

# **PUBLIC DEFENDER OF GEORGIA**

**ANNUAL REPORT 1998**

**SUMMARY IN ENGLISH**



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## INTRODUCTION

The protection of Fundamental Human Rights and Freedoms is a universally recognized legal principle. Although, it should be noted that the acknowledgement of this universal principle by the international community has not occurred suddenly. This above-mentioned principle is the youngest of all the basic principles of international law. It has been generated only after the World War II, when significant steps have been made embarking on the way of recognition and protection of fundamental Human Rights and Freedoms on the international level.

The 90s of the 20<sup>th</sup> century have been a significant time for building Georgia's statehood: democratic transformation is underway, serious legal reforms are being carried out.

Georgia, through embarking on the way of building a rule of law state has recognized and announced the supreme standards of the international law in the sphere of protection of human rights and freedoms. The adoption of the Basic Law of the Country by the Georgian Parliament on 24 August 1995 speaks to it.

Unlike constitutions of various countries where the provisions for Human Rights and Freedoms are provided for in the preamble, Chapter II of the Georgian Constitution is entirely devoted to the Fundamental Human Rights and Freedoms. The Basic Law of our country has not only declared the Universally recognized Human Rights and Freedoms, but also defined basic legal instruments for protection of these rights and freedoms.

The Institute of the Public Defender of Georgia is a significant tool within the entire system to guarantee the protection of Human Rights and Freedoms as envisaged by the Constitution. It is a qualitatively new Constitutional Institution to play a significant role in establishing a Rule of Law State from the angle of human rights and freedoms.

Based on the Article 43 of the Georgian Constitution, the Georgian Parliament adopted the Law on the Public Defender of Georgia on 16 May, 1996, which defines the competence, basic principles and forms of activity, as well as legal guaranties for exercising the competence of the Public Defender.

As mentioned above, the Law on the Public Defender of Georgia defined the main spheres of activity, in particular:

1. To carry oversight on the protection of human rights and freedoms



throughout Georgia, detect the facts of violation of human rights and promote rehabilitation of the violated rights.

2. To carry oversight on the activity of state officials and local self-governance bodies, public officials and legal persons, to evaluate Acts, passed by them, to provide recommendations and proposals within the framework of the Constitution and other legislative acts in order to insure the protection and promotion of human rights and freedoms by the State.

3. To carry out educational activities in the field of protection of human rights and freedoms.

Given the current human rights situation in the country, it has become important to establish a national Institution embed with high independence which would be able to really protect human rights and freedoms in accordance with the international standards. This necessity has been foreseen by the legislator and the Article 4 of the Law on the Public Defender of Georgia guarantees the independence of the Public Defender: "The Public Defender of Georgia is independent and shall obey to the Constitution and the Law. Any pressure on the Public Defender or intrusion into his activities is impermissible and is punished by law".

The independence of the Public Defender of Georgia is significantly strengthened by the fact, that he is neither a part of the executive branch, nor is accountable before it – an undeniable gain of our country's democratic reconstruction.

## **Chapter 1**

### **Office of the Public Defender of Georgia**

#### **• Structure of the Office, Examination of Complaints, Receiving Citizens**

The Georgian Parliament elected the Public Defender on October 29, 1997. The Office of the Public Defender has been established in January 1998 and started to function in order to insure his activity.

Considering the specifics of the Public Defender's activity great focus has been paid to selection of staff to insure successful implementation of tasks faced by the Office. At present, the Office is mainly staffed by specialists with juridical and technical background. In addition to it, there are young personnel, enjoying the status of guest experts in almost all departments of the Office. Through working environment they learn and ac-



quaint themselves with specifics and activity of the new Institute and improve their professional skills.

Based on international covenants in the field of human rights and freedoms the main structural divisions of the Office are the Department for Civil and Political Rights and the Department for Social and Economic rights.

The Department for Civil and Political Rights carries out the following functions: protection of civil and political rights of individuals, protection of the rights of political organizations and public organizations, protection of human rights in the justice, law-enforcement, security and penitentiary facilities.

The Department for Social and Economic Rights carries out the following functions: protection of social rights of internally displaced people, protection of the rights of women and children, protection of human rights in the fields of education, science, culture, health, sport, social welfare, economics, civic-legal relationship.

Administrative Department insures the economic and financial activity of the Office of the Public Defender, promotes its logistical basis, provides monitoring on implementation of decisions made by Public Defender, insures other activity of the Office.

Activity of the Office of the Public Defender is headed by the Deputy Public Defender.

As regards the activities of the Office, 2343 citizens addressed the Office of the Public Defender during 1998 through complaints, claims and letters.

It's noteworthy, that in addition to their individual requests and demands the claimants consider it necessary to reform all spheres of the public life, to implement economic reforms, to perfect the activity of state and economic institutions, to solve the problems of vital importance.

The number of written statements lodged in amounts to 1335, i.e. 56,9% of the total appeal.

Geographically, complaints and claims could be divided as follows: the Imereti region - 98 statements, among them 43 from Kutaisi city; Kvemo Kartli - 67, among which - 33 from Rustavi city, from Gardabani - 23, from Marneuli - 7, from Megrelia and Zemo Svaneti regions - 33 statements, from Shida Kartli - 38, among them 17 - from Gori; from Kakheti region - 31; 21 statements from Mtskheta-Mtianeti, among them 10 - from Mtskheta, 8 - from Dusheti and 13 lodged from Adjara Autonomous Republic, in particular from Batumi city.

The largest shares of Statements are lodged from Tbilisi (1006), comprising 75,3% of the total amount.

A conclusion, drawn on the geographic analysis implies the necessity of establishing Public Defender's Regional Offices. It will enable the people away from the capital to address the Public Defender's Regional Commissioner.

The content analysis of statements indicates the following: 715 statements are related to court decisions, 199 - to interior bodies, 108 - to prosecutor's offices, 234 - to penitentiary facilities, 291 - to housing issues, 143 - to social welfare, 62 - to IDPs and 203 - miscellaneous.

As seen from above, the largest amount of received complaints and statements are related to court decisions. The majority of applicants assume that the Public Defender's Institute is established in order to supervise the activity of judiciary bodies and to insure control on their decisions. Therefore, they demand the Public Defender to cancel unacceptable and unfavourable court decisions. There is much civic dispute in Georgia today and concerned people simply do not believe in court decisions. The reason is probably the lack of confidence and lack of credibility of courts among the people. Therefore, the current juridical reform should promote significant increase of the courts' authority and insure the independence of such bodies.

The majority of lodged claims are related to penitentiary facilities and problems of such.

The analysis of the applications revealed an interesting circumstance: particularly, during the year of 1998 the increase in the number of applications and complaints was noticed, which could be explained by the following:

- a) Lack of information about the Public Defender of Georgia and his activities at the beginning of the year;
- b) Increase of social-economic problems;
- c) Building the confidence in the Public Defender and his Office given the activity results.

As a result of examination of the claims, the Public Defender's Office prepared 411 letters and recommendations that were sent out to respective institutions for appropriate response.

Ideas reflected in these letters and recommendations were shared and positively responded in 197 cases.

