general and special articles at the same time; reasoning of sentence; the issue of relying on inadmissible evidence in a sentence; and discontinuation of criminal prosecution when an act is decriminalised.

8. RIGHT TO RESPECT FOR PRIVATE LIFE

8.1. INVESTIGATION ON DISSEMINATED RECORDINGS

Although the objective of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the state to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private life.²⁹³ Accordingly, for effective prevention, the state should take positive measures for reducing criminality and effective investigation of already committed crimes.²⁹⁴

Unfortunately, the information obtained by the Office of the Public Defender indicates that the majority of serious crimes committed in 2015 and 2016 are still not investigated:

- In 2016, on 14 September, 27 September and 3 October, audio recordings of telephone conversations between politicians and persons known to the public were disseminated by mass media. The investigation instituted concerning this incident has been ongoing without any results; nobody has been recognised as a victim or charged to this date;²⁹⁵
- Despite the requests of the Public Defender, the prosecutor's office has not started investigation concerning obtaining audio recordings of Georgia's former president's conversations, which were disseminated on 24 and 29 October and 2 November in 2015;
- The Department of Counterintelligence started investigation under the article on state coup, however it was later classified and information about the investigation's results are not accessible;²⁹⁶ and
- Similarly, the results of investigation results in the case of 26,000 video recordings are not known to this date. It is only known that only 144 files have been destroyed. It is not known whether anyone has been recognised as a victim or has been charged in other related criminal incidents.²⁹⁷

Investigation instituted on dissemination of video recordings, depicting private life, through social networks on 11 and 14 March, 12 April and 12 June in 2016 is an exception from the above trend. Within the scope of the instituted investigation, the prosecutor's office carried out numerous acts, requested the competent authorities of the United States for legal assistance²⁹⁸ and charged concrete persons with making, purchasing and storing the abovementioned recordings.²⁹⁹ However, it should be noted that, to this date, the persons who

293 *Enans v. the United Kingdom*, application no. 6339/05, judgment of the Grand Chamber of the European Court of Human Rights of 10 April 2007, para. 75.

294 Interference with the right to respect for private life is a serious violation of human rights and Council of Europe Member States should take all necessary measures to comply with their obligations under the Convention to adopt criminal law provisions to effectively punish serious human rights violations through adequate penalties. Combating impunity requires that there be effective investigation in cases of serious human rights violations. This duty is absolute. See the Guidelines adopted by the Committee of Ministers on 30 March 2011 on Eradicating Impunity for Serious Human Rights Violations.

295 Letter no. 13/77315 of the Office of the Chief Prosecutor of Georgia, dated 29 November 2017.

296 Letter no. 13/77315 of the Office of the Chief Prosecutor of Georgia, dated 29 November 2017.

297 Regarding these cases, see in detail the Public Defender's statement summarising the campaign Timer is On, available at: <http://www.ombudsman.ge/ge/news/saxalko-damcveli-kampanias-wammzomi-chartulia-adjamebs.page>.

298 Letter no. 13/77315 of the Office of the Chief Prosecutor of Georgia, dated 29 November 2017.

299 Two persons were convicted for illegal purchase and storage of video recordings depicting private life and criminal proceedings against three persons are pending; 8 persons were charged with illegally obtaining video recordings, out of whom 7 persons were convicted and 1 was acquitted. No criminal prosecution has been instituted under the charges of illegal dissemination of the video recordings.

allegedly disseminated the videos have not been identified and trials against several persons are still pending.³⁰⁰ Accordingly, the investigation cannot be deemed as closed.

8.2. PROCEDURE FOR CARRYING OUT COVERT INVESTIGATIVE OPERATIONS

On 22 March 2017, the Parliament of Georgia adopted a package of legislative acts that were aimed at enforcing the judgment of the Constitutional Court of Georgia of 14 April 2016 and regulate in a new manner the issues regarding the procedures for organising, possessing, using and administering the technical infrastructure of covert surveillance.

On 14 April 2016, the Constitutional Court in its judgement no. 1/1/625,640, based on the constitutional claims of the Public Defender of Georgia and CSO representatives, declared unconstitutional those provisions that regulated technical aspect of covert investigative acts.³⁰¹ The Constitutional Court stated that the impugned provisions, though they were serving legitimate aims, were not proportionate means for achieving them. The court maintained that whenever an agency that has investigative powers and/or is interested from a professional viewpoint in the result of this operation, has access to monitoring communications in real time and directly possesses modern technical means of obtaining personal information, can administrate and have a direct access to personal information with the use of these means, this creates a particularly high risk of interference with the right to respect for private life. The same goes to copying and storing the so-called meta data by this agency.

In the Constitutional Court's opinion, under such conditions, the powers vested in the Personal Data Protection Inspector, namely, to give consent through respective electronic system by "activating an object" and carry out periodic inspection of this electronic system, served to reduce the risk of interference with the right to respect for private life. However, these steps could not be considered to be a sufficient and effective means of external control on the process concerned. Moreover, there is a higher risk of unjustified interference with the right to respect for private life when the State Security Service has access to those technical means of obtaining information that are not subject to even the Personal Data Protection Inspector's control.³⁰²

As already mentioned, on 22 March 2017, the Parliament of Georgia adopted new legislative acts that were aimed at regulating covert investigative activities in a new manner. The new law established a legal entity of public law under the State Security Service of Georgia, viz., the Operative and Technical Agency of Georgia that is in charge of operative and technical covert investigative activities and electronic surveillance. The Public Defender of Georgia maintains that the legal framework established by the law of 22 March 2017 runs counter to the spirit of the Constitutional Court's judgement of 14 April 2016 and does not serve the purpose of its effective enforcement.

In particular, in the Public Defender's opinion:

- Since the Operative and Technical Agency is a legal entity of public law under the State Security Service, it remains under an effective control from the State Security Service and remains within its system. Therefore, it can be said that the right to direct access to communication and network infrastructure through covert investigative operations remains within the agency that is interested from professional viewpoint;

300 Letter no. 13/77315 of the Office of the Chief Prosecutor of Georgia, dated 29 November 2017.

301 The following impugned provisions were declared unconstitutional: The Law of Georgia on Electronic Communications, Article 8³.1.a), first sentence, Article 8³.1.b), second sentence; the Criminal Procedure Code of Georgia, Article 3.31, and Article 143³.40 in terms of Article 16 and Article 20.1 of the Constitution of Georgia.

302 Under the Constitutional Court's judgment of 14 April 2016, one of the motives for declaring the impugned provisions unconstitutional was the fact that the measure of obtaining communication data in real time could have been carried out, among others, using other equipment and software to which the control of the Personal Data Protection Inspector could not have been extended.

- There is still the possibility of using technical means that allow carrying out measures of obtaining contents of communication in real time, bypassing the external control mechanism;
- The Personal Data Protection Inspector still cannot effectively control the covert investigative operations of monitoring internet communication, removal and fixing information from/into communication channels and computer systems;
- Copying and storing communication that can identify a person are also carried out without effective external control. In particular, the legislation of 22 March 2017 is still unable to exclude setting up the so-called Alternative Banks of Data;
- It is alarming that, under the legislation of 22 March 2017, not only the technical infrastructure required for carrying out covert operations but also the equipment of the Department of Counterintelligence designed for electronic surveillance was subjected to the control of the State Security Service. The latter is not subject to the minimum control which is required for covert investigative operations at least from the Personal Data Protection Inspector.

Accordingly, the Public Defender of Georgia, together with representatives of civil society, decided to challenge the legislation of 22 March 2017 regulating technical aspects of covert operations before the Constitutional Court of Georgia. The Constitutional Court admitted the Public Defender's constitutional claim; it is now awaiting the consideration of its merits.

8.3. WIRETAPPING AND RECORDING TELEPHONE CONVERSATIONS

According to the data of the Supreme Court of Georgia, the common courts rejected only 132 motions out of 6,147 motions about covert operations examined in 2017. Out of this number, 548 motions concerned wiretapping and recoding telephone conversations, out of which 499 were upheld in full and 21 partially.³⁰³

The Public Defender's Office requested detailed information from the Supreme Court of Georgia and the Office of the Chief Prosecutor of Georgia to study general trends and various aspects of legality of conducting covert operations, among others:

- Frequency of wiretaps and recordings of telephone conversations carried out as a measure of emergency;
- Compliance with the duty to provide information to a respective subject;
- Compliance with the duty to destroy information;
- Compliance with the duty to discontinue or suspend covert operation in the cases stipulated by law; and
- Legality of decisions in case of revealing another crime.

According to the Supreme Court, covert operations of wiretapping and recording are rarely (in approximately 4% of the cases) conducted as a measure of emergency,³⁰⁴ which is commendable.

It is however unfortunate that the Office of the Chief Prosecutor does not maintain statistics on covert operations.³⁰⁵ Without analysing statistical data it is impossible to discuss whether the above statutory obligations such as informing the subject of surveillance, destruction of information in cases stipulated by law,³⁰⁶ discontinuation or suspension of covert operation and other statutory requirements.

303 Information is available at: <http://www.supremecourt.ge/statistics/2017/>, (accessed on 10.03.2018).

304 Letter no. 11-k of the Supreme Court of Georgia, dated 31 January 2018.

305 Letter no. 13/7093 of the Office of the Chief Prosecutor of Georgia, dated 30 January 2018.

306 See Criminal Procedure Code of Georgia, Articles 143³-143⁸.

The necessity of conducting adequate control over the compliance with the statutory duties is confirmed by the case studied by the Public Defender's Office,³⁰⁷ which showed that the prosecutor's office conducted wiretapping and recording of telephone conversations between an accused and their lawyer for a month, which is a serious violation of the right protected by international law.³⁰⁸ Moreover, the Criminal Procedure Code repeatedly states that an accused person's interaction with his/her lawyer is absolutely confidential,³⁰⁹ including, in the context of covert activities.³¹⁰ It is particularly unfortunate that the lawyer's appeal was not upheld by the Tbilisi Court of Appeals. The Court discussed the relevant normative framework and stipulated that the state should respect confidential relationship between an accused and a lawyer. However, the court still did not uphold the appeal. In the judge's opinion, it would place unnecessary burden on investigative authorities to listen only to predetermined telephone numbers.³¹¹

Having observed the abovementioned, the judge did not take into account the fact that investigative authorities knew the lawyer's phone number. Even without it, the moment the lawyer was identified, wiretapping should have been stopped, which did not happen.

RECOMMENDATIONS

To the Prosecutor's Office of Georgia:

- To inform the public periodically about the progress made in the investigation instituted regarding incidents involving breach of the right to respect for private life
- To start processing statistical data regarding wiretaps and recordings:
 - Frequency of wiretaps and recordings of telephone conversations carried out as a measure of emergency;
 - Compliance with the duty to provide information to a respective subject;
 - Compliance with the duty to destroy information; and
 - Compliance with the duty to discontinue or suspend a covert operation in the cases stipulated by law.

307 Application no. 1437/18 of Citizen T.T., dated 6 February 2018.

308 See, *S. v. Switzerland*, applications nos. 12629/87 and 13965/88, judgment of the European Court of Human Rights of 28 November 1991 and *Khodorkovskiy and Lebedev v. Russia*, applications nos. 11082/06 and 13772/05, judgment of the European Court of Human Rights of 25 July 2013.

309 The Criminal Procedure Code of Georgia, Article 38.4 and Article 43.

310 The Criminal Procedure Code of Georgia, Article 143.2

311 Decision of Investigative Section of the Tbilisi Court of Appeals of 29 September 2017, case no. 78-s/1g-1170-17, p. 5.

9. RIGHT TO EQUALITY

The protection of the right to equality remains a challenge in Georgia; insufficient legislative guarantees, wrong opinions deeply rooted in the society and the lack of measures implemented by the state to ensure equality impede the effective enforcement of existing regulations.

To eliminate shortcomings in the legislation, the Public Defender of Georgia submitted the so-called first wave draft amendments to the parliament in 2015.³¹² These amendments are designed to improve the mechanism of enforcement of antidiscrimination law by private entities and to extend the term for filing complaints on alleged facts of discrimination with courts, which, in turn, will positively affect the effectiveness of the Public Defender as the institution protecting the equality. A timely adoption of amendments is crucial especially considering that discrimination is a frequent phenomenon in the private sector.³¹³ Moreover, *harassment*, *sexual harassment* and *denial of reasonable accommodation* are not acknowledged as the forms of discrimination.

In 2017, the Public Defender considered 162 new cases on discrimination; discrimination or incitement to discrimination was established in 26 of them while 113 cases were terminated on various legal grounds.³¹⁴ The largest share of the complaints concerned alleged discrimination on the grounds of disability (11%), gender (9%), ethnicity (9%), different opinion (9%), religion (7%), sexual orientation and gender identity (7%), citizenship (3%) and political opinion (3%).

The grounds of discrimination or incitement to discrimination in the 26 cases were: sex in six cases, disability and different opinion in five cases each, sexual orientation and gender identity in four cases, religion and citizenship in two cases each and pregnancy and age in one case each.

The most vulnerable groups in terms of exercise of the right to equality still include women, persons with disabilities, including children, representatives of LGBT+ community and religious minorities. Discrimination is most frequently alleged in the area of pre-contractual and labour relationship. Discrimination has proved to be a problem in the process of receiving social benefits too.

9.1. DISCRIMINATION ON THE GROUND OF SEX

One of the forms of discrimination against women, observed in the reporting period, was sexual harassment,³¹⁵ although the number of complaints submitted to the Public Defender concerning this wrongdoing was not high. There are several reasons behind the scarcity of such complaints, including negative gender stereotypes, practice of blaming victims and lack of information. Moreover, sexual harassment at workplace or in public space is not regulated by legislation. The absence of relevant regulation further complicates the understanding of sexual harassment and negatively affects the indicator of exposure of such cases. Moreover, the consideration

312 A public statement of the Public Defender of Georgia: <http://ombudsman.ge/ge/news/saxalxo-damcvelma-parlaments-antidiskriminaciuli-meqanizmis-gadzlierebis-miznit-cvilebebis-migebisken-mouwoda.page>

313 As many as 26 percent of complainants claim that they were discriminated by physical and legal entities in private law.

314 A number of cases were terminated because discrimination was not established in them; some cases were terminated because the complainants filed complaints with a court; other cases were terminated because defendants represented by physical/legal persons in private law failed to provide the information which was requested by the Public Defender in relation to the cases.

315 The Public Defender's friend-of-the-court opinion to the Tbilisi City Court: <http://www.ombudsman.ge/uploads/other/4/4672.pdf>; Recommendation to Fresco LLC: <http://www.ombudsman.ge/uploads/other/4/4976.pdf>

by the Public Defender of the sexual harassment case of E.S. showed the difficulty of obtaining evidences in those cases.

Pregnant women represented a group of victims discriminated on the ground of sex in the reporting period too.³¹⁶ In this regard women are, as a rule, discriminated against by private employers who refuse to extend the employment contracts to pregnant women.

The Public Defender's considers that the absence of state programs tailored to physiological and psycho-emotional needs of victims of sexual violence is discriminatory too.³¹⁷

9.2. DISCRIMINATION ON THE GROUND OF DISABILITY

Persons with disabilities are the people who most frequently encounter discrimination in various spheres of life. An imperfect legislative framework and the lack of understanding of importance of a special education teacher prevent disabled children from exercising their right to inclusive education.³¹⁸

PWDs experience difficulties in using the public transport in 2017 too. The practice of the Public Defender revealed the instances where children with autism spectrum and their parents became victims of aggression from the side of drivers and passengers in public transport, since it is difficult to manage the behaviour of those children.

Although by establishing a system of care giver the state took certain steps towards the transition from a medical model of disability to a social model, the implementation of this system is problematic.³¹⁹ In particular, individual needs of a person are not taken into consideration when appointing a care giver. For the institute of care giver to effectively assist a person in exercising his/her rights, there must be established a standard requiring that a court adjusts spheres of support to individual psycho-emotional needs of a person.

9.3. DISCRIMINATION ON THE GROUND OF RELIGION

The reporting period revealed discrimination and incitement to discrimination mainly against the Muslim community. Such instances included the restriction of freedom to express their religious identity to Muslim schoolchildren in public schools of Georgia as well as the use of school education process for the aim of religious indoctrination, proselytism or forced assimilation. One of those facts took place in a public school of the Mokhe village in Adigeni district, where the acting school principal required from a Muslim schoolgirl to remove the hijab if she wanted to be enrolled at the school.³²⁰

Persons of Muslim identity encountered problems when crossing the state border of Georgia too: in contrast to others, they were delayed at the border, inquired about the aim of their visits, ties with the Republic of Turkey and other Muslims as well as forced to hand over religious literature.³²¹

316 The Public Defender's recommendation to IG Development Georgia LLC: <http://www.ombudsman.ge/uploads/other/4/4830.pdf>

317 The Public Defender's general proposal to the Ministry of Labor, Health and Social Affairs of Georgia: <http://www.ombudsman.ge/uploads/other/4/4819.pdf>

318 The Public Defender's recommendation to the Ministry of Labor, Health and Social Affairs of Georgia: <http://www.ombudsman.ge/uploads/other/5/5007.pdf>

319 The Public Defender of Georgia, *Legal Capacity – Legislative Reform Without Implementation, Study Report*, 2016, available at: <http://www.ombudsman.ge/uploads/other/3/3948.pdf>; Public Defender's general proposal to the High Council of Justice and LEPL Levan Samkharauli National Forensic Bureau: <http://www.ombudsman.ge/uploads/other/4/4616.pdf>

320 The Public Defender's general proposal to the Ministry of Education and Science of Georgia: <http://www.ombudsman.ge/uploads/other/4/4746.pdf>

321 The Public Defender's recommendation to the Ministry of Internal Affairs of Georgia and LEPL Revenue Service: <http://www.ombudsman.ge/uploads/other/4/4398.pdf>

9.4. DISCRIMINATION ON THE GROUND OF SEXUAL ORIENTATION AND GENDER IDENTITY

The complaints examined by the Public Defender prove that LGBT+ community encounters discrimination in almost every sphere of life. According to information provided by nongovernmental organizations and other activists, representatives of LGBT+ community sometimes opt not to disclose facts of alleged discrimination for fears of being further stigmatized.

Negative stereotypes about LGBT+ community are still widespread among society, causing the restriction of some of their rights on discriminatory grounds and encouraging violence against them. An example of such attitude is an incident that took place in Batumi on 25 August 2017, L.B. and T.K., representatives of “Equality Movement” – nongovernmental organization working on protection of LGBT+ rights.³²²

As the activity of the Public Defender shows, representatives of LGBT+ community often fell victim to discrimination when receiving services and renting a space.³²³ Sometimes, applicants are subject to discrimination regardless of whether they belong to the LGBT+ community or not, mainly due to their appearance or dress style.

9.5. DISCRIMINATION IN THE PROCESS OF RECEIVING SOCIAL BENEFITS

The state social policy is designed in a way that, in certain cases, it is discriminatory against various groups. This approach is especially painful for persons with disabilities who, in certain cases, are prevented from using social benefits due to established criteria.

Persons with severe disability (except for persons with significant visual impairment) and moderate disability engaged in public activity cannot benefit from social package³²⁴ whereas persons with identical disabilities engaged in private activity can benefit from social package.³²⁵ Moreover, children under the age of five, along with other prioritized groups, enjoy a priority to engage in the rehabilitation/habilitation program; consequently, the financing is terminated to children over the age of five and they are put on the waiting list.³²⁶

It the reporting period, persons with sight impairment with a status of severe disability, who were registered in the territory of Chiatura municipality, received social assistance for utility fees from the Chiatura municipal budget.³²⁷ However, such a benefit was not offered to other Persons with severe disability living in the territory of the municipality.³²⁸ The Public Defender observed instances of discrimination in other municipalities too.³²⁹

The discrimination by association on the ground of citizenship was observed in the issuance of subsistence allowance to families: in the event a family member does not have Georgian citizenship or a residence permit, the entire family is deprived of the subsistence allowance. According to the acts regulating this issue, a family member filling in the application for subsistence allowance shall have “ID/residence permit or passport of

322 A public statement of the Public Defender of Georgia: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadebatanasworobis-modzraobis-wevrta-mimart-ganxorcielebuli-savaraudo-arasatanado-mopyrobis-faqtze.page>

323 The Public Defender’s recommendation to Technocom LLC: <http://www.ombudsman.ge/uploads/other/4/4497.pdf>; Recommendation to Sector 26 LLC: <http://www.ombudsman.ge/uploads/other/4/4194.pdf>; Recommendation to G.G.: <http://www.ombudsman.ge/uploads/other/4/4397.pdf>.

324 Paragraph 4 of Article 6 of the Ordinance of the Government of Georgia N279, dated 23 July 2012, on determining the social package.

325 The Public Defender’s recommendation to the government of Georgia: <http://ombudsman.ge/uploads/other/4/4495.pdf>

326 Subparagraph B of Paragraph 2 of Article 3 of rehabilitation/habilitation subprogram envisaged in the Ordinance of the Government of Georgia N102, dated 6 February 2016.

327 The Ordinance of Chiatura municipality council N7, dated 15 March 2017, on the Approval of the Rule of Disbursing and Receiving Social Assistance from the Municipal Budget of Chiatura.

328 The Public Defender’s recommendation to the Chiatura municipality council: <http://www.ombudsman.ge/uploads/other/4/4762.pdf>

329 The Public Defender’s public statements: <http://www.ombudsman.ge/ge/news/zestafonis-municipalitetis-sakrebulo-savaraudo-diskriminacia-agmofxvra.page>; <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-shefasebit-bordjomis-municipalitetis-axaldaqorwinebulta-programa-diskriminaciulia.page>

Georgian citizen or other identity document of every member of his/her family declared in the application, which bears the personal number of a document holder.³³⁰ Moreover, “an authorized person of the Agency shall personally examine ID/residence permit or passport of Georgian citizen or other identity document³³¹ of each member of the family and copy the personal numbers from these documents.”³³²

The rule of the use of social programs is discriminatory against persons with permanent residence permit in Georgia too as this rule allows only citizens of Georgia to use those programs.³³³

9.6. DISCRIMINATION IN LABOUR AND PRE-CONTRACTUAL RELATIONSHIP

The majority of facts of alleged discrimination that came to the attention of the Public Defender concern labour and pre-contractual relations. Discriminatory criteria specified in vacancy announcements should be underlined.³³⁴

Discriminatory treatment is usually manifested in denying a job and firing from the job.³³⁵ In the reporting period, the Office of Public Defender received a number of complaints about various labour right violations of discriminatory type in schools, kindergartens and local self-government bodies. It should be noted that the majority of these complaints concerned alleged discrimination on the ground of political or different opinions.³³⁶

9.7. STATEMENTS AND ADVERTISEMENTS ENCOURAGING DISCRIMINATION

The practice of the Public Defender reveals that abusive statements of high officials or other public persons that incite discriminatory attitudes towards women, persons with disabilities, LGBT+ community and religious minorities represent a serious challenge to the protection of equal rights.³³⁷

In the reporting period, the Public Defender repeatedly reacted to advertisements and reportages³³⁸ inciting discrimination and contributing to the establishing and strengthening of sexist and other discriminatory stereotypes and stigma.

330 Subparagraph A of Paragraph 4 of Article 11 of Decree N225/n of the Minister of Labor, Health and Social Affairs of Georgia, dated 22 August 2006.

331 Paragraph 5 of Article 7 of Decree N141/n of the Minister of Labor, Health and Social Affairs of Georgia, dated 20 May 2010.

332 The Public Defender's recommendation to the Ministry of Labor, Health and Social Affairs of Georgia: <http://www.ombudsman.ge/uploads/other/4/4818.pdf>

333 The Public Defender's recommendation to the Ministry of Labor, Health and Social Affairs of Georgia: <http://www.ombudsman.ge/uploads/other/4/4837.pdf>; Friend-of-the-court opinion to the Tbilisi City Court: <http://www.ombudsman.ge/uploads/other/4/4747.pdf>.

334 The Public Defender's general proposal to the Ministry of Labor, Health and Social Affairs of Georgia: <http://www.ombudsman.ge/uploads/other/4/4427.pdf>.

335 The Public Defender's recommendation to Zaza Pachulia Basketball Academy LLC: <http://www.ombudsman.ge/uploads/other/4/4324.pdf>; Recommendation to LEPL Georgian Public Broadcaster: <http://www.ombudsman.ge/uploads/other/4/4509.pdf>; Recommendation to LEPL Technical University of Georgia: <http://www.ombudsman.ge/uploads/other/5/5006.pdf>.

336 The Public Defender's recommendation to the Ministry of Education and Science: <http://www.ombudsman.ge/uploads/other/4/4975.pdf>.

337 The Public Defender's general proposal to the Parliament of Georgia: <http://ombudsman.ge/uploads/other/4/4192.pdf>; General proposal to the LEPL Ivane Javakishvili Tbilisi State University: <http://www.ombudsman.ge/uploads/other/5/5008.pdf>; Public statements: <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-qedis-sakrebulo-wevrebis-seqsistur-gamonatqvamebs-exmianeba.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-autizmis-speqtris-mqone-adamianebs-mimart-gamotqmulsheuracxmyofel-gamonatqvamebs-exmianeba.page>; <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-marneulis-meris-seqsistur-gamonatqvams-exmianeba.page>

338 The Public Defender's general proposal to the Pirveli LLC: <http://www.ombudsman.ge/uploads/other/4/4709.pdf>; General proposal to JSC Tskali Margebeli: <http://www.ombudsman.ge/uploads/other/4/4914.pdf>.

9.8. SHORTCOMINGS IN INVESTIGATION INTO ALLEGED HATE CRIMES

Despite positive steps taken by the state, the effectiveness of investigations into alleged hate crimes remains a challenge. According to the Chief Prosecutor's Office,³³⁹ 2017 saw the increase in the number of cases where hate was established as a motive of crime. However, the activity of the Public Defender reveals that the motive of hate often remains unnoticed by investigative bodies and this undermines the prevention of hate crimes. Besides, the Public Defender has not been informed yet of those documents which the Ministry of Interior and the Chief Prosecutor's Office use as a guidance in investigating this type of crimes.³⁴⁰

The cases considered by the Public Defender include crimes allegedly committed on the ground of religion, ethnicity, sexual orientation and gender identity, in which investigators did not establish the motive of hate and the investigation was either continued or terminated; also, the cases which were not investigated because of absence of elements of crime. The Public Defender also examines facts of abuse on the ground of alleged discrimination committed by law enforcement officers against representatives of LGBT+ community and ethnic minorities.³⁴¹

A large share of complaints on alleged hate crimes submitted to the Public Defender accounts for Jehovah's Witnesses, which concern the facts of violence against them as well as the damage caused to their property. Unfortunately, law enforcement authorities often react to such facts as to individual incidents, failing to inquire into the history of violence and qualifying a repeated physical abuse or damage to the property and items as the persecution on religious ground.³⁴² There are instances when after the termination of investigation, a fact of abuse is qualified as an administrative offence; however, even when a person is found guilty of wrongdoing, the existing legislation does not allow for specifying the motive of discrimination.³⁴³

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend the legislation on combatting discrimination in accordance with the legislative proposal submitted by the Public Defender of Georgia on 11 February 2015;
- To amend the legislation on combatting discrimination so as to specify *harassment*, *sexual harassment* and *denial of reasonable accommodation* as forms of discrimination.

RECOMMENDATION

To the Government of Georgia:

- To ensure that persons with severe and moderate disability employed in the public sector benefit from the social package envisaged in the Ordinance of the Government of Georgia N279, dated 23 July 2012, on determining the social package;
- To ensure that the state social and health care programs are available to persons with residence permit on an equal footing with the citizens of Georgia.

339 Measures for the implementation of recommendations issued to the prosecution of Georgia under the Ordinance of the Parliament of Georgia N1181- IIS, dated 30 June 2017, on the report of Public Defender "The Situation in Human Rights and Freedoms in Georgia - 2016."

340 It should be noted that at a meeting held on 1 March 2018, representatives of the Prosecutor's Office promised the Public Defender to provide these documents.

341 The Public Defender considered seven such complaints. The consideration of the cases did not reveal the motive of hate in any of them.

342 Article 156 of the Criminal Code of Georgia.

343 The current administrative legislation does not qualify a discriminatory motive as an aggravating circumstance for administrative liability.

To the Ministry of Internal Affairs of Georgia:

- To develop a guiding document for the effective investigation into alleged hate crimes.

To the Ministry of Internal Affairs of Georgia and LEPL Revenue Service falling within the sphere of administration of the Ministry of Finance of Georgia:

- To carry out a passport and visa control of persons entering and leaving Georgia and associated customs procedures at the customs checkpoints by observing religious neutrality and on a case-by-case basis.

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

- To consider urgent needs of children requiring the placement in the rehabilitation/habilitation subprogram and their parents and meet the needs of beneficiaries on the waiting list within a reasonable time; at the same time, to increase the geographic access to the program;
- To modify the legislation regulating the issue of social subsistence allowance so as to ensure that the failure of any one of family members to meet the criteria necessary for social assistance does not prejudice the right of other members of the family to this allowance;
- In case of pregnancy resulted from rape, to consider the allocation of financing to the victim, within the scope of state health care program, by taking into account the social and economic conditions of the victim.

To the Ministry of Education and Science of Georgia:

- To speed up the process of improvement of the legislative framework regulating the inclusive education. In particular, to specify on the legislative level the role and functions of multi-disciplinary team of inclusive education, special education teachers and other parties to the process, including, parents;
- In order to observe a religious neutrality in public schools, to eradicate the practice of using religious objects for non-academic purposes within the school infrastructure;
- To ensure that alleged facts of involving schoolchildren in religious rituals, including non-Christian schoolchildren in Christian rituals, during school hours are assessed, disciplinary proceedings instituted and relevant legal response undertaken.

To the Prosecutor's Office of Georgia:

- To provide the Public Defender with the document that is applied as a guideline by the prosecution of Georgia in the process of investigation of alleged hate crimes.

To the Chiatura municipality council:

- To ensure the allocation of financial aid for utility fees to all persons with severe disability living in the municipality.

10. GENDER EQUALITY

Gender equality remains a challenge in Georgia. The large scale of violence against women, low involvement of women in a decision making process and problems in the realization of the right to equality adversely affect the women's rights and a gender equality indicator.

In 2017, by ratifying a Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence the state took a significant step towards the enhancement of mechanisms of combating domestic violence and violence against women and protecting and assisting the victims of the violence.

Yet another commendable step was the establishment of the human rights protection department within the Ministry of Internal Affairs of Georgia;³⁴⁴ the department will monitor investigations and administrative proceedings concerning domestic violence, violence against women, and hate crimes.³⁴⁵

10.1. WOMEN'S PARTICIPATION IN THE DECISION MAKING PROCESS

Equal participation of women in the decision making process is an essential prerequisite for attaining the gender equality. Unfortunately, women's participation in the political life remains a problem in Georgia, with the lack of state initiatives and reluctance of political parties to support the promotion of women further aggravating the problem.

According to the Global Gender Gap Index 2017,³⁴⁶ Georgia ranks 114th among 144 countries by its score of women's political participation and women in Parliament. According to the data of Inter-Parliamentary Union,³⁴⁷ Georgia ranks 124th among 193 countries with 24 women represented in the parliament as of 1 March 2017.

Alike previous years, the indicator of women participation in the executive authority remains low: only two ministers out of 14 are women. While women comprise the majority of employees of the ministries, their share at managerial positions is not insignificant – 19%.³⁴⁸ Only one ministry has the advisor on gender issues; eight ministries do not have such a position at all; in six ministries, the function of gender advisor is performed by other officials as an additional one.³⁴⁹

The Public Defender states argues that, the Parliament of Georgia must support a temporary legislative measure on gender quotas. Despite a number of unsuccessful attempts on the legislative level,³⁵⁰ the submission of

344 Information is available at: <http://police.ge/ge/ministry/structure-and-offices/adamianis-uflebata-datsvis-departamenti?sub=11451> [last accessed on 6 March 2018].

345 Also, facts of trafficking and crimes committed by/against minors.

346 Information is available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=GEO> [last accessed on 7 March 2018].

347 Information is available at: <http://www.ipu.org/wmn-e/classif.htm> [last accessed on 7 March 2018].

348 According to the information provided by the ministries to the Office of Public Defender, as of February 2018, there are 1824 men and 425 women on managerial positions in 14 ministries.

349 From among existing ministries, only the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia has the advisor on gender issues.

350 The initiative on gender quotas was first submitted to the parliament of Georgia in 2003 and then in 2008.

a draft law to the Parliament in 2017, which was drafted by the working group on women's political participation and had up to 37 000 signatories, may be regarded as a step forward.³⁵¹

Women's participation in the implementation of local self-governance also remains a problem. The gender analysis of the 2017 local elections showed the low number of woman candidates both from single seat constituencies and on the party lists.³⁵² As a result, the share of women representation in the Municipal Councils is 13.46% and among 64 elected Mayors only one is a woman.³⁵³

The steps taken by local self-government bodies to mainstream gender equality are often formal and insufficient. The majority of self-government units lack gender advisors while the regions where gender equality councils³⁵⁴ are set up and gender advisors appointed, need to strengthen the mentioned mechanism institutionally. The activities of municipalities to meet women's needs are mainly focused on programs envisaging one-off assistance and payment of the rent to single and multi-children mothers, and victims of domestic violence. However, these projects are implemented only in several municipalities and awareness level is low in the society on these projects.

10.2. WOMEN'S ECONOMIC ACTIVITY AND LABOUR RIGHTS

Ensuring women's economic participation on an equal level with men is crucial for the establishment of society that values gender equality. However, limited access for women to material resources, a legislative regulation of issues such as equal pay for equal work, prohibition of sexual harassment, etc. still remain problematic in Georgia.

According to the Global Gender Gap Index 2017, Georgia's score of economic participation and opportunity has improved and the country ranks 75th among 144 countries. The score of wage equality for similar work has remained unchanged and Georgia ranks 45th by this indicator, according to the same survey.³⁵⁵

Equal participation of women is also impeded by unequal distribution of child care load; underlying reasons of such a state of affairs include the stereotypical attitudes that are widely spread in the society and Gaps in the legislation. It should be noted that the Maternity Protection Convention №183 of the International Labour Organization has not been ratified yet. The Georgian legislation envisages a child care leave for both parents,³⁵⁶ but the grounds of reimbursement of this leave, as specified in the decree of the Minister of Labour, Health and Social Protection of Georgia,³⁵⁷ are vague and non-specific and hinder the exercising this right by male parents. The rule of reimbursement of the maternity leave needs to be regulated in private sector as well, because so far the reimbursement of maternity, childbirth and childcare leaves for women depends on employers' good will and gender sensitivity.³⁵⁸

During the reporting period, as a result of the Public Defender's proposal, the parliament supported the

351 Information is available at: <https://info.parliament.ge/#law-drafting/14155> [last accessed on 6 March 2018].

352 Women comprise a mere 7.62% of members of elected self-government bodies and 1.85% of elected mayors of 54 self-government units.

353 Information is available at: <https://docs.google.com/viewerng/viewer?url=https://gyla.ge/files/news/2006/untitled+folder/GYLA.-gender-presentation.-2017.pdf> [last accessed on 5 March 2018].

354 Gender equality councils are established in 15 municipalities, are not established in 42 municipalities, and are being established in two municipalities.

355 Information is available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=GEO> [last accessed on 7 March 2018].

356 The Law on Public Service and the Labor Code of Georgia; Information is available at: <https://matsne.gov.ge/ka/document/view/28312> <https://matsne.gov.ge/ka/document/view/1155567>; [last accessed on 15 February 2018].

357 The Decree №01-43/n of the Minister of Labor, Health and Social Protection of Georgia, dated 30 June 2017. Information is available at: <https://matsne.gov.ge/ka/document/view/3725416> [last accessed on 15 February 2018].

358 Information is available at: <https://matsne.gov.ge/ka/document/view/115556> [last accessed on 15 February 2018].

initiative which changes the ground for the termination of a single parent status.³⁵⁹ Despite this commendable move, however, challenges remain in a legal regulation of the status of single parent. Namely, according to the information provided by the Public Service Development Agency,³⁶⁰ 1,610 birth registration record of children born only in 2017 indicated only mother as a parent, while the status of a single parent was granted to 2,320 women from 2015 onwards.³⁶¹ The fact that this status has not been granted to men so far indicates that the rule of granting a status of single parent is limited to a female parents only.

The absence of the rule for determining the status of multi-children family remains a problem. According to the information provided by the Ministry of Justice,³⁶² in 2017, as many as 11,674 persons gave birth to the third or more child; however, there are no programs aimed at improving social and economic conditions of multi-children families. It should be noted that in 2018, the Healthcare and Social Issues Committee of the Parliament started discussing the issue of determining a status of multi-children family and social package.³⁶³ The Public Defender further continues to work in this direction.

10.3. SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (SRHR)

Sexual and reproductive health and rights is one of significant indicators in assessing the gender equality. In 2017, the Office of Public Defender assessed the human rights in the context of sexual and reproductive health and wellbeing in the country.³⁶⁴ The results of the survey showed a number of barriers and shortcomings in this area.

A key problem is the low awareness on sexual and reproductive health and rights. Lack of information on SRHR is causing problems such as early marriage, undesired pregnancy, spread of HIV and other sexually transmitted diseases and makes it difficult to eradicate gender stereotypes deeply rooted in society. The Public Defender states that, it is important to incorporate the teaching of sexual and reproductive health and rights in the formal education curriculum.

Yet another problem along with the lack of information is the implementation of sexual and reproductive health and rights and the access to relevant services. In this regard, the most vulnerable category consist of persons who are discriminated against on the grounds of various traits or identity.³⁶⁵ Being stigmatized because of their identity or/and self-representation, they cannot receive relevant treatment in health care institutions and this further discourages them to use these services.

In 2017 there was the improvement of maternal healthcare, including the decrease in the maternal mortality and artificial abortion rates.³⁶⁶ In particular, according to the preliminary data of pregnancy centers and maternity houses, 24,308 artificial abortions were conducted in Georgia in 2017,³⁶⁷ compared to the corresponding indicator of 26,838 in 2016. Much like the previous years, the highest share of abortions accounted for women aged between 25 and 29 years (7,280). The indicator of abortion among youngsters under 15 years of age, has decreased by 26% as compared to 2016.

359 Under the legislative norm, effective until that, a single parent status was terminated to a woman/man upon the official registration of marriage regardless of whether her/his spouse assumed responsibility for care after the child. Information is available at: <https://matsne.gov.ge/ka/document/view/31702> [last accessed on 15 February 2018].

360 The letter of the Public Service Development Agency № 01/23393; 23/01/2018.

361 The letter of the Public Service Development Agency № 01/95297; 21/03/2018.

362 The letter of the Public Service Development Agency № 01/23393; 23/01/2018.

363 Information is available at: <http://www.parliament.ge/uploads/other/87/87696.pdf> [last accessed on 19 March 2018].

364 Information is available at: <http://ombudsman.ge/uploads/other/5/5046.pdf> [last accessed on 7 March 2018].

365 LGBT+ persons, female sex workers, female drug users, internally displaced and conflict affected women. PWDs, ethnic minorities, youth and youngsters.

366 Information is available at: <https://rm.coe.int/1680464e72> [last accessed on 7 March 2018].

367 The letter of the Ministry of Labor, Health and Social Affairs of Georgia №01/5148 30.01.2018.

Proper regulation of surrogacy remains a challenge. The Georgian legislation does not properly regulate surrogacy; therefore, much of this practice is unregulated which encourages commercial surrogacy. It is important to set a minimal age limit for a gestational carrier in order to ensure a corresponding level of development of a surrogate mother and capacity to understand, when taking this decision, a possible adverse impact of the surrogacy on her health.

In Public Defender's view, there is a need of a comprehensive regulation of the rights of a surrogate mother, client parent(s) and children to avoid uncontrolled surrogacy and encouragement of commercial surrogacy.

Unfortunately, due to lack of detailed information and data in the area of sexual and reproductive health, the state policy fails to adequately meet different needs of women. The Public Defender believes that the data on sexual and reproductive health services, including on the accessibility of services for all vulnerable groups must be collected, categorized and analyzed in order to eliminate existing shortcomings and develop effective policy and programs in the future.

10.4. WOMEN, PEACE AND SECURITY

The UN Security Council resolution 1325 on Women, Peace and Security, and associated resolutions recognize a significant contribution of women to the process of peacebuilding, security and reconciliation as well as management and prevention of conflicts. To implement the agenda of the resolutions, countries assume an obligation to promote the participation of women and girls in a decision-making process and implement effective protection and assistance measures for the prevention of gender-specific risks and violence.

Despite the number of steps taken by Georgia, which include the adoption and implementation of the national Action Plan on Women, Peace and Security, the state policy failed to make an impact on the rights and actual conditions of conflict-affected population, especially women and girls, and hence, number of challenges and problems remain unsolved in this area.³⁶⁸

Responsible government entities fail to see special roles and needs of women and girls, therefore, the trainings conducted to address this problem prove to be insufficient to raise the level of gender sensitivity among representatives of those entities that have poor gender balance. In particular, women participation in the armed forces of Georgia stands at 7% while in international peace keeping missions is at a mere 1%.³⁶⁹ Although there is an even gender balance among the staff of a civic office of the Defence Ministry of Georgia, the representation of women on managerial positions comprises 30%.

A low awareness on the issues of violence against conflict-affected women and domestic violence as well as sexual violence remains a problem. Moreover, specific psycho-social rehabilitation and reproductive health services were not offered to conflict affected women and girls, while the advocacy for issues concerning women and girls often depended on individual efforts and initiatives.³⁷⁰

10.5. TRADE OF HUMANS (TRAFFICKING)

The trade of humans (trafficking) is one of grave violations of human rights. Millions of people become victims of trafficking globally every year, with women and children representing especially vulnerable groups.

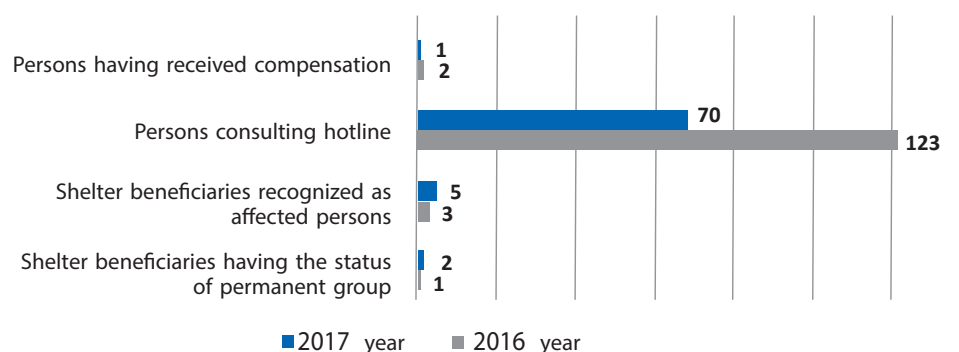
³⁶⁸ Information is available at: <http://ombudsman.ge/uploads/other/5/5021.pdf> [last accessed on 7 March 2018].

³⁶⁹ The letter of the Defense Ministry of Georgia MOD 8 18 00164059. 19.02.2018

³⁷⁰ Information is available at: <http://ombudsman.ge/uploads/other/5/5021.pdf> [last accessed on 16 March 2018].

According to the report of US Department of State of 27 June 2017, Georgia, like in the previous year, is placed onto Tier 1.³⁷¹ Nevertheless, the report underlines that Georgia is a source, transit, and destination country for women and girls subjected to sex trafficking and men, women, and children subjected to forced labour. In 2017, investigations were launched into 21 alleged cases of trafficking.³⁷² The indicators of persons who received shelter service for victims of human trafficking in 2017 are provided below:³⁷³

Table N1: Data on the provision of services to the victims of human trafficking



In 2017, the status of a person affected by human trafficking was granted to eight women and the status of victim of human trafficking on the ground of sexual exploitation was granted to four women.³⁷⁴

Bearing in mind that Georgia is a transit country, the risk of sex trafficking doubles. In Public Defender's view, a great deal of attention should be paid to touristic regions and the seaside. It is the obligation of the state to raise awareness on trafficking among representatives of law enforcement authorities and the population and to step up the activity in identifying alleged crimes and undertaking effective response.

10.6. VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

Despite positive changes in regard with issues concerning the domestic violence and violence against women, the implementation of effective preventive measures remained a challenge in 2017. Yet another challenge, against the increased indicator of identified violence, is the improvement of protection and assistance measures for persons affected by violence and being victims of violence and the adjustment of these measures to different needs of these persons.³⁷⁵

Despite repeated recommendations of the Public Defender, no standard methodology has been developed for keeping the statistics on violence against women and domestic violence; the lack of data makes it difficult to assess the problem and plan and implement programs/services that are tailored to existing needs.

The involvement of social workers in the process of studying the cases of domestic violence remains a problem. Besides, although the legislation requires that an offender undertakes a mandatory training course de-

³⁷¹ US Department of State, Trafficking in Persons Report 2017, pg. 177. Information is available at: <https://www.state.gov/j/tip/rls/tiprpt/2017/>.

³⁷² The letter of the Ministry of Justice of Georgia №1233, 22 February 2018; including 15 cases of alleged sexual exploitation (one is committed in Azerbaijan and 14 in Georgia, of which six is committed in Adjara, three in Tbilisi, one in Shida Kartli, four in Kvemo Kartli), one case of both sexual exploitation and forced labor (Shida Kartli), one forced labor of an adult (Abkhazia), one forced labor of an adult and a minor (Kvemo Kartli), one forced labor of a minor (Tbilisi) and two cases of sale/purchase of child (Tbilisi and Adjara).

³⁷³ The letter of the State Fund for the Protection and Assistance of the Victims of Human Trafficking № 07/138, 29 January 2018.

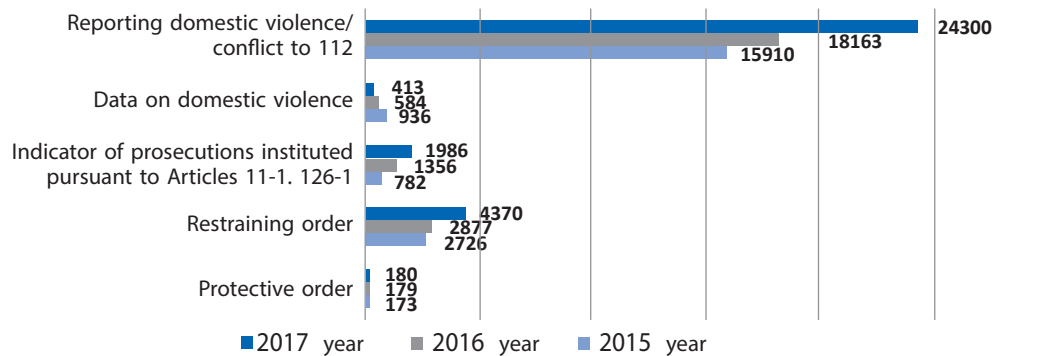
³⁷⁴ The letter of the Ministry of Justice of Georgia №5176, 25 January 2018.

³⁷⁵ The study and analysis of cases by the Office of Public Defender showed that among persons who are especially severely affected by domestic violence are women with low income or no income, uneducated women, single women, conflict-affected women, elderly persons and women whose partners/former partners work in law enforcement entities or/and serve in armed forces.

signed to change violent attitude and behaviour, this service is not offered to offenders, save probationers and convicts.³⁷⁶

It should be noted that the indicators of the detection of domestic violence and application of protective measures have increased over the past few years; however, the risk assessment when responding to an incident, the development of an individual plan for the protection of a victim and the conduct of an effective monitoring to avoid repeated violence are the issues that remain problematic.

Table N2: Incidents of Violence against Women and Domestic Violence



As regards investigations into incidents of domestic violence, according to the Ministry of Internal Affairs, in 2017, investigations were initiated into 2,853 cases under Articles 11¹-126¹ of Criminal Code of Georgia.³⁷⁷ With regard to domestic violence, investigations were launched into 19 cases under Article 151¹ of Criminal Code of Georgia, and the prosecution was initiated on five of them; investigation was launched into a female genital mutilation but was terminated due to lack of the signs of crime.³⁷⁸

Low indicator of complaints concerning domestic violence from regions³⁷⁹ and the failure of law enforcement officers to detect facts of economic and psychological violence³⁸⁰ are the problems that persist. The studied cases revealed yet another problem – the use by law enforcement officers of so-called “written pledge” as a warning mechanism. In some cases, they use only administrative legal mechanisms to prevent domestic violence, although the materials of the cases imply signs of criminal offence³⁸¹.

At the same time, the awareness of issues of violence against women and domestic violence is low among representatives of law enforcement agencies. Victims of violence often speak about the barriers they come to face when interacting with law enforcement agencies. In particular, these are bureaucratic rules and procedures of police departments, which are not tailored to needs of female victims. The stereotypical attitudes of the representatives of law enforcement office, increase the risk of secondary victimization of the victims of violence.

As a result, the tendency of victims reporting about the violence but refusing to continue the consideration of a case persists; a reason behind this is the distrust in existing services and protective mechanisms and the absence of future prospects.

³⁷⁶ The letter of the Ministry of Corrections of Georgia № MOC 1 18 00260308; 22/03/2018. According to the provided information, in 2017, as many as 81 convicts participated in rehabilitation programs, implemented in the penitentiary system, that are designed to change violent attitudes and behavior and 67 convicts undertook a mandatory program “Management of Violent Behavior” at the LEPL National Probation Agency.

³⁷⁷ The indicator includes Article 126¹ as well as the crimes specified in this Article, with the reference to Article 111, which are envisaged in relevant articles of the Criminal Code of Georgia. The letters of the Ministry of Internal Affairs of Georgia MIA 9 18 00191707; MIA 4 18 00401357, dated 25 January 2018 and 19 February 2018.

³⁷⁸ The letter of the Ministry of Internal Affairs of Georgia MIA 2 18 00661078; 21/03/2018.

³⁷⁹ The letter of the Ministry of Internal Affairs of Georgia MIA 9 18 00184958, 24 January 2018.

³⁸⁰ Public Defender’s recommendations of 16 August 2017 (№ 08/11501; № 08/11502) to the Ministry of Internal Affairs of Georgia, concerning ineffective response to the cases of domestic violence.

³⁸¹ Public Defender’s proposals № 08/7418; N 08/7412 of 1 June 2017 concerning the initiation of investigation.

Assessment of Services at the Service Institutions for the Victims of Violence

One should commend the fact that in 2017 five state shelters and a crisis centre operated in Georgia, providing services to victims of violence. It should also be noted that at the end of 2017, crisis centers were opened in Kutaisi and Gori, which is a significant step towards the improvement of access to these services.³⁸²

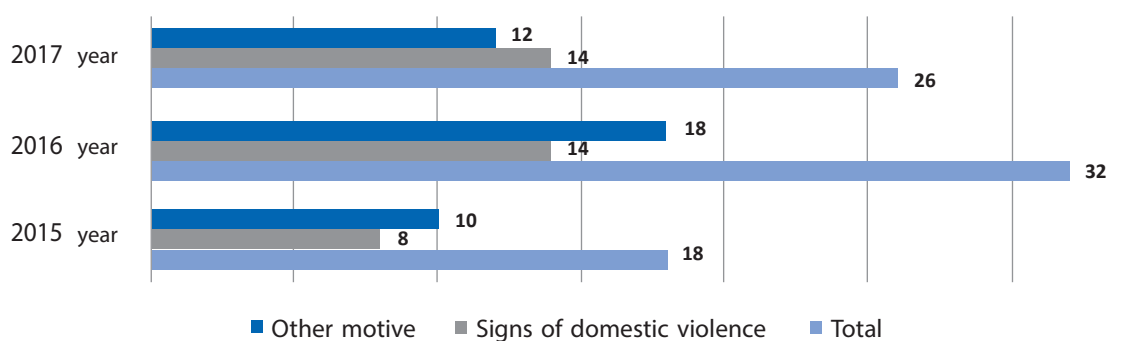
Part of recommendations which the Public Defender issued after the monitoring of shelters for victims of violence and trafficking remains unfulfilled.³⁸³ The shelters fail to properly ensure the self-realization of beneficiaries, their empowerment and psycho-social rehabilitation. The problems that persist include: the provision of housing and financial support to victims after they have left shelters, adjustment of shelter buildings, and collection of information about the health of beneficiaries upon their admittance to shelters.

