REPORT OF THE PUBLIC DEFENDER OF GEORGIA

First half of 2001

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Tbilisi
2001

CONTENT

Introduction

This is another report of the Public Defender of Georgia on the human rights situation in Georgia. The report is prepared in line with the Organic Law of Georgia on Public Defender of Georgia.

The report covers the period from January to June 2001 inclusive. However, for certain reasons the report materials touch upon the earlier period as well. This is especially true for the general part of the report in order to identify with more clarity the trends that have become prevalent in the area of human rights and freedoms.

The report is based on a wide variety of materials such as the references, applications and complaints to the Office of the Public defender of Georgia, information obtained from various governmental institutions and NGOs, as well as the reports of governmental agencies on the implementations of packages of economic, social, cultural, civil and political rights.

The report consists of two parts. In the first part we attempted to give our view on the human rights situation in Georgia and voice general opinions on the critical problems that we thing take priority. It should be pointed out that we have no claim to any all-inclusive or comprehensive analysis. We targeted efforts at identifying the most vulnerable issues that require immediate, urgent and effective reaction. This is particularly true with the specific cases described in this part. Of course, it would be impossible to discuss all the complaints to and subsequent recommendations from the OPDG within the frame of this report. Therefore, we selected the most resonant cases and issues, which in the Ombudsman's opinion challenge serious attention.

The other part of the report reflects specific aspects of the OPDG efforts. In particular, this part provides statistical figures and information on structural reforms and the financial condition of the OPDG.

As the PDG reports are semi-annually submitted to the Parliament of Georgia, we intentionally avoided the matters, which are of deep concern but not completed yet.

We'll come back to these issues in our next reports. Besides, in our next reports we are going to focus attention on the human rights

situation in dynamics in order to highlight current trends in this area in our country.

I'd like to express my sincere appreciations to the UNDP Office in Georgia for the active support that they gave us in printing this as well as previous PDG reports.

I'd like to underline that this report intentionally draws attention to human rights violations, problems and challenges, and is almost silent about positive trends. The thing is that, as we firmly believe, shortcomings must be repaired first (for which we have made them as apparent as possible).

Reaction of state structures
in connection with Decree N 543, December 2000
of the President of Georgia

As you may know, this decree is related to the process of implementation of the recommendations made in the PDG report of the first half of 2000. According to available information, several ministries have responded to the assignments under the decree.

In particular, the Ministry of Labour, Health and Social Affairs of Georgia presented two letters (dated March 2, 2001 and April 17, 2001 respectively) to inform us about the measures that the top officers of the Ministry have taken to fulfill specific assignments. Besides, the letters provide information on the matters studied by the PDG (regarding the cases of L. Khavtasi, L. Samanishvili, and D. Kiknadze).

In its letter to the President of Georgia the Ministry of Justice informs about the measures taken to overcome the challenges in the penitentiary system. The letter also indicates the steps that the Ministry has made to improve performance of the penitentiary structure and the content of the changes that the relevant law requires.

The letter of the Ministry of Justice specifically notes that "a large number of Georgian citizens are still unaware of the issues related to the execution of court decisions that often results in the violation and ignorance of their lawful rights on the part of various public officials." We welcome the efforts of the Ministry of Justice in this respect. Namely, it has determined to issue a special manual to help individuals protect their lawful rights and interests in the execution process.

The other letter is received from the Penitentiary Department of the Ministry of Justice with specific information on the implementation of the measures provided in the presidential decree.

This information from the Ministry of Justice partly agrees with the PDG notes, saying that some evaluations are exaggerated. On the other hand, it is important that the Justice Council expresses readiness to cooperate with the PDG, and invites her to take part in the Council meetings.

The Ministry of Refugees and Accommodation informs that the institution has carried out certain measures to fulfill the presidential decree. An important passage in the information is that the Draft Law on Making Changes and Amendments to the Law of Georgia on Forcibly Displaced Persons - Refugees is prepared. This draft law was worked out together with the OPDG and on December 26, 2000 was introduced by the President to the Parliament of Georgia for consideration. It is desirable that the Parliament of Georgia should consider the draft during its autumn sessions.

And finally, the information on the fulfillment of the provisions of the presidential decree was submitted by the Ministry of Internal Affairs of Georgia. The information provides a list of specific measures that have already been implemented and the list of measures that will be carried out in the nearest future. Our attention in this respect is drawn by the fact that the Administration for Personnel and Staff of the Ministry plans to conduct special trainings for police officers on human rights issues in local police precincts and the Academy of the Ministry. The measures taken on added significance against the background of the available data on continued human rights violations on the part of police officers.

We hope by the time we submit the report to the President of Georgia on January 29, 2002 the Ministry of Internal Affairs will have furnished us with exhaustive information on the specific measures that the structure has carried out to prevent human rights violations in its system and hold accountable those who are responsible.

Bringing the Law of Georgia on Public Defender of Georgia in line with the Georgian legislation on criminal procedure, civil procedure and administrative offences

The provisions of Paragraph e) Article 21 of the Organic Law of Georgia on Public Defender of Georgia require special attention and interpretation. Under this paragraph, the PDG recommends the court of relevant jurisdiction that the latter should review the legality of the court judgement if the PDG examines and feels that the violation of human rights and freedoms during legal proceedings could have substantial influence of the court decision.

The prosecution, investigation and judicial authorities come up with conflicting interpretations regarding the PDG rights when it comes to the fulfillment of the provisions of this article of the law.

The GPD is not a party and its recommendation regarding human rights violations is not subject to hearing.

However, this is a rather unreasonable approach to the issue. It betrays ignorance of or lack of experience in legal provisions. In particular, the prosecution, investigation and judicial authorities fail to notice that the Law of Georgia on Public Defender of Georgia falls within the category of organic laws that is specifically pointed out in Paragraph 3 of Article 43 of the Constitution of Georgia.

Apart from that, subject to Article 4 of the October 29, 1999 Law of Georgia on Normative Acts, the organic law of Georgia falls within the category of normative acts. Under Article 5 of the same law, the Georgian law cannot govern the issues the resolution of which is provided by the organic law of Georgia.

As for the codes, namely the Criminal, Criminal Procedure, Civil and Civil Procedure Codes, they are legal norms which fall within the category of systematized laws and govern specific public relations. However, Article 19 of the Law of Georgia on Normative Acts establishes the following hierarchy of validity for normative acts:

- Constitution of Georgia, constitutional law of Georgia;
- International agreement of treaty to which Georgia is a party;
- Organic law of Georgia;
- Law of Georgia, etc.

As we see above, hierarchically Georgian laws as well as codes stand lower than organic laws of Georgia and are prevailed by the latter. Therefore, we must invoke the Constitution and the provisions of the Law of Georgia on Organic Acts, and if the Civil, Criminal, Criminal Procedure, Civil and Civil Procedure Codes as well as the Code of Administrative Offences do not provide for the admissibility to consider the PDG recommendations, the priority regarding the consideration of such recommendations must be attached to the execution of the Law of Georgia on Public Defender of Georgia. This means that in such case the court authorities must invoke the provisions of Paragraph e) of Article 21 of the Law of Georgia on

Public Defender of Georgia. In other words, if the PDG finds it ascertained that human rights were violated during legal proceedings, including by mistake of the court, and such violation will affect the court decision, or if the GDP finds its reasonable that there are newly discovered and newly identified circumstances on the case after the court decision has been made, and all this is fixed in the in the PDG recommendations, whether or not the Civil, Criminal, Criminal Procedure, Civil and Civil Procedure Codes as well as the Code of Administrative Offences provide, the court must consider the PDG recommendation for review of the court decisions under the provisions of Paragraph e) of Article 21 of the Law of Georgia on Public Defender of Georgia.

In this case, there is a second solution too. In particular, the Civil, Criminal, Criminal Procedure, Civil and Civil Procedure Codes as well as the Code of Administrative Offences must be amended so as to bind courts to review the legality of its decisions and consider the PDG recommendations to that effect where there PDG has found any substantial human rights violation or miscarriage of justice thanks to newly discovered facts, irrespective of the expiry of the terms of appeal.

In addition to the Constitution of Georgia and the Organic Law on Public Defender of Georgia, these requirements are specified in such foundation documents of international law as the Universal Declaration of Human Rights, the Covenant of Civil and Political Rights, etc.

In particular, Article 10 of the UN Universal Declaration of Human Rights prescribes that *"everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

Subject to Paragraph 3, Article 14 of the International Covenant of Civil and Political Rights, *"everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law"*. This also applies to the cases, which show conclusively that there has been a miscarriage of justice.

As seen from the above, the international documents do not restrict the possibility for upper courts to review the decisions of lower courts according to any specific criteria that is fully in tune with the provisions of Paragraph e) of Article 21 of the Law of Georgia on

Public Defender of Georgia regarding the validity to apply to the court of relevant jurisdiction for review of the legality of court judgments.

This report is the document that confirms the validity of our opinions. This is well evidenced from the examples here where the courts refuse to consider the Public Defender's reasonable (in our opinion) recommendations (in connection with unfounded court judgements or human rights violations during the trial) on the pretext that the existing procedural law does not leave room for revision of court cases.

One more note with respect to our relations with the judicial authority: I believe that the answers to the PDG applications must be signed by the relevant official, not even the chief of some department. It may just as well be expedient to remember once again that the Public Defender is a constitutional institute and therefore should be reckoned with by the officials of the judicial power.

Discussion of the recommendation of the Public Defender of Georgia for setting time-limits for proceedings over newly-discovered facts

Frequent are the cases where proceedings over newly discovered facts administered without time limits being specified. This allows some interested respective authorities to continually draw out investigation, thereby infringing upon the rights of the party to the case.

A convincing example is the case of Shapatava who was charged with smuggling but later found not guilty and discharged from pre-trial detention. The General Prosecutor's Office proceeded on December 29, 1999 on the Shapatava Case N 643 for newly discovered circumstances. However, for the whole of one year and three months since then only three investigative actions were conducted: the question on bringing BMW-Z-3 to Georgia was sent twice to Germany and only once was T. Shapatava interrogated. It was only after repeated interventions of the PDG that the

proceedings finished 1 year, 7 months and 14 days after they were instituted.

With this in mind, I think it necessary that the words "Prosecutors of the Autonomous Republics of Abkhazia and Ajara" in Paragraph 3 of Article 596 of the Criminal Procedure Code of Georgia be supplemented with the words "conduct investigation for maximum six months on the cases filed over the complaint for newly discovered circumstances on the case." The article must be worded as follows:

".... If the reason for the case review is not found, the prosecutor or the investigator shall terminate proceedings under a reasonable order that is approved by the General Prosecutor of Georgia, or the prosecutors of the Autonomous Republics of Abkhazia and Ajara. Proceedings on the case filed on the complaint for newly discovered circumstances continue for maximum 6 months – the copy of the order shall be sent to the complainant who may appeal, within 10 days upon receipt thereof, against the order on dismissal with the Supervisory Chamber of the Supreme Court of Georgia."

On April 10, 2001 I submitted Recommendation N 42-01-1 to that effect to the Mr. Z. Adeishvili, the Chairman of the Committee of the Parliament of Georgia for Legal Affairs, Legality and Administrative Reforms but have not received any answer yet.

Corruption and human rights

It is not our aim to go into detail with another unhealthy and criminal process of corruption currently underway in Georgia. On such occasion, the Public Defender would go beyond her function to exercise regular control and monitoring over human rights situation and provide the government with subsequent recommendations in the area. However, this does not at all mean that the Public Defender is limited to this area either, and just let the vice of corruption go unchallenged insomuch as corruption is, both in its narrow and broad sense, most directly and inextricably related to human rights. The community has long been pressing the government to take drastic measures to this end and it seems that the government has been trying to do something about. However, its efforts have proven widely inadequate and disappointingly ineffective.

Corruption is eating up virtually every foundation and organic principle of a civil society. When corruption flourishes, a narrow group of individuals fail to or just would not govern the state with any common sense methods or high civil service ethics. As their activity falls out of any reasonable governance category, they lord it over on people and become domineering in a direct sense of this word. The system turns into a grotesque, chameleon dictator that is increasingly difficult to resist and overcome. This is the vice with a typically growing and overwhelmingly prevailing trend, undermining and destroying the very formal framework for individuals to protect their rights.

Bribe, extortion, threatening, illicit financial or credit transactions, often directed against the economic, financial and political interests of one's own country, coercion of the community into having to put up with unreasonable and illegal decisions and regulations of high-ranking public officials – these are clear and irrefutable identifying marks of an incumbent-driven system that flouts and tramples underfoot basic human rights and fundamental freedoms.

Our efforts to assess corruption situation must necessarily go along some of the issues which have been subject of serious studies for the Anti-Corruption Council, which are directly related with human rights violations and which the Public Defender just can not ignore now. For instance:

1. A critically important Draft Law on Nationalization of Illegal and Unfounded Property has encountered fierce criticism and opposition both in the executive government and the Parliament. Although the draft law requires further fine-tuning, this matter must be brought to its logical end. Seizure of illegal property is neither neobolshevism nor political repression. Rather, it is the leaving of this property to their unlawful owners that constitutes violation of human rights and law. Seizure by the state of illegal property would be a fitting and adequate response to rampant human rights violations. This issue must be set apart and isolated from politics (whether rightist, leftist, centrist, etc) as it is purely normative-legislative in nature.

2. The Anti-Corruption Council finds that the current method of running the education system is destructive and subversive, and induced by increased corruption in educational institutions, resulting in violation of the rights and interests of the people

employed in the system. Further, outright corruption in the education sector flouts the dignity of its employees and violates their labour rights. Finally, the rights of pupils and students are encroached upon. Therefore, the system, especially the Ministry requires root-and-branch changes. Effective measures must be taken to hold high-ranking officials responsible for such violations.

3. Development of the system of human rights requires clarification of the measures carried out by the Ministry of Economy and Trade of Georgia, for example, of one of the draft laws of the Ministry "on the 2002 Budget Parameters and Reserve of Georgia". The economic policy, which must serve the development of the country, is a rather cursory and ramshackle one. Such ambiguity and lack of clarity often raise open questions about violations of such individual rights as long-delayed payment of salaries and pensions, illicit privatization, and legalization of shadow economy.

4. In order to prevent violations of individual rights and freedoms, it is critically important to regulate the issue regarding the legality of special funds or the so-called off-budget revenues. It is an established practice in the ministries to set up within their midst kind of additional funds, ostensibly to stimulate materially some employees in budgetary organizations. However, this to a considerable extent violates individuals' constitutionally guaranteed labour rights and equality before law. Such a practice breeds a kind of "elite" class in ministries and is illegal and unfair in essence. This results in the violation of Article 2 of the Labour Code which states that "under similar working conditions the employee has the right to receive equal amount and quality of compensation, but not less than the subsistence level and in manner prescribed by law", and in the violation of Paragraph 6 of Article 9 of the Law on Public Service which states that "the list of wages and name of office of public servants is established by law. The rates of wages are set by the President of Georgia."

Subject to Article 21 of the Law of Georgia on Budgetary System and Powers, any non-tax income must be transferred to the central budget of Georgia except as provide by the legislative act of Georgia and presidential decrees. Invariably all the ministries violate this norm. For example, such amounts are transferred by order of the

minister or chairman of department, not by the legislative act of Georgia and presidential decree.

According to the information furnished by the Anti-Corruption Council, nine of the nine sources of off-budget incomes are illegal to which over 6 million lari has already been transferred for the last six months. Violations are serious in terms of transfers to the special accounts of the Ministry of Agriculture and Food, the Ministry of Finance, the Ministry of Economy, Industry and Trade, the Ministry of Justice and the Ministry of Health, Labour and Social Affairs. The amounts that they have illegally transferred for the last six months run to millions of lari.

The responsibility for all the consequences of increased corruption as of a criminal phenomenon rests with all the aforementioned ministries, and especially the law-enforcement structures such as the Prosecutor's Office, the Ministry of Internal Affairs, the Ministry of Security, etc. Instead of fighting corruption, they are directly involved in it. Therefore, these structures are most responsible for their failure to tackle the issue. It is time to bring top law-enforcement officials accountable for all the above. Success of anti-corruption efforts depends on the President's personal, individual and political will, not on the supremacy of law or the constitution. That's why individuals, not laws, govern the society. This is the chief restraint to protection of human rights and development of European standards of a civil society in Georgia.

Civil and political rights

Right to self-determination

We have had to speak about this right because the most vulnerable issue for Georgia – the issue of conflicts in Abkhazia and Tskhinvali Region has not been resolved yet.

The thing is that the failure to settle the conflicts clashes most directly with the resolution of other substantially important matters. As you know, the Constitution holds that only after Georgia has created adequate conditions will it be possible to create a law-prescribed parliament in two houses.

The leaders of self-proclaimed republics often argue to justify their separatist drive with the nations' right of self-determination. Such absurd and far-fetched statements are inherently unreasonable and only echo the obsession and fixed ideas of separatist leaders.

Current international law is absolutely clear and categorical in this respect. It does recognize the right to self-determination but only within the frames of an already existing state. The UN and the OSCE foundation documents recognize the right to self-determination only for of colonial and independent nations. At the same time, they underscore that the right to self-determination must not be used so as to encourage any action that violates the territorial integrity or political unity of sovereign state if these states ensure the protection of the right of peoples to equality and self-determination and if such state has the government that represents the interests of the entire nation without any difference.

With regard to he right of nations to self-determination, we think it advisable to mention the critical situation of the largest army of persons forcibly displaced from the conflict areas in Georgia. A lot has been said and written on the problem that allows us at this time not to make an in-depth analysis of it. Nevertheless, one thing should be noted that there are multiple human rights violations in relation to internally displaced persons (IDPs), to say nothing about the problem's being humanitarian in nature. Subject to the foregoing, it is critically important to take every measure in order to resolve all disputes and give the IDPs the opportunity for a guaranteed, safe, and voluntary return to their homes.

Gender equality

Article 3 of the Covenant of Civil and Political Rights is fully devoted to the question of equality of men and women before law.

As the analysis of our legislation shows, the efforts were made in Georgia to ensure the equality of men and women. Georgia has acceded to the Convention on Prevention of Women Discrimination.

The President of Georgia issued the Decree on Arrangements for Strengthening of the Protection of Women Rights, the Decree of the

President on the National Plan for Improvement of the Situation of Women, and the Plan to Fight Violence against Women.

Nevertheless, Georgia is facing a host of persistent problems and barriers in the way of appropriate implementation of women rights. In particular:

- Women are still inadequately represented at the level of decision-making rights, and in legislative and executive structures;
- Women are harder hit by property than men, another trend specific for a transitive period; This is especially true for persons with fixed income (employees of a budget sphere and pensioners), majority of whom are women;
- As already mentioned above, it is virtually impossible for specialists with highest education to find jobs on the current labour market. In this case, women constitute a majority of such job-seekers;
- Internal conflicts resulting in thousand of forcibly displaced women.

And finally, our women are not adequately informed of their rights and freedoms or remedies. Besides, as it is the case with the whole society, they are enmeshed with a web of low legal awareness.

Right to freedom and personal inviolability

According to available information, the total of 2588 persons were detained in the year 2000, including 2492 persons - by a writ of arrest issued by a judge, 96 detainees were released later, 84 - for replacement of the measure of restraint, 4 - for the reason that they were found not guilty, and 8 - for expiry of the detention term.

The available statistics shows an improvement of this year's figures in comparison with those of previous years. Approximately 15-20% of those detained in previous years was later released for the above-mentioned reasons.

At the same time, the Ministry of Foreign Affairs informs that the examination of 52 police precincts in the year 2000 revealed 28 facts of unlawful detention. In particular, 47 police officers were subject to disciplinary penalty. 14 of these officers were discharged and 10 officers - dismissed from the police structures.

Nevertheless, it is hard to believe that mistreatment of individuals by police officers is a rarity. This is evidenced by a large number of available cases regarding unlawful detention and arrest, beating, torture, placement in pre-trial detention in departure of law-prescribed terms, commitment to prisons of individuals in bodily injury, and so forth. Some of these facts are discussed in the respective parts of this report.

We should also mention the widely accepted idea that whatever you do, police officers who illegally treat individuals always get off scot-free (a rare exception may be where consequences are too grave). Although I disagree with the above, I still feel that the prevalence of such disillusionment is a dangerous trend insomuch as lack of trust toward law-enforcement structures encourages nihilistic approach to law and order. (Please see the cases of R. Sarjveladze, I. Zarkua, L. Storozhenko, D. Romanov, and A. Nasoev regarding commitment to prisons in violation of prescribed terms and in bodily injury, pp. 83, 96, 97, and 98).

It should be noted that in the past the criminal procedural legislation of Georgia did not know the measures of restraint, which have been introduced in the new Criminal Procedure Code of Georgia. We are talking about the measure of home arrest. For instance, home arrest as a measure of restraint was administered against only 22 out of 4000 accused individuals in 1999. As for arrest, it was applied against 2090 individuals. The same trend holds out in the year 2000. And what's most alarming is that home arrest is not applied at all against accused juveniles. For example, only 3 of 668 juvenile arrestees were put under home arrest in 1999. And this goes against 177 cases of juvenile arrests as a measure of restraint (please see the cases of Apkhadze, A. Bajadze, I. Devsuradze and others, pp. 83, 85 and 86).

Violations of the criminal procedural norms, namely the violation of procedures for consideration of information on crime commitment, are rampant in the structures of the Prosecutor's Office.