The Public Defender's Office pays special attention towards claimants.

The Department for Receiving Citizens was established as a separate subdivision in late September 1998.



The tasks of this Department are as follows:

- To interview claimants, who addressed the PDA either in person or through phone seeking clarification on a problem;
- To determine, as a result of the interview whether or not the issue falls within the competence of the Public Defender and if such is the case, to receive an appropriately prepared written statement (if necessary, claimant could be assisted in drafting a statement);
- To explain the claimant, which state body to refer to seek the resolution of the problem concerned and what are the ways for such, if the issue does not fall within the competence of the Public Defender.
  - To render juridical advice to citizens if necessary;
  - To ensure that claimant is received by top official of the relevant state body if necessary.
- To obtain an operative information on the issue raised by the claimant if necessary.

The spectrum of petitions is so diverse that the division into categories is possible only conditionally. Accordingly, the issue pertains to "the criminal" (pre-trial investigation and court proceedings of the criminal law cases, detention and arrest, penitentiary system, etc.) and to "the civil" (housing and labor disputes, daily conflicts, etc.) problems. The indicator of "miscellaneous" category is quite high (consultations, repeated claims applications, people with diminished psychic capacity, etc).

As a result of the activity by the Department, a few trends have been revealed, which to our opinion had negative effect on human rights condition in Georgia. These are:

- Lack of legal knowledge among citizens of Georgia, which is the main cause of their problems;
- Distrust and nihilism of people towards the court, which to their opinion is a corrupted institution;
- Bureaucracy of state bodies, which is the cause for procrastination of cases at different levels.

Receiving citizens by ministries and officials of various institutions is a significant problem.

Public Defender of Georgia is available to receive citizens each Monday, from 15.00 hours, officials of the Office are available each week day. It needs to note that during the year 1998, 1258 individuals have been enlisted for appointment with the Public Defender, out of which only 855 individuals showed up.

## **Part II**

### **The State of Protection of Civil and Political Rights**

#### **- Condition of Persons Deprived of Liberty**

Georgia, having embarked on the way of democratization, expressed its readiness for protection of fundamental human rights and freedoms. As a result of this Georgia acceded a number of international covenants and conventions in the field of human rights during 1993-1994, therefore assuming responsibility to ensure the compatibility of domestic legislation with international norms. These instruments are: The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights; International Convention on The Elimination of All Forms of Discrimination Against Women; International Convention on the Rights of The Child; International Convention on the Prevention and Punishment of the Crime of Genocide; International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Rights against Discrimination in the Sphere of Education.

On January 27, 1999 Georgia became a plenipotentiary member of the Council of Europe. The decision was unanimous among all the members of the CoE.

Joining the Council of Europe will allow Georgia to strengthen its national statehood, independence, solve problems actively caused as a result of the recent armed conflicts.

Membership of Georgia to the Council of Europe implies the acknowledgement of humanitarian, democratic and legal values that make the basis of the European civilization.

It is clear that international controlling procedures and mechanisms can not replace the domestic mechanisms and regional activities. The responsible for human rights is a country, under the jurisdiction of which these people are.

Given the above mentioned, the condition of human rights and freedoms during 1998 would be analyzed from that angle. Meanwhile, despite a number of positive steps made recently in the country, the situation is still quite difficult. The resolution is a priority issue for all the branches of the state.



Strong will of the Georgian people to establish a rule of law state and to insure universal principles of human rights and freedoms is expressed in the preamble of the Georgian Constitution, according to which the Georgian citizens are keen to establish democracy, gain economic independence, build a social and legal state, protect fundamental human rights and freedoms.

The protection of human rights and freedoms recognized by the Universal Declaration of Human Rights as well as by the Georgian Constitution can not be viewed alienated and separated from the country and society. The conditions of human rights and freedoms depend on the rule of law in the country and on real implementation of human rights and freedoms provided by law.

Activity of any institution on a governmental or public level should be based upon the supremacy of law, as one of the important elements of the rule of law State. Supremacy of law implies the activity of legislative, executive and judicial branches in accordance with the law only, observance of checks and balances as well as mutual accountability and responsibility between the state and the people.

Objectivity demands to say that the recent judicial reform in the country is carried out in the spirit of these principles only. Although, quite often the desires remain as the desire due to the fact that the government officials of different branches, allegedly having been guided by "State interests" have acted by their personal interests, not taking into account the principle of supremacy of law but rather by the expediency of law implementation.

In this report we will try to focus attention to concrete facts of such approach, which testify to the fact that human rights have not yet become a top value for a few people in the country. In this regard, the situation is extremely hard in the penitentiary system of Georgia. Despite few efforts by the Penitentiary Department to carry out various activities the situation does not satisfy inmates' elementary demands. It is necessary to solve the problem of providing food to prisoners. The food provision for inmates demands immediate resolution, the sanitary-hygiene situation in correctional facilities is beyond any criticism, the furniture and inventory of the penitentiary facilities need to be totally replaced.

Nowadays, there is need for 2000 beds, 4000 chairs, 1000 wardrobes, 10000 sets of clothes, the similar amount of shoes and other items of the elementary need. Hard living conditions of inmates is also due to the fact, that the correctional facilities are located in old buildings half destructed buildings.

The current economic situation of Georgia does not allow the resolu-



tion of all the problems in the penitentiary system, however when talking about elementary needs, health and life of inmates it should be beyond any dispute that the state should try to prevent rampant tuberculosis or other infectious diseases. Without daily and consistent work of our foreign partners and friends in a number of cases such diseases would have the fatal result. However, the situation is still hard in the Geguti Labor-force correctional facility and the Ksani No9 TB correctional facilities.

Medical service of the penitentiary system has received half of the sum allocated from the budget last year, which is insufficient and has negative impact on the health condition of inmates. 85 inmates deceased last year. 1621 inmates received medical treatment at the Republican Penitentiary Hospital. 40 diseased inmates requested the judiciary bodies for pre-term release upon a special medical commission certificate, from which 34 have been released and 6 were refused due to gravity of the crime committed.

Nowadays, there are inmates kept at the Republican Hospital of the penitentiary who have no chance of recovery. Because of the lack of financial support the staff of the hospital has no possibility of providing a proper medical care. It should be noted that a few diseases are not included in the list conditioning the pre-term release of inmates. Due to this a number of inmates-patients are patiently expecting their death in the penitentiary hospital, which has strong psychological impact in the other inmates. If nothing changes, there will be many similar examples this year also.

Every normative act in the field of human rights and in particular in the field of the right to life should be unconditionally implemented. This issue should be solved on a governmental level. It is essential to take immediate measures to adopt the law on pre-term release of inmates due to health condition, which will solve all the critical problems.

#### **- Arbitrary Detention, Torture of Inmates, Illegal Dispersement of Demonstrations and Meetings**

The Public Defender pays special focus to the conditions of inmates in preliminary-detention and pre-trial detention facilities, because the most massive violations of human rights take place in this system. Vivid examples of such are indicated in the publishing papers of both, international organizations (Amnesty International) as well as Georgian NGOs.