In the reporting period, the Public Defender of Georgia studied several cases where victims of violence refused to use a shelter because if they did so they would be stripped of minimum subsistence allowance while after leaving the shelter they would have to undertake procedures anew to receive social allowance. In this regard it should be noted that the procedure for the issuance of compensation to victims of domestic violence is unregulated. Under the assumed obligation, the state must develop this procedure within five years.³⁸⁴ Thus, in order to provide victims of violence with effective protection and assistance, the procedures for granting, suspending and terminating the status specified in the rule for socioeconomic evaluation of the condition of socially vulnerable families must be revised so that victims of domestic violence are timely provided with necessary support.

Femicide/Gender Related Killing of Women

According to the data of the Chief Prosecutor's Office of Georgia, in 2017, investigations were launched into 26 cases of gender related killings of women (including 14 facts showing the signs of domestic violence) and 15 attempted killings of women (including 12 facts showing the signs of domestic violence); investigations were also initiated into five incitements to suicide or attempted suicides.³⁸⁵

Table N3: Data on femicide³⁸⁶



382 The letter of the State Fund for the Protection and Assistance of the Victims of Human Trafficking № 07/138, 29 January 2018. According to provided information, 307 persons used shelters for victims of violence and services provided there while 112 persons used the crisis center for victims of domestic violence in Tbilisi.

383 Information is available at: <http://ombudsman.ge/uploads/other/4/4617.pdf> [last accessed on 8 March 2018]

384 Article 17 of the Law of Georgia on Elimination of Domestic Violence, Protection and Support of Victims of Domestic Violence.

385 The letter of the Chief Prosecutor's Office of Georgia № 13/10053, 8 February 2018.

386 Ibid., the table also reflects the data published by the Chief Prosecutor's Office. Information is available at: http://pog.gov.ge/res/docs/public_information/qaltamkvlelobebisanalizi.pdf

The Public Defender sees the link between the high indicator of femicide and the absence of the system for the monitoring violence against women and domestic violence and the risk assessment. In 2017, the Gender Equality Department of the Office of Public Defender studied the cases of femicide/attempted femicide where incidents of alleged domestic violence had been reported to the Interior Ministry before the crimes were committed.³⁸⁷

In a number of cases, according to the information provided by the Interior Ministry, the response was not undertaken because the victims canceled their reports to the police. In such cases the law enforcement agency does not enquire about the reason of cancellation to find out whether it was a fear of the victim of the offender or the intimidation of a victim by the offender. A matter of special attention is a situation where a victim has repeatedly reported violence to the police and police responded to some of these incidents. In such cases, law enforcement officers consider each report as a separate incident and disregard a regular and continuous nature of domestic violence.

One should also underline those cases of femicide, where, according to law enforcement agencies, victims did not turn to the police for help. As the analysis of cases studied by the Public Defender suggests, the reasons of that is mistrust towards law enforcement agencies, the fear of more severe violence and disbelief in the efficiency of existing mechanisms of protection and assistance.

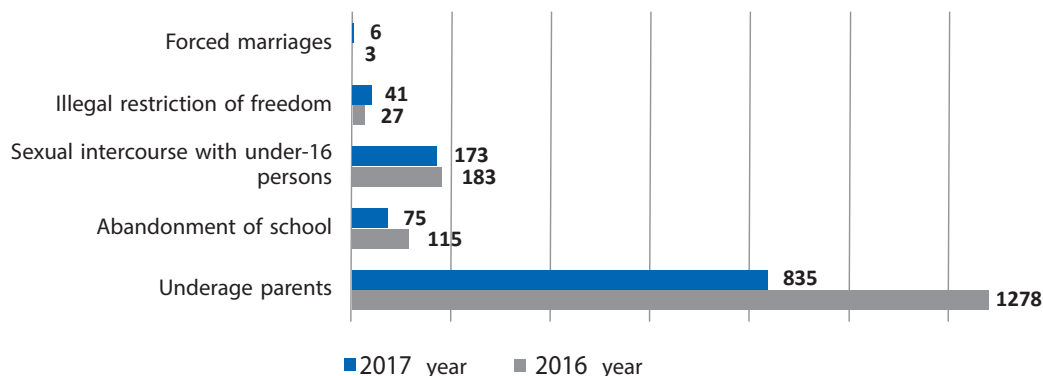
10.7. EARLY MARRIAGE

Early marriage and the practice of engagement remains one of the most alarming manifestations of gender inequality adversely affecting the rights of women and girls.

It has to be mentioned that since 01 January 2017, on the basis of Public Defender's legislative proposal, the registration of marriage of under-18 persons has been prohibited. A positive impact of this move was a decreasing number of such marriages. However, the indicator of under-age parents of newborns remains high³⁸⁸ and the problem of coexistence in early age, forced marriage, engagement and abduction persists.

There is a need to raise awareness of risks associated with early marriage through mainstreaming gender education and a complex life skills/sexual learning in the education system.

Table N4: Early marriage³⁸⁹



³⁸⁷ Public Defender's recommendations (27/12/2017; N 08/17745) to the Ministry of Internal Affairs of Georgia, concerning ineffective response to the cases of domestic violence.

³⁸⁸ The letter of the Ministry of Justice №488. 24.01.2018.

³⁸⁹ The table shows the indicator of initiation of investigation. The letter of the Ministry of Internal Affairs MIA 3 18 00251425, dated 1 February 2018; the letter of the Ministry of Education and Science MES 1 18 00069062, dated 24 January 2018; the letter of the Ministry of Justice №488, dated 24 January 2018.

The analysis of cases studied by the Office of Public Defender shows a weak coordination among general educational institutions, law enforcement agencies and the Social Service Agency on cases of early marriage. This is also proved by the information provided by the Social Service Agency,³⁹⁰ saying that it studied only 98 cases of early marriage in 2017.

Yet another challenge along with the early marriage is the early engagement. According to the information provided by the Interior Ministry, the investigation was launched into six cases of forced marriage, pursuant to Article 150¹ of the Criminal Code of Georgia, but terminated in five cases; moreover, a court did not hear any of such cases.³⁹¹

10.8. THE RIGHTS OF LGBT+ PERSONS

Homophobic and transphobic attitudes existing in Georgia adversely affect the rights of LGBT+ persons and endangers the idea of equal rights. Mainstreaming LGBT+ issues in the gender equality agenda remains a problem³⁹² and hinders the improvement of the existing situation.

On 17 May 2017, an action was staged in front of the building of the State Administration to mark the International Day against Homophobia, Transphobia and Biphobia. Although consultation meetings were held with the Interior Ministry and government administration well before the action, the event was limited in space and time and LGBT+ persons were not given the freedom to choose the place and format of the event.³⁹³

Violence against LGBT+ Persons

The activity of the Public Defender provides the ground to conclude that LGBT+ persons are subject to heightened violence both at home and in public spaces while the measures undertaken by the state to counter the problem are insufficient.

The Office of Public Defender studied a number of complaints in which LGBT+ persons speak about alleged violence, homophobic, humiliating attitudes and inadequate response from police officers. Unfortunately, in a number of cases the complainants themselves refuse to continue proceedings and do not cooperate with General Inspection of the Interior Ministry and the Prosecutor's Office because they doubt that the cases will be investigated in a timely and fair manner. Moreover, it is difficult to obtain evidence in a number of cases. To avoid the encouragement of homophobic attitudes and violence of police officers, it is important to apply measures envisaged in the law to each of those cases which contain sufficient evidence of the offence.³⁹⁴

According to the information provided by the Chief Prosecutor's Office, in 2017, the motive of hate was studied in 86 criminal cases, including on the ground of sexual orientation in 12 cases and gender identity in 37 cases.³⁹⁵ The General Inspection of the Interior Ministry received 21 reports/complaints from LGBT+ com-

390 The letter of the Ministry of Labor, Health and Social Affairs №04/2564. 17.01.2018.

391 The letter of the Ministry of Internal Affairs MIA 3 18 00251425, dated 1 February 2018.

392 The gender equality action plan for 2014-2016 did not envisage the protection of LGBT+ rights or their involvement in a decision making process, which was a gross shortcoming of the plan and actually, undermined the goal of achieving gender equality. Information is available at: <http://www.ombudsman.ge/uploads/other/5/5069.pdf>.

393 Information is available at: <http://ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-homofobiasta-dansfobiastan-brdzolis-saertashoriso-dgestan-dakavshirebit1.page> [last accessed on 16 March 2018].

394 Public Defender's recommendation concerning ethical norms by a police employee, 09/01/2018.

395 The letter of the Division of Human Rights Protection of Prosecutor's Office № 13/13875, dated 23 February 2018. According to provided information, four persons in four out of investigated cases were charged with a crime and the motive of the crime was intolerance on the ground of gender identity. Two persons were found guilty and the hearing on merits is underway against two persons. The motive of intolerance on the ground of gender identity was studied in six cases, though it was not established. Consequently, the motive of hate was not indicated in these cases.

munity in 2017: no disciplinary misdemeanour was established in nine of these cases; eight cases were transferred to other entities of the Ministry of Internal Affairs; only one case was transferred to the Prosecutor's Office and investigation has been launched into it; internal inquiry is underway into two cases.³⁹⁶

The Office of Public Defender often receives complaints about violence against transgender women. Unfortunately, the law enforcement agency lacks an effective strategy of regulating hate-motivated violence, limits itself to responding to separate incidents alone and fails to deal with systemic nature of the problem.

In 2017, on a number of occasions, representatives of LGBT+ community benefitted from the institution providing services to victims of domestic violence; however, given that they still encounter a number of barriers in receiving the service, the institution must ensure the availability of adequately qualified and sensitive personnel.

Social and Economic Rights of LGBT+ Persons

With regard to the constitutional changes, the Public Defender negatively assessed the fact of defining marriage as a union of woman and man in the Constitution. Such wording will encourage homophobic attitudes and enhance negative behaviour towards LGBT+ persons.

In parallel to such a wording in the Constitution, it is important to introduce other forms of recognition of the relationship of the same sex couples, for example, civil partnership; otherwise, the constitutional provision will come into conflict with the standards of the ECJ³⁹⁷ and recommendations issued by the Council of Europe's Parliamentary Assembly and Committee of Ministers.³⁹⁸

LGBT+ persons living in Georgia continue to face problems in the implementation of the rights to education, employment, labour, access to various services and safety. Unfortunately, policy documents designed to achieve gender equality often disregard the issues of LGBT+ rights while the community members cannot set the agenda for improving their rights because they are not involved in a decision-making process.

The situation concerning the rights of LGBT+ community is especially complicated in exercising the right to education; the right to education is restricted to minors with nonconforming gender identity. The cases studied by the Public Defender of Georgia in 2017 have shown the prevalence of homophobic and transphobic attitudes in public schools and universities, which results in creating a hostile environment and ostracizing such persons from the mentioned space.

Sexual and Reproductive Health and Rights of LGBT+ Persons

The analysis of cases studied by the Public Defender in 2017 makes it clear that the access to sexual and reproductive health services and information may be restricted for LGBT+ persons because of their nonconforming sexual behaviour, expression and identity. According to the complaints studied by the Public Defender, community members often face homophobic attitudes from medical personnel and these attitudes adversely affect the access of LGBT+ persons to medical services.

According to the information provided by the State Regulation Agency for Medical Activities of the Ministry of Labour, Health and Social Affairs,³⁹⁹ the Agency received seven complaints regarding the provision of medical services to representatives of LGBT+ community in 2017, but signs of violation were detected only in one case.

³⁹⁶ The letter of the Ministry of Internal Affairs MIA 6 18 00211468, dated 27 January 2018.

³⁹⁷ See: *Vallianatos and Others v. Greece*; *Oliari and Others v. Italy*; *Schalk & Kopf v. Austria*.

³⁹⁸ *Combating Discrimination on Grounds of Sexual Orientation or Gender Identity*, Council of Europe Standards, 2011, Available at : <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047f2a6>

³⁹⁹ The letter of the State Regulation Agency for Medical Activities of the Ministry of Labor, Health and Social Affairs №02/4651; 26.01.2018.

The national legislation allows the change of gender markers on the documentation certifying the identity only if a person has undergone sex reassignment surgery. Under the existing practice, a medical intervention (including, the sex reassignment surgery) is considered a necessary condition for changing a gender marker in identity documents. As a result, transgender persons cannot get the identification documents correctly indicating their gender identity, which leads to their social exclusion and violation of their rights in terms of health care and privacy.⁴⁰⁰

10.9. THE RIGHTS OF WOMEN AND LGBT+ RIGHT DEFENDERS

In the reporting period, the Public Defender of Georgia studied several cases of violations against the women and LGBT+ right defenders because of their activity. In contrast to previous years, it was revealed that the main type of intimidation was cyberbullying and cyber threat, posing a serious threat to activists living in Georgia.

With anti-gender movements having stepped up their activity in the country and opposing the gender equality policy openly and often through showcasing force, it is crucial that law enforcement agencies properly assess the risks of threats against women and LGBT+ rights defenders and effectively investigate such facts.

Against this backdrop, problems are still seen in the prevention of violence against women and LGBT+ rights defenders by law enforcement agencies and in incorporating the issues envisaged in the resolution⁴⁰¹ about women rights defenders in the policy documents.

RECOMMENDATIONS

To the Government of Georgia/Ministry of Foreign Affairs of Georgia:

- To start procedures for signing and further ratifying the Maternity Protection Convention №183 of the International Labour Organization

To the Ministry of Internal Affairs of Georgia:

- To ensure retraining of personnel of territorial bodies of the Ministry of Internal Affairs on issues of violence against women, domestic violence and early marriage; also, develop a post-training assessment document to measure the progress achieved by retrained personnel
- To analyse statistics on violence against women and domestic violence for the aim of studying specific characteristics of intimate partner violence, including same-sex partners
- To incorporate the risk assessment and monitoring methodology for incidents of domestic violence and develop an individual action plan on domestic violence cases
- To improve the analysis of statistics on violence against women and domestic violence, in particular, analyse reports to LEPL 112 Emergency Response Centre about alleged domestic violence and family conflicts

⁴⁰⁰ L. Jalagania, Legal Situation of LGBTI Persons in Georgia, EMC, 2016. CESCR General Comment 22; Council of Europe Commissioner for Human Rights, Discrimination on grounds of sexual orientation and gender identity in Europe (2011).

⁴⁰¹ Information is available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> [last accessed on 15 February 2018].

To the Prosecutor's Office of Georgia:

- To undertake preventive measures to decrease/avoid forced marriages and sexual contacts with minors

To the Ministry of Justice of Georgia:

- To establish a quick, transparent and accessible procedure of recording a gender identity of transgender persons in all main documents issued by public and non-public institutions. It is important to clearly disassociate this procedure from a medical transition process

To the Ministry of Labour, Health and Social Affairs:

- To amend the rule of providing maternity, childbirth and childcare leave and relevant compensation so as to ensure both parents with the equal possibility to use it
- To collect and analyse categorized data on the access to sexual and reproductive health services, including for vulnerable groups
- To introduce measures towards assisting single and multi-children parents, inter alia, by envisaging them in the existing social assistance system; to collect and analyse comprehensive statistical data on single and multi-children mothers
- To revise the rule of assessing social and economic conditions of socially vulnerable families so as to ensure that the placement in shelters for victims of domestic violence does not entail the termination of social allowance
- To regulate a process for medical transition so that to provide transgender and intersex persons with the access to the medical service of internationally recognized standards. To this end, to establish international clinical practice guidelines, including, on hormonal therapy

To the State Fund for the Protection and Assistance of the Victims of Human Trafficking:

- To ensure that shelters for victims of domestic violence and violence against women pay a great deal of attention to the empowerment and social rehabilitation of beneficiaries
- To ensure that shelters improve, to the maximum extent possible, the delivery of services to LGBT+ persons and conduct continuous retraining of the personnel
- Upon the admission to a shelter, to fully examine health of beneficiaries and their dependents in order to avoid a further spread of possible diseases and to ensure timely treatment
- To improve physical environment of shelters for servicing PWDs and adjust buildings in accordance with mandatory standards

To local self-governments:

- To research women's needs on a local level in order to identify problems in gender equality and improve the rights of women
- To plan and implement projects on a local level, that are oriented on economic and political empowerment of women, with

11. FREEDOM OF CONSCIENCE AND RELIGION

During the reporting period, number of crimes committed on the grounds of religious intolerance decreased, however adequate response to the infringements remains a serious problem. Issue of restitution of cult buildings seized during the soviet period is still unresolved. Non-dominant religious associations continue to encounter problems when constructing new buildings.

Religious minorities talk about cases of violations of religious neutrality and proselytism at public schools. Incidents of encouraging indoctrination and discrimination at schools were also revealed.⁴⁰² Legislative norms, creating unequal conditions to non-dominant religions associations are still in place. Constitutional amendments, creating high risk of intervention into freedom of religion, constituted one of the most significant issues during the reporting period.

Council of Religions under the auspices of the Public Defender presented a list of recommendations to the Georgian state bodies, educational institutions and media outlets in 2017.⁴⁰³ Kick-off meetings with the state bodies to fulfil these recommendations shall be assessed positively.

11.1. LEGISLATION AND EXISTING GAPS RELATED TO FREEDOM OF RELIGION AND EQUALITY

Discussion related to freedom of religion and grounds for its restriction in the framework of **constitutional amendments and constitutional reform**, carried intensive character during the reporting period.

One of the problems addressed reflection of issues establishing preconditions for unjustified interference into the freedom of religion in the draft constitution. Among such conditions were the ones that are not foreseen by major international human rights documents and western constitutional traditions.⁴⁰⁴ Considering joint positions and recommendations of the Council of Religions, non-governmental and international organizations as well as field experts, problematic norms related to restriction of freedom of religion were no longer incorporated in the new constitutional amendments, which were initiated in the 2017 autumn session of the Parliament of Georgia.

Norms in the Georgian legislation, creating unequal conditions for the non-dominant religious associations remained unchanged. For years Public Defender has been requesting the establishment of equal **taxation regime** for religious unions,⁴⁰⁵ since the legislation of Georgia sets tax benefits only to the Georgian Patriarchy (such as property, VAT and profit taxes⁴⁰⁶). These norms were appealed by 8 religious associations at the Constitutional Court of Georgia in 2016. The Court accepted the part of the claim for substantial hearing,

402 Detailed information is provided in the Chapter on Equality.

403 Recommendations of the Council of Religions under the auspices of the Public Defender: information can be retrieved from the following website: <http://www.ombudsman.ge/uploads/other/4/4411.pdf> {last visited on 15.03.2018}

404 State security, prevention of crime and exercise of justice, as grounds for restriction of freedom of religion.

405 Parliamentary Reports of the Public Defender of Georgia for 2008-2016, Recommendations of the Council of Religions under the umbrella of the Public Defender: information can be retrieved from the following web-page: <http://www.ombudsman.ge/uploads/other/4/4411.pdf> {last visited on 15.03.2018}

406 Articles 99, 168 and 206 of the Tax Code of Georgia.

which relates to exemption from VAT without the right of deduction for painting of churches and temples under the commission of the Patriarchate of Georgia.⁴⁰⁷ During the reporting period no judgment on the case was rendered by the Court.⁴⁰⁸

Provisions of the **State Property Law** are also discriminatory. Public Defender of Georgia regularly pays attention to this issue.⁴⁰⁹ Pursuant to the law, persons registered under the status of Legal Entities of Public Law (including religious associations) are not entitled to purchase property from the state (with or without the payment). Exemption only applies to the Georgian Orthodox Church.⁴¹⁰ Religious unions have appealed these provisions at the Constitutional Court of Georgia too.⁴¹¹ No final decision has been made by the Court during the reporting period.

State still preserved unequal policy toward **funding religious associations and compensating damage sustained by the religious organizations during the soviet period**. Currently, several religious organizations receive state funding, with the Georgian Patriarchy being the recipient of the largest share of funding. Since 2014, state funding is provided to several other religious organizations too. In particular, by the Resolution of the Government of Georgia of January 27, 2014, state symbolically reimburses material and moral damage sustained by four religious unions (Armenian Apostolic, Catholic, Muslim and Jewish communities) during the soviet rule. The act fails to define the amount of damage sustained by these religious unions during the soviet period. Nor is the selection criteria clear according to which only four religious associations were selected.

Apart from the fact that this model lacks the nature of compensation of the damages incurred and takes the form of annual direct funding of religious organizations, the requirement of the resolution according to which religious organizations, under whose name more than one religious association is registered, had to be merged through reorganization process as one legal entity of public law,⁴¹² or establish representative council⁴¹³ before November 10, 2014, also constitutes a problem. Pursuant to the resolution, in case the reorganization is not carried out within the determined timeframes, the association will be deprived of the funding possibility.⁴¹⁴ Currently the Office of the Public Defender of Georgia studies the application of the LEPL Administration of Muslims of All Georgia, related to the refusal of state funding foreseen by the resolution as a result of time-expiry. Afterwards, the organization was not able to receive funding any more.

11.2. OFFENCES COMMITTED ON THE GROUNDS OF RELIGIOUS INTOLERANCE

In comparison with previous years, number of incidents of violence committed on the grounds of religious intolerance, decreased in 2017. Nevertheless, the problem in terms of adequate response to the offences revealed in previous years (2013-2016), has not been solved yet – investigations on these cases are still pending, which can be perceived as a systematic problem.

Within the reporting period, Christian Organization of Jehovah’s Witnesses informed the Public Defender about 13 offences committed against them on the grounds of religious intolerance. Out of this number, 6

407 Article 168 (2, “b”) of the Tax Code of Georgia.

408 Constitutional Claim №671

409 Parliamentary Reports of the Public Defender of Georgia for 2014-2016, Recommendations of the Council of Religions under the umbrella of the Public Defender: information can be retrieved from the following web-page <http://www.ombudsman.ge/uploads/other/4/4411.pdf> {last visited on 15.03.2018}.

410 Articles 3 and 6³ of the Law of Georgia on State Property.

411 Constitutional Claim №811.

412 Which will be entitled to receive funding.

413 Which will involve all representatives of one and the same religious denomination, will be authorized to liaise with state authorities on behalf of his/her denomination, gain remuneration and be jointly liable for designated expenditures of the received funds.

414 Article 3 of the Rules on “Implementation of Several Measures for Partial Compensation of Damages Caused by the Soviet Totalitarian Regime to Religious Associations in Georgia” approved by the Decree №117 of the Government of Georgia on January 27, 2014.

cases relate to the violence against Jehovah's Witnesses on the grounds of religious intolerance, whereas 5 cases address impediments to perform religious rites and damage of literature/stands, and 2 cases relate to incurring damage on praying facilities – royal halls. In spite of the fact that the number of offences committed on the grounds of religious intolerance is decreased, statistics show that such acts still mainly target Jehovah's Witnesses.

Similarly to previous years, acts of the staff members of the Ministry of Internal Affairs during the investigation process is still problematic. In three out of the overall number of cases submitted by the Jehovah's Witnesses in 2017, alleged facts of misuse of authority and power by Ministry employees were observed.⁴¹⁵

Despite the more effective response to the offences committed on the grounds of religious intolerance and their adequate qualification in comparison with previous years, overall, investigation shall still be assessed as ineffective. Investigations launched on incidents of violence against Jehovah's Witnesses, their persecution, putting obstacles to perform religious rites and damaging royal halls (6 facts) are still ongoing without any tangible results.⁴¹⁶

Investigations without any results on alleged facts of violence and threat against Muslims, impediments to perform religious rights, as well as abuse of power by the staff members of the Ministry of Internal Affairs during 2012-2014⁴¹⁷ show the indifferent attitude of the state toward crimes committed on the grounds of religious intolerance and prolongation of proceedings for unreasonable timeframes. Furthermore, no investigatory actions have been continued on the fact of alleged forceful dismissal of the Former Sheikh of the Muslim Department of All Georgia in 2014. No individuals were recognized as victims or accused in neither of these cases.

Gaps in the investigation of crimes committed on the grounds of religious intolerance are also highlighted in the Communication of the Public Defender of Georgia to the Committee of Ministers of the Council of Europe of August 18, 2017.⁴¹⁸ The document mainly deals with the progress in execution of several judgments adopted against Georgia by the European Court of Human Rights as well as systemic and structural shortcomings of Georgian legislation and practice in terms of effective investigation of hate crimes.

11.3. VIOLATION OF RELIGIOUS NEUTRALITY AND DISCRIMINATION AT SCHOOLS

In line with the application of religious associations,⁴¹⁹ environment at public schools remains discriminatory. Requirements enshrined in the Law of Georgia on General Education, which state that that the school shall remain neutral and forbid unequal treatment, display of religious symbols for non-academic purposes, indoctrination and proselytism, are not complied with. Furthermore, prevention of breaches of religious neutrality at general educational institutions and effective response toward such incidents is still problematic.⁴²⁰

415 Applicants pointed out alleged verbal assault by the police officers, failure to reflect full information in the protocol in full and facts of pressure.

416 Letter N370528 of the Ministry of Internal Affairs of Georgia of February 15, 2018.

417 2012 villages Nigvziani and Tetrtskaro, Lanchkhuti Municipality; 2013 village Samtatskaro of Dedoplistskaro Municipality; 2014 villages Chela and Mokhe of Adigeni Municipality; Kobuleti Municipality.

418 Information can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/news/saxalxo-damcvelma-evropis-sabchos-ministrta-komitets-winashe-morigi-komunikacia-waradgina.page>>, {last visited on 20.02.2018}.

419 Information can be retrieved from the following web-page: <http://www.ombudsman.ge/uploads/other/4/4746.pdf>>, {last visited on 20.02.2018}

420 Detailed information can be found in the Chapter on Equality.

11.4. PROBLEMS RELATED TO THE PROPERTY OF RELIGIOUS ASSOCIATIONS

Restitution of building to religious organizations seized during the soviet period is still under question. The state has not taken any regulatory or political steps to ensure restitution of historical property to non-dominant religious groups.

Pursuant to the Constitutional Agreement⁴²¹ between the State of Georgia and Georgian Apostolic Autocephalic Orthodox Church concluded in 2002, major part of the historical property was already restituted to the Orthodox Church. As to other religious associations, such as Armenian Apostolic, Catholic, Evangelical-Lutheran Churches, Muslim and Jewish communities, they have requested the restitution of the seized cult buildings since regaining independence by Georgia. Yet, most of such buildings remain under the state balance. Along with the problem of returning property to its historic owners, state fails to pay due attention to seized cult buildings (most of which form part of the cultural heritage) as a result of which they are being destroyed.

Transfer of the right to property over another temple to the Orthodox Church reveals the inconsistent state policy in this direction and the necessity to solve the restitution problem. In 2017 the damaged church located on Agmashenebeli Avenue, Tbilisi was transferred to the Patriarchate of the Orthodox Church. A number of documents examined by the Public Defender demonstrate the ownership of the building by the Armenian Apostolic Church before the soviet occupation. Public Defender considers that there are grounds for abolishing decisions of the LEPL National Agency of Public Property⁴²² and LEPL National Agency of Public Registry⁴²³, based on which state's right to property over the church was abolished and the property was registered under the Patriarchate of Georgia due to the fact that they are adopted in violation of law and without due examination of the circumstances of the case. At the same time, ongoing work over the building, which might cause changes in its appearance and hinder restoration in original conditions,⁴²⁴ needs to be suspended.

Issue of restitution also involved the transfer of disputed cult buildings in the village Mokhe, Adigeni municipality. The so called Mokhe Commission, operating under the umbrella of the State Agency of Religious Affairs adopted very problematic decision – it failed to determine origins of historical Mosque. As a result, Mokhe mosque was not transferred to the local muslim community. Instead, muslim community was offered to build the mosque on another territory in the same village. In spite of the court decision, Catholic Church was not given the possibility to start construction of the church on its own land in Rustavi. Likewise, state has offered them another territory to build the church in the same city.

Role of the State Agency of Religious Affairs under the Prime-Minister of Georgia in the process of obtaining construction permits of cult buildings is vague. When issuing permits, local self-government bodies share the position of the Agency regarding authorization of relevant religious confessions to launch the construction, which can be deemed as unjustified interference into the competences of local self-governmental authorities.

In some cases, state opposes the construction of cult buildings of non-dominant religious groups not only during issuing permits, but also before the process even starts. To this end, issue of constructing new Mosque in Batumi shall be underlined. Current mosque in Batumi is overcrowded. For years local Muslims have requested the possibility of construction of a new mosque, however, despite promises made, the issue remains unresolved. In 2017, Muslims bought a plot of land to construct the mosque, however Batumi City Hall refused to issue permit for a construction on May 5, 2017.⁴²⁵ Since summer 2017, Muslims pray on a newly purchased plot of the land in the open air.

421 Articles 7 and 11 of the Constitutional Agreement.

422 Order N1/1-1600 of the LEPL National Agency of Public Property of July 10, 2017.

423 Decisions N88201760860712 and N882017558545-0813 of the LEPL National Agency of Public Registry of July 11, 2017 and July 18, 2017 respectively.

424 Recommendation N 04-9/3883 of the Public Defender of Georgia of March 13, 2018.

425 Order N0/825 on refusal on the special zoning agreement of May 4, 2017 and Order N0/828 on refusal to approve conditions for using land plot for construction purposes of May 5, 2017.

Public Defender launched examination of the legality of this decision on his own motion.⁴²⁶ Outcomes of the case examination show that the decision of the Batumi City Hall was made without due consideration of circumstances of the case and proper justification. Furthermore, inconsistent approach of the Batumi City Hall toward different confessions was revealed. In particular, several orthodox churches are built in the same functional zone,⁴²⁷ where construction of the mosque was requested; these permits were neither issued in accordance with existing regulations, nor were any proceedings launched on the infringement.⁴²⁸ Nonetheless, a decision was made to impose a fine for the infringement of construction rules (arbitrary construction of the mosque) on Muslims⁴²⁹ and to dismantle the construction.⁴³⁰

Consequently, Public Defender addressed the Batumi City Hall with a recommendation to abolish a decision on refusal to issue construction permit and requested to adopt a new, justified decision considering significant circumstances of the case.⁴³¹

11.5. PERSONAL DATA PROTECTION

During the reporting period alleged facts of breaching special categories of data of the representatives of religious minorities by the LEPL State Agency of Religious Affairs (hereinafter Religious Agency) also took place.⁴³² In particular, in the framework of the project “Religious Map”, Religious Agency requested written information on the full list of priests, copies of ID documents, their contact details together with the ranks and places of service from religious organizations.⁴³³

Public Defender considers that the act of requesting information by the Religious Agency runs counter to the legislation on personal data protection, considering the fact that information related to religious beliefs belongs to the special categories of data,⁴³⁴ processing of the data implies any activities conducted upon the data, including their request⁴³⁵ and legislation in force prohibits processing of such data without strictly defined grounds.⁴³⁶

SUGGESTION TO THE PARLIAMENT OF GEORGIA:

- To introduce amendments to the Tax Code of Georgia in order to ensure equal tax breaks for religious associations on property, value added and profit taxes
- To make relevant amendments to the Law of Georgia on State Property, that similarly to the Georgian Apostolic Autocephalic Orthodox Church, will allow direct sale and free transfer of state owned property to other religious associations that have a status of Legal Entity of Public Law

426 Case N6929/17 pending at the Office of the Public Defender of Georgia.

427 Residential zone 6.

428 Letter N25/959 of the Architectural and Urban Planning Department of Batumi Municipality and Letter N25/2021 of Supervision Department of Batumi Municipality.

429 Muslims have built a wooden construction on their own means, which were utilized for performing religious rituals.

430 Resolution N336 of the Supervision Department of Batumi Municipality of May 31, 2017.

431 Recommendation of the Public Defender N 04-9/4743 of March 28, 2018.

432 Information can be retrieved from the following web-page: <<http://netgazeti.ge/news/189271/>> [last visited on: 2.03.18 ¶].

433 Letter N1/552 of the LEPL State Agency of Religious Affairs of April 12, 2017.

434 Article 2 (b) of the Law of Georgia on Personal Data Protection and Article 6 of the Convention Protection of Individuals with regard to Automatic Processing of Personal Data.

435 Article 2 (d) of the Law of Georgia on Personal Data Protection.

436 Article 6 of the Convention Protection of Individuals with regard to Automatic Processing of Personal Data; Article 6 of the Law of Georgia on Personal Data Protection.

RECOMMENDATIONS

To the Government of Georgia:

- To Introduce relevant amendments to the Government Decree №117 on “The Rule for the Implementation of Several Measures for Partial Compensation of Damages Caused by the Soviet Totalitarian Regime to Religious Associations in Georgia” of January 27, 2014 to eliminate unequal compensation practices to the religious associations, including setting a new deadline for the religious organizations for creating associations or representative councils
- To take effective measures for the return of the cult buildings seized during the Soviet period to their historic owners, to develop relevant legislation and to return presently state owned religious structures to the religious associations which were their historic owners
- To eliminate the practice of creating barriers in the issuance of construction permits for religious associations and in this regard, to eradicate the practice of undue interference of the central government in the competences of the self-government

To the Prosecutor’s Office of Georgia:

- To periodically inform public about the investigations going into the violations of the rights of Muslim that occurred in 2014, in the villages of Chela and Mokhe of the Adigeni municipality, as well as in Kobuleti municipality.
- To provide detailed information regarding the measures carried out and results achieved within the investigation into the alleged facts of dismissal of the former Sheikh of Muslim Department of All Georgia and coercion against him by the staff members of the Ministry of Internal Affairs

To the Ministry of Internal Affairs and the Prosecutor’s Office of Georgia

- To provide detailed information on the measures carried out in regards to the cases of alleged offenses committed against the Muslim population in the villages of Nigvziani, Tsintskaro, Samtatskaro and in Kobuleti, as well as the alleged offenses committed against the representatives of Jehovah’s Witnesses and other religious groups in 2012-2014

To the Ministry of Education and Science of Georgia:

- To create a special monitoring and response group which will proactively monitor the implementation of the requirements of the Law of Georgia on General Education at public schools and, in case of detection of a violation, will make an adequate response.
- With participation of the Council of Religions, under the auspices of the Public Defender of Georgia and non-governmental organizations working on the issues of religious freedom, to elaborate an emergency action plan for the protection of religious neutrality and culture of tolerance at schools
- To study the issue of the freedom of expression of religious identity at schools (including wearing of women’s traditional Muslim headscarf, Hijab) and to establish a mandatory uniform approach for all public schools that will be focused on the freedom of expressing the religious identity of pupils

To the Local Self-Governmental Authorities

- To demonstrate religious neutrality and adhere to constitutional principle of equality in the process of issuing permits to religious associations for constructing cult buildings

12. FREEDOM OF EXPRESSION

Freedom of expression is a foundation of a democratic society; therefore studying challenges facing it constitutes one of the priorities of the work of the Public Defender of Georgia.

Recommendation of the Public Defender of Georgia⁴³⁷ to reflect in the special statistics not only the crimes of interference into the professional activities of a journalist, but also all those criminal acts against journalists, that relate to their professional activities,⁴³⁸ was still acute during the reporting period.

In the context of freedom of expression, special attention shall be paid to the hacker attacks on online media outlets “Guria News”⁴³⁹ and news agency “Expressnews”⁴⁴⁰ in February and August 2017, leading to hindering their work. According to the information provided by the Ministry of Internal Affairs of Georgia, investigation has not made any particular results regarding the attack on the website of “Guria News” yet,⁴⁴¹ as to the fact of illegal access to the website of “Expressnews”, investigation has not been launched at all.⁴⁴² In order to ensure realization of freedom of expression in the country, Public Defender considers, that launching timely and effective investigation on mentioned and similar cases carries particular significance.

12.1. CASE OF AFGAN MUKHTARLI

One of the acute cases of the reporting period was the disappearance of Afgan Mukhtarli, Azerbaijani journalist from the Tbilisi centre on May 29, 2017. Public Defender has made a number of public statements on the case.⁴⁴³

Due to partial consideration of the Public Defender’s proposal,⁴⁴⁴ case of Afgan Mukhtarli was handed over to the Investigatory Department of the Chief Prosecutor’s Office of Georgia on July 20, 2017. Nevertheless, Prosecutor’s Office failed to consider part of the proposal which related to granting the journalist with the victim status.⁴⁴⁵ Public Defender disagrees with this position and still deems, that there are preconditions for granting victim’s status to Afgan Mukhtarli, since as a result of the alleged offense, he has suffered damage.

Furthermore, the Prosecutor’s Office has not examined the aggravating circumstances of the crime envisaged by the Criminal Code, such as premeditated illegal deprivation of liberty by transferring the victim abroad by

437 Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, p 440.

438 Letter №MIA 9 18 00327832 of the Ministry of Internal Affairs of Georgia of February 9, 2018.

439 Information can be retrieved from the following web-page: <<http://netgazeti.ge/news/174808/>> [last visited on 16.02.2018].

440 Information can be retrieved from the following web-page: <<http://epn.ge/?id=50548>> [last visited on 16.02.2018].

441 Letter №MIA 5 18 00326749 of the Ministry of Internal Affairs of Georgia of February 9, 2018.

442 Letter №MIA 0 18 00364850 of the Ministry of Internal Affairs of Georgia of February 14, 2018.

443 Statements can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-azerbaidjaneli-jurnalistis-gauchinarebas-exmianeba.page>>, <<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-afgan-muxtarlis-saqmeze-mimdinare-gamodziebas-exmianeba.page>> [last visited on 13.02.2018].

444 Information can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/recommendations-Proposal/winadadebebi/saqartvelos-saxalxo-damcvelma-afgan-muxtarlis-saqmeze-saqartvelos-mtavar-prokurors-winadadebit-mimarta.page>> [last visited on 14.02.2018].

445 Information can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/news/saqartvelos-mtavaram-prokuraturam-saxalxo-damcvelis-winadadeba-nawilobriv-gaitvaliswina.page>> [last visited on 14.02.2018].

a group and/or by transferring the victim abroad by an organized group.⁴⁴⁶ As a result, investigation is still ongoing under Article 143 (1) – unlawful imprisonment.

The Public Defender closely observed the events around the case and regularly requested information on ongoing investigation from investigatory bodies. In spite of the fact that authenticity of video footages obtained on the case posed several questions,⁴⁴⁷ Prosecutor’s Office stated, that no grounds exist to doubt the authenticity of tens of video-surveillance cameras obtained from different locations, accordingly, no examination was appointed. Unfortunately, after expiry of almost a year since the disappearance of the journalist as well as carrying out a number of investigatory activities, investigation failed to reach any concrete outcomes. Furthermore, Prosecutor’s Office has not informed public of the results of the investigation, which would have strengthened confidence in a timely and effective investigation and refute the doubt that Georgia closed its eye and acted indifferently toward the disappearance of the journalist.

Due to state and public significance of disappearance of Afgan Mukhtarli, as well as gaps revealed during investigation, a number of non-governmental organizations and media outlets addressed the Parliament to establish a temporary investigative commission.⁴⁴⁸ Public Defender of Georgia calls on necessity of convincing response on questions related to the ongoing investigation and supports mentioned initiative.⁴⁴⁹

12.2. CASE OF TV COMPANY “RUSTAVI 2”

During the recent years, Public Defender actively observed events around TV Company “Rustavi 2”, regularly monitored court proceedings and studied relevant documentation.⁴⁵⁰ Monitoring revealed significant violations of law in terms of seizure of property of “Rustavi 2”⁴⁵¹, appointment of a temporary management in the company⁴⁵² and premature delivery of the decision based on the own motion of the appellate court.⁴⁵³ In itself, mentioned circumstances and reviewing the Rustavi 2 case without oral hearing at the Supreme Court damaged the credibility of the ongoing proceedings at courts.⁴⁵⁴

Public Defender of Georgia made a statement regarding the decision of the Grand Chamber of the Supreme Court of Georgia of March 2, 2017 and stated that its enforcement could endanger perseverance of diverse media environment, and particularly activities of critical media outlets. It shall be noted that on the basis of the application of “Rustavi 2”, the European Court of Human Rights suspended enforcement of the Supreme Court’s decision until March 8, 2017 and afterwards until further notice.

Besides, no legal assessment has been made on the renouncement of shares of the founders of the company in the advantage of Kibar Khalvashi. Investigation of the mentioned case has been ongoing at the Chief

446 Letter №13/5929 of the Chief Prosecutor’s Office of Georgia of January 25, 2018.

447 Mentioned questions were posed in TV Shows, please visit: <http://rustavi2.ge/ka/news/78347>

448 Information can be retrieved from the following web-page: <https://emc.org.ge/ka/products/sazogadoebrivi-da-media-organizatsiebi-afgan-mukhtarlis-gatatsebis-sakmeze-sakartvelos-parlamentsa-da-mtavar-prokurors-mimartaven> [last visited on 15.03.2018].

449 It shall be considered, that fractions under parliamentary minority refused to support such initiative. Information can be retrieved from the following web-page: http://parliament.ge/ge/saparlamento-saqmianoba/plenaruli-sxdomebi/plenaruli-sxdomebi_news/parlamentis-plenaruli-sxdoma23022018.page [last visited on 15.03.2018].

450 Report of the Public Defender of Georgia for 2015 on on Situation in Human Rights and Freedoms pp. 510-511; Report of the Public Defender of Georgia for 2016 on on Situation in Human Rights and Freedoms, pp. 443-446.

451 Statement can be retrieved from the following web-page: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-telekompania-rustavi-2-is-qonebis-dayadagebastan-dakavshirebit.page> [last visited on: 21.02.2018].

452 Statement can be retrieved from the following web-page: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelis-sagangebo-gancxadeba-telekompania-rustavi-2shi-droebiti-mmartvelebis-danishvnastan-dakavshirebit.page> [last visited on 21.02.2018].

453 Statement can be retrieved from the following web-page: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-exmaureba-rustavi-2tan-dakavshirebul-saqmes.page> [last visited on 21.02.2018].

454 Statement can be retrieved from the following web-page: <http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-rustavi-2is-saqmestan-dakavshirebit.page> [last visited on 21.02.2018].

Prosecutor's Office of Georgia since 2012.⁴⁵⁵ Attention shall be paid to the fact that David Dvali and Jarji Akimidze, founders of the "Rustavi 2", addressed the Public Defender of Georgia in 2018,⁴⁵⁶ underlying the importance of accusing relevant individuals in a timely manner by the investigative authorities, since statute of limitations for imposing criminal responsibility will expire in June 2019.

12.3. EVENTS SURROUNDING THE PUBLIC BROADCASTER

Events happening under the new leadership of the Public Broadcaster caused significant criticism during the reporting period.⁴⁵⁷ Among them, Public Defender made a negative assessment of the vision presented by the management in the beginning of 2017, which related to the closure of programs only based on their ratings.⁴⁵⁸

Amendments introduced to the Law of Georgia on Broadcasting and Law of Georgia on State Procurement shall be assessed negatively. In particular, within the new regulatory framework, Law of Georgia on State Procurement does not extend to procurements made by the Public Broadcaster.⁴⁵⁹ As a result, currently, procurements made by the Broadcaster are beyond legal regulation, which puts transparency of its work under question. Furthermore, new rules grant the Public Broadcaster right to direct incomes envisaged by law toward boosting start-ups,⁴⁶⁰ which considering the risks related to the activities of such companies, puts the reasonableness of public expenditures under doubt. Furthermore, Public Broadcaster was given the possibility to transmit commercial advertisement,⁴⁶¹ which runs counter to the legislative principle of public broadcasting on freeing the Public Broadcaster from commercial influence.⁴⁶²

Based on the monitoring conducted during the reporting period, a number of problems related to realization of labour rights at the Public Broadcaster was also revealed.⁴⁶³ They mainly related to concluding short term contracts without objective circumstances, appointments made without competition and dismissals on discriminatory grounds.

12.4. CASE OF BIRJA MAFIA

On June 10, 2017 Public Defender of Georgia addressed the detention of G.K. and M.M. – member of the music group Birja Mafia for drug possession.⁴⁶⁴ Members of the group as well as their family members related the detention to the music video released by the rappers on the internet, which shows a character dressed in a police uniform wearing a dog-belt in one of the scenes. This link is also confirmed by terminating criminal persecution against Giorgi Keburia and Mikheil Mgaloblishvili in December 2017.⁴⁶⁵

Investigation is ongoing on the facts of abuse of power using violence by the employees of the Ministry of Internal Affairs of Georgia and forgery of evidence in a criminal case on particularly serious crime at Tbilisi

455 Letter №13/15759 of the Prosecutor's Office of Georgia of March 2, 2018.

456 Application №3450/18 registered at the Office of the Public Defender of Georgia.

457 Media Advocacy Coalition "Assessment of the Activities of the Management of Public Broadcaster in 2017".

458 Public statement can be retrieved from the following web-page <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-sazogadoebriv-mauwyebelis-agmasrulebel-sabchos-pasuxobs.page> [last visited on 07.03.2018].

459 Law of Georgia on Public Procurement, Article 1 (3'),(m).

460 Law of Georgia on Broadcasting, Article 33 (7).

461 Law of Georgia on Broadcasting, Article 64 (1).

462 Law of Georgia on Broadcasting, Article 2

463 See Chapter on Labor Rights of this Report (Sub-chapter: "Protection of Labor Rights at Public Bodies").

464 Statement can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/news/saxalxo-damcveli-birja-mafias-reperebis-dakavebas-exmaureba.page>> [last visited on 14.02.2018].

465 Letter №13/4860 of the Chief Prosecutor's Office of Georgia of January 22, 2018.

Prosecutors Office. Currently, no one is recognized as a victim or accused in the case.⁴⁶⁶

Public Defender would like to emphasize that content of the video and visuals applied are fully protected by freedom of expression. Pursuant to Article 153 of the Criminal Code of Georgia, illegal hindrance to freedom of speech or to the right to receive or disseminate information, which caused significant damage or was committed by abusing power, is punishable. Therefore, existing legislation establishes the ground for carrying out ongoing investigation by the Prosecutor's Office also for violating freedom of speech.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To establish temporary investigative commission to study the case of disappearance of Afgan Mukhtarli

RECOMMENDATIONS

To the Prosecutor's Office of Georgia

- Regularly inform public on progress made on the cases⁴⁶⁷ described in this chapter

To the Public Broadcaster of Georgia

- Considering high standards of transparency, establish special rules for procurements to be made by the Public Broadcaster and for financing start-ups

466 Letter №13/78945 of the Chief Prosecutor's Office of Georgia of December 5, 2017. Letter N13/12676 of the Chief Prosecutor's Office of Georgia of February 19, 2018.

467 Ongoing investigation on the alleged fact of threatening Nika Gvaramia in 2015; Ongoing investigation on the facts of forced transfer of rights of David Dvali and Jarji Akimidze, founders of a broadcasting company "Rustavi 2"; Ongoing investigation on alleged fact of interference into the activities of the judges of the Supreme Court of Georgia to influence legal proceedings; Ongoing investigation related to the detention of members of Birja Mafia, a music group; Hacker attacks carried on web-pages of "Guria News" and news agency "Expressnews".

13. FREEDOM OF ASSEMBLY AND MANIFESTATION

Public Defender of Georgia actively observed realization of freedom of assembly and manifestation in the country during the reporting period. Monitoring revealed problems pertaining to failure of the police to fulfil negative obligation, which implies refraining from interference into the exercise of the right.

International day against homophobia and transphobia was celebrated at the chancellery of the Government of Georgia on May 17, 2017. Due to measures undertaken by the state authorities for ensuring security of LGBT+ activists, demonstration was limited in time and space. In particular, demonstration lasted only an hour, under the special mobilization of the patrol police.⁴⁶⁸ Law enforcement authorities blocked all roads leading to the Administration of Government, and allowed the entrance to the location only to media representatives and participants of the demonstration.⁴⁶⁹ Carrying out such state measures is based on high homophobic background of the society and hinders celebration of the international day against homophobia and transphobia in a free environment. Public Defender considers, that state authorities shall take all necessary measures to facilitate decrease of homophobic attitudes in the public and celebration of the international day against homophobia and transphobia by all interested individuals.

During the reporting period Public Defender repeatedly addressed cases, when law-enforcers hindered participants of the demonstration from placing protest camps and folding beds or setting out banners.⁴⁷⁰ These demonstrations took place on a wide pavement, did not obstruct movement of traffic, neither did it block the entrance of the building nor hinder the activity of relevant institution, therefore it fell within the scope of freedom of assembly. Notably, the possibility of erection of protest camps and other non-permanent constructions is pointed out in the OSCE Guidelines on Freedom of Peaceful Assembly.⁴⁷¹

The decision of the Tbilisi City Court of August 24, 2017 which considered it legal to restrict erecting camps on the part of the pavement in front of the building of the JSC “Georgian Railway” and justified such a restriction on the grounds of threat to life and health of the participants of the assembly shall be assessed as a step back in the progress of realization of this right in comparison with the last year.⁴⁷² Public Defender considers that the justification provided by the Court fails to comply with the standards prescribed by the legislation of Georgia, which provide the possibility of interfering into the exercise of constitutionally protected sphere of freedom of assembly for protection of public safety only when it is prescribed by law. In itself, Public Defender deems that there were no grounds for placing restrictions on the exercise of the rights enshrined by the Law of Georgia on Assemblies and Manifestations in this particular case.

468 Information can be retrieved from the following web-page: <goo.gl/fpJJkt> [last visited on: 12.02.2018].

469 Information can be retrieved from the following web-page: <<http://www.interpressnews.ge/ge/sazogadoeba/433008-homofobiasada-transfobiasthan-brdzolis-saerthashoriso-dghesthan-dakavshirebith-mthavrobis-administraciasthan-saprotesto-aqcia-mimdinareobs.html?Par=A>> [last visited on: 12.02.2018].

470 Statements can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-safinanso-kompania-saqartvelos-dazaralebulta-shekrebis-tavisuflebis-shezgudvas-exmianeba.page>>; <<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcveli-rkinigzelebis-shekrebis-tavisuflebis-ukanono-shezgudvis-faqt-exmianeba.page>>.

471 OSCE/Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, Second Edition, Warsaw/Strasbourg, 2010, Para: 18-19, pp. 30-31; see decision of the Tbilisi City Court Administrative Chamber of August 31, 2016 on the case №3/6463–16, p. 10.

472 The decision of Tbilisi City Court of August 31, 2016 which considered the decision of the Tbilisi City Hall of August 25, 2016, by which “Partizani Mebagebi” were restricted the exercise of the right to assembly and to put up the tent in front of the administrative building of the City Hall, as illegal was assessed positively.

The study of individual applications revealed that law enforcement authorities restrict erecting non-permanent constructions during the assembly on the basis of Article 134 (2) of the Code of Georgia on Administrative Infringements;⁴⁷³ Public Defender takes this as an incorrect and inappropriate ground. In particular, this provision extends to cases where a permit is required for erecting constructions or placing posters, banners, advertisement boards or non-standard road signs on the adjacent territory of the road or within 100 meters from it. Public Defender considers that restriction of exercise of freedom of assembly on this ground by the law-enforcement authorities lacks legal basis and sets illegal practice.