Under Paragraph 4, Article 265 of the Criminal Procedure Code of Georgia, information on crime is immediately considered if the person is detained. Examination by such person of the information on crime commitment and the criminal case is instituted in a police department or in another body of enquiry within not later than 12 hours after such person is brought there.

In all the other cases, the institution of a criminal case may be preceded by examination that must not continue for more 20 days.

These are most frequently violated norms and, as a procedural supervisor of investigation, which provides oversight to the legality of enquiry under Article 55 of the Criminal procedure Code of Georgia, the prosecution authority does not fully exercise these rights that law has vested in it (please see the cases of L. Pomina, T. Kvirkvelia, and T. Shapatava, pp. 80, 84, and 108).

When discussing the right of personal freedom and inviolability, we cannot avoid the issue of commitment of individuals to mental institutions. As we know, this sphere is regulated by the Law of Georgia on Mental Care. However, subject to the Criminal Code of Georgia, a person may be committed to a mental institution for coercive treatment under Article 101 and 102 of the said code. According to available information, over 66000 patients were registered by mental institutions of Georgia in 2000. This figures has slightly changed for the last years (please see the M. Mamulashvili Case, p. 116).

Rights of prisoners

The functioning of the penitentiary system of Georgia is governed by the Law of Georgia on Imprisonment. It should be mentioned that the transfer of the penitentiary system from the Ministry of Internal Affairs to the jurisdiction of the Ministry of Justice is in itself a big stride toward endurance of human rights and humanized treatment of prisoners. For example, changes were made in the penitentiary regimes (reinforced and special regime colonies were abolished), a special convoy was set up immediately within the Penitentiary Department, the prisoners have wider opportunities to meet their friends, acquire education, etc.

In all, it should be said that the Law of Georgia on Imprisonment is the cornerstone for root-and-branch reform of the penitentiary system of our country.

Currently, the Penitentiary Department of the Ministry of Justice operates 17 institutions: 5 general regime and 4 strict regime colonies, 5 prisons, 1 juvenile corrective institution, 1 health institution for convict down with tuberculosis, and 1 health institution for arrestees.

Although the system proceeded with reforms, one of the major problems is related the weakness of the logistical base of the penitentiary institutions. Majority of the premises of these institutions is badly depreciated. Besides, the institutions experience a shortage of apparel, linen, bed sheets, pillows, health care equipment, etc.

Within this context we should note that during 1996-2000 the state could only once (in 1998) allocate the budget-prescribed funds to the penitentiary system. The 1999 budget provided allocations to fund only protected budget items.

In this respect, we should emphasize that a brand new penitentiary institution has just been put into operation that is more or less in line with the international standards.

The situation is critical with juvenile convicts. They serve their sentences in Khoni Regional Juvenile Institution that fails dramatically to meet the basic provisions of the Law on Imprisonment (please see p. 100).

As you know, Georgia is a member-state of the Anti-Torture Convention of Europe. Within the frames of the Convention Georgia has recognized the competence of the European Anti-Torture Committee to examine human rights situation in the penitentiary systems of its member-states. The Committee has visited Georgia several times this year. The first visit was aimed to get acquainted with the general situation. During its second visit the delegation conducted a comprehensive inspection of Georgian prisons. The Committee intends to prepare the subsequent report about the results of the visit. Therefore, we don't have full information yet regarding the conclusions of the Committee experts. However, the meetings with the Committee members discussed the problems in the Georgian penitentiary system. Against such background it is highly unlikely that final report of the Committee will be positive for

Georgia. This will once again remind Georgia that like in other cases, we are violating our international obligations in the area of human rights.

Luckily, the figure of illness-induced deaths of prisoners has dropped since 1998. For instance, the number of prisoners who died of illness in 2000 was 62 against 92 such deaths in 1997 (according to official estimates).

The positive trend to mention about last few years is the reduction in number of female convicts and juvenile offenders. At this stage, 113 women and 22 juvenile offenders serve their sentences in the Georgian penitentiary system. Partly this is attributed to the process of remission so effectively used in Georgia.

For instance, in 1999 the President of Georgia granted pardon to 119 juveniles and 53 female convicts. In this respect it is worth mentioning that in the period from 1997 to 2000 the President of Georgia pardoned 6130 convicts. This is when, according to available information, the total number of current convicts in Georgia slightly exceeds 7000.

Regarding the process of pardoning, I think it advisable to once again get back to the T. Asanidze Case.

From September 1999 to May 2001 I regularly recommended the Chairman of the Supreme Council of the Autonomous Republic of Ajara and the Security Minister of the Autonomous Republic of Ajara regarding the execution of the sentence awarded by court to transfer T. Asanidze to the penitentiary institution of the relevant regime, bring him before the Supreme Court of Georgia, and later, to immediately release him from prison under the court judgment to that effect.

More specifically, regarding the above I applied to the Chairman of the Supreme Council of the Autonomous Republic of Ajara on September 24, 1999, Recommendation N 835/07/989, to and the Security Minister of the Autonomous Republic of Ajara on January 12, 2000, Recommendation N 3/01, again to the Security Minister of the Autonomous Republic of Ajara on January 17, 2001, Recommendation N 5/7, to the Chairman of the Supreme Council of the Autonomous Republic of Ajara on January 31, 2001, Recommendation N 7/01, to the Security Minister of the Autonomous Republic of Ajara on January 31, 2001, Recommendation N 8/01-1,

and finally to the Chairman of the Supreme Council of the Autonomous Republic of Ajara on May 18, 2001, Recommendation N 352/01-1.

However, in utter disregard for my multiple applications, these recommendations were ignored and put aside to gather dust in gross violation of the provisions of Paragraph 7 of Article 5, Paragraph b) of Article 18, and Article 24 of the Law of Georgia on Public Defender of Georgia. Neither the PDG was in any way informed of the results of their consideration. I think there is no earthly justification to the above.

Not just one but series of human rights have been violated in connection with convict Asanidze, including the right to freedom and personal inviolability, the right to fair trial, the right to access to remedies, to say nothing about flagrant violations of the imperative provisions of the Constitution and other laws of Georgia. At the same time, I'd like to take the opportunity to once again call on all to whom it may concern to take all the necessary measures in order to reinstate T. Asanidze's rights and release him from detention so as to ensure the protection of the Constitutional and other legal provisions.

On July 2, 2001 T. Asanidze, who had been illegally held in the pre-trial detention place of Batumi, the Autonomous Republic of Ajara for two years, filed a claim through his son Davit Asanidze in the European Court of Human Rights for a speedy hearing of his case and for immediate release before adjudication.

The President of the Chamber of European Court of Human Rights says in his letter to the applicant that he attaches priority to this case and the Government of Georgia will be informed of the date of hearing.

Violation of procedural norms and the MP candidate's constitutional right to be elected

Under Article 12 of the Law of Georgia on Public Defender of Georgia, the PDG studied on her own initiative the violation of the voting procedures by the Elections Administration in a single-mandate Election District N 55 of Khoni Region in the Parliamentary Elections of November 1999. In particular, as revealed from the case materials, the cancellation of the results of voting in Khidi N 15 and

Zezeleti N 22 Polling Stations of a single-mandate Election District N 55 of Khoni Region (on which the Central Elections Commission made the relevant decision) created the situation (as provided by Paragraph 10, Article 55 of the Law of Georgia on Parliamentary Elections) where for voting in polling stations the Central Elections Commission appoints re-elections for the candidates of a single-mandate elections district. Despite the imperative norm prescribed by the law, no new voting was called and the results of voting were so finalized. As a result, Jemal Mebuke was elected in a single-mandate Election District N 55 of Khoni Region. This violation in procedural norms resulted in direct encroachment upon the constitutional right to be elected of MP candidate Akaki Bobokhidze as he was deprived of the opportunity to be elected MP by majority procedure. In this respect, we filed a petition in the Supreme Court of Georgia. After a group of MPs has filed the constitutional complaint, the Plenum of the Constitutional Court of Georgia considered the case and delivered Judgment N3/122,128 on June 13, 2000. Thereunder, the Constitutional Court overruled as unconstitutional the results of voting in a single-mandate Election District N 55 of Khoni Region.

However, despite such decision of the Constitutional Court, the Parliament of Georgia made no response whatsoever. Therefore, within the scope of our law-granted competence we recommended to the Parliament that it consider the said decision and annul as unconstitutional and unfounded Resolution N 13, November 20, 1999 of the Parliament in the part where Jemal Mebuke is found MP under majority procedure from Elections District N 55 of Khoni Region. However, the Parliament has not made any response to our recommendation yet.

Owing to such inaction on the part of the Parliament, we filed a petition to the Board of the Constitutional Court of Georgia to judge (within the scope of its competence under Paragraph g), Article 19 and Paragraph 2, Article 21 of the Law of Georgia on the Constitutional Court of Georgia) the constitutionality of the aforementioned resolution of the Parliament. We are talking about the speedy hearing of the constitutional appeal in respect of the above. However, our petition was dismissed on the basis of the respective judgment of the Plenum of the Constitutional Court.

Non-fulfillment of contractual obligations and restriction of freedom

There is no direct prescription in the Georgian legislation that one may be subject to restriction of freedom just because one fails to fulfill his contractual obligations. Restriction of freedom in the Georgian legal system may result only for violation of the criminal legislation. However, some legislative cats raise doubts in this respect.

For example, Article 198 of the Civil Procedure Code prescribes the taking of a written statement not to leave as one of the security measures. Paragraph 3 of the above article holds that the court may use other measures for security of actions as well. In our opinion, the application of the measure of recognizance not to leave clashes most directly with and restricts human rights, to say nothing about one of the measures of restraint under the criminal law being similar to the foregoing.

Apart from the above, under the Law of Georgia on Bankruptcy Proceedings (Article 14), the court may apply against the debtor such measures for security of action as arrest, or detention of the debtor to obtain a written power of attorney. We strongly believe that as it was the case above, coercive measures of criminal procedure are used within the frames of the civil procedural legislation. This is absolutely impermissible toward the persons who have not committed crime and therefore constitutes serious violation of human rights.

Right to travel

With regard to this right I'd like to draw your attention to the following two facts:

At present, Georgian citizens have to pay 35 lari (exclusive of the cost of photos) to obtain their passports. I'd like to remind you once again that this amount barely accounts for the average monthly salary in Georgia and twice exceeds average monthly pensions. Under such circumstances, majority of the Georgian population finds

it increasingly difficult to obtain passports. This, in turn, constitutes indirect violation of the right to travel.

The Law of Georgia on Legal Status of Foreigners states that a foreign citizen may be forbidden to leave the territory of Georgia *"in other cases prescribed by the legislation of Georgia."* We believe that the application of such norms in such case may serve as a potential basis for violation of a foreigner's right to travel.

Considering that under the same law the exit of a foreigner from Georgia may be postponed until he has fulfilled his civil law obligations, it can be said that we face the exaggeration that is not fully compatible with the international commitments of Georgia to ensure the right of free travel for individuals (please see the I. Kalandia Case, p. 114).

Regarding foreigners, I'd like to remind that Georgia has not yet adopted any law on deportation. This area is governed by the Decree of the President of Georgia on Temporary Procedure for Deportation of Foreigners from Georgia. We believe that the deportation term (3 days) under this decree must be reviewed as it may just as well lead to violation of the rights of foreigners.

Right to fair trial

Within this context it should be mentioned that the provisions of the Criminal Procedure Code of Georgia regarding the right of defense is inadequate and directly restricts instruments of defense. This issue has been a number of times brought up by NGOs. The issue on adoption of the Law on Advocates has long been a subject of fierce debates. I hope that adoption and realization of this law will help ensure the right of individuals to receive advocate's professional assistance.

Realization of the right to free trial in connection with the criminal legislation is impossible without the right of redress upon reversal of conviction. To the best of our knowledge, during the second regular discussion of reports regarding the Anti-Torture Convention, the Georgian delegation presented examples where both Georgian and

foreign citizens claimed and obtained redress under the Georgian legislation. In our opinion, such precedent will lay a strong foundation to the development of other positive trends, though we should say that such examples are rather few as yet.

Right to privacy

It should be said that this right is quite thoroughly provided by the Georgian Constitution and legislation. Unfortunately, the practice has shown that violation of this right is no rare thing when it comes to such criminal procedural actions as search and seizure.

As for protection of individuals' dignity and reputation from illegal abuse, the aspect of privacy remains open and unregulated by the civil legislation. On this occasion, court authorities provide remedies to individuals. During the reporting period we had a precedent where the Georgian courts heard cases involving protection of one's dignity and reputation. This betrays the snail's rate at which the contours of legal culture are taking shape in Georgia to solve dignity-related issues in court.

The issue of privacy was another area which was beyond the scope of regulation of the Georgian legislation. Now this sphere is governed under the General Administrative Code that regulates relations between individuals and legal entities by internationally accepted standards.

Despite the frequency of cases where public institutions fail to fulfill the provisions of Articles 38 and 39 of the General Administrative Code on access to the copies about public and personal information. On a number of cases public institutions arbitrarily set a variety of charges for the issues of such information, or cork access to it altogether to such persons who may be identified without access to it for other persons. Oftentimes, public institutions artificially impede or restrict free issue of public information to applicants and it is only after the PDG intervention that it becomes possible to obtain it.

G. Tevdoradze, the Principal of O. Tskhelidze Gymnasium of Kutaisi, has refused, for several months and in violation of the provisions of Articles 28, 36, 37, 38 and 39 of the General Administrative Code, to

provide to M. Akhrakhadze and M. Murusidze, residing at 17 Rustaveli Avenue, Kutaisi, the copies of personal applications for occupation of vacant job, staff orders, and schedules of leaves during 1995, 1996, 1997, 1998, 1999 and 2000, thereby preventing the applicants from studying and analyzing the documents so that they may not apply to the investigation authorities for falsification of documents.

Social-Economic Rights

Right to work

The problem of employment has been particularly critical for the last few years in Georgia. Deterioration of economic parameters is well evidenced by the fact the GDP volume of 1999 dropped by 37% compared to that of 1990. This, in turn, has substantially reduced the employment opportunities in Georgia. In particular, the number of employees has dropped by 37,2% since 1990. Unregistered unemployment and part-time employment have taken on tremendous dimensions. Reduction of employment opportunities has critically intensified immigration.

In 1999 economically active population accounted for 39,5% of the entire population of Georgia against 50,6% in 1990. At the same time, the share of unemployed individuals in the economically active population was almost 14%. According to the moderate criteria of the International Labour Organization though, the level of unemployment in Georgia is almost 16%. It should also be noted that the highest level of unemployment (29%) in Georgia is registered in the capital.

Life has introduced such new concept as self-employed population. Such individuals make up 58% of the total number of employees. Why? The thing is that we consider that employees are the capable family members of the persons who own more than 1 ha land area irrespective of whether the family cultivates and earns anything from it or not. Further, this involves yet another paradox: the level of unemployment registered in cities exceeds nearly 5-fold the same parameter in villages. However, cities provide much wider employment opportunities than villages.

Official statistical estimates hold that unemployment is higher in men that in women. It seems that the female employment figure is higher. However, this is not the case as women have quite a large number of those who is "out of the labour force". To put it simply, we mean that the number of women in the economically active population is twice as high as that of men. At the same time, women have quite a large share of those who work free in household undertakings (almost a 2-hold difference compared to men).

According to the estimates of the last few years, the highest level of unemployment is observed in the 20-25 (nearly 29%) and 25-29 (22%) age groups. As we see, individuals have no employment opportunities when they are most prepared for it. What's the reason? It may be presumed that limitation of employment opportunities is attributed to such factors as increased demand of young people themselves, lack of due experience, etc.

What efforts are being made to maximize employment opportunities? As you know, Georgia has the United State Employment Fund the competence of which is to fund the measures which are implemented within the national policy for employment. In fact, such measures are carried out by the Fund itself. How effective, though, is such work? We should take into account the following circumstances:

- The Constitution of Georgia prescribes that the state encourages and assists unemployed individuals to find jobs (Article 32). However, the country has not yet created the implementation mechanism to that effect. The Ministry of Labour, Health and Social Affairs designed the Draft Law on Compulsory State Insurance against Unemployment but the Parliament has not passed it yet.

- As already mentioned, the increasing rate of employment-driven migration is virtually unchecked in Georgia. This creates a fertile ground for a variety of human rights violations, to say nothing about such a dangerous trend as trafficking.

- Under such circumstances where Georgia finds it increasingly difficult to create new jobs, the problem is coupled by the absence of a normative act or any regulation to deal with such unemployment prevention opportunities as organization of public works. The regulation to this end has been drafted by the

Ministry of Labour, Health and Social Affairs and it is desirable that it be enacted as soon as possible.

The active policy to be pursued in the sphere of employment involves such measures, which are aimed to create new jobs and preserve old ones. Besides, another important factor in the employment policy should encourage the growth of effective employment. To this end, it is recommended that maximum help be provided to small, medium and family undertakings.

The National Employment Program has already been designed. It was based on the Parliament-passed Social Development Concept. However, it is most unfortunate that the statistical estimates used in designing the program are basically empirical and scholarly. The major problem is that Georgia has not conducted any serious labour market research. Plans were made to carry out such research this year. The PDG is looking forward to seeing the results.

As already stated, the Georgian labour market has ample supplies of labour force. As the level of unemployment is high and the rate of economic growth - slow, earnings of the majority of employees are beyond the subsistence level. Therefore, the salary has lost its stimulating function and to a certain extent has turned into a kind of social benefit that has nothing to do with the quality of intensity of work. A low level of remuneration, in turn, adversely affects the employee's attitude toward his job, and is identified as the primary cause for secondary employment. Such a situation induces other consequences as well, including deterioration of labour discipline, etc. Although the minimum wage has increased nearly 5-fold since 1996, it is hardly enough as an adequate social guarantee. The deplorable thing is that the minimum wage accounts for some 17 and average wages - some 25% of the subsistence level, both failing miserably to meet essential needs.

As we know, the amount of minimum wage has recently increased from 9 to 20 lari. This is the amount to which no tax provisions must apply according to the existing rule.

Nevertheless, this category of wage has been a subject of taxation so that 11 lari is slashed away from it as income tax. This is a principal contravention of the Georgian labour law provisions, grossly violating the rights and interests of employees.

Proceeding from the above, we categorically request that the relevant governmental structures immediately drop this illegal and ugly practice of minimum wage taxation in order to create objective conditions to equalize minimum wage and untaxed minimum, legalize actual earnings, fill the gap between minimum wage and subsistence level, and prevent any future manipulation with taxable minimum (see the A. Jishkariani Case, p. 112).

Talking about wage, I'd like to share a few ideas. As we know, the state regulates wage through the budget sector in a centralized manner. As for the off-budget and private sector, businesses and organizations independently determine the mode and system of remuneration, and of course, in consideration of the current minimum wage at that. In this respect we'd like to add that average wage in the private sector exceeds 1,7-fold that in the budget sector.

Despite certain positive trends in the economic growth of Georgia in recent years, smaller wage continues to be out of touch with growing economic interests. Suffice is to say that in the year 2000 the average wage in Georgia accounted for only 68% of the average subsistence level. The low level of wage is directly responsible in is equally low share (34,5%) in the general structure of revenues. This is so when the critical limit in this respect is 60%. All of this allows for only once conclusion that the labour motivation process in Georgia is cracking forward at an extremely slow pace.

Touching upon such an important issue as remuneration to men and women, we should not that Georgia is in quite a critical condition in the area. According to the estimates of the Ministry of Labour, Health and Social Affairs, the average monthly salary of women employed in different fields of economy is 55 lari against 112 lari with men. Under such circumstances we may draw the inference that the much-hoped-for, widely acclaimed and legally supported equality of men and women in terms of compensation has been a pie from the sky. Women are predominately employed to do low-paid jobs and therefore are subject to indirect discrimination.

Summing up the above, we believe that the major challenges in the current employment sphere of Georgia are as follows:
- a sharp deficit in qualified and experienced personnel induced by the absence of an adequate training and retraining system;

- Incomplete scales of long, hidden and seasonal unemployment and alarming scales of inadequate employment;
- Irrational and inefficient structure of employment where 57% of the employed population are self-employed;
- Majority of jobs are low-paid, a major cause of poverty prevailing in Georgia.

Right to social protection

A variety of programs are currently implemented in Georgia with the aim to support specific categories of people. We'll not draw out your attention to the number of pensioners and types of pensions. However, I'd like to mention one thing: the number of pensioners has dropped since 1999. It's hard to identify the actual reason. But I don't think that the reason has to do exclusively with the detection of a high number of the so-called "dead souls". Perhaps more reasonable would be to conclude that the number of pensioners in Georgia is physically decreasing. And it should come as no surprise - average life span in Georgia is unfortunately going down.

As we know, in 1997 Georgia introduced a social (family) benefit as a form of state material assistance to certain vulnerable categories of people. The assistance is implemented under the state program. But what draws our attention as we analyze the program? The number of the categories of beneficiaries falls down (list of the beneficiaries in 2000 included only single-family unemployed pensioners and orphans). Besides, even the amount of the program funds is downsized. If the state budget allocated 15 888 000 lari within the program in 1997, the same parameter in 2000 was dropped to 13 300 000. One can hardly believe that the condition of beneficiaries for these years has so improved that only two categories fell in the program. We need to expand, not cut the program.

As for the general public spendings for social security, it should be said that this parameter has also dropped since 1997. If budget spendings accounted for approximately $146 million in 1997, they could barely exceed $123 million in 1999.