Therefore we are often addressed by claimants complaining about beating and torture of inmates by the representatives of law-enforcement bodies. Based on the Article 17 of the Georgian Constitution: "Torture, unhuman, brutal or degrading treatment or punishment is inadmissible". №4 of the Article 18 of the Constitution says: "The physical or moral intimidation of a detainee is inadmissible".

The Georgian legislation provides strict measures against individuals who apply torturing, beating and abuse against detainee. However, despite that majority of claims received by the Public Defender's Office demanded the revision of court rulings, based on the confessions extorted under duress. Therefore, one can conclude that the practice of applicability of criminal responsibility against beating and torture of inmates is very low.

Some concrete facts can be given as an example: *defendant G.Zabiradze demanded assistance in order to cease the torture against him. He was severely beaten during one of the interrogation processes in investigative isolator NI. We have studied the history of Zabiradze while in the hospital and met the prisoner himself and were convinced in the truthfulness of the facts. Therefore we applied The General Procuracy of Georgia with the request to investigate the fact of Zabiradze's torture. The note received from the Republic Procuracy informs us that the defendant injured himself by beating his head to the walls of the cell. From the Zabiradze's illness history we learn that the accused person had several injures which was impossible to be caused by beating his head to the wall, as his genitals were hurt.*

*At 11 a.m. of May 6, 1998 at Akhmeteli subway four policemen from Gldani region police department arrested G. Teloiani. He was taken to the Gldani police department, where he was severely beaten. The police claimed that Teloiani kept a gun at home that must have been submitted to the police. Police contacted Teloiani's mother, asking her for money in order to free her son. It is also known that two policemen visited Teloiani at home several times and verbally threatened him, in case if he reveals the fact of torture).*

Public Defender is aware of the facts, when people are kept at the district police precincts without being posed any charges, which is the violation of the Constitution (Article 18). This particularly refers to the people oppositional to the government. There are, the black list of the so called "politically unreliable people", who are arrested on the eve of demonstration without any reasoning and who are kept in the police precincts until the end of gathering. The facts of forceful disbursement of such demonstrations and manifestations are repeatedly indicated.

It causes particular indignation when such meetings and demonstra-



tions are dispersed even though they are within the framework of the acting legislation. This right to such is provided for by the 1995 Constitution.

*For instance, in December of last year in Merab Kostava's yard so to say in the place, which does not cause traffic problems, the demonstration was dissolved and as a result the citizen Ledjava was found dead. In October of last year the force was used against the gathering of Abkhasian refugees, which was planned to take place in the hall of philharmonia and the sum of rent was already paid by the organizations of gathering beforehand.*

The above-mentioned is aggravated by a circumstance, that during the dissolution of meetings there are facts of physical abuse against journalists, which often hinders the activity of independent mass media. On November 10, last year correspondent of the "Resonansi" newspaper A. Ckitishvili, accredited to attend the proceedings was beaten up in front of the Supreme Court building.

Analysing the above-mentioned, the Public Defender Office assumes that one of the reasons for the confrontation between authorities and opposition is the well-known events of 1991-1992.

December-January events of 1991-1992 placed Georgia into the legal vacuum. On one hand, through enforcement, the acting Constitution of Georgia was suspended and on the other, the 1921 Constitution of independent Georgia was restored, although the latter did not work practically.

The legal vacuum allowed for the interpretation of law in various ways, in particular when the opposing sides defended the legality through force, which resulted in mass human rights violations on both sides. As a result of such, there are tens of inmates whose crime pertains to the civil war and its consequences. Many of them are recognized as political prisoners by both international human rights organizations as well as legal attorneys of individuals. This does not increase the authority of the Georgian government and of the Georgian State in the eyes of the world community.

Irrespective of the fact, that the new Penal Procedural Code of Georgia envisaged a few guarantees against arbitrary detention of inmates, such facts are still common.

More over, the staff of investigative bodies offices do not make in-depth analysis of documentation, do not give proper evaluation to evidences and in a number of cases initiate criminal proceedings without reasoning, which later becomes a subject of confrontation and dispute between parties.

*For instance, only the investigative office of Ministry of Internal Affairs brought to justice approximately 5025 person, 2620 from them were imprisoned. The interesting fact is that later on, the criminal charges were*







*stopped against 469 person, the case was stopped for 170 defendants for not having the evidences and for 299 for not proving a crime. It must be mentioned that arresting activity was used against 12 people. For example: December 2, 1997, the Investigative service of Imereti region brought criminal charges against the citizen Kharadze (crime is considered by the Criminal Code article 218, paragraph 4) and he was sentenced to prison and almost a year later the case was stopped. Also illegally was arrested the citizen Djalabadze, to whom in July 15, 1998 was brought the criminal charges in Marneuli investigative department (the crime is considered by the Criminal Code Article 88, Paragraph 1) which was stopped as well.*

Unfortunately, these are not single facts. There is even more concern about the fact, that this problem was not solved even after the Penal Procedural Code was brought into the conformity with the Georgian Constitution and that decisions on arresting became the prerogative of courts. Unfortunately, judges due to various reasons have not become an element of the structure, which in the first place should guarantee the protection of human rights. More over, despite the fact that the new Penal Procedural Code envisages new forms of deprivation of liberty like bail, conditional imprisonment, etc, the courts still do not actively apply this practice. The fact, that only 32 cases of bail were applied last year speaks to it.

The above-mentioned, certifies that there is no due attention to the human rights by law-enforcement bodies. They should work towards detecting any single act of beating and torture of inmate and punish everybody who is guilty of such through severity of the law.

It needs to be mentioned that Chiefs of relevant bodies try to react to similar or other infringements. 78 policemen were convicted, while 202 law-enforcement personnel were discharged from the office. Although, speaking about administrative or criminal responsibility only is not sufficient. We should care to change the mentality of law enforcement officials. Claims against such are received from all, suspects, convicts and victims.

A matter of hot dispute is a subject of the so-called "mourning mothers" organizing acts. These are the parents claiming against criminal cases that are doomed due to unqualified investigation year-after-year. The cases are either closed or concrete victims are not applied or the rights of victims are abused. The case of Gocha Jikia's murder is a good example. The family uses the extreme form of protest, however the law-enforcement bodies are unable to detain and bring to court a criminal. Such facts are many.



## - Justice, Judicial Reform

Besides the establishment of the special body in Georgian government's executive branch focusing on protection of human rights, prisoners do not have faith in it and other institutions. They simply do not believe that their complaints would be reviewed in positive and legal manners.

The majority of defendants on pre-investigation stage hide the fact of their torture, fearing that it would have negative consequences on them and their relatives. Derived from the above mentioned facts, the absence of the medical analysis letter certifying the torture of the defendant, leaves judge unaware of the fact that testimony was obtained, by using illegal procedures. Therefore the verdict made by court is not based on the legal aspects, which later causes claims of case examinations. Regarding the above mentioned we would give the following fact as an example:

*In accordance with the verdict of Georgian Supreme Court made on 8<sup>th</sup> of April 1996, Mr. Cherkezishvili and five other members of the group were imprisoned for committing burglary. Derived from the prisoner's confession and relying on the examination of the case, it was revealed that on pre-investigation stage their rights were violated, to be precise, they were interrogated without their defense attorney's presence.*

On behalf of the recommendation of Public Defender, Supreme Court changed its verdict and all of the prisoners were released.