RECOMMENDATIONS

To the Ministry of Internal Affairs of Georgia:

- To consider topics related to freedom of assembly and manifestation in relevant training curricula for capacity development of patrol police officers. To conduct special training course on this topic for patrol police officers and representatives of structural units, who are responsible for ensuring full realization of freedom of assembly/manifestation
- To not restrict the possibility of erecting non-permanent constructions during the assembly on the basis of Article 134 (2) of the Code of Georgia on Administrative Infringements

473 Letters №MIA 2 17 03001582, № 6 17 03002350 and №MIA 2 17 03023830 of the Ministry of Internal Affairs of Georgia of December 13 and 15, 2017 respectively.

14. FREEDOM OF INFORMATION

Freedom of information constitutes an integral part of a democratic state, which, through the development of free thought,⁴⁷⁴ facilitates the effective realization of many other rights.⁴⁷⁵ The level of access to public information and the government's accountability constitute main tools to measure the realization of this right. To establish more guarantees for freedom of information in the country, the improvement of existing legislation and its harmonization with international standards are necessary.⁴⁷⁶ The Internal procedures to submit the Council of Europe Convention on Access to Official Documents of June 18, 2009 for ratification to the Parliament of Georgia, as well as the drafting process of the special law on freedom of information, which, according to the 2014-2015 Action Plan of Georgia under the Open Government Partnership, should have been developed in spring 2015, shall be finalized soon.⁴⁷⁷ It should be underlined that the Government has foreseen the obligation to agree on the final text of the draft law, and to present it before the Parliament of Georgia in the Action Plan for the next two years.⁴⁷⁸

14.1. ACCESS TO COURT DECISIONS

The problems related to access to copies of court decisions remain unchanged.⁴⁷⁹ Pursuant to the Tbilisi Court of Appeals⁴⁸⁰ and the Tbilisi City Court's⁴⁸¹ processing of decisions require an unreasonable distribution of the human resources of the court, and hinders the exercise of justice. Nevertheless, public access to court decisions, which are encrypted, is guaranteed both by the legislation of Georgia and the publicity principle of court decisions, and recognized both nationally and internationally.⁴⁸²

Therefore, common courts shall carry out the relevant technical activities, develop software and human resource policies in order to ensure the fulfilment of the legal obligation to issue public information without any impediments. Besides, ensuring access to court decisions on criminal cases which relate to the official duties of high ranking officials is still an acute problem.⁴⁸³ In particular, the law of Georgia on Personal Data Protection does not grant the data controller the right to take relevant decisions by striking a balance between

474 Decision №2/2-389 of the Constitutional Court of Georgia of October 26, 2007, on the case "Citizen of Georgia Maia Natadze and others vs. Parliament of Georgia and President of Georgia", II, 14.

475 Human Rights Committee, General Comment №34, September 12, 2011, Para. 4. General Comment can be retrieved from the following webpage: <<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>> [last visited on 13.03.2018].

476 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, pp. 516-520; Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, pp. 450-455.

477 Adopted by the Decree №557 of the Government of Georgia of September 18, 2014, see obligation 10.

478 Action Plan of Georgia for 2016-2017 under the Open Government Partnership, adopted by the Decree №539 of the Government of Georgia of December 9, 2016, obligation 7.

479 Applications №998/17 and №12417/17 pending at the Office of the Public Defender of Georgia. See also Institute for Development of Freedom of Information, Access to Court Decisions in Georgia: Analysis of Common Court Practice, 2016, p. 16. The document can be retrieved from the following web-page: <goo.gl/m8hHrA> [last visited on 12.03.2018]

480 Letter №08-17 of the Tbilisi Court of Appeals of April 26, 2017.

481 Letter №2145985 of the Tbilisi City Court of November 3, 2017.

482 Public Defender addressed Tbilisi Court of Appeals with a recommendation related to this issue on March 10, 2017. Information can be retrieved from the following web-page: <<http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxodamcvelma-tbilisi-saapelacio-sasamartlos-sadjaro-informaciis-gacemis-rekomendacii-mimarta.page>> [last visited on 13.02.2018].

483 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, pp 518-519, Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms pp 451-454.

access to information and personal data protection in each particular case. As a result, the special categories of the data of former and acting officials or candidates, which relates to their official duties, and are stored in public institutions, and are not issued without the consent of a data subject, even in cases of high public interest.

14.2. ACCESS TO DOCUMENTS STORED IN ARCHIVES

There were problems revealed in terms of the ability to access archive funds. At the outset, it should be underlined that legislation on the storing of archive funds is inconsistent with regards to personal data processing standards. On the one hand, the Law of Georgia on National Archive Funds and National Archives restricts access to documents, including personal data up to 75 years after their collecting.⁴⁸⁴ On the other hand, the Law of Georgia on Personal Data Protection, which is a relatively new regulation, authorizes data processing for the protection of significant public interests, in spite of the date of the drafting of the document.⁴⁸⁵ Besides, said legislation provides for the possibility of data disclosure 30 years from the death of the data subject, or when the data of the deceased individual is processed for historical, statistical and research purposes.⁴⁸⁶

It should be noted, that the legislation does not grant the archives the right to request the personal data of a data subject from the relevant institution in order to fulfill the information request. As a result, to gain access to archive materials, the applicant is obliged to gain a consent from, and in most cases, will receive information on an unknown data subject, or prove that a person is deceased. Such a process significantly hampers access to archive materials by interested individuals, which in itself causes barriers to, for example, researching the Soviet past. Therefore, it is of the utmost importance that amendments are introduced in the legislation which authorize the archives to request relevant information regarding archive fund subjects and/or considering the historical importance of the materials, and to establish exemptions to access to documents prepared during the Soviet regime.

Apart from this, applicants⁴⁸⁷ complain about the high fees⁴⁸⁸ set for the services provided by archives; to this end, it is recommended to reflect the customer's right to make copies of the documents in research halls free of charge, and with customers' own equipment in the legislation.

SUGGESTION TO THE PARLIAMENT OF GEORGIA

- To introduce amendments to the Law of Georgia on Personal Data Protection, which will strike a balance between freedom of information and personal data protection. In particular, to provide access to special categories of data stored in public institutions regarding former and acting high ranking officials and candidates, related to official duties of such individuals, when high public interest in the case exists

484 Articles 22 (4, "b") and 23 of the Law of Georgia on National Archive Fund and National Archive

485 Article 5 ("g") of the Law of Georgia on Personal Data Protection.

486 Article 7 (1 and 5) of the Law of Georgia on Personal Data Protection.

487 Cases №1913/18 and №2978/18 pending at the Office of the Public Defender of Georgia

488 Ex. Information can be retrieved from the following web-page: <<https://matsne.gov.ge/ka/document/view/1549211>>, <<http://www.artpalace.ge/ge/PDF/price.pdf>>, <<https://matsne.gov.ge/ka/document/view/1758558>> [last visited on 13.02.2018].

RECOMMENDATIONS

To the Government of Georgia

- To initiate new draft of the Act on Freedom of Information in a timely manner, which will establish a monitoring mechanism for access to information and freedom of information, and determine sanctions for illegal refusal to issue public information

To the Ministry of Foreign Affairs of Georgia

- To finalize internal procedures in order to submit the Council of Europe Convention on Access to Official Documents of June 18, 2009 for ratification to the Parliament of Georgia in 2018

To the High Council of Justice

- To study the needs and distribute effectively software and human resources at the common courts, in order to ensure access to court decisions

15. RIGHT TO PROPERTY

Through its oversight function, the Public Defender observes the protection of the right to property as one of the fundamental human rights. The failure to finalize registration of land plots is worth mentioning; therefore, revealing double registration still remains a problem. The issue of the recognition of property rights over land plots in so called “traditional possession”, and protection of such rights, are still not regulated. Neither have the obligations before the individuals affected by uncompleted housing development cooperatives been met. Problems related to the failure to meet the obligations pledged by the state bodies, as well as to execute court judgments, were also detected.

15.1. RIGHT TO PROPERTY OF POPULATION AFFECTED BY THE UNCOMPLETED HOUSING DEVELOPMENT COOPERATIVES

Regular failure to comply with state commitments in relation to housing cooperatives was found to still be problematic during the reporting period. The Public Defender has addressed this issue in his previous annual reports, too.⁴⁸⁹ The activities of state bodies responsible for meeting domestic debts cannot be regarded as sufficient and effective, because unified rules for meeting obligations before citizens are affected by uncompleted housing development cooperatives, which will determine in detail the forms and terms of meeting such commitments, have not been elaborated yet. The criteria and grounds for selecting persons from the members of the housing development cooperatives to be satisfied during the first stage is ambiguous, mostly by the determination of order. To provide a remedy to these individuals, transferring specified immovable property to members of the housing development cooperatives at a symbolic price, and concluding relevant agreements with them, is necessary.

15.2. REGISTRATION OF OWNERSHIP RIGHT ON LAND PLOTS IN BAKURIANI AND THE TERRITORY OF DIDI MITARBI

Problems related to the registration of ownership rights on agricultural land plots by residents of the town of Bakuriani and the village of Didi Mitarbi are still acute.⁴⁹⁰ In particular, a study of applications of part of the population of Bakuriani and the village of Didi Mitarbi revealed that the registration of property rights over agricultural land plots distributed during the land reform at the National Agency of Public Registry is hampered by an ongoing investigation on allegations of abuse of official powers by the employees of Borjomi Municipality.

489 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, p. 557, and Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, pp. 821-823.

490 Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, pp. 555-556 and Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, pp. 808-809.

Part of the population of the town of Bakuriani and the village of Didi Mitarbi has been documented proving legal possession of land plots, which grants them the right to request registration of their right over the land, and is protected by international and national standards of human rights.⁴⁹¹ Pursuant to the documentation⁴⁹² received from the LEPL National Agency of State Property, individuals are still disposed to own land plots in the territory of Borjomi and Didi Mitarbi. As a result, the majority of the population of Bakuriani and the village of Didi Mitarbi is under the threat of violation of their property rights, since they have possessed agricultural land plots for years already, and are unable to register their ownership.

Taking this into account, it is of the utmost importance to refrain from selling agricultural land-plots in the town Bakuriani and the villages Didi Mitarbi under state ownership before investigation on the criminal case is finalized; the Public Defender addressed the Prime Minister of Georgia, the Minister of the Economy and Sustainable Development of Georgia, the Chairman of the LEPL National Agency of State Property, and Chairman of the Assembly of Bojomi Municipality with a proposal⁴⁹³, however it was not properly reviewed.⁴⁹⁴

15.3. ISSUE OF FULFILLMENT OF DOMESTIC PUBLIC DEBTS BY STATE AUTHORITIES AND FAILURE TO EXECUTE COURT JUDGMENTS

The reporting period revealed a systemic problem of failure to satisfy domestic public debt by the state authorities, which is mainly a result of a lack of budgeted funds. This mainly includes, but is not limited to, back pay that must be remunerated from the state budget. Cases were also revealed where the state recognizes the debt of the creditors, and issues a document proving such debt, but fails to pay them.

The Study of individual applications also detected incidents of failure of state bodies to execute court decisions, which obliges them to pay the debt; such obligations are only fulfilled after compulsory execution of judgments. Therefore, individual creditors have to address the court or LEPL National Bureau of Enforcement, which involved quite a considerable amount of fees and time. Furthermore, this results in putting an unreasonable workload both on the court and the National Bureau of Enforcement, as it is expected that the administrative body will have to comply with the obligation.

It is noteworthy that the executive authorities of Georgia undertook the obligation to remunerate material damage suffered by citizens as a result of hostilities in Tbilisi during December-January 1991-92. To comply with this obligation, and provide compensation in return for the demolished buildings, individuals were provided with apartments located on 5 Kipshidze Str, Block “B”,⁴⁹⁵ and relevant orders and property certificates were also issued; however, the obligations of the state have not been fulfilled yet. To this end, the Office of the Public Defender contacted local self-government bodies in Tbilisi, and found that Tbilisi City Hall carried out measures to construct the buildings on 5 Kipshidze Street (technical documentation were prepared, negotiations with interested individuals were ongoing), however, these procedures have taken a lengthy period of time, and the construction has not been finalized for years. As a result, the affected population has not been provided with relevant housing yet.

491 Sermet L. “European Convention on Human Rights and Right to Property”, Human Rights Files”. (1999), p. 17.

492 Letter №14/36081 of the LEPL National Agency of State Property of July 18, 2017.

493 Proposal №04-2/16731 of the Public Defender of Georgia of December 7, 2017.

494 Letter №6/65767 of the LEPL National Agency of State Property of December 15, 2017.

495 Decree N16.45.368 of the Cabinet of Tbilisi Municipality of August 4, 1998.

15.4. PROBLEMS RELATED TO JUSTIFICATION OF DECISIONS OF THE RECOGNITION COMMISSION

During the reporting period, cases examined by the Public Defender revealed a common failure to study the circumstances of the case, and to justify the decisions by Recognition Commission of the Right to Property over Land-Plots under the Possession of Individuals and Legal Entities of Private Law of Tbilisi City Court. In particular, it was revealed that in some cases, the commission, during the recognition of property rights to the arbitrarily occupied plot of land, and failed to consider the archive data of technical registry, whereas the grounds for doubting their authenticity did not exist.⁴⁹⁶ In other cases, issues were formally resolved by directly indicating that the fact of the arbitrary occupation of possession of the land plot were not proven, while the relevant decision of the commission on the refusal to recognize the right to property has been abolished by decision of the court, due to the failure to comply with the obligation to study the circumstances of the case, and to take the decision accordingly.⁴⁹⁷

The Public Defender deems it necessary that particular attention shall be paid to archival data of the technical registry while discussing the recognition of the right to property on land plots. Mere reference to the failure to prove arbitrary occupation or possession of land in a decision is unacceptable, since in the framework of discretionary powers, the justification of an act to prevent arbitrariness carries particular significance.

RECOMMENDATIONS

To the Government of Georgia:

- To develop in a timely manner procedures for compensating domestic debt related to housing development cooperatives, including the determination of selection criteria and establishment of an effective mechanism for the fulfillment of obligations before the affected population
- To adopt decisions on securing funds in its budget to cover debts of the previous year, and on disposing money from the fund, of the execution of court judgments on the basis of the applications of individuals or relevant authorities

To the Government of Georgia, to the Ministry of Economy and Sustainable Development of Georgia

- To refrain from selling agricultural land plots in the town of Bakuriani and the village of Didi Mitarbi until the ongoing criminal investigation is finalized

To the Prosecutor's Office of Georgia

- To regularly update the public on progress made on criminal investigation on the distribution of agricultural land plots in the town of Bakuriani, and the village of Didi Mitarbi

⁴⁹⁶ Cases N9119-1, N9187/1 and N9318/1 pending at the Office of the Public Defender of Georgia.

⁴⁹⁷ Case N1231/17 pending at the Office of the Public Defender of Georgia.

To the City Hall of Tbilisi Municipality

- In accordance with the procedures developed by the Government of Georgia, to determine in a timely manner immovable property to be transferred into private ownership of the members of housing development cooperative at a symbolic price, and to discuss the issue of concluding the agreement with the affected population and take relevant decisions
- Ensure timely completion of the activities related to the construction of the block “B” located at 5 Kipshidze Str, Tbilisi as well as the arrangement of appropriate infrastructure and communication networks

16. RIGHT TO VOTE

The reporting period saw characteristic large-scale constitutional amendments, which among other issues, involved the reform of the voting system. In particular, Parliament of Georgia made a decision to abolish the majoritarian component of the voting system, and to introduce only a proportional one.⁴⁹⁸ Initially, the introduction of the proportional electoral system was planned by 2020, however, the transition to this system was postponed until 2024, which, considering the legitimate expectations regarding the reform, shall be assessed negatively. The main expectation of the process of reforming the electoral system was related to the elimination of existing distortions in the corresponding mandates of the election results. By the amendments introduced in the Constitution in 2017,⁴⁹⁹ restrictions were imposed on the possibility of establishing electoral blocks; the 5% threshold was preserved for the political parties, and the rules for assigning the so-called undistributed mandates given to the party in first place.⁵⁰⁰ These amendments, together with the postponing the transition to the proportional electoral system in 2024, did not ensure the realization of the equality principle of the electoral law and a proportionate reflection of votes in relevant mandates.

By the constitutional amendments introduced by the third hearing on March 23, 2018, the⁵⁰¹ issue of assigning undistributed mandates was regulated in a new manner,⁵⁰² and previous shortcomings were improved upon. Furthermore, the possibility of establishing electoral blocks for the next parliamentary elections was introduced as a one-off; as for the threshold determined for parties and blocks, it was decreased to 3%.

16.1. LOCAL SELF-GOVERNMENT ELECTIONS OF 2017

On October 21, 2017, the local self-government elections of mayors and local councils in 64 municipalities of Georgia were conducted.

Representatives of the Public Defender observed the elections in all municipalities of Georgia, including villages at the dividing line, Kutaisi penitentiary institution, and Batumi psychiatric hospital.⁵⁰³ Monitoring revealed that the elections were mainly conducted in a calm environment; some violations and problematic issues were detected.⁵⁰⁴ The Public Defender also studied a number of applications concerning the poll.⁵⁰⁵ Applications mainly addressed procedural gaps in selecting representatives of the district election commissions, shortcoming in the management of election documentation, issues related to propaganda and use of administrative resources, alleged incidents of illegal donations, the conduction of election campaign in places forbidden to that end,⁵⁰⁶ and etc.

498 On September 26, 2017 Constitutional Law “Amendments to the Constitution of Georgia” was adopted.

499 Amendments of September 26, 2017.

500 See Article 37 (6-9) of the Constitutional Law of Georgia on “Amendments to the Constitution of Georgia” of September 26, 2017.

501 These amendments have not been published in the Legislative Herald by March 28, 2018.

502 Article 37 (6) of the Constitutional amendments adopted by third hearing on March 23, 2018.

503 See the Statement of the Public Defender of Georgia. Information can be retrieved from the following web-page: <<http://ombudsman.ge/ge/news/saxalxo-damcvelis-gancxadeba-archevnebis-mimdinareobastan-dakavshirebit.page>>.

504 There were cases of the late opening of polling stations, the non-registration of complaints by commissions, the incorrect filling of control papers, the incorrect filling of protocols, starting the voting process without placing a control paper in the ballot box, loss of a stamp of the polling station, the signing of ballots by registrars in advance, voting by the use of driving license and other cases.

505 Statements of the Political Party “United National Movement”.

506 For example, during the pre-election period, an incident of propaganda by the teacher at the public school was observed. By the letter N01-02/2010 of the Central Election Commission of Georgia, the Office of the Public Defender was informed that Chairman of the N82 Shuakhevi District Commission compiled a protocol against a teacher in the Skhepi public school for violating Article 81 of the Election Code of Georgia, whereas the Shuakhevi Magistrate Judge imposed a fine on the teacher in the amount of 1000 GEL.

Part of the violations is related to improper preparation of the members of district election commissions.⁵⁰⁷ Transparency of selecting representatives of the district election commissions as well as staffing of commissions free from party/political influence was a challenge. Pre-election period and polling day, unlike the previous experience, did not feature the facts of violence and only several incidents were detected.⁵⁰⁸

16.2. ALLEGED RESTRICTIONS OF EXPRESSING THE FREE WILL OF THE ELECTORATE

The collection of data on voters who arrived at polling stations, by certain individuals – representatives of the electoral process, was particularly problematic on the polling day. Processing of the data shall be conducted only in accordance with the principles prescribed by law: fairly and lawfully, without prejudice to human dignity, processed with specified and legitimate purposes, and not excessive in relation to the purposes for which they are undertaken. Such a collection of voter data might violate a primary principle – free expression of the will of the electorate, and the restriction of control over it. Currently, this issue is under the consideration at the Office of the Personal Data Protection Inspector of Georgia.⁵⁰⁹

An alleged incident of the collection of the list of supporters of the mayoral candidate Kakha Kaladze by the principles of 170 public kindergarten, with the request of the Kindergarten Management Agency, constitutes a case of the restriction of the free will of the voters, and the use of administrative resources.⁵¹⁰ Information disseminated through the media on the involvement of civil servants and staff of kindergartens in pre-election campaigns shall be considered.⁵¹¹ Pursuant to the report of the OSCE/Office for Democratic Institutions and Human Rights, an alleged mobilization of teachers in support of the ruling party caused certain concerns in terms of the free and unconcerned by the prospect of revenge vote of the civil servants which contradicts the commitments of the OSCE.⁵¹² The Public Defender welcomes the fact that interagency commissions addressed the educational resource centers with a recommendation to ensure that the staff of public schools and kindergartens abstain from political propaganda.⁵¹³

16.3. ALLEGED FACTS OF ILLEGAL DONATIONS

The Public Defender will consider the placement of the slogan⁵¹⁴ of the candidate of the “Georgian Dream – Democratic Georgia” on Freedom Square in Tbilisi, which aimed to form and/or preserving the interest/support of this party by the population. This gave the aforementioned party political advantage compared to other parties, and placing it with local budget funds constituted a prohibited donation.⁵¹⁵ The Public Defender addressed the State Audit Service,⁵¹⁶ to take relevant administrative measures; however the recommendation of the Public Defender was not considered.

507 See recommendations in the “Special Report of the Public Defender of Georgia on Parliamentary Elections of 2016”.

508 For example: attacks on the electoral quarters of UNM candidates (D.Lagvilava, R.Sulukhia), physical and verbal assault of their supporters. In both cases, an investigation has been launched. A physical confrontation between the Commission member at N20 Old Kveshi polling station of Bolnisi N23 election district.

509 Letter 9.02.2018 N6180000496 of the Office.

510 See the link: <<https://monitori.ge/965/>> [last visited on 15.02.2018].

511 According to the source, there is a list of 54 civil servants, which are involved in party propaganda, see the link: <<http://rustavi2.ge/ka/news/87561>> [last visited on 15.02.2018].

512 Report on Preliminary Findings and Conclusions 2017, p:14; Link is available on:<<http://www.osce.org/ka/odhr/elections/georgia/351621?download=true>> [last visited on 15.02.2018].

513 Recommendation 9.10.2017, to make maximum boundaries between the professional activities and political processes to avoid the politicizing of the learning process, during the working and resting hours, or during the conduct of official activities, including through the use of the private social media pages.

514 Inscriptions made in Georgian and English languages: “City Full of Live”.

515 Articles 25 (1, “e”) and 34² (1,2) on the Law of Georgia on Political Associations of Citizens.

516 Proposal N04-2/2666 of the Public Defender of Georgia of February 15, 2018. b

An alleged illegal donation made by placing advertisement banners of the political party “Georgian Dream-Democratic Georgia” in public places (public transport, bus stops) was revealed in several cases, in spite of the fact that the tenure of the contract concluded with private companies had elapsed. Pursuant to the State Audit Service,⁵¹⁷ regulations of the law regarding donations extend only on to those acts which relate to the use of tangible or intangible resources in order to attain electoral objectives. The Public Defender deems it necessary that such position contradicts the aims and requirements of the law. In particular, regulations related to the financial activities of the party operate both during the election period and beyond.⁵¹⁸

Similar to the pre-election period of the previous parliamentary elections, during this time advertising of the City Hall’s infrastructural programs (“For Tbilisi”) was broadcasted on various networks.

Similarly to the pre-election period of the previous parliamentary elections, advertising infrastructural programs (“Done for Tbilisi”) undertaken by the City Hall took place at different media outlets. As a result of the study conducted by the National Communications Commission,⁵¹⁹ such video-clips failed to carry information important to the public, and advertised services provided by the concrete administrative body, and therefore did not comply with the Law of Georgia on Broadcasters.⁵²⁰ Pursuant to the information at the Office of the Public Defender,⁵²¹ the Central Election Commission did not perceive the video-clips to include signs of propaganda, and the election campaign foreseen by the Election Code.⁵²² As to the Audit Service, it stated that since the advertisement did not relate to the political/electoral objectives, regulations enshrined in the legislation for donations did not extend to them. The Public Defender does not share the positions of the Central Election Commission, and the Audit Service, which are based on a narrow interpretation of the law. In circumstances where the National Communications Commission stated that video-clips did not carry public importance, and served only to advertising activities conducted by the Tbilisi City Hall, there is a reasonable suspicion that their broadcasting served the objectives of a particular political party. Since, during the past few years, broadcasting such advertisements by the state constitutes an established practice, it is necessary for the relevant authorities to make an adequate assessment of the relevant legal objectives.

RECOMMENDATIONS

To the Central Election Commission

- To elaborate instructions on processing personal data at polling stations before presidential elections, in cooperation with the Office of the Personal Data Protection Inspector of Georgia

To the State Audit Service

- To correctly interpret Article 26¹ of the Law of Georgia on Political Associations of Citizens while discussing the legality of donations of political parties, and not to consider links of financial, tangible or intangible resources with electoral goals as a determining criteria

517 The Audit Service did not study whether the fact constituted illegal donation. Letter N008881/09 of the State Audit Service of 29.01.2018.

518 Article 26¹(4) and Chapter III of the Election Code. Electoral goals are related to regulating the income and expenditure of persons with electoral goals, and not to the party.

519 Letter 1.11.2017 N03/3702-17 of the National Communications Commission.

520 See Article 66¹(2) of the Law on Broadcasting. Also, see Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms pp:495-496, Link available on: <<http://ombudsman.ge/uploads/other/4/4494.pdf>>.

521 Materials sent by the Letter 15.03.2018 N02627/09 of the Audit Service.

522 Since it does not indicate to the political party “Georgian Dream”, neither its registration number, no calls to support electoral subject or activities, which will facilitate voting for the party are seen in the video-clip.

17. RIGHT TO PROTECT CULTURAL HERITAGE

Similarly to previous years, legislative guarantees in regards to protecting monuments of cultural heritage still face shortcomings. In particular, regulation is still in force that releases the owner/legal possessor of various religious confessions from the responsibility of the maintenance of cultural properties.⁵²³ Furthermore, the National Agency for Cultural Heritage Preservation of Georgia was informed about actions taken against monuments under the ownership (possession) of different religious confessions.⁵²⁴ According to information gathered by the Office of the Public Defender, the National Agency for Cultural Heritage Preservation currently works on the draft Code on Cultural and Natural Heritage, which considers the recommendation of the Public Defender, and does not foresee an exemption for any of the owners in regards to the infringements of the monument.⁵²⁵ The Public Defender expresses her hope, that these draft amendments will be initiated soon, and that the Parliament will adopt them without any hindrance.

The illegal practice according to which large-scale land works are undertaken without the involvement and relevant conclusions of the Ministry of Culture and Monument Protection, is still prevalent.⁵²⁶ According to the information provided to the Office of the Public Defender,⁵²⁷ comprehensive institutional and legal reforms are planned in the management of mineral resources, including regulating the protection of cultural heritage during the use of mineral resources.

An examination of one of the cases⁵²⁸ showed that the practice of the distribution of competences between administrative bodies on infringements related to cultural heritage are also illegal. Liability for violating rules regarding the work undertaken on cultural monuments are predicted by the legislation.⁵²⁹ In such cases (violations), special regulations on cultural monument protection⁵³⁰ confer the authority to respond not to the Tbilisi City Hall (as established in practice), but to the National Agency for Cultural Heritage Preservation of Georgia.⁵³¹ Besides, the authorities should consider that the aim of sanctioning is to eradicate infringements related to the preservation of cultural heritage.⁵³²

523 Article 30 (8) of the Law of on Cultural Heritage. Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, pp.:568-569. Link is available on: <<http://www.ombudsman.ge/uploads/other/3/3891.pdf>>.

524 Damage of the Church Mtsire Jvari, damage of two graves of Old Dadeshi Church, construction of a church in the visual area of the Kintsvisi complex, new constructions on the territory of the old church in the Parekha neighborhood, illegal works conducted on Batumi Saint Barbare Church, work conducted in the village with the Dedeshi Church without a relevant permit, damage to the church of Saint Mary in the village of Birkiani, lightning candles in the Vardzia complex before the finalization of rehabilitation works. Letter №09/513 of the National Agency for Cultural Heritage Preservation of February 22, 2018. Additional information is also provided in the Chapter on Freedom of Conscience and Religion.

525 Letter №09/513 of the LEPL National Agency for Cultural Heritage Preservation of February 22, 2018.

526 According to the Letter N22/1177 of the LEPL National Agency of Mineral Resources of 26.02.2018, a body issuing licenses lacks the cooperation of the Ministry of Culture and Monument Protection in licenses issued in 2017, which constitutes a breach of Article 14 of the Law on Cultural Heritage. See the Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms pp: 565-566.

527 Letter №22/1177 of the LEPL National Agency of Mineral Resources of 26.02.2018.

528 Application №11616/16 of N.T. Recommendation №04-11/11495 of the Public Defender of Georgia.

529 Article 88 of the Administrative Infringements Code, Fines are determined in the amount of 5000 GEL to 15000 GEL. In every 6 month period, the amount of fine is tripled if the grounds of imposition of a fine are not eradicated.

530 Article 5 (1, “k”) of the Law on Cultural Heritage, paragraph 3 of the same article; Article 239 (10) of the Administrative Infringements Code of Georgia; pursuant to the administrative agreement of April 2, 2015, City Hall was not conferred as a right to issue Protocol on Administrative Infringements under Article 88 of the Administrative Infringements Code.

531 Monitoring Department of Tbilisi City Hall responded on the bases of Article 44 (2) of the Code on Safety and Free Movement of Products.

532 In the present case, measures undertaken by the Monitoring Department of Tbilisi City Hall failed to serve the improvement of conditions of the monument – the end of the infringement. On the contrary, the body was requesting the offender to gain a permit for illegal work undertaken, which from the legal point of view, could not be conducted.

As the Office of the Public Defender was informed,⁵³³ the Ministry of Culture and Monument Protection and Tbilisi City Hall work jointly to prepare draft legislative amendments on the establishment of an adequate mechanism for infringements of cultural monuments. Conducting this process within a reasonable period of time, and with the interests of protecting cultural heritage, carries particular significance.

An analysis of one of the cases showed that the physical conditions of cultural monuments in Truso Gorge are problematic, and adequate state measures need to be implemented. It turns out,⁵³⁴ that a database of cultural monuments is not complete, which in itself complicates rehabilitation work to be conducted on relevant sites.

Investigations on damaging and the destruction of the ancient Sakdrisi-Kachagiani gold mine have been ongoing since 2014 without any tangible results,⁵³⁵ and neither has the investigation on the destruction of archaeological sites during the construction of Ruisi-Rikoti road launched in 2014 been finalized.⁵³⁶

The Protection of cultural heritage is an acute issue in terms of constructing hydroelectric power plants, too. One example of such is the construction of a hydroelectric power plant cascade on the river Rioni.⁵³⁷ According to reports of its environmental impacts,⁵³⁸ the construction of such power plants might have negative effects on 19 immovable monuments in the project territory.⁵³⁹ Furthermore, out of 23 cultural monuments, 13 are located on the territory of water reservoirs; therefore, they will be directly affected by the project.⁵⁴⁰ Nevertheless, the conclusion of the environmental experts indicate that cultural monuments will not be covered by the water-flooded areas; as to the 19 monuments located in the project territory, the direct impact on them is not foreseen. Incompliance with clarifications provided in the expert report regarding the impact on cultural monuments, and those regarding environmental impact, pose questions regarding the legality of the order⁵⁴¹ of the Minister of Environment and Natural Resource Protection of Georgia, by which the expert report was approved. The case study shows that the administrative body failed to examine all the circumstances of the case, which contradict the requirements of the law, and constitute grounds for abolishing the administrative act.

Pursuant to the material at hand, any involvement of the Ministry of Culture and Monument Protection in the decision making process on constructing the power plant cannot be found,⁵⁴² leading to a violation of the law. In particular, pursuant to the Law of Georgia on Cultural Heritage, the relevant body shall make a decision on a construction carrying special significance on the basis of a positive conclusion of the Ministry of Culture and Monument Protection.

PROPOSAL TO THE PARLIAMENT OF GEORGIA

- To introduce legislative amendments to ensure the equal treatment of all owners for the violations of the rules of conducting works on, and the maintenance of monuments of cultural heritage, and to extend responsibility on objects owned by all religious confessions

533 Letter №09/1115 of the National Agency for Cultural Heritage Preservation of September 12, 2017.

534 Pursuant to the letter №09/2342 of the National Agency for Cultural Heritage Preservation of 22.12.2017, there is a need to compete-updating scarce information, preparing new registration documents on the monuments/objects, and assessing their physical conditions.

535 Letter 2.02.2018 №13/8363 of the Chief Prosecutors Office.

536 Letter 30.1.2018 №13/7130 of the Chief Prosecutors Office.

537 Tvishi Hydro Power Plant and Namakhvani-Joneti Hydro Power Plant.

538 See the following link: <http://moe.gov.ge/res/images/file-manager/daskvnebinebartvebi/namaxvani_jinoeti_hesi/gzsh_1.pdf>, Volume I, p: 347.

539 They include monuments of local and national significance..

540 See the following link: <http://moe.gov.ge/res/images/file-manager/daskvnebinebartvebi/namaxvani_jinoeti_hesi/gzsh_2.pdf>, Volume II, p:102.

541 Order №0-1014 of the Ministry of Environment and Natural Resource Protection of Georgia on approving the expert conclusion on placing two-tier hydro power plant cascades on river Rioni (Tvishi hydro power plant and Namakhvani-Joneti hydro power plant) of December 25, 2015.

542 LEPL technical and construction supervision agency's letter/materials №09/1902. Government of Georgia March 24, 2009 resolution №57 article 79, paragraph 2 sub paragraph „e“, Hydro Power Plant is of class V when 50 MW and more. This Hydro Power Plant Cascade is TvishiTvishi HPP 100 MW, Namakhvani-Zoneti 333 MW.

RECOMMENDATION

To the Prosecutors Office of Georgia

- To periodically inform the public about the destruction of archaeological objects in the process of the construction of the Ruisi-Rikoti motor road, and the process and progress of investigation of the damage and destruction of the ancient Sakdrisi-Kachagianigold mine

To The Ministry of Environmental Protection and Agriculture, Ministry of Culture and Monument Protection of Georgia, LEPL Technical and Construction Supervision Agency

- To fully explore the influence of cultural heritage monuments located in the design area, and the project area, and in the case of the implementation of the Hydro Power Plant Cascade Project on the river Rioni, not to implement the project if damage and destruction of cultural heritage monuments cannot be avoided

To the LEPL National Agency for Cultural Heritage Preservation

- To carry out all necessary activities for the purpose of the improvement of the database of cultural heritage monuments/objects, and plan the rehabilitation in a timely manner of the monuments / objects with as may be necessary, including the Truso Gorge

To LEPL National Agency for Cultural Heritage Preservation, Tbilisi City Hall

- When working on the legislative amendments, to take into consideration the necessity of clear segregation of competences between the agency and the municipality, while performing illegal works on cultural heritage monuments, ensuring the active involvement of the agency

18. RIGHT TO WORK

A safe working environment remained a pressing issue during the reporting period; however, relevant amendments introduced in the legislation shall be assessed positively. Similarly to previous years, particular attention shall be paid to gaps in the labor legislation, and problems pertaining to the protection of labor rights at public institutions.

18.1. SAFE WORKING ENVIRONMENT

According to the information provided by the Ministry of Internal Affairs, accidents occurred at industries in 2017 resulted in the death of 47 and injuries to 106 individuals respectively.⁵⁴³ The main challenge in 2017 was the establishment of a monitoring mechanism for a safe and healthy working environment. The establishment of an effective labor inspectorate constitutes one of the main priorities of the EU-Georgia Association Agreement.⁵⁴⁴ Pursuant to the Association Agreement, Georgia is under an obligation to reflect in its national legislation and implement in practice the relevant conventions of the International Labor Organization (ILO)⁵⁴⁵, which oblige the state to introduce a labor inspectorate system in the spheres of industry and commerce, the non-commercial sector and agriculture.⁵⁴⁶

To this end, the adoption of the Law of Georgia on Occupational Safety,⁵⁴⁷ which introduces an enforcement mechanism of obligations related to safety at work, shall be assessed as a step forward. The Public Defender welcomes the authority of the supervisory body to impose sanctions in the case the detection of a violation; however, problems remains in the extension of the law to work that is hard, harmful and dangerous. At the same time, the supervisory body lacks the mandate of unconditional access to the employer.⁵⁴⁸ Unfortunately, the Public Defender's major remarks in this direction have not been taken into consideration.

At the same time, it is of particular importance that safe working standards cover all working places, in order to ensure that the life and health of all employees are protected. The elaboration of standards of safe working environment, in accordance with EU directives, constituted one of the major priorities under the National Human Rights Action Plan of Georgia for 2016-2017. To this end, Office of the Public Defender was informed,⁵⁴⁹ that three EU directives⁵⁵⁰ were examined in details to implement standards of safe working

543 Letter N MIA 5 18 00355521 of the Ministry of Internal Affairs of Georgia of February 13, 2018.

544 EU-Georgia Association Agreement, p. 26. Information can be retrieved from the following web-page: <https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf> [last visited on 19.03.2018]; EU-Georgia Association Agenda 2017-2020, p. 22, Information can be retrieved from the following web-page:<https://eeas.europa.eu/sites/eeas/files/annex_ii_-_eu-georgia_association_agenda_text.pdf> [last visited on 19.03.2018].

545 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Article 229 (3-4).

546 N81 Convention of 1947 concerning Labour Inspection in Industry and Commerce, Protocol of this Convention of 1995, ILO Convention N129 concerning Labor Inspection in Agriculture of 1969.

547 The Parliament of Georgia adopted this law on the third hearing on March 7, 2018, and published it in the Legislative Herald on March 21, 2018.

548 The supervisory body is authorized to conduct selected control during the year only once, inspect the company to study accidents at the working environment, or to remedy violations. In other cases, inspections can be carried out based on the court warrant.

549 Letter N01/7711 of the Ministry of Labor, Health and Social Protection of Georgia of February 9, 2018.

550 Directive 89/656/EEC of the Council of November 30, 1989 on use of personal protective equipment (third individual Directive within

environment. The Public Defender expresses hope that the implementation of such standards will not be unduly prolonged.

18.2. WORK OF STATE PROGRAM OF INSPECTING WORKING CONDITIONS

New state program on inspecting working conditions were approved in 2017.⁵⁵¹ Nevertheless, the program failed to extend or strengthen the authorities of the body conducting inspections, resulting in a low level of remedying violations revealed as a result of the monitoring.

In particular, pursuant to the information of the Ministry of Labor, Health and Social Protection of Georgia,⁵⁵² 169 employers expressed their consent to study working conditions, leading to the inspection of 279 units of 169 companies.⁵⁵³ Recurrent inspection was only conducted at 33 units, where the first monitoring revealed 504 violations.⁵⁵⁴

Re-monitoring revealed the remedying of 99 violations on the basis of relevant recommendations. As to the forced labor and labor exploitation, the Department has not found any signs of such cases at 111 companies inspected during 2017, out of which 6 inspections were unplanned.

The decision of the Constitutional Court, which abolished regulation foreseen by the state program on inspecting labor conditions of 2015, 2016 and 2017 respectively, should be underlined. Pursuant to these regulations, the department's recommendations constituted non-public documents.⁵⁵⁵ The decision of the Constitutional Court is an important innovation, since it gives access to information regarding the safe working environment at one or the other employers to members of the public, as well as employees.⁵⁵⁶

18.3. WORK OF BODIES WITH A SANCTIONING MANDATE

Departments at the local self-government bodies supervising construction activities are authorized to launch proceedings for violating safety rules of construction.⁵⁵⁷ However, they lack the ability to get an immediate response to the infringements. The LEPL Technical and Construction Supervisory Agency is only limited to technical inspection of objects with increased technical threat.

The joint monitoring group of the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Labor, Health and Social Protection of Georgia was established on May 11, 2017, in order to

the meaning of Article 16 (1) of the 89/391/EEC Directive), Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and Directive 92/57/EEC - temporary or mobile construction sites of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

551 Decree N627 of the Government of Georgia of December 29, 2016.

552 Letter N01/7711 of the Ministry of Labor, Health and Social Protection of Georgia of February 9, 2018.

553 Pursuant to the Letter N01/7711 of the Ministry of Labor, Health and Social Protection of Georgia of February 9, 2018, in the framework of the activities of the joint group of the Ministry of Economy and Sustainable Development and the Ministry of Labor, Health and Social Protection of Georgia, 15 workplaces were inspected.

554 Re-monitoring on one of the workplaces was conducted by the joint group of the Ministry of Economy and Sustainable Development and the Ministry of Labor, Health and Social Protection of Georgia.

555 Ruling N1/19/1241 of the Constitutional Court of Georgia of October 13, 2017 on the case: Human Rights Education and Monitoring Center (EMC) and "Unity 2013" v Government of Georgia.

556 Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, p. 515, Information can be retrieved from the following web-page: <<http://ombudsman.ge/uploads/other/4/4494.pdf>> [last visited on 19.02.2018].

557 Article 49 of the Code of Product Safety and Free Movement.

monitor labor conditions, and to carry out technical inspection of industries with hard, harmful and dangerous conditions, as well as with increased risk against health and life of an individual.⁵⁵⁸ The group acts in the framework of the authorities of relevant bodies determined by the legislation,⁵⁵⁹ therefore, no essential novelties were introduced by this change.

18.4. OUTCOMES OF THE INVESTIGATION ON INCIDENTS CAUSED AT INDUSTRIES AND FINAL DECISIONS OF THE COURTS

The systematization of information and its pro-active publications regarding the outcomes of investigations of criminal cases regarding occupational accidents constituted one of the important activities undertaken by the National Human Rights Action Plan for 2016-2017.⁵⁶⁰ It was revealed,⁵⁶¹ that the Prosecutor's Office of Georgia provides the National Statistics Office with such information on the basis of the Memorandum concluded on April 30, 2010, resulting in the publication of data requested from relevant authorities electronically in the form of a unified report.⁵⁶² Therefore, currently, no steps are taken to inform the public on the outcomes of investigations launched on such cases, as well as subsequent court decisions.⁵⁶³

Statistics requested from the Ministry of Internal Affairs of Georgia⁵⁶⁴ indicate that only **11 out of 128 cases of occupational accidents, on which investigation was launched, were sent to the court. The investigation was suspended in 36 cases, whereas in 81 cases it has not been launched at all. Criminal Persecution has been instigated on 13 cases.** The Public Defender underlines the importance of a timely and effective investigation of these cases by the law-enforcement authorities.

An analysis of final decisions requested from the city and district courts revealed interesting data.⁵⁶⁵

Imprisonment as a form of a sentence was resorted only in 3 cases out of 90 incidents of injuries examined by the common courts during the period of January 1, 2015 - October 31, 2017. As a result of substantial hearing, a conviction was issued in 20 more cases.⁵⁶⁶ 72.2% of cases (65 cases) were finalized by concluding a plea bargain agreement without a substantial hearing. In one case, a judgment of acquittal was adopted, whereas another case was returned to the district prosecutor's office for a diversion. Fines imposed vary from 500 GEL to 5,000 GEL.⁵⁶⁷

To impose criminal responsibility on such instances, it is necessary that a person responsible for compliance with provisions enshrined in the relevant normative acts violates them.⁵⁶⁸ An analysis of court decisions reveals that relevant rules can be found only in construction norms elaborated before 1992, during the Soviet Union or afterwards, or the imposition of liability is based on internal documentation adopted by the employers.

558 Joint Order of the Ministry of Economy and Sustainable Development of Georgia (N 1-1/200) and the Ministry of Labor, Health and Social Protection of Georgia (N 01-98/მ) of May 11, 2017 on Establishment of a Joint Monitoring Group of the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Labor, Health and Social Protection of Georgia.

559 Letter N01/61353 of the Ministry of Labor, Health and Social Protection of Georgia.

560 Decree N388 of the Government of Georgia of July 21, 2016 on Approving National Human Rights Action Plan for 2016-2017.

561 Letter N13/65265 of the Chief Prosecutor's Office of Georgia of October 9, 2017.

562 Information can be retrieved from the following web-page: <http://www.geostat.ge/?action=page&tp_id=601&lang=geo> [last visited on 19.03.2018].

563 As an example, kindly find the web-page of the Ministry of Internal Affairs of Georgia, which on its home-page publishes information on instances of domestic violence www.police.ge

564 Letter N MIA 6 18 00351517 of the Ministry of Internal Affairs of Georgia of February 13, 2018.

565 Letter N04-2/14718 of October 24, 2017.

566 Imprisonment was imposed on 11 cases, which were counted as a conditional sentence (together with a fine on 5 cases, out of which 3 also included deprivation of the right to carry out certain activities). 8 convictions helped to determine the form of a sanction in terms of a fine, in one case – fine together with the deprivation of the right to carry out certain activities).

567 Out of 90 judgments mentioned, 5 of them were appealed in the higher instance court (3 judgments by the prosecution, 1 judgment by the defense and 1 by the convicted person). Out of this number, higher instance courts left 3 appeals unaltered. In one case, judgment of acquittal was adopted. 1 case has not been returned to the city court by October 31, 2017.

568 Articles 170, 240 and 240¹ of the Criminal Code of Georgia.

Furthermore, safety rules are entwined in special acts regulating various business processes, which in certain instances cases practical difficulties.

Information received from the courts demonstrates that, in cases involving violations of labor safety rules, responsibility in some of the cases is incurred on a person directly performing the work, and rarely on the customer or the director of the construction company/industry, and in most of the cases on the manufacturer of the work. Identification of the latter is not always possible, though.

18.5. MAIN GAPS IN THE LABOR CODE

Shortcomings of the Labor Code of Georgia, which were addressed by the Public Defender in the Parliamentary Reports for 2015 and 2016, have not been eradicated yet. In particular, the Code does not define maximum numbers for the daily working hours and weekly working hours, and it lacks a maximum threshold of overtime, and does not provide an exhaustive list of grounds for terminating the labor contract. Neither do the restricting grounds to conclude labor contracts for a definite period of time extend to cases where the period of the labor contract is one year or more. As to the minimum amount of adequate remuneration, it has not been established yet.

18.6. PROTECTION OF LABOR RIGHTS AT PUBLIC INSTITUTIONS

Cases studied by the Office of the Public Defender⁵⁶⁹ indicate the frequent violation of obligations to adopt justified decisions related to labor relationships on the basis of the examination of circumstances of the case, as well as breaches of the legality principle. The following cases were revealed: lack of written justification on refusal to undertake a position in the protocol of the competition commission; termination of the labor relationship without any legal basis; granting leaves of absence without remuneration, instead of granting leaves for childcare without remuneration; failure to carry out measures to study circumstances excluding dismissal, leading to dismissal of a (female) civil servant during the period of raising a child under the age of 3; dismissal from the positions on the basis of an elapsing contract tenure, in circumstances of indefinite contract duration.

Systemic problems included cases of concluding contracts under definite durations, in instances where relevant legislative preconditions are lacking.⁵⁷⁰ This in itself facilitates arbitrary exercise of rights conferred to the employers by the legislation.

The arbitrary exercise of rights of the employer are also revealed from the information requested from the LEPL Public Broadcaster,⁵⁷¹ according to which, the Public Broadcaster concludes contracts for definite durations frequently, when concluding agreements up to one year are not justified by objective circumstances. Furthermore, employees of the Broadcaster, except for the General Direction and other exemptions, are not selected as a result of the competition.⁵⁷² This hampers the management of the employment process at an institution, financed from the state budget, in a concrete, fair and transparent manner.

⁵⁶⁹ During the reporting period, Office of the Public Defender of Georgia found such problems in a number of applications: N12995/16; N7395/16; N3995/17; N363/17; N16224/16.

⁵⁷⁰ Cases N1242/17, N1315/17, N2504/17, N2650/17, N7956/17 pending at the Office of the Public Defender of Georgia. Also Letters N719/01 and N1285/01 of the Public Broadcaster of February 24, 2017 and March 31, 2017 respectively.

⁵⁷¹ Letters N719/01 and N1285/01 of the Public Broadcaster of February 24, 2017 and March 31, 2017 respectively.

⁵⁷² Letters N719/01 and N1285/01 of the Public Broadcaster of February 24, 2017 and March 31, 2017.

PROPOSALS TO THE PARLIAMENT OF GEORGIA:

- To establish a labor inspectorate to carry out effective monitoring of labor conditions with relevant rights and enforcement mechanism
- To fix in the Labor Code of Georgia:
 - the maximum numbers of daily working hours and minimum weekly uninterrupted rest time
 - maximum acceptable threshold of overtime
 - definition of a minimum wage and annual review mechanism of such wage
- To define in the Law of Georgia on Public Service:
 - procedures for undertaking a position at the non-commercial legal entities founded by the local self-government authorities

RECOMMENDATIONS

To the Government of Georgia

- To introduce relevant amendments for complying with the following EU Directives: 89/656/EEC, 1999/92/EEC and 92/57/EEC⁵⁷³

To the Prosecutor's Office of Georgia

- To systematize and pro-actively publish information of the outcomes of investigations on occupational safety

To the Ministry of Foreign Affairs of Georgia

- To launch ratification procedures of the ILO Convention N81 concerning Labour Inspection in Industry and Commerce; ILO Convention N129 concerning Labor Inspection in Agriculture; ILO Convention N155 concerning Occupational Safety and Health and the Working Environment and ILO Convention N131 concerning Minimum Wage Fixing

To the LEPL Public Broadcaster

- To establish internal labor policy document, determining rules on undertaking vacant positions, including through open and closed competition

⁵⁷³ Directive 89/656/EEC of the Council of November 30, 1989 on use of personal protective equipment (third individual Directive within the meaning of Article 16 (1) of the 89/391/EEC Directive), Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and Directive 92/57/EEC - temporary or mobile construction sites of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

19. THE RIGHT TO LIVE IN HEALTHY ENVIRONMENT

The implementation of the right of living in a healthy environment is still facing critical challenges in the country, in both legislative and practical terms.

The Environmental Assessment Code adopted by the Parliament of Georgia in 2017 should indisputably be regarded as a step forward in terms of environmental impact assessment system, including bringing the provisions related to public involvement in the activities and decision-making processes, which require environmental impact assessment, in compliance with international standards.⁵⁷⁴ Changes related to noise regulation, which were a recommendation of the Public Defender, should also be positively assessed.⁵⁷⁵ According to the Ministry of Internal Affairs of Georgia,⁵⁷⁶ from August 2017 to January 2018, 203 cases of violation of acoustic noise regulation were observed.⁵⁷⁷

Legislative regulations⁵⁷⁸, according to which a potential investor is required to prepare an environmental impact assessment (EIA) report only after concluding a memorandum with the state,⁵⁷⁹ still remain problematic. Without the EIA, the undertaking of any obligations by the State would run counter to the requirements of the law. Legislative shortcomings in the field of construction regulation remain unchanged,⁵⁸⁰ namely, there are no relevant regulations that would oblige a construction permit seeker to submit an engineering-geological survey, a construction drawing of a building, an assessment of the impact on adjacent buildings, and other important documents to an administrative body at any of the stages of the issuance of a construction permit.⁵⁸¹

There is no specific list of prohibited construction materials,⁵⁸² while a number of construction materials are of unstable, flammable, toxic or other character.⁵⁸³ In order to ensure the protection of the health of the population and the environment, the guidelines of the International Labor Organization indicate that relevant entities have to define hazardous materials that should be prohibited in the construction industry.⁵⁸⁴ It should

574 The number of activities subject to environmental impact assessment has increased, and the procedures of screening and scoping have been introduced, mechanisms for public participation in the decision-making process were established (it became a state obligation to ensure public awareness and organize public discussion in case of issuing recommendations upon strategic documents of screening, scoping and environmental decisions); The law specified cases of exemption from the EIA, etc.

575 On 28 June 2017, the Parliament of Georgia adopted a law on amendments to the Code of Administrative Offences. Articles 771 and 772, which envisage responsibility for exceeding of the permissible rates of acoustic noise in a residential house, in a building of privately owned real property or social/public institution during day time hours or night time hours, have been added to the Code.