There are such social groups in Georgia, which receive no social benefit. Besides, even if they are provided, the benefits can hardly ever ensure an adequate standard of welfare of the recipients. However, we should note that the government has made certain efforts to improve the situation in this avenue. Namely:

- On July 1, 2000 the President of Georgia issued the Edict on setting up the governmental commission under the head of state. The commission was assigned to work our organizational arrangements in order to eliminate poverty in Georgia and design economic growth programs;
- As a result of the work of the commission, the President issued another Edict (November 30, 2000) on Approval of the Interim Document on the National Program for Poverty Elimination and Economic Growth. Under the edict, the governmental commission was assigned to design, on a grassroots basis, relevant strategies of the national program by April 1, 2001. The interim document of this program has already been submitted to international donor organizations for consideration.

It's perfectly clear the poverty cannot be eliminated in Georgia without foreign assistance. However, this does not give us the right to just sit around and wait until the tide turns. The current situation, though, shows that Georgia will typically fail in its fulfillment of the international commitments regarding the provisions of Article 9 of the Covenant on Civil and Political Rights.

Right to due living standards

Unfortunately, our country has plunged into a critical state in this respect as well. We have already cited the estimates regarding the minimum and average wage rates and their share in the subsistence level.

This time we'll touch upon the living standards of our population.

As of December 2000, the subsistence level in Georgian cities was: 105,4 lari - for capable males, 100,4 lari - for average consumers, and 200 lari - for medium families. The normative minimum wage rate, i.e. wage necessary to fill the budget deficit of a four-member

family, was in the region of 43 lari per employee. Thus, the requirement of the UN Committee for Economic, Social and Cultural Rights that Georgia ensure such minimum wage rate that would be sufficient to meet essential needs of the employee and his family members, remains unfulfilled.

Right to adequate nourishment

The analysis of the materials of the Ministry of Agriculture and Food identifies the following situation in terms of supply of food products to the Georgian population: compared to 1997, only four (vodka, sugar, mineral water, and beer) out of 26 items of food products experienced growth in the year 2000. It is also worth mentioning that the Ministry has the estimates only according to the registered economic sector that is inadequate in itself. Besides, me must presume that a considerable part of agricultural output falls within the shadow economy that cannot be appraised extremely negatively as such.

Now regarding the export and import of products. According to available data, import in recent years has dramatically exceeded export so that the trend assumed a stable character. For example, the Georgia's export of food products in the year 2000 accounted for $95 million against nearly $163 million that comes on import. The negative balance in the amount of $63 million is notable. Perhaps this is because the country does not fully utilize its export potential, or it may be that the business activity here is in chronic stagnation.

According to available information, Georgia's need for food products is satisfied in the following manner: local output meets the demand for fruit and vegetables, tea and potato. The demand for technologically processed meat, milk and milk products, and bakeries is basically met by export.

A question arises: what is the current situation in Georgia in terms of food supply? According to available estimates, the actual level of food consumption in Georgia has decreased since 1997, by virtually all basic parameters.

It should also be mentioned that the amount of food products imported to Georgia in the form of assistance is being continually slashed.

Subject to the above, we may conclude that Georgia again fails to fulfill the provisions under Paragraph 2, Article 11 of the Covenant on Economic, Social and Cultural Rights.

Right to adequate housing

This is the area that is often overlooked when it comes to analysis of human rights situations. However, this is where we encounter the violation of one of the most essential human rights. We'll cite just a few examples to illustrate the thesis:

The total housing fund of Georgia consists of 24 million m2, approximately making up 9 000 houses is technically beyond satisfactory. Around 1200 houses are subject to demolition for being in distress. According to the available estimates, the amount required for the repair of the housing fund runs up to 750 million lari.

The state has practically stopped budget-funded housing projects. For instance, during 1997-2000 the state built the dwelling house in the total area of 71 000 m2 against nearly half million m2 area of dwelling houses simultaneously constructed by individual builders.

As for the equipment of the existing housing fund with amenities, we find ourselves in a rather weird situation. Official estimates hod that the standard of supply of water, sewerage system, bathrooms, hot water and central heating is quite high whereas the figures betray an awesome gap between the actual supply and the very presence of the relevant utility equipment. It is no guess that the current housing fund is left without any hot water or central hitting.

Another cause for concern is that not every Georgian family has adequate housing. According to available data, nearly 380 000 individual has to do without any house of apartment. Taking into account that over million people live in badly depreciated and distressed or non-repaired houses, the situation would be alarming.

Proceeding from the above, it is clear that the issue of housing to vulnerable part of the Georgian population is rather critical. The Ministry of Urbanization and Construction of Georgia has prepared a draft national program for designing housing supply mechanisms as part of the National Poverty Elimination Program. The housing reform program has been mapped out by the WB technical support and experts involvement. However, the program is hanging fire due to lack of funds.

Against the background of the current situation, the PDG believes that the program must be given priority and funds - raised both within and outside Georgia.

According to available information, in order to tackle the problems, which impede the implementation of the right to housing, the Ministry of Urbanization and Construction of Georgia deems it necessary to modify the existing legislative base. The Ministry has already submitted the draft law on condominiums to the government. We believe this draft law must be considered as soon as possible and submitted to the Parliament of Georgia.

Right to health

Georgia has been implementing a cardinal reform in its health care system since 1995. However, on a par with positive results, the reform has induced series of adverse consequences. This has been many times cited in various documents, particularly with respect to right protection aspects. Therefore, this time we'd like to draw direct your attention to one of the essential pre-conditions for the effective operation of the health care system. This is the principle of funding, an area full of problems. Regrettably, the funding parameters in the health care sector have decreased since 1998. If the planned parameter in 1998 was 54 million lari, the figure dropped to 48 million in the year 2000. However, we should also emphasize that the situation has definitely improved regarding the fulfillment of planned parameters.

As for other important aspects of the health care situation in Georgia, we'll touch upon a few facts below:

For the last few year Georgia has come up against certain problems in the supply of safe and quality table water to its population. The major problems in the area are related to anthropogenic contamination, deficit in table water, and low hygienic reliability.

Notwithstanding the fact that 70% of the population receives table water supplies in a centralized way, majority of consumers gets such table water that fails to meet the applicable sanitary-hygienic standards. Frequent are the cases where table water is supplied without chlorinating. More frequent, though, are disruptions in supplies in gross departure of the supply schedule, basically due to power outages. How the power supply schedule is observed in Georgia, especially during a winter period, is anybody's guess.

1800 out of 4100 km sewage network of Georgia requires capital repairs. Repairs are required in sewage and drainage facilities as well. Such a situation increases the risk of outbreak of certain water-transmitting diseases.

Proceeding from the above, it becomes evident that Georgia again fails to live up to its international commitments under Article 12 of the Covenant of Economic, Social and Cultural Rights.

Certain aspects related to the receipt of education will be discussed below where well talk extensively about children rights. This time, we'd like to focus on certain rather unwelcome trends.

In recent years, the number of pupils in secondary and special education schools has been relatively stable as per 1000 persons. Meanwhile, the recent years have seen a drop in number of both state-run secondary schools and pupils in them in absolute figures. It should be noted that such decrease occurred in the pupils of both Georgian- and non-Georgian-language schools. However, the decrease in non-Georgian-language schools is more dramatic. In a similar vein, the number of primary and technical schools as well as of pupils in and graduates from them is scaling down.

A markedly reverse trend persists regarding the number of students in state-run highest educational institutions, with the prevailing form of full-time studies. This goes on a par with the upward trend in the number of private highest educational schools. It should be noted that majority of both the state-run and private highest educational institutions prepare specialists with a education profile.

This fact signals the prestige and priority being attached to the highest education in Georgia. However, it is also clear that specialists are prepared in utter disregard for the current market demands. Under such circumstances, it is very likely that certified specialists will end up without relevant jobs and just join the inflated army of the unemployed.

As for the budget funding of the school education system, it should be pointed out that regrettably the budget allocations to this end continue to drop. Such circumstances, as cited in the UNDP document on the humanitarian situation in Georgia, have formed a fertile ground for an informal payment system where families have empty their pockets in order to fill a considerable part of the budget of the education institutions. This is done in the form of monetary contributions in the so-called school funds, contributions for the purchase of fuel in winter, etc.

It is much hoped that within the frames of the soon-to-be-allocated WB loan, the Ministry of Education of Georgia will finally resolve the question of funding the secondary education system. Until then I have to note that neither in the area of education has Georgia been able to live up to its international commitments under Article 13 of the Covenant on Economic, Social and Cultural Rights.

Cultural Rights

Regarding the area of cultural rights, I'd like to be confined to one issue only. The thing is that the funding of research institutions, in particular, the Academy of Science of Georgia, has critically deteriorated since 1997. The trend of reduction has run across all the items such as utility charges, office expenses, and transport costs, to say nothing about the funds needed to perform scientific research. The budget has completely deleted such items as equipment purchase and capital repairs. In the same period, the number of the employees of the Academy was reduced by almost 34%, and by 50% compared to the parameter of 1994.

Cited below is the specific example that well illustrates the issues of concern to our scientists.

According to Professor Guram Mchedlidze, the director of the Institute of Paleobiology within the Academy of Sciences of Georgia, sharp cuts in funding directly result in continued staff reductions, ultimately leading to dramatic stagnation of series of scientific areas. If the trend persists, some of them will fall out of the scope of research altogether. Science was not in such a critical condition during World War II as it is now. On the contrary, scientists had better conditions at that time and better conditions produced better results - scientists had contributed substantially to all that the Soviet Union achieved both during and after World War II.

One of the for-discussion documents (TACIS Program) on the reorganization of the Georgian scientific-technological system aptly evaluates the actual condition in Georgia. The summery of the document says that the budget deficit in scientific-research institutions allow extremely low wages, and in an unregulated manner at that.

Therefore, the future of our young scientists looks rather gloom. Majority of young people has to leave Georgia in order to get jobs in foreign scientific institutions. Others have to make adjustments - they cut every tie with research work and undertake entirely new and different, more profitable activities. And we know that there are many promising and talented scientists among them. This is a direct and lamentable consequence of a critically small room for science and technologies in the plans of our government officials.

Freedom of conscience and religious extremism

According to the unanimous evaluation of international organizations, with which I fully agree as the PDG, freedom of conscience is among the rights which are most brutally violated in Georgia. We are talking about the non-traditional religious organizations, which are dismissed as sects in Georgia and assailed and persecuted in every way.

Freedom of expression, conscience and religion is the attainment of civilization and constitutes the corner stone of a democratic society. Article 9 of the European Convention on Human Rights and Fundamental Freedoms states: *"every human being has the right to*

freedom of expression, conscience and religion." The right involves freedom of choice to change religion or faith, freedom of exercising religion both alone and together with others, both in private and in public, freedom of worship, freedom to profess religious doctrines and perform other rituals.

This right is one of the most violable elements determining the mode of living of believers. Besides, it the value for atheists, Agnostics, skeptics and even those who are indifferent to such issues... This is the right on which pluralism hinges, without which no democratic state can exist, and which has been attained for centuries through heroic and painstaking efforts.

Freedom of worship is primarily a matter of conscience but at the same time involves the *"freedom to exercise religion."*

Article 9 of the aforementioned Convention says that the freedom to exercise religion may be realized not only together with others, *"in public"* and in the circle of those whose beliefs the person shares, but also involves the right of the person to convince others in the truth of his own religion "through teaching."

The fundamental nature of the rights provided by Article 9 of the European Convention on Human Rights and Fundamental Freedoms find their due reflection in Article 19 of the Constitution of Georgia which revolves around the freedom of expression, conscience, worship and religion and Paragraph 3 of which prescribes that it is impermissible *"to limit these freedoms to the extent their exercise does not violate others' freedoms."* This means that the freedom in a democratic society where different religions coexist may be subject to restriction only with the aim to facilitate mutual agreement over the interest of different groups. In an attempt to translate this article into life, the parliament of Georgia passed the Resolution against Religious Extremism. Besides, in his edict dated March 22, 2001 the President of Georgia called on the Ministry of Internal Affairs to put an end to the criminal actions of religious intolerance. The Parliament resolution and the Presidential edict are seen as the response of the government against the situation where the illegal disruption of religious worship, faith and rituals through violence and physical assault has become commonplace in Georgia. Frequent and diverse are the violations of the rights of religious minorities as well as criminal actions against them. In this respect, on March 15, 2001 the Supreme Court of Georgia issued a statement where its

says that the Supreme Court *"denounces such actions and other manifestations of religious extremism and intolerance... Such actions are not only criminal but also a serious threat to the public and the state."*

I'm not dismissing or diminishing the role and influence of the Orthodox Church in our country. The Orthodox Church has always been and will continue to be the fundament on which the Georgian statehood and, to say it so, the very existence of the nation, rest.

However, Georgia has always taken pride in her religious tolerance. It has become a typical example that the temples of different confessions stand and operate almost side by side in the capital of Georgia. Another shining example of tolerance specific for the Georgian nation - the good neighbourly relations and friendship that exist between the Georgians and the Jews have survived millennia.

Against such seemingly tolerant background, it is really intolerable to put up with the current tide of extremism against religious minorities. We mean the multiple acts of violence to which the members of such unconventional religious groups as Jehovah's Witnesses (above all), Baptists, Chrishna followers, and others fell victim.

Admittedly, this is the area full of gross violations of the freedom of conscience. Moreover, such acts are coupled with the violations of the right to access to legal defense, the freedom to associate, and the freedom of speech.

According to available information, the representatives of the Union of Jehovah's Witnesses in Georgia filed two claims in the European Court of Human Rights - one regarding the pogroms against them by the parishioners of the notorious Father Basil, who is disfellowshipped from the established Orthodox Church, and the other - against the cancellation the registration of the Union of Jehovah's Witnesses by judgment of the Supreme Court of Georgia.

To the best of our knowledge, the European Court of Human Rights has given priority to the first case, which means that it will be considered any time soon. Besides, it is likely that the second action will be united with the first and so prioritized by the European Court.

What with the facts behind, we believe that the representatives of the Union of Jehovah's Witnesses stand a good chance to win the case. As a result, Georgia will come under heavy penalties, including

materially, by having to compensate moral damages to the winning party. Besides, Georgia will significantly compromise its reputation on the international arena that will be a very unwelcome fact.

We believe that the government must take radical measures to put an end to human rights violations and intolerance on religious motives.

We appreciate the statements that the Orthodox Church made in this respect. We also welcome the subsequent resolution of the Parliament. The attitude of NGOs to the issue also merits consideration. They unanimously decried religion-related violence and encroachment upon the freedom of worship. The relevant governmental structures must take all the necessary legal measures.

However, any measure, just carried out, does not alleviate the problem insomuch as we fight results, not reasons. The reasons are that the current Georgian legislation does not regulate the activity of religious organizations in Georgia. As we know, the activity of public associations is governed by the Civil Code (Article 1509) subject to which religious organizations falls within the category of public-law legal entities and in this sense are equalized with political parties. But Georgia has the law that regulates the activity of political parties. This is so when Georgia has no specific law on religious organizations and their activity is pushed beyond the legal scope. This, in turn, induces human rights violations.

It was not long ago that the Parliament of Georgia adopted a change to the Constitution to introduce another type of a normative act - Constitutional Agreement. This is the document that is hoped to regulate the relations between the state and the Orthodox Church. This will help create a certain legislative base, but for one confession only. Therefore, it is much likely to promote discrimination against other religious organizations. We believe that to forestall the trend, the parliament must as soon as possible discuss whether to pass or not to pass the law on religious organizations. The issue is of increased importance as it has already become the subject of attention for the European Council and may generate serious repercussions.

Sadly, as already mentioned above, encroachment upon freedom of worship has become commonplace with us. Such an inherently negative trend is totally unacceptable for every person of common

sense and for every state wishing to build a democratic society. Just within the reporting period the Office of the PDG received over forty applications and complaints regarding violation of freedom of worship. Considering that part of the applications is collective, the situation will assume alarming character. Nearly 400 Georgian citizens' freedom of worship has been (or is deemed to have been) violated. The victims are from a variety religious groups and orientations. The geography of the violations is quite wide (Tbilisi, Rustavi, Marneuli, Kaspi, Zugdidi). Equally diverse are the types of violations (threatening, disruption, assault and battery, seizure of literature, forced de-involvement). Just about two weeks ago one group of religious extremists smashed vehicles as the Georgian Representation of Baptists was shipping cargo from Poti to Tbilisi. The assailants misappropriated and destroyed property and bible literature. Besides, they damaged the publishing house where Baptists' literature was printed, and brutally beat foreign representatives of the Pentecostal Church.

At 22:40 p.m. March 14, 2001, five persons unidentified by investigation one of whom was wearing a mask, intruded into the Church of the Evangelist Christian Baptists where they bound guards with a sticky tape, cut out the fire-proof safes in the cashier's room with a welding instrument, and seized 34 440 DM, 5 423 USD, other valuables, and disappeared.

On April 29, 2001 unidentified persons attacked the apartment of Nugzar Butkhuzi, one of Jehovah's Witnesses, (residing in Mukhiani Military Settlement, Tbilisi, Apt. 18), broke the door open, smashed windows, and burnt religious literature.

Soon thereafter, assailants came upon the religious meeting that was being held at Apt. 25, Building 218, Mukhiani 4B M/R, and brutally beat the attendants with hand clubs and batons. As a result, nine individuals suffered severe injuries who were rushed to hospitals for medical care. Unfortunately, the list of such violations goes on and on.

From the applications filed to us, we may break the violations into two groups: one is where the meeting of a religious organization is attacked and disrupted by the extremist group of another religion, and the other - when a member of a different religious organization is attacked, physically assaulted and deprived of religious literature out in the street.

The scope of violators and victims is broad and diverse. However, according to the applications we may say that Jehovah's Witnesses are singled out for most frequent and brutal attacks. The most notorious violator is Basil Mkalavishvili, (expelled from the Orthodox Church) together with his "Gldani Eparchy." It should be noted that during the press conference held by Jehovah's Witnesses on January 22, 2001 in the Office of the PDG at 11, Machabeli St., Basil Mkalavishvili and his parishioners arbitrarily broke into the hall and disrupted it. In this regard, on February 21, 2001 the Investigation Division of Mtatsminda-Krtsanisi Regional Department of Internal Affairs of Tbilisi filed a legal action under Subparagraph a), Paragraph 2, Article 239 of the Criminal Code of Georgia. Many other criminal cases are filed against Basil Mkalavishvili and even the *written recognizance of not to leave Tbilisi* has been taken from him. However, this does not prevent him from going unpunished wherever he wishes.

For instance, at about 16.30 a.m. July 9, 2001 Basil Mkalavishvili, having given the recognizance not to leave Tbilisi, drove in a car to the meeting place of Jehovah's Witnesses in the village of Ortasheni, Gori Region, and threatened the attendants: "I'm going somewhere now but I'll come back in 10 minutes and if you have not left, I'll burn you." Fortunately he went and did not come back. However, religious extremists who see such things going on may just as well develop the sense of impunity and inflict serious damage to the democratic principles, including civil and political rights, guaranteed by the Constitution of Georgia. No matter what effort we make to fight this evil, we won't get anywhere unless law-enforcement structures, the police and the prosecutor's office, act. It should be said that there has been a slight progress in their work for the last time - nearly 20 criminal cases have been filed. Four of the old cases that we know have already been referred to the courts (courts of Kutaisi, Zugdidi, Marneuli, and Borjomi). However, it's a pronounced fact that law-enforcers are usually lazy about investigating cases on religious rights violations. As an example to the above, cited without comment below is the answer to our reference, showing a typical lackadaisical approach to religious rights violations:

"In response to your Reference N 526, June 29 this year, be advised that on April 6 this year Igoeti Subdivision of Kaspi Regional Division of Internal Affairs received an application from Guram

Makharoblishvili, a member of Jehovah since 1995, (residing in village Okami, Kaspi Region) where the applicant states that on while he was going together with his friend Givi Tsutsunashvili, also a member of Jehovah, on the village road on January 29 this year, some unidentified persons attacked them, inflicting both physical and verbal damage to them on the ground that he is a member of Jehovah. An inquiry was conducted on the fact which identified Giorgi Kotolashvili, Tengiz Beinashvili, Jemal Balkhamishvili and Nugzar Paichashvili, all residents of village Lamiskana. However, these persons denied any physical or moral damage against G. Makharoblishvili, adding that they had forbidden him to stop visiting people in their village, stop preaching "Jehovah", and stop distribution of literature, as he had often traveled to village Lamiskana and had won over the followers of "Jehovah". Thus, the inquiry identified no fact of hooliganism or physical damage against the applicant.

Despite the above, the aforementioned persons were warned not to inflict any physical or moral damage to G. Makharoblishvili, neither resist him in any way in his religious activity, on which the applicant was notified." (Style of observed).

Another alarming trend that we just cannot go by is that the most recent application that we have received underlined *"disruptions of Russian-language religious meetings."* This phrase may just as well be a symptom of yet another from of religious rights violations, especially so that over 1/3 of the signatories of the collective applications over religious rights violations are of non-Georgian origin. The issue of freedom of worship is very delicate and takes on added significance within such context. Therefore, the relevant government structures must make every effort to avoid any aggravation of the situation.

For part of the public a follower of another religion is identified with the enemy and betrayer of Georgia. Hardly but more or less such part is used to having to put up with the existence of other "large" and "traditional" denominations. However, it finds extremely difficult to put up with the existence of "small" and "non-traditional" religious groups on the land of Georgia which are often identified as "being thrown in from outside" or "agents," - such people of group of people who have betrayed Georgia and wish to destroy her. Such part of the

public thinks that a crusade against the Orthodox Church has been launched and the "front line" traverses Georgia...