The majority of the claims brought to the public defender's office request the review of the court verdicts. Most of the applicants are suspicious regarding court verdicts on the following matters:

- Torture of defendants in order to obtain forced confession.
- Defendants were not permitted to have their defense attorneys, during the process of interrogation.
- Verdict was based on incomplete investigation of the case.

The existing situation in the justice system requires the juridical reform to take place. New Georgian constitution raised the particular question regarding progressive mechanism of protection of human rights, which would be mainly focused on court system. Accordingly despite great variety of barriers it is considered that, new reform would be really helpful in establishing modernized progressive court system.

In our opinion, the above mentioned juridical reform would play an enormous role in creating the independent status and working conditions to lawyers and judges, which seems essential and important in Georgia. For example:



The Supreme Court of Georgia made a verdict on 21<sup>st</sup> of April 1997 based on (Code 65-subarticle 1. Code 17-67-subarticle 2) that Mr. Ratiani was considered guilty in committing the crime and was deprived the liberty for seven years. Several months later public defender of Georgia received a letter from Mr. Ratiani requesting to review the verdict and its legitimate basis. After the examination of the case details it was stated, that verdict was not based on the thorough investigation of the case. Practically, Mr. Ratiani was pronounced guilty for criticizing the present government and for the involvement in conducting terrorist act against the president of Georgia and planning Coup.

The following case could be given as an example of the fact, when the verdict of the court was reviewed in order to confirm the legal and thorough basis of investigation:

Internally displaced person Mr. Kakava was pronounced guilty by the Rustavi district court for possessing the shotgun and narcotics in a small quantity. The casation collegium of the Supreme Court on behalf of the request of Public Defender of Georgia asked the Rustavi district court to examine the details of the above mentioned case. After the precise review of the case the Rustavi district court cancelled the first part of the verdict and released Mr. Kakava, taking into consideration the period of his imprisonment while on pre-investigation stage.

Another claim received by public defender regarding the examination of the court verdict was the case of Mr. Adamia, who was imprisoned for 1 year and 3 months. In accordance with the request of Ombudsman of Georgia the details of the case were examined, but unfortunately for some reason the case was transferred back to investigation stage.

The number of similar cases of so called "false verdict" is unfortunately enormous.

### **Non-execution of court verdicts**

The authority and independence of the court system is badly influenced by the problem of non-execution of court verdicts.

In accordance with the statistical information of the ministry of judiciary: in 1996 (3989 cases out of 17976 were not executed. In 1997 -6913 out of 21533 were not executed in 1998 situation could be considered as even worse.) Each year the number of unexecuted cases increases and causes



fair unsatisfaction of citizens. Mostly non-executed cases are connected to job related disputes, when public authorities do not pay any attention to protection of the rights of their employees. In order to better illustrate such cases we would give you couple of practical examples:

Mr. Gersamia on behalf of the order of ex CEO of Poti port was dismissed from his job on the basis of non-competence and poor performance, couple of months later his job position was totally cancelled. On 18<sup>th</sup> of December 1996, the district court of Poti examined the case of Mr.Gersamia and resumed him on his job position. The Supreme Court supported this decision. Despite the all above mentioned facts the present CEO of Poti port Mr. Inaishvili does not pay any attention to the final decision of both courts (Supreme and Poti), he violates the rights of ex-employee of Poti port-Mr. Gersamia and keeps him unemployed.

The same situation was found in the case of Mr. M. Bakuradze, who was dismissed from his job on illegal motive. Later in 1997 the district court of Gardabani reviewed the claim of Mr. Bakuradze and found him eligible to be resumed on his job position. Because of non-execution of this particular court verdict, deputy chairman of the Supreme court of Georgia Mr. Liluashvili personally on behalf of Ombudsman's claim, requested both the governor of Gardabani region and chairman of Gardabani court to immediately execute the above mentioned verdict. Unfortunately both above mentioned public officials ignored the supremacy of law, as a result Mr. Bakuradze still remains unemployed.

Another fact of non-execution of court verdict is connected to the case of Mr. Khidasheli vs. "Samtrest"

The above mentioned cases can well demonstrate the fact that the great number of public officials ignore the supremacy of law and disobey the request of court, at the same time relying on their job-positions and their personal authority.

Derived from all the facts given above the juridical reform seems inevitable in Georgia. Even more, it is considered to be helpful not only for reorganizing the justice system but, also for building the progressive structure of the country, based on the acknowledgement of law authority.



## The condition of penitentiary system

As it was mentioned above, the Public Defender pays special attention to the prisoners' conditions in penitentiary institutions.

One of the unsolved problems is the issue regarding life sentence imprisonment. As far as you are concerned, Georgian Parliament has abolished the death penalty. Skeptics assume, that with abolishing the death penalty the lynching will increase, but their fear was in vain. Only one fact was revealed during these years. At the same time the Parliament has adopted the new form of penalty- life sentence imprisonment. There are six life-sentenced prisoners in Georgia now. It must be noted that conditions in penitentiary facilities are very severe. Therefore, the government and each human rights organization have to do their best to create elementary life conditions for them.

We consider that one of the ways to solve problems in penitentiary system is to pass a new penitentiary code. It is very important to guarantee prisoners normal living conditions, medical service and other basic rights. In 1998 the Public Defender proposed the Parliament and the Ministry of Justice to assist in solving these problems.

Now, when Georgia is a member of the Council of Europe, everyone knows well, that one of the conditions which is necessary for a membership in the Council of Europe is the transmission of detained person from the Ministry of Internal Affairs to the Ministry of Justice in reasonable time.

According to the international conventions and pacts the law has to be adopted concerning the transmission of pre-detention cells and prisons from the subordination of the Ministry of Internal Affairs to the system of Ministry of Justice. This fact will more effectively provide the international and local governmental and non-governmental organizations to supervise human rights conditions.

On the way of legislative reform one of the achievements is addition and change in criminal procedure code made in 1997, also the adoption of a new criminal procedure code, which will come into force soon. The introduction of new forms of suppression that are not in conjunction with imprisonment could be considered as important step ahead.

The Public Defender often pays attention to the facts when expedient bodies don't use these means and mediates them to change imprisonment on non-imprisonment punishment.

In many cases courts and law enforcement authorities take into consideration the Public Defender's recommendations. Accordingly, Levan



Omarashvili, Lali Gogolauri, Ilona Mare, Vasiko Kovziashvili, Babale Khutsishvili, Khatuna Letodiani were released, but unfortunately in few cases the Public Defender's recommendations and mediations were not granted positively.

One of the Public Defender's important duties is the pardon of prisoners. Last year the Public Defender mediated a few pardons and Nugzar MolodinaShvili, Vladimer Domukhovski, Nugzar Ugulava, Auto Tsomaia, Malkhaz Kukharashvili, Dato Dokhnadze, Gia Mchedlishvili were released.