576 Letter NMIA91800387197, 16/02/2018 of the Ministry of Internal Affairs of Georgia. A protocol on administrative violations was drawn up by the agency on the above mentioned cases.

577 Including, 1 case of use of pyrotechnic material during night time hours.

578 According to the 2nd paragraph, subsection “b” of the Article 7 of the Government Resolution N214 of 21.08.2013 it is the obligation of the winner of the expression of interests to prepare the environmental impact assessment of the project.

579 For more details view the report of the Public Defender of Georgia on “The Situation Of Protection Of Human Rights And Freedoms In Georgia” for 2015, pp 484-485, 488, available at <http://ombudsman.ge/uploads/other/3/3652.pdf>

580 For more details view the report of the Public Defender of Georgia on “The Situation Of Protection Of Human Rights And Freedoms In Georgia” for 2016, p. 326, available at <http://ombudsman.ge/uploads/other/4/4882.pdf>

581 Government Resolution N57, dated 24.05.2009 - Article 33, subsection “a” of paragraph 4; Article 35

582 Letter 19.07.2017 N11 / 4349 of the Ministry of Economy and Sustainable Development. Chapters III and VIII of the Code of Product Safety and Free Movement define only the general requirements and procedures of product safety that determine whether the requirements for a specific subject are met.

583 According to the N06/3125 letter of the National Center for Disease Control And Public Health dated 21.07.2017, 17% of total morbidity cases and 19% of mortality in Georgia are caused by adverse environmental conditions. The symptoms of early mortalities associated with environmental pollution are exceptionally high in the industrial regions.

584 Safety and health in construction: an International Labor Organization code of practice (1992), p: 85, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107826.pdf [last viewed: 13.02.2018].

be welcomed that certain changes are being introduced in this direction.⁵⁸⁵ It is also important to define the list of prohibited materials to be used in the construction industry. **Legal safeguards for fire safety of buildings are also incomplete. The sanctions provided by the Code of Offences, in the field of environmental protection, are ineffective. The greatest state-wide challenge is atmospheric air pollution, and flaws in legislation related to it, as well as its monitoring mechanisms.**

Chaotic spatial arrangement and urban development of the capital, environmental aspects of urban planning, including a disregard of public interest in the decision-making process on recreational zones and illegal practice of unsubstantiated development ration increase pose a severe problem.

19.1. SHORTCOMINGS IN THE URBAN DEVELOPMENT FIELD

In terms of spatial arrangement, one of the reasons for the challenges in the capital is an illegal practice of adopting decisions without any substantiation, and without examining the merits of the case.⁵⁸⁶ The given problem has been topical in the given report year as well.⁵⁸⁷

The examination of one of the cases⁵⁸⁸ demonstrated that through analysis of the merits of the case and substantiation of the decision are especially crucial in regards to recreational zones. A special regime is established by the legislation, determining that no types of construction are permitted in the recreational zone, except for types of construction defined by law. Along with the abolishment of a recreational zone, legal guarantees⁵⁸⁹ are also abolished, which substantially changes the social purpose and importance of the land plot. The decision-making bodies should take into account that the interdependence between public and private interests in the field of spatial arrangement and city planning, along with other issues, involves preservation and maintenance of the recreation areas.

A problem of general accessibility of information regarding the environment has also become apparent.⁵⁹⁰ Accessibility of information is not limited to the availability of documentation and data. The simplicity of obtaining such information is also significant. Namely, obtaining information regarding planned changes often requires processing of voluminous data, as well as its counter analysis and examination, which, considering the specific nature of the issue, often requires special knowledge and skills.⁵⁹¹ Citizens should be able to obtain interlinked information regarding planned changes in an unobstructed, simple and comprehensive manner. However, in case of Tbilisi, information/documentation contained on the web-site www.tas.ge cannot ensure

585 According to the N11 / 4349 letter of the Ministry of Economy and Sustainable Development dated 19.07.2017, it is planned to adopt government resolutions in the field. In addition, the draft amendments to the technical regulation "Product Safety and Free Circulation Code" have been prepared.

586 See Public Defender's Report for 2016, pp: 528, available at: <http://ombudsman.ge/uploads/other/4/4494.pdf>, also according to the 13.10.2016 decision of the Tbilisi Court of Appeal, based on the analysis of the extensive judicial practice, the Chamber concludes that, almost in all cases, exceeding the coefficient by a relevant entity cannot be proved.

587 The Office is working on 15 cases related to the construction sphere, including legality of constructions, problems related to conservation of an abandoned construction, etc.

588 The area of the RZ by the "Maglivi" building of the State University is being reduced from 18 154 sq.m to 6 031 sq.m., with more than 8000 sq.m. of the RZ losing its status. Conclusions of the Tbilisi Municipality Council for Regulation of Territory Utilization and Development Issues and decisions of the City Assembly are absolutely unsubstantiated. The Public Defender has addressed the Council/Assembly with a recommendation N04-11/17409, and requested them to annul the illegal acts, and adopt a lawful decision

589 N14-39 Decree of the Tbilisi City Assembly dated 24 May 2016

590 The State's commitment to inform the public on environmental issues is indicated in the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Georgia has been a party to the convention since 2000.

591 For example, appropriate information and inspected circumstances regarding the planned changes to the recreational zone by the Iv. Javakhishvili State University "Maglivi" building of are not evident from the decisions. The exact nature of planned changes could not be ascertained, even through a lengthy communication between the Public Defender's Office and administrative bodies. It was impossible to acquire the complete information from the documents posted on the mentioned website. The Public Defender's Office was able to learn the actual content of the said decisions only through comparison of the zoning map.

achieving this goal and therefore, does not fully comply with the requirement of Aarhus convention. It should be noted that accessibility of information is directly linked to the possibility of control over the issues at hand.

In addition, it is important that the government keeps in mind the need to timely inform citizens regarding discussions on possible infrastructural changes in the administrative bodies, and to implement adequate mechanisms for achieving this goal. Interested citizens should be able to participate in the decision making process from the very beginning. In addition, they should have to have the ability to identify, in a timely manner, whether the project to be discussed will have an impact on their lawful interests. Granting permissions on requests by the construction businesses at the expense of the right to healthy environment of the third persons is unacceptable.⁵⁹² The public interest in maintaining a green cover should not be ignored in favor of the construction business' interests. In certain cases, construction permits are being issued on the basis of written assurance from the Department of Environment and Green Spaces. In accordance with the assurance, in case of issuance of construction permit, the Department also issues a permit to cut down/move the green plantings from the land plot.⁵⁹³ The legislation does not envisage rules/conditions regarding the issuance of such assurances. Therefore, there is a risk that an assurance may be issued without meeting the legal requirements needed for cutting down of green plantings.

19.2. DECISIONS ON CONSTRUCTING HYDRO POWER PLANTS

Georgia became a fully-fledged member of the European Energy Community in 2017.⁵⁹⁴ As a result, it undertook an obligation to progressively fulfil directives and commitments made by the agreement.⁵⁹⁵ This required implementation of consistent energy policy, and subsequent activities by the state. However, the National Action Plan for the development of renewable sources of energy has not been elaborated yet.⁵⁹⁶

Pursuant to relevant Directives,⁵⁹⁷ the national regulatory body, which as an independent authority, will be vested with the competence to set tariffs, plays an important role. Each party to the Association Agreement⁵⁹⁸ is under an obligation to establish independent regulatory bodies.⁵⁹⁹ However, the Ministry of Energy of Georgia⁶⁰⁰ has been determining the cost of constructing hydro power plant case-by-case for years. Furthermore, the state considered the memorandum concluded with the investors during the reporting period fully or partly as a commercial secret,⁶⁰¹ which contradicts international transparency standards of information and data in the field of energy.

The examination of several cases by the Office of the Public Defender⁶⁰² revealed problems pertaining to the decisions made by the state authorities regarding the construction of hydroelectric power plants. Namely,

- 592 For example, the case of D.M., Public Defender's recommendation N04-3 / 7191 to the Tbilisi Architecture Service. The order for legalization of adhering to construction was issued without examination of possible adverse impacts to the neighboring facilities, and on the health of third parties.
- 593 Letter N2823867 of the Architecture Service dated 8.09.2016.
- 594 Georgia signed the Protocol on Accession of Georgia to the Founding Agreement of the Energy Community in 2016, its ratification was made in 2017.
- 595 Directives are set for 2017-2023. Information can be retrieved from the following web-page: <<http://www.energy.gov.ge/projects/pdf/pages/Energetikuli%20Gaertianebis%20Damfudznebel%20Khelshekrulebastansakartvelos%20Sheertebis%20Shesakheb%20Okmi%201454%20geo.pdf>> [last visited on: 10.02.2018].
- 596 Implementation of the Directive N2009/28/EC on the promotion of the use of energy from renewable sources is a state obligation.
- 597 Directive N2009/72/EC concerning common rules for the internal market in electricity and Directive N2009/73/EC concerning common rules for the internal market in natural gas.
- 598 Article 215 of Chapter 11 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.
- 599 These bodies shall be vested with powers to regulate markets in natural gas and electricity.
- 600 Successor of this body is the Ministry of Economy and Sustainable Development of Georgia pursuant to the amendments introduced in 2017.
- 601 For example, memorandum about constructing the Shuakhevi power plant cascade is a commercial secret.
- 602 Khudoni power plant, Adjaristskali power plant cascade, Namakhvani power plant, Nenskra power plant. Assessment of the Public Defender of Georgia related to these power plants were regularly reflected in the Parliamentary Reports of the Public Defender of Georgia.

decisions were made without informing and involving society, and neither were the social-economic needs of the population considered, nor was an analysis made of the proportionality between sustainability and harm inflicted.

Such attitude creates reasonable suspicion of the public that administrative proceedings mainly carry a formal character.

19.3. PROBLEMS OF AMBIENT AIR POLLUTION

According to the data of the World Health Organization (WHO), Georgia ranks third in mortality rate from ambient air pollution.⁶⁰³ Air in Georgia is polluted from transportation, the energy sector, manufacturing, and agriculture.⁶⁰⁴ At the same time, the state recognizes,⁶⁰⁵ that currently enforced normative acts on air quality and monitoring systems fail to provide the possibility to assess the level of pollution and its impact on the population, in accordance with the parameters endorsed by the World Health Organization.

The national legal framework on protecting ambient air fails to fully reflect the obligations of Georgia under the Association Agreement with the EU. This includes, but is not limited to, the non compliance of national thresholds of air pollution substances (arsenic, cadmium, mercury, nickel, etc) with the European standards.⁶⁰⁶ In the meantime, margins of particular contaminants (PM₁₀, PM_{2.5}) are not regulated on a national level at all.⁶⁰⁷ Besides, Georgian legislation lacks rules on the best accessible technology threshold of emissions of specific stationary sources, and an integrated system of permissions.

According to the conclusion of the State Audit Service, 120,050,566 GEL was spent from the state budget for the treatment of diseases caused by different contaminants.⁶⁰⁸ It is noteworthy that municipal transport has a significant effect on forming harmful substances in the air. Most of them are not equipped with sound exhaustion system. Namely, in line with the information provided by the State Audit Service, 2017 regular technical inspection was not necessary for 143 buses out of 816; as to the rest of 673 buses, 456 buses failed to comply with the relevant requirements.⁶⁰⁹ **Even though exploitation of such buses is forbidden by the legislation of Georgia,⁶¹⁰ transportation companies still runs forms of transportation that are legally out of commission to avoid delays in the movement of passengers.⁶¹¹**

Analysis of the documentation by the Office of the Public Defender⁶¹² reveals that regulations involved in protection from ambient air pollution are ineffective. Sanctions enshrined in the law on administrative infringements are not compliant with the gravity of the acts, and fail to prevent breaches of regulations in the long run.

603 Letter #06/3123 of the LEPL National Center for Disease Control and Public Health of 21.07.2017.

604 LEPL National Center for Disease Control and Public Health deems it important to progressively strengthen rules on motor fuel quality and carbon emission norms and their control, to establish age limit of vehicles and its gradual decrease, to optimize transport flow management, to develop electronic transport, and etc.

605 Letter #06/3123 of the LEPL National Center for Disease Control and Public Health of 21.07.2017.

606 Directive 2008/50/EC on ambient air quality and cleaner air for Europe and Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

607 Third National Program of Activities for Environmental Protection 2017-2012, draft version, 2017, p.48.

608 Audit report on effectiveness of activities for reducing ambient air pollution caused by traffic emissions across Tbilisi. p. 24. Information can be retrieved from the following web-page: <<https://www.sao.ge/files/auditi/auditis-angarishebi/2018/atmosferuli-haeris-dabinzureba.pdf>> [last visited on 20.03.2018].

609 Audit report on effectiveness of activities for reducing ambient air pollution caused by traffic emissions across Tbilisi, p. 18 Information can be retrieved from the following web-page: <<https://www.sao.ge/files/auditi/auditis-angarishebi/2018/atmosferuli-haeris-dabinzureba.pdf>> [last visited on 20.03.2018].

610 Article 18 (1, "b") of Law of Georgia on Traffic.

611 Audit report on the effectiveness of activities for reducing ambient air pollution caused by traffic emissions across Tbilisi, p. 18. Information can be retrieved from the following web-page: <<https://www.sao.ge/files/auditi/auditis-angarishebi/2018/atmosferuli-haeris-dabinzureba.pdf>> [last visited on 20.03.2018].

612 Letter #8 17 00075963 of the Department of Environmental Supervision of 27.10.2017.

There were high expectations in terms of the regulation of emissions from the transport sector, namely the establishment of a technical inspection of all types of transport from December 31, 2017. Pursuant to the amendments introduced by the Parliament of Georgia⁶¹³ and the new Order of the Government,⁶¹⁴ these issues have been once again postponed for several years. The Public Defender addressed the legislative amendments,⁶¹⁵ and made a negative assessment.

19.4. CHALLENGES IN THE AREA OF FIRE SAFETY

Several high profile cases drew the attention of the public toward challenges pertaining to fire safety issues during the reporting period. This also includes the blaze at the Hotel Leo Grand in Batumi, which resulted in the death of 11 individuals.

The Public Defender considers the technical regulation of the Rules and Conditions of Fire Safety,⁶¹⁶ as the main document of the field, faces significant shortcomings. Problems pertaining to the enforcement of fire safety requests practice.

Requirements of fire safety enshrined by the mentioned regulation,⁶¹⁷ extends to the anti-fire systems already in place; the regulation itself lacks the obligation to establish such systems. An updated set of rules, comprising of detailed and broad obligations of the facilities and its employees, is in Russian, and search for it in the Legislative Herald of Georgia is impossible. Other documents applied by the supervisory authority, are not collected and accessible in the legislation of Georgia or on the web-page of the LEPL Emergency Management Agency, which hampers the informing of the persons responsible for fire safety.

Cases⁶¹⁸ of gross violations of the acting legislation, causing a threat of fire and/or threatening human safety, were detected. However, in neither of the cases had the LEPL Emergency Management Agency addressed the court on full or partial suspension of the exploitation of buildings, construction sites, aggregates and/or storerooms, or for any other activities. In the meantime, failure to comply with the requirements, such as the application of fireproof materials, the establishment of emergency exit routes, the installation of fire-alarms and automated fire alarm detectors and/or their exploitation, provision of initial facilities to extinguish fire, installation and exploitation of electric cables and equipment, appointment of a person responsible for fire safety and training of employees on safety rules, were revealed throughout Georgia.⁶¹⁹

Fines⁶²⁰ possible for violating technical rules and conditions of fire safety are incompatible with the gravity of the violation, and its expected outcomes. Study of the information provided by the Chief Prosecutors Office of Georgia revealed that investigations of incidents of fire on different trade amenities are often prolonged, and the imposition of criminal responsibility on concrete individuals becomes impossible.⁶²¹

613 Link is available on: <<https://info.parliament.ge/#law-drafting/14661>> [last visited on 12.02.2018].

614 Regulation approved by the #510 Decree of the Government of 1.12.2017 on Regular Technical Inspection of Motor Traffic and Their Trailers.

615 Link is available on: <<http://www.ombudsman.ge/ge/news/saxalxo-damcveli-exmianeba-avttransportis-ew-teqdatvalierebastan-dakavshirebul-cvilebebs.page>> [last visited on 12.02.2018]. Public Defender expressed negative attitude toward this during the Committee hearing, and supported enforcement of technical inspection of those motor vehicles in a timely manner, which would reflect positively on air and health conditions of the population.

616 Technical rules approved by the Order #370 of the Government of 23.07.2015.

617 For the fire alarm and fire extinguishing equipment, anti-smoke and water supply sources.

618 Letter N1 17 01257067 of the LEPL Emergency Management Agency of 29.05.2017.

619 Letter N1 17 01257067 of the LEPL Emergency Management Agency of 29.05.2017

620 Article 177 of the Administrative Infringements Code foresees a fine in the amount of 50 GEL-300 GEL.

621 Letter #13/53726 of the Chief Prosecutors Office of Georgia of 14.08.2017.

19.5. ENVIRONMENTAL ISSUES IN ENTREPRENEURIAL ACTIVITIES

In 2013-2015, the damage caused to the environment by the Georgian Manganese LTD⁶²² exceeds 357 million GEL. Investigations launched in 2013⁶²³ and 2015⁶²⁴ are still ongoing, without any tangible results. Investigations launched into the destruction of the plantation on #10 Asatiani Str has not been finalized yet.⁶²⁵

Pursuant to the State,⁶²⁶ sanctions imposed on Georgian Manganese LTD and additional terms failed to ensure compliance with the license conditions; therefore, the company continued to act in violation of such conditions.⁶²⁷ The state has exhausted all legal leverages to ensure the compliance with the requirements of the license/permit.⁶²⁸

For years, causal link between the environmental damage caused by the work of RMG Gold and RMG Copper in the Bolnisi and Dmanisi municipalities, and the health problems of the population, could not be identified. The state relies on the expert⁶²⁹ views, according to which correlations cannot be established, as a result of which relevant decisions are not taken, and priority is given to preventive measures. It turns out that in-depth epidemiological researches need to be undertaken to reveal concrete risk factors, and their impact on health. Measures employed in this direction shall be deemed ineffective, which violates right of the local population to live in a healthy environment.

SUGGESTIONS TO THE PARLIAMENT OF GEORGIA

- To amend the Code of Administrative Offences of Georgia to stringent the sanctions for offences related to noncompliance with technical regulation on “Fire Safety Rules and Conditions” and other offences committed in the sphere of environmental protection

RECOMMENDATIONS

To the Government of Georgia:

- To introduce legislative changes in Government Resolution #57 of March 24, 2009, and to determine the obligation of submitting an engineering – geological examination for the plot indicated in the Article 33 (4, “a”) of the Resolution at the decision making body during the issuance of a construction permit
- To accelerate measures necessary for the implementation of Directives 2004/107/EC, concerning Air Quality and Cleaner Air for Europe, and Directive 2008/50/EC on Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air

622 Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, from p. 525.

623 In line with the letters N13/2541, N13/1995 of the Chief Prosecutors Office of Georgia, investigation is launched on the fact of violation of protection of mineral resources.

624 According to the letters N13/2541, N13/1995 of the Chief Prosecutors Office of Georgia, investigation is launched on the fact of illegal entrepreneurial activities jointly by more than one person, non-compliance with a court’s decision, tax evasion in particularly large quantities, legalization of illegal income by company’s management.

625 Letter N13/8835 of the Chief Prosecutor’s Office of Georgia.

626 Letter N1067/01 of the Ministry of Environment and Agriculture of 7.02.2018.

627 Order No-334 of the Ministry of Environment and Natural Resource Protection of 5.07.2016.

628 State became obliged to abstain from the decision of abolishing the license of the company and to address the court to appoint temporary manager in order to avoid paralyzing the manufacturing process, development of negative environmental processes and suspension of budgetary incomes, while also considering interests of the employees of the company. The court approved the new action plan of the company and tasked it with a duty to submit a monthly report to the Ministry/Court.

629 According to the letter N06/3332 of the LEPL National Center for Disease Control and Public Health of 3.08.2017, verbal consultations were ongoing on this issue with the group of experts of the US Centers for Disease Control and Public Health.

- To ensure the publicity of agreements with investors to guarantee the fulfillment of international standards on information and data transparency in the energy sector, and the determination of tariffs by the Georgian National Energy and Water Supply Regulatory Commission
- To take all necessary measures, including the conducting of advanced epidemiological surveys, to investigate causal links between the environmental damage caused by the work of RMG Gold and RMG Copper in the Bolnisi and Dmanisi municipalities, and the health problems of the population, and to take appropriate steps to eliminate identified problems
- To adopt uniform normative acts on fire safety, which will replace an already outdated set of rules that are mostly in the Russian language, and will ensure establishment of modern standards

To the Prosecutor's Office of Georgia:

- To periodically update the public on the progress made on cases involving “Georgian Marganes” and the cutting of trees on Asatiani Str

To the Tbilisi City Hall

- To immediately develop an action plan on the renewal of parks for municipal buses and transmission to ecologically clean technologies in order to minimize ambient air pollution

To the Tbilisi City Hall, LEPL Tbilisi Architect, Tbilisi Assembly

- To inform the public about environmental issues via the user friendly website www.tas.ge , and to ensure public participation in the decision making process

20. RIGHT TO HEALTH CARE

This chapter covers issues, shortcomings, and problems in regard to the universal healthcare program, and access to medications and the pharmaceutical market, patient's rights and professional liability of subjects of independent medical practice. Given the importance of the issue, drug abuse policy in Georgia is discussed in a separate chapter.

A positive move in the reporting period was the amendments to the Law of Georgia on Tobacco Control,⁶³⁰ which accommodated the recommendations of the Public Defender⁶³¹ and local and international organizations working on this issue. Later, the enforcement of separate provisions was postponed,⁶³² which must be assessed as a negative development; however, it is important to ensure that other positive legislative changes are not postponed, and they enter into force on the set date – 1 May 2018.

20.1. UNIVERSAL HEALTH CARE PROGRAM

The previous reports of the Public Defender of Georgia highlighted a problem of restricting persons engaged in private insurance schemes as of 1 July 2013, in order to fully benefit from the universal health care program. With the amendment⁶³³ introduced in the beginning of the reporting period, the aforementioned date was changed, and a restriction on the use of universal health care program now applies to persons engaged in private insurance schemes as of 1 January 2017. By changing the dates alone, the government failed to deal with this problem in a comprehensive manner, and the persons who will leave private insurance schemes after 1 January 2017, will again be subject to different treatment in receiving health services, and will only benefit from the so-called minimum insurance package.⁶³⁴

As a result of changes to the state program on universal health care,⁶³⁵ the service packages have become differentiated by citizens' incomes since May 2017. The state replaced the principle of universality with a targeted approach, and determined the amounts of services to be rendered under the program in accordance with individual incomes. The reasons cited behind this change were the optimization of costs, and the establishment of social justice. Nevertheless, this move failed to decrease the costs of the universal healthcare program. As in the previous years, the 2017 budget of the program proved deficient, and it became necessary to add around GEL 50 million to it.⁶³⁶

630 Law of Georgia on the Amendments to the Law of Georgia on Tobacco Control, N859-IIS, 7 May 2017.

631 Special report: Situation in the Field of Tobacco Control; information available at: <http://www.ombudsman.ge/uploads/other/4/4224.pdf>

632 On 26 July 2017, the amendment to the Law of Georgia on Tobacco Control was adopted by the Parliament of Georgia, postponing the enforcement of norms regulating the sale/display of tobacco in standardized (plain) packaging from 1 January 2018 to 31 December 2022.

633 The Ordinance №208 of the government of Georgia, dated 25 April 2017, "On Amending the Ordinance №36 of the government of Georgia, dated 21 February 2013, on Several Measures to Be Undertaken for the Aim of Transition to Universal Healthcare."

634 See the 2016 report of the Public Defender, The Situation in Human Rights and Freedoms in Georgia, pp. 539-540.

635 The Ordinance №208 of the government of Georgia, dated 25 April 2017, "On Amending the Ordinance №36 of the government of Georgia, dated 21 February 2013, on Several Measures to Be Undertaken for the Aim of Transition to Universal Healthcare."

636 Information is available at the official webpage of the Finance Ministry of Georgia: http://mof.ge/images/File/bijetis-kanoni2018/tavebi/VI_TAVI_11.12.2017.pdf

It must be noted that the universal healthcare program was extended to include a medication component,⁶³⁷ which is aimed at financing medicine for citizens suffering from chronic diseases, and registered in the database of socially disadvantaged people with the rating score of up to 100,000.⁶³⁸ This is a commendable step, but, in the interest of health of program beneficiaries, and in view of their social and economic condition, the state must extend the list of financed diseases and medications.

20.2. THE ACCESS TO MEDICATIONS AND THE PHARMACEUTICAL MARKET

Pharmaceutical activity is one of important components of the health care system. The state supervises the pharmaceutical market in two areas: the protection of competition on the market (LEPL Competition Agency), and the observance of norms of safety and effectiveness of products (LEPL State Regulation Agency for Medical Activities). It must be noted that in 2017, the LEPL Competition Agency did not study/monitor the pharmaceutical sphere at all.⁶³⁹

In 2017, the government of Georgia drew up a state program of quality control of medications,⁶⁴⁰ which aims to protect the pharmaceutical market from medications that are falsified, defective, spoilt, expired and not allowed on the Georgian market.

Several large enterprises operating in Georgia have obtained GMP (good manufacturing practice)⁶⁴¹ certificate from organizations of various countries. However, since corresponding standards are not established in Georgia, the State Regulation Agency for Medical Activities lacks trained GMP inspectors who would be able to examine the compliance of local production with GMP standards. A negative move in this regard was the postponement of the enforcement dates – it was planned to establish the national GMP inspectorate by 1 July 2019, and start production in accordance with the national GMP standard from 1 January 2022. Originally, the national GMP standard was to be enforced on 1 January 2018.

Expenditure on medications, which is constantly increasing, is a heavy burden for the population, and amounts to nearly half of their spending on health care.⁶⁴² A systemic reform to improve the access to medication is one of the elements of the Georgian government's long-term plan, which is designed to increase the access of vulnerable parts of the population to outpatient medications.⁶⁴³ The state must increase the access to generic

637 The Ordinance №208 of the government of Georgia, dated 25 April 2017, “On Amending the Ordinance №36 of the government of Georgia, dated 21 February 2013, on Several Measures to Be Undertaken for the Aim of Transition to Universal Healthcare.”

638 Co-financing by program beneficiaries was set at 10% of the cost of medicine(s), which shall not be less than 5 tetri and more than 1 lari.

639 The letter of LEPL Competition Agency №02/60 (29/01/2018), according to the letter of LEPL Competition Agency №02/929 (26/10/2016), in 2016, only six administrative proceedings were conducted. The most important was the inquiry into the activity of the LEPL State Regulation Agency for Medical Activities, the pharmaceutical market regulator, in particular, the inquiry into parallel import. A decision of the working group was approved on the basis of the inquiry, according to which the LEPL State Regulation Agency for Medical Activities breached Paragraph B of Article 10 of the Law on Competition; namely, with two importers in equal conditions, the Agency issued the registration for the medication Lorista to only one importer whereas denied the registration to another. Thus, an unequal treatment by the Regulation Agency of equal cases was revealed. In this regard, the State Regulation Agency for Medical Activities carried out a repeated evaluation of the documentation, declared a decree of the head of the Agency on the import of the mentioned product with a distinguished packaging-marking void, and prohibited an interested party from importing the mentioned product with distinguished packaging-marking.

640 The ordinance №36 of the government of Georgia On the Approval of 2017 State Program on the Control of Quality of Medications (26 January 2017).

641 GMP (Good Manufacturing Practice) is a system for ensuring that pharmaceutical products are produced and controlled according to quality standards. It is designed to minimize the risks that cannot be eliminated through testing the final product.

642 Results of national health reports, 2012-2015. Information is available at: <http://www.moh.gov.ge/uploads/files/2017/angarishebi/1.pdf>

643 The government of Georgia, Basic Data and Directions of the Country for 2017-2020. Information is available at: http://mof.ge/images/File/BDD/BDD_2017-2020_Pirveladi-varianti.pdf

drugs,⁶⁴⁴ and improve the electronic prescription system, thereby facilitating the replacement of original brands by generic drugs. It is necessary to continue a regular monitoring of physical access to medications, and to control the share of generics in prescribed medications. Marketing and promotion of medications, as well as the communication of information about them to the public, must be strictly regulated and controlled. To ensure the quality, safety and protection of medications, the Health Ministry must carry out measures for the improvement of the pharmaceutical activity - the production, further research, distribution, storage and placement, development of sales conditions of pharmaceutical products.

20.3. PATIENTS' RIGHTS

In 2016 and 2017, the Public Defender of Georgia studied the applications of citizens,⁶⁴⁵ which concerned the quality of provided services, alleged restrictions of the right to health, and complaints submitted by them to the Professional Development Council. The study of the mentioned applications has revealed that the problem of informing patients about their rights and medical personnel about their responsibilities remains.

According to the legislation, the Ministry of Labor, Health and Social Affairs controls the quality of medical activity of all medical institutions. The Professional Development Council, set at the Ministry,⁶⁴⁶ considers applications and complaints concerning the activity of the medical personnel and based on studied materials, and takes a decision concerning professional liability.⁶⁴⁷ The Council receives organizational and technical support from the State Regulation Agency for Medical Activities. The analysis of information supplied by the Agency shows that in 2015-2017, the number of complaints regarding the quality of medical assistance is quite high. Applicants often complain about a low degree of professional qualification and responsibility of the relevant medical personnel. The number of doctors whose state certificates were suspended for various periods, or upon whom were imposed other measures of professional liability, is rather high.⁶⁴⁸

It must be noted that the consideration of citizens' complaints to the Professional Development Council is protracted; citizens are not allowed to participate in the consideration of applications, and are not invited to the Council meeting, although the parties to a complaint have the right to attend a decision-making process.⁶⁴⁹ To allow for the full realization of this right, the Council must notify an applicant about the place and time of a meeting in due time, and ensure the realization of the rights guaranteed to patients. This will facilitate not only the protection of the rights of parties to administrative proceedings, but also a substantiated decision making as in such a case, the administrative body will be able to better inquire into circumstances of the case.⁶⁵⁰

The State Regulation Agency for Medical Activities and the Professional Development Council carry out their activities with the help of invited experts, who are led and coordinated by the Health Care Department of the Ministry of Labor, Health and Social Affairs. The coordination and management of experts by the Department is limited to organizational aspects, while the assessment of the impartiality of expert opinions does not fall within the competence of the Department. Moreover, legal acts regulating the activities of experts⁶⁵¹ do not specify a liability in case of their failure to fulfill or properly fulfill responsibilities, which creates problems in practice; nor are the norms to regulate the participation of a patient in the preparation of expert opinion established.

644 Generic drugs are pharmaceutical products produced under international names, which are the same in quality and performance as medications of various names, produced by pharmaceutical companies under patents. The difference is only in price: generic drugs are cheaper and thus more affordable by wider society.

645 The cases N 9048/15, N11617/16; N 7388/16; №7440/1 and others, considered by the Office of Public Defender.

646 Decree №122/N, dated 16 May 2008, of the Minister of Labor, Health and Social Affairs of Georgia.

647 Article 63 of the Law of Georgia on Health Care.

648 The letter №02/70031 (08/11/2017) the State Regulation Agency for Medical Activities.

649 Article 87 of the Law of Georgia on Medical Practice.

650 Guidelines of general administrative law; team of authors, Tbilisi 2005, pg. 248.

651 For example, Decree of the Minister of Labor, Health and Social Affairs of Georgia №01-157/O (25.07.2014) On Experts of the Ministry of Labor, Health and Social Affairs of Georgia.

The Ministry of Labor, Health and Social Affairs of Georgia must ensure qualified medical personnel within the scope of the system of continuous medical education, and improve the mechanism of doctors' certification.

20.4. DRUG ABUSE POLICY

The state drug abuse policy is largely oriented on punitive measures, and focused on the restriction of the supply of narcotic substances to a black market, turning not only sellers but also users into objects of prosecution.

The use of narcotic substances without a doctor's prescription is punishable in Georgia both under administrative and criminal procedures. In particular, the first use is punishable under the administrative procedure envisaging a fine of GEL 500 or detention of up to 15 days,⁶⁵² while a repeated action committed within one year, is subject to criminal prosecution, and envisages a fine or detention of up to one year.⁶⁵³

A tough criminal policy implemented in 2005-2006 resulted in the decrease of the illegal drug supply of traditional narcotic substances (opium, heroin, Subutex) to the black market. However, as the policy was focused on decreasing traditional narcotic substances alone, amphetamine-type stimulants (the so-called "Vint" and "Jeff"), domestically manufactured from medications that are easily available at drugstores, gained popularity among people who use intravenous drugs. According to medical researches and observations, the use of such homemade stimulants is closely associated with irreversible neurological changes, Parkinson's-type diseases and disability.⁶⁵⁴

With traditional opioids decreasing sharply on the black market in 2010-2012, those who injecting drugs switched to the use of an opioid with codeine content made at home from precursors easily available at drugstores and shops, the so called "krokodil", which is characterized by a high risk of overdose.⁶⁵⁵

Yet another widespread problem is the so-called "pharmacy drug abuse" – an illegal sale of those medications by drug stores, which are subject to a special control. In this case, medications are easily available even for minors.

According to the 2014 International Narcotics Control Strategy Report of the US Department of State, so-called "krokodil" is made at home from medications mixed with codeine, which is available with a prescription, but also commonly sold "under the table" by pharmacies without a prescription.⁶⁵⁶

The report also notes that Georgia lacks a comprehensive mechanism for the fight against the increasing use of homemade stimulants and opioids. Experts estimate that the number of intravenous drug users in Georgia is approximately 45,000, while according to the National Forensic Bureau, the number of all types of registered drug users is about 60,000.⁶⁵⁷

As noted above, the Georgian legislation on drug abuse is focused on punitive measures and the restriction of the supply of narcotic substances. Therefore, **a repressive component of the policy, and the volume of human and financial resources allocated for law enforcement measures, create a sharp imbalance between the punitive vector of anti-drug policy and its care/assistance vector.** A strict drug abuse policy

652 Article 45 of the Administrative Offences Code of Georgia.

653 Articles 273 and 273¹ of the Criminal Code of Georgia.

654 The state strategy on combating drug addiction. Available at: <https://goo.gl/A2KSvR> [last accessed on 10.03.2018].

655 The state strategy on combating drug addiction. Available at: <https://goo.gl/A2KSvR> [last accessed on 10.03.2018].

656 Country Report: Georgia, 2014 International Narcotics Control Strategy Report (INCSR), Volume I, Drug and Chemical Control Bureau of International Narcotics and Law Enforcement Affairs, U.S. Departments of State; p: 170; available at: < <https://www.state.gov/documents/organization/222881.pdf> > [accessed on 26.03.2018].

657 Country Report: Georgia, 2014 International Narcotics Control Strategy Report (INCSR), Volume I, Drug and Chemical Control Bureau of International Narcotics and Law Enforcement Affairs, U.S. Departments of State; p: 170; available at: < <https://www.state.gov/documents/organization/222881.pdf> > [accessed on 26.03.2018].

undermines the effectiveness of treatment-rehabilitation and prevention programs, especially when efforts are insufficient in the area of prevention and treatment-rehabilitation. Moreover, imposed fines, plea agreements and other measures undertaken by the state aggravate the social and economic situation of the families of drug users.⁶⁵⁸

Given the above, one may say that the strict state policy does not leave enough room for the effective treatment-rehabilitation of drug users. **The state fights drug users more severely than the drug abuse itself.** The criminalization by the state and marginalization by society of drug abusers force them to hide this problem, which further exacerbates the negative consequences of drug abuse.

An additional problem is the spread of contagious diseases associated with the intravenous use of drugs, such as hepatitis C and B, HIV/AIDS, et cetera. The criminalization of drug abuse and the distrust of drug abusers towards the state hinders and dramatically complicates the elimination of these diseases.

The state policy that is largely oriented on the punishment of drug users also adversely affects important components of harm reduction, such as a syringe exchange program.⁶⁵⁹ However, due to strict drug abuse policy in the country, the program has been modified, and envisages the distribution of injection equipment rather than the exchange.⁶⁶⁰

Other problems include: a high indicator of the use of psychoactive substances among minors; the young age (13 years old) of beginner drug users; a high level of the use of new psychoactive substances. According to relevant studies, the use of psychoactive substances among Georgian schoolchildren is twice as high as among European schoolchildren.⁶⁶¹

With all the above said, it is clear that the strict drug abuse policy has failed to reduce harm, and the number of drug abusers constantly increases. It becomes impossible to implement various health care programs as drug users, fearing criminal prosecution, refrain from taking certain actions. Consequently, to protect human rights, the existing drug abuse policy needs to be changed.

It was in the spirit of changing the existing policy that the state strategy on combating drug addiction⁶⁶² was drawn up; it shares the stance questioning the effectiveness of the paradigm of fight against drug addiction in the 21st century, especially after the publication of the report of Global Commission on Drug Policy in June 2011. According to the strategy document, the 21st century revealed the need for a balanced strategy on combating drug addiction, which is oriented on human rights and rests on scientific evidence, and has proved effective in preventing a further increase of the scale of problem in relevant countries. The key characteristic of the European approach is the focus on the recognition of the problem, rather than on combatting and eliminating the problem, and the implementation of pragmatic and realistic strategy that will lead to effective management of the problem.⁶⁶³

According to the strategy document, the aim is to reduce the health, social and economic harm caused by the illegal turnover of narcotic substances in Georgia, on individual, family, community, public and national levels. The main areas of the strategy are the decrease of demand and reduction of harm, decrease of supply,

658 Country Report: Georgia, 2014 International Narcotics Control Strategy Report (INCSR), Volume I, Drug and Chemical Control Bureau of International Narcotics and Law Enforcement Affairs, U.S. Departments of State; p.: 6; available at: < <https://www.state.gov/documents/organization/222881.pdf> > [accessed on 26.03.2018].

659 The aim of so-called syringe exchange program is to provide new injection equipment in exchange for used syringes, thereby preventing the spread of infectious diseases. Since Georgia has not established a small amount for many narcotic substances, and any minimal amount of such substance, including the amount left in a used syringe, gives rise to criminal liability, drug users prefer not to move with such injection equipment.

660 This was caused by the fact that a small amount is not established for many narcotic substances. Therefore, any amount of such substance represents a large amount and a ground for qualifying it as a crime. This prevents drug users from moving with such injection equipment.

661 Public Policy Documents 2015, available at < https://www.gfsis.org/files/policy-paper/2014-2015/01_Maia_Beruashvili.pdf > [last accessed on 10.03.2018].

662 Adopted by interagency coordination council of the fight against drug addiction.

663 The state strategy on combatting drug addiction, pg. 3. <https://goo.gl/A2KSvR> > [last accessed on 10.03.2018].

coordination, international cooperation and monitoring of drug addiction.⁶⁶⁴ Hence, the state strategy prioritized several directions, namely, decrease in demand,⁶⁶⁵ harm reduction,⁶⁶⁶ overcoming stigma and discrimination, and a decrease in supply.

It should be noted that **stigma and discrimination** towards drug users creates a whole set of barriers in overcoming this problem. It complicates an early detection and timely treatment of drug dependence, prevents patients from referral for treatment, contributes to their marginalization and social isolation, causes unemployment, thus forming a vicious circle, and limiting the opportunity to break this vicious circle. Self-stigma, as well as stigma existing in the society, is one of serious barriers for drug-dependent persons to receive timely and effective treatment. The situation is even graver when it comes to drug dependent women, as the attitude towards such women is far more merciless.

The Public Defender of Georgia believes that a reform of anti-drug addiction policy, drawn up by the Georgian National Drug Policy Platform and initiated by members of the Georgian parliament (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze), best fits the objectives of the state strategy on combating drug addiction.

The above mentioned reform envisages the decriminalization of the use of narcotic substances. This will increase the level of trust towards the state and, consequently, the referral of drug abusers for assistance. It will also help liberalize sanctions for drug crimes, and determine small amounts of narcotic substances; improve the procedure of forced narcotic drug testing, and bring it in line with human rights standards; improve the rights of people convicted for drug crimes; create a new environment for providing care (service) to people having problems with drugs; improve systems of treatment-rehabilitation and prevention, and create commissions for dissuasion of drug addiction.

It should be noted in this regard that the Public Defender of Georgia prepared and filed constitutional complaints with the Constitutional Court, concerning the procedure of administering drug related offences (so-called street drug testing, the constitutionality of administrative punishment of a person on the basis of drug testing, and the use of result of such a test as evidence in criminal justice),⁶⁶⁷ also the use of imprisonment for consuming and storing small amount of narcotic substance⁶⁶⁸ as a punishment.⁶⁶⁹ Both constitutional complaints were considered on their merits by the Constitutional Court, though as of March 2018, the rulings had not been delivered yet.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To timely consider a package of draft laws N 8700/2-1 drawn up by the Georgian National Drug Policy Platform and initiated by members of the Georgian parliament (A. Zoidze, L. Koberidze, D. Tskitishvili, S. Katsarava and I. Pruidze) on 22 June 2017, and adopt it so that it results in:

⁶⁶⁴ The state strategy on combatting drug addiction, pg. 6. <https://goo.gl/A2KSvR> > [last accessed on 10.03.2018].

⁶⁶⁵ The decrease in demand implies a wide spectrum of strategies and programs aimed at reducing the willingness and desire to consume illegal narcotic substances. To achieve this, it requires prevention of use, relevant treatment and rehabilitation.

⁶⁶⁶ Activities in the area of harm reduction include the reduction of negative consequences of the use of narcotic/psychotropic substances. Such measures, among others, are the so-called syringe-exchange program, substitution therapy, et cetera.

⁶⁶⁷ In the first constitutional complaints, the Public Defender challenges the constitutionality of so-called street urine testing. In the Public Defender's view, disputable provisions conflict with the rights guaranteed in the constitution, such as the inviolability of dignity (Article 17); the inviolability of liberty (Article 18); and the right to be protected from self-incrimination. The disputable provisions enable police officers to arbitrarily subject, without sufficient legal grounds, any person to a drug control, who, in their view, fits into a drug user stereotype. Therefore, this procedure is often undertaken against absolutely innocent people, thereby causing the restriction of important constitutional rights such as the inviolability of liberty, inviolability of dignity, inviolability of privacy, et cetera.

⁶⁶⁸ Another constitutional complaint disputes those parts of sanctions specified in Article 45 of the Administrative Offences Code of Georgia and Article 173 of the Criminal Code of Georgia, which envisage the imprisonment for a period from 15 days to one year for using and storing established small amounts of drug substances. These provisions are challenged in relation to the first two paragraphs of Article 17 of the Constitution as punishments infringing on the dignity.

⁶⁶⁹ It must be noted that one constitutional complaint was satisfied partially, and the part of the provision which concerns the application of imprisonment for storing a small amount of marijuana was declared unconstitutional.

- Decriminalization of the use of narcotic drugs which, in turn, will lead to the increase in referrals of drug users for assistance to the state and boost the trust towards the state;
- Establishment of small amounts of narcotic substances subject to special control as well as the initial amounts giving rise to a criminal liability, in a fair and adequate manner;
- Creation of a new environment for providing care (service) to persons having problems with drugs;
- Improvement of systems of treatment-rehabilitation and prevention.

RECOMMENDATIONS

To the government of Georgia:

- To extend the list of medicines specified in the subprogram on ensuring medications for chronic diseases, envisaged under the State Program of Universal Health Care, taking into account the interests of program beneficiaries and their social and economic conditions

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

- To ensure the development of effective and long-term plan for the improvement of the pharmaceutical activities, the production, further research, distribution, storage and placement, and development of sales conditions
- To draw up regulatory norms defining the activities and responsibilities of medical experts, based on the principles of transparency, publicity and accessibility
- To ensure the improvement of continuous professional development system for medical personnel, to develop measures for the improvement of doctor training programs within the scope of continuous medical education system; to introduce new training programs for eliminating shortcomings in servicing patients. At the same time, to draw up a long-term action plan for the abovementioned activities

To the State Regulation Agency for Medical Activities:

- To draw up norms determining the complaints consideration procedure, which will set forth reasonable timeframes for the study and submission of an application/complaint to the Professional Development Council for further consideration; also the rule of notifying interested persons about a planned meeting of the Professional Development Council

To the Competition Agency:

- To develop an annual action plan for the detection and monitoring of undue restrictions on competition in the pharmaceutical market

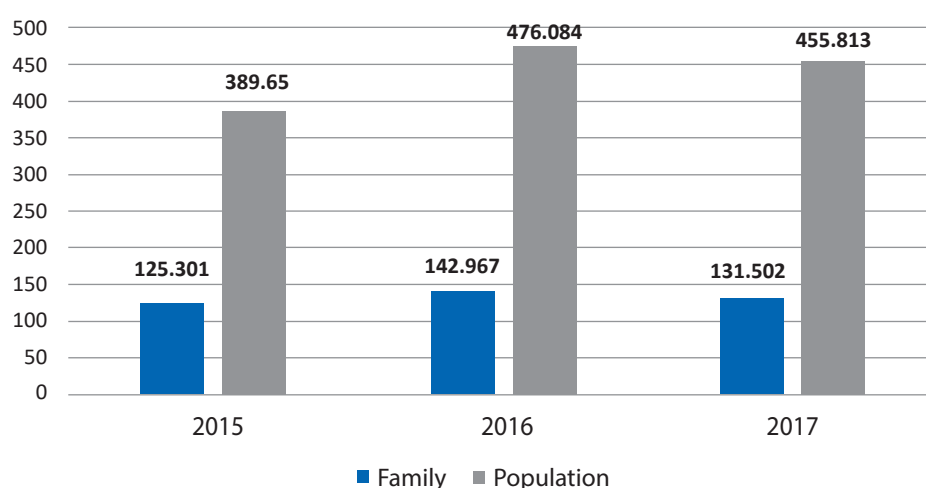
21. RIGHT TO SOCIAL SECURITY

To this date, the main programme of social security in the country is to provide the population below the poverty line with subsistence allowance, and issue other related benefits. The possible discouragement to labour, and a lack of a feeling of stability among beneficiaries, should be considered as the main shortcomings of social security in the country.

21.1. SUBSISTENCE ALLOWANCES AND THE MAIN SHORTCOMINGS

Extremely poor families are provided with subsistence allowance in the country. A subsistence allowance is issued to poor families that are identified by a respective grading system. However, this allowance is issued based on the amount the state can give within the existing resources. Accordingly, the families falling above the eligibility threshold of subsistence allowance can be considered as poor; however, the state does not allocate appropriate resources for their social security. The poverty indicator is considerably higher than the number of families and persons receiving only a subsistence allowance.

The diagram below reflects statistics⁶⁷⁰ regarding the families and population receiving subsistence allowance in last three years. This data indicates what resources were allocated by the state, and what number of people could be provided accordingly with a subsistence allowance. It is noteworthy that the LEPL Agency of Social Services does not maintain statistics on the effectiveness of the programme, which would show the results of improvements in the situation of the population registered in the unified databases of the socially vulnerable families.



⁶⁷⁰ Information obtained from the website of the LEPL Agency of Social Services: http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610.

The unstable nature of providing assistance to beneficiaries is a significant shortcoming of the allowance programme. In particular, **it can be said that the existing system does not motivate beneficiaries to seek employment.** The State Audit Service inspected how the programme of subsistence allowance and related social security measures contribute to the reduction and prevention of the factors causing possible labour discouragement among the programme's beneficiaries.⁶⁷¹ The research revealed that, as of April 2016, 46% of the programmes' beneficiaries are fit to work, and there is at least 1 member in 64% of the families benefiting from subsistence allowance, and at least 2 members in 47% of such families that are unfit for work.⁶⁷² Accordingly, almost half of the beneficiaries can be employed, have income, and improve their socio-economic situation. However, when the socio-economic situation (employment and other income) changes, the data of a beneficiary is corrected, and it is highly likely he/she will no more be eligible for subsistence allowance. Therefore, employment is tantamount to losing subsistence allowance for the beneficiaries, as the existing social security system is accommodated to such minimal needs that any change in income, **even a minor salary or other economic activity, will result in an increase of the rating score.**

For improving these families' socio-economic situation, **it is imperative to ensure that beneficiaries that are fit to work continue to receive subsistence allowance in parallel to employment for a certain period to feel more stable. Otherwise, objectives such as improving the socio-economic situation of poor families and reducing poverty in the country cannot be attained.** A legislative amendment was made in this regard in the reporting period,⁶⁷³ which made it mandatory for the unemployed and members of beneficiary families that are fit to work to register at the information portal of labour market management, viz., www.worknet.ge, as a job seeker. However, this amendment is rather formal in nature, and cannot ensure the encouragement of beneficiaries that are fit to work. The abovementioned topics gain even more relevance in those conditions where the process of granting scores is obscure, and gives rise to certain questions. In the reporting period, there were still applicants to the Public Defender's Office, who considered that refusal to subsistence allowance was contrary to law, and argued that the state boosted their scores despite the fact there had been no changes in their socio-economic situation, or there were changes worsening their socio-economic situation.

The examination of such applications⁶⁷⁴ leaves the impression that the existing methodology of assessing socio-economic situation of families does not allow for the accurate identification of vulnerable groups, and sometimes the rating scores of beneficiaries are increased unreasonably. For instance, in the reports of the previous years,⁶⁷⁵ the Public Defender indicated that when assessing families living in Tbilisi, a parquet floor has a higher coefficient, notwithstanding its condition, which results in a considerable increase in the rating scores. The Public Defender also discussed identifying the minimum consumer basket with a concrete sum which cannot be updated. In particular, when assessing families' socio-economic situation, the cost of minimum consumer basket is given in the amount of the material at the time of the composing of a formula. The cost of a minimum consumer basket changes annually.⁶⁷⁶ However, it stays intact in the formula. The cost of a minimum consumer basket in the formula is taken into account when calculating the index of household needs, and the accurate calculation of this index is important for establishing the target groups. Accordingly, if the cost of minimum consumer basket remains intact in the formula, this will obstruct the accurate calculation

671 The 2016 Report of the Audit of Effectiveness of the State Audit, Reducing Dependence on Social Benefits of those Disabled Beneficiaries Receiving Subsistence Allowance, available at: "<https://sao.ge/files/auditi/auditis-angarishebi/2016/tb-socialuridaxmarebebi.pdf>."

672 The 2016 Report of the Audit of Effectiveness of the State Audit, Deducing Dependence on Social Benefits of those Disabled Beneficiaries Receiving Subsistence Allowance, available at: "<https://sao.ge/files/auditi/auditis-angarishebi/2016/tb-socialuridaxmarebebi.pdf>", p. 18.

673 Resolution no. 270 of the Government of Georgia of 1 June 2017 on amending Resolution no. 126 of the Government of Georgia on 24 April 2010 on Poverty Reduction and Improvement of Social Security of the Population.

674 In 2017, the Office of the Public Defender of Georgia studied 93 applications in terms of the right to social security.

675 The 2015 Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, pp. 787-788.

676 The National Service of Statistics calculates the cost of subsistence allowance. The subsistence minimum changes with the change of minimum consumer basket.

of families' needs. This shortcoming has not been redeemed yet. It is therefore important to ensure that the state authorities take certain measures to help correctly identify vulnerable persons, and for increasing the transparency of the procedures and awareness of them among citizens.