The influence of such "patriot Orthodox followers" is notable and permeates virtually all branches of the state. Quite often we hear that one is first an "Orthodox Georgian" and then a "policeman," an "public officer," or "MP". Therefore it should not come as a surprise that majority of the public supports democratic values, from time to time stands up for human rights but has a different view on freedom of conscience and takes action against it. Freedom of religions primarily involves the right of an individual to act according to his faith and freely exercise (or not exercise) religious rites and live in a society where he has the right to do so without being discriminated for his religious beliefs. However, this can be realized if the society and the state allow religious minority organizations to freely engage in their activities. Religious minorities here include all religious organizations except the principal, main religious organization (in our case the Orthodox Church). Regarding division of individuals according to religion. In 1981 the UNO adopted the Declaration on Liquidation of All Forms of Non-reconciliation and Discrimination based on Religion and Opinions. Paragraph 1 of Article 2, which sets this document from other declarations, states that "No individual shall be discriminated for their religion or opinions by any state, group of people or individuals."

We believe that the state, the society, religious NGOs, and human rights institutions must make concerted efforts to fight such a dangerous trend as violation of the right and freedom of conscience and religion. In particular:

- The law on Religious Organizations must be adopted;
- A group must be formed from psychologists, sociologists, lawyers and representatives of religious organizations to map out the national program on the concept of the rights of religious and national minorities. In turn, the state must try to implement it;
- No constitutional agreement must be made without first achieving public consensus;
- The state must enter into dialogue with all denominations existing in Georgia in order to better understand their request and create the atmosphere of mutual respect;

This report cites series of facts on manifestation of religious extremism in Georgia and their grievous consequences. No one argues that all these cases involve human rights violations. We face challenges not only with regard to freedom of conscience but also with regard to the right to personal inviolability, and ineffectiveness of the available remedies. The issue assumes increased importance as we consider it within the context of juveniles who are the followers of this or that religion or sect. (Please see the Case of Minor V. Basishvili).

We must draw attention to the fact that discrimination may come not only by a public officer but also by a group of persons or individuals. This is particularly worth giving attention to us as religious rights violations are mostly committed by groups of persons or specific individuals. In stark contrast with our situation, the right of religion under Article 6 of the 1981 Declaration involves:

a) Right to assemble to exercise religion and other rites and customs related to faith;

b) Right to establish charity and humanitarian organizations;

c) Right to make and use objects and materials necessary for the expression of religious rites, customs or doctrine;

d) Right to make, publish and spread literature in the area;

e) Right to conduct in due places educational work on religious issues and faith;

f) Right to ask for and receive financial and other donations from both individuals and organizations;

g) Right to prepare, appoint or elect the leader meeting the norms of this or that religion or faith with the hereditary right to transfer leadership;

h) Right to observe day-offs, celebrate holidays and perform relevant rites;

i) Right to establish close contacts with individuals and groups of different religion or faith on both national and international level.

Although not thorough and comprehensive in the understanding of freedom of expression, conscience and religion, the above list of Article 6 in fact provides an explanation as to what these freedoms involve and how they must be protected when it comes to freedom of worship.

The PDG and her Office work on several directions to improve religious rights situation in Georgia:

1. Recommending that the relevant structures (mostly interior departments) react adequately to the facts cited in the letters or applications to us as well as those spread by media. Almost 80 applications have been considered and answered in the reporting period;

2. The PDG cooperates with the governmental structures that may contribute to the improvement of the human rights situation. On March 29, 2001 the PDG applied to Mr. Gia Meparishvili, General Prosecutor of Georgia, with the recommendation that *"it is necessary that the Prosecutor's Office provide strict procedural oversight on all the divisions of the Ministry of Internal Affairs that (according to their jurisdiction) have the obligation to file criminal actions and conduct objective investigations under Articles 155 and 156 of the Criminal Code of Georgia."* After giving the recommendation, we received a letter from the Prosecutor's Office, informing that over 10 cases are pending trial or investigated on the facts of violations of the rights of religious minorities. To the best of our knowledge, the same number of criminal cases have been filed since April;

3. Together with the Institute of State Law and Religion the employees of the Office of the PDG conduct instructions and present reports on human rights in the Georgian interior departments;

4. On the PDG initiative and by support of NGOs, the Office of the PDG held sreies of discussion-meetings on different aspects of religious rights;

5. The employees of the Office of the PDG maintain close contacts with the representatives of different denominations, trying to identify their problems and take preventive measures for protection of their rights.

Freedom of Expression

Freedom of expression on most occasions is associated with freedom of press despite the fact that freedom of expression is a much broader concept, also involving the expression of one's own opinion through any available means, access to information, and freedom to receive and spread it. This time, though, we think it expedient to draw your attention to freedom of press.

The current independent Georgian media, which is gaining reputation with each passing day, is one of the most cherished achievements of a democratic society. This method of freedom of expression is put on top of the agenda of the international community as one of the priorities in the implementation of human rights.

True to the above, the media publishes any type of material on any subject in a virtually unfettered manner. And we know that it is guaranteed by both the Constitution and other laws of Georgia.

However, I cannot ignore the trend that has recently appeared in our country. An increasing number of journalists often argue that freedom of press is absolute unlimited and it is possible to talk about anything in any way, including in an insulting manner.

Of course, according to the European standards freedom of press for journalists in expressing their opinions about any person, his biography or actions is virtually unlimited especially when it comes to public officials - politicians who have purposely chosen to be in the center of public attention. However, freedom of press may contravene other human rights (right to privacy) when individuals are involved.

I'd like to give just one example in this respect. Not long ago one TV company informed the public that a babe had for the first time been identified with AIDS in Georgia. The fact was alarming as such but it was highlighted in such a manner that everybody got to know who the babe and the parents were. As far as we know, the parents promptly took their child away from the hospital. This means that the future of the child is doomed. This is a sad consequence of the journalist's thoughtless talk.

The typical critical approach of journalists, especially in the electronic media, toward current events in both the public and the state (that seems absolutely congruous and in line with the situation that we are in) is gradually growing into an exaggerated manner of reporting. Some international organizations (say, The Anti-Racism and Xenophobia Committee of the European Council) states that if there was no censure, Georgian journalists would do well with a code of conduct as a measure of self-censure for them. Another aspect of the problem involves psychological factors. The thing is that bringing out only negative facts from the event induces not only negative reactions and stress but also indifference, disillusionment, and hopelessness in the audience of readers, listeners and spectators. Unfortunately, the Georgian journalism is not free from the vice of inclination toward sensationalism. But let's get back to the remedies to ensure freedom of expression and the issues of concern to that end.

Unfortunately, attacks on journalists continue. An example to this is the murder of the reporter of the TV Company RUSTAVI-2 Giorgi Sanaia. I'd like to register my position: "no matter what was the motive for the murder, no matter who the murderer is, the journalist has been killed and this is what's most dangerous and alarming for the society which claims to be civilized. It is the duty of the relevant structures of our country to do everything not only to open the case of murder and bring the perpetrator to justice, but also to absolutely rule out such facts in future. There have been cases in most recent history of Georgia where victims of murder were journalists. Such facts always provoked a markedly negative public reaction, resentment, and outcry. Perhaps this signals that the civil society is at last taking root in Georgia."

As you know, the media activity in Georgia is governed by the Law on Press and Other Means of Media. This is one of the first laws adopted by our country since it gained independence. The law as such may be appraised positively but in many respects fails to meet current demands. Sometimes we meet such weird situations where the existence of this law is totally forgotten during discussions on freedom of speech and the Parliament is earnestly asked to pass a specific normative act. The Law on Press has been modified many times and a great deal of amendments has been entered to it due to the passage of new laws and by the desire to modernize and update it. Let the relevant experts judge its effectiveness. But we should

mention that the new law must be drafted in consideration of both Georgia's international commitments for human rights, and domestic provisions of our legislation (Civil Code, General Administrative Code).

When Georgia acceded to the European Council, this organization drafted recommendations for Georgia to comply with as one of the members of the unified European family. One of the recommendations is directly related to freedom of expression, and that Georgia must draft and adopt the law on electronic media. Years have passed since then but we see no sign of such law yet.

When it comes to freedom of press and freedom of expression, the electronic media must necessarily consider the interests of the national minorities living in Georgia. As you know, the system of the State TV-Radio Corporation has editorial staff of the Russian, Armenian and Azerbaijanian TV and radio broadcasting. However, purely for technical reasons (distribution of frequencies) Armenian-language TV and radio programs can be viewed and heard in Tbilisi only. The Armenians who are densely populated in different parts of Georgia are in a kind of information gap, and basically have to use TV and radio channels of the neighboring states. This is an illustrative example of how a purely technical reason may violate one of the basic human rights - the right to access to information, and add certain political implications to the problem. We believe that it would be advisable to take certain measures to settle the issue. By the way, we know that the representatives of non-Georgian-language editorial staff have repeatedly applied to the relevant governmental structures but to no avail.

And finally, in my opinion a curious moment related to the right to access to information. The Law of Georgia on Health Protection uses the term "patient" in almost all cases. One of the rare exceptions is Article 7, which states that any citizen of Georgia may receive information about his health condition. It is much hoped that the law-maker did not intend to discriminate foreigners and aliens in this respect insomuch as the right of foreigners and aliens to receive information is provided by the Georgian legislative acts (Law on Legal Status of Foreigners). However, more interesting is that this perhaps purely technical pitfall was repeated in another law on Protection of Patient's Rights. It seems that the information about one's own health is accessible for the Georgian citizens and withheld from foreigners staying in Georgia. I hope that it won't be too difficult

to correct these laws especially so when we speak about the need to bring our laws in line with Georgia's international commitments for human rights.

Freedom of elections

In the summer of 2002 Georgia schedules to hold local government elections. The procedure for the conduct of these elections is provided by the Law on Elections of Local Representative Bodies - Councils. Subject to Paragraph 2, Article 36 (Chapter "Transitional Provisions") of the law, "Voters forcibly displaced from the Autonomous Republic of Abkhazia and the Autonomous District of Ossetia do not participate in the ***first*** (italics - ours) elections for local representative bodies - councils." This substantially restricts the election rights of a considerable part of the Georgian citizens.

In June 2000 a group of citizens filed a constitutional claim in the Constitutional Court of Georgia, disputing the validity of the provision of Paragraph 2, Article 36 of the Law on Elections of Local Representative Bodies - Councils. By its judgment (December 21, 2000) the Constitutional Court terminated proceedings on the case , stating that "Paragraphs 1 and 2 of the Transitional Provisions of the law specifically refers to the first local elections held (....) in Georgia on November 15, 1998, not the elections to be held in future (...). The constitutional claim in the Constitutional Court was filed 10 days after the local elections (...) when the disputable normative act ***had already been invalid"*** (italics - ours).

Such decision of the Constitutional Court has created a legislative gap - it remains a guess whether forcibly displaced persons have the right to take part in the forthcoming local elections or not. In particular, according to the Constitutional Court, "Article 2 of the Constitution of Georgia regarding the right of citizens to participate in the elections held under ordinary circumstances (note: Article 28 of the Constitution must have been cited) cannot equally apply under extraordinary circumstances... (?!). ... (The Constitutional Court) finds that (...) the law had the right to establish a different rule for

participation in the elections due to their being separated from their place of residence." (!)

We think this constitutes the violation of the election rights of and discrimination against forcibly displaced persons according to place of residence. This contravenes not only Article 28 of the Constitution but is also incompatible with Paragraphs a) and b) of Article 25 of the Covenant on Civil and Political Rights (right to participation in state affairs and elections), with Article 14 (Prohibition of Discrimination regarding the Rights and Freedoms Recognized by the Convention) and Article 12 (General Prohibition of Discrimination) of the European Convention on Human Rights and Fundamental Freedoms. In the light of the anti-discrimination provisions of the European Convention I believe that if the forcibly displaced persons filed action in the European Court of Human Rights, events would take a rather unfavorable turn for Georgia.

Within such context I think it advisable to mention that the situation regarding the election rights of internally displaced persons is totally incompatible with the UN Fundamental Principles of Equality, subject to which:

- "Forcibly displaced persons enjoy by virtue of equality the same rights and freedoms under the international and local laws that other persons living in their country do (Principle 1.1.);
- Forcibly displaced persons (...) are not subject to discrimination due to their displacement and equally enjoy the following rights: (...) the right to vote and the right to participate in public activities. In particular, they shall be given the opportunity to enjoy the means which are necessary for the implementation of these rights (Principle 22.1.D)".

In this respect, I recommended to the Chairman of the Parliament of Georgia that:

The electoral laws provide the right of suffrage of forcibly displaced persons guaranteed by the Constitution of Georgia and recognized by international laws on human rights so that forcibly displaced persons be allowed to take part in the local elections. The Parliament has already accepted this recommendation.

Besides, I'd like to remind that as one of the member-states of the European Union, Georgia has acceded to the European Convention

on Human Rights and Fundamental Freedoms, signed and ratified its protocols regarding the groups of the rights not included in the text of the Convention itself. The exception to this end is the first protocol of the Convention, which has been signed but not ratified the Parliament. One of the articles of this protocol provides election rights. I recommend to the Parliament of Georgia that it discuss that the question on ratification of the first protocol of the European Convention on Human Rights and Fundamental Freedoms.

Rights of minorities

In this respect I'd like to focus your attention to one fact only. As one of the members of the European Council, Georgia has signed the Frame Convention on National Minorities, thereby undertaking certain commitments in the area. However, the thing is that unlike many conventions in the sphere of human rights, signed the Frame Convention on National Minorities is not enforceable (i.e. it is not directly valid toward the Georgian legislative system). To enforce the provisions of this Convention, the member-states must adopt relevant laws and pursue the subsequent policy.

By nature, the Georgian legislation is not discriminating, and can ensure equality of individuals irrespective of their national or ethnic origin. Therefore, the idea prevails that Georgia has no need to pass a specific legislative act to provide for minority rights and interests. However, the problem is that in addition to the guarantees specified in law, any state is bound to implement the so-called positive measures in order to promote and achieve actual equality between the majority and the minority.

The program provisions of the of the aforementioned Frame Convention are targeted to this very end. These principles must serve as the basis for the Law of Georgia on National Minorities and Their Rights. It is an open secret that amid general tolerance national minorities living in Georgia are still weakly integrated into the Georgian society, and badly represented in the legislative and executive branches of government. Improvement of this situation is one of the strategies aimed at protection of national minority rights.

The second major problem to this end is that national minorities can not speak the official state language of the country they live in. The state is bound to take specific measures in the area. We put much hope on the passage of the Law on State Language as the issue will be finally regulated within its frames. I remind that as one of the member-states of the European Council, Georgia is bound to take into account the provisions of yet another document. This is the European Charter on Regional and Minority Rights.

According to available information, the Parliamentary Committee for Civil Integration is now working on the conference dedicated to national minorities. It is expected that public discussion of the conference work will significantly promote integration processes in our country and go a long way toward protection of national minority rights.

I'd like to emphasize another dangerous trend that has recently cropped up in our society. It has to do with the furore that followed one of the articles published in the Russian press. More alarming, though, is that bringing out the issues of national origin of certain public officials and politicians has proven the very seed that found fertile grounds in the Georgian society.

Division or classification of individuals according to religion, national, ethnic and social belonging is disapproved not only by the Constitution and international norms but also contradicts the traditional moral norms established in the Georgian society.

Individuals are judged according to their dignity and deeds. No individual's national belonging may be seen as either virtue or vice. The greater furore we raise (no matter in what way it is doe) over such publications, the severer will be the damage to the public in general and the politicians in particular. We can cite many examples of the people of different national, ethnic and religious origin whom history assigned to their due places only according to what they had done to contribute to the building of the state.

Children's rights

The Convention on the Rights of the Child was passed by the UN General Assembly in 1989. It has been ratified by almost all states, including Georgia (in 1994). The Convention establishes the priority to the rights of the child and recognizes the principles of humanism and equality of human beings.

In compliance with the Convention principles and the recommendations of the UN Committee for the Rights of the Child, the Child Rights Center within the Strategy Department of the Office of the PDG. The UNICEF- Georgia contributed substantially to the establishment of the Center. The obligation of the Center is to promote the rights and interests of children and adolescents in the society.

At the initial state, the Center aims to:

- Promote coordination and cooperation between governmental institutions and NGOs for protection of the rights of children and adolescents;
- Provide assistance to governmental structures in designing a unified strategy;
- Promote and take part in research work to identify the actual situation in Georgia in terms of children's rights;
- Promote modification of the national laws in line with the UN Convention on the Rights of the Child, and implementation of the Convention principles;
- Take part in legal education of adolescents, register the facts involving violation of their rights, act as a mediator between adolescents and the relevant governmental structures;
- Hold consultations with children as well as individual related to hem in order to ensure protection of their rights;
- Design new strategies to approach vulnerable people;

- Promote popularity of the Convention on the Rights of the Child in order for the public to become aware of the fact that the rights of the child are integrated into human rights;
- Get acquainted and study the experience of other countries and introduce such advanced practices in Georgia.

The Center cooperates with different governmental structures, and from time to tome conducts forums together with NGOs working of children's issues, and maintains close contacts with children's adolescents and young people's organizations, and the media.

One of the basic aims of the Center is to get children and adolescents involved in public activities, debates, and in making solutions in connection with their own problems. It is much hoped that the ideas and viewpoints of children will become accessible through letters, telephone, the Internet, the Young parliament, and through cooperation with other young people's associations. Where there is any violation of the child's rights, the Center records the problem and the individual. The Child is offered the relevant free legal advice. Besides, the Child Rights Center has created a special information bank that contains the review and analysis prepared by the Center, materials and analytical information gathered by governmental institutions and NGOs regarding the rights of children and adolescents. The bank information will be regularly updated and made accessible for the general public. By UNICEF support, the Child Rights Center has already prepared and published the information booklet on the aims and activity of the Center.

The work that was performed in the reporting period has once again convinced us in the need to direct more attention to children's rights situation that is rather critical due to the general unhealthy environment in the country. The problems related to health, nutrition, and inadequate education have not been caused by the absence of good will or ignorance. It is impossible to get out of such deplorable state only by government decisions. This is echoed by Edict N 189, March 10, 2001 of the President to Georgia, that says: *"... there is a certain deficit of the national approach to the protection of children. The state must be committed and take an active position, and design a unified national policy of strategies and plans to improve the critical situation of children in the country"*. A special commission under the

President of Georgia was called into being to work out, as yearly as the end of this year, the unified national program of child-assistance measures for 2001-2007. This is a promising undertaking but more a thing of the future. The current condition is truly desperate. This is well evidenced from the National Report of Georgia on the results of the World Summit on Children's Issues submitted to the United Nations Organization in December last year and from the situational analysis "Women and Children in Georgia" prepared in cooperation with international organizations.

Four major problems to which humanity assigns priority in connection with children - survival, development, protection, and participation - is shifted to the back row in all spheres of public life. As the basic revenues continue to be low, the budget fails miserably to meet the very urgent social needs.

In the light of general resource deficit and lack of funding it is surprising that the Children and Young People Development Fund set up within the State Department for the Affairs of Young People failed to utilize 15 000 lari that had been allocated last year for NGOs working on children's problems.

Right to live and health care

The hopes pinned to the health reform seem unlikely to bear much fruit. This is primarily induced by the fact that stressed people could not undertake the costs that the state did not or failed to bear. According to the estimates of the Ministry of Labour, Health and Social Affairs, the figure of prenatal deaths has been rising for the last three years, mainly due to dead births. Statistics show that the increased number of neonatal deaths is what accounts for the higher figure of infant mortality. Worsening of the health and nutrition of women is caused by deterioration of the heath care quality and the general social-economic situation.

An impartial analysis of children's situation shows that there are many ambiguities in information of the Ministry. Statistical estimates pooled from various information sources are in stark contract with each other (for example, regarding infant and under-5 child mortality

rates). As a result of such differences, it s hard to argue for the protection of the main child's rights to live and health care.

The current economic plight is directly connected with increased rates of drug-addiction, STD and AIDS in children and young people. Unfortunately, neither the society nor the media seems prepared to make an adequate response to this threat. The situation requires urgent intervention.

Right to development

Statistics show that the number of children's educational institutions has dropped sharply for the last few years. The number of pre-school institutions in 1995/96 was 1322, dropping to 1229 in 2000. The number of state secondary education schools in 1995/96 was 3219, falling down to 3201 in 2000. The number of primary, professional and technical schools also dropped from 118 in 1995/96 to 84 in 2000.

As mentioned above, the trend regarding the state's lack of necessary funds persists. Parents are hard-pressed to meet their expenses for manuals, copybooks, and pens, to say nothing about transport costs. Majority of parents fails to clothe their children warmly enough to keep children in frozen classrooms.

Unfortunately, the current deplorable state prompts us to admit that the education reform is moving forward at snail' pace and much water has to go under the bridge before we see any light at the end of the Georgian education tunnel.

Right of active participation

Part of challenges with regard to active involvement of children and adolescents is induced by not only the current legislative base but also the deep-rooted local traditions. Children and adolescents have no say in public life, neither their views are respected. The family and

the society act as a shield to the child. However, sometimes it is increasingly difficult to differentiate between such over-care from restriction of freedom and independence especially so when children do not know that there might be other alternatives as well. The Young Parliament received universal public acclaim when it was established in 1998 but a wonderful undertaking just died for two years. Was it truly so hard to raise the small funds that was needed was this vitally important matter? The fact that we leave the issues of strategic importance to our country at the mercy of international organizations is an unforgivable mistake of all of us.