We can not emphasize the fact, that last year the government itself often expressed goodwill and implemented the act of pardon. During the 1998 the pardon department has considered 5238 requests and 2667 recommendations. In respect to the commission proposals, from 2667 prisoners the President pardoned 902 persons. In spite of this fact at the beginning of the year the President implemented a pardon act and more then 1200 prisoners were released on parole.

We think the former board of attorneys lost its effectiveness and needs the reorganization of structure and therefore for the better protection of human rights it is necessary to create a new independent, impartial and high-qualified office of attorneys.

### **Health care**

The main responsibility of the government in the field of health care represents the protection of individual's constitutional right to life and medical treatment.

Accordingly, the field of health care constitutes the main part of the state's social policy and represents the guarantee of building pure democratic, civil society. The biggest existing problems, connected to implementation of state health-care programs are non-regular and non-full funding of them.

The state budget of 1998 confirmed 36 governmental programs, including: 11 medical prophylactic, 9 insurance and 16 other-total worth of 54.22 million Lari. During the year only 58% of the budget was composed. The absolute deficit including all the programs constituted 22,672 million Lari. Derived from this, most of the health -care programs planned by the government were not implemented and people of Georgia could not get the promised medical service.

The situation is getting even worse if we take into consideration the fact that Georgian legislature decided to provide 2.5Lari per capita from the budget, which means that each individual would have approximately 80-90



Tetri for health –care. This situation causes the claims with the content of health-care to the public defender’s office to increase drastically. It should also be mentioned that the percentage of mortality among workable people increased too.

Another huge problem connected to the field of health –care is the illegal trade of false and expired medicines by various individuals. It should be mentioned that the number of mental disorders among people increased during the recent period. In 1998 the number of registered disorders of this type is well above 87066 and only 4977 diseased out of the above-mentioned number were hospitalized.

In such problematic and strict period, it would not be right if we do not pay attention to the devoted work of the ministry of health –care directed towards implementing the medical reform in Georgia. The implementation of this particular program seems impossible without necessary funding from state and municipal bodies, or otherwise in the near future both patients and doctors might loose their interest and faith into it.

### **Rights of the children**

One of the biggest existing problems in the sphere of human rights protection is connected to the rights of children. In spite of the fact that it is the fifth year since the Republic of Georgia joined “Convention of the rights of the children” (CRC), the problems regarding this field still remain.

Problematic character of this subject could be easily demonstrated by the fact that, during the recent period more than 600 juveniles were captured and another 2500 registered by the ministry of internal affairs, basically for committing such crimes as: prostitution, drug possession, alcoholism etc. It should also be mentioned that in comparison with last year the number of felonies committed by juveniles noticeably increased. Another 430 juveniles are registered in the ministry of internal affairs for begging money on the streets; the real number of young beggars is considerably high.

The Ombudsman and public defender’s institute of Georgia work hard in order to save these small children and keep them out of prison. The good example of this could be well demonstrated by the following case: In March of 1998 police division of Chugurety district captured three juveniles: G. Palelishvili 16 years old, A. Minasian 14 years old and M. Chitashvili 17 years old, for stealing food worth 14 Lari from the store at night. Despite the



fact that, on behalf of public defender's request all of the above mentioned children were released from the courtroom, several nights later they committed the same. As a result we are coming to conclusion that this type of problems unfortunately have very deep social roots.

Hard political and economic situation in the country caused a great number of social crimes to emerge. The number of abandoned children has increased and majority of them have to continue their lives in poor and severe living conditions.

During the last years more than 200 children were adopted by foreigners, these tendency could have a tragic impact to our nation, which is small by itself.

### **Educational system**

Such a complex activity, as the educational reform causes great variety of social problems. Structural changes are accompanied by the changes in number of institutions of the system of education, which on one hand is suitable with the measures of modern standards, but on the other hand causes unemployment and non-education.

During the period of 1990-1998 the number of elementary schools decreased from 2479 to 1224. Which caused the decrease in the number of pupils from 199982 to 74879 and in the number of teachers from 22538 to 5397.

The same period the number of high schools decreased by 463 points, from 3686 to 3223, accordingly the number of high school pupils also decreased from 878 thousand to 721 thousand and number of teachers decrease from 100932 to 71405.

It is understandable that the claims to the public defender's office derived from the above mentioned situation are basically regarding the job positions, which teachers lost because of the educational reform. Public defender's office tries to do its best to help teachers in such a desperate situation, but the reality is, that such a problem is caused by political and economic situation in the country and government is only able to solve this problem.

As far as you are concerned, recently the examination tests for the teachers were conducted by the ministry of education in order to reveal professional teachers and state their salaries in accordance with the degrees. This above-mentioned process caused fierce opposition from the teacher's side.



## **PART III – Conditions of Economic, Cultural and Social Rights**

### **Employment, wages, vital minimum, pension assurance**

During the 90s the general economic crisis took place in Georgia. As a result of low rate of production the national income was reduced to 45 per cent as against preceding years. Industrial production stood at 48%, rural production- at 32% and the housing lagged behind them. Because of the high rate of inflation almost every second ruble became cheap. There was an abyss between the mass of active money and the people's life demands. Registered unemployment increased 7 times by 1992. It must be taken into consideration that this number was not actual and there was the ongoing process of hidden unemployment.

Since the year of 95 economic conditions in the country had begun to improve. In 1992-1994 rated money incomes were 5 times higher than wage incomes and by the end of 1995 the rate of wage increase was higher in comparison with the rate of other money resources. Despite of this, there was a low standard of life in the country.

The total internal production added up 451USD per person in 1995, 1996-775, 1997-913 and 1998-600, thought it was 1,5-2 times less than a vital life minimum.

According to the statistical treatments of 1998, the average vital minimum went up to 182,4 Lari by the end of 1998. 18 Lari was the first category wage of the person employed in the state sector and it made up 39,5% of the normative minimum wage. It must be noted, that there was no structural change in employment, the number of self-employed was 57,8% (1 091 men), and 41,6% (786,6 men) were hired.

Due to the unbalanced budget, hidden incomes and high rate of corruption the budget was not fulfilled by the end of 1999. In such conditions there was continued fluctuation of Lari with the prices soaring on basic products.

These bad economic situations (low wages, unemployment, poverty and other difficulties) were reflected in the applications admitted to the Public defender's Office of Georgia. According to these applications unemployed population are not able to pay for communal payments (gas, water, electric energy, phone e.t.a.). The general populations don't seem to understand how to live and pay with prices soaring and wages lagging behind it, with so many pensioners waiting their pension for months vainly. by the second half of 1998 the pension deficit added up 38,9 mln. Lari.



It must be noted that the Pension Fund did something to improve the situation in this direction, but its achievement leaves much to be desired.

Unfortunately, the Public Defender was unable to take an active part in this matter, though he was trying to exercise his rights and addressed to the legislative and executive state bodies.

### **Income of the Population**

Among other problems the applicants demanded that there should be timely and proper indexation of their bank savings. The President's decree (8 December 1997) demanded that the Parliament must define the indexation of money at the rate of 502mln. Lari and it must be considered as the internal budget debt. At the same time 2mln Lari should be reserved for the purpose of helping disable population of the 1<sup>st</sup> and 2<sup>nd</sup> categories. It seemed quite natural that the other part of population should not approve of it.