21.2. SHORTCOMINGS IN ADMINISTERING THE SUBSISTENCE ALLOWANCE PROGRAMME

A significant shortcoming of the process of awarding the subsistence allowance is its significant delay. In particular, an eligible family will receive the allowance 3 and a half months after submitting an application. This period is rather long, considering the family's needs and socio-economic situation.⁶⁷⁷ It is also noteworthy that the procedure is not regulated within a single act, and the respective provisions are scattered in various legal documents.⁶⁷⁸ The State Audit Service examined the issues related to the duration of the above stages, and found out that it is possible to reduce the terms of the procedure considerably. This assessment concerned reducing the terms of enforcement of rating scores and depositing allowance, and optimal distribution of the resources. Therefore, the State Audit Service issued a recommendation to the Ministry of Health and Social Security of Georgia and the LEPL Agency of Social Services to coordinate the initiation of an i/reduction of the terms of enforcing rating scores for applicant families, and depositing allowances.⁶⁷⁹

Therefore, it is important to reduce the above terms and the waiting period to allow the Social Services Agency to respond more swiftly to the needs of socially vulnerable families.

21.3. THE RIGHT TO ADEQUATE FOOD

The right to adequate food is discussed in the Public Defender's report of 2016 in terms of international and domestic standards, and the major challenges in this regard are emphasised in the Georgian context.⁶⁸⁰ The accessibility of food that meets the needs of the population is still one of the major challenges. For instance, in Tbilisi, access to free canteens is guaranteed only for those individuals who are on the main list.⁶⁸¹ The number of beneficiaries enrolled on the main list is determined according to funding. The lists are not corrected as a rule, and they are permanent to a certain extent. The sequential numbers given to applicants on the main list are also a significant issue. In particular, the Office of the Public Defender of Georgia requested information from Tbilisi Municipality and other regions, and found out that the sequence of beneficiaries is determined based on the registration date of their applications. It means that preference is given to a beneficiary whose application is registered earlier in the *Gamegeoba*. Accordingly, there is a risk that a socially vulnerable person with more needs might not use a canteen, or might permanently be on the waiting list, whereas another socially

⁶⁷⁷ Under the legislation in force, the procedure is initiated based on a family's application. Within two weeks after the application was filed, a social worker visits the family, and fills out a declaration. Within 30 calendar days of this moment, the family is given a rating score, and the allowance is given in the next month after the rating score was awarded (when calculating month, the next month after the rating score was awarded is considered to be the first month).

⁶⁷⁸ Order no. 225/n of the Minister of Labour, Health and Social Affairs of Georgia of 22 August 2006 on Approving the Procedure for Appointing and Issuing Purposeful Social Benefits; Order no. 126 of the Government of Georgia of 24 April 2010 on Reduction of Poverty and Improving Social Security in the Country; Order no. 145 of the Government of Georgia of 28 July 2006 on Social Benefits.

⁶⁷⁹ The 2016 Report of the Audit of Effectiveness of the State Audit, Reducing Dependence on Social Benefits of those Disabled Beneficiaries Receiving Subsistence Allowance, p. 45.

⁶⁸⁰ The Public Defender's Report on the Situation of Protecting Human Rights and Freedoms in Georgia, 2016, p. 724, <http://ombudsman.ge/uploads/other/4/4494.pdf>.

⁶⁸¹ There are two lists of food beneficiaries, namely, main and additional. When, due to some reason, a beneficiary of the main list does not turn up, the additional list beneficiaries can have food instead; the number of the beneficiaries on the additional list cannot be more than 10% of those on the main list.

vulnerable person with fewer needs might be using this service without a limit.⁶⁸² There is a strictly determined number of beneficiaries (250 individuals) in the Zugdidi municipality⁶⁸³ and there are no additional lists. This limit means that other persons will be refused access to free canteen services.

The funding for free canteens in Tbilisi municipality has been increased by 2 million Lari in the reporting period.⁶⁸⁴ However the number of beneficiaries according to districts has not changed. Therefore, there are still beneficiaries on the waiting list that, except for a very small portion,⁶⁸⁵ cannot use this service despite their need.

Municipalities have different criteria for eligibility for free canteen use. In particular, if those beneficiaries whose rating score does not exceed 200,000 points can use free canteens in Tbilisi Municipality; in some municipalities, the maximum threshold is 65,000 points⁶⁸⁶ (the limit for eligibility for subsistence allowance). In those conditions where the subsistence allowance programme identifies the poorest stratum of the population, it can be said that there are many poor families whose rating scores are low, but higher than the subsistence allowance threshold, and therefore they cannot use free canteens. The needs of the population in the regions should be assessed and only then determine the criteria for using free canteen.

The received information shows that the local self-governments cannot fully expend their budget. In particular, in some municipalities, the funds allocated to free food programmes are not fully spent, and at the same time beneficiaries are refused food due to the unavailability of seats. It is imperative to ensure that the municipalities fully expend their resources and provide their beneficiaries with food according to the demand.

RECOMMENDATIONS

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

- To ensure initiation of amendments concerning the subsistence allowance programme that would enable beneficiaries to be eligible for subsistence allowance for a reasonable period in case of employment; and
- With the coordination of the LEPL Social Service Agency, to amend Order no. 225/n of the Minister Labour, Health and Social Affairs of Georgia of 22 August 2006 with the effect of reducing the terms of appointing subsistence allowance; also, to initiate changes in the government's Resolution no. 126 of 24 April 2010 and Resolution no. 145 of 28 July 2006

To Local Self-Governments

- To gather and update within certain periods objective and statistically stable data for assessing the needs in terms of access to food on their respective territories (food accessibility needs assessment document). Based on the food accessibility needs assessment document, ensure increase in the budget, and attract additional resources. When forming the list of food recipient beneficiaries; take into account needs of a family instead of the date of their registration; amend respective legal acts to this end.

682 Under Annex 2 to Order no. 1879 of the Tbilisi Municipality City Hall of 26 November 2014 determining the instruction, those socially vulnerable families whose points do not exceed 200,000 points can use free canteen.

683 Letter no. 02/1822 of the Zugdidi Municipality City Hall, dated 15 February 2018.

684 Resolution no. 6-8 of the Tbilisi Municipality *Sakrebulo* of 15 December 2017 on Approving Tbilisi Municipality Budget for 2018. Free canteen service: in 2016 – GEL 14,509.2; in 2017 – GEL 16,303.6.

685 Under Annex 2 to Order no. 1879 of the Tbilisi Municipality City Hall of 26 November 2014 approving the instruction, when due to some reason a beneficiary of the main list does not turn up, the additional list beneficiaries can have food.

686 For instance, in Zugdidi and Kutaisi.

22. THE RIGHT TO ADEQUATE HOUSING

Challenges related to the realisation of the right to adequate housing are of a systemic nature, and remain the same from year to year. In particular, the following problems have been identified over the years:⁶⁸⁷ deficient legislative framework, limited budgetary and infrastructural resources, lack of uniform municipality databases, and lack of support programmes for persons held in shelters, as well as a low awareness of rights. It should also be noted that for years, the Human Rights Action Plan of the Government of Georgia⁶⁸⁸ has not featured a package of concrete measures aimed at overcoming homelessness.⁶⁸⁹

22.1. THE PROCEDURE FOR REGISTERING THE HOMELESS AND PROVIDING THEM WITH A SHELTER IN TBILISI

Since the issues related to the realisation of the right to adequate housing are debated most extensively in the Tbilisi Municipality, the present report dedicates a separate chapter to this issue. According to the information supplied by the Tbilisi City Hall, in 2016-2017, 8,661 individuals applied to the Commission for Registering and Accommodating the Homeless (hereinafter the commission). Out of this number, 2,869 applications did not meet the requirements. Out of the total number of registered applications, only 3,399 applications were examined;⁶⁹⁰ 842 individuals were registered as homeless; and 2,375 applications were rejected. In 182 applications, the beneficiaries died were convicted, or additional information is being sought after.⁶⁹¹ The information at our hands shows that, **compared to 2016, the workload of the commission has increased, and the Public Defender's Recommendation concerning the conducting of the commission's hearings with corresponding frequency was followed.**⁶⁹² However, the statistics show that it is important to maintain work dynamics, and if possible to increase it so that that the quality of the commission's work is not compromised.⁶⁹³

It is commendable that, based on the Public Defender's proposal⁶⁹⁴ concerning significant shortcomings identified in the process of monitoring the commission's activities, the Tbilisi City Hall started working on legislative amendments to the effect of regulating the grading system during the process of accommodating registered homeless persons.⁶⁹⁵

It is noteworthy that the programmes aimed at overcoming the problem of homelessness in the capital (social accommodation, shelter and subsidising accommodation) are regulated separately. Paying for accommodation

687 The Public Defender's Reports of 2014, 2015 and 2016 on the Situation of Protecting Human Rights and Freedoms in Georgia, see chapter The Right to Adequate Housing.

688 Resolution no. 445 of the Government of Georgia of 9 July 2014 and Resolution no. 338 of the Government of Georgia of 21 July 2016.

689 Resolution no. 2315 of the Government of Georgia of 30 April 2014, para. 21.

690 Letter no. 15-0118043109 of the City Service of Healthcare and Social Services of Tbilisi Municipality, dated 12 February 2018.

691 Letter no. 15-0118043109 of the City Service of Healthcare and Social Services of Tbilisi Municipality, dated 12 February 2018.

692 The Public Defender's Reports of 2016 on the Situation of Protecting Human Rights and Freedoms in Georgia; see chapter The Right to Adequate Housing, pp. 715-723.

693 Under Order no. 46.10.906 of the Tbilisi Municipality of 13 December 2017, for optimising the commission's functioning, the number of its members was reduced from 13 to 6, which made the commission's work more flexible and made the quorum easier.

694 Proposal no. 04-4/11488 of the Public Defender of Georgia of 16 August 2017 on Regulating Statutory Procedure of Grading in the Procedure of Providing a Shelter to the Registered Homeless.

695 Resolution no. 28-116 of the Tbilisi Municipality *Sakrebulo* of 27 November 2015.

for the homeless is not regulated as a part of the social policy of the homeless, and it is considered as a special/ exceptional part of another programme.⁶⁹⁶ In particular, the sub-programme of Compensating Demolished Accommodations envisages paying for accommodation in exceptional cases for those in dire socio-economic conditions. It can be said that giving benefits under this scheme is attached to the fact that a person is homeless due to dire socio-economic conditions. Besides, by virtue of compensating for accommodation, these persons that the above commission could not accommodate at some stage are protected from homelessness and are on the waiting list.

According to the data of the district *Gamgeoba* of Tbilisi Municipality, in 2016 and 2017, at least GEL 11,698,913.00 was expended for the sub-programme of subsidized accommodation.⁶⁹⁷ Out of this sum, GEL 4,435,530.00 was issued under the major scheme,⁶⁹⁸ and GEL 6,065,470.00 under the exceptional scheme.⁶⁹⁹ As regards the number of beneficiaries, in 2016 and 2017, accommodation was paid for 2,434 families, and 1,083 individuals. The monthly subsidy under the exceptional scheme was given to 1,458 families and 699 individuals.⁷⁰⁰ The statistics show that the rent sub-programme and the recipients of these budgetary funds are mainly beneficiaries under the exceptional scheme. This fact underlines that it is critically important for the use of the exceptional scheme to have standardised and comprehensive regulations to ensure that budgetary funds are expended legally and transparently.

Furthermore, the Public Defender stated numerous times that said programme was designed as a one-time solution of the problem, and it cannot ensure a long-term solution. Therefore, a major emphasis should be made on creating infrastructural resources (development of the housing fund), and not on strengthening subsidising policy (e.g. reimbursement of monthly rent). It is also important to ensure that the local authorities revise the advisability of the rent reimbursement scheme, and the effectiveness of its use in its present format. Besides, along with developing infrastructural resources, there should be support programmes for persons accommodated in a shelter, which would enhance their socio-economic situation, and will make it possible to increase the number and quality of shelters.

22.2. SITUATION OF THE HOMELESS IN MUNICIPALITIES

In 2017, the Office of the Public Defender of Georgia requested information from the city halls of the municipalities concerning an assessment of homelessness and an examination of resources required for the solution of the problem.

Even though, compared to the previous years, the work of the self-government authorities improved in this regard, the following problems remain in the country: maintaining a comprehensive databases of the homeless, the methodology for its functioning, and envisaging the needs of the homeless in the budgeting process.

Compared to the previous year, there are more municipalities that maintain databases and register homeless persons. However, in some municipalities, databases are still set up based on applications only, and local governments do not create respective mechanisms to acquire and record information about the homeless and register them in the databases. The respective bodies of local self-governments do not inform about the

696 Resolution no. 33-138 of Tbilisi *Sakrebulo* of 29 December 2015, Article 9, (since 1 January 2018, Resolution no. 10-23 of Tbilisi *Sakrebulo* of 16 January 2018, Article 9).

697 These statistics do not cover the data of Saburtalo and Didube district *Gamgeobas*, since the said information was not provided by them.

698 Resolution no. 33-138 of Tbilisi *Sakrebulo* of 29 December 2015, Article 2, (invalidated by Resolution no. 10-23 of Tbilisi *Sakrebulo* of 16 January 2018).

699 Resolution no. 33-138 of Tbilisi *Sakrebulo* of 29 December 2015, Article 9, (invalidated by Resolution no. 10-23 of Tbilisi *Sakrebulo* of 16 January 2018).

700 Tbilisi Municipality *Gamgeobas* did not present information in a uniform manner. In particular, some of them provided statistics according to individuals and not families.

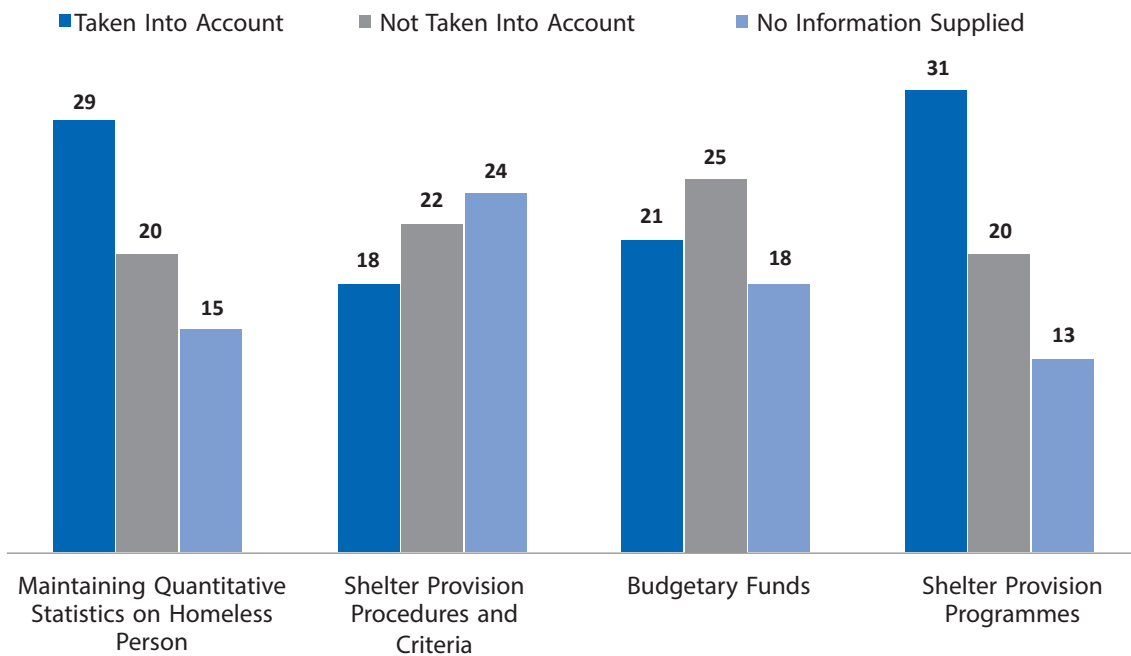
existing databases to the Social Services Agency, except for isolated cases.

Besides, the greater part of municipalities’ legislation framework is disorganised and, when required, the budget is not there. Shelter is provided not by the appropriate procedure, but based on the criteria established by social programmes, which certainly cannot ensure running the procedure appropriately. Often, the criteria on which the issues of shelter seekers are based, and the respective help provided are unclear.

The higher indicator of providing shelter by local self-governments is positively assessed. This implies accommodation of the homeless in social houses, and providing them with rent and long-term accommodation. However, it should be noted that insufficient financial and infrastructural resources cannot allow an effective solution of the problem, without the assistance of the central authorities.

The table below reflects the quantitative statistics of the local self-government bodies for maintaining the databases required for overcoming homelessness throughout Georgia, the registration of criteria in databases, and the programmes for providing financial resources and shelter.

Situation of Homeless Persons in Municipalities



RECOMMENDATIONS

To the Government of Georgia

- To set up a governmental interagency commission that will determine the state policy to address challenges related to homelessness, and supervise the activities of responsible agencies.

2017

Before the elaboration of uniform policy concerning homelessness in the country, with due account to statutory requirements, the following recommendations are given to **local self-government bodies**:

- Those municipalities that require shelters for homeless persons should systematise databases of homeless persons and, if needed, regulate corresponding procedures for overcoming homelessness, and mobilise the required financial and infrastructural resources; and
- Where there are existing social programmes for homeless persons, those municipalities should ensure informing the population regarding the right to adequate housing.

23. PROTECTION OF THE RIGHTS OF ECOMIGRANTS

The major problems in the field of ecomigration remain unsolved. In particular, there is no special law on ecomigrants to this date, and the budget allocated for their accommodation is scarce. The monitoring of the process reveals that adequate attention is not paid to the prevention of natural calamities. Effective planning and implementation of such measures, within the realm of possibility, reduces the damage caused by natural calamities. Furthermore, certain shortcomings concerning the examination of ecomigrants' settlement by the commission were revealed in the reporting period. The return migration of ecomigrants is also a problem.

23.1. THE SHORTCOMINGS IN THE LEGISLATION AND PRACTICE REGARDING ECOMIGRANTS

The Public Defender of Georgia discussed the necessity to adopt a special law on ecomigrants in numerous reports.⁷⁰¹ To date, the draft Governmental Action Plan of Human Rights Protection for 2018-2020⁷⁰² is only oriented towards their settlement, and still does not envisage any social guarantees. The fact that there is no special action plan was also negatively assessed.⁷⁰³ According to the act regulating the settlement of ecomigrants, "the avenues of assisting ecomigrant families that do not need settlement are considered at the last stage".⁷⁰⁴ However, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia still does not have a clear vision about the planned stages of ecomigrant settlement.

Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013 (hereinafter order no. 779) and Order no. 25 of the Government of the Autonomous Republic of Ajara (hereinafter order no. 25) govern ecomigrant settlement. The latter covers settlement of ecomigrant families registered on the territory of Ajara since 2010, and the rest is covered by order no. 779. There is a commission set up based on these legal acts⁷⁰⁵ that uses the data from the ministry's unified databases, criteria and point system envisaged by order no. 779,⁷⁰⁶ according to which the sequential number of families' settlement is determined.

The main shortcoming of both acts is the failure to regulate the prevention of return migration. In particular, there is no mechanism to limit the right of ecomigrants who are settled elsewhere, to use their immovable property situated in the location of a natural disaster. It is important to regulate this issue legally, as both the ministry and the Government of Ajara acknowledge that there are frequent cases like this in practice. Return migration endangers beneficiaries' life and limb directly.

701 See the 2013 Parliamentary Report pp. 613-614; the 2014 Parliamentary Report pp. 661-662; the 2015 Parliamentary Report pp. 849-850; and the 2016 Parliamentary Report pp. 780-781.

702 Available at: <http://bit.ly/2HbqLlL>, chapter 23 of the project, (accessed on 9.02.2018).

703 See the 2015 Parliamentary Report p. 851, the 2016 Parliamentary Report p. 782.

704 Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 1, Article 2.11.

705 The Commission Regulating the Issue of Settlement of Families Affected by Natural Calamities and Subjected to Displacement (Ecomigrants) (order no. 779) and the Mixed Governmental Commission for Selecting Beneficiaries Providing Ecomigrant Families with Accommodation (order no. 25 of the Government of Ajara).

706 Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 3.

Additionally, shortcomings in the settlement criteria should be mentioned. In particular, order no. 779 gives respective points to those families that are registered with less than 57,001 points in the unified databases of socially unprotected persons.⁷⁰⁷ Considering the fact that there are different rating scores established to be eligible for subsistence allowance (e.g. 30,000 points, 65,000 points, etc), it is necessary to bring the ecomigrants' settlement criteria in compliance with these regulations.⁷⁰⁸

As regards to practical shortcomings, the scarcity of budget funds should be noted in as a primary problem. In 2017, the ministry gave accommodations to 94 families, which is only 1 family more compared to the data from 2016.⁷⁰⁹ It is possible to accommodate 120 families by the budgetary funds allocated in 2018.⁷¹⁰ It should be noted that the Ministry of Health and Social Affairs of the Autonomous Republic of Ajara (hereinafter the Healthcare Ministry of Ajara), that ensures settlement of ecomigrants registered on the territory of Ajara, settled 111 families in 2017, and plans to settle of 117 families in 2018.⁷¹¹

The process of transferring accommodation to the ownership of ecomigrant families that started in 2004-2012 continued in the reporting period, too. It should be assessed negatively that, compared to the previous year, private properties were transferred to a fewer number⁷¹² of families; in total to 101 families.⁷¹³

There are 5,009 ecomigrant families registered in the databases, out of which state agencies and international organisations settled 1,346 families.⁷¹⁴ Accordingly, approximately 4,000 families await settlement. The funds allocated to this end are not sufficient.

It is noteworthy that, according to order no. 779, those ecomigrant families that live under special threat (the finding is reached by the LEPL National Agency of Environment) should be settled without application of the criteria.⁷¹⁵ In 2018, 24 such families were settled. However, 282 families were found to be under special threat.⁷¹⁶ It should be noted that the ministry itself still does not have any information about the number of families, at least with regard to how such findings have been reached.⁷¹⁷ A document is submitted by a family individually, and deliberations start accordingly. This procedure does not ensure the coordinated work of state agencies, and leads to the sporadic settlement of families living under special threat. This is not aimed at a final solution to the problem.

The Public Defender also emphasises one more issue concerning the ministry's website. Apart from ecomigrants, there are other persons who are the ministry's beneficiaries as well.⁷¹⁸ However, unlike other beneficiaries, the website does not impart information about the status of ecomigrants. The Public Defender believes that, to raising awareness among the population, the ministry's website, similar to its other beneficiaries, should also contain information about ecomigrants.

707 Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 3, Social Criteria.

708 Resolution no. 145 of the Government of Georgia of 28 July 2006 on Social Benefits.

709 See the 2016 Parliamentary Report of the Public Defender of Georgia, p. 780.

710 GEL 3,000,000.00 Letter no. 03-01/03/604 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 10 January 2018.

711 The allocated sum amounts to GEL 3,000,000.00, Letter no. 05/377 of the Ministry of Health and Social affairs of the Autonomous Republic of Ajara, dated 21 February 2018.

712 See the 2016 Parliamentary Report of the Public Defender of Georgia, p. 781.

713 Letter no. 03-01/03/604 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 10 January 2018.

714 Letter no. 03-01/03/604 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 10 January 2018.

715 Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 13 November 2013, Annex no. 1, Article 3.3.a).

716 Letter no. 21/913 of the LEPL National Agency of Environment, dated 14 February 2018.

717 Letter no. 03-01/03/604 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, dated 10 January 2018.

718 Refugees, persons with humanitarian status, etc.

23.2. ACTIVITY OF THE COMMISSION REGULATING ECOMIGRANTS' SETTLEMENT

Based on order no. 779, the Public Defender's representative, as an observer, monitors the hearings of the commission. When discussing issues, in most of the cases, the commission takes on board the comments made by the Public Defender's representative, which is assessed positively. However, there are several problems that need to be addressed.

The first problem concerns the discussion of motions from various agencies⁷¹⁹ about the settlement of ecomigrant families. An ecomigrant family might not have sufficient points for settlement by the commission. However, if there is a certain agency monitoring its settlement, the commission discusses the issue. This gives rise to a feeling of unfairness regarding those families that do not have sufficient points; furthermore, the legislation does not provide for such grounds.

Another significant complication is that when the commission discusses the settlement of an individual family, the relevant information is only received orally, and the final decisions is also rendered based on such information. In particular, information about a family is given to the commission orally, its accuracy is not verified, and the source of information is not maintained in the respective minutes. The Public Defender observes that any decision adopted regarding settlement should be reasoned and based on relevant evidence, without which the process gives rise to errors in judgment.

23.3. PREVENTION OF ECOMIRGATION

In order to avert damage and spare financial resources, it is important to forecast and prevent potential calamities. Taking preventive measures on the territories at high risk is one of the tasks of the LEPL National Agency of Environment.⁷²⁰ The agency develops an annual information bulletin indicating the risks of anticipated damage, and preventive measures to be taken according to various regions.⁷²¹ It should also be borne in mind that the LEPL National Agency of Environment indicates preventive measures to be taken in findings that are made with regard to particular families.⁷²² In the reporting period, there were such recommendations made with regard to 852 families; 135 families were subjected to geo-monitoring observation.⁷²³ The agency itself does not carry out monitoring the implementation of recommendations issued.⁷²⁴ However, the observation of the process shows that the individual recommendations of the agency are not followed, as local self-governments do not have the corresponding financial resources for their implementation.⁷²⁵

Apart from the abovementioned, one of the priorities of preventing ecomigration should be raising public awareness. It is important to inform the population about the measures for required for reducing the risks of natural calamities.

719 Mostly the local self-government body or the office of the State Representative.

720 Article 2.10 of Order no. 49 of the Minister of Environmental Protection and Natural Resources of 26 December 2016 on Approving the Statute of the LEPL National Agency of Environment.

721 Article 3.c) of Order no. 49 of the Minister of Environmental Protection and Natural Resources of 26 December 2016 on Approving the Statute of the LEPL National Agency of Environment.

722 E.g. Construction of protective buildings, planting, etc.

723 Letter no. 21/1317 of the LEPL National Agency of Environment, dated 9 March 2018.

724 Letter no. 21/1317 of the LEPL National Agency of Environment, dated 9 March 2018.

725 Concerning monitoring the Commission for Ecomigrants Settlement, there is communication in the files sent by local self-government bodies in response, according to which preventive measures cannot be carried out due to the lack of financial resources.

RECOMMENDATION

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, and the Government of Autonomous Republic of Ajara:

- To amend Order no. 779 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and Order no. 25 of the Government of Autonomous Republic of Ajara, with the effect of ensuring the prevention of return migration by a uniform standard, similar to the act regulating the natural calamity of 13-14 June.⁷²⁶

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia:

- To amend Order no. 779 of the of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with the effect of bringing the social criterion of settlement into compliance with the points determined for eligibility for subsistence allowance
- To finalise the process of transferring living spaces to the ownership of ecomigrants that started in 2004-2012
- When discussing the settlement of ecomigrant families, the commission should not give priority to those applications which are petitioned before the ministry by various agencies
- To publish information on ecomigrants, similar to the ministry's other beneficiaries, on the website of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
- To ensure the gathering of information about those ecomigrants that live in higher risk conditions, so that the treating settlement of such families is a priority

726 Resolution no. 17-66 of Tbilisi Municipality's *Sakrebulo*, dated 5 July 2015.

24. RIGHT TO EDUCATION

The protection of the right to education and furthering its implementation remained a problem in the reporting period. Infrastructural problems in general education institutions, shortcomings existing in terms of inclusive education and insufficient measures to prevent dropping out of schools, have negative ramifications for the existing situation. Children living and working on the streets, children with disabilities, children married at an early age and engaged in labour are especially vulnerable groups.⁷²⁷

Furthermore, the accessibility of education in the mother tongue of Georgia's occupied territories is a main problem. The movement of school children along the Administrative Boundary Line (the ABL) to receive a general education remains problematic.⁷²⁸ Similarly, the steps made towards teaching Georgian to representatives of ethnic minorities still fails to respond to the existing challenges.⁷²⁹

For protecting the right to education in 2017, the following component of the right to education is also noteworthy. It is linked with the right of accessibility of the active educational institutions,⁷³⁰ and the state's obligation to ensure a free choice of education, provided a selected school meets the minimum educational standards determined by the state.⁷³¹ In this regard, the Constitution of Georgia should be noted, under which the state's support for educational institutions is guaranteed.⁷³² In this regard, school authorisation is a useful means that contributes to a continuous improvement of the school,⁷³³ as during the authorisation process educational standards are assessed.⁷³⁴

In this regard, the authorisation of the Private Demirel College caught the public's attention in the reporting period.

The study of the issue demonstrated that the refusal to grant authorisation⁷³⁵ was adopted without a comprehensive examination, and the assessment of the circumstances of crucial importance, and without adequate reasoning.⁷³⁶ A decision of an Authorisation Council is usually based on the assessments of relevant experts, which often are wrong from a legal perspective. Besides, the college was assessed based on the previous year's study plan, whereas the procedure should have been aimed at assessing the readiness of the establishment for general educational activities in 2017/2018. Furthermore, the refusal to grant authorisation was based on individual violations, giving rise to individual responsibility. This is impermissible, since authorisation aims at assessing a school institutionally, and it is not a putative mechanism. The decision reached by the Authorisation Council runs counter to both law and the council's previous practice. It is unfortunate that the recommendation made by the Public Defender regarding this issue⁷³⁷ was not complied with, and students of the Demirel College remain deprived of the possibility of studying in this institution, which is illegal.

727 See detailed information in the chapter on The Rights of Persons with Disabilities.

728 See detailed information in the chapter on the Rights of Population Affected with Conflicts.

729 See detailed information in the chapter on the Rights of National Minorities and Civic Integration.

730 *Catan and others v. Moldova and Russia*, applications nos. 43370/04, 18454/06, and 8252/05, judgment of the Grand Chamber of the European Court of Human Rights of 19 October 2012, para. 137.

731 The United Nations Committee on Economic, Social and Cultural Rights, General Comment no. 13. Paras 57, 28-30, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_13_en.pdf, (accessed on 12.03.2018).

732 Constitution of Georgia, Article 35.

733 Recommendation of the European Parliament and of the Council of 12 February 2001 on European cooperation in quality evaluation in school education.

734 The Law of Georgia on Developing the Quality of Education Article 7.1.

735 Decision no. 93 of the Council of Authorisation of Establishments of General Education, dated 29 August 2017.

736 See the Public Defender's statement of 7 December 2017, information is available at: <http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-demirelis-koledjistvis-avtorizaciaze-uaris-tqma-ukanonod-miichnia.page>, (accessed on 19.02.2018).

737 Recommendation no. 04-3/16417, dated 30 November 2017.

25. RIGHTS OF THE CHILD

Although positive steps were taken by the state in the area of children's rights in 2017, there is a need to strengthen the existing systems, and create new services. The effectiveness of the response by relevant state entities to violations of child's rights remains a problem, requiring further improvement of referral mechanisms, upgrade of qualification, and enhancement of responsibilities of professionals working with children.

A commendable development seen in 2017 was a legislative amendment that will significantly improve the enforcement of child's rights. The Law on Adoption and Foster Care establishes improved national standards; a significant step forward is the adoption of state standards of early and preschool education, and relevant technical regulations.⁷³⁸

The state still fails to fulfil its obligation to determine a state mechanism for the introduction and implementation of the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure on the national level, and to draw up a procedural rule.

The implementation of effective measures for protecting children from violence and the preventing violence against children remains a challenge. The Public Defender of Georgia has been studying a criminal incident on Khorava Street in Tbilisi in December 2017, which ended in the killing of two minors. This incident is yet another indicator of problems in preventing violence among children, and the necessity to carry out active measures in this regard.

More attention should be paid to ethical standards and children's interests in reporting the issues of children in the media. Although the indicator of reports on the issues of children has increased, superficial reporting and stigmatization remains a problem. Moreover, suicide among children, crimes committed against minors and by minors, are covered without a proper consideration to the child's best interests.

25.1 CHILD'S RIGHT TO LIFE AND DEVELOPMENT.

The right to life and development in healthy environment is inviolable principle of the Convention on the Rights of the Child and the state must protect it through adequate, comprehensive, timely and effective measures.⁷³⁹ Regardless of the above said, effective implementation of the right of a child to life and development is still problematic.

In 2017, the publication of the results of a study into blood lead levels in children aged 2-5, which was conducted in the Iashvili Children's Central Hospital, revealed a grave situation. According to the study report, higher than permitted blood lead levels were detected in 33% of 254 children aged between 2 and 5, who were admitted to the Iashvili Children's Central Hospital with various diagnosis. The problem of this study is that it did not cover the entire country; moreover, no adequate measures have been undertaken since then to effectively eliminate causes of the study results.

738 Information is available at: <<https://matsne.gov.ge/ka/document/view/3838370>, <https://www.matsne.gov.ge/ka/document/view/3837694> >[last accessed on 26 March 2018].

739 Article 6 of the UN Convention on the Rights of the Child.

Although various programs are implemented to avoid children morbidity and mortality, a greater deal of attention, in this regard, must be paid to timely placement of children in health care services, the provision of adequate medical services and access to primary health care, especially in villages and mountainous regions where the access to medical services and necessary medications for children are often problematic.

In 2017, the Public Defender of Georgia highlighted the problem of availability of safe and harmless toys. The state has failed so far to define measures for the control of toy safety, to establish a supervisory body and to provide corresponding legislative guarantees; such a state of affairs negatively affects children's health. It is therefore important to timely approximate internal regulations with the Toy Safety Directive of the European Union (2009/48/EC).

Suicide in children

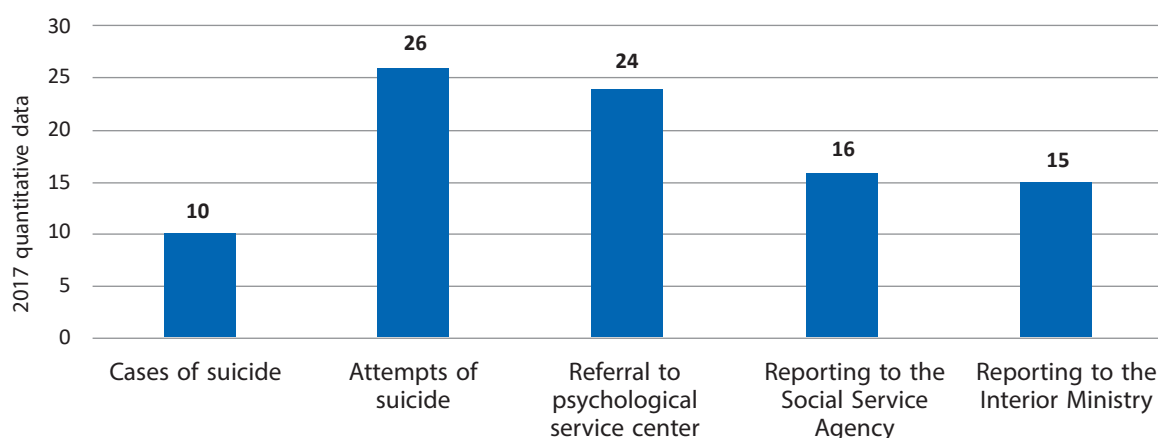
Suicide in children remained one of most painful and problematic issues in 2017. A common strategy and action plan on the prevention of suicide, which would enable timely detection and elimination of risk factors of suicide, has not been developed yet. At the same time, it is important to strengthen professionals' systemic work with children at risk.

The study of cases by the Office of Public Defender suggests that the factors contributing to suicides and attempted suicides in minors include the neglect of minors' interests, belated psychological or emotional support and the failure to timely provide effective psychological service to children at risk or/and with difficult behaviour.

2017 saw the increase in suicides/attempted suicides among minors; in regard with suicide/attempted suicide in minors, investigations were launched into 36 criminal cases under Article 115 of the Criminal Code of Georgia, including into nine suicides and 27 attempted suicides.⁷⁴⁰ Compared to the previous year, this indicator is up by 20%.⁷⁴¹

Despite implemented measures,⁷⁴² problems are seen in the area of identifying risks of suicide and prevention of facts in a timely manner. Professionals working with children, especially teachers and social workers must clearly understand their role in managing cases of such type and in close cooperation with parents/legal representatives, must contribute to the prevention of suicide in children.

Table N1 - Cases of suicide among schoolchildren and the indicator of referral



740 The letter of the Ministry of Internal Affairs of Georgia № MIA 1 18 00647389, 20/03/2018.

741 The letter of the Ministry of Internal Affairs of Georgia № MIA 8 17 02542750, 21/10/2017.

742 The letter of the Ministry of Education and Science № MES 7 18 00174890, 16/02/2018.

Water, sanitation and hygiene in public schools

The availability of safe and harmless potable water, and observance of standards of sanitation and hygiene in public school remains a grave problem, especially in mountainous regions and villages.

In some cases, the central water supply system is out of order; internal water supply network is often faulty or inoperative in schools. Potable water is not available in 94 public schools of the Ministry of Education and Science, thereby creating problems in observing hygiene and sanitation.

It is necessary to carry out effective measures to ensure the availability of quality potable water in facilities intended for children, inter alia, to define a quality control supervisory body and to develop a framework for monitoring.

25.2. THE RIGHT TO EDUCATION

Preschool education

During the reporting period, the Office of the Public Defender of Georgia intensively studied the situation in kindergartens in the context of beneficiaries' rights. The results of the study showed persistent problems, including poor infrastructure of kindergartens, low qualification of teachers, failure to prevent violence, and to observe norms of sanitation and hygiene in institutions.

There is a shortage of kindergartens. As many as 171 public preschool educational institutions operate in Tbilisi with 61,370 children enrolled at them. However, at the beginning of the academic year, some 3,500 children who applied for kindergartens were not enrolled.

Overcrowded classes is one of most acute problems in Tbilisi kindergartens, with some classes counting 60-65 children each. Other problems include a shortage of teachers, lack of sleeping rooms, failure to tailor educational process to individual needs of children. Several cases become known of children been left unattended at kindergartens, which endangered a physical safety of beneficiaries.

Serious problems in regional kindergartens are seen in the areas of infrastructure, sanitation and hygiene, and supply/renewal of educational inventory. A large number of preschool educational institutions require urgent rehabilitation; water supply systems needs to be arranged, and geographic access to kindergartens improved. A problem in exercising the right to education in native language was also revealed.⁷⁴³

Out-of-school children

The rights of out-of-school children remains a problem. The official statistics reflects the number of dropouts alone but lacks the accurate data on the number of those children who are not engaged in the education process and the reasons behind that. Measures to find out-of-school children and engage them in the education process are inadequate, especially considering that the number of children living and working on the street is high.

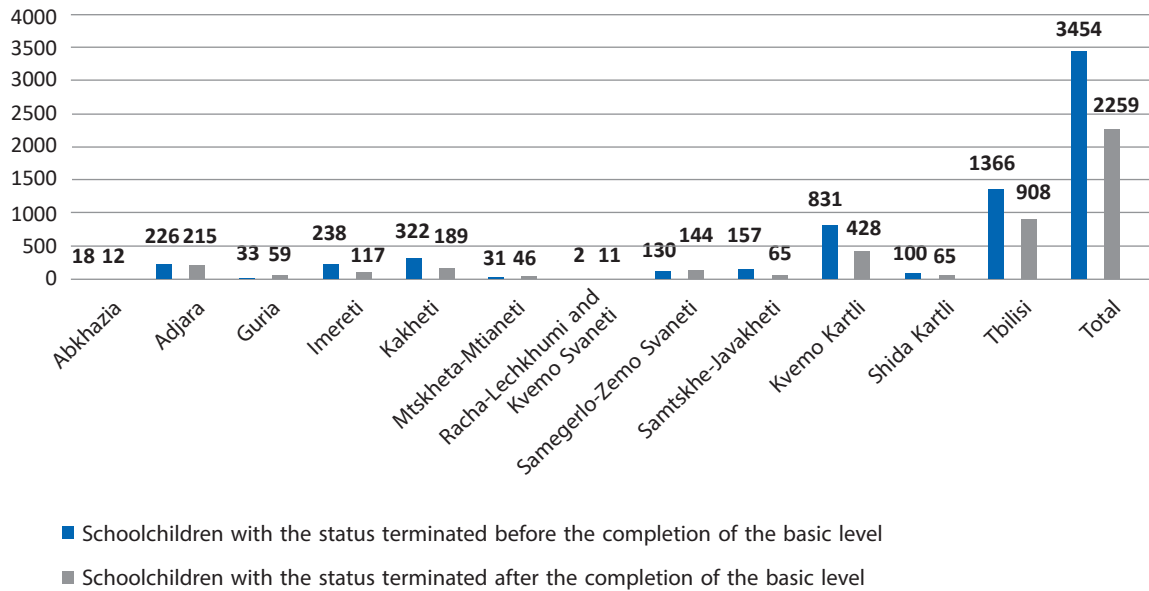
Children with disabilities are among high risk groups as their needs are often disregarded in the provision of education. The dropping out as a result of early marriage and work is also a problem; such cases are neither prevented nor responded to adequately to ensure the protection of the right of the child to education.

In 2016-2017 academic year, the status of a school student was terminated to 5,713 minors, including 3,454 children before the completion of a compulsory basic education level and 2,259 children after the completion

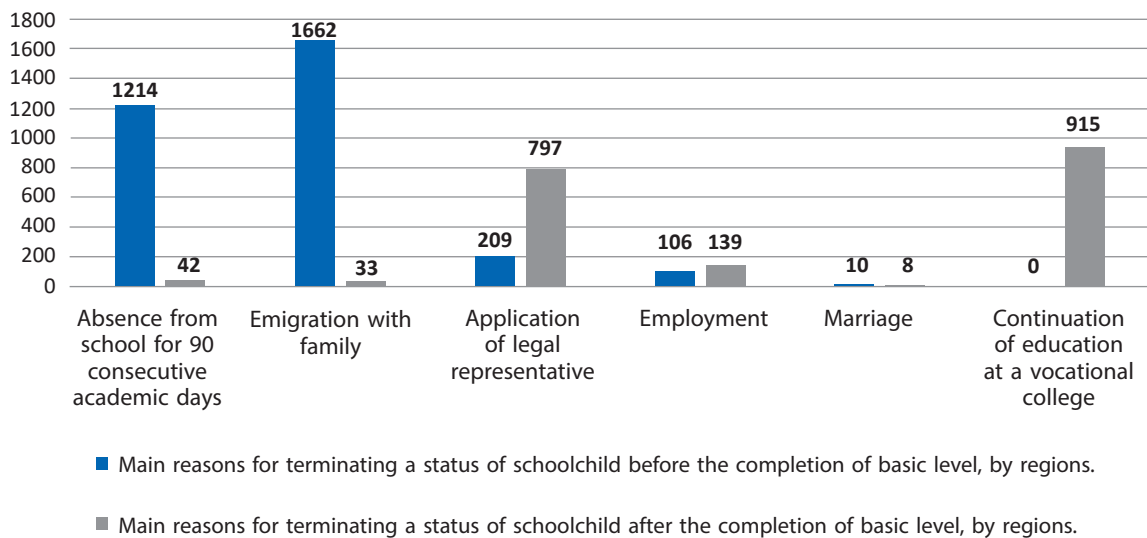
743 Non-profit legal entity kindergarten №1 in Akhalkalaki.

of the basic level. The most common reason cited is the emigration (1,695 cases), though detailed information about the purpose of emigration is not available. The highest indicator of dropouts on both educational levels were seen in Tbilisi (2,274), Kvemo Kartli (1,259), Adjara (441) and Kakheti (511).⁷⁴⁴ In Tbilisi this might be attributed to a high number of population, but the indicators of Kvemo Kartli, Adjara and Kakheti require a special attention because, judging by referrals to the Public Defender, these are the regions where the early marriage and work comprise a large share of the dropouts.

Dropout indicator



Reasons of dropping out



Children living and working on the street still comprise an extremely vulnerable group. Among other rights, their right to education is, as a rule, unprotected. According to the information provided by the Social Service Agency, only 27 children were engaged in the formal education in 2016-2017 academic year. Bearing in mind the scale of the problem, this indicator is unarguably low: over the period between 2014 and 2017, the mobile

744 The letter of the Ministry of Education and Science № MES 4 18 00286334; 14.03.2018.

teams of the subprogram on shelter provision to neglected children established contacts with the total of 1,054 neglected children in Tbilisi, Rustavi and Kutaisi while in 2017, shelters for neglected children were used by 270 beneficiaries.⁷⁴⁵

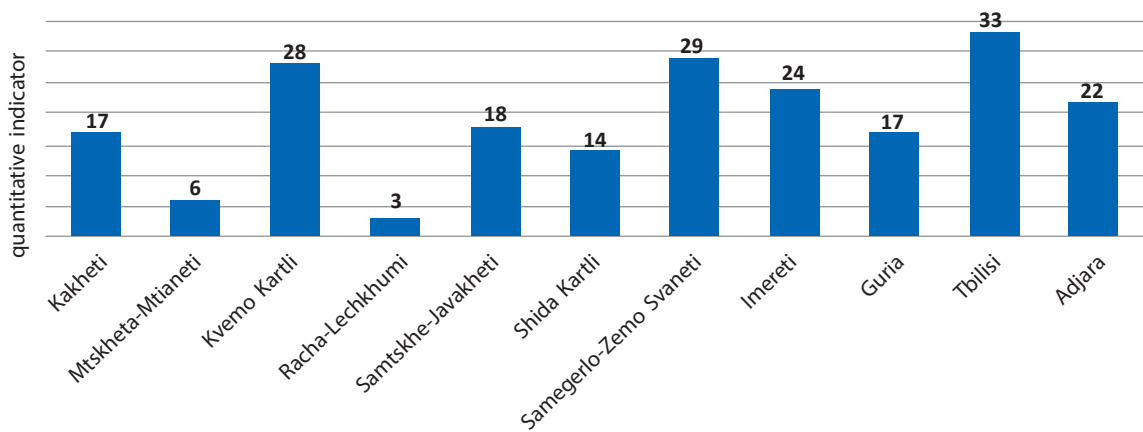
The cases studied by the Office of Public Defender also reveal the violation of child's right to education during family conflicts. There are cases where court rulings concerning relations with a child are not properly enforced while when a legal representative violates the child's right to education, a response mechanism is not prompt and adequate and as a result, a minor is left beyond a general education process over a long time.⁷⁴⁶

State of infrastructure of public schools

The Office of Public Defender of Georgia intensively studies the state of infrastructure of general educational institutions. As the study showed, a substantial part of public schools operate in dangerous conditions. Although such schools carry out a number of safety measures, they cannot be considered satisfactory; this problem must be tackled in a timely and systemic manner.

The situation is especially grave in schools in mountainous regions and villages. According to the LEPL Educational and Scientific Infrastructure Development Agency, as of 2017, there were 211 schools operating across the country that badly needed rehabilitation.

Operational public schools that badly need rehabilitation



As of 2017

Much like in previous years, problems of arranging toilets in general educational schools, equipping science classrooms and sports halls and operating canteens remain unsolved. This problem is even more acute in public schools of mountainous regions and villages, where canteens are often inoperative and science classrooms and sports halls need rehabilitation and renewal.

A noteworthy new development is that, the state delegates responsibilities in the field of general education to municipalities which must implement public school infrastructure projects, including, ensure potable water supply to public schools and compliance with sanitation and hygiene standards.

⁷⁴⁵ The letter of the LEPL Social Service Agency № 04/7626; 09/02/2018.

⁷⁴⁶ See the report of the Public Defender of Georgia, The Situation in Human Rights and Freedoms in Georgia (2016), pg. 576; <http://www.ombudsman.ge/uploads/other/4/4494.pdf> [last accessed on 26.03.2018].

25.3. CHILD POVERTY AND INADEQUATE LIVING STANDARD

Child poverty and inadequate living standard remain one of gravest problems in the country. According to information from the LEPL Social Service Agency,⁷⁴⁷ as many as 73,035 families, having under-18 family members, receive subsistence allowance in Georgia. The number of minors receiving subsistence allowance makes up 150,186, including 43,169 children aged between 1 and 5 years and 4,099 children up to one year.

The effectiveness of social programs is a problem too. The study conducted by the Office of Public Defender revealed that state programs fail to adequately protect families from poverty and even properly meet basic needs of minors. Especially problematic is the promptness and preventive nature of child care and social programs as it is seen on the example of Subprogram of Emergency Assistance to Families with Children in Crisis. The total of 928 families are engaged in this subprogram; the decision-making commission held a meeting nine times in 2017. Although the aim of the subprogram is to timely meet emergency needs of families, the decision-making on the involvement of families in this subprogram often takes months and in certain cases, even years.⁷⁴⁸

The study showed that due to social and economic problems, living conditions of minors are often dangerous to their life and health while steps taken by the state to alleviate the situation are belated and fruitless. Child poverty often entails problems such as the violation of the rights of the child to health, education and development.

Children living and working on the street are an especially high risk group as steps taken by the state to protect their rights are insufficient. There is a need to identify the needs of these children and their biological families. This would be a prerequisite for avoiding the labour or begging by minors.

The protection of the rights of Roma children is also important as the situation in this regard has not been studied comprehensively. Steps taken by the state in this area remain ineffective as specific needs of such children are not properly identified and they face problems in accessing relevant state services.

25.4. VIOLENCE AGAINST CHILDREN

Violence against children remains a problem especially in the area of identification and timely response to cases of violence and rehabilitation of child victims of violence. There is a lack of effective services which would ensure psychosocial assistance adjusted to real interests and needs of a child victim. LEPL Social Service Agency employs only 11 psychologists countrywide, which is clearly insufficient to meet existing needs. In 2017, the service was rendered to 340 child victims of violence, however, the existing resources cannot ensure the rehabilitation of every such child.⁷⁴⁹

The indicator of violence against children remains high. Out of 837 referrals to the LEPL Social Service Agency in 2017, 236 concerned the physical violence, 164 involved psychological violence, 222 concerned the neglect and 10 was related to economic violence against children. Out of 837 cases only 303 cases were referred to the Ministry of Internal Affairs of Georgia.⁷⁵⁰ In 2017, as many as 121 minors were placed in alternative state care because of violence against them.

747 The letter of the LEPL Social Service Agency № 04/10182; 21/02/2018.

748 See Public Defender's Recommendation on Child's Right to Communicate with Both Parents; <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saqartvelos-saxalxo-damcvelis-rekomendacia-bavshvis-orive-mshobeltan-urtiertobis-uflebis-shehexeb.page> [last accessed on 26.03.2018]/

749 The letter of the LEPL Social Service Agency № 04/7610; 09/02/2018.

750 The letter of the LEPL Social Service Agency № 04/7610; 09/02/2018.

Violence in general educational institutions

Especially problematic issues with regard to violence against children in general educational institutions are the prevention and timely identification of violence and effective implementation of protection and assistance measures. Rehabilitation services for child victims of violence are minimal and insufficient.⁷⁵¹

Bullying is a widespread form of relationship among minors in general educational institutions; cases of psychological as well as physical violence are frequent, often having dire consequences. An example of this is the Khorava Street incident in Tbilisi.

General educational institutions can play a crucial role in the prevention of violence among children which remains a serious challenge for the state. Unfortunately, there is no action plan or an instruction for teachers on combatting bullying; nor is the statistics available on incidents of bullying during an academic year. There is a need to strengthen the activity of psychological service at the office of resource officers; however, with the available human resources and difficulties in territorial access, the provision of psychological service remains a problem.

Other problems include: the lack of effective response to cyberbullying; low awareness of the rights and various forms of violence among schoolchildren; lack of competence of responsible persons in the area of response to any form of violence, including the referral mechanism.

The results of a survey conducted within the scope of monitoring carried out by the Office of Public Defender in 2016-2017 academic year show that beating is not regarded as violence by 13.2% of schoolchildren and 4% of school employees; slapping on the head is not violence for 37% of schoolchildren and 12.7% of school employees while ear pulling is not seen as violence by 42.5% of schoolchildren and 13.9% of school employees. Similar attitudes are observed towards other forms of violence, including psychological violence.⁷⁵²

The key findings of the monitoring include: discrimination, inter alia, by adults, is commonplace on the grounds of ethnicity, religion, gender, physical and mental characteristics, residence in non-prestigious districts, bad or good academic performance, dress style, accessories and other traits; humiliation or oppression of pupils on various grounds is not considered violence by a segment of schoolchildren and school employees.