Right of the child to be particularly protected

It is our duty as of human beings to ensure increased protection of vulnerable children and tackle the causes.

The number of orphan children, of children lacking parental care as well as of juvenile offenders is rising dramatically. 104 000 children displaced from Abkhazia and Samachablo are in need of rehabilitation and invalids of such category whose number fluctuates between 8 000-25 000 (exact data are unavailable) - in need of hospital care. 600 000-800 000 children live in families beyond subsistence level. Children are forced to go out in the street in order to meet their needs.

Majority of child institutions is badly off for capital repairs and worst off for education and other equipment. Food in children homes is insufficient and inadequate. Commonplace is the bedroom accommodating 30 beds together.

The future of children after the have left such institutions looks rather gloom. Not even ID cards are issued to them.

Official statistics put the figure of invalid children at 8 000 while NGOs say the number is three times as large. It's a shame that the pedagogic concept "Defectology" that was designed back in the Soviet era, which put children with slight mental weakness in specialized institutions, is still used in Georgia. Although children are currently integrated in "limited development" schools under the new education system, the process is rather irregular and slow.

There are 15 special institutions for invalid children and virtually all of them can keep on only with the funds of charity organizations. The state's invalid protection package is limited to 14 lari only.

The problems of children lacking parental care are often related to spousal disagreements and conflicts. On most occasions, one of the divorced parties does not allow the other to visit children, instead of providing opportunities to such party to duly fulfill his/her parental obligations. Oftentimes, children are taken abroad without the consent of one of the parents. This is well illustrated by the materials submitted to the PDG Office regarding the future of the children of Egnato Mkoyan and Tamar Khitarishvili, Giorgi Toradze and Maia Gvaramia (please see p. 105).

The transitive period has introduced a new reality in our life - street children. There are no reliable statistical figures in this respect but it is a fact that the state is unable to effectively care for them. NGOs only cannot solve the problem.

From time to time our police carry out raids and bring arrested children to the Juvenile Admission-Assignment Division of the Administration of the Ministry of Internal Affairs of Tbilisi. 276 juveniles have been placed there in just 6 months of 2001. 69 of the juveniles were unattended, 37 - beggars, 37 - tramps, 1 - stray, 1 - drug-addict, and 1 was brought for identification purposes. The main problem is that parents again let their children out in the street after they have taken children away. As a result, majority of such children gets in this division several times a year. The police have registered 253 unreliable families and 114 of their adolescents. Five of this category of children have committed crimes.

Samtredia Special School numbers 43 such children and majority of them has been placed here for such basic crimes as tramping, theft, and drug abuse.

For just 6 months of 2001 the police have registered 368 juvenile crimes, exceeding by 46 items (14,2%) last year's similar parameter. This accounts for 6,1% in all the crimes committed in this period in Georgia. According to age groups, the crimes are divided as follows: under-14 - 33, 15-15 - 62, and under 16-18 - 152.

The regional interior bodies operate special juvenile inspection offices. However, lack of adequate funding and facilities adverse affects the operation of such offices. Despite the efforts of the

Ministry of Internal Affairs, local government bodies failed to transfer back to the juvenile inspection offices the "children rooms" which were recorded on the balance but later - alienated to individuals and private business entities. This would make it possible for the police to effectively carry out prophylactic work with juveniles.

Decree N 80, March 2, 2001 of the President of Georgia approved the 2001-2003 State Program for Protection, Development and Reintegration into Public Juveniles. Under the same decree, the program must be funded from the budget in the amount of 3 million lari. However, the budget failed to allocate the money due to current budgetary crisis in our country.

Situation in the army and rights of military servicemen

Comparative analysis of certain parameters of the 2001 and 2000 annual budgets of the Ministry of Defense of Georgia

As a result of the general budget sequester, the 2000 budget (43,7 mln) of the Ministry of Defense was slashed by 20.2 million to drop on 23.5 mln lari.

Inadequate funding of the Ministry of Defense in 2000 further increased the payroll arrears (10 month payroll arrears of app. 15 000 000 lari). In all, the year 2000 ended with four month payroll arrears and food payment in the amount of 5 000 000 lari.

The staff of the Ministry of Defense of Georgia for 2001 was reduced to 20 000 items, resulting in the lay-off of 20 000 military officers. However, the 2001 budget of the Ministry prescribes not a penny to cover the debt arising from the above-mentioned measure (total payment to reduced personnel - app. 10 mln lari). This means promotion and approval of the violation of the rights of the said personnel. The amount (33055,9 mln lari) approved by the Law on the 2001 Budget is enough to meet maximally limited expenses of the staff (salary, nutrition, clothes). All the other expenses remain without funding.

The basic military budget parameters were determined in departure of the requirements of the national defense and security instead of using at least a small part of the economic effect of the staff reduction for the improvement of the social conditions of military servicemen.

If annual the wage fund of the Ministry of Defense was reduced to 6.722,3 mln in 2000, the annual wage fund in 2001 dropped to 6.006 mln lari against the requested amount of 10.131,038 mln lari. This means that the 14 month arrears for previous months will further increase by 4 another months. In fact, the 2001 annual budget prescribed beforehand that wages for several months would not be paid out (as it was the case in 2000).

Instead of 14.318,6 mln for food expenses the budget approved 7.212 mln. Food compensation in 2000 was 6.834,2 mln and in 2001 - 6.473,5 mln lari.

Such a funding policy casts a serious challenge to the success of the military reform and will inevitably result in the violation of the rights of the military.

Condition of military unit premises

The PDGO monitoring in military units found out that majority of premises is badly depreciated and in urgent need of repairs. Water leaks down in barracks and headquarters. They may break down in any minute and claim health and very lives of our soldiers. One building has already broken down and a soldier survived by miracle.

Georgia has no normative document to ensure adequate living standards for our military. Hygienic conditions are worsening. 30-40 soldiers have to share one washstand. In some military units they pour water to reach other.

Barracks are in bad repair. Roofs are blackened by the smoke of the wood fire, the wooden floor is equally ugly to look at. Drawers are empty. Here and there you may see bars of soap of different manufacture, sending the message that soap is not distributed to

soldiers. Bed sheets remain unwashed for months and solders have to go to bed with their clothes on.

Particularly unbearable are the barracks in winter for lack adequate heating. Soldiers will have to solve the problem on their own this winter unless the relevant authorities do something about it. There a lot of examples where soldiers, in order to keep warm, had to demolish fences or visit coffin shops to ask for sawdust instead of heavy jobs assigned by the shop owners.

Soldiers suffer from real malnutrition. They can't get even half of the prescribed norm of 4000-4500 calories.

Even a cursory examination of the following percentage figures well shows the desperate state that our armed forces are in in terms of food supplies: food - 17%, fish - 42%, oil - 23%, salt - 100%, potato - 74%, cabbage - 47%, rice - 63%, butter - 0%, macaroni - 131%, cereals - 60%, onion - 45%, bread - 100%.

The military are in a critical state in terms of ammunition as well. They have no other pair of uniforms to change and when the uniform falls out of shape, soldiers have to buy them on the market with their own money. It should be noted that majority of soldiers come from socially vulnerable families. Maintenance of soldiers in the army bears most heavily upon such families.

Another prevalent trend involves purchase of personal items and spending of the wage (3,40 lari) due to soldiers for cosmetic repairs and electricity needs of barracks. As such wage is extremely small and inadequate, soldiers are often given short-term furloughs and parents have to fund expenses to and fro.

Health care

What with the current straitened circumstances in the army both socially and hygienically, soldiers are increasingly susceptible to illness. Gastro-intestinal disturbances are among the most widely spread diseases in the army. There were a few cases of tuberculosis in previous years. One of the cases that we informed to the public was related to mass outbreak of a certain disease in

Mukhrovani Military Brigade. In particular, some 50 military were down with the disease. However, the information was suppressed because (as they explained) if disclosed, parents would take away their children from the army and the country's military preparedness would deteriorate.

The attitude of the top officers here was extremely cynical. There were more interested in hushing up the affair than in the health of soldiers. If soldiers get ill, problems bear on parents. As there are no enough medications in military hospitals, parents have to fill the gap.

It would be interesting to say a few words about the system itself. The rule for granting a leave to a soldier for illness is governed by Order N 360 of the Minister of Defense and the Regulation on the Rule for Expert Examination in Military Forces. The regulation provides the list of the illnesses against which fitness for military service is determined. The regulation is completely copied from its Russian counterpart and fails to meet the Georgian reality. Even the Administration of the Central Military Hospital concurs to the above. For instance, the most widely spread illness of erosive gastritis is successfully cured in Russia while it is virtually impossible to do it in Georgia due to the reasons cited above.

Desertion and causes

1st cause - out-of-regulation relations, prison system (through which relations between military servicemen are regulated): "good guys," "guys enjoying patronage, "tough guys, and "sitting ducks."

2nd cause - unwelcome situation in the military unit - malnutrition, anti-sanitation, and cold in barracks.

3rd cause - poor health condition - lack of medications and low health care standards.

4th cause - family condition - harvesting season, social problems, health of the family member of the soldier himself (please see the Chaduneli Case, p. 87).

Besides, potential deserters are the soldiers allowed by officers to go home who failed to pay a certain amount (ranging from 50 to 100 lari). Fearing that their case will have been referred to the Military Prosecutor's Office, such soldiers no longer return to their military units.

The amnesty issued in 2000 did not produce any spectacular results. According to available data, about 1000 soldiers have run away from their units for now. The reason is that we don't fight the causes or desertion. Until the state approach is changed, the problem will continue. Unless the funding policy is changed, we may assume that the government is pushing soldiers toward desertion.

Homicides and suicides in the army

Over 100 military have been killed in the now-war period since the establishment of the Armed Forces of Georgia. The cause - dire material-social strait, violence, careless handling of arms, family problems, lack of perspective, injustice.

We'll cite only two facts: on June 29, 2000 Kutaisi Regional Military Prosecutor's Office filed a criminal case against Captain Mamuka Kvirikashvili of the Military Unit N 51651 of the Ministry of Defense of Georgia for abuse of power, illegal imprisonment, beating and bringing to the point of suicide.

The investigation has established that from June 18, 1999 to April 2, 2000 by abuse of his official power, Captain Mamuka Kvirikashvili routinely let his subjects (soldiers Mamuka Sikharulidze and Vazha Sikharulidze) home without registration of any leaves. Furthermore, Captain Mamuka Kvirikashvili assigned them to bring food, wine, and money. Where the soldiers failed to fulfill the assignment, the Capital inflicted verbal and physical damage to them. From 18.00, December 10, 1999 to 8.00, December 12, 1999 Captain Kvirikashvili illegally limited the freedom of M. Sikharulidze by forcefully taking him to the ineffective toilet room of the barracks, and chained him to the sewage pipe, locked the door and left him isolated from the outside

world in such condition that the soldier had to stand and experience hunger and thirst as he was tied to the pipe with his hands. Captain Kvirikashvili threatened that if the soldier said a word, he would kill and bury him in such a place where nobody could find him. By routinely treating so, Captain Kvirikashvili brought Private M. Sikharulidze to the point of suicide. On April 20, 2000 the latter drank liquid ammonia to commit suicide, suffering serious health consequences.

In October 2000 the trial against Kvirikashvili took place in Kutaisi District Court which found him guilty and sentenced him to 5 year in prison.

In June 11 Akhaltsikhe District Military Prosecutor's Office filed a criminal action against Lieutenant Temur Melikadze, Chief of the Guardroom of the Military Commandant's Office of Akhaltsikhe Garrison, and Goderz Gogrichiani, Assistant Commandant, for bringing Private Suleiman Agakishev to the point of suicide.

In February 2000 Private Agakishev was placed in the guardroom for three days for a 2-day desertion. At about 11.00, March 8, Chief of the Guardroom T. Melikadze brought the private out of the cell and ordered that Agakishev clean up the territory and toilet of the Commandant's Office. Private Agakishev refused, saying he was ill. Melikadze assaulted the private physically, inflicting several hits in the head and the abdominal area. After that, Melikadze took him into the cell, took off his overcoat, and splashed him all over with water. Besides, Melikadze poured water on the floor and locked Agakishev in. 30 minutes thereafter, Melikadze, now together with Assistant Commandant Goderz Gogrichiani, again took Agakishev out of the cell and beat him unsparingly, then they tried to push him down into the sewage channel. At that time Agakishev resisted them for which both assailants hit him in the head with a spade handle, dragged him into the moist cell and locked him in. In June 2000 Agakishev was twice installed as a guard in the guardroom according to the service regulations. On both occasions he was severely beaten by Melikadze and Gogrichiani. Before going as a guard to the Guardroom the third time, Agakishev, fearing that he would be beaten again and that his dignity would be flouted, fired against himself to commit suicide. Luckily, he survived but with severe bodily injury. In June 2000 the criminal case under Article 115 (crime of aforethought) against T. Melikadze and D. Gogrichiani was heard by Tbilisi District Court which sentenced either of the defendants to 2

years of imprisonment that was replaced with a probation term. The PDG believes that the sentence against T. Melikadze and D. Gogrichiani is widely inadequately. I think that the court failed to correctly evaluate the criminal actions of T. Melikadze and D. Gogrichiani that resulted in a lighter sentence.

Description of the events of 25 May

At 11.00 a.m., May 25, 2001 the PDGO received a telephone call to inform that the heavily armed military of the guard subdivision (chief officers - Colonel Krialashvili Commander of the Regiment, and Colonel Otaladze, Battalion Commander) who had been on military trainings in Norio Training Ground, left the place of location and moved toward the Landing-Fighting Regiment of the Interior Troops deployed in Mukhrovani, entered into the unit without resistance and were joined by the military of the host regiment. Interestingly, Colonel Otanadze had formerly been Chief of the host regiment. At that moment the action, according to official sources, was appraised as military-political adventure with the request that the government step down. Such evaluation extremely aggravated the situation in both the government and the public.

To take an on-site examination, the PGDO dispatched to the scene its employ Nodar Epremidze. By 12.00 by personal request of the Minister of Defense, N. Epremidze met with Colonel Otanadze and Krialashvili, and conveyed the President's proposal to start negotiations.

At the meeting it became clear what the true causes of the action were. Their main request was social, not political. During the trainings, their soldiers had been hungry and had to eat snakes and turtles. The officers had had serious family problems for lack of wages and could see no other way out (on one occasion the Ministry of Defense had failed to allocate funds for the burial of the officer who died of illness). The aforementioned colonels asked to meet the media and the PDG that was partly fulfilled. The PDG met them in

just about an hour, despite the resistance of police officer Gamezardashvili. Police and security officers did not allow any journalists to attend the meeting.

After the meeting the PDG met with the President, apprised him of the situation, and proposed that negotiations be started as soon as possible to forestall further complications.

The meeting between the President and the military started at 22.00 p.m. and the situation was cooled off.

The talks resumed on may 27 in the President's Chancellery. It was established that sharp cuts in the military budget for last two years had dramatically deteriorated the financial and material condition of the military. To study the problems and design urgent measures, the President set up the Ad Hoc Inter-Departmental Commission of the National Security Council (Decree N 541, May 31, 2001 of the President of Georgia on Establishing the Ad Hoc Inter-Departmental Commission of the National Security Council in order to Study the Current Situation in the Ministry of Defense of Georgia and Design Urgent Measures) under N. Sajaia, Secretary of the National Security Council, Aide of the President of Georgia for Security Issues. N. Epremidze was placed in the Commission from the Office of the Public Defender of Georgia.

We recommended that it was necessary to create the program to ensure the implementation of civil control over the protection of the rights of the military and improvement of the current situation in the area. The program must be worked out in cooperation with the representatives of public organizations, the PDGO, the Parliament of Georgia and the media.

Interior Troops

On June 21, 2001 the PDGO received a collective application from the military servicemen of the Ksani and Tkibuli Battalions of the Interior Troops. The application was signed by 49 persons.

The former military servicemen of the Ksani and Tkibuli Battalions of the Interior Troops had come out on a hunger strike in front of the Administration Office of the Interior Troops.

The PDGO immediately proceeded to meet lawful demands of the people on the hunger strike. We applied to Mr. N. Sajaia, Secretary of the National Security Council, Aide of the President of Georgia for Security Issues, to act as a mediator before the Ministry of Finance to satisfy the lawful demands of the people mentioned above. In parallel, we conducted talks together with the Authorities of the Interior Troops. As a result, it was determined to meet the leaders of the action. The issue was resolved positively through our intervention.

Besides, to protect the rights of the military and provide effective control and monitoring over the situation in the area, we submitted recommendations to the M Minister of Defense, to the Chairman of the State Border Protection, and to Marshal of the Interior Troops, that they put up the address and contact phones of the PDGO representative at the conspicuous places in the units of interior troops.

Recommendations for protection of the rights of the military

- Social and legal remedies of the military provided by Article 4 of the Law of Georgia on the Status of a Military Serviceman must be fully enforced;
- Material provision under Article 12 of the Law of Georgia on the Status of a Military Serviceman must be fully effected;
- Privileges prescribed for the military be restored;
- Institute of alternative service must be enacted in compliance with international human rights norms;
- Law of Georgia on the Status of a Military Serviceman must be amended in order to protect the rights of the military and provide effective control and monitoring over the situation in the area;

- Ad Hoc Parliamentary Committee be set up to study the causes of prevalent facts of homicide and suicide in armed forces in order to avoid such facts in future;
- Special lessons must be arranged in schools and highest educational institutions in order to inform the audience on mines and related threats as well as ways to avoid such threats (54 cases on hitting mines have been registered in Dedoplistskaro and Abkhazia);
- Special attention must be placed on the special training of draftees (together with the Ministry of Defense) as they falls within the risk-group;
- Pre-school age children and their parents must be duly instructed to avoid such threats in future;

Despite the PDG recommendations, the institute of alternative service was not enacted. The issue requires urgent attention.

CASES RELATED TO VACANCY CONTEST HELD AT THE MINISTRY OF TAX REVENUES

On August 5-6, 2000 at the Ministry of Tax Revenues of Georgia the vacancy contest for Tbilisi tax officers was held where more than 2100 persons took part. From this number up to 400 succeeded, 1291 - failed and 477 were put in the reserve, where 255 officers after passing the second round of the interview were enlisted in the tax bodies on February 18 this year. During this process many breaches were fixed on which we submitted recommendations to ex-minister Michael Machavariani. The same was confirmed by the court decision of Tbilisi Vake-Saburtalo Regional Court on December 21,2000. The group of experts appointed under the court decision should establish the compliance of the tests with the requirements of the program, and they considered that 42% of tests carried on the exam on August 5-6, 2000 were worthless. The experts also established "the unlawfulness on introduction of the normality index and finally applied for cancellation of the results of the held exams. The court decision unequivocally proved the violation of rights of the tax officers by the fault of the Ministry. This

was acknowledged by Mr. Machavariani himself, and First Deputy Minister D. Mumladze guaranteed that the committed mistakes would be improved impartially and in good time".

Unfortunately, against the background of these promises the situation was not improved but aggravated with even more mistakes. The obligation provided by Minister's Order No. 103 of June 15, 2000 specifying that the vacancies would be filled by the skilled specialists, was infringed and many positions were occupied by those persons who failed to attain to the obligatory 24-grade limit established by the Ministry itself. As the Ministry leaders explained repeatedly, those appointments were effected by nomination of the qualifying commission, therefore, it is quite unclear why they did not pay attention to those who was enlisted in the reserve.

Within one year I submitted a number of recommendations to Mr. M. Machavariani with indication of the required measures. We claimed protection of the supremacy of law, but in vain.

Noteworthy is, that improvement of the established situation began only with appointment of Mr. L. Dzneladze. Since that time our recommendations have had adequate and timely response and we hope that those tax officers who have been put in the reserve will be employed little by little. On October 20 this year Mr. L. Dzneladze together with the representatives of the tax staff who remained left unemployed for the fault of the Ministry considered this problem. The issues put by us during the past one year has been driven from the dead point. They decided the issue of transparency of the availability of current vacancies for those persons who are in the reserve that would promote selection from the rolled reserve. I believe that such approach will remove this problem from the agenda and those persons whose rights have been violated will find their trust again.

Tsekavshiri Activity

In the process of study of complaints of the initiative group of the consumer cooperative we detected a number of violations and shortcomings in the Tsekavshiri system. Namely, in accordance with Clause 1 of Article 13 of the Law of Georgia On Consumer Cooperation, Tsekavshiri should specify the number of shareholders

by January 1, 1998 and should allocate and legitimate the cooperative property among them. However, this term was prolonged by Tsekavshiri management till December 31, 2002 with violation of the law. Noteworthy also is, that in the most cases the decisions made by the of chairman Tsekavshiri Board V. Katamadze preceded the resolutions of the Board, and this was the gross violation of the applicable law. However, as per the law "if the problem concerns lease or otherwise alienation of the real estate of the union, the preliminary consent of the general meeting of the union members is required. Otherwise the deal will be invalid". Noteworthy also is that under Article 2.6 of Decision No. 40 of Tsekavshiri Board of June 28, 1996 "Provisional Statute on Sale of the Retained and Extra Fixed Assets and Other Property of the Consumer Cooperation": "The issue on sale of the assets shall be considered and decided by the National Board (the Central Commission Board is applied), or by the meeting of proxies in the regions, who will provide the decision to Tsekavshiri Board for the final approval and consideration on the session. The decision of the board session will ground the sale of assets".