The same applies to the problem related to the bankruptcy. Almost every second individual was deprived of his/her savings due to the lack of legislation, irrelevant registration of commercial structures in self-governing bodies, the lack of the mechanism of normal functioning of companies wrong private treaties between natural persons and legal persons, false advertisement, undue control etc.

### **Property holder's and Consumer's Rights**

Now Georgia is in a transitive period. The population of Georgia seem to realize this with its objective causes, but at the same time due to the lack of true information, negligent of laws, corruption-the problems that stand in the way of market economy. It is necessary to work with population with reference to these matters. The Public Defender's staff works in this direction using various forms of activities. The staff gives commentaries about the reasons of this conditions.

The problems connected to enterprise and land privatization are the part of new market economy.

By 1998 there was 11 834 private enterprises in Georgia. More than 10 000 shareholders became the owners of 3 000 enterprises on the basis of various forms of privatization. Simultaneously there are facts of violation of the rights of holders. As a result of it, they address the Public Defender of Georgia.



There are numerous facts when a great number of wrongly formed documents about the privatization disputed matters between individuals and legal persons. Here we can mention the treaty between the "Borjomi" and "Georgian Glass and Mineral Waters" companies. Serious complaints exist with reference to the Tskhneti country cottages.

Current legal civil code violates the right of property of certain groups of population who is in need of proper house conditions. The Public Defender's staff requested the Parliament of Georgia to take this circumstance into consideration during the process of adoption of the relevant law.

The rights of consumers are maintained by the law adopted on 20 march 1996, but according to the statistical treatment the share of bulk goods constituted 45% in 1993. Nowadays it makes up 60%. The shops and markets of Georgia are full of bulk goods and bargains. These situations are the natural cause of undue checks and controls by various state structures.

Another important problem that the Public Defender's staff should take care of is to defend the rights of women. Equality of human rights and fundamental freedoms for all, irrespective of gender, is guaranteed by the Constitution of Georgia.

In spite of this, there are, however, several problems in the area of protecting the rights and freedoms of the women. The share of unemployed women in Georgia is especially large. After transition to market economy the women were affected by the greatest threat of human deprivation through both human and income poverty. Being hired in the first turn, women have fewer opportunities and vacancies available than men. This is why women often apply to the Public Defender.

Here should be mentioned the case of the citizen Nani Dolidze who addressed the Public Defender's staff. She was engaged as a cashier of the United Bank of Georgia in Ozurgeti. She was fired from her office in 1996 without reasonable foundation. Having examined the case, the court has returned Dolidze to her office by its decision only after the request of Public Defender to review the case.



## **Military Rights National Minorities, Political Conflicts**

The geopolitical reality of the region, the international tensed atmosphere and the acute conflict situations on our territory caused the foundation of the efficient army. The country's present economic level would not facilitate the development of this process in a desirable rate and direction, which may cause many negative occurrences, including the violations of human rights. These violations will appear during the mobilization of active military service. Basically these violations will be connected to refusal of going to military service for religious, ethnic, moral, philosophical and political beliefs.

Here as an example we can take Giorgi Tambulov's issue, which was discussed at the Public Defender's office. Tambulovi was sentenced to three years for desertion by the Kutaisi court. It became clear, that he was going into the Central Clinical Hospital for a check-up and has given diagnosis, that he would not be a subject for call up at the peacetime - Order № 360, Ministry of Defense. Beside this, he was called up for military service, which became the reason of his health aggravation. The Public Defender's office by the assistance of court succeeded in obtaining the truth.

The social problems are the most widespread: food does not contain enough calories and is not sufficient, the uniform is of the low quality, and the medical service is not effective which cause the solders disability. The delay of salary is systematical and it becomes the reason of suicide (Major G. Amirshanov). "Dedovshina" –it is the acute problem inherited from the Soviet Army, which leads to the beating or suicide and causes the desertion. The deserters prefer to be in custody than to return to the army. The Ministry of Defense has to take into consideration that there were more than 100 military men killed at the peacetime. All these events were considered as the suicides or accidents. It becomes clear that the military prosecutors' office must intensify their supervision control.

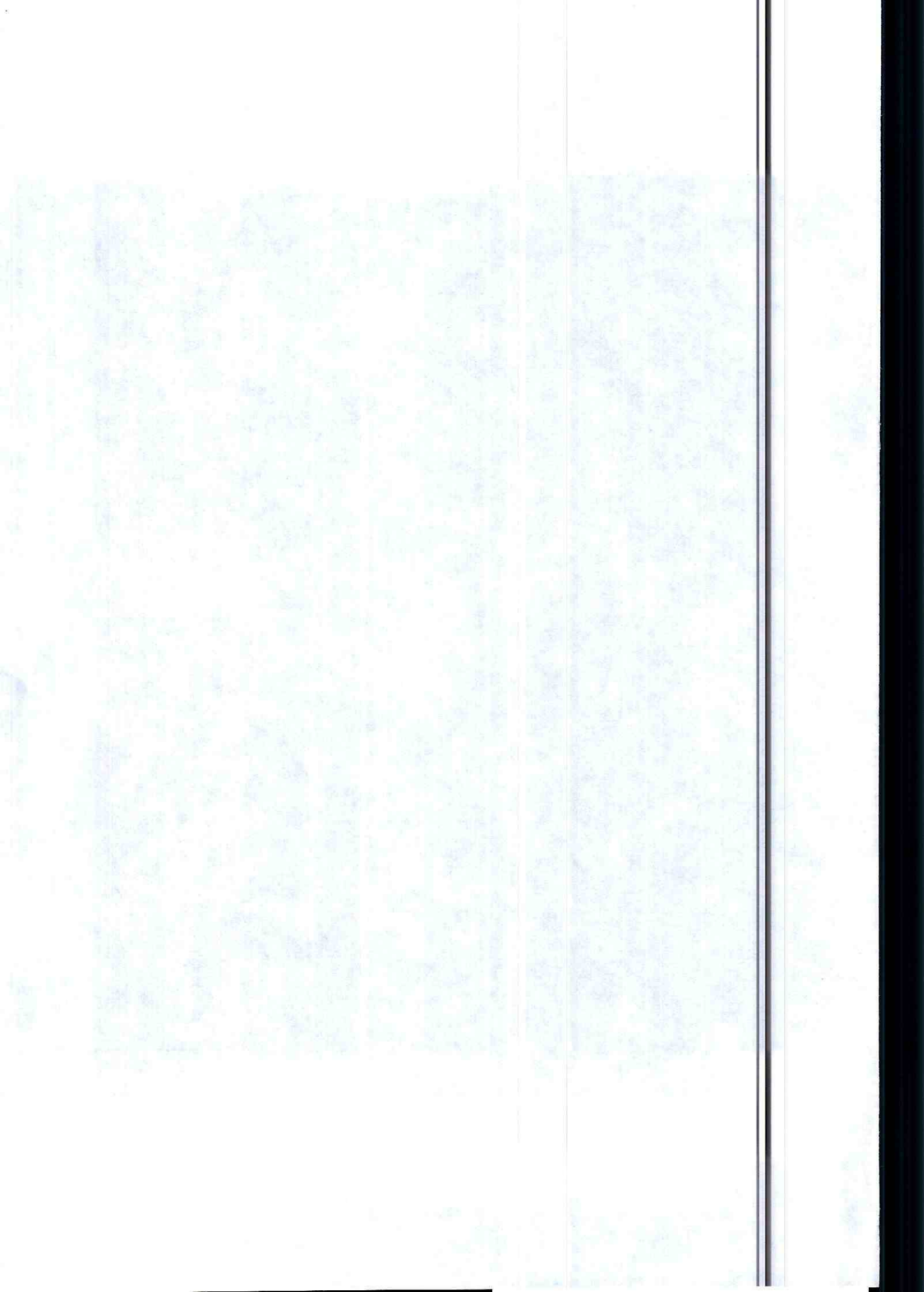
The International Humanitarian Law strictly forbids the restriction of the ethnic, religious or language minorities to use their culture, religion and native language. The Georgian Constitution is the main guarantee for the protection of these rights in our country. It is difficult to estimate the problems regarding the ethnic conflicts connected to national minorities in our country.