The monitoring also revealed that disciplinary sanctions applied in schools and mechanisms of response to violence are not oriented on the best interests of a child as a victim of violence and on the rehabilitation of a child offender. Even in identified cases of violence, schools do not have a common vision of how to manage the process. Therefore, their response to incidents of violence vary.

Dismissal from classes as a disciplinary sanction applied against pupils is not fully regulated on a legislative level and it creates a risk of violation of the child's right to education. Neither the Law of Georgia on General Education nor internal public school regulations provide guarantees for the protection of pupil's right to education when pupils are dismissed from classed for up to five days or for the period from five to ten days. It is not clear what is the role of school or the aim of the mentioned disciplinary sanction in such cases and whether this sanction is proportionate, adequate and result-oriented.

The monitoring conducted in LEPL Public School N15 in Samtredia is worth mentioning too; it revealed an unsatisfactory situation in regards with the rights of beneficiaries. The monitoring showed that the existing situation does not correspond to the purpose of placing beneficiaries in this institution⁷⁵³ and is not tailored to individual needs of children, more specifically, is not oriented on resocialization of beneficiaries.

751 The Psychological Service Center of the LEPL Office of Resource Officers of Educational Institutions operates only in Tbilisi, Rustavi, Telavi, Kutaisi, Batumi, Gori and Poti.

752 A complete special report Violence Against Children in General Educational Institutions is available at: <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/zogadsaganmanatleblo-dawesebulebebshi-moswavleta-mimart-dzaladobis-kutxit-arsebuli-mdgomareoba.page> > [las accessed on 15.03.2018].

753 The Law of Georgia on General Education specifies main grounds for referral of minors. According to Paragraph 1 of the Article 48 of the Law, referral is carried out in the best interests of the minor, against minors with anti-social behavior who have attained the age of 12.

Shortcomings revealed through the monitoring include: violent and conflicting relations among minors, disregard of minors' opinions in making decisions that affect them, failure to approximate the physical environment of the institution to a family type environment, a low level of awareness of beneficiaries and a low motivation to obtain education; all this indicates the need of implementing general, systemic changes.

The protection of minors from violence remains a problem in private schools. Effective mechanism to respond to and to monitor violations of child's rights in private schools are not provided either on a legislative level or established in practice, which would enable to scrutinize each case of violence against children in a private school and allow children to participate in this process and express their opinions. This issue must be considered in the process of drafting new authorization standards for general educational institutions, which is led by the National Centre for Education Quality Enhancement.⁷⁵⁴

Acts against sexual freedom and inviolability of minors; the system of providing protection and assistance to victims

In 2017, problems were again seen in timely identification and prevention of acts against sexual freedom and inviolability of children as well as provision of effective rehabilitation services to child victims of violence. Improper conduct of psychosocial rehabilitation of child victims of sexual violence and delays in their timely integration into educational space are especially problematic.

Although Georgia joined the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2015, the state has failed so far to properly fulfil the obligations assumed under it. The state lacks an effective national system of rehabilitation and assistance of child victims of sexual violence and relevant support mechanisms.

The cases studied by the Office of Public Defender of Georgia show that identification of alleged facts of sexual violence and timely provision of psychological and social services to victims remain a problem. Yet another serious problem is the failure of the state to establish an effective mechanism of identifying, and responding to, alleged cases of involvement of minors in prostitution and trafficking.

According to the Ministry of Internal Affairs of Georgia, in 2017, investigations were launched into 17 cases of rape of minors⁷⁵⁵ and 173 cases of acts of sexual nature.⁷⁵⁶ In 2017, the investigations were initiated into the total of 243 cases of acts against sexual freedom and inviolability of minors.⁷⁵⁷

Compared to a rather high indicator of alleged acts against sexual freedom and inviolability of minors and facts of violence, the number of psychologists of the Social Service Agency working with child victims in regions is disproportionally low and cannot meet the needs. The Agency has only one psychologist in regions, who is also responsible for rendering the service to beneficiaries of the state programs. The Public Defender highlighted this problem in 2015-2016 parliamentary reports too, but the problem has not been solved and services necessary to assist child victims of sexual violence have not been developed.

Domestic violence and neglect

Timely identification of child victims of domestic violence, prevention of domestic violence and rehabilitation of victims of domestic violence remain problematic. The inability to identify such case may be primarily explained by a low awareness of society and persons working with children; this hinders a timely response from

754 The National Center for Education Quality Enhancement; MES 9 18 00199084; 22/02/2018.

755 Article 137 of the Criminal Code of Georgia.

756 Article 140 of the Criminal Code of Georgia.

757 The letter of the Ministry of Internal Affairs of Georgia № MIA 6 18 00288987; 06/02/2018.

responsible entities to cases of domestic violence and neglect.

According to the Ministry of Internal Affairs of Georgia,⁷⁵⁸ investigations were launched into 176 facts of domestic violence against minors countrywide in 2017. Tbilisi tops the list by the number of cases – 58; followed by Imereti, Racha-Lechkhumi and Kvemo Svaneti – 31, and Kvemo Kartli – 25. Restraining orders were issued on 199 facts of violence against minors with Tbilisi, here as well, being in the lead (63) and followed by Imereti and Racha-Lechkhumi (47) and Kvemo Kartli (22).

Persons employed in general educational and preschool educational institutions can play an important role in the prevention of domestic violence and neglect; however, as it was revealed, they are not well aware of referral procedures and their responsibilities in this process.⁷⁵⁹

Children living and working on the street belong to a high risk group in terms of neglect and domestic violence. In this regard, the state has not taken effective steps to protect their rights and ensure a safe environment. The total of four mobile groups work currently in Tbilisi, Rustavi and Kutaisi, which are responsible for identifying children living and working on the street and taking corresponding measures. However, with the available resources, especially in non-working hours when mobile teams are mainly inoperative, the response is not effective.

As the activities carried out by the Public Defender make it clear, court decisions concerning the transfer of child or/and communication of another parent or other family members with a child are not enforced effectively. Alleged psychological violence against children by family members is not properly studied in a number of cases, largely because of the failure of timely engagement of a psychologist with a child as well as his/her family members.

25.5. CHILD LABOUR

Child labour remained a pressing issue in 2017, both on practical and legislative levels. Problems are seen in areas of the protection of and assistance to children living and working on the street, seasonal employment of children, elimination of labour migration abroad and prevention of dropping out because of labour.

It should be primarily noted that the legislation in the area of labour rights requires further improvement. According to the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the state must devise a priority action plan and develop an effective implementation mechanism to eliminate worst forms of child labour, but none of these has been implemented in Georgia.

Like in the previous year, the state lacks an effective mechanism to monitor labour rights of the child. According to the information from the Labour Conditions Inspection Department, in 2017, children were employed by five private enterprises; the working environment of minors in the enterprises/organizations were largely satisfactory; instances of labour exploitation of minors or worst forms of child labour were not detected.⁷⁶⁰

A problem of systemic nature is the performance of work by children, which is inappropriate to their age and psycho-physical development, because of poverty and inadequate living conditions. Although the Public Defender has been highlighting this issue for years now, the state has not taken effective steps in this direction yet.

758 The letter of the Ministry of Internal Affairs of Georgia № MIA 4 18 00373151; 15/02/2018.

759 The Public Defender's special report Violence Against Children in General Educational Institutions (2017). <http://ombudsman.ge/uploads/other/4/4823.pdf>

760 Letter of the Ministry of Labor, Health and Social Affairs of Georgia N01/6818, 6 February 2018.

There is an urgent need to enhance the role of social workers and patrol police in responding to instances of children working as street laborers, including providing timely referral of and assistance to such children. Despite the scale of the problem, investigations were launched in 2017 into: one case of a minor's involvement in antisocial activity; one case of a minor's involvement in the illegal production and sale of pornographic works or other similar items⁷⁶¹; and five cases of alleged human trafficking of minors.⁷⁶²

Dropping out of school and regular absenteeism because of work remains a serious problem. This is especially frequent in regions where minors do not attend school during seasonal work periods. This is made evident by a dropout indicator showing that in 2017, the status of pupil was suspended for 106 children before the completion of the basic level of education, and to 139 children after the completion of the basic level of education.⁷⁶³

25.6. RIGHTS OF MINORS PLACED IN ALTERNATIVE CARE

Implementation of foster care and reintegration services

UN General Assembly Resolution #64/142 (2010) sets an obligation for states to ensure the development and implementation of a coordinated policy tailored to the needs of children in the sphere of alternative care. A matter of utmost importance in the field of alternative care is the enhancement of foster care and reintegration programs, as these programs offer the possibility for children to be raised in inclusive, familiar and familial conditions.

Despite positive legislative changes, systemic problems and shortcomings are observed in the implementation of the subprogram on foster care. Children are still separated from their biological families and placed in alternative care settings because of grave social and economic conditions facing their biological families.

In 2017, some 11% of children in alternative care were separated from their biological families because of poverty and inadequate living conditions, particularly socioeconomic conditions. As many as 25% of children were placed in foster care for the same reason.⁷⁶⁴ These indicators are alarming. To address the underlying causes of poverty, the state must have effective services and intensive intervention measures in place designed to enhance the social function of families and alleviate comparative or extreme poverty. This is the only way to avoid the placement of minors in alternative care on the grounds of poverty of their families.

Individualized needs-oriented care remains a problem in the area of foster care. There is a need for systemic retraining of foster families in childcare issues. A great deal of attention should be paid to ensuring that social workers pay planned and unplanned visits to reintegrated and foster families, properly evaluate the fulfilment of individual needs of beneficiaries, and effectively monitor the protection of the best interests of the child within the family. As in previous years, 2017 did not witness any headway in strengthening the social function of families engaged in the reintegration service.

In 2017, 282 cases of foster care and 102 cases of reintegration were identified; the total number of foster care beneficiaries comprises 1,748 while the number of children placed in the reintegration service is 440. These numbers speak for the need for more social workers, something which the Public Defender has repeatedly underlined in annual reports.

761 Article 255¹ of the Criminal Code of Georgia.

762 According to the Interior Ministry, of the mentioned criminal cases, one was terminated under Subparagraph A of Paragraph 1 of Article 105 of the Criminal Code and two criminal cases were terminated concerning labor exploitation.

763 Letter of the Ministry of Education and Science N MES 4 18 00286334. 14 March 2018.

764 Letter of the LEPL Social Service Agency N04/13442, 7 March 2018.

Considering the above situation, the state must ensure effective services and active intervention mechanisms to enhance the social function of families and overcome comparative or extreme poverty. Unfortunately, as the data provided in this report shows, effective steps have not yet been taken in this direction.

Rights of the child in small family-types homes

According to information provided by the LEPL Social Service Agency,⁷⁶⁵ as many as 88 beneficiaries were placed in small family-type homes in 2017, while the service was rendered to the total of 314 beneficiaries. The results of the monitoring conducted by the Special Prevention Group of the Public Defender of Georgia and the Centre of the Rights of the Child of the Office of the Public Defender of Georgia⁷⁶⁶ indicate problems in the areas of protection of minors from violence, rehabilitation of child victims of violence, proper emotional and social development of child victims of violence, full realization of the right to education and preparation of minors for independent living.

In general, small family-type homes provide a positive, comfortable, family-type environment which is conducive to the emotional and social development of children. It should be noted, however, that this picture of the ideal environment is not uniform and varies from home to home. Often persons engaged in child care fail to prevent bullying, overcome crises, detect psychological and mental problems in a timely manner and manage cases in a multidisciplinary way; all these factors negatively affect the provision of adequate assistance to children.

In the majority of cases, the level of academic knowledge of beneficiaries of small family-type homes does not correspond to their biological age. Beneficiaries are not motivated to obtain knowledge. The monitoring conducted during the reporting period showed that, compared to previous years, a greater amount of attention is paid to the involvement of small family-type home beneficiaries in inclusive education; however, the inclusive approach needs to be strengthened.

Problems existing in small family-type homes notably impede the process of preparing beneficiaries for independent living. When beneficiaries leave a small family-type home, especially after turning 18, they often come to face the same problems that were the grounds for their placement in alternative care. This largely results from the absence of support systems - and when needed, relevant services - for persons that have withdrawn from the system after reaching legal adulthood.

The engagement of minors in informal education, vocational or other education largely depends on geographic location, the availability of a small family-type home and the existence of relevant institutions in the region. When engaging children in additional activities, it is important to take into consideration their interests and desires; this, however, is often not the case due to aforementioned reasons.

The level of awareness of rights as well as feedback and complaint procedures are very low among minors living in small family-type homes. Minors are not encouraged to engage in discussion of problematic issues that arise during the process of care. Employees of small family-type homes need to raise their level of awareness of children's rights, especially the protection of children from violence.

Child's rights in childcare institutions subordinated to religious denominations

During the reporting period, the Office of Public Defender monitored the rights of children placed in institutions subordinated to a religious denomination.⁷⁶⁷

⁷⁶⁵ Letter of the LEPL Social Service Agency N04/13442, 7 March 2018.

⁷⁶⁶ From 19-30 June 2017.

⁷⁶⁷ The monitoring covered nine institutions: 1. Not-for-profit (non-commercial) legal entity St. Nino Boarding House for Orphans, Waifs and Children in Need of Care in Ninotsminda, Javakheti, the Patriarchate of the Georgian Orthodox Church; 2. Not for-profit (non-

The monitoring showed yet again⁷⁶⁸ that the institutions subordinated to religious denominations fail to provide their beneficiaries with services maximally approximated to a family environment. Moreover, these denominational organizations fail to run the institutions in accordance with the principles of the state policy on deinstitutionalization.

There is an urgent need to bring services in line with state childcare standards. The mechanism of the LEPL Social Service Agency designed to control and monitor the abovementioned institutions in terms of enrolling and placing beneficiaries in institutions, reflecting individual and specific needs of children when providing services, supporting beneficiaries to maintain contact with their biological families and preparing them for independent living is not sufficiently effective. A number of institutions (especially the boarding schools subordinated to Muslim denominations) do not maintain communication with the LEPL Social Service Agency on issues of enrolment and childcare.

Much like the monitoring conducted in 2015, the results of the 2017 monitoring revealed the need to retrain persons engaged in services, especially childcare personnel, in the areas of children's rights, state child care standards and management and prevention of antisocial behaviour. Moreover, a greater deal of attention should be paid to preparing children placed in alternative care for independent living; this is extremely important for individual needs and the best interests of beneficiaries.

Each boarding house inspected during the monitoring is a large institution and, consequently, none of these institutions are approximated to a family environment. Each living space in a boarding house accommodates more than three beneficiaries. The outdoor grounds of boarding houses lack the conditions and inventory for children to engage in leisure activities. Moreover, caregivers and children are not informed of risks (threats) or strategies for avoiding and mitigate them.

Beneficiaries of these institutions receive general education in public schools; however, in several institutions children are not engaged in out-of-class and informal educational activities.⁷⁶⁹

The situation in terms of religious teaching and free-time activities varies from institution to institution. For example, the main out-of-class activities at the Boys Boarding House in Kobuleti of the Georgian Muslims' Association as well as at the Girls Boarding House in Village Feria of the Georgian Muslims' Association, consists of religious teaching and participation in religious rituals. According to representatives of the institutions, this is a voluntary process for children. Children in institutions subordinated to the Georgian Orthodox Church also participate in religious rituals. The administration of these institutions also claims that the process is voluntary and children are engaged in it according to their ages and levels of development. As regards the planning of free time and leisure, the institutions control beneficiaries' use of TV, computers, Internet and phone.

The monitoring revealed that the not-for-profit (non-commercial) legal entity St. Nino Boarding House for Orphans, Neglected Children and Children in Need of Care in Ninotsminda, Javakheti, continues to apply earth-low bows and prohibitions on participation in religious ritual as forms of punishment of minors.

commercial) legal entity St. Apostle Matthias Foundation's Boarding School in Village Feria, the Patriarchate of the Georgian Orthodox Church; 3. Girls Boarding House in the village of Feria, Georgian Muslims' Association; 4. Boys Boarding House in the village of Feria, Georgian Muslims' Association; 5. Boys Boarding House in Kobuleti, Georgian Muslims' Association; 6. Ambrosi Khelaia General Education School in Salkhino village, Martvili municipality; 7. Sairkhe Saint Nino Theological Boarding School, the Georgian Orthodox Church; 8. Boarding school at the mosque in Ghorjomi village, Khulo municipality; 9. Not-for-profit (noncommercial) legal entity St. Ilya the Right College Preparatory Boarding School in Stepantsminda, the Patriarchate of the Georgian Orthodox Church.

768 The Public Defender's special report, 'Children's rights monitoring in boarding houses run by the Georgian Orthodox Church and the Muslim confession,' 2015.

769 The exception is the not for-profit (non-commercial) legal entity St. Apostle Matthias Foundation's Boarding School in the village of Feria, where children have access to diverse extracurricular activities and circles.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To take action at the legislative level to stipulate observing the principle of prohibition of children's corporal punishment in general educational institutions.

RECOMMENDATIONS

To the Government of Georgia:

- To develop a rehabilitation mechanism for child victims of sexual exploitation and sexual violence; to create and establish, within a reasonable time, a concept of activity of special rehabilitation institutions.
- To develop a common mechanism of regular monitoring of potable water safety, standards of sanitation and hygiene in institutions intended for children (public schools, kindergartens) in order to ensure that water safety is regularly monitored across the country and the results are handled accordingly.
- To develop a common strategy of prevention of suicide in children as well as protection and assistance for victims.
- To determine, within a reasonable time, a state mechanism for the implementation of the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure on the national level and to draw up concrete procedural rules for implementation of the protocol.
- To conduct monitoring of the fulfilment of the obligations set forth in the Government of Georgia's ordinance "On the Approval of Child Protection Referral Procedures".
- To improve the working conditions of social workers of the LEPL Social Service Agency of the Ministry of Labour, Health and Social Affairs in cities and regions; to strengthen social services, increase the financial component in the state budget for employing more social workers and psychologists and ensuring material and technical provision of these services.
- Within the scope of the obligations envisaged in the Toy Safety Directive, to plan and carry out concrete measures to improve the legislative and institutional framework regarding child safety.

To the Ministry of Education and Science:

- To improve infrastructure of general educational institutions and renew the educational inventory. In this regard, to pay a greater deal of attention to general educational institutions in mountainous regions and villages.
- To carry out intensive construction and rehabilitation of general educational institutions that are in a dilapidated state and operate in dangerous conditions.
- To regularly raise the awareness of pupils, parents and school employees about children's rights, mechanisms for protecting children from violence and positive methods for managing behaviour and preventing bullying; to emphasize the establishment and strengthening of principles of equality and tolerance in general educational institutions.
- To take into consideration the opinions of children and ensure their participation in decision-making processes that affect their participation in general educational institutions.

- To increase the number of psychological service centres of the LEPL Office of Resource Officers of Educational Institutions and enhance the existing resources.
- To improve the rules and procedures of disciplinary proceedings against public school teachers and minors to ensure timely, adequate, proportionate and relevant response from the state to violations of children's rights.
- To specify the obligations of general educational institutions regarding violations of children's rights in private schools in the authorization regulations of general educational institutions.
- For preventing students from dropping out, especially before completion of a mandatory level of education, to ensure a timely identification by general educational institutions of existing needs and referral to responsible state institutions.
- To change the existing model of school N15 in Samtredia.

To the Ministry of Internal Affairs of Georgia:

- When identifying cases of domestic violence against children and neglect of children, to swiftly refer cases to the LEPL Social Service Agency and facilitate the use of restraining and protective orders.
- To introduce the feedback and evaluation methodology for trainings conducted to raise employees' awareness of issues of violence against children and children living and working on the street.
- To carry out timely and adequate measures in response to cases of alleged child labour exploitation and involvement of children in antisocial activity; to place special emphasis on the timely identification of and effective investigation into such cases.
- To ensure timely and effective investigation/criminal prosecution of sexual violence against children, to regularly provide training to professionals working with victims of sexual violence.

To the Ministry of Labour, Health and Social Affairs:

- To ensure adequate psychological and mental services to child victims of domestic violence and neglected children in light of their specific needs.
- When identifying incidents of domestic violence, to ensure that Social Service Agency employees transfer minors in a timely fashion into a safe environment in accordance with existing services; to step up work with children living and working on the street and increase the number of mobile teams working with at-risk children. Also, to enhance cooperation in this area with the Ministry of Internal Affairs.
- When identifying the place of residence of a child, to study the rights of the child in relation to both parents and provide corresponding information to the courts; to enhance psychological services and ensure the timely involvement of a psychologist; moreover, to hear and consider the child's opinion in realizing the right of the child to communicate with both parents.
- To swiftly evaluate the educational needs of out-of-school children living and working on the street for their engagement in general education.
- For the elimination of child poverty, to properly evaluate the needs of poor families with children and accordingly involve them in relevant social programs; also, rather than place children

in alternative care due to poverty, to carry out all possible measures for social and economic empowerment of biological families.

- To ensure a positive environment conducive to the emotional and social development of children in small family-type homes in accordance with state child care standards; these standards to be ensured through enhanced monitoring of the care provided to beneficiaries in small family-type homes and in close cooperation with service providers.
- To regularly retrain persons engaged in childcare on issues of mental health, prevention and identification of violence against children and neglect, management of difficult behaviour and children with disabilities.
- To take active steps for effective management of the deinstitutionalization process; to ensure the deinstitutionalization of all religious boarding schools in the country and, if applicable, further licensing in accordance with Georgian legislation; to this end, to provide boarding schools with information and relevant consultation about licensing.
- To conduct regular monitoring on care provided to beneficiaries of religious boarding schools; to upgrade the qualification of service providers on issues concerning the protection of minors from violence and mistreatment, the establishment of child care standards, violence against children, mental health and children with disabilities.

To local self-government bodies:

- To undertake timely and adequate measures for the improvement of conditions in kindergartens in accordance with the Law of Georgia on Early and Preschool Education.
- To carry out, within a reasonable time, the rehabilitation of early and preschool educational institutions and equip them with proper educational inventory, placing a special emphasis on the conditions in kindergartens of villages and mountainous regions.

26. RIGHTS AND CIVIC INTEGRATION OF ETHNIC MINORITIES

In spite of important developments taking place in 2017 in the sphere of ethnic minority protection and civic integration, measures taken to address existing gaps have been insufficient and a series of problems remain unaddressed.

The Public Defender welcomes the establishment of an advisory council for ethnic and religious minorities by the Public Broadcaster to ensure that ethnic minority communities have the means to follow developments within Georgia and without, on the one hand; and greater awareness among ethnic Georgians on issues related to the country's ethnic minorities, on the other. It is worth noting that important dates for Georgia's ethnic and religious minorities have been broadly and routinely covered.

Preparatory work on setting up TV and radio broadcasts in the Azerbaijani and Armenian languages has already started.

It should be noted that the Ministry of Education and Science has already started preparing new textbooks for ethnic minority students, while the Ministry of Culture has launched renovation of the Armenian theatre, an initiative the Public Defender has recommended on numerous occasions.⁷⁷⁰

26.1. ACCESS TO EDUCATION

In spite of numerous efforts, there is still no policy document that can provide conceptual framework and in-depth analysis of the current situation, including challenges facing the country's education system and methods for addressing these challenges, such as inter-agency cooperation for higher-quality education for ethnic minorities. Importantly, in 2015 the Georgian Ministry of Education and Science started developing a policy document to cover the issues of professional staff at every grade of minority schools. Experts in the field including representatives of non-governmental and international organizations participated in development of the document. Unfortunately, for unknown reasons, the document was never approved. The Public Defender believes work on the document needs to continue in order to develop a holistic approach and common vision for addressing existing challenges.

Pre-school education

Poor access to pre-school education in regions predominantly populated by ethnic minorities remains a challenge. Staff at pre-school education institutions lack adequate skills for working with children from diverse ethnic backgrounds, while the trainings that are available to them lack information on methods and strategies for managing diverse environments. Another problem is scarcity of pre-school institutions and lack of personnel. The quality of teaching in the state language in those education institutions which are attended by ethnic minority students remains poor.

⁷⁷⁰ The Public Defender's parliamentary reports for 2015 and 2016. Available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>.
<http://www.ombudsman.ge/uploads/other/4/4882.pdf>.

The model of multi-lingual teaching and school textbooks

Issues related to the ineffectiveness of so-called “bilingual textbooks” used in non-Georgian-language schools have been repeatedly highlighted in reports prepared by the Public Defender and the Public Defender’s Council of Ethnic Minorities.⁷⁷¹ Seventy percent of the contents of these textbooks, which were introduced in 2010, is in minority languages (Armenian, Azerbaijani, Russian) while the remaining 30% is provided in the state (Georgian) language.

In most schools which use a minority language as the primary language of instruction, the use of bilingual textbooks is not feasible as teachers’ command of the Georgian language insufficient to explain lesson materials, and students cannot comprehend materials for the same reason.

According to the Georgian Ministry of Education and Science⁷⁷², work on developing new textbooks has already commenced. A concept of bilingual education that reflects the specifics of local conditions was developed during the reporting period. The concept envisages the introduction of a bilingual model tailored to capacities and subjects in I-VI grades.

Reference to diversity in school textbooks

In order to foster greater civic integration, it is important that school textbooks contain material related to tolerance and diversity. The Georgian Ministry of Education and Science has upheld the Public Defender’s recommendation included in the 2016 parliamentary report for⁷⁷³, as a result of which the licensing criteria for new school textbooks⁷⁷⁴ now include strict requirements for diversity education.

Teaching native languages to small ethnic minority groups

It should be noted that, following a recommendation of the Public Defender and the Public Defender’s Council of Ethnic Minorities, since 2015 the Georgian Ministry of Education and Science has implemented⁷⁷⁵ a program to provide native-language education to representatives of small minority groups. Also, in 2015, the Ministry identified those schools and grades⁷⁷⁶ which were included in the program, with curricula including instruction in Ossetian, Khundz (Avarian), Udi, Assyrian and Kurdish languages. Chechen language was later added as an optional subject taught for two hours per week. It is worth mentioning that Ossetian had previously been taught in several schools until 2011.

It should be noted that the quality of teaching has been seriously affected by the lack of qualified staff and textbooks. For instance, in one Tbilisi school, students are not able to take Kurdish (Kurmanji) classes because the school was unable to find a teacher with necessary qualifications. In addition, teachers have not been offered retraining programs to improve their competences.

771 Assessment document on the implementation of the national concept for tolerance and civic integration and action plan for 2012-2013. Available in Georgian at: http://tolerantoba.ge/failebi/OMBUDSMAN_Publication_GEO_FINAL_PRINT_13225.pdf; The Public Defender’s parliamentary reports for 2015 and 2016. Available at: <http://www.ombudsman.ge/uploads/other/3/3892.pdf>, and <http://www.ombudsman.ge/uploads/other/4/4882.pdf>.

772 Correspondence of the Ministry of Education and Science MES 2 18 00277738 of 12 March 2018.

773 Annual report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia. Available at: <http://www.ombudsman.ge/uploads/other/4/4882.pdf>.

774 Ministerial order N621 of 14 July 2017 of the Ministry of Education and Science of Georgia. Available in Georgian at: <http://www.mes.gov.ge/old/upload/editor/file/Brdzanebebi/2017/ivlisi%5D/621.pdf>.

775 Letter N86806 of 2 February 2016 of the Ministry of Education and Science.

776 Ministerial order N1255 of 20 November 2015 of the Minister of Education and Science on identifying schools and grades where the languages of small ethnic groups should be taught. Available in Georgian at: <http://www.mes.gov.ge/old/upload/editor/file/Brdzanebebi/2015/noemberi/1255.pdf>.

Native-language textbooks for schools with Armenian and Azerbaijani as languages of instruction

For the past few decades, Armenian- and Azerbaijani-language textbooks and literature have been imported from Armenia and Azerbaijan and therefore do not conform with the standards of the Georgian education system. It should be noted that, while Armenia only recently introduced a 12-grade system, Azerbaijan continues to offer 11-year schooling, which means that there are no textbooks written for grade 12. This hampers the education process in Azerbaijani-language schools.

The Public Defender welcomes a decision of the Ministry of Education and Science to uphold a recommendation of the Public Defender⁷⁷⁷ to open a bid for Armenian- and Azerbaijani-language textbooks and literature. At the same time, it is important that new textbooks meet the teaching standards stipulated by the Georgian education system and contain elements and language standards pertaining to the respective language, culture and literature.

Access to higher education

A 4+1 program implemented in Georgia since 2010 enables representatives of ethnic minority communities to take general competence exams in the Azerbaijani and Armenian languages. To date, more than 4,000 students have received education under this program.⁷⁷⁸

The program offers a one-year preparatory course in Georgian language after which students are able to continue to study in programs of their choice. However, it should be noted that the dropout rate among these students remains high.⁷⁷⁹ However, the reasons are yet to be scrutinized by the education system. In the Public Defender's view, there are no effective integration programs in those higher education institutions attended by the program's beneficiaries. Neither is students' knowledge of learning processes in different cultural environments and relationships sufficient. It should be noted that beneficiaries of the 1+4 program often face challenges in enrolling in their preferred programs. By the time these students obtain their Georgian language certificates, most universities have already enrolled students in their programs, leaving no vacant places.

Adult and vocational training

The National Strategy for Civic Equality and Integration for 2015-2020⁷⁸⁰ highlights the need for greater access to vocational and adult learning opportunities for representatives of ethnic minorities. This access is necessary to ensure participation in the country's labour market. However, no specific and effective measures have been taken to fulfil this stated goal.

There is great demand for vocational training in regions predominantly populated by ethnic minorities, particularly in rural areas. However, physical distance and scarcity of vocational facilities have been major obstacles to meeting this demand. In view of the abovementioned, it is crucial that educational programs offered to ethnic minority groups reflect the specific regional characteristics of the labour market, in particular that in ethnic minority communities.

777 Annual report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, pp. 267. Available at <http://www.ombudsman.ge/uploads/other/4/4882.pdf>.

778 Information provided by the Office of the State Minister for Reconciliation and Civic Equality. Available in Georgian at: <http://smr.gov.ge/detailspage.aspx?ID=56>.

779 Center for Civil Integration and Inter-Ethnic Relations (CCIIR): The effectiveness of the one-year Georgian language program for ethnic minorities at HEIs for 2016. Available in Georgian at: <http://ccir.ge/upload/editor/file/CCIIR%20research%20document.pdf>.

780 State Strategy for Civic Equality and Integration for 2015-2020. Available at: http://smr.gov.ge/Uploads/esen_55b90432.pdf.

Promotion and teaching of the state language

In order to promote the state language and improve access to Georgian-language education, the Ministry of Education and Science has been implementing a variety of programs for pupils, students, teachers, public servants and other interested individuals.⁷⁸¹ The LEPL Zurab Zhvania School of Public Administration offers a state language program to all interested individuals through a network of 10 regional learning centres⁷⁸² and mobile groups operating in 71 villages.⁷⁸³ In 2017, the total number of beneficiaries amounted to 3,247.⁷⁸⁴

In spite of the abovementioned, lack of knowledge of the state language remains a challenge to integration. The authorities need to strengthen efforts to effectively address this problem, including monitoring the effectiveness of state language programs, implementing awareness-raising campaigns among the broader public and implementing educational programs.

26.2. GEORGIA'S CULTURAL HERITAGE RELATED TO ETHNIC MINORITIES

Full protection and realization of cultural rights is an important condition for civic integration and effective protection of ethnic minority rights.

In Shida Kartli region, the Ashugh music school and the region's unique Borchalo carpet knitting tradition have long been vital cultural signifiers for the region's national minority communities. Unfortunately, there are no sustainable programs to protect and preserve these cultural traditions. In addition, local youth show little interest in learning traditional arts and crafts, as a result of which both the Ashugh music school and Borchalo carpet knitting tradition will soon be extinct.

In most regions populated by national minorities, there are no art circles or folklore groups, and most houses of culture require rehabilitation. Municipal libraries are occasionally updated with primarily Georgian language books.

The Public Defender welcomes the commencement in September 2017 of renovation work of Petros Adamian Armenian Professional State Drama Theatre.⁷⁸⁵ It should be noted that cultural heritage monuments related to the capital's Armenian community are dilapidated.⁷⁸⁶ These monuments are in dire need of renovation work.

Throughout 2017, the issue of renovating Heydar Aliev Azerbaijani Drama Theatre remained unresolved. According to the information provided by the Ministry of Culture, a report submitted by Levan Samkharauli National Forensics Bureau suggested that while it is still possible to restore and reinforce the damaged building, renovation would be unjustified and cost ineffective. The Ministry offered the Drama Theatre an alternative location and promised to construct a new building. As far as the Public Defender is concerned, the Drama Theatre and the Ministry have not been able to strike a deal with respect to the building.⁷⁸⁷

In light of the rapidly-developing tourism industry, the diversity of Georgian culture is undoubtedly one of the country's most important attractions. However, Georgia's touristic map misses important cultural heritage

781 Available in Georgian at: http://smr.gov.ge/Uploads/report_864b8967.pdf, pp. 37-39.

782 Akhalkalaki, Ninotsminda, Bolnisi, Dmanisi, Marneuli, Gardabani, Tsalka, Lagodekhi, Akhmeta, and the village of Lambalo, Sagarejo municipality.

783 Report on the implementation of the State Strategy for Civic Equality and Integration and the Action Plan for 2017. Available at: http://smr.gov.ge/Uploads/___e8ef6b3d.pdf.

784 Letter MES 2 18 00277738 of 12 March 2018.

785 Letter N05/08-1233 of 28 February 2018 from the Ministry of Education and Science of Georgia.

786 1) Mughan 'Sub Gevorg' (Akhospireli street 26), 2) Shamkhoretsots 'Karmir Avetaran' (Peristsvaleba street 6), 3) Erevantsots 'Surb Minas' (Gelati street 13), 4) 'Surb Nshan' (Vertsklis street 6), and 5) Tandoian 'Surb Astsvatsatsin' (David Aghmashenebeli Avenue 40).

787 Letter N05/08-1233 of 28 February 2018 of the Ministry of Culture and Sport.

sites regarding the country's national minority groups. Nor is there any mechanism to inform tourists about the country's national minority cultures.

26.3. PARTICIPATION OF NATIONAL MINORITIES IN LOCAL GOVERNANCE AND ELECTIONS

There is a low level of national minority participation in decision making both at the national and municipal levels, including the Tbilisi Sakrebulo. It should be noted that, for the first time in decades, a woman was elected mayor in one of the minority regions.⁷⁸⁸ It is also the first instance of a person with ethnic Azerbaijani background being elected mayor of Marneuli.⁷⁸⁹

The low level of ethnic minority participation in Tbilisi municipal governance remains a problem. Roughly 13% of Tbilisi's population is composed of ethnic minorities.⁷⁹⁰ However, as in previous years, these communities are not represented in the current Sakrebulo. Nor are there any ethnic minority representatives among the Gamgebelis and Deputy Gamgebelis of Tbilisi districts and municipalities, or heads or deputy heads of city services. Ethnic minorities are only represented in technical and support staff, which creates the perception of indirect discrimination.

Over the past several years, the Central Election Commission has worked with ethnic minority communities to make impressive progress on matters related raising awareness, training election administration staff, translating election-related materials into minority languages and informing citizens about the electoral process.⁷⁹¹ It should be noted that, while polling station commission members in Kvemo Kartli and Samtskhe-Javakheti and election district commissions in Samtskhe-Javakheti include representatives of ethnic minorities, there is no ethnic minority representation in any of Kvemo Kartli's district commissions (except for a member of ethnic Greek background in Tsalka election district).

Moreover, there are no minority representatives in any of the regulatory commissions (Georgian National Energy and Water Supply Regulatory Commission) or the Board of Trustees of the Georgian Public Broadcaster.

The issue of lack of information among ethnic minorities about public services remains unresolved. Respective ministries release certain information about various public services in minority languages; however, this information is insufficient for ethnic minority groups to have adequate understanding of health, education, social, agricultural and other services offered by the state, or of planned activities in these spheres.

26.4. ETHNIC MINORITIES ACCESS TO MEDIA AND OTHER INFORMATION

Although the Public Broadcaster provides information for the webpage and news program "Moambe" in seven languages, including ethnic minority languages, during the reporting period the country's ethnic minorities still lacked information about developments inside and outside Georgia.

788 Anivar (Ani) Mosoyan was elected a mayor of Ninotsminda Municipality.

789 Temur Abazov was elected a mayor of Marneuli municipality.

790 A map developed using National Statistics Office data by the Center for the Studies of Ethnicity and Multiculturalism. Available at: http://csem.ge/wp-content/uploads/2016/07/ethnic_groups_of_georgia.jpg

791 Information provided by the Central Election Commission. Available at: <http://cesko.ge/geo/static/2655/informatsia-qartul-enaze-2017#none>.

Within the frame of a project implemented by the Georgian Association of Regional Broadcasters, the news program “Moambe” is simultaneously translated into Armenian and Azerbaijani languages and aired in Kvemo Kartli and Samtskhe-Javakheti regions. However, local communities in these regions are not satisfied with the quality and accuracy of translation. In addition, while local media sources air news programs in minority languages in Kvemo Kartli and Samtskhe-Javakheti⁷⁹², these organizations’ lack of capacity puts them at a disadvantage vis-a-vis international media sources.

According to observations by the Public Defender’s Office, Armenian and Russian media are particularly popular in Samtskhe-Javakheti, while communities in Kvemo Kartli prefer Turkish, Azerbaijani and Russian media. The popularity of foreign media is likely to contribute to increased pro-Russian and anti-Western sentiments in regions predominantly populated by ethnic minorities.⁷⁹³

The Public Defender welcomes a decision of the Georgian Public Broadcaster to uphold the Public Defender’s 2016 recommendation⁷⁹⁴ concerning the development of an action plan and tailored programs for improving the quality of information in regions with significant ethnic minority communities. Throughout 2017, the Public Broadcaster and the Ethnic Minority Council at the Public Defender’s Office held a series of consultations, as a result of which the Public Broadcaster developed a media strategy and action plan.⁷⁹⁵ Implementation of the action plan was announced as a key priority.⁷⁹⁶

RECOMMENDATIONS

To the Ministry of Education and Science:

- To develop a unified strategy and an action plan in support of greater civic integration in the sphere of education, as well as more effective implementation of existing programs. The strategy and action plan should cover pre-school, primary and secondary school, higher and professional education and be tailored to the needs of ethnic minorities.
- To introduce programs for teachers and students supporting tolerant and appropriate behaviour for multicultural environments in schools attended by students of various ethnic and linguistic groups.
- To implement relevant programs to further foster diversity and tolerance education in school textbooks.
- To hold consultations with the Public Defender’s Council for Ethnic Minorities while ensuring newly-commissioned textbooks promote diversity and tolerance.
- To continue the development and implementation of multilingual teaching methods suited to Georgia’s social conditions.
- To implement special education programs tailored to particular labour market demands to support the vocational education of national minorities. It is recommended that education in some disciplines and specialties be provided in minority languages.

792 TV Marneuli, Radio Marneuli, TV 12 Akhlakalaki, TV Parvana Ninotsminda, and Radio NOR Ninotsminda. Available at: <http://www.marneulivt.ge/>, <http://marneulifm.ge/ka/tag/radio-marneuli/>, <http://www.parvana.ge/>, <http://nor.ge/>.

793 The survey on public attitudes in Georgia was carried out by the National Democratic Institute (NDI). Available at: https://www.ndi.org/sites/default/files/NDI%20poll_june%202017_ISSUES_ENG_VF.pdf.

794 Available at: <http://www.ombudsman.ge/uploads/other/4/4882.pdf>, pp. 276.

795 Media strategy for supporting national unity civic integration, inter-ethnic and inter-religions dialogue. Available in Georgian at: <https://cdn.1tv.ge/app/uploads/2017/11/Doc1-1510848602.pdf>.

796 Working on issues related to Georgia’s ethnic and religious minorities is a new priority of the Georgian Public Broadcaster. Available in Georgian at: <https://1tv.ge/news/vasil-maghlaferidze-saqartveloshi-mckhovrebi-etnikuri-da-religiuri-umciresobebis-sakitkhebzemushaoba-sazogadoebrivi-mauwyebilis-erti-erti-prioriteti-khdeba/>.

- To continue implementation of state language learning programs, promote use of the state language and increase access to state language learning programs.
- To implement a special educational program to improve the effectiveness of ethnic minority language teaching, including training ethnic minority language teachers, publishing school textbooks, and implementing other necessary programs.
- To continue the process of developing, publishing, and introducing textbooks in native languages for Armenian and Azerbaijani schools, with the involvement of representatives of ethnic minority communities.
- To develop and implement inter-cultural and integration programs in higher education institutions attended by so called “1+4 students”, so these students better understand how to study and interact in diverse ethnic environments.

To the Ministry of Culture and Sport of Georgia:

- To take respective measures, including the renovation of churches belonging to Tbilisi’s Armenian communities, in order to ensure the protection of ethnic minority monuments and culture.
- To implement programs for the protection and preservation of the Borchalo carpet knitting and Ashugh music traditions.
- To contribute to information, education, publishing, and other activities with the purpose of protecting and promoting the culture and traditions of ethnic minorities.

To the Department of Tourism and the Ministry of Culture and Sport:

- To include information about tangible and intangible cultural heritage monuments of Georgia’s ethnic minorities in touristic routs, maps, and publications pertaining to ethnic minority regions.

To the Government of Georgia, Tbilisi City Hall, and local self-government bodies:

- To implement specially-designed programs to foster direct participation of ethnic minorities in the labour market and local government decision-making processes.
- To take measures to support the career advancement of ethnic minorities with adequate qualification in order to ensure greater representation of ethnic minorities in middle and high-ranking public service positions.

To the Ministry of Education and Science and local self-government bodies:

- To ensure there is a strong component of Georgian and ethnic minority language teaching in pre-school education institutions so students have a foundation to proceed with learning Georgian and ethnic minority languages in general schools.
- To introduce educational programs to support teachers in acquiring adequate knowledge of working in multicultural environments in pre-school institutions attended by children of diverse ethnic and linguistic backgrounds.

To the LEPL Public Broadcaster:

- To monitor the quality and accuracy of simultaneous translation of “Moambe” in order to eliminate possible inaccuracies.
- To contribute to the development of a news service (including in the Azerbaijani, Armenian and Russian languages) for greater awareness of ethnic minorities about developments taking place in the country.
- To ensure the Public Broadcaster’s programming is translated and disseminated in minority languages through various means, including regional media outlets.
- To continue efforts to ensure the Public Broadcaster’s Georgian-language programs devote adequate attention to matters related to the country’s ethnic minorities with a strong focus on issues pertaining to the civic integration of ethnic minorities.
- To raise awareness among journalists of ethnic minority issues.

To local self-government bodies:

- To ensure greater access to pre-school education, including by means of allocating adequate funding, in regions populated by ethnic minorities.

27. HUMAN RIGHTS PROTECTION IN THE DEFENCE FIELD

In 2017, the Department of Human Rights Protection in the Defence Field conducted monitoring of the following units: the Department for Coordination of Military Mobilization and Draft at the Ministry of Regional Development and Infrastructure of Georgia; the First and second Infantry Brigades of the Georgian Armed Forces; the Fourth Mechanized Brigade; the Military Unit in Adlia; the 10th Cadre Brigade of the National Guard; the Third Infantry Brigade; the Second Artillery Brigade; the Combat Engineer Battalion Land Forces of Georgia; the First Radar Battalion of the Air Defence Brigade; the Ammunition Storage Base of the Logistical Support Command; the Training Centre of the Military Servicemen of the Ministry of Correction; the 14th Unit of External Protection and Convoy of the N14 Penitentiary Establishment; the Second Unit of External Protection and Convoy of the N2 Penitentiary Establishment; the Second sub-unit of the second unit of the third Division of Ministry of Internal Affairs; the Second sub-unit of the first unit of the third Division of the Ministry of Internal Affairs; the second division of Special Tasks Department of the Ministry of Internal Affairs; and the third division of the Department of Protection the Facilities of the Ministry of Internal Affairs.

The Department for Coordination of Military Mobilisation and Draft at the Ministry of Regional Development and Infrastructure of Georgia fulfilled the Public Defender's recommendations set out in the Parliamentary Report for 2016. The department established conditions allowing conscripts to undergo medical and visual examination individually, in an isolated room. Apart from this, a dressing room was placed next to the doctor's cabinet; these conditions are much more conducive to maintaining the conscripts' dignity.

The Public Defender welcomes the Ministry of Defence's fulfilment of the recommendations provided in the 2016 report. In particular, infrastructure problems at the military weapons and equipment maintenance base of the Georgian Armed Forces have been resolved and the provision of internal computer networks is steadily progressing.⁷⁹⁷

A new office of the State Service of Veterans Affairs was opened and equipped with modern technologies in December 2017, which will make the body's work more effective.⁷⁹⁸

Conscripts' discharge from military units because of health conditions remained a problem in 2017, which is mainly the result of rules for medical examination of the conscripts. Particular attention should be paid to the psychiatric component of the examination. Namely, psychiatrist interviews with the conscripts last only 5-10 minutes. Interviews with the conscripts demonstrate that they, as well as their family members, consider taking a military conscription card⁷⁹⁹ to be a precondition for future career success. As a result, conscripts frequently hide health problems during medical examination. Representatives of drafting units have no access to databases of patients registered in psychiatric clinics based on the Law of Georgia on Personal Data Protection. Moreover, conscripts' psychiatric problems are only revealed during military service.

797 Correspondence N MOD 31800109000 of the Ministry of Defense.

798 Information can be retrieved from the following web page: < <https://goo.gl/FpH644> > visited on [06.03.2018].

799 Article 32 (22) of the Law of Georgia on Military Service. After completion of compulsory military service, the relevant body shall issue a certificate either to the person undergoing the military service, or to the local municipality.

The servicemen of the 17th Unit of the External Protection and Convoy of the Ministry of Corrections are unable to enjoy their right to holidays;⁸⁰⁰ heads of units choose soldiers with exemplary behaviour and, instead of giving them annual leave, discharge them for three days. Considering this practice, if a given soldier fails to impress the head of unit, he might be denied annual leave. Furthermore, as in previous years, servicemen are not provided with comprehensive medical insurance. According to the military servicemen, there are cases when soldiers serving temporarily at the Ministry of Corrections only receive 80% medical insurance coverage⁸⁰¹, with the remaining 20% being covered by the soldiers' own means.

No renovation works have been carried out at the 6th and 8th units and the sinks are not equipped to provide warm water. Nor have renovation works been conducted in the dining room or kitchen of the 17th unit, and the bathrooms are also in disorder.⁸⁰² Conscripts of the External Protection and Convoy of the Ministry of Corrections who rotate once in three days are not provided with meals or remuneration of expenses for transportation between their domicile and the penitentiary institution.⁸⁰³

No renovation works of the medical unit in Special Tasks Unit I of the Special Tasks Department of the Ministry of Internal Affairs of Georgia have been carried out.

27.1. MINISTRY OF DEFENCE

Establishment of a system for discharging conscripts for weekends is a novelty.⁸⁰⁴ However, the practice of discharge differs among various units. In particular, a number of units discharge soldiers from 17:00 on Friday until 08:00 on Monday, whereas others set these periods from 08:00 on Saturday until 19:00 on Sunday.

Poor conditions, especially the water supply and ventilation systems and poor artificial lightning, constitute the main problems facing the Ministry of Defence in terms of infrastructure.⁸⁰⁵

No separate toilets or baths are provided for the female service personnel of the First Infantry Brigade. Living quarters are narrow and lack individual plumbing.⁸⁰⁶ In one of the barracks of the Second Infantry Brigade, the water pipes are damaged and water leaks from the wall. None of the barracks are equipped with sufficient bathrooms. The grounds for drill training are not in order; in particular they are not asphalted and are lined with stones, which can result in physical trauma during training. Hot water is supplied in schedules and water collector reservoirs (metal cisterns) are not cleaned;⁸⁰⁷ the capacities of the water pumps are insufficient to provide hot water to the buildings' upper floors. Classrooms are equipped with outdated inventory, and no teaching materials are provided for theoretical trainings. Windows are broken in several bedrooms, no lightning is provided in the dining room and the kitchen, and windows are not equipped with protective nets. Problems persist in keeping order, as well.⁸⁰⁸ Infrastructural problems are acute in Adlia Military Unit and the Third Infantry Brigade.⁸⁰⁹

800 Article 11 (6) of the Law of Georgia on Military Service.

801 Letter N MOC81800113984 of the Ministry of Corrections of Georgia, Annex N3.

802 Article 4 (1) of the Law of Georgia on Military Service. The state provides the guarantees of social and legal protection of military servicemen. To this end, the state provides adequate living conditions to the military servicemen, considering the particularities of the service; Article 169 of the Charter of the Internal Service of the Georgian Armed Forces – order and cleanliness shall be ensured in dining rooms and bakeries.

803 Article 12 (1) of the Law of Georgia on Military Service; military servicemen are on full support of the state.

804 Article 11 (2^o) of the Law of Georgia on Military Service.

805 Article 171 of the Internal Charter of the Georgian Armed Forces; toilets must be equipped with adequate ventilation and lightning.

806 Article 147 of the Internal Charter of the Georgian Armed Forces; beds shall be located in such a way that there is a room for a pump between them.

807 Article 165 of the Internal Charter of the Georgian Armed Forces; reservoirs for drinking water shall be washed under the supervision of the company commander and filled in with fresh drinking water.

808 Article 169 of the Charter of the internal Service of Georgian Armed Forces – order and cleanliness shall be ensured in dining rooms and bakeries.

809 Security of electricity is not ensured; problems pertain to lightning, water supplies, and hygiene.

The Ministries of Defence and Internal Affairs of Georgia and the State Security Service of Georgia are competent to conduct monitoring of sanitary and hygienic norms and application of preventive measures with regard to the Georgian Armed Forces and the military units of the Ministry of Internal Affairs and the State Security Service.⁸¹⁰

Restrictions on exercising the right to holidays by professional military service personnel were observed in a number of units.⁸¹¹ Military personnel typically take a week, or in better instances, a two-week holiday, whereas in most instances annual leave days⁸¹² are left unused. Consequently, during these days personnel are tasked with additional functions and required to work overtime. This problem is caused by the inability to fully staff units.

Providing housing to military service personnel remains an acute problem. Individual interviews confirm the state failed to provide NCOs with housing, either temporarily during service or with the right to ownership. The only officers who were provided with apartments are those whose contracts foresaw transmission of the property into the private ownership after contract's tenure elapsed. The state is obligated to ensure military service personnel and their family members with housing⁸¹³; however, soldiers living in regions who much perform service away from their domicile are forced to rent an apartment or to reside at the military units.

27.2. MINISTRY OF CORRECTIONS OF GEORGIA

Hygienic conditions in the units of the External Protection and Convoy as well as the Training Centre of Military Service Personnel of the Ministry of Corrections are unsatisfactory.⁸¹⁴ The ventilation system is poor in the training centre's dining rooms, an unpleasant smell is common, mosquito nets are not present, and glue plates are used in the kitchens, which further hampers sanitation.⁸¹⁵

Beds in the unit rooms are covered with old and torn leather mattresses. Some of the beds are without any mattress at all; therefore soldiers have to lay down on boards and no covers are provided.⁸¹⁶ Personnel are not equipped with individual plumbing,⁸¹⁷ civilian clothing and other private belongings are left in their bags. Neither air conditioning nor toilets are properly functioning. The fourteenth unit's dining room lacks a window and is not duly cleaned; as for the second unit, it lacks any dining room at all.⁸¹⁸

Towers located in the external perimeters of the penitentiary establishment have broken windows and doors and are covered by a metal roof; because the ceilings are made of rotting boards, military personnel in the tower are under risk of physical injury.