However, the board chairman G. Katamadze with violation of the procedure provided by the law used to issue the decisions on sale of the assets of the cooperative organizations of the Tsekavshiri system and the households, without the preliminary consent of the general meeting or the board. For example, on May 5, June 23, July 30, September 10, September 24, November 19, December 25, etc. 1998, and March 7, 2000 inclusive, 21 decisions of the board on sale-purchase of the assets were issued, while the consent of the board was passed only on March 17, 2000. And what is more, the Tsekavshiri board effected the mass sale of the operating objects at the low prices of the book value. Namely, for repayment of the loan in amount of 7,000 lari taken by the Kareli Region cooperative, they sold the bakery of 10-times more value; for repayment of the loan taken by the Gurjaani Region cooperative in amount of 30,000 lari, they sold restaurant "Nakaduli" valued at 110,000 lari, etc. There are a lot of such facts and it should be mentioned that everything took place with violation of the law. The criminal case instituted by the General Prosecutor's Office in these facts was then terminated for expiration of the period of limitation.

Under the agreement made between the chairman of Tsekavshiri board Mr. G. Katamadze and the president of the National Bank Mr. N. Javakhishvili without the decision of Tsekavshiri general

meeting, board and management the loan in amount of 2,5 mln USD was taken from the National Bank for import of flour by Italian firm "Grandi Molini Italiani". The documents substantiating allocation and obtaining of the loan were executed by the both parties with violation of the law. In particular, the loan was not secured. On December 1, 1996 the Italian firm imported the flour via the Poti Sea Port. The total weight of this flour by relevant documents was 7,300 t. However, the actual weight of this flour was less by 47,4 t and more than 10,600 USD were written off at the National Bank. Tsekavshiri began repayment of its liabilities to the National Bank from December 12,1996 and till April 4, 1997 paid only 1,100,000 lari. For the forcible recovery of the debt the 6th and 7th floors of the administration building owned by Tsekavshiri with the total space 2441 sq. m were put on the public trades and the National Bank by the obtained these assets against the debt under the writ of execution. At present the National Bank bringing the suit at the court claimed from Tsekavshiri payment of the indemnity in amount of 1,1 mln USD and 100,000 lari. It should be mentioned that by decision of the Supreme Arbitration Court of 1997, Tsekavshiri should pay for the National Bank 1,5 mln USD, where only 930,000 USD were actually paid. The documents reflecting the shortcomings and breaches in the Tsekavshiri system were forwarded by us to the General Prosecutor's Office of Georgia on June 26, 2001. By Order of Mr. G. Meparishvili the special group for investigation of this case was formed. Noteworthy is that on October 16 the General Prosecutor provided us with the interim information were the facts of violation available within the Tsekavshiri system were cited. The investigation for establishment of the fact in exceeding the authority and commission by the Tsekavshiri board and by its chairman Mr. G. Katamadze in person is in progress..

It should be also mentioned that by decision of judge Mr. T. Jaliashvili at Krtsanisi-Mtatsminda Regional Court of September 28, 2001, the charters of the Central Union of Consumer Cooperation of Georgia – Tsekavshiri, approved by decisions of Mtatsminda District Court of December 30, 1997 and June 18, 2001, were vacated.

DISCIPLINARY PROSECUTION OF JUDGES

M. Chopikashvili's Case

On May 6 this year I applied with recommendation to the Council of Justice and Supreme Court of Georgia to examine the legitimacy of decision of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on October 27, 2000 and the ruling of the same Chamber of January 17, 2001 on the groundless dismissal of Mrs. Mareh Chopikashvili's claim for succession of the house owned by her father.

The Council of Justice forwarded the facts of the case to the Supreme Court, which, on the ground of the facts of the preliminary examination of reasonability of the disciplinary prosecution of judges, did not recognize the disciplinary offence committed by judges B. Khimshashvili, M. Akhaladze and Z. Koberidze as per the law On the Disciplinary Responsibility and Disciplinary Proceeding of Judges of the Common Law Courts of Georgia, and dismissed the application for institution of the disciplinary prosecution against them. At the same time in their letter sent to me they failed to ground the legitimacy of the passed decision and, thus, violated the rights of Mrs. Chopikashvili.

Taking into consideration the above mentioned facts, I advised the applicant to apply to the European Court of Human Rights (Strasbourg).

CASES RELATED TO DELAY IN RESPONSE TO CRIME AND IMPEDING INVESTIGATION IN CRIMINAL CASES

On Delayed Institution of a Criminal Case, Incomplete Investigation and Delay in Response to the Fact of Assault and Battery of Ludmila Fomina

In order to initiate preliminary investigation in the fact of assault and battery of Ludmila Fomina by a police officer on August 27,

2000 I was to apply with letter No. 9/02/4/946 to the General Prosecutor of Georgia on January 15, 2001.

The General Prosecutor in his letter No. 319/1-4-2001 of January 25, 2001 regarding my letter informs that the decision on dismissal of institution of a criminal case passed by Tbilisi Samgori District Prosecutor's Office on October 26, 2000 according to items "a" and "b" of Clause 1 of Article 28 of the Criminal Procedure Code of Georgia , was reversed as an illegal one on January 25 this year, or upon the receipt of my letter this decision, and the materials was forwarded to Tbilisi Prosecutor's Office for additional investigation. Tbilisi Prosecutor's Office was also entrusted, as it is mentioned in the letter, with making the adequate response to the shortcomings committed during the previous investigation.

In his letter No. 19/1-42001 of March 12, 2001 Deputy General Prosecutor Mr. T. Moniava informed me that on March 9, 2001 the Department for Supervision over Legitimacy of the Inquiry and Operation and Investigation Activity in the Interior Bodies instituted a criminal case under Article 120 of the Criminal Code of Georgia (deliberate actual injury causing a short-term damage of health or small or unstable loss of capability to work) which was forwarded for further investigation to the Tbilisi Prosecutor's Office.

It should be mentioned that on August 27, 2000 after application to Tbilisi Samgori District Interior Department on the fact of assault and battery the chiefs of the mentioned Department instead of the timely response to the notice about the crime detained the victim and her husband Nodar Diasamidze at the police office for 6 hours. Thereafter, the deputy chief of the Department gave to the inspector-in-charge the written assignment for the forensic medical expertise. Furthermore, when they learned about the possible participation of a police officer in commitment of this crime, the deputy chief did not provide the officer-in-charge with the proper written notice as certified by the victim by the copy of the incomplete text of the written notice made by the deputy chief of the Department in response to her application.

What about the investigation of the above mentioned facts, it was carried out with the gross violation of the criminal law provisions.

Namely, by the expert's opinion No. k/451 of October 24, 2000 the investigation was carried out under resolution of Samgori District Prosecutor's Office of October 6, 2000 (the experts were warned

about the criminal responsibility for providing false opinion) that indicates that by that period the criminal case in the fact of assault and battery of Mrs. Fomina was instituted at the Prosecutor's Office, otherwise, as the resolution on appointment of the expertise is referred to the investigation action provided by the procedure norm it should not be passed without institution of a criminal case. In such conditions it is unclear and doubtful the fact how could Samgori Region Prosecutor's assistant T. Archvadze pass and Samgori Region Prosecutor V. Abakelia approve the decision on dismissal of institution of a criminal case on October 26. In addition, the resolution of the Prosecutor assistant provided to the victim in the notice of the Region Prosecutor's letter of October 28, 2000 mentions the dismissal of institution of a criminal case and there is explained her right to appeal this decision at the superior prosecutor as well as to apply to a court for institution of a criminal case in a private prosecution.

However, the victim and her husband assert, nobody has notified them about dismissal on institution of a criminal case and nobody has explained them their rights thereof.

The above-mentioned persons reject the opinion of the forensic medical expertise, which excludes the miscarriage, resulted from the injury. At the same time on May 16, 2001 they received Opinion #82/21 where the injuries inflicted to Mrs. Fomina are attributed not to an actual bodily harm but to a less severe bodily harm with long-term health disorder. As to miscarriage, in the expert's opinion, any trauma inflicted in the concrete case, such as the concussion of the brain, should be a favorable factor for the miscarriage.

On May 15 this year Mrs. Fomina put in one more application where she stated that on February 8, 2000 the attempt to knock her off by a motorcar was made, she often heard threats of death through the telephone etc.. These facts could evidence the certain interest from the side of the law-enforcement bodies.

Taking into consideration the above mentioned facts, on May 18, 2001 I applied with recommendations to the General Prosecutor of Georgia to initiate the proceeding in the criminal case. However, my recommendation was dismissed on the ground of a lot of other more significant cases charged to him. At the same time the General Prosecutor's office disregarded the reasonable doubt of the Public

Defender that the case instituted in the mentioned fact should not be dismissed on October 26, 2000.

The General Prosecutor's disregard of the recommendations of the Public Defender of Georgia concerning the fact of dismissal of the case provoked the doubt and distrust of the victims in the prosecutor's bodies and they rejected further cooperation with them. Such action of the victims caused passing of a regular groundless decision by Gldani-Nadzaladevi Regional Prosecutor's office on dismissal of the case under item "b" of Article 638 of the Criminal Procedure Code of Georgia, or by the motive of a private prosecution. There should be also mentioned that due to the inadequate investigation there has not been yet established, if it was the private prosecution or a less severe bodily harm resulted in the long-term harm to health and, may be, the miscarriage. Therefore, the said decision of the regional prosecutor's office was appraised by me as the gross violation of Mrs. Fomina's rights. In my recommendation in August of this year, I claimed vacation of the mentioned findings of the prosecutor's office from the General Prosecutor in person and consideration of the issue on responsibility of those persons who had passed such groundless decision on this case. Unfortunately, my recommendations have been without response until now.

Thus, the General Prosecutor's Office of Georgia notwithstanding my recommendations of January 15 and May 18, 2001 failed to carry out the unbiased investigation in the fact of assault and battery of Mrs. L. Fomina and to implement the lawful measures against the persons in fault. This is impermissible, as I think.

R. Sarjveladze's case

Mr. Sarjveladze was detained (took into custody) under the administrative procedure for 15 days at Guria Region Interior Department. The Kutaisi District Court reduced the term of temporary custody to 9 days. On January 5, 2000 he should be released under the above-mentioned grounds, however, this did not take place. Thus, the victim was put into custody before bringing a charge with violation of the law. In this case Lanchkhuti and Ozurgeti policemen notwithstanding the complaint of the victim's father failed

to make the adequate response to the case and then the latter applied to the Public Defender. The Public Defender petitioned the General Prosecutor in January as well.

Only by July of this year, after many mentions the General Prosecutor's office confirmed the fact of the illegal placing of Mr. Sarjveladze in the isolation ward.

Case of Apkhadze and others

In April-May of this year Apkhadze, Pailodze, Gvenetadze, Vashakidze were on hunger strike at Kutaisi prison N2 This extraordinary form of action was caused by their arrest on a charge of murder with the lack of evidences.

On May 7 this year in the Public Defender's recommendation before the General Prosecutor was put the question on examination of the legitimacy of the charge and imprisonment and selection for the accused another preventive punishment (not imprisonment). We received the response of the deputy General Prosecutor that settlement of the question put in the recommendation thereof will take place during the trial at the court, that seems to be a tardy measure.

The Public Defender considers that in this case the General Prosecutor's office of Georgia groundlessly evades passing the findings on this case and instead of consideration of the preventive punishment shifted off its responsibility to the judicial bodies.

T. Kvirkvelia's case

On April 19, 1999 Mr. Kvirkvelia got the severe bodily harm because of the car accident.

Though the car accident was committed by a servant of the military unit of the Russian Federation armed forces in Transcaucasia A. Kovshov, who still stays in Georgia with his family, he has not been questioned yet. No forensic medical expertise, neither other investigation actions were carried out. On August 19, 1999 the

investigation service of the Tbilisi Central Interior Department dismissed the charge as the groundless.

Following the recommendation of the Public Defender of Georgia of June 20, 2001 to Tbilisi prosecutor, on July 7 the decision on dismissal of the charge was vacated as an unlawful one and the proceeding in this case was renewed.

Thus, because of the gross violation of the criminal procedure law, during two years the case had been groundlessly dismissed and no response of Tbilisi prosecutor to the mentioned violations took place before the recommendation of the Public Defender.

As to the responsibility of those persons due to the illegal actions of whom the case is still in process and who grossly violated Mr. Kvirkvelia's rights, Tbilisi prosecutor's office contented itself with the general words on forwarding a letter of response to the Tbilisi investigation department that seems to be quite an inadequate measure.

CUSTODY

The custody as a kind of the preventive punishment is applied in extraordinary cases to a person who has committed a felony and grave felony taking into consideration the personality of a criminal. At the same time one of the prerequisites of the custody should be the fact that the person would prevent collection of evidences, escape investigation etc. At the same time the criminal procedure law of Georgia, namely, Article 159 of the Criminal Procedure Code of Georgia provides that the custody as the preventive punishment is not applied to the seriously ill persons, women over 60 and men over 65 as well as to pregnant women. Notwithstanding the concrete provisions of the law, we have petitioned before the court against application of the custody by the prosecutor's office to old and disable people.

A.Bajadze's case

Vani Region prosecutor raised a question on putting into custody Alexandre Bajadze, a man of 71. This presentation of the prosecutor was satisfied by the court of the same region with the excess of obligatory limits of detention for a murderer. The court put Mr. Bajadze into temporary custody for two years. Upon expiration of this term the Kutaisi district court relegated the case for the additional investigation. However, the prosecutor's office did not put the question on replacement of the preventive punishment towards the latter.

On May 24 the Public Defender of Georgia applied with recommendation to the General Prosecutor of Georgia for replacement of the preventive punishment against Mr. Bajadze. Deputy General Prosecutor of Georgia in his Letter of June 15, 2001 informed that the facts mentioned in the recommendation would be considered during the trial in the case at the Judicial Chamber for Criminal Cases of Georgia.

At present the preventive punishment of Mr. Bajadze is replaced with such measure, which is not connected to the custody.

On groundless accusation and long-term custody of Tamaz Devsuradze for illegal purchase of drugs without their distribution

Under the judgment passed by Tbilisi District Court on March 7, 2001 Tamaz Devsuradze was acquitted from the accusation under paragraph 1 of Article 260 of the Criminal Code of Georgia for absence of a criminal act as provided by the criminal law, the preventive punishment in kind of custody was released from him and he was discharged.

Mr. T. Devsuradze was illegally detained by Rustavi interior department officers on June 8, 2000 for purchase of 0.7 gr of drug opium without the intention of its distribution.

The accusation which alleged that on the said day in the town of Rustavi, at 31, Rustaveli Street, the police officers found out in the

back pocket of Mr. Devsuradze the mentioned drug was not confirmed within the trial.

On the contrary, from the moment of detention Mr. Devsuradze refused to sign the relevant report for he disagreed the results of search. At the same time he explained that the mentioned drug was wrapped in his handkerchief and put furtively in his back pocket by police officers. Witness David Chadrishvili at the session of the Chamber of Appeals of District Court evidenced that Mr. Devsuradze was not searched in the street of Rustavi but in one room of the Rustavi Interior Department. When replying to the request of police officers to show any illegal thing he had had Mr. Devsuradze answered that they seemed to know where they had put something by themselves. The police officers took some two parcels wrapped in the handkerchief from Mr. Devsuradze's trousers back pocket and then took him away out to Rustaveli street and said him to confirm that the personal search was carried out in the street on the place noted by them.

The fact that the search did not take place in Rustaveli Street was also confirmed by witnesses T. Devsuradze, F. Machavariani, V. Matiushenko and E. Sosauri, while police officers A. Gochitashvili, Z. Abulashvili and A. Davitashvili failed to explain to the court how and in what way the search had taken place, whether Mr. Devsuradze produced them the drug and after then they called other officers, or vice versa.

In addition, within the preliminary investigation was violated provision of item 3 of Article 106 of the Criminal Procedure Law of Georgia, whereas the notice on examination of the drug and the chemical expertise opinion were provided by one and the same person.

Therefore, as a result of violation of the provisions of the criminal procedure law by the officers of Rustavi interior department (police) and the officers of the investigation service of the same department Mr. Devsuradze was kept in the illegal custody for 9 months.

In consideration of the mentioned facts, by recommendation #435/04-06/66 of June 15, 2001 I applied to the Kvemo Kartli District Prosecutor's Office, which by Letter #g-6-2001 of July 12 informed me that the officers of Rustavi Interior Department, who had taken part in the detention of Mr. Devsuradze – Alexi Gochitachvili, Zviad Abulashvili, Archil Davitashvili, Vasil Buselishvili and Z. Adamia as

well as the chief of the criminal investigation service of the same department Gela Razmadze and chief of Regional Interior Department Temur Anjaparidze were dismissed from their office.

On Failure to Fulfil Recommendations of the Public Defender of Georgia in Consideration of New Facts in the Case of N. Chaduneli

On December 21, 1999 Kutaisi District Court sentenced Mr. Nugzar Chaduneli for a long term desertion with three year custody which further was replaced with the three years conditional sentence under petition of the Public Defender.

Thereafter, the Public Defender of Georgia discovered the facts evidencing that N. Chaduneli from the age of one year was treated at Surami traumatology hospital with the diagnosis – congenital dislocation of the hip.

On September 25, 2000 the Public Defender taking into consideration the above mentioned facts submitted to the General Prosecutor of Georgia recommendation No. 231/ch on institution of a legal proceeding for review of a sentence. Unfortunately my action had no effect.

On January 5, 2001 the Public Defender received from the Central Military Medical Commission of Armed Forces of Georgia opinion No. 1/2-1 of January 3, 2001 where the congenital dislocation of the right hip of Mr. Chaduneli was confirmed.

Proceeding of the above mentioned on February 22, 2001 the recommendation No. 114/07/231-ch was again forwarded to the General Prosecutor for institution of the legal proceeding due to new facts. In this case the recommendation of the Public Defender had no response as well

On June 4, 2001 the Public Defender of Georgia obtained opinion No. k/5 provided by the qualifying forensic medical expertise where the congenital dislocation of the right hip of Mr. Chaduneli resulted in reduction of the leg of 3 cm was mentioned. Thereafter on July 6, 2001 recommendation No. 560/04-12/231-ch was again forwarded to the General Prosecutor of Georgia for the groundless delay in institution of the legal proceeding.

On August 6 this year the Judge-Advocate's Office of Georgia provided us with information No. 21-k-01 where it was shown that they put the question on initiation of legal proceeding for the new facts before the General Prosecutor's Office.

Thus, during almost 1 year the General Prosecutor's Office of Georgia and Judge-Advocate's Office of Georgia with gross violation of the law have disregarded the right of Mr. Chaduneli, groundlessly dismissed initiation of legal proceeding for the new facts in response to the recommendation of the Public Defender of Georgia.

FACTS OF VIOLATION OF PROCEDURE NORMS TOWARDS PRISONERS

During the reported period my attention was attracted by frequent cases of placing of prisoners to the custody subordinated to the Ministry of Internal Affairs of Georgia with violation of the terms established by the criminal procedure law and the delay of their transfer from those custodies to Kutaisi, Batumi and Tbilisi prisons subordinate to the Ministry of Justice, when sometimes such transfer was accompanied with various injuries inflicted to prisoners.

From November 2000 till June 2001 I established 64 interior bodies which placed in the preliminary custody and then transferred to the mentioned prisons 191 prisoners. In addition, during the mentioned period 30 prisoners were placed from 8 interior bodies to the prisons with various injuries.

From this aspect the most serious violations were exposed at Tbilisi temporary isolation ward - 56 cases, at Kutaisi interior Department – 17 cases, Ozurgeti interior division – 9, Gurjaani and Chiatura region and municipal interior divisions - 7, Khashuri, Signakhi and Zestafoni regional interior departments – 6, Khelvachauri interior department – 5 cases, etc.

As to various injuries which were inflicted to the prisoners in the custody during the transfer, the largest number of cases – 5 was exposed at Kutaisi interior department and Khoni interior divisions. Noteworthy is the fact that in many cases the prisoners are placed in the preliminary custody for a long period and their transfer to the

prisons is counted not by hours and days but by months. Namely, as transferred to the prison:

Omar Tvalabeishvili - with the delay of 2 months and 16 days, Tengiz Gorgadze - 1 month and 23 days, David Bajelidze – 1 month and 4 days, Grigol Arevadze – 1 month and 4 days, Ramaz Diasamidze – 1 month and 2 days, Teimuraz Gorgadze – 1 month and 1 day, Zviad Kinkladze - 1 month, Roman Mskhaladze – 1 month, Michael Antadze - 28 days, Zaza Chelidze – 26 days, Huseim Kazan Asmaz – 25 days, Dimitri Baratashvili – 24 days, Merab Abuselidze – 22 days, Imeda Bakanidze – 22 days, Zaza Chochiashvili – 22 days, Kakhaber Artilakva – 22 days, Dato Khundadze – 22 days, Korneli Gobronidze – 22 days, Dato Tskhomelidze – 21 days, Kakhaber Lomtatidze - 19 days, Teimuraz Chocholadze – 19 days, Roland Bolkvadze – 16 days, Roland Kontselidze – 15 days, Archil Ioseliani – 44 days, Giorgi Akhalaia – 35 days, Roman Kharshiladze – 28 days, Sulkhan Khvedelidze – 28 days, Mamia Gabrichidze – 25 days, Malkhaz Gogadze – 22 days, Guram Bendiashvili – 22 days, Alexandre Kalandadze - 20 days, Vakhtang Karkashadze – 20 days, Zaza Lomsadze – 17 days, Gela Kikilashvili – 17 days, Vepkhia Kikashvili – 17 days, Gazarira Bahadon Ogli Hamedov – 16 days, Magara Kamid Ogli - 16 days, Vladimer Krichiashvili – 15 days, Giorgi Gvarjishvili - 15 days, Garry Nazarov – 15 days, Ivan Sristikov - 15 days, Zviad Arakhamia – 14 days, Teimuraz Kenchoshvili – 14 days, Gela Chakhvashvili – 14 days, Vepkhia Samadashvili – 13 days, Gocha Gurashvili – 13 days, Malkhaz Nandoshvili – 13 days, Tariel Gulishvili – 13 days, Alexandre Khaduri – 12 days, Lavrenti Lomidze – 12 days, Tamaz Gudadze – 12 days, Alik Paraskevov – 12 days, Ilia Kechishvili - 12 days, Konstantin Akopov – 11 days, Vazha Javakhishvili – 11 days, Dimitri Kupatatze - 11 days, Tamaz Abesadze – 11 days, Anton Bagdoshvili – 11 days, Vakhtang Birkadze – 11 days delay and others.