In accordance with the statistics of 1989 the ethnic groups consisted











of: Armenians (8,1%), Russians (6,3%), Azeris (5,7%), Ossetians (3%), Greeks (1,8%), Abkhazians (1,8%), Ukrainians (1%), Kurds (0,6%), Jews (0,5%) and others. Today the migration processes that has been happening for last 10 years changed these indexes. In 1990-97 years, almost 700 thousand people left Georgia and almost 80 thousand of others arrived, but the migration saldo is about 620 thousand. Among them 120 thousand people migrated from Abkhazia and 10 thousand from Tskhinvali region. In 1992 year 19,5 thousand Slavs (Russians, Ukrainians, Belorussians), 2,6 thousand Armenians, 4,4 thousand Azeris, 2 thousand Ossetians left Georgia.

It must be mentioned that there was no announcement for the violation of ethnic minority's rights at the Public Defender's office. There are of course announcements from the non-Georgian inhabitants, who complain about every-day life problems, which worry the Georgians too. It has to be mentioned that every violation of non-Georgian inhabitant's rights mostly for the political sense must be and is discussed attentively.

The conflicts in Abkhazia and Tskhinvali region are considered as the political and not ethnic. It must be noted that the rights of preservation and development of: culture, religion, language and traditions, foundation of theatres and libraries, the usage of mother tongue (at local radio and TV) and participation in public life was never violated in these regions and could not be the reason of the conflicts. However, the violations of human rights during the conflict situations are subject of separate discussion.

There is another important problem, so-called "Moslem Meskhs" issue. This issue has to be solved at the short time with justice, because it is the prestige of Georgia and is confirmed by the European Union. The Public Defender is uneasy that the president's order to settle down "The Moslem Meskhs" by stages has failed to comply.

The Georgian jurisdiction is not carried out in two regions Abkhazia and so called South Ossetia. It is known that: Human rights are not protected in these regions, even after conflicts "Amnesty International" has been addressing authorities in these two regions as those with *de facto* control and as recognition of their status *de jure*. In this document we read: "The government of Abkhazia have to ensure the security and safety of whole inhabitants in spite of ethnic origin. The Abkhazian armed forces are charged with the premeditated and severe murders of the inhabitants.

All the accused must be prosecuted and the compensation must be given to the victims". By the same organization's information there were almost 200 people killed and 1400 houses destroyed in Gali last year. The Public Defender's commitment is to contact the government of Sukhumi



and to clarify all the facts about violation of human rights. The OSCE will take participation in fulfillment of these works. The Public Defender demonstrates his intention to solve the Abkhazian problem by the help of peace treaty.

The employees of the Public Defender's office have been personally meeting the representatives of the internally displaced people's groups, in order to better understand the essence of their problems.

## **Part IV – Conclusive Issues**

### **Relations with international organizations and NGO-s**

In accordance with the analysis of the protection of human rights in Georgia in 1998, we come to a conclusion that this particular field faces many problems. Highly developed and democratic countries also have the problems in this field and no wonder, that Georgia, which went through the ethnic conflicts, civil war, political oppositions, making the first steps towards democracy would occur in same situation. The best achievement is to choose the way of recognition the principles of humanism and democracy, which must lead to the unity of free people, to the creation of civilized society and rule of law.

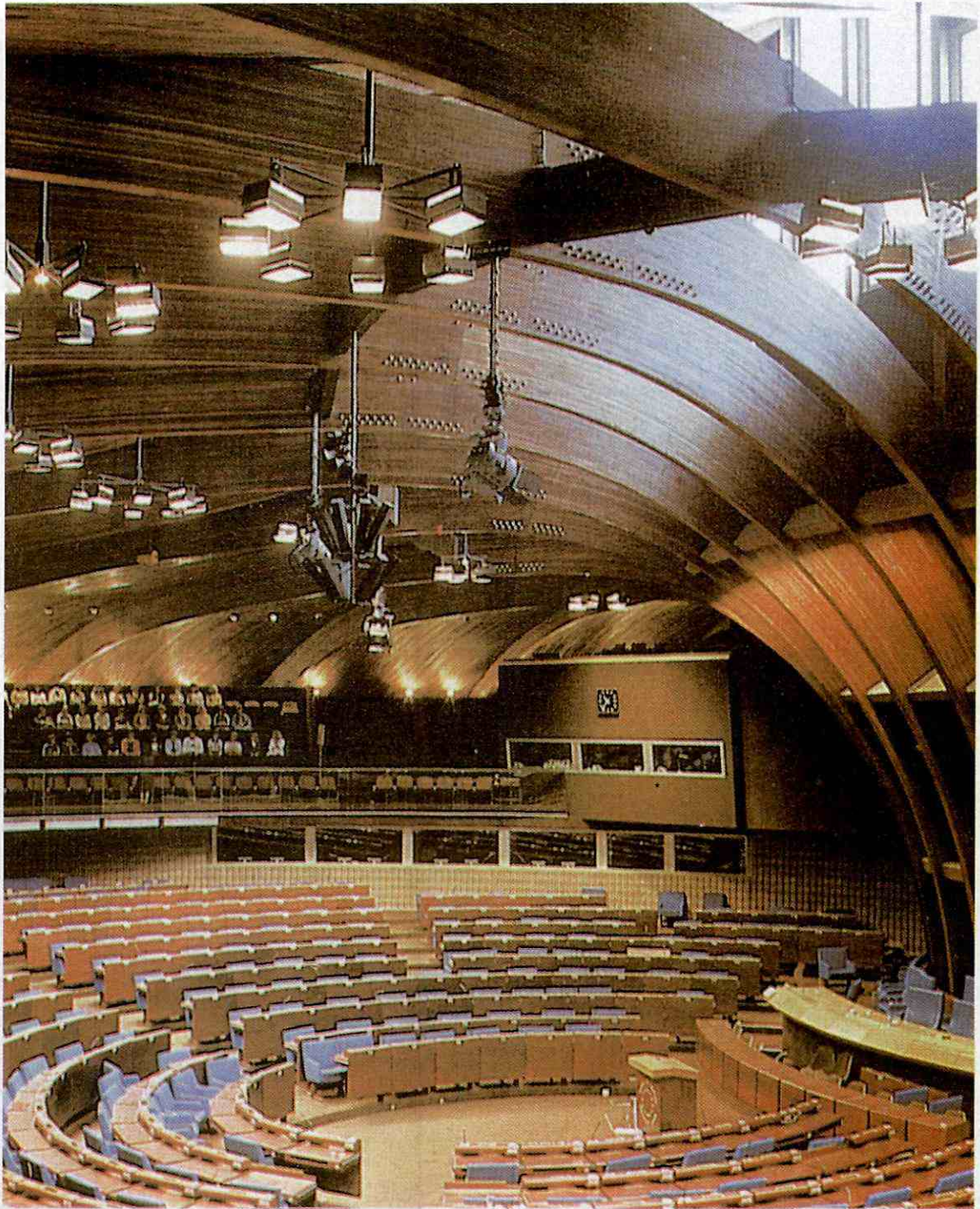
For this purpose, it is important to establish such democratic institution as the Public Defender's office. It must be noted that establishment of this institution would play an enormous role in the field of protection of human rights.