Apart from undertaking monitoring visits, the Department of the Protection of Human Rights in the Defence Field began investigating deaths occurring at the military units. As investigation is still ongoing case, the Public Defender cannot yet provide any conclusions or assessment.⁸¹⁹ The Department has also studied 25 individual

810 Chapter IX, Article 35 (2) of the Law of Georgia on Public Health.

811 Combat Engineer Battalion Land Forces of Georgia, second infantry brigade, third infantry brigade.

812 Article 11 (4) of the Law of Georgia on Military Service.

813 Article 14 of the Law of Georgia on Military Service.

814 14th Unit of external protection and convoy, 2nd Unit of external protection and convoy.

815 Article 169 of the Charter of the internal Service of Georgian Armed Forces – order and cleanliness shall be ensured in dining rooms and bakeries.

816 Article 148 of the Charter of the internal Service of Georgian Armed Forces - beds of military servicemen stationed in the barracks should consist of blankets, sheets, mattresses, and pillows.

817 Ibid, Article 147 beds shall be located in such a way that there is a room for a pump between them.

818 Ibid, Article 169, order and cleanliness shall be ensured in dining rooms and bakeries.

819 Article 18 (“e”) of the Organic Law of Georgia on Public Defender – The Public Defender is authorized to obtain information about criminal, civil and administrative cases, the decisions in which have entered into force.

complaints which mainly related to the transfer of civilian and military personnel to staff disposal and the legality of dismissal from work.

Unfortunately, amendments to Resolution No. 4 of the Government of Georgia on Monetization of Social Benefits of January 11, 2007, according to which not all persons having veteran status shall benefit from subsistence allowance, have not yet been introduced. Pursuant to changes made to this resolution on November 4, 2009, subsistence allowance during November 5, 2009 – September 1, 2012 was provided to individuals, who by the time of granting the subsistence allowance were registered by the competent body as recipients of pension, state compensation or state academic scholarship. From September 1, 2012, subsistence allowance would be granted only to those individuals who by the time of granting such allowance would be registered at the competent body as a recipient of the state pension. This disadvantages those individuals who were granted veteran status after September 1, 2012. This problem is also reflected in the Parliamentary Reports of the Public Defender for 2015 and 2016.⁸²⁰

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To amend Article 11 of the Law of Georgia on Military Service to clearly determine the right to leave from duty during weekends as well as clarify the time of leave.

RECOMMENDATIONS

To the Government of Georgia:

- To amend Resolution No. 4 of the Government of Georgia of January 11, 2007, in order to ensure equal treatment of individuals benefitting from subsidiary allowance and to ensure that all individuals having veteran status are able to benefit from such allowance, as it was determined before September 1, 2012.

To the Ministry of Defence of Georgia:

- To improve infrastructure at Georgian Armed Forces barracks⁸²¹ in accordance with the standards enshrined in the Internal Charter of the Georgian Armed Forces.
- To compensate personnel for tasks carried out during days when military service personnel are unable to use their annual leave in accordance with the legislation of Georgia.
- To inform the General Staff of all units regarding possession of housing and transfer to private ownership to those military service personnel⁸²² who are stationed far from home. The General Staff shall provide the Commission on Transmitting Household to Official Possession/Private Ownership with the relevant list of individuals for consideration pursuant to Order No. 441 of the Ministry of Defence of April 4, 2014.

820 Report of the Public Defender of Georgia for 2016 on Situation in Human Rights and Freedoms, pp. 355 < <http://www.ombudsman.ge/uploads/other/4/4494.pdf> > last visited on [12.03.2018]; Report of the Public Defender of Georgia for 2015 on Situation in Human Rights and Freedoms, pp. 367 < <http://www.ombudsman.ge/uploads/other/3/3891.pdf> > visited on [12.03.2018].

821 Repair: bathrooms, electric and water supply systems, conditioning of kitchens and dining rooms and ventilation systems, fields for drill training of the Third Infantry Brigade, ensure 24-hour supply of hot water, conduct construction works at military unit of Adlia, and equip it with necessary inventory.

822 Article 14 of the Law of Georgia on Military Service.

To the Ministry of Corrections of Georgia:

- To improve infrastructure conditions at the units of External Protection and Convoy of Penitentiary Establishments.⁸²³
- To determine the relevant amount of money for military service personnel on combat duty and working in three-day shifts and to calculate their wages accordingly.
- To provide a 100% insurance package for military service personnel of the External Protection and Convoy.

823 Undertake construction works and improve conditions of bathrooms at Second, Fifth, Six, Fourteenth, Fifteenth, and Seventeenth units of external protection and convoy, at the training center for Geguti Military Servicemen, and at the towers located on the external perimeter of the penitentiary establishments.

28. RIGHTS OF PERSONS WITH DISABILITIES

2017 did not witness any notable improvement in the realization of rights of persons with disabilities (PWDs). Long-standing challenges continued to persist in the reporting period as well, especially with regards to the proper realization of the rights of PWDs to education, health, rehabilitation, access to labour and employment, and participation in political and social life.

With four years having passed since ratification of the UN Convention on the Rights of Persons with Disabilities, the state still lacks an effective enforcement mechanism, a fact which hinders implementation of the convention. Drafting a government ordinance on the formation of a new mechanism with the involvement of an international expert should be commended as a positive step,⁸²⁴ however, neither PWDs nor the relevant organizations were informed of or consulted about this decision in a timely manner, a fact which runs counter to the principles of the convention.

The parliament of Georgia has not yet ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.⁸²⁵ This prevents interested persons from using an individual mechanism to appeal to the relevant UN committees regarding violations of rights.

It is worth noting that the draft law on the rights of PWDs was written during the reporting period. The document sets out the main principles and mechanisms of equal, non-discriminatory access for PWDs, including women, girls, and children with disabilities, in various spheres. According to available information, the parliament intends to consider and initiate voting on the draft law during its spring session in 2018.⁸²⁶

In 2017, the Administration of the Government of Georgia launched the process of drafting the Action Plan of the Government of Georgia on the Protection of Human Rights (2018-2020). The content of the government's draft action plan, as well as its procedural aspects, has attracted criticism from civil society and, in particular, the PWD community. Moreover, according to the draft action plan, transfer to a modern system of disability assessment (the so-called "social model") is planned by 2020, which will further delay the process of implementing the convention.

28.1. ACCESSIBILITY

Ensuring persons with disabilities have access on an equal basis to the physical environment, transportation, information, and communications is one of fundamental prerequisites for guaranteeing realization of the rights of PWDs, and it requires a complex approach.

It should be noted that the Georgian legislation is inconsistent with the requirements of the UN Convention on the Rights of Persons with Disabilities. Moreover, in terms of accessibility, no nationwide study has been

824 According to the administration of the government of Georgia (the letter N36542-06.12.2017), the mentioned ordinance will be adopted in the foreseeable future.

825 According to letter N14824/3-39 of the parliamentary committee on human rights and civil integration, the optional protocol of the convention will be ratified during the 2018 spring session.

826 The letter of the parliamentary committee on human rights and civil integration N14824/3-39, 15 December 2017.

conducted into the needs of PWDs. This is despite the fact that use of social facilities, municipal transport, and road infrastructure by PWDs is a matter of concern across the country. In 2017, a new underground station “Universiteti” was commissioned which, against the recommendation of the Public Defender,⁸²⁷ is not accessible for PWDs.

Bringing accessible buses into the capital city was a positive development; however, given the scale of the problem, it is necessary to introduce accessible transportation into all bus routes. Government ordinance No. 41 on the Approval of Safety Rules for Buildings and Structures entered into force on January 1, 2017,⁸²⁸ with Chapter 11 (Accessibility) regulating the planning and construction of facilities accessible for PWDs.⁸²⁹ In contrast to government ordinance No. 41 of January 6, 2014 on the approval of Technical Regulation of the Arrangement of Space and Architectural and Planning Elements for Persons with Disabilities, the provisions of the document adopted during the reporting period rest on US standards of universal design,⁸³⁰ something which must be assessed as a positive step.

Lack of realization of the right to access remains an especially acute problem in the regions. Analysis of information provided to the Public Defender by self-government bodies makes it clear that practice is not uniform in municipalities, which results from imperfect legislation regulating the arrangement of space as well as disregard for enforcement.

A number of municipalities have not introduced construction standards regulating the arrangement of space for PWDs and do not conduct relevant monitoring.⁸³¹ Moreover, the above-mentioned regulation is not perceived as part of construction legislation, but rather a separate document which applies only to newly-built and renovated buildings and not to the modification of old buildings. The lack of practice of using repressive measures, however, indicates that local self-governments do not apply mechanisms of warning and penalizing to violations of the accessibility requirements for PWDs.

After municipal infrastructure services submit design documentation, construction permits are issued and technical supervision of the construction is carried out by the relevant units of executive bodies.⁸³² However, the design documentation itself is sometimes not sufficiently detailed, only indicating, in general terms, the obligation to accommodate PWD needs. Another problem is effective inspection of the construction process after issuance of the permit.

In 2017, the Office of the Public Defender studied the use of parking spaces by PWDs. Based on the results of the study, the Public Defender issued recommendations⁸³³ to the relevant municipal councils to ensure unimpeded use of parking spaces by PWDs. The local self-government bodies accepted the Public Defender’s recommendations and implemented or planned changes to ordinances regulating the issue.⁸³⁴

827 The Public Defender’s recommendation, dated 28 October 2015, on Ensuring Access to Underground Station Universiteti for PWDs. Available at: <https://drive.google.com/file/d/0B9BM3M8hbgAUOVA5eFVSM0ZRcGs/view>.

828 The Government of Georgia ordinance N41, dated 28 January 2016, on the approval of Safety Rules for Buildings and Structures. Information is available at: <https://matsne.gov.ge/ka/document/view/3176389> [last accessed on 15.02.2018].

829 The document ICC A117.1-2009, Accessible and Usable Buildings and Facilities, was adopted by the Civil Rights Division of the US Department of Justice in 2009.

830 The document ICC A117.1-2009, Accessible and Usable Buildings and Facilities, was adopted by the Civil Rights Division of the US Department of Justice in 2009.

831 Lentekhi, Tianeti, Ninotsminda, and other municipalities.

832 Mtskheta, Ozurgeti, Lagodekhi, Tkibuli, Kaspi, and other municipalities.

833 The Public Defender’s recommendation of 5 December 2017 on Unimpeded Use of Parking Places by PWDs. The document is available at: <http://www.ombudsman.ge/ge/news/saxalxo-damevelis-rekomendacia-shshm-pirta-mier-parkirebis-adgilebit-daubrkleblad-sargeblobis-sheaxebe.page> [last accessed on 13.02.2018].

834 The letter of Batumi municipal council N698-12, 15 December 2017; the letter of the mayor of Gori municipality N10/4/826, 21 December 2017; the letter of the mayor of Zugdidi municipality N04-4004, 4 August 2017; the letter of Poti municipal council N2-06/407, 13 December 2017.

28.2. THE RIGHT TO EDUCATION

Proper realization of the right of PWDs to education remains a serious challenge at all levels of education. Incomplete legislation on inclusive education, an inconsistent approach to the needs of PWDs, and other factors hindering the integration of PWDs into the education system impede access to education by these persons.

There are issues remaining on the legislative level that require revision and improvement. With regards to access to education, the Law of Georgia on General Education⁸³⁵ places emphasis only on geographic and language barriers while disregarding disability as a significant factor. A matter of concern is the failure to determine the status of special-needs teachers and a model for the professional development of such teachers.⁸³⁶ Problems arise in practice due to failure to: amend legislation in order to eliminate barriers to interagency exchange of information regarding children with disabilities; develop a mechanism for monitoring children at risk of dropping out of school; and a strategy to prevent children from dropping out.

Despite some positive changes in the area of preschool education,⁸³⁷ it is still difficult to conduct a situational analysis at the preschool education level⁸³⁸ and to develop an individual schedule and teaching plan tailored to the needs of children when enrolling them in kindergarten.

Statistical data on children with disabilities engaged in preschool and general education is still unavailable.⁸³⁹ The Ministry of Education and Science is not aware of the number and needs of children with disabilities who are left out of the formal education system. The absence of this information makes it difficult to plan and implement relevant interventions.

The cases studied by the Public Defender's Office⁸⁴⁰ show the needs of disabled children are not taken into consideration, and disabled children are subject to discrimination.⁸⁴¹ Moreover, factors hindering the integration of disabled children into formal education include: the absence of a mechanism for seeking and identifying out-of-school children with disabilities facing risk of marginalization; the lack of a strategy for managing difficult behaviour; often inaccessible physical environments and insufficient educational resources;⁸⁴² inadequate transportation; insufficient coordination among state agencies; and inadequate responses to incidents of violence; among others.⁸⁴³ A shortage of specialists (special teachers, psychologists, coordinators) and the low level of qualification adversely affect the quality of inclusive education.⁸⁴⁴ A tendency to use resource rooms for purposes other than that intended was also observed during the reporting period.⁸⁴⁵ However, the Ministry of Education and Science should be commended for taking effective steps in response to the recommendation of the Public Defender on this issue.

835 The Law of Georgia on General Education. Information is available at: <https://matsne.gov.ge/ka/document/view/29248> [last accessed on 15.02.2018].

836 Correspondence MES 8 17 01456023; MES 7 17 00961284.

837 On 6 June 2016, the law on Early and Preschool Education was adopted; on the basis of this law, the municipalities approved relevant ordinances in 2017. Information is available at: <https://matsne.gov.ge/ka/document/view/3310237> [last accessed on 15.02.2018].

838 Correspondence of the Ministry of Education and Science MES 4 17 01438173.

839 Correspondence of the Ministry of Education and Science MES 2 17 01330882.

840 Cases studied by the Office of Public Defender of Georgia: N13058/16, N8110/17, N14942/16, N5324/17, N14530/16, N8606/17, 14028/17, N13058/16.

841 The Public Defender's recommendation, dated 7 December 2017, on the establishment of indirect discrimination on grounds of health. Information is available at: <http://www.ombudsman.ge/ge/news/saxalxo-damcvelma-specialuri-saganmanatleblo-sachiroebibis-mqone-bavshvis-mimart-iribi-diskriminacia-daadgina.page> [last accessed on 15.02.2018].

842 Correspondence MES 8 17 01456023. Supporting educational resources were printed only for Georgian language and mathematics courses.

843 The Public Defender's proposal, dated 3 January 2017, on the realization of the right to education of out-of-school children with disabilities. Information is available at: <http://www.ombudsman.ge/ge/news/winadadeba-saganmanatleblo-sistemis-migmadarchenili-shshm-bavshvebis-ganatlebis-uflebis-realizebis-taobaze.page> [last accessed on 15.02.2018].

844 This was proven once again during the visits of representatives of Public Defender to general educational institutions on 9-10 October 2017 (16 schools).

845 The Public Defender's recommendation, dated 20 June 2017, on eliminating the practice of using resource rooms for election purposes. Information is available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendacibi/rekomendacia-sadjaroskolebis-resurs-otaxebis-saarchevno-miznebisvis-gamoyenebis-praktikis-agmofxvris-sheaxebe.page> [last accessed on 15.02.2018].

Despite the possibility to obtain vocational training in an accessible environment (due to the accessibility of vocational education institutions), the quality both of education and employment remains a problem.

The situation has remained largely unchanged on the level of higher education. PWDs still have no access to educational institution infrastructure, materials, and programs.

28.3. THE RIGHTS OF PWDS TO HEALTH

Although Georgia's universal healthcare program takes into consideration the interests of PWDs, this community still faces a number of challenges in realizing the right to health. The problems are evident in accessing the physical environment, including the infrastructure of medical facilities, as well as lack of information, affordability of medications and means of hygiene, and effective communication with medical personnel.

There was a case during the reporting period when the parent of a disabled child encountered difficulties receiving compensation for medical services rendered to her child by a clinic. In particular, it is not made clear to program beneficiaries what types of services are covered by the state under the universal healthcare program.⁸⁴⁶

It is difficult, under the abovementioned program, for PWDs to receive care at inpatient mental institutions. In reality, no diagnosis or treatment of somatic diseases is available. The situation is even worse when it comes to co-funding medical services, as the majority of patients are not able to pay for services directly.

Enrolment in the state Hepatitis C elimination program is problematic for patients of inpatient mental institutions, as well.⁸⁴⁷ This program is not available to persons receiving long-term inpatient mental health treatment.⁸⁴⁸

Realization of the right to reproductive and sexual health is problematic for women and girls with disabilities, partially due to the lack of suitable infrastructure and equipment at medical institutions. Apart from that, communication about existing services, especially encouragement to take part in them, remains a challenge.

Mental health

Mental health is a serious challenge to ensuring realization PWDs' right to health. A commendable development is the increase of the budget of the mental health state program by GEL 5 million in 2018.⁸⁴⁹ Nonetheless, a number of issues still need to be addressed urgently.

In this regard, it is important to implement the activities set forth in the document of strategic development of psychiatric healthcare and its action plan covering 2015-2020.⁸⁵⁰

Monitoring of the action plan showed that implementation of the majority of activities specified in the document has been delayed.⁸⁵¹ Work on developing the program on the prevention of suicide in persons

846 The case N14798/17 studied by the Office of Public Defender.

847 The case N16641/17 studied by the Office of Public Defender.

848 Letter N01/77397 of the Ministry of Labor, Health and Social Affairs of Georgia, 15 December 2017.

849 The ordinance of the government of Georgia N592, dated 27 December 2017, on the approval of the 2018 state health care program, Annex 12. Information is available at: <<https://matsne.gov.ge/ka/document/view/3972595>> [last accessed on 13.02.2018].

850 The ordinance of the government of Georgia N762, dated 31 December 2014. Available at: <<https://matsne.gov.ge/ka/document/view/2667876>> [last accessed on 12.02.2018].

851 Information on the implementation of activities set forth in the mental health development action plan for 2015-2020 was communicated to the Office of Public Defender through the letters of the Ministry of Labour, Health and Social Affairs (N01/75299), the Ministry of Education and Science (MES 6 17 01438689), and the Ministry of Corrections (MOC 8 17 00937251).

with psychosocial needs has also been delayed. Yet another delayed process is the harmonization of Georgia's legislation on mental health with international standards.

Moreover, long- and short-term programs have not been developed to mobilize society to raise awareness about mental health issues. Informational and educational activities carried out by the state to reduce stigmatization of persons with mental disabilities through raising awareness in society at large are insufficient.

Effective steps have not been taken to: train primary healthcare personnel on issues of mental health; draw up a long-term strategy on human resource development; raise awareness among students; and increase the number of mental health residents and holders of master's degrees in the relevant sphere.

Measures undertaken to ensure the field has adequate qualified personnel are insufficient, creating serious challenges to proper realization of the right of the child to mental health services.

The absence of a deinstitutionalization strategy for mental health patients must be assessed as a negative fact.

The practice of hospitalizing 15-18-year-olds with psychosocial needs is problematic. The existing legislation allows for the placement of 15-17-year-olds in the adult ward, which runs counter to the best interests of the child and the rights stipulated under international law.⁸⁵² Children's and adult mental health wards apply different standards and, in such cases, juveniles are treated as adults. This puts them at risk of violence and neglect. Over the period from December 2015 to November 2017, as many as 228 minors 15-18 years of age who were placed in adult wards were subjected to such treatment.⁸⁵³

2017 did not witness an increase in financial means for psychosocial rehabilitation (70,100 GEL was allocated); such small funding cannot ensure the introduction and implementation of effective rehabilitation methods in both inpatient and outpatient healthcare institutions.

The number of patients hospitalized for more than six-month intervals remains high.⁸⁵⁴ The number of persons who are placed in mental institutions due to social and economic conditions and lack of shelter also remains high.⁸⁵⁵

An issue that complicates the provision of voluntary psychiatric treatment, in cases of adults and children, is the authenticity of expressions of consent by the patient. On the one hand, existing legislation obligates an institution, when voluntarily hospitalizing a child, to take any decision with the consent of the child. On the other hand, it leaves the full right to express consent with the child's legal representative. Mental health institutions consider this provision to be ambiguous,⁸⁵⁶ especially in cases when the child disagrees with the treatment provided.

Practice shows that ambiguous regulation of this issue causes confusion among institutions when obtaining informed consent from adults receiving treatment; as a result, the person's will is often replaced.

28.4. REHABILITATION

Rehabilitation of PWDs is a prerequisite for full-fledged realization of their rights to health, education, employment, participation in social life, and independent living.

852 Paragraph 13 of Article 3 of the decree of the Minister of Labour, Health and Social Affairs N87/N, dated 20 March 2007, on Approval of the Rule of Placement in Mental Hospital.

853 The letter of the Ministry of Labour, Health and Social Affairs N01/3857 (23.01.2018).

854 In particular, in 2017, as many as 783 patients stayed in hospital for more than six months under the component of the state program on mental health, Inpatient Service – Mental Inpatient Service to Adults and Children with Mental Disorders.

855 Detailed information about the conditions in mental institutions is provided in the chapter of this report, 'Mental Health Institutions'.

856 Paragraph 2 of Article 8 and Paragraph 1 of Article 17 of the Law of Georgia on Psychiatric Care. The document is available at <<https://matsne.gov.ge/ka/document/view/24178>>; [last accessed on 13.02.2017].

Various components of the State Program on Social Rehabilitation and Child Care⁸⁵⁷ provide limited support to the social rehabilitation of PWDs. Among them are the Children Rehabilitation subprogram and the Early Childhood Development subprogram.

Despite positive changes implemented in 2017 under the Early Childhood Development subprogram,⁸⁵⁸ the program fails to fully meet existing needs, and beneficiaries of the program have to wait to receive services. In 2017, some 630 beneficiaries received services under the Early Childhood Development subprogram whereas 464 remained on the waiting list.⁸⁵⁹

In 2016-2017, the geographic coverage of the Children Rehabilitation subprogram increased and seven new service providers⁸⁶⁰ started to operate within the scope of the program. However, this expansion only partially improved the satisfaction of existing needs. In 2017, some 791 beneficiaries received services under the Children Rehabilitation subprogram, which amounts to only 8% of PWDs under 18 years of age.⁸⁶¹

Realization of the right to rehabilitation by adult PWDs is also problematic. The state program for their rehabilitation does not cover important services such as therapeutic intervention including physical therapy, occupational therapy, psychological correction, mobility and orientation, and spatial orientation, among others. Adult PWDs receive certain rehabilitation services only if they are both war veterans and day care centre beneficiaries. Even in this case, the number of service beneficiaries and the volume of services provided do not correspond to existing needs.

With regard to this issue, in 2017 the Public Defender drew up a proposal to the Government of Georgia which recommended adult PWDs be ensured rehabilitation services;⁸⁶² however, the Public Defender is not aware of whether it has been considered by the Government.

28.5. THE REALIZATION OF THE RIGHT OF PWDS TO LABOUR AND EMPLOYMENT

Realization of the right to labour is an important prerequisite for PWDs' independent living. Nevertheless, challenges with regard to PWD employment have been topical for many years now. Despite some advancements in terms of state programs for promotion of employment, PWD employment statistics have not shown any notable improvement.

Monitoring conducted by the Public Defender in 2017⁸⁶³ shows that PWDs face serious problems obtaining employment. Employment is mainly possible through the separate initiatives of various organizations who are supported by the state. Once the support provided under the state program expires, labour relations with the PWDs are terminated. Lack of access to the physical environment remains a significant barrier for PWDs in reaching places of employment, performing work-related tasks, and integrating into society in general.

857 The ordinance of the government of Georgia N121, dated 9 March 2017, on the approval of 2017 state program on social rehabilitation and child care.

858 According to the 2017 program, the number of financed visits per month was increased. Moreover, the Minimum Standards for Early Intervention Service for Children were approved under decree N01-188/O, dated 18 August 2017, of the Ministry of Labor, Health and Social Affairs.

859 The letters of the Ministry of Labour, Health and Social Affairs N04/73175 (27.11.2017) and N01/8293 (13.02.2018).

860 Kakheti, Tbilisi, Kvemo Kartli, Samegrelo, and Adjara.

861 According to the letter of the Ministry of Labour, Health and Social Affairs N01/8293 (13.02.2018), there are 73 beneficiaries on the waiting list for the program.

862 The Public defender's proposal of 18 August 2017 to ensure adult PWDs have access to rehabilitation services. Available at: <http://www.ombudsman.ge/uploads/other/4/4692.pdf>.

863 Over June-December 2017, the Office of the Public Defender of Georgia carried out monitoring of the implementation of state programs on promoting employment of PWDs, which, along with desk research, also involved focus-group meetings in Tbilisi and Yerevan.

Employment wages are very low, which, coupled with other barriers, makes PWD employment unprofitable from the perspective of the worker.

Under the current legislation, the employment of PWDs in the public sector entails the restriction of their rights to social assistance.⁸⁶⁴ In this regard, the Public Defender of Georgia, on May 31, 2017, issued a recommendation⁸⁶⁵ to the Government of Georgia on finding a fact of direct discrimination of PWDs with severe and moderate disability on the ground of employment, but the recommendation was not accepted.

Under the existing regulations,⁸⁶⁶ in certain instances employment precludes the right to subsistence allowance. Refusal to issue monetary allowance because of employment is a significant discouragement for these persons to take paid jobs.

During the reporting period, the employment of PWDs was promoted through several programs approved by the Government of Georgia.⁸⁶⁷ However, the programs envisage largely identical measures and fail to fully consider important and complex aspects of employment promotion.

According to the data provided by the Ministry of Labour, Health and Social Affairs,⁸⁶⁸ the number of job-seeking PWDs engaged in the programs significantly exceeds the number of actually employed PWDs, which demonstrates the issue of employment has not been dealt with effectively.

In 2017, as many as 3,535 job-seeking PWDs were registered on the employment portal www.worknet.gov.ge. By contrast, the number of PWDs who received employment in 2016-2017 under the state programs amounted to only 161.

It is also noteworthy that measures undertaken to control the quality of employment promotion services envisaged by the programs are insufficient, and PWDs and/or their representative organizations are not involved in monitoring or evaluating the programs.

There is also a need to enhance awareness-raising campaigns designed to combat stereotypes and misconceptions about PWDs. Moreover, awareness among PWDs themselves must be raised concerning the services and programs offered to them in the area of employment.

28.6. PARTICIPATION IN POLITICAL AND PUBLIC LIFE

The Right to vote

Participation in elections is an important component of involvement in public decision-making processes. The inaccessibility of physical environments, services, and information throughout the country are key factors hindering the realization of this right.

There is a need to improve election legislation⁸⁶⁹ regulating the physical accessibility of polling stations as

864 Persons with severe visual impairment represent an exception, Paragraph 4 of Article 6 of the ordinance of government of Georgia N279 on Determining the Social Package, 23 July 2012.

865 Available at: <http://ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/saxalxo-damcvelma-saqartvelos-mtavobas-kerdzo-da-sadjaro-seqtorshi-dasaqmebul-shshm-pirebs-shoris-diskriminacii-agmofxvrisaken-mouwoda.page>.

866 The ordinance of government of Georgia N758, dated 31 December 2014, On the Approval of Assessment Methodology of Social and Economic Conditions of Vulnerable Families (Households).

867 The State Program for Social Rehabilitation and Child Care 2017, Program for the Development of Employment Promotion Service, State Strategy of Labor Market and Labor Market Strategy Action Plan 2015-2018, State Program of Vocational Education and Training and Upgrade of Qualification.

868 The letter of the Ministry of Labour, Health and Social Affairs N01/71122, the letters of the LEPL Social Service Agency N04/39865, N04/7381, and N04/44997.

869 Articles 58 and 63 of the Election Code of Georgia.

well as a need for adjustment of the voting process. The legislation does not clearly specify the obligations of electoral commissions and other state agencies, thereby, in practice, allowing room to delegate responsibilities.

A commendable development is the novelties introduced by the Central Election Commission (CEC) to improve to polling stations;⁸⁷⁰ however, despite the declared policy of the CEC to ensure an inclusive election environment, the measures undertaken to this end are insufficient.

Analysis of statistical data⁸⁷¹ provided by the CEC discerns serious impediments to realization of PWDs' right to vote. According to this data, a total of 7,027 PWDs participated in the parliamentary election of 8 October 2016, with the number dropping to 3,353 in the 21 October 2017 local election.⁸⁷² It must be noted that the official data of the LEPL Social Service Agency indicates 114,928 adult PWDs as of October 2017,⁸⁷³ with 2.9% (3,353 PWDs) of the total having taken part in the most recent election. Comparison of this indicator with total voter turnout, which, according to the CEC, was over 45% on 21 October,⁸⁷⁴ clearly indicates an unequal electoral environment.

According to the CEC,⁸⁷⁵ during the 2017 local elections, out of total 3,634 polling stations, only 1,156 stations were adapted to accommodate PWDs (i.e., less than one-third of them). Consequently, roughly 70% of polling stations are not accessible to PWDs. It should be noted that the level of accessibility falls short of standards established under the UN Convention.⁸⁷⁶

The monitoring conducted by the non-profit legal entity Coalition for Independent Living⁸⁷⁷ on the polling day for local elections, on 21 October 2017, showed the majority of polling stations were either inaccessible for PWDs or adapted in breach of standards. According to the organization, the election map⁸⁷⁸ displayed on the CEC webpage, which provides information about accessible polling stations, is not accurate. Moreover, out of 60 inspected accessible polling stations, 20 lacked a special voting cabin. The monitoring also detected serious shortcomings in casting ballots by blind and visually-impaired persons. Members of election commissions were either ignorant or had superficial knowledge of regulations for using special frame-form and magnifying lenses. Precinct election commission members also displayed lack of qualifications and awareness of the needs of PWDs.

Involvement of PWDs in the development of local municipal budget priorities

In order to fully realize their human rights, PWDs and their representative organizations must be effectively involved in local self-government activity and decision-making on PWD issues.

During the reporting period, a study was conducted into the involvement of PWDs and their representative organizations in the drafting of the 2018 budget priorities document by local self-government bodies.⁸⁷⁹

According to obtained information, PWDs and their representative organizations were involved in this process in only 21 municipalities. Since the information contains only general data, it is difficult to analyse the entire

870 Adjustment of the CEC webpage for visually impaired persons, provision of election information in audio format, sign language interpretation of CEC video clips and news briefings on the election day, and the possibility to use special frame/form and magnifying lenses for visually-impaired voters, among other things.

871 Letters from the Central Election Commission N07/1717, 29 September 2017 and N07/208, 12 February 2018.

872 181 persons in a wheelchair, 150 deaf/with hearing problems, 433 blind, and 2,324 visually impaired, 265 receivers of support.

873 Official webpage of the LEPL Social Service Agency, available at: http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=1191 [last accessed on 15.02.2018].

874 Official webpage of the CEC: <file:///C:/Users/rkokhodze.OMBUDSMAN/Downloads/monacileqalebi.pdf> [last accessed on 15.02.2018].

875 Information is available at: <https://map.cec.gov.ge/> [last accessed on 12.02.2018].

876 Article 9 of the UN Convention on the Rights of Persons with Disabilities.

877 The monitoring report is available at the webpage: http://disability.ge/images/stories/pdfs/21.10.2017____-2.pdf [last accessed on 12.08.2018].

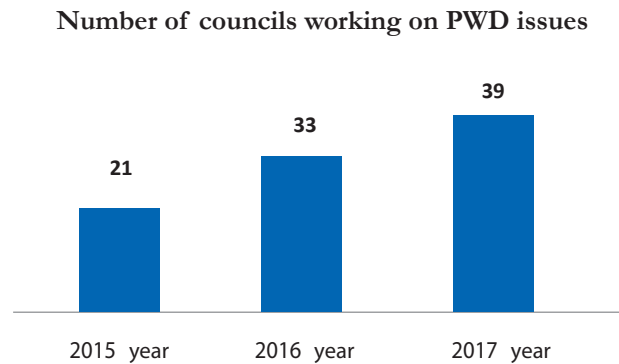
878 Information is available at: <https://map.cec.gov.ge/> [last accessed on 12.02.2018].

879 The Office of Public Defender requested information from 64 municipalities.

picture of the drafting process. Moreover, it gives rise to doubts that the participation of PWDs and their representative organizations in drafting the 2018 priorities document was formal.

The establishment/operation of regional and local councils working on PWD issues

Study of the establishment and operation of regional and local councils working on PWD issues showed that, as of 2017, such councils had been established in 39 municipalities.



However, information supplied by the municipalities does not provide a clear picture of conducted meetings and the involvement of PWDs and their representative organizations in decision-making processes (the documentation is not enclosed with meeting protocols), which gives rise to doubts that the process of establishment and operation of councils, save few exceptions, are of a nominal nature.

PROPOSAL TO THE PARLIAMENT OF GEORGIA:

- To ensure ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.
- To carry out a full harmonization of national legislation with the Convention on the Rights of Persons with Disabilities to ensure timely introduction of a social model of assessment and incorporation of the principles of reasonable accommodation and universal design in legal regulations.

RECOMMENDATIONS

To the Government of Georgia:

- To ensure the establishment of an effective mechanism for the implementation and coordination of the UN Convention on the Rights of Persons with Disabilities with the involvement of PWDs.
- To bring national legislation regulating spatial arrangement in line with international standards of universal design and to harmonize national legislation with the UN Convention on the Rights of Persons with Disabilities.
- In sorting out the issue of regulation of accessibility, to give proper consideration to the complex nature of the issue and ensure maximum involvement of experts in the field, PWDs, and their representative organizations in the process.

- To ensure timely and effective implementation by responsible public entities of activities set forth in the 2015-2020 action plan of psychiatric healthcare development.
- To ensure an increase in the budget for the psychosocial rehabilitation component of the psychiatric health care state program so that it fully meets the existing needs of both children and adults.
- To ensure, within the scope of the state program of social rehabilitation, the development and implementation of a specialized rehabilitation subprogram for adult PWDs based on the geographic principle.
- To facilitate the involvement of PWDs in the development and monitoring of the implementation of state employment programs.

To the Ministry of Education and Science of Georgia:

- To ensure improvement of the quality and continuity of inclusive education through the revision and improvement of the existing legislative framework (preschool, general, vocational, and higher education regulatory acts)
- To carry out a situational analysis of inclusive education on a preschool education level.
- To identify factors hindering the integration of PWDs into educational processes and, in coordination with relevant entities, to work toward the elimination of these factors.
- To maintain detailed statistical data on children with disabilities engaged in the educational processes as well as out-of-school PWD children at risk of marginalization.
- To seek, identify, and offer relevant services to PWD children left out of formal education and to develop a strategy for the management of difficult behaviour and preventing students from dropping out.
- To ensure the retraining of preschool and general educational institution personnel on issues of inclusive education.

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

- To raise the awareness of PWDs about available financing for health services by disseminating information in relevant formats.
- To ensure the detailed regulation of rules and procedures of involvement of beneficiaries of inpatient mental health services in the universal healthcare program.
- To ensure the involvement of beneficiaries of long-term inpatient mental service in the state program on Hepatitis C elimination.
- To reduce the negative effects of personnel shortages within a short period, ensure the retraining of psychiatrists in the subspecialty of child psychiatry.
- To draw up clear instructions ensuring accurate expression of will in giving informed consent for voluntary inpatient mental assistance, including by minors and persons receiving support.

- To step up activities towards deinstitutionalization in the field of mental healthcare, including through establishing shelters through community organizations and family-type homes.
- To ensure the improvement of the database for PWD job seekers and of the employment situation in general;
- To strengthen measures designed to promote the employment of PWDs in the private sector and to raise awareness of employers and other members of society.

To the Central Election Commission:

- To ensure the accessibility of the physical environment of polling stations, strengthen cooperation with relevant local self-government and central government bodies;
- To enhance measures designed to ensure an inclusive environment, inter alia, to train election administration members on issues pertaining to PWD voters and the correct application of existing assistive devices.

To Local Self-governments:

- To ensure the implementation of construction standards of spatial arrangement for PWDs and effective monitoring of their enforcement. Moreover, in case of need, to apply preventive and repressive measures (denial to issue a permit, inspection, penalizing, and dismantling, among others) against structures that are being constructed as well as those that are already constructed.
- To study needs with regard to accessibility on the municipal level; also, to undertake measures for ensuring PWDs' access to municipal transport and road infrastructure.
- To ensure the delivery of preschool and other forms of education, including school preparation programs, to PWD children of preschool age.
- To ensure the participation and proper involvement of PWDs and their representative organizations in public decision-making processes.

29. THE RIGHTS OF ELDERLY PERSONS

Among measures undertaken by the state in 2017, a positive step towards protection of the rights of elderly persons was adoption of the 2017-2018 action plan of the State Policy on Aging in Georgia.⁸⁸⁰ It should be mentioned this step was taken at the end of 2017, however. As a result, the responsible entities are left with only one year to fulfil the obligations set forth in the action plan.

Grave social and economic conditions facing elderly persons remained a challenge during the reporting period. The applications to the Public Defender's Office make clear that social services and adequate living conditions are not available to a large segment of the elderly population; there is a shortage of programs designed to benefit them and local measures to ensure their wellbeing fail to meet existing needs.

Elderly people often become victims of violence, including from family members. There are difficulties in identifying instances of violence and, when identified, the authorities often fail to undertake adequate responses to protecting victims from repeat acts of violence.

29.1. SOCIAL PROTECTION OF ELDERLY PERSONS

Social protection remains a serious challenge in terms of realizing the rights of elderly persons. Social guarantees offered by the state often fail to even ensure minimal living standards.

The existing social assistance system for elderly persons is basically limited to issuance of a retirement pension to citizens having reached retirement age; the amount of the pension is too small to provide adequate nutrition and medication. Therefore, there is an urgent need for timely implementation of pension reform that would make it possible to ensure pensioners have an adequate basic income.⁸⁸¹

Beneficiaries still face difficulties receiving a monetary allowance after being registered in the database on socially-vulnerable families. A large amount of cases studied by the Public Defender's Office⁸⁸² concern precisely the problem of termination and resumption of issuance of the monetary allowance. According to many of the applications received, monetary social assistance was terminated or denied to families of elderly beneficiaries. A large segment of the population believes they were awarded inaccurately high scores as a result of assessment, scores which were not changed after re-examination or repeated assessment. This issue is, inter alia, problematic because the awarded scores are often correlate directly with the ability to use social programs on the local level, including the order of placement in specialized residential institutions, receipt of medication assistance and one-off assistance, and use of the soup kitchen program, among other benefits.

Elderly persons represent a target group of separate subprograms of the State Program for Social Rehabilitation and Child Care⁸⁸³ (supporting the rehabilitation of war veterans, provision of assistive devices, and community

880 The ordinance of the government of Georgia N490 of 2 November 2017 on the approval of the 2017-2018 action plan of the State Policy on Aging in Georgia. Information is available at: <<https://matsne.gov.ge/ka/document/view/3842647>> [last accessed on 12.02.2018].

881 This measure is a priority of the 2017-2018 action plan of the State Policy on Aging in Georgia.

882 Of 55 cases studied in 2017, 31 cases concerned this issue.

883 The ordinance of the government of Georgia N121, dated 9 March 2017.

organizations). However, judging by the waiting list of service seekers, elderly persons either are not involved in programs or are able to benefit from them only after delays.

Specialized residential services operating in the country also fail to meet the needs of the elderly living in residential institutions.⁸⁸⁴ Because of overcrowding, moratoriums are declared time and again on registering additional beneficiaries.

Care for social wellbeing of elderly persons on the local level

In realizing the rights of elderly persons, it is important to study the needs of these persons on the local level, to plan targeted programs and services, and to ensure the provision of necessary financial resources.

To monitor this issue, the Public Defender's Office analysed information about programs and services and relevant funding allocated in local municipal budgets for the needs of elderly persons. The analysis revealed positive development in this direction, including the establishment and provision of home care services for the elderly through funding and co-funding schemes.⁸⁸⁵ It should be noted that it is important to monitor the quality of this service in the process of delivery. Various social services are also rendered in several municipalities.⁸⁸⁶ Other programs envisaged by local self-government budgets are mainly limited to measures such as the financing of utility fees, soup kitchens, monetary assistance for the purchase of medications, coverage of treatment and rehabilitation costs, and one-off monetary assistance for elderly persons who are at least 100 years old and veterans of World War II.

Registration in a common database of socially-vulnerable persons is a prerequisite for the involvement of beneficiaries in some local programs (such as the provision of medication and free transportation), though this registration gives rise to certain barriers in benefitting from the programs.

The majority of municipal budgets do not cover the provision of shelter. However, in certain cases, such as within the scope of the program on the provision of rent to indigent families, the elderly have the opportunity to receive support.⁸⁸⁷

As regards measures undertaken to develop proper infrastructure for the elderly, including relevant accommodation and equipment in public spaces and transport, information provided by the municipalities mainly references the placing of ramps in parks and on public buildings.

29.2. VIOLENCE AGAINST ELDERLY PERSONS

According to the report of the Special Rapporteur on Violence Against women, its Causes and Consequences, elderly persons in Georgia are subject to various forms discrimination, which increases their vulnerability.⁸⁸⁸ This is further demonstrated by increased applications to the Public Defender's Office concerning instances of domestic violence against the elderly.

884 In 2017, as many as 130 elderly persons benefited from services envisaged in the community service subprogram while 80 beneficiaries were on the waiting list. (The letter of the Ministry of Labor, Health and Social Affairs of Georgia N01/8293). The waiting list for elderly persons seeking assistive aids is comparatively shorter; no waiting lists are observed in a certain part of subprogram components. (The letter of the Ministry of Labor, Health and Social Affairs of Georgia N04/10828).

885 The municipalities of Tbilisi, Kutaisi, Batumi, Poti, Bolnisi, Tetrtskaro, Keda, Gori, Sachkhere, Sagarejo, Samtredia, and Lagodekhi.

886 An integrated day center in Chokhatauri municipality serves elderly citizens along with other beneficiaries (it offers free sewing and washing services). In Telavi municipality, the elderly are offered washing services, though this service does not fully meet their needs. A social washing service operates in Khoni municipality.

887 Gori, Senaki, Chkhorotsku, and Martvili municipalities.

888 Information is available at: <http://www.ombudsman.ge/uploads/other/3/3867.pdf>.

Study of the issue provides grounds to say that measures of protection and assistance of women victims of violence and domestic violence are not properly adapted to the needs of the elderly, and these services must be improved in this regard. In particular, on the one hand, law enforcement authorities find it difficult to identify cases of violence against older persons, while on the other hand, psychosocial and economic rehabilitation programs for victims of violence do not fully meet the needs of the elderly. For these reasons, the protection of elderly people from continuous violence remains inadequate.

The information provided by the Information-Analytical Department of the Interior Ministry does not provide separate data on violence against the elderly; however, analysis of restraining orders suggests that the most vulnerable group among women victims of violence consists of women above 45 years of age (1,070 issued restraining orders); 278 restraining orders were issued to protect men victims of the same age category from violence.

RECOMMENDATIONS

To the Government of Georgia:

- In order to ensure proper social protection of elderly persons, to enhance social protection guarantees for the elderly, including increase of the monthly pension within the scope of retirement reform.

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

- To develop and implement, at the national level, targeted programs oriented toward the needs of elderly, including the home care service program, which take into account geographic access.
- To ensure the development of community services tailored to the needs of the elderly, increasing the number of community organizations by taking into account geographic access and quality control of provided services.

To the Ministry of Internal Affairs of Georgia:

- For the purpose of studying specific aspects of violence against women, to collect and analyse statistical data on violence against elderly persons.

To local self-government bodies:

- On the basis of study of the needs of elderly persons living on the territory of a municipality, to develop targeted programs and allocated necessary funding in local self-government budgets.

30. THE HUMAN RIGHTS SITUATION OF THE CONFLICT-AFFECTED POPULATION

The human rights situation of conflict-affected communities residing in both Georgian-controlled and occupied territories remained dire in 2017. Subjection to subject to inhumane and degrading treatment as well as violation of the rights to liberty and security, , restriction of freedom of movement and expression, and violation of the right to native-language education feature on a long list of violations which local communities much cope with on a daily basis.

In spite of numerous demands and recommendations to the Russian Federation and the de facto authorities, international human rights organizations and watchdogs are not able to access the occupied territories in order to monitor the human rights situation there, which, in turn, results in a scarcity of information pertaining to the human rights situations in these territories.⁸⁸⁹ Nevertheless, the Public Defender continues to pay close attention to human rights issues in the occupied territories.

The Georgian government continued to implement important educational, social, health, and infrastructural projects aimed at improving the socio-economic conditions of conflict-affected communities. However, considering the dire situation, the Public Defender believes the Georgian government should expand the scope of state-funded programs and make them more easily accessible to conflict-affected communities, in particular those residing in the occupied territories. These programs should cover educational and healthcare projects as well as social and economic assistance initiatives. The Georgian government should develop well-coordinated, flexible, and needs-based mechanisms both at the legislative and practical levels.

At the same time, the Russian Federation, as the state exercising effective control, must be held responsibilities for human rights violations committed in the occupied territories.⁸⁹⁰

30.1. ISSUES OF SECURITY AND FREEDOM OF MOVEMENT OF CONFLICT-AFFECTED INDIVIDUALS

The year of 2017 was marked by the continuous process of so-called “borderization”, which began in 2009 and has been accompanied by a series of human rights violations of liberty and security, property, and freedom of movement. Signs indicating the presence of a so-called “border” have been installed at several points along the Administrative Boundary Line with South Ossetia, as a result of which the local population’s access to farmland has been further restricted.⁸⁹¹

During the reporting period, the State Security Service of Georgia reported 126 cases of detentions over the Administrative Boundary Line with South Ossetia. The figure suggests a slight decrease compared to previous years, with 134 individuals detained in 2016 and 148 in 2015. The number of detention cases on the Abkhazian

889 The report of the United Nations High Commissioner for Human Rights in cooperation with Georgia. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1724097.pdf> [Last accessed 02.03.2008].

890 On the responsibility of a country exercising effective control, see *Catan and others v. the Republic of Moldova and Russia*, §§102-107; also, *Cyprus v. Turkey*, §§102-107.

891 For example, as a result of a banner installed on 4 July 2017, G.K., a resident of the village of Bershueti, Gori municipality, can no longer access his 10 hectares of land.

Administrative Boundary Line was 52 (compared to 193 in 2016 and 341 in 2015).⁸⁹² However, the statistical data provided by the State Security Service, cover mostly those incidents that occur on the territories under Georgia's effective control. According to the State Security Service:

“The Federal Security Service of the Russian Federation reports that 3,000 individuals were detained for illegal crossing of the so-called “border” with occupied Abkhazia in 2016, while 2017 saw more than 1,000 individuals detained for the same reason. As for the number of detentions along the occupation line with Tskhinvali region, the de facto security services reported the detention of 549 and 514 individuals in 2016 and 2017, respectively, for the abovementioned ‘allegations.’”⁸⁹³

In 2017, the Abkhazian de facto authorities shut down two checkpoints in Gali's lower zone⁸⁹⁴, a decision which is believed by international organizations to affect around 1,000 individuals on a daily basis and further reinforces the isolation of communities residing along the Administrative Boundary Line in Abkhazia.⁸⁹⁵

Importantly, the decision to shut down the checkpoints has prevented students from receiving general education:⁸⁹⁶

- In academic year 2015-2016, five students routinely crossed the Administrative Boundary Line from the village of Khurcha, Zugdidi municipality, to attend school in the village of Nabakevi in occupied Gali district. In 2016-2017 there were four students doing so, while in 2017-2018 there are none;⁸⁹⁷
- In 2015-2016, fifteen students from the village of Otobaia in occupied Gali district would attend school in the village of Ganmukhuri, Zugdidi municipality.⁸⁹⁸ In 2016-2017, there were 17 Otobaia-based students attending the school in Ganmukhuri while in 2017-2018 it is likely that there will be no students from occupied Gali district attending school in Ganmukhuri.

A small group of students has transferred to other schools in Gali district, while the majority choose to stay with relatives residing in Georgian-controlled territory and attend Georgian schools, visiting their families during weekends.

The situation is similar in pre-school education. In 2016, there were 11 minors from families residing in occupied Nabakevi registered at a kindergarten in the village of Khurcha, Zugdidi municipality. However, by September 2017, there were only two minors left, both of whom stay in Khurcha together with their families during the week. It should be noted there is no pre-school institution in the village of Nabakevi. The situation is very similar in the Orsantia kindergarten in Zugdidi municipality, which was attended by five minors from

892 A presentation of the 2017 report of the Office of the State Minister for Reconciliation and Civic Equality; and a summary of informational meetings held between the Georgian participants of the Geneva International Discussions and Incidence Prevention and Response Mechanisms and non-governmental organizations held during 2016 and 2017, 15 December 2017.

893 Letter from the State Security Service of Georgia N4409/18 dated 18 February 2018. Data from 2015 are available in a 2016 special report of the Public Defender of Georgia on the human rights situation of the conflict-affected population in Georgia. Available at: <http://www.ombudsman.ge/uploads/other/4/4524.pdf> [Last accessed 16.02.2018].

894 On 4 March 2017, Khurcha-Nabakevi and Orsantia-Otobaia checkpoints were effectively closed while the Saberio-Tskoushi technical crossing point remains operational.

895 ‘Statement of Niels Scott, Resident Coordinator, on behalf of the United Nations Country Team regarding announced closure of crossing points along the Inguri River’, 26 January 2017. Available at: http://www.ungeorgia.ge/eng/news_center/media_releases?info_id=507#.WdXavVuCzIX [Last accessed 10.10.2017].

896 A special report of the Public Defender of Georgia: ‘The Right to Education in Gali District: New Developments and Challenges in the Academic Year of 2015-2016’. Available at: <http://www.ombudsman.ge/uploads/other/3/3363.pdf> [Last accessed 16.02.2018]; a special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2015, pp. 65. Available at: <http://www.ombudsman.ge/uploads/other/3/3768.pdf> [Last accessed 16.02.2018]; a special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2016, pp. 49-51. Available at: <http://www.ombudsman.ge/uploads/other/4/4524.pdf> [Last accessed 16.02.2018].

897 The number of students routinely crossing this section was seven in 2014, 13 in 2013 and 22 in 2012. Please see a special report of the Public Defender of Georgia on the human rights situation of the conflict-affected population of Georgia. Information provided to the Public Defender's Office by the school administration and Gali Education Resource Center. 13.12.2017.

898 In 2014, the number of students totaled 18 compared to 34 in 2013. A special report of Public Defender on the human rights situation of conflict-affected population in Georgia. Information provided to the Public Defender's Office by the school administration and Gali Resource Center. 13.12.2017.

occupied Otobaia in 2016. However, by September 2017, there were no minors from Otobaia registered at the kindergarten.⁸⁹⁹

It is also problematic for schoolchildren to cross the Georgian-controlled side to participate in various projects, trainings, summer schools, and camps. Even though failure to obtain relevant documents has been reported as a problem in recent years, teenagers still manage to cross via bypass routes. However, since 2017 it has been almost impossible to take bypass routes due to heightened risk of being detained by Russian Federation border guards. As there are limited opportunities for children to prosper and develop in the occupied territories, restrictions imposed on their movement should be considered violations of the rights of the child.

Along with the checkpoint closures, the Abkhaz de facto authorities have nearly tripled sanctions for “illegal crossing of the border”: before 2016 residents of the occupied territories had to pay 2,000 Russian rubles (around 80 GEL) upon detention; in 2017 the amount of the fine had increased from 4,800 to 6,000 Russian rubles (around 210-260 GEL). In case of repeat violations, administrative arrest may also apply.⁹⁰⁰

As for individuals residing on Georgian-controlled territory, if detained they have to pay fines of 30,000 – 80,000 Russian rubles (approximately 1,500 – 3,500 GEL). According to the Georgian State Security Service, there were several cases of long-term detention of individuals residing on the Georgian-controlled territory in 2017.⁹⁰¹ Due to such regulations and intense policing by Russian border guards along the Administrative Boundary Lines, local communities are exposed to high risks of detention while crossing via bypass routes.