Study and analysis of the mentioned violations gives us the ground to make with the great likelihood the opinion that placing the prisoners with violation of the criminal law to preliminary custody by interior bodies in many cases was accompanied with various injuries and their transfer to prison with delay were caused by the desire of interior body officers to force the detainees to give desirable evidences with physical and mental pressure on them, that is the gross violation of their rights under the law.

On May 7, 2001 I sent recommendation No. 318/01/-1 for elimination of the above mention breaches and responsibility of the appropriate officers to the Minister of Internal Affairs of Georgia and Minister of Justice of Georgia, recommendation No. 310 to the General Prosecutor of Georgia, recommendation No. 127/03 of July 10, 2000 to the Minister of Internal Affairs of Georgia, recommendation No. 128/03 to the General Prosecutor of Georgia and Minister of Internal Affairs of Georgia, recommendation No. 218/03 of August 29, 2001 to the Minister of Internal Affairs of Georgia and General Prosecutor of Georgia, recommendation No. 219/03 to the Minister of Internal Affairs of Ajaria Autonomous Republic, Minister of Internal Affairs of Georgia, and General Prosecutor of Georgia.

From the letters No. 13/1-129 and No. 13/1-154 of the Minister of Internal Affairs of Georgia of July 28 and September 12, 2001, regarding my recommendations it is revealed that due to the improper control of the activity of the subordinate staff and other shortcomings and breaches in the work the chiefs of Chiatura, Sachkhere, Zestafoni and Tskaltubo interior regional divisions: M. Memernishviloi, D. Chachanidze, V. Natsvlishvili, O. Iobidze as well as the chief of the headquarters of Imereti Region interior department, Zh. Gogsadze, chief of the headquarters of Lagodekhi interior department A. Onanashvili, the head of temporary custodies at Kutaisi, Gori, Lagodekhi, Telavi, Akhmeta, Gurjaani interior departments: S. Zivzivadze, T. Terterashvili, M. Grigalashvili, V. Grishikashvili, L. Shatirishvili, Z. Khotenashvili; heads of Tbilisi Mtatsminda-Krtsanisi, Didube-Chugureti regional interior divisions: L. Gvazava, L. Bedia; heads of Telavi, Dmanisi, Kvareli, Akhmeta and Tsalka interior departments: Z. Alkhanishvili, R. Kavlelashvili, G. Mozgvrishvili, J. Mgebrishvili, and N. Kinkladze - were dismissed from their office.

As to the General Prosecutor of Georgia, his letter regarding my recommendations stated that the facts mentioned in the recommendations of Public Defender would be studied, though till present any decision on the mention violations has not be made yet.

On recommendations of the Public Defender of Georgia concerning consideration of the draft On Making Amendments and Supplements to the Criminal Code of Georgia presented by the Ministry of Justice

In February this year the Council of State Security sent me the draft of law On Making Amendments and Supplements to the Criminal Code of Georgia presented by the Minister of Justice of Georgia.

The draft law provides making addition of Article 342' to the Criminal Code of Georgia, where the act of an officer of a preliminary custody, or a penitentiary institution, or of a person equated to such officer, which promotes the violation of the provisions of the service or fails to perform or improperly performs this provisions in case such actions causes the death, severe or less severe bodily harm, escape of a person placed in the custody or penitentiary institution, disorganization, gross violation of the legal interests of a natural or legal person, public or state interests or other grave outcomes shall be punishable under the criminal procedure.

Article 378' of the presented draft law is the second addition to the Code. This Article establishes the criminal responsibility for the effect which a prisoner would have on the administration of the custody or penitentiary institution by injuring himself in order to prevent the operation of a custody or a penitentiary institution, or disorganization of its activity.

Having considered the above mentioned draft law I have not agreed with its provisions for the following reasons: at present some norms of the applicable Criminal Code of Georgia contains the reasonable mechanisms of the legal response and establishes the criminal responsibility of an officer of the custody or penitentiary institution and the person equated to such officer in case of violation by the latter of the provisions of the internal service rules of the appropriate institution, promotion of such violation, failure to perform or improper performance of these rules, if such action

causes commitment of a crime listed in the relevant article of the draft law.

Namely, Article 332 of the Criminal Code provides the criminal responsibility and enlarged sanctions for the abuse of official authority by an officer or a person equal thereto in contempt of public service requirements in order to gain any profit or privilege for oneself or others that has come as a substantial prejudice to the right of a natural or legal person, legal public or state interest.

Article 333 of the Code establishes the criminal responsibility and provides the substantial sanctions in case of exceeding official powers by an officer or a person equal thereto that has inflicted a substantial damage to the right of a natural or legal person, legal public or state interest.

Article 342 of the Code provides the criminal responsibility and the enlarged sanctions for non-fulfillment or undue fulfillment, by an official or a person equal thereto, of the official obligation due to neglectful attitude therewith, that has substantially prejudiced the right of a natural or legal person, legal public or state interest.

In consideration of the above mentioned opinion I have deemed as reasonable supplementing to the Criminal Code of Georgia with Article 342" which would establish the criminal responsibility and provide the enlarged sanctions for non-fulfillment or improper fulfillment of the service rules established in the preliminary custody or in the penitentiary institution by the respective officers or a person equal thereto, that could cause the death or severe or less severe bodily harm, escape for a person placed in the custody or penitentiary institution, disorganization, etc.

Article 379 of the Code provides imprisonment up to 8 years for escaping from the place of arrest, detention, imprisonment, jail or when being held under custody or to convoy if committed by group, or by violence posing danger to life or health or by threat of such violence.

Under the same criminal procedure is punishable the evasion by a convict provided with the permit on short-term leave of penitentiary institution from serving the sentence.

I have not also approved the addition of Article 378' to the Criminal Code (the attempt of a person placed in the custody of penitentiary institution by self-injuring to effect on the administration of the

custody or penitentiary institution in order to prevent its operation or disorganize its work), as the similar provisions are established by Article 378 of the applicable Criminal Code of Georgia for the kinds of strict punishment (prevention or disorganization of the activity of the custody or penitentiary institution). Paragraph 1 of this Article establishes the criminal responsibility for non-compliance with the legal request of the employer of the detention or penitentiary institutions or otherwise impeding the activity of this institution. Paragraph 3 of the same Article provides the criminal responsibility for attack on the administration of the detention or penitentiary institution or creation of a criminal gang for this purpose or an active participation into such gang, and paragraph 4 establishes the strict punishment for 8 till 15 years for the persons who committed the said actions and had been convicted for grave offence.

In addition, following the international penitentiary standards, the Universal Declaration of Human Rights, International UN Convention of Civil and Politic Rights, provision of the UN Convention against Torture and Other Cruel, Inhumane Treatment Abusing the Human Dignity, we deemed not admissible to consider the injury or threat of such injury to be a kind of pressure on the administration of the custody or penitentiary institution, the more so as such action is already punishable under the criminal procedure. The mechanisms of legal response to the self-injuring are not recognized and provided not only by the applicable Criminal Code of Georgia but it was not recognized by the former Georgian SSR criminal law as well.

Threats of self-injuring, suicide, hunger-strike, disturbance as provided by the international penitentiary standards are caused by various circumstances, namely by the factors where the prisoners in many cases feel themselves as conceived or imprisoned and convicted as the result of judicial error and do not trust in the disciplinary system operating in the custodies and penitentiary institutions, the mechanisms of their appeals and complaints, etc. In such condition very actual is the request of the Public Defender of Georgia to deem the judicial error as a new fact for the trial and it shall be put as the appropriate supplement to the Criminal Procedure Code of Georgia.

I think that adequate responsibility for pressure on the administration in the custody and penitentiary institution is established by the law On Imprisonment which provides such kinds of organization and

legal response that do not contradict the international penitentiary standards: in particular, I imply application of the disciplinary measure for violation of the internal rules of the penitentiary institutions (Article 30), as well as application of security measures (Article 95), namely, use of the strait-jacket and handcuffs. Application of such measure, as a rule, requires caution and personal responsibility of the doctor of the penitentiary institution during his daily examination of the appropriate contingent. At the same time such method should not be used as a kind of punishment and no torture, cruel, inhumane and abusive treatment should be applied towards a prisoner or convict.

The recommendation was taken into consideration and the draft law was not passed by the Parliament.

J. Sophia's Case

On February 26, 2001 in prison No. 4 of Zugdidi there was placed the charged Jeiran Sophia who was accused under paragraph 2 of Article 179(e) of the Criminal Code of Georgia and was convicted to 3 months of imprisonment by the ruling of Zugdidi Regional Court judge (J. Morgoshia). J. Sophia was arrested on August 25, 2000 at St. Petersburg hospital where he was treated and transported under the guard to Georgia in January 2001.

As J. Sophia explained, during the total 5 months of transportation under the guard he was mercilessly beaten by the Russian headquarter escort. By the day of placing in Zugdidi prison the state of his health was very bad. However, the medical service of the prison did not take any measures to save the patient's life. After interference of the Public Defender J. Sophia was examined by the medical commission and his health was deemed as alarming. For the state of his health his advocate petitioned the court for discharge but as this petition preceded the trial (appointed on March 23), on March 22 J. Sophia was suddenly transferred to the reanimation ward of the Zugdidi regional hospital were he died. The cause of death was the same diagnosis he had had on the day of placing in the prison.

According to the response received from the Ministry of Justice and the Investigation Department to our petition for initiation of the

proceeding in the fact of the gross violation of the prisoner's right by the investigator and the medical service of Zugdidi prison No. 4, no violation from the side of investigator and prison administration was established (!!!).

Minor I. Zarkua Case

The regional office of the Public Defender on June 22, 2001 was applied by the teachers of Secondary School No. 1 of the town of Zugdidi who were rather perturbed with the fact of detention of the 11th form student of the school Irakli Zarkua at Zugdidi police department where he underwent the assault and battery resulted in lowering of his hearing.

In accordance with Article 21 of the Law On Public Defender the forensic medical expert R. Petelava was asked to carry out the expertise of I. Zarkua but she failed to do it allegedly not being informed about the availability of such law.

I. Zarkua together with his classmate Z. Zarandia were brought to the Zugdidi Police Department under the charge of the attempted rape at 12:00 on June 21 and were detained there till 23:00. By study of the materials it was established that no report on arrest was drawn up and the detainees were not explained their rights, neither they were given the right on the advocate. The gross violation of the law was that the detainees were cruelly beaten. As Zarkua explains he was beaten by the interior department inquiry service officer G. Kalichava and the patrol officer.

Following the above mentioned fact we initiated the petition on exceeding the authority and commission access and charge on the assault and battery before Zugdidi Regional Prosecutor's office and applied to the General Inspection of the Ministry of Internal Affairs for investigation of this fact.

Notwithstanding our repeated applications no response from the above mentioned services has been received yet.

Case of D. Romanov and L. Storozhenko

On March 28 and April 5 of this year we were applied by Mr. Dimitri Romanov who stated that he had suffered the assault and battery from the officers of the 6th division of Gldani-Nadzaladevi Region Interior Department who had tried to force him to make confession on burglary, on March 22, 2001. The applicant also noted that the chief of the criminal investigation service of the above mentioned division named Temuri had physically and verbally insulted the victim's mother Lubov Storozhenko who had visited her child at the Police Department.

According to report No. 69/1 on forensic examination made by the forensic expert M. Nikoleishvili on March 30, 2001, Mr. Romanov had on his body some injuries. Each injury totally and separately are attributed to actual bodily harms without short-term disorder of health. By their term the injuries do not contradict the date mentioned by the victim.

According to the forensic expert report No. 70/1 of March 30, 2001 of the same expert Lubov Storozhenko had on her body injuries as well. The injuries had been made by some firm blunt instrument (instruments) and totally and separately are attributed to actual bodily harm without short-term disorder of health. By their term the injuries do not contradict the date mentioned by the victim.

On April 5, 2001 I informed Tbilisi Prosecutor about the above mentioned facts but have not received any relevant decision thereof.

A. Nasoev's Case

On December 19, 2000 the Public Defender of Georgia was applied by Mrs. Roza Nasoeva who stated that on July 24 of the same year her son had been taken away from the wedding and arrested by Tbilisi Isani-Samgori Regional Police officers.

As applicant mentions Alexander Nasoev was arrested after he had not satisfied the request of the policeman of 2500 USD in kind

of a bribe for release from the criminal responsibility for the robbery allegedly committed by him one year ago.

Under my recommendation of January 15, 2001 the General Prosecutor of Georgia initiated a criminal case in bribery against N. Kekelia, the officer of Isani-Samgori Regional Interior Department .

I consider that in the above mentioned case the police abused the dignity, culture of a representative of the national minority, namely, of Curd nationality, the traditions and customs of the Curds.

ON THE JUDICIAL ERRORS RELATED TO GROUNDLESS CONVICTION OF G. MALASIDZE ACCUSED OF MURDER

On September 24, 2000 I was applied by the convict Givi Malasidze placed in Rustavi prison who asked the review of his case of the illegal conviction for the murder.

The applicant notes that he has had no intention to kill N. Makhitsrishvili. On the contrary during commitment of the crime he was in the state of affect, could not control his actions and did not shoot and kill the victim that could be proved by the burn in the cranial area of the victim but not the tarce of a gun.

By study of G. Malasidze sentence it was established that on November 26, 1996 the Judicial Board for Criminal Cases of the Supreme Court of Georgia convicted Mr. Malasidze for the murder without aggravation, committed through striking the victim with gunpoint on the cranial area and causing the fatal injury to the victim.

It was also established that the sentence passed to Mr. Malasidze was not grounded on the evidences proving the murder of Mr. Nakhutsrishvili by striking of the gunpoint in the cranial area. Namely, as the convict has evidenced he shot towards the victim with the blank cartridge from the distance of 10-15 cm to cow him, thus the victim got the burn in the cranial area. This fact was also proved by the questioning of defendant L.Kevkhishvili.

By the evidences of N. Tsikaridze, Z. Chikadze and B. Nakhutsrishvili, N. Nakhutsrishvili was beaten black and blue at the headquarters of Mkhedrioni where G. Malasidze coursed the latter.

The above mentioned fact was confirmed by them during the confrontation with N. Nakhutsrishvili, but they dismissed the fact of striking by the latter with the gunpoint in the cranial area of N. Nakhutsrishvili.

By the court sentence it is established the N. Nakhutsrishvili was beaten by some Mkhedrioni members where D. Malasidze also was. At the same time the cause of death of the victim was deemed the strike of the gunpoint. However neither the preliminary investigation, no the court could establish who was a person committed the fatal wound to the victim on the place of act.

Under the background of these facts the statement of Malasidze providing the availability of the forensic expert's opinion where the burn signs were noted in the cranial area of Mr. Nakhutsrishvili, which then disappeared, obtains the special significance. Also noteworthy is the statement of Malasidze in the part that the certificate on his mental instability disappeared from the files as well.

Proceeding from the above mentioned facts we have the case with the judicial error which was a reason of Mr. Malasidze's groundless sentence for the murder without aggravation and the fact that the judicial error under the applicable criminal procedure law is not deemed as a new fact, makes the appeal against the sentence impossible.

On Submission of Recommendation to the Ministry of Justice of Georgia on Transfer of Juvenile Convicts to Tbilisi Prison and Then to the Khoni Penitentiary Intended for Convicted Former Law Enforcement and Power Structures with Violation of the Law On Imprisonment

By order No. 6 of February 20, 2001 of the Ministry of Justice of Georgia: "in connection with commencement of the works required for overhaul of buildings and premises at juvenile corrective institution (Mtskheta Region) for security of those convicts under Article 33 of the Internal Regulations of the juvenile corrective institutions approved by order No. 358 of the Ministry of Justice of December 28, 1999 shall be temporarily placed in Tbilisi prison No. 5 for the term of 1 year,

This decision contradicts the law of Georgia On Imprisonment. In particular, the mentioned law does not provide transfer of convicts though of temporary nature to the penitentiary institution of another regime, the more so the prison. On the contrary, Paragraph 4 of Article 6 of this Law provides limitation of placing those persons who have not attained to the age of 18 by the date of passing sentence in the juvenile corrective institutions.

According to Article 19 of the law, the regime of serving sentence and confinement shall be determined under the law. Paragraph 1 of Article 23 of the same law provides that the confined convict , as the rule, shall serve the total term of sentence at the penitentiary institution determined by the court. The convicts placed in the juvenile corrective colony shall serve their sentence in the same institution but not in the institution of another type. In addition, according to Paragraph 2 of the said Article transfer of convicts is allowed only to the institution of the same regime and only when the stay in the previous institution is impossible for the emergency.

Really, the internal regulations of the juvenile corrective institutions provides transfer of convicts to another place in case of occurrence of any damage to them but only in the cases when such threat arises from the side of a convict or another person. At the same time this article of internal regulations does not indicate the cases related to the overhaul of building and premises, neither change of placing total contingent of convicts to institutions of another purpose and regime in such case. There should be taken into consideration the fact that the internal regulations mentioned in the order of Minister of Justice in no case could replace the provisions of the law On Imprisonment.

Under the background of the mentioned requirements it is unclear the content and arguments of the order of the Ministry of Justice that provides as the reason of transfer of the minors to Tbilisi prison No. 5 commencement of the works required for the overhaul of building and premises in the corrective institutions, where parallel with a transfer of minors was placed the contingent of convicts of Khoni penitentiary institution now liquidated.

Proceeding from the above mentioned facts I pursuant item "b" of article 21 and paragraph 3 of article 23 of the Organic law On Public Defender of Georgia on February 27, 2001 requested from the Ministry of Justice the urgent elimination of the above mentioned

violation of the law On Imprisonment and restoration of the juvenile convicts rights thereof.

On March 9, 2001 I was informed that the contingent of juvenile convicts was transferred to Khoni institution where previously former officers of law enforcement and power structures served their sentence. At the same day with recommendation No. 16/02-4 I applied to the Minister of Justice of Georgia and mentioned that transfer of the said category of convicts to the above mentioned institution was unreasonable because the material and technical base, the utilities and living conditions, structure and staff of this institution are far from compliance with the provisions of articles 82, 83, 84 of the law On Imprisonment. The said penitentiary institution is located far from the regional center and the transport and telephone communication with it is complicated. Hence, the contacts of the parents, relatives, governmental and non-governmental organizations with this contingent as well as providing of the humanitarian aid to it will be brought to the minimum. Such means of protection and security of the minors as the buildings, their accommodation, beds, clothes, teaching, staffing of this institution with the adequate number of teachers, vocational instructors, advisers, social workers, psychiatrists, and psychologists as provided by Articles 26.2, 26.3, 27.1., 27.2. of the Minimum Standard Rules of the United Nations (the Beijing Rules), Articles 27, 28, 29, 30, 31, 32, 33, 81 of the UN Havana 8th Congress on Crime, Prevention and Offences.

The recommendation also mentioned that under the background of these requirements it is unclear the provision of order No. 87 of the Ministry of Justice of March 5, 2000 on the transfer of the convicts of the said category to the former Khoni colony No. 9 of the general and strict regime in connection with the overhaul of the buildings and premises in the juvenile corrective institution, while the contingent of that institution was totally transferred to the juvenile corrective institution as is given in order of February 20, 2001, in the conditions of the current overhaul of buildings and premises that is unreasonable and illogical. By the same recommendation I ask the Ministry of Justice to consider the issue on placing of the juvenile convicts in the relevant institutions providing the requirements of international and national law and to create for them the adequate conditions for life.

The former Minister of Justice of Georgia made no response to my recommendation. However, from letter No. 23/13-120 of Vice-Chairman of Penitentiary Department of March 15, 2001 it is clear that the Ministry of Justice has considered my request and temporarily transferred juvenile convicts from the juvenile corrective institution to Khoni colony of general and strict regime for the period of works.

Regardless the promises, to date both the Ministry of Justice and Penitentiary Department has not taken any measures as provided by the law On Imprisonment on return of juvenile convicts to the respective institution and instead of temporary transferring them to the Khoni colony they established for them the permanent placement regime inadmissible for us.