In our annual report we attempted to illustrate our activity the duration of which is only one year.

We attempt to ignore demagogic, populist and false so called "effective applications" often made by different structures and individuals participating in the sphere of protection of human rights whose work achievements and devotion have not been illustrated yet. During last year the Public Defender on behalf of the law was authorized to:

Forward recommendations to the state body on juridical person, who triggered the violation of human rights (Ministry of Internal Affairs,







General Prosecutor, Ministry of transport, different departments and organizations, town halls, etc.).

Forward recommendations regarding different court decisions.

Submit suggestions to the Parliament in order to improve the legislation.

Notify the President of Georgia. (The facts of massive delaying of salaries, the facts of violation of human rights during the demonstrations and peaceful gatherings).

Notify the speaker of Parliament and committee chairmen (concerning 1991-92 events, budgetary problems and non-execution of court decision).

Although it must be noted, that the Public Defender did not raise the question of punishment (imprisonment, resignation etc) of those persons, who had caused the violation of human rights.

It must be also stated, that at the beginning, when there was the lack of experience in the field of human rights in Georgia, it was important, how the first Public Defender would lead his activity.

Obviously, international organizations paid special attention to the Public Defender's office. The diplomatic representatives of foreign states and international organizations during the meeting with the Public Defender, expressed their promotion and great desire for the co-operation.

During the last year with the support of different international organizations many visits of the Public Defender were arranged abroad. We had possibility to participate in different activities concerning the protection of human rights.

The important meetings were: Public Defender's visit to Strasbourg – to the Council of Europe. Meeting with the mediator of France. Visit (with the employees of Public Defender's office) in Sweden, held with the assistance of UNDP, meeting with OSCE democratic institutes and ODHIR authorities arranged in Warshava. For instance: In March 23-25, 1998 the international seminar was held in the Public Defender's office with the support of the human rights directorate of Council of Europe.

SIDA with Raoul Wallenberg's Institute arranged the seminar in the Public Defender's office in September 14-19, 1998, titled "Human Rights for Police and Penitentiary System".

With the support of UNESCO, the Round Table was held on three



main themes: 1. The rights of persons deprived of their liberty. 2. Women's and children's rights. 3. Disabled people's rights. Many representatives of governmental and non-governmental organizations took part in it.

From November 30, till December 5 1998, SIDA and Raoul Wallenberg's Institute held the seminar titled "Human Rights for the employees of the Court system and law enforcement bodies". The Public Defender with its office made serious contacts with many international organizations, working in the field of human rights.

**UNDP – UN** development program. Many activities were organized with the initiative and promotion of the leader of this organization, Marco Borsotti. This organization implements the project, which promotes and supports the Public Defender's activities. The library created in the Public Defender's Office consists of different international organization's normative acts and reports, Georgian legislation; apart from other objectives UNDP is going to create a serious library, available for everybody.

Last year the Public Defender's office with the Pen-Club published first issue of a magazine "Komagi".

**OSCE –** The Public Defender systematically co-operates with the OSCE mission, with its ambassador and human rights mission. These relations include the collaboration with the Public Defender's Office in Warshava as well. This mission has an important role in different joint activities, which attempt to arrange the meetings between the Public Defender and those representatives of the government of Sokhumi, which are responsible for the implementation of joint action plan. OSCE mission rendered the Public Defender's office an assistance by means of financing the business-visit of former Ombudsman of Alaska, Dean Gothehrer, who gave us significant recommendations and made competent consultations in relation with examining applications and other matters. We also co-operate with the office of OSCE in order to get training programs for the young employees of the office.

**Council of Europe –** Human Rights Directorate of Council of Europe and the Public Defender's office held the first international seminar with the active support of Council of Europe, the representatives of the Directorate of Human Rights participated in it. This organization forwarded the necessary publications concerning Human rights: European conventions, pacts, the recent decisions of the Committee of Ministers of the Council of Europe, the mechanisms of the protection of human rights in different countries, the structures of the Ombudsman's institute to the Public Defender's Office.



**Amnesty International** – The Public Defender often gets the correspondences from this organization, where the Amnesty International asks him to concentrate on different issues regarding the violation of human rights or imprisonment. The regional director of Amnesty International Yan Gorvin expressed in his letter the desire of co-operation with the Public Defender. He also requested him to draw attention to the conditions of 69 inmates, whose names were mentioned in the latter. We have received the same letter from Aaron Rhodes. Executive Director of the International Helsinki Federation for Human Rights. The Public Defender's office had already investigated their cases, a few of them were released later. Some of them were the supporters of the former government, who had been sentenced with different terms. Some inmates' cases are being examined now.

Herewith the Public Defender highlights the collaboration with every organization in Georgia, which are working in the field of human rights, including NGO-s.

Such co-operation has begun. It includes implementation of common projects (for instance, joint examination of the detention facilities, particularly pre-detention cells, publications of joint issues on the human rights field, joint activities in the sphere of the protecting of disabled people's rights, assistance in holding conference-seminars, provision of necessary publications, technical assistance etc.) Despite the Public Defender's close co-operation with the NGO-s, some of them have a doubt of advisability of such co-operation, would the Ombudsman be the co-ordinator of their activities? Or does the Public Defender's Office consider itself the supervising body upon the NGO-s etc. We consider that the psychological factors lead these fear and doubts, than conceptual difference. That is why in the course of time this sphere will become more actual for the Public Defender.

Today, when we are surrounded with many unsolved problems in our country, it is difficult to create a faithful attitude of people to justice or to explain, that the Public Defender also acts within the frame of his jurisdiction and he is not capable to change present state administration and court system, he is able and responsible to make more active administrative activities. Although for this purpose, it is necessary to make some relevant amendments in the law on the Public Defender, moreover, this idea is shared by many international experts. In our opinion, it will be desirable for the Public Defender, to make his report in the parliament every six months, instead of once in a year.