The Public Defender of Georgia believes the checkpoint closure and increased fines are another step backwards in terms of realization of the rights of local residents. Closure of the checkpoints restricts local residents’ freedom of movement and creates unjustified impediments to receiving healthcare and education, conducting trade, and maintaining family ties, among other things.

Meanwhile, the Public Defender has documented several cases of physical violence against detainees held penitentiary institutions on the occupied territories. According to the information provided by the Georgian State Security Service, between 2014 and 2016, 37 citizens reported they had been physically abused during or after being detained (26 in Abkhazia and 11 in South Ossetia).⁹⁰²

The Public Defender welcomes cooperation of the parties on the release of prisoners, which is an important element of confidence building and cooperation. G.G., who was detained in June 2016 and sentenced to 20 years in prison by the de facto authorities in South Ossetia, was released on 26 November 2017.⁹⁰³ G.L., detained in 2011 and sentenced to 20 years imprisonment, was released from Dranda prison in Abkhazia on 25 December 2017.

30.2. CIVIL AND SOCIAL RIGHTS OF THE POPULATION RESIDING ON THE OCCUPIED TERRITORIES

The closure of the two checkpoints adversely affected around 3,400 households of the so-called “Lower Gali zone”, who used the checkpoints most frequently. As of today, the Enguri Bridge remains the only crossing that connects these households to the Georgian-controlled territory, which means these communities have to spend twice as much time and money in order to cross. In addition, prices to transport goods over the Enguri

899 Information provided by the kindergarten administration to the Public Defender of Georgia. 09.11.2017.

900 A summary of informational meetings between the participants of the Geneva International Discussions and the Incidents Prevention and Response Mechanism and NGOs held during 2016 and 2017, 15 December 2017.

901 Letter N02137913 of 6 September 2017 of the State Security Service of Georgia.

902 Letter N10509/17 of 18 July 2017 of the Ministry of Internal Affairs of Georgia.

903 A statement of the Public Defender on the release of G.G. from Tskhinvali prison made on 27 November 2017. Available at: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-persons-detained-at-dividing-line.page> [Last accessed 16.02.2018].

Bridges have also increased. This has particularly hit those farmers who previously transported small amounts of agricultural products to Zugdidi market, as well as the elderly who, in addition to maintaining family ties, often frequented Zugdidi municipality to receive various social and healthcare services.⁹⁰⁴

Since April 2017, the Abkhazian de facto authorities have been replacing Form N9 with a resident permit for the Gali population. Holders of such a permit are allowed to temporarily reside in Abkhazia and move across the Administrative Boundary Line. However, it does not allow for full enjoyment of human rights.

According to information available to the Public Defender during the period from April 2017 to January 2018, residence permits were issued to 1,573 individuals while requests are being processed for 4,447 residents of Gali district. Local communities are not particularly enthusiastic about obtaining the residence permits due to lack of trust in the authorities. They believe the Abkhazian de facto authorities will use the resident permits as legal bases to expel them from the territory, as the authorities have the discretion to terminate the permit or refuse to issue it for various reasons, including security concerns.⁹⁰⁵ Furthermore, ethnic Georgians in Gali identify themselves as indigenous inhabitants of Abkhazia and not as “guest” or “foreigner”, as they are referred to in the residency permits.⁹⁰⁶

An estimated 107 de facto Abkhazian passports have been issued in Gali district⁹⁰⁷ while the Form N9 remains a valid document issued to roughly 12,000 individuals.⁹⁰⁸ The abovementioned data suggest the majority of Gali residents are left without the document necessary for moving across the ABL. Closure of the checkpoints, imposition of stricter sanctions, and harsher procedures for the issuance of documentation can be qualified as attempts to oppress and isolate Gali’s ethnic Georgian communities.

Banning Georgian as a language of instruction for students of ethnic Georgian background and preventing them from participating in various educational activities must be qualified as violations of the rights of the child as well as discrimination on grounds of ethnicity. The Abkhazian de facto authorities have no intention to sanction any form of multilingual education, except that in the Russian language. Similar to the Abkhazian case, where Russian gradually replaced Georgian as a language of instruction, the de facto authorities in South Ossetia made a decision in 2017 to introduce Russian as a language of instruction in six Georgian primary schools in Akhgori district. As a result, students of these schools will now take classes in Russian while Georgian is downgraded to a language class. Therefore, the ethnic Georgian population of Akhgori district will no longer be able to exercise their right to receive education in their native language.

According to the information available to the Public Defender, the crime rate in Gali district has increased (primarily because of robbery and theft)⁹⁰⁹ which can partly be explained by economic hardship. Due to widespread corruption, the local population chooses not to appeal to de facto law enforcement agencies with their problems. On the contrary, they try to avoid any interaction with them as, during routine and widescale militia raids, young men are often detained and searched for drugs. This practice is perceived by the Gali population to be a form of pressure and extortion by the de facto authorities.⁹¹⁰ This concern has also been voiced by the Akhgori population. The Public Defender has been alerted that Akhgori de facto police, often with the direct involvement of the chief of police, routinely force local youth, including minors, to be tested for alcohol

904 For more information, refer to a special report of the Public Defender ‘on the impacts of the closure of the crossing points on the rights of the population living along Abkhazia’s Administrative Boundary Line’, 2017. Available at: <http://www.ombudsman.ge/uploads/other/4/4911.pdf>.

905 For more information on the terms and conditions of issuance of the resident permit, refer to the special report of the Public Defender on the situation of the human rights of the conflict-affected population in Georgia, 2015. pp.70-72.

906 Information provided by local residents to the Public Defender’s Office, July 2017.

907 ‘107 so called passports and more than 1500 resident permits have been issued in Gali’, 23 January 2018, Livepress. Available in Georgian at: <http://www.livepress.ge/ka/akhali-ambebi/article/22219-galshi107etspasportida1500zemetibinadrobismotsmobagaica.html> [Last accessed 16.02.2018].

908 A special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2016, pp. 46.

909 Information provided by contact persons, 2017.

910 Information provided by contact persons, 2017.

and drugs; during these tests, the youth are subject to disrespectful and degrading treatment. Local communities report that ethnic Georgian youth are the main targets of such operations.⁹¹¹

In occupied Gali district, many families continue to live in houses damaged during military operations. Over the course of many years, international organizations have implemented various infrastructure projects aiming at rehabilitating houses, schools, and kindergartens. However, due to a decrease in funding, the scale of such projects has considerably diminished. The Georgian government cannot fund or support the rehabilitation projects in occupied territories in order to ensure adequate housing for the local population. However, it is imperative the Georgian authorities raise this issue before international partners and donor organizations.

It should also be noted that the Gali population frequently complains to the Public Defender's Office about harsh interference in private life by the district administration, who curb their rights and freedoms. In particular, cases of pressure being put on school children and teachers to attend anti-Georgian rallies and even deliver speeches have been reported. An exemplary case of psychological pressure was reported, in which an opera singer of ethnic Georgian background (though a citizen of Russia) gave an interview after which his uncle and employees of the Gali House of Culture were forced to deliver a televised apology to the Abkhazian people.

In its 2016 parliamentary report, the Public Defender highlighted the dire conditions of medical facilities in the occupied territories, including the need for adequate equipment and staff retraining.⁹¹² The information available to the Public Defender suggests the suicide rate in Gali district remains high, while many people have been reported to be addicted to alcohol and drugs.⁹¹³

The Public Defender welcomes the introduction in 2017 of a postgraduate medical education program developed by the Ministry of Labour, Health and Social Affairs, which offers a fully-funded scholarship for postgraduate studies in priority programs for those ready to practice medicine in the occupied territories or in villages located along the Administrative Boundary Lines. The Public Defender also welcomes training opportunities for doctors under a vocational training program developed by the Ministry of Health and Social Protection of the Autonomous Republic of Abkhazia.⁹¹⁴

Both initiatives will contribute to the quality of medical services in the region. However, lack of financial and material support as well scarcity of adequate equipment in healthcare facilities operating in the occupied territories is still problematic and must be addressed. Information available to the Public Defender suggests that medical staff often cover the costs of purchasing medical items at their own expense. Addressing this problem would have been an important step toward ensuring adequate protection of the right to healthcare for the local population.⁹¹⁵

Over the past several years, the Public Defender has been advocating expansion of the State Referral Program to cover all residents of the occupied territories, including those with valid Georgian ID cards. The Public Defender welcomes a statement by the Office of the State Minister for Reconciliation and Civic Equality according to which the issue has already been resolved.⁹¹⁶ However, according to information provided by the Ministry of Labour, Health and Social Affairs of Georgia, only 32 individual residents of the Occupied Territories with Georgian IDs were covered under the program,⁹¹⁷ amounting to only 2 percent of patients from the occupied territories.

911 Information provided by contact persons, 2017.

912 A special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2016, pp. 43-46.

913 Information provided to the Public Defender of Georgia, August 2017.

914 Letter N01/6625 from the Ministry of Labour, Health and Social Affairs of 5 February 2018.

915 Information provided to the Public Defender of Georgia, August 2017.

916 A public discussion on Human Rights in Conflict-affected Regions: Challenges and State Strategy, initiated by the Public Defender on 16 November 2017, available at: <http://www.ombudsman.ge/en/news/public-discussion-on-human-rights-in-conflict-affected-regions-existing-challenges-and-state-strategy.page> [Last accessed 16.02.2018].

917 Letter N01/7264 from the Ministry of Labour, Health and Social Affairs of 8 February 2018.

The number of beneficiaries of the referral program from the Occupied Territories has also decreased (837 patients in 2014, 1,537 in 2015, 2,052 in 2016, and 1,644 in 2017). This may be the result of a new policy pursued by the Ministry of Labour, Health and Social Affairs according to which costs related to out-patient diagnostics are no longer covered by the program. The Public Defender believes that this decision is likely to negatively affect patients, as inaccurate diagnostics performed in medical facilities in the occupied territories is the main reason for which patients prefer to seek medical services on the Georgian-controlled territory.

In addition to severe social conditions, widespread *halyomorpha halys* (commonly known as “brown marmorated stink bug”, or BMSB), has gravely affected fruit, nut, and citrus crops in Western Georgia, including Gali, Ochamchire, and Tkvarcheli districts, where these crops are the major source of income for local communities.

In light of the severe socio-economic conditions and dire human rights situation outlined above, there is a risk these communities may be forced to move out of their places of permanent residence in Abkhazia. Therefore, the Government of Georgia must pay close attention to security risk assessments and measures to ensure greater protection of human rights. Due to limitations on state social programs on the occupied territories, it is crucial that a social protection mechanism be set up for the affected communities. Therefore, it is of utmost importance that the Government of Georgia develop a social needs assessment mechanism and social protection program specifically for the population residing on the occupied territories.⁹¹⁸

It should also be noted that the Ministry of Education and Science has been providing vital financial, material, and technical support (including equipment, retraining, and financial assistance) to students and teachers of schools located on the occupied territories. These programs should be further implemented and developed.

Official investigative bodies have limited access to the occupied territories, which makes it difficult for them to effectively investigate crimes committed there. Based on the information provided by the Prosecutor’s Office of Georgia, due to lack of access to the occupied territories, adequate investigative actions cannot be carried out, which hinders criminal proceedings against the perpetrators. For instance, the Public Defender submitted a proposal to the Prosecutor’s Office of Georgia to launch an investigation into a case of alleged sexual abuse of a child residing in an Akhgori children’s institution.⁹¹⁹ Even though the investigation has been launched, no progress has been reported so far.⁹²⁰ An investigation into a road accident claiming three lives in Gali on 23 September 2015, remains ongoing.⁹²¹ The Prosecutor’s Office reports that all necessary investigative actions have been carried out; however, no one has been charged for the crime.⁹²²

In 2017, the Kutaisi Court of Appeals sentenced R.K. to 14 years in prison for the premeditated murder of a citizen of Georgia, G.O., near the Abkhazian Administrative Boundary Line.⁹²³ However, the Abkhazian de facto authorities have refused to hand the convict over to Georgian law enforcement. Failure to bring justice further exacerbates the poor human rights situation of the population residing in conflict-affected regions.

Violations of property rights in South Ossetia raise particular concerns and should be viewed as continuations of the policy of ethnic cleansing of the Georgian population. It has been reported that the de facto authorities cleared the territory of the occupied village Eredvi of the ruins of 268 houses and prepared the land for agricultural activities under the “Investment Program for Socio-Economic Development of South Ossetia”

918 More information on social conditions on the occupied territories is available in a special report of the Public Defender on the rights of women and children in conflict-affected regions, 2017. Available at: <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/qalta-da-bavshvta-uflebebi-konfliqtebit-dazaralebul-regionebshi-2014-2016-wlebis-mimoxilva.page> [Last accessed 02.03.2018].

919 Proposal of the Public Defender of Georgia N01-6/15582 of 8 November 2017 to the Prosecutor ‘to launch an investigation in an alleged sexual abuse and other alleged cases of violence against children residing at Akhgori children institution’.

920 Letter N13/75927 of 22 November 2017 from the Chief Prosecutor of Georgia.

921 ‘A road accident in Gali claimed lives of an ambulance team’, 23 September 2015, Netgazeti. Available in Georgian at: <http://netgazeti.ge/news/44184/> [Last accessed 16.02.2018].

922 Letter N13/97000 of 11 February 2017 of the Chief Prosecutor of Georgia.

923 A statement of the Chief Prosecutor of Georgia is available in Georgian at: http://pog.gov.ge/geo/news?info_id=1157 [Last accessed 22.03.2018].

funded from the Russian Federation budget.⁹²⁴ The village was completely abandoned by the Georgian population during the August 2008 war. Their houses were damaged by the Russian air force while ethnic Ossetian militia burnt and razed the remains to the ground with bulldozers. The same fate was shared by another village, Tamarasheni, which is now the site of residential houses for Russian soldiers.

In 2017, South Ossetia's de facto authorities resumed pressure on civil society representatives and activists. In 2017, Tamar Mearakishvili, an Akhalkori-based activist, was unlawfully detained twice and a criminal investigation was launched against her for alleged defamation.⁹²⁵ Mearakishvili has been cooperating with international media and international organizations to uncover problems facing the population of Akhalkori district.⁹²⁶ This is believed to be the reason for pressure applied against her. The Public Defender believes Mearakishvili has been deprived of her liberty unlawfully and denied her freedom of expression, and that pressure exerted on her is part of an effort to force her to permanently leave the region.⁹²⁷

Since 2014, a number of non-governmental organizations have ceased their activities, while individuals and organizations who have been participating in confidence and peace -building projects are still subject to pressure because of their activities and their communication with Georgian counterparts. The Freedom in the World reports for 2016 and 2017 by Freedom House rate South Ossetia as a “not free” territory. 2017 was also marked by verbal assault against activists and organizations who have participated in Georgian-Abkhaz dialogue. Assaults are generally carried out by anonymous Facebook users who label participants of various projects and initiatives “traitors” and “enemies”.⁹²⁸

30.3. THE SOCIAL AND ECONOMIC RIGHTS OF THE POPULATION LIVING ALONG THE ADMINISTRATIVE BOUNDARY LINES

Economic hardship and social problems are major challenges undermining the development of conflict-affected communities living along the Administrative Boundary Lines on the Georgian-controlled territory. In spite of important projects carried out by the Georgian authorities (providing gas infrastructure, rehabilitation of roads and street lighting, and provision of potable water infrastructure), local communities complain about the lack of opportunities to earn a livelihood and lack of state programs to address this problem. During meetings with representatives of the Public Defender's Office, local residents underline that, while they are aware of income generation programs implemented by both state and non-state actors, only those farmers who have capacity to contribute with financial or other resources are qualified to benefit from such programs. Local residents also note that even small grants (in the amount of 1,000 GEL) would be of great benefit.⁹²⁹

In 2015 and 2016 reports, the Public Defender provided recommendations to the Interim Governmental Commission for Responding to the Needs of Villages along the Administrative Boundary Lines (hereinafter referred to as the “Governmental Commission”) to develop and implement programs tailored to the needs and capacities of the conflict-affected communities and intended to foster production and agricultural activities in these areas. However, there was no discussion of these issues in 2017, as the Governmental Commission be-

924 ‘Meeting in Ergneti and unhappy journalists’ [„Встреча в Эргнети и недовольные журналисты“], 3 October 2017, Mzia Paresishvili, Ekho Kavkaza. Available in Russian at: <https://www.ekhokavkaza.com/a/28771892.html> [Last accessed 19.03.2018].

925 “My case N961705“, Tamar Mearakishvili, 21 January 2018, Netgazeti. Available in Georgian at: <http://netgazeti.ge/news/246235/> [Last accessed 16.02.2018].

926 ‘Georgia: de facto authorities in a disputed region stifle freedom of expression’, 21 August 2017, Amnesty International. Available at: <http://www.amnesty.org/en/documents/eur56/6974/2017/en/> [Last accessed 16.02.2018].

927 The Public Defender's statement on the detention of Tamar Mearakishvili, 16 August 2017. Available at: <http://www.ombudsman.ge/en/news/public-defenders-statement-on-detention-of-tamar-mearakishvili.page> [Last accessed 16.02.2018].

928 Information provided to the Public Defender's Office by contact persons, 2017.

929 Visit of representatives of the Public Defender to villages of Koshka, Tsitelubani, and Perevi along the Administrative Boundary Line between 23 June 2017 and 11 July 2017.

believes that state programs “are designed in such a way to consider needs and capacity of local communities”.⁹³⁰

Lack of economic opportunities has been a driver of youth migration from villages. For instance, there is no child of school age in the village of Zardiaantkari in Gori municipality, which had been occupied until 2012. Information provided to the Public Defender suggests that local municipalities provide funding for various cultural and sport events for youth residing in villages along the Administrative Boundary Lines.⁹³¹ It is crucial that support provided for such projects be consistent and focused for the long-term. However, it is evident that in light of budgetary constraints, the efforts of local authorities are far from sufficient.

It has been 10 years since the end of the August 2008 war, but issues related to compensation for damaged houses along the Administrative Boundary Lines in Shida Kartli and Samegrelo remain unresolved, with owners still awaiting compensation from the state. Since 2016, the Public Defender has been calling on the government to address the issue⁹³²; however, there has not been much response, further exacerbating the socio-economic situation of the affected community. In 2017, the Governmental Commission heard from Gori municipality Gamgebeli that 41 houses enlisted on the municipal territory require rehabilitation at a total cost of 720,000 GEL.⁹³³

At the same time, one of the recommendations of the Public Defender to the Georgian Ministry of Labour, Health and Social Affairs highlighted in the 2017 parliamentary report was to open an emergency care unit for children in Rukhi hospital, as well as to hand over an ambulance specifically equipped to render medical assistance to child patients, including those crossing from Abkhazia. The Ministry notified the Public Defender’s Office that the recommendation has been fulfilled and the emergency room for child patients will be included in the hospital. As for an ambulance, the Ministry has notified the Public Defender’s Office that a fully equipped ambulance has already been at work along the Administrative Boundary Line with Abkhazia to deliver patients, including children and new-borns from Abkhazia, to respective medical facilities. The Public Defender welcomes the commitment demonstrated by the Georgian Ministry of Labour, Health and Social Affairs to uphold the recommendation.

RECOMMENDATIONS

To the Government of Georgia:

- To discuss and task respective agencies with developing a program for assessing and responding to the social needs of residents of the occupied territories in order to ensure financial support to vulnerable groups, including families living below the poverty line, families with many children, the elderly, single parents, and persons with disabilities, among others.

To the Ministry of Labour, Health and Social Affairs:

- To allocate additional resources to adequately equip medical facilities and ensure financial support to staff working on the occupied territories.

930 Letter N01/452 of 13 February 2018 of the Ministry of Regional Development and Infrastructure of Georgia.

931 Letter N1313-8/1 of 21 August 2017 from Gori municipality Gamgebeli.

932 A proposal of the Public Defender of Georgia of July 2016 for the introduction of effective measures to ensure the realization of social rights by the conflict-affected population; a special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2015, pp. 53; a special report of the Public Defender on the human rights situation of the conflict-affected population in Georgia, 2016, pp. 38.

933 A session of the interim governmental commission for response to the needs of villages along the Administrative Boundary Lines held on 27 September 2017.

- To revise rules for funding patients from the occupied territories under the State Referral Program and ensure that out-patient diagnostic services are also covered by the program as in 2015 and 2016.

To the Office of the State Minister for Reconciliation and Civic Equality:

- To provide information to international donor and development agencies about the situation related to housing and accommodation of residents of the occupied territories and launch dialogue to ensure that the right to adequate housing is realized.

To the Ministry of Regional Development and Infrastructure and the Office of the State Minister for Reconciliation and Civic Equality:

- Within the framework of the Interim Governmental Commission for Responding to the Needs of Conflict-affected communities, to rehabilitate or provide compensation for houses damaged during military actions on the Georgian-controlled territory.

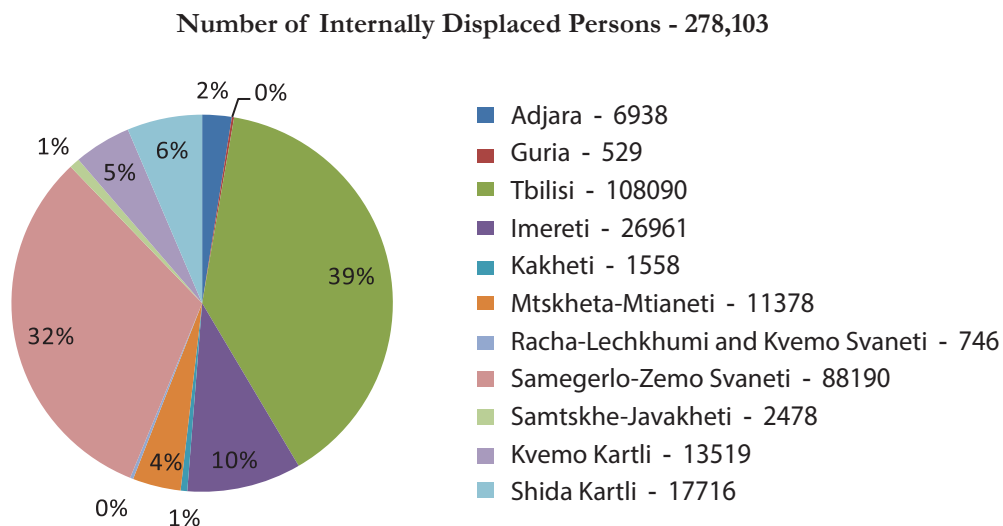
31. THE HUMAN RIGHTS SITUATION OF INTERNALLY-DISPLACED PERSONS

Monitoring and protection of the rights of internally-displaced persons are some of the main priorities of the Public Defender's Office. During the reporting period, representatives of the Public Defender continued to monitor the conditions faced by internally-displaced persons all over the country. They visited IDP compact settlements on more than 300 occasions and provided legal counsel to more than 850 IDPs.

2017, like previous years, was marked by an extensive process for accommodating IDPs. The reporting period saw 1,865 IDP families receive durable accommodation⁹³⁴, including 449 households who had previously been living in dilapidated or dangerous buildings. Although 32 dilapidated buildings were closed during 2017, the majority of IDPs residing in compact settlements continue to live in dire conditions.

31.1. PROCESS OF DURABLE ACCOMMODATION OF IDPs

According to data available from 2017, 278,103 individuals are currently registered as internally-displaced persons, including 146,137 residing in private sector housing, while 131,966 live in compact settlements.⁹³⁵



Before the return of IDPs to their permanent places of residence, the provision of long-term housing and the socio-economic integration of IDPs remain top priorities for the state.

The current legislative framework⁹³⁶ provides the following four types of long-term accommodation for IDPs:

- 934 Letter N01-02/08/1099 of 17 January 2018 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.
- 935 Letter N01-01/07/ 825 of 15 January 2018 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.
- 936 Order N320 of 9 August 2013 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees on 'rules and criteria for providing internally displaced persons with long-term housing, and the statute of the commission of IDP issues'.

- Accommodating IDPs in rehabilitated and newly-built buildings;
- Purchasing individual houses and apartments for IDP households (under a *House in the Village* project);
- Granting privately owned IDP settlements to ownership of IDPs (through privatization); and
- Mortgage programs.

On 9 August 2013, the Minister of Internally Displaced Persons from the Occupied Territories, Refugees and Accommodation signed order N320 on Approving rules and criteria for long-term accommodation of internally displaced persons and the statute of the commission on IDP Issues. Based on the order, the regulation on accommodating IDPs in long-term housing has been approved. The Commission on IDP Issues is responsible for reviewing and making decisions on applications.

In 2017, 1,865 IDP families were provided with durable accommodation⁹³⁷, including 612 households for whom residential houses were purchased (under the *House in the Village* project), 166 families whom had their mortgages covered, and 1,087 whom received apartments in rehabilitated and newly-built buildings.⁹³⁸ 1,302 households were provided with financial assistance to rent apartments based on the criteria set out in the same ministerial order.

Similar to previous years, representatives of the Public Defender continued to closely monitor distribution of apartments by the Commission on IDP Issues (hereinafter referred to as the “Apartment Distribution Commission”) as well as balloting. The Public Defender welcomes a decision to prioritize those IDP families who had been living in dilapidated or dangerous buildings under their lawful ownership.

At the same time, further to changes to an act regulating the accommodation of IDPs, the low-income indicator, one of the criteria for accommodation, was removed. This is a negative development because failure to take into account the economic standing of IDP families will present challenges for identifying those households who need to be accommodated more urgently than others. The monthly income of families used to play an important role while making decisions on accommodating applicants, while its neglect may lead to failure to identify those households with pressing need of accommodation. In addition, justification, both legal and factual, of rejection of applications for accommodation in a protocol of the commission’s session, remains a challenge.

The Public Defender welcomes the fact that construction of new blocks of apartments for IDPs has been underway throughout Georgia. According to the information available to the Public Defender, in 2018, IDPs will be provided with accommodation in Tbilisi, Vaziani, Zugdidi, Batumi, Mtskheta, and Tskaltubo.⁹³⁹

In spite of the fact that durable accommodation is a priority of the government, there are 52,008 IDP families still awaiting accommodation while only 37,648 households have been settled so far.

31.2. PRIVATIZATION OF RESIDENCES FOR IDPs

One of the forms of durable accommodation of IDPs is to entitle the latter to ownership over residences in compact settlements.⁹⁴⁰ Currently, 131,966 IDPs are registered in former compact settlements. Thirty-one

937 Number and locations of households provided with housing in newly built and rehabilitated buildings: Zugdidi – 144, Kutaisi – 429, Gori – 472, Zestaponi – 2, Marneuli – 27, Vaziani – 4, and Tbilisi – 9.

938 Letter N01-01/07/1071 of 17 January 2018 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

939 Letter N01-01/07/1071 of 17 January 2017 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

940 This process began in 2009, based on Decree N52 of the president of Georgia.

buildings have already been transferred to the ownership of IDPs and nine more are scheduled to be privatized in 2018.⁹⁴¹ The reporting period saw the accelerated process of privatization, which is undoubtedly a positive development, as well as raised awareness of IDPs on the non-obligatory nature of privatization and alternative accommodation options in the event of rejection.

The monitoring found that, as in previous years, challenges and problems remain largely the same including unequal distribution of space and “partly legalized” buildings which have been surveyed and drafted on numerous occasions but have not yet been fully privatised. Because of this problem, IDPs cannot set up condominiums, nor do they have adequate information about the condominium system. There are numerous buildings which fail to meet even minimum living standards.⁹⁴² However, these buildings have already been transferred to IDPs’ ownership. Yet another pivotal issue is that of determining the red lines of lands attached to premises which, together with other shared property, remain the state’s property. These issues are routinely covered in annual parliamentary reports of Public Defender.⁹⁴³

31.3. “COLLAPSING” BUILDINGS

In spite of certain positive developments, poor living conditions remain the most pressing problems facing IDPs. It should be noted that the Ministry prioritizes the needs of those families who have been living in dilapidated or collapsing buildings, which is undoubtedly a positive decision. In 2017, 449 IDP families residing in 32 collapsing buildings were provided with durable accommodation, while 41 compact settlements were assessed.⁹⁴⁴ This compares favourably with 2016, when the Ministry managed to provide accommodation for only 179 IDP households.⁹⁴⁵ However, the monitoring also revealed that there are numerous other buildings from which the occupants need to be relocated as soon as possible.⁹⁴⁶

Assessment reports prepared on certain buildings confirm that some of the buildings in question are in particularly abject condition. Nevertheless, IDPs continue to live in these buildings. The Public Defender believes one of the priorities for the Ministry in 2018 should be the relocation of IDPs residing in collapsing buildings. Delay in resolving issues related to resettlement of IDPs from collapsing buildings may lead to devastating outcomes. It is pivotal that the Ministry routinely examines the condition of compact settlements through Levan Samkharauli National Forensics Bureau or revise and re-examine existing reports.

31.4. NEEDS-BASED ASSISTANCE FOR IDPs

In parliamentary reports, the Public Defender routinely highlights the need to introduce a needs-based approach to resolving IDP issues. The Public Defender welcomes a decision of the Ministry to prioritize the needs-based approach along with continuing to provide durable accommodation for IDPs.

941 Letter N01-01/07/963 of 16 January 2018 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

942 Law of Georgia on Internally Displaced Persons from the Occupied Territories, Article 4.

943 Report of Public Defender on the situation in the human rights and freedoms in Georgia 2010-2016.

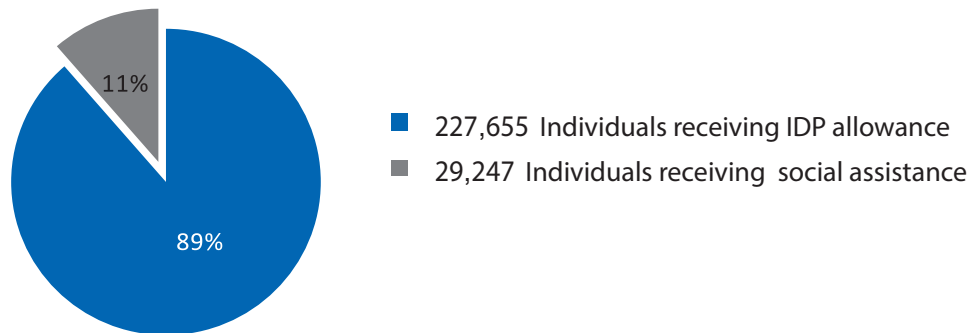
944 Letter N01-01/07/963 of 16 January 2018 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

945 The Public Defender’s report on the human rights situation of internally-displaced persons in Georgia, p. 9.

946 The following locations (including those in Zugdidi municipality) require particular attention: Vazha Pshavela 26; the village of Rukhi; the kindergarten in Natsuluk; Lesso LTD; the kindergarten in the village of Shamgona; the kindergarten in Kakhati; the production plant in Inguri village; and apartments at the tea plant. **In Kutaisi:** “Tskaltsitela”; tourist base “Ilori”; Martve kindergarten; the former dispensary building; and Khvamli hotel. **In Tskaltubo:** sanatorium “Friendship”. **In Tbilisi:** Ushba Hotel; the bureau of hydrogeology in the village of Digomi; former kindergarten 78 in Navtlugi settlement; “Saktsigni” at 26 Kiziki street; “Kikicha” enterprise at Mevele street 5; and “Duzani” building at Iumashev street 21. These and other locations have been referred to in previous reports of the Public Defender.

An effective strategy should be developed according to a holistic approach, while the criteria to be developed should closely reflect the needs of IDPs.

123 126 424 GEL was spent on IDP allowance in 2017



The introduction of a needs-based assistance system had been included in an action plan for the implementation of the IDP state strategy for 2015-2016. According to the action plan, the social assistance system had to be based on needs rather than status, while the expediency of the assistance would be determined by rational, clear, and transparent criteria.

RECOMMENDATIONS

To the Ministry of the Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees:

- To continue to work for the introduction of needs-based assistance for IDPs in close cooperation with stakeholders and ensure the new system will better serve the needs of IDPs.
- To prioritize resettlement of IDPs from collapsing buildings and conditions that contain life-threatening risks while carrying out the durable accommodation process for 2018.
- To continue to examine the sustainability of compact settlements in cooperation with Levan Samkharauli National Forensics Bureau, and to update existing reports.

To Tbilisi Municipal City Hall, other local authorities and the Ministry of Economy and Sustainable Development:

- To launch a procedure for establishing red lines over shared property for the purpose of transferring land to private ownership, with the cooperation of the Ministry.

32. RIGHTS OF MIGRANTS

In 2017, the Public Defender's Office was approached by a number of foreign citizens who questioned the lawfulness of decisions to refuse entry to the country's territory⁹⁴⁷ and deny citizenship or legal residence based on alleged state security and/or public order considerations.⁹⁴⁸ In the process of reviewing these applications, it was revealed that the quality of justifications provided by the agencies in charge continues to be a problem.⁹⁴⁹

32.1. REFUSAL OF ENTRY TO GEORGIA

Aliens are most often denied entry to Georgia⁹⁵⁰ “on other grounds stipulated by the Georgian legislation”.⁹⁵¹ Scrutiny of the issue has revealed that the Ministry pursues a systemic approach according to which the abovementioned norm is used as independent grounds for refusal of entry into Georgia, and is not connected to any other legally-defined circumstance. The Ministry has changed the original grounds for refusal in a number of cases⁹⁵², including that involving the Azerbaijani journalist J.A. who was denied entry to Georgia.⁹⁵³ Importantly, the administrative body which issued the act did not specify legal grounds for the change, nor did it provide any justification. Therefore, the process's compliance with the law was never established and the relevance of the Ministry's practice became questionable. At the same time, in response to a proposal by the Public Defender to reconsider application of the clause “other cases provided by the legislation” when denying entry into the country⁹⁵⁴, the Ministry of Internal Affairs expressed its readiness to deliberate on the issue and cooperate with the Public Defender's Office along with other agencies.⁹⁵⁵

Representatives of the Public Defender's Office carried out occasional on-site monitoring of the processing of repatriating foreign citizens denied entry. The monitoring found that foreign citizens are not handed refusal documents in person. Rather, the document along with the foreign citizen's passport is given to a representative of the airline which is to ensure the return of the individual in question. Therefore, it is at the discretion of the airline representative to deliver the decision. In addition, it should be noted that the procedure is not based on any legal act.⁹⁵⁶ The Public Defender welcomes a decision of the Ministry effective from 12 July 2017 to use police body cameras to record the process of explaining grounds for refusal of entry by law enforcement officials as well as verbal exchanges between law enforcement officials and foreign citizens.⁹⁵⁷

947 The Public Defender's Office was processing 11 cases (we expect statistical information from some regional offices).

948 The Public Defender's Office was processing six cases (we expect statistical information from some regional offices).

949 For more information, see a report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia for 2016, pp. 490-492.

950 The Public Defender's Office was processing six cases.

951 The Law of Georgia on Legal Status of Aliens and Stateless Persons, Article 11, Paragraph 1, Clause I.

952 Clause E was indicated instead of Clause I (if his/her stay in Georgia poses a threat to state security and/or the public order of Georgia, or to the protection of the health, rights, and legitimate interests of citizens of Georgia and other persons residing in Georgia).

953 №6664/17 File 6664/17 processed by the Public Defender's Office.

954 A proposal 04-4/15894 of 15.11.2017 of the Public Defender of Georgia.

955 Letter MIA51702950132 of 7 December 2017 of the Ministry of Internal Affairs of Georgia.

956 Letter MIA21702205622 of 13 September 2017 of the Ministry of Internal Affairs of Georgia.

957 Letter MIA01702857276 of 28 November 2017 of the Ministry of Internal Affairs of Georgia.

32.2. DENIAL OF CITIZENSHIP AND LEGAL RESIDENCE

It has been established that the authorities failed to provide valid justification for denial of citizenship and legal residence on grounds of state security and/or public order considerations on numerous occasions, including the case of Azerbaijani journalist L.M.⁹⁵⁸ In order to restore realization of the journalist's rights, the Public Defender contacted the State Security Service and LEPL Public Service Development Agency (hereinafter referred to as "the Agency"). The agency notified the Public Defender's Office they have no access to the factual circumstances the State Security Service cites as grounds for denial, unless provided by the latter.⁹⁵⁹ Therefore, when issuing a decision, the Agency fully relies on ungrounded conclusions submitted by the State Security Service and does not have the ability to question the validity of such conclusions.

According to the law, factual information should be presented to the Agency in such a manner that does not compromise state security and state secrets.⁹⁶⁰ In accordance with the law, information submitted by the State Security Service should contain adequate justification and not be limited to confirming/denying the presence of grounds to deny status. In its turn, the Agency is responsible for checking the validity of the information provided and making a decision in compliance with the law when presented by the State Security Service with totally ungrounded conclusions.

RECOMMENDATIONS

To the State Security Service and LEPL Public Service Development Agency:

- To provide appropriate justification when denying legal residence and citizenship on grounds of state security and public order considerations, in accordance with requirements as stipulated by the law.

958 File 15305/16 processed by the Public Defender's Office.

959 Letter 01/308850 of 9 November 2017 of the LEPL Public Service Development Agency.

960 Law of Georgia on Legal Status of Aliens and Stateless Persons, Article 18, Paragraph 3 and Organic Law of Georgian on Georgian Citizenship, Article 16, Paragraph 3.

33. SITUATION REGARDING THE RIGHTS OF ASYLUM SEEKERS AND PERSONS UNDER INTERNATIONAL PROTECTION

The Public Defender's Office puts a priority on examining the human rights situation facing asylum seekers and persons with international protection. One of the cases processed by the Public Defender is that of Turkish citizen Mustafa Emre Çabuk, who was denied refugee and humanitarian status by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (hereinafter referred to as "the Ministry").

Examination of the case yielded that the above-mentioned decision to deny status lacked legal grounds.⁹⁶¹ Therefore, the Public Defender addressed the Ministry with a request to revoke the decision, fully re-examine the circumstances of the case and issue a new decision. The Ministry expressed their readiness and willingness to execute the court's effective decision.⁹⁶²

During the reporting period, representatives of the Public Defender's Office paid more than 60 visits to study and monitor realization of the rights of asylum seekers and persons with international protection.

33.1. ACCESS TO TERRITORY AND ASYLUM PROCEDURES

Access to territory implies the right to asylum, adherence to the principle of non-refoulement and exempting the asylum seeker from criminal charges when crossing the border without required documentation.

As of 31 December 2017,⁹⁶³ there were 1,477 individuals under international protection residing in Georgia, including 235 with prima facie refugee status⁹⁶⁴ and 215 and 1,027 holding refugee and humanitarian status, respectively.

The Public Defender welcomes adoption of the law on international protection which came into force on 1 February 2017. The law is in compliance with the fundamental provisions of the UN Convention of 1951 and European Union directives and standards. However, despite considerable improvement of the legal framework, including the introduction of simplified procedures for granting refugee status and greater access to asylum procedures at the borders, refugee status is being granted at decreasing rates. In 2015, 75% of applications were accepted (out of 1,262 applications reviewed, 69 applicants were granted refugee status, while 878 hold humanitarian status). In 2016, only 43% of 583 reviewed cases yielded positive results (refugee and humanitarian status was granted to 48 and 203 individuals, respectively), while in 2017 only 18% of 492 reviewed cases yielded positive outcomes (refugee and humanitarian status granted to 53 and 36 individuals, respectively).

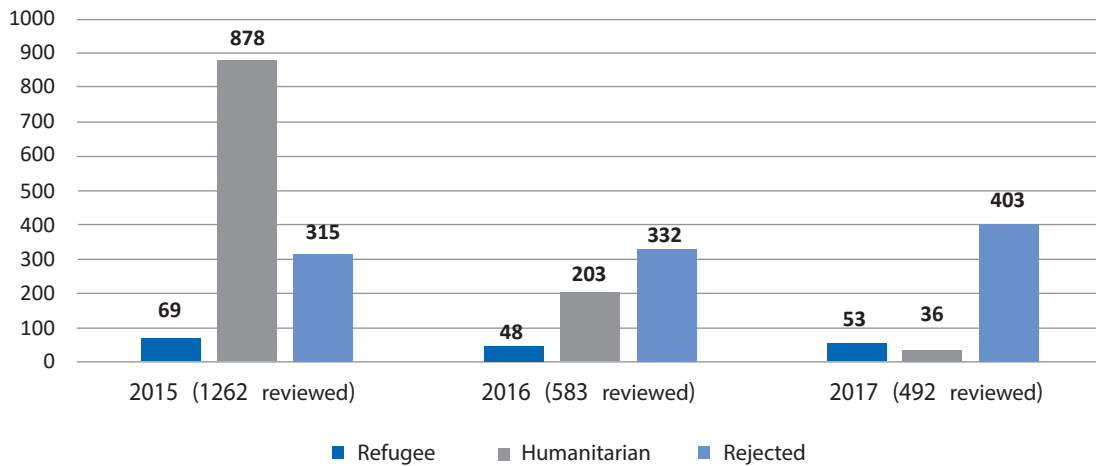
961 Recommendation of the Public Defender. Available at: <http://www.ombudsman.ge/en/news/public-defender-of-georgia-demands-to-revoke-decision-regarding-mustafa-emre-abuk.page>.

962 Letter N02-01/05/24545 of 11 October 2017 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

963 Letter N02-01/05/2897 of 5 February 2018 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

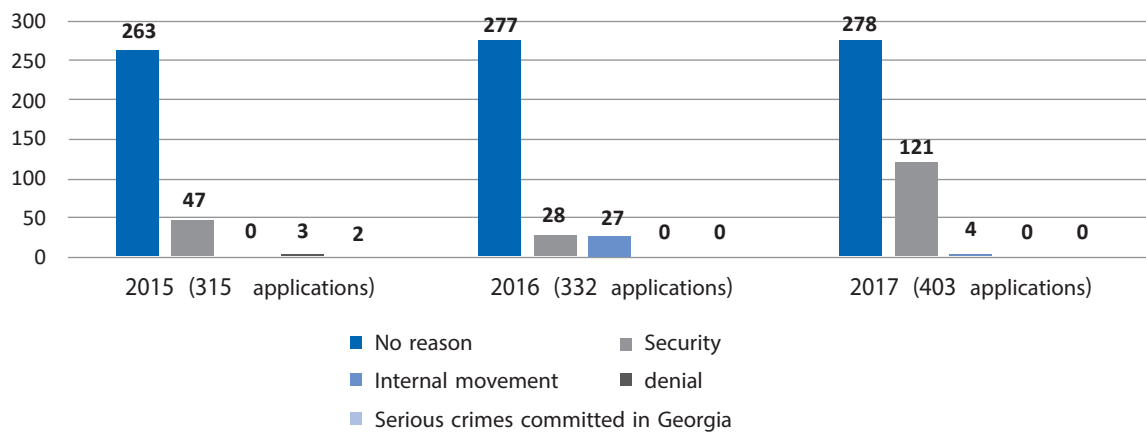
964 Latin: based on the first impression, accepted as correct until proven otherwise.

Granting refugee and humanitarian status in 2015-2017



Moreover, the number of applications denied on grounds of state security has increased. At the same time, the lack of justification for such decisions remains a problem. In 30% of 82 denial cases, in the individual administrative-legal acts issued for each denial, the Ministry cites reasonable doubt the individual in question will compromise Georgia’s state security, territorial integrity, or public order.⁹⁶⁵

Statistics of rejected applications for asylum in 2015-2017



The lack of rigor in the justification process remains the key challenge with respect to such decisions. The only official grounds for such decisions are reference letters issued by the State Security Service. Monitoring revealed that individual circumstances are largely ignored during the decision-making process, as a result of which the Ministry unconditionally accepts recommendations prepared by the State Security Service when making decisions on whether to grant refugee and humanitarian status.

At the same time, the State Security Service struggles to prepare recommendations that contain factual circumstances pertaining the case in question without compromising state secrets, state security and/or the protection of public safety.

In light of the lack of justification in cases of denial of status, it is not possible to ascertain whether the asylum seeker has had his/her rights violated or has been subject to discriminatory treatment.

⁹⁶⁵ Law of Georgia on International Protection, Article 17, Paragraph 1, Clause B.

This shortfall has been observed not only with respect to denial of asylum but also during the decision-making process on refugee status. It is difficult to assess the validity of decisions when they are made based on conclusions containing classified information prepared by the Department of Counterintelligence of the State Security Service. The monitoring paid close attention to appeal procedures for such decisions as well as the pursuant court hearings. In spite of the fact that judges have access to classified information, decisions do not appear to be based on deliberation and assessment. However, it should also be noted that there have been some cases in which the judge chose not to take into account classified information provided by the State Security Service, and ultimately ruled in favour of the asylum seeker by revoking the administrative-individual act of the Ministry of Refugees.

The practice employed by the European Court of Human Rights is instructive for striking an adequate balance between protecting state security on the one hand and human rights on the other, as well as for preventing arbitrary and unjustified human rights violations.⁹⁶⁶ The court practice suggests that the threat posed by an individual to state security should be ballanced, especially when it comes to Article 3 of the European Convention of Human Rights.⁹⁶⁷ The court also believes the application of confidential materials may become inevitable during cases relevant to national security. However, this does not release the authorities from effective oversight by the courts when they issue justifications related to national security and terrorism. There are techniques that can be employed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice.⁹⁶⁸ It is important that, whereas the rights of the asylum seeker are curtailed on grounds of state security, she/he should still have the right to be protected against arbitrary decisions while a mechanism should be established to enable the courts to examine grounds for decisions made by executive authorities, and to ensure that national security concerns are adequately considered. The process should be based on the principle of adversarial hearing and always ensure the equality of arms so the individual is able to effectively appeal the charges brought up against him/her. Legal representatives must also have access to case materials.⁹⁶⁹

33.2. ACCESSIBILITY OF ASYLUM PROCEDURES AT THE BORDER AND PENITENTIARY INSTITUTIONS

Regarding access to asylum procedures at the state border and penitentiary institutions, the monitoring revealed that patrol and border police have general information on procedures related to requesting asylum by aliens at the border. However, the level of understanding and information is insufficient and the persons in charge need to provide information on the new law on international protection and asylum procedures to prevent violation of the non-refoulement principle and ensure that asylum seekers are not charged with criminal offences.

At the same time, a clause in the Law of Georgia on International Protection is deemed problematic. More specifically, Paragraph 4 of Article 7 of the law states that an alien or a stateless person will be exempted from the criminal responsibility for illegal crossing of the state border if the person applies for international protection. However, according to Paragraph 4 of the abovementioned article, if it is determined by the relevant final decision on international protection that an alien or a stateless person is not in need of international protection, the exemption from criminal responsibility shall not be extended. This norm contradicts the Geneva Convention relating to the status of refugees.

966 Chahal v. The United Kingdom, N22414/93. Available at: <http://www.refworld.org/pdfid/3ae6b69920.pdf>.

967 'No one shall be subjected to torture or to inhuman degrading treatment or punishment'. Article 3, European Convention on Human Rights.

968 Judgement of the European Court of Human Rights on Case of Liu and Liu v. Russia, N42086/05, Para 56–57 and 63.

969 *A and Others v the United Kingdom*, N3455/05, 19 February 2009, ECtHR, para 220, [http://hudoc.echr.coe.int/eng?i=001-91403#{"item id":\["001-91403"\]}](http://hudoc.echr.coe.int/eng?i=001-91403#{).

33.3. INTEGRATION OF PERSONS WITH INTERNATIONAL PROTECTION

Pursuant to the Law of Georgia on International Protection,⁹⁷⁰ the Ministry in cooperation with other state agencies shall develop local integration programs for internationally-protected persons and facilitate their participation in such programs. Local integration is a legal process whereby refugees are granted a progressively-wider range of rights and entitlements by the host state that are broadly commensurate with those enjoyed by its citizens. These include freedom of movement, access to education and the labour market, access to public relief and assistance, including health facilities, the possibility of acquiring and disposing of property, and the capacity to travel with valid travel and identity documents. Realization of family unity is another important aspect of local integration.⁹⁷¹

According to information provided to the Public Defender's Office⁹⁷², the participation of refugees and humanitarian status holder in integration programs remains low. For instance, from 2015 to 2017, 101 refugee and humanitarian status holders took part in *Georgian Language Learning Program for Asylum Seekers, Refugees and Persons with Humanitarian Protection Status* while 415 refugees and humanitarian status holders benefited from healthcare services. The number of persons registered at the employment portal totalled 51.

One of the most challenging barriers to the integration process is language. Most beneficiaries have no command of Georgian and, therefore, their access to education, employment and healthcare services is restricted. Lack of information about available services is another challenge. Language courses are available to persons who fall under certain categories. For instance, language learning courses for asylum seekers is available only in a reception centre and, therefore, only those who reside in the centre can access the service. And while there are courses available to persons with international protection, the number of participants is limited.

A precondition for greater integration is that refugees be provided adequate housing by the state. Currently, after status is granted, the asylum seeker has to leave the reception centre and is often forced to live in harsh conditions. Refugees find themselves in a particularly dire situation because of difficulties in finding adequate and safe accommodation. Although the law grants refugees and humanitarian status holders the rights to free movement and choice of accommodation, in practice this does not apply to all refugees and persons with humanitarian status. There are no state-funded organizations in Georgia to support asylum seekers and persons with international status in obtaining suitable accommodation. It is important that the state develop a special program to contribute to creating suitable living conditions for refugees or persons with humanitarian status.

The Public Defender welcomes the opening of the Integration Centre in May 2017 with the joint financial support of the Ministry and the Office of the United Nations High Commissioner for Refugees in the South Caucasus. However, monitoring revealed the centre's target group is limited to persons with international protection. The centre focuses mainly on teaching Georgian language, the basics of civil education and raising awareness of socio-cultural issues. The centre also provides support for involvement in state programs, organizes cultural events and contributes to long-term strategic development. The Public Defender's Office believes that language courses should be structured in such a way to accommodate (to the greatest extent possible) the diverse capacities and needs of persons under international protection. It is also important that courses be available to those asylum seekers who deserve international protection, due to dire situations in their countries of origin. The Public Defender's Office believes they should be given an opportunity to realize the rights provided by the law, whereas currently the extent of realization of these rights largely depends on their command of Georgian language.

970 Law of Georgia on International Protection, Article 65.

971 United Nations High Commissioner for Refugees (UNHCR), *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, LAS/2006/02, pp.8. Available at: <http://www.refworld.org/docid/44bb9b684.html> [Last accessed: 15.02.2018].

972 Letters N02-01/05/28006 and N02-01/05/29052 from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees.

RECOMMENDATIONS

To the Parliament of Georgia:

- To ensure that necessary changes are made to the Law of Georgia on International Protection. More specifically, to remove Paragraph 4 of Article 7, which contradicts the Geneva Convention Relating to the Status of Refugees of 1951.

To the State Security Service:

- To ensure that decisions to deny refugee or humanitarian status based on national security reasons and conclusions on inexpediency contain specific grounds for such decisions, in such a manner that does not compromise state secrets or fail to comply with international best practices.

To the Ministry of Internal Affairs of Georgia:

- To ensure that all relevant structural units are trained in asylum issues and relevant materials are included in professional basic and retraining programs.

To the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees:

- To ensure the expansion and improvement of integration programs for persons with international protection, to ensure these programs are accessible to more refugees and humanitarian status holders.
- To take measures, in the form of awareness-raising campaigns, to promote awareness among persons with international protection as well as the wider public on integration programs.
- To ensure access to Georgian-language learning courses for asylum seekers.
- To launch dialogue with international donors and development organizations to seek funding for ensuring accommodation for persons with international protection.



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