On Hampering the Activity of the Public Defender Representative at Kutaisi Prison No. 2

On June 9, 2001 my representative in Imereti Region K. Kandelaki visited Kutaisi prison No. 2 in order to see the accused I. Mikeltadze and his accomplices K. Mikeltadze and A. Kervalishvili. Earlier K. Kandelaki visited these persons at Kutaisi custody where she met no obstacles from the side of police. The accused I. Mikeltadze during the private conversation asked my representative Ketevan Kandelaki not to name in the custody the personality of those who aided in the escape from Kutaisi prison No. 2 on January 18, and agreed to discuss the above mentioned fact after transfer to Kutaisi prison No. 2.

On June 19 when Mrs. Kandelaki visited prison No. 2 the prison administration, namely director O. Macharadze, deputy directors O. Jangavadze and Kh. Akhaladze refused to access enter my representative into the prison and, thus violated the requirements of paragraph 1 of Article 27 of the Organic Law On the Public Defender of Georgia.

During the mentioned incident I personally spoke by telephone with deputy director of the prison Mr. Omar Jangavadze whom I explained that nobody could prevent the visit of my representative. However, the latter and the prison administration did not take into account my lawful request. The same violation of law was repeated

on June 20, 21, 27 and 28. The prison administration groundlessly repeated that they would no obey the verbal instruction of the Department Chairman Sh. Kopadze as well. Noteworthy is the fact that the accused I. Mikeltadze was willing to have a frank conversation with my representative about the fact of escape from Kutaisi prison No. 2 that took place on January 18. However, the prison administration seemed to prevent such conversation deliberately in order not to make clear those criminal reasons which promote the escape of dangerous criminals from the prison. This escape then caused some robberies and finally murder of a policeman. All these facts arise a not so groundless doubt that the present administration of a prison excluding its new director was informed about the escape and that is why they intentionally have created the barriers to the visitor of Mr. Mikeltadze.

On September 3 this year the chief of Penitentiary Department provided me with information No. 23/3/15-5421 where it was established that the deputy director of the prison in the operation and regime matters Mr. Akhaladze and deputy director in affairs of special contingent and social affairs were dismissed from their office for hampering the activity of the Public Defender representative. At the same time all administration officers of the Department institutions were entrusted with insuring the possibility of performance of the functions of the Public Defender and her legal representatives. Nevertheless, the main law breaker Mr. Jangavadze's punishment was limited with the severe reprimand only.

T. Katamadze's Case

Application of Mrs. Tamar Katamadze entered the staff of Public Defender of Georgia in 27.06.2001. The citizen asked from the Public Defender the aid in search of her child. As it was established her daughter Nona Katamadze has stayed in Greece since 1997. Initially she left for Greece for work and then married the Greek Saki Petrakis and gave birth to a daughter.

Except this information the mother had no one for 4 years. Notwithstanding the photos of her daughter with the family, the address and telephone number that she had received before, she

could not contact with her child because the answer by telephone was one and the same, that Nona is out. The mother could not travel to Greece for the lack for money.

The initial picture gave the classic sample of the trafficking. In order to establish the place of residence of Nona Katamadze the Public Defender applied to the Minister of Internal Affairs Kakha Targamadze, to the Greece Embassy in Georgia and to the Extraordinary and Plenipotentiary Ambassador of Georgia in Greece Mr. A. Chikvaidze.

Mr. A. Chikvaidze replied to the Ombudsman's request with his best endeavors. He sent the Embassy official Nana Khurtsilava to village Antipolil 400 km far from the Athens in order to establish the new address of the lost daughter. Ms. Khurtsilava met with Nona Katamadze in this village where she lived with her husband and child and connected her with her mother via telephone.

Therefore, the alleged typical sample of the trafficking was investigated as the misunderstanding from the both sides and had the happy end. Mr. Chikvaidze and his colleagues were appreciated in writing by the Public Defender.

T. Khitarishvili's Case

On July 30, 1999 Akhaltsikhe Region Court passed for upbringing to Tamar Khitarishvili, the mother, her 3 children she had with citizen E. Mkoyan. Tbilisi District Court and Supreme Court of Georgia remained in force the decision of the Region Court. However, to date enforcement of the court decisions is prevented by the children's father Egnatos Mkoyan and his brother, MP of Georgia Endzel Mkoyan. The Department of Execution of the Ministry of Justice has failed to preserve the adequate firmness in execution of the court decision, though within recommendations I applied to both the Minister and the Presidential representative in Samtskhe-Javakheti Region for aid in process of execution of the court decision but in vain.

G. Toradze's Case

From July 13, 2000 at request of George Toradze the Public Defender of Georgia has carried out the activity for establishment of whereabouts of the latter's son the minor George Toradze, Jr.

It was established that after dissolution of marriage of G. Toradze, Jr. parents, Maya Gvaramadze and George Toradze, the latter not informing about the whereabouts of his child was lacking the possibility to meet his son and to perform the parental rights and duties.

After the unsuccessful cooperation with the Consular Department of the Ministry of Foreign Affairs of Georgia we with the assistance of the Embassy of Georgia in Greece established on March 26, 2001 that on June 14, 1999 Mrs. Gvaramadze was granted the visa to enter Greece without the right to take a child.

In this case the activity of the Ambassador of Georgia in Greece Mr. A. Chikvaidze was very helpful. With his aid the whereabouts of the child was established. The child together with his mother stays in Greece and resides in city of Khalkida, 12, Gazep street.

Now we are trying to establish how could Maya Gvaramadze take the child to Greece without the permit of his father.

V. Basishvili Case

On January 21, 2001 at the Public Defender Office entered the application of Tbilisi Secondary School No. 173 student, the minor V. Basishvili who refused to continue his study at school for his oppression from the side of teachers and schoolmates.

V. Basishvili named as the reason of such oppression his belonging to the Evangelists. He was insulted verbally, physically and morally from the side of school academic part, form master and classmates.

In spite of my interference in this case and the activity carried out by the Prosecutor's bodies, Ministry of Education and school administration, the conflict between the student, classmates and teachers unfortunately was not eliminated and the minor left the

school, though the school administration said to the minor and his parents that it would create all necessary conditions for the latter to continue his studies. Nevertheless, the boy refused not only to return to school but to be transferred to another school. Now Vasil Basishvili does not study.

CONCRETE FACTS OF VIOLATION OF SOCIAL RIGHTS

During the reporting period many deceived and robbed tenants, landlords, dismissed citizens and other persons whose rights were infringed applied to the staff of the Public Defender for help. Below are only some facts of this.

Case of Employees Engaged in the System of the Academy of Sciences

Pursuant to the Law of Georgia On the 2001 State Budget, order of the Presidium of the Academy of Science of Georgia of January 11, from January 1, 2001 the staff of scientific institutions and organizations financed from the budget of the Academy of Sciences of Georgia was reduced. However, as it was established these layoffs took place with violation of the law. Noteworthy is that the Academy of Sciences of Georgia is a legal person of the public law which rule of establishment, activity and structure is determined by the law On Legal Persons of the Public Law, and the labor relations are regulated by the Labor Code of Georgia. Nevertheless these provisions were infringed. In particular,

- by order of the director of N. Muskhelishvili Computational Mathematics Institute at the Academy of Sciences, of January 31, 2001 16 employees were dismissed with violation of law from February 1, 2001;
- by order of the director of the Institute of Structural Engineering and Seismology of February 28, 2001, 9 research workers - from March 1;
- by order of the director of A. Razmadze Mathematics Institute of January 31, 2001, 5 employees - from February 1;

- by order of the director of A. Janelidze Institute of Geology of January 18, 2001, 35 research workers - from March 1;
- by order of the director of Ketskhoveli Institute of Botany of January 29, 2001, 10 employees - from January 1.

It is established the number of employees dismissed with violation of the law has been growing day after day. Having examined the case we make the opinion that the issued orders obviously contradict the applicable law.

In connection with the above mentioned facts within the terms of reference granted by the Organic Law on the Public Defender of Georgia we requested from the President of Academy of Sciences of Georgia Mr. Albert Tavkhelidze to take the adequate measures provided by the law and now we may say that the goal of our petition was attained and the labor rights of those research workers have been restored.

However, we would like to emphasize the fact that the lawmaker - the Parliament of Georgia has infringed the provisions of law by itself. The fact is that on December 13, 2000 the Parliament of Georgia passed the Law On 2001 Budget. This law was promulgated into the newspaper "Sakartvelos Respublika" on December 30 and provided under article 27 of the Budget Law, the 10% layoff at the budgetary organizations from January 1, 2001.

Thus, the Parliament of Georgia infringed the provisions of article 42.2 of the Labor Code provided that the employee should be notified on the expected layoff at least 2 months before, or pursuant to the Law On Public Service - at least 1 month before. Actually the budgetary organizations were given for dismissal for the employees only 1 day (December 31, 2001). The budgetary organizations found themselves before the dilemma: if they obeyed the budget provision, they would violate the labor law, and if they violated the law and observed the terms provided for dismissal of the employees, they would not perform the budget law passed by the Parliament. Following the budget law the position of the employees laid off at budgetary organizations, including the Academy of Sciences was aggravated by the obligatory requirements provided by Article 42.3 of the Labor Code to keep the average wage for the laid off employees on termination of their labor agreements during no more 2 months from the day of lay off till the new employment day, that

was postponed till 2002. Therefore, there are direct evidences of violations of the law.

T. Shapatava Case

In June 2001 Tamaz Shapatava applied to the Investigation Service of Tbilisi Central Interior Department for inflicting the loss in the especially large amount to the company Astra-Digomi Ltd. by the misuse of the official powers by ex-managers of this company M. Jincharadze, Z. Kikabidze and V. Maisuradze.

Instead of 20-day term established by Article 265 of the Criminal Procedure Code of Georgia the said Department delayed in examination of the case, that required interference of the public Defender of Georgia. On March 29, 2001 the Public Defender applied with her recommendation to the General Prosecutor of Georgia, and only then institution of a criminal case became possible in the end of April of the current year. Until that time Tbilisi Prosecutor's Office made no adequate response to this violation of the law.

Thus, instead of 20 days established for examination of the materials the decision on institution of a criminal case was made with the delay of 4 months only after recommendations forwarded by the Public Defender.

M. Begiashvili's Case

The Assay Control Inspection at the Ministry of Finance of Georgia was the governmental institution of the said Department and its functioning was regulated by the Law On State Control and Assay of Precious Metals and Stones.

We have studied the petition related to the labor case of the chief of this Inspection Mr. Begiashvili. On the grounds of the presented materials it was established that the labor rights of him and the Inspection employees were infringed by Orders NN 92, 93 of the Ministry issued on May 4, 2001. In our opinion the Ministry of Finance in person of Mr. Z. Nogaideli when issuing those Orders

should submit the draft of orders for the legal opinion to the ministry of Justice of Georgia pursuant to Article 11 of Chapter 2 of the Presidential Order N 326 On Drafting, Issue, Promulgation and Effect of Normative Acts of the Executive Authority of Amy 17, 1998, and there should be definitely established whether the Assay Control Inspection was liquidated or reorganized under the Presidential Order N 161 of April 26, 2001. Should the case have been clarified no doubt would be arisen thereof.

Our opinion is unequivocal. The above mentioned Inspection was reorganized since in item "c" of Article 6 of the Regulations of the Ministry of Finance by the Presidential Order N 161 the Assay Control Inspection was renamed and reorganized into the Department for Control over Precious Metals and Stones, i.e. the reorganization took place. In such case reorganization of an enterprise does not create the ground for release of an official. We do not deny the fact that as a result of the changes effected under the Presidential Order the Assay Control Inspection as the governmental institution was abolished. However, abolishment of this Inspection in this case could not be considered as its liquidation. It is quite evident from the Order that one of the structural units of the Ministry of Finance, the Assay Control Inspection was affiliated to the central staff of the Ministry in kind of its division and terminated its activity as the independent structure within the Ministry system. As a result of the said changes only the name was changed while the functions and tasks remained the same. Thereupon, the central staff of the Ministry of Finance in kind of the Department for Precious Metals and Stones became the successor of the former Inspection. Consideration of this dispute was referred to the court, By the ruling of Tbilisi District Board for Administrative and Taxation Cases of Amy 18 and by the Decision of Tbilisi Vake-Saburtalo Regional Court of May 30 regarding liquidation of the Assay Control Inspection, the force of the Order of the Finance Minister Mr. Nogaideli was suspended till passing the final court decision. However, the victim himself Mr. M. Begiashvili did not like the further consideration of the case, i.e. he did not enjoy his rights vested in him under the law.

Noteworthy also is that out recommendation of May 24 was left without consideration and response by Mr. Nogaideli. We have not received any response from him what measures were done for restoration of the infringed labor rights of the working collective.

Case of Tbiltrans drivers

During study of the process of fulfillment of obligations undertaken by the state before the drivers who worked at the municipal enterprise Tbiltrans under the contractual basis we have ascertained that former Tbiltrans drivers should be satisfied with dwellings or the relevant compensation, however, this problem still remains unsettled. The fact of the matter is as following: by the Presidential Edict N 374 of 1997 the Ministry of Finance of Georgia and Tbilisi Mayor was entrusted to pay step by step the state debt before the Tbiltrans drivers in 1998-2002. However, the Ministry of Finance with every passing year has ignored the legal claim of the suffered people and fulfillment of the provisions determined by the Presidential Edict.

Noteworthy is than in the 2000 Central Budget provided 1.3 M GEL for this purpose, but the amounts were not paid. The total debt before the drivers is 9.5 M GEL. Proceeding from the current situation I provided my opinion in kind of recommendation to the Minister of Finance of Georgia Mr. Nogaideli and Tbilisi Mayor Mr. Zodelava. In the response from the Ministry of Finance was explained that from the last year budget only 150 000 GEL were paid, while Tbilisi Municipality as the extra measure for the partial payment of the said debt from the budget funds in 1999-2000 considered admissible to settle this problem thorough transfer of the state-owned property and land subject to privatization. In the process of settlement of this problem we together with the suffered people met the leadership of the Ministry of State Property Management and claimed to reflect in the draft law the strict schedule of payment of the mentioned debt from 2001 till 2003 in cash only because in case of transfer of the real estate those people would not be able to bring it to the living condition. Unfortunately, this proposal was not shared and the Parliament of Georgia in its Resolution on Making Amendments in the Law of Georgia On privatization of the State-owned Property on July 20, 2001, fixed the term of payment for the debt as 2001-2005 in kind of direct sale of the property subject to privatization (share, stocks, buildings and promises and other) where the entitlement payment due instead of the dwelling should be deemed against the state property. In our opinion the mentioned Parliamentary Resolution contravenes the term established by the Presidential Edict. At the same time taking into consideration the failure of the state budget, the payment of debt will be more

complicated and the infringed rights of the suffered drivers will be hardly restored.

As the means of response available at our disposal have been exhausted we, proceeding from the actuality of the case applied to the President of Georgia for entrusting the State minister Mr. G. Arsenishvili to consider and search for the ways of settlement of the problem and call to account the Minister of Finance of Georgia Mr. Nogaideli for the failure to execute the Presidential Edict N 374 of 1997.

The breaches revealed in the Tsekavshiri system, Tbiltrans, those related to the cases of Okromchedlishvili, Jishkariani, Chubinidze and Vardosanidze still are not eliminated and are not brought to the requirements of the recommendations forwarded by the Public Defender on this matter.

Zh. Okromchedlishvili's case

On August 9, 2000 the Public Defender was applied by cit. Zhuzhuna Okromchedlishvili who claimed the disregard of Vake-Saburtalo Regional Administration and the police department of the same region in respect of the unauthorized construction by her neighbor.

We have established that this case continued for about half a year. The relevant letters were sent to the regional administration and police. After my request the police examined the availability of the permit for construction carried out by Zh. Okromchedlishvili's neighbor in respect of the disputable structure and revealed that the neighbor was not authorized for construction, i.e. the construction was illicit.

In this connection we applied to Vake-Saburtalo Regional Administration for bringing a suit on the illicit construction to the regional court and referring Mrs. Okromchedlishvili as a third person. Our recommendations were considered and on February 16, 2000 the regional administration by its Decision N 2-02/89 applied to the regional court with the suit brought against the appropriate defendants in connection with the above mentioned case, for the partial invalidation id the privatization contract of April 15, 1998, resettlement from the unlawful premise, its construction and bringing

to the initial state with inclusion of Mrs. Okromchedlishvili to the state of claim as the third person.

A.Jishkariani's Case

On April 5 this year we were applied by cit A. Jishkariani who was working as the research worker at the State Scientific Institute of Standardization and Metrology. He quite rightfully claimed the amount of 318 lari and 46 tetri which were illegally stopped from his income tax, that was confirmed by the decision and ruling of the respective regional court and court of appeals legally grounding his claim.

Within the study of this case we have come to the opinion that the said Institute artificially hampered solution of the problem that infringed the rights of Mr. Jishkariani.

We applied with the recommendation to the director of the State Scientific Institute of Standardization and Metrology Mr. G. Bakradze for eliminate the illegality and to satisfy the grounded financial claim of Mr. Jishkariani. The recommendation of the Public Defender was satisfied by the above mentioned institute.

Case of A. Chubinidze and V. Vardosanidze

On February 27 this year we were applied by cit. Avtandil Chubinidze who claimed the pension allowance for occupational injury of his deceased father Gutusha Chubinidze, at Rustavi Metallurgical Works. He claimed the due 231 lari of pension. The metallurgical Works administration minded to pay the pension lumpsum.

We applied with the relevant recommendation to the Rustavi Works administration. The recommendation was partially satisfied and the family got 200 lari.

On June 5 the Public Defender was applied by the pensioner of Rustavi Metallurgical Works Gogi Vardosanidze who claimed 662 lari of pension due.

We applied with the relevant recommendation to the Rustavi Metallurgical Works administration. The recommendation was partially satisfied and 300 lari were paid.

In the both cases the one thing is unclear: if the possibility to pay the pension due was available why the administration of the works waited for interference of the outer instance, and if the case could be settled with outer interference only, does not it indicate to the weakness of the enterprise management or to other circumstances.

The breaches revealed in the Tsekavshiri system, Tbiltrans, those related to the cases of Okromchedlishvili, Jishkariani, Chubinidze and Vardosanidze still are not eliminated and are not brought to the requirements of the recommendations forwarded by the Public Defender on this matter.

On the Ungrounded Denial of Issue of the Passport of Citizen of Georgia to Irina Kalandia granted of parole with the probation period

On February 2 this year the Public Defender was applied by the Abkhazian refugee Irina Kalandia granted of parole with the probation period. She claimed that she was groundlessly denied of issue of the passport of the citizen of Georgia and of financial allowance.

It was established that the National Bureau of the Passport, Visa and Population Registration of the Ministry of Internal Affairs of Georgia and its subordinate services due to the misinterpretation of the provisions of Article 10 of the Law on Temporary Leave of the Citizens of Georgia from the Republic of Georgia and Arrival to the Republic of Georgia groundlessly denied Ms. Kalandia of issue of the passport.

The Public Defender of Georgia in her Recommendations N 10/01-1/108 of February 22, 2001 and N 195/01-1/108 k of March 19 pointed to the National Bureau of Passport, Visa and Population Registration of the Ministry of Internal Affairs of Georgia the fact that they had not correctly interpreted the provision of the above mentioned Article of the Law, as this Article in consideration of the concrete case deemed as allowed and not obligatory denial of issue

of the passport of the citizen of Georgia in the case when such person failed to fulfill the obligation under the court decision.

As the provision of the law in this case carried out not the imperative but the alternative nature and at the same time Ms. Kalandia did not violate the obligations under the court ruling, and no request for dismissal of Ms. Kalandia's passport had been filed from the side of the respective law-enforcement bodies, the Public Defender of Georgia deemed therewith the decision of dismissal of Ms. Kalandia's application as the infringement of her rights and considered reasonable issue of the passport of the citizen of Georgia to this person. This recommendation was satisfied then.

On the Groundless Dismissal of L. Arbolishvili's Application for Drawing Up Form 164 on Recognition of an Occupational Disease and Acknowledgement of the Insured Accident

Since 1978 till present the administration of Georgian Railways Ltd. and the respective trade union (A. Chkhaidze, Bugianashvili, Bibineishvili) notwithstanding the dozens of written petitions, instructions and assignments of the executive, law-enforcement and other authorities of Georgia as well as my recommendations of March 1, May 24 and July 19 of this year to the Georgian Railways Ltd. General Director and the Chairman of the Trade Unions Association of Georgia grossly have been violating the rights of former engineer of the engine and car section of Tbilisi Locomotive Depot Mr. Levan Arbolishvili and groundlessly have dismissed his application for drawing up Form N 164 on recognition of the occupational diseases and acknowledgement of the insured accident.

Under the Statement on occupational disease of April 25, 1978 signed by the sanitary inspector of Tbilisi Division of the Transcaucasian Railways, doctor at the aid station of the locomotive depot, chief of locomotive depot and the chairman of the primary trade union committee of locomotive depot, L. Arbolishvili fell sick on duty during the motion, repair and liquidation of faults of engine and cars that provoked his disease of myeloradiculopolyneuronitis.

Under the certificate N 99 issued by Prof. N.I. Makhvilade Institute of Labor, Hygiene and Occupational Diseases of the Ministry of Health

of Georgia of March 16, 1978 the diagnosis of Mr. Arbolishvili was confirmed and the disease was referred to the occupational one. From that time till 1998 many requests on confirmation of the diagnosis, including the presentation of the Transcaucasia Transport Prosecutor, were forwarded to the administration of Transcaucasia and Georgia railways but in vain. At last the reference of Prof. N.I. Makhvilade Institute of Labor, Hygiene and Occupational Diseases of December 10, 1997 sent to the Chairman of the Parliamentary subcommittee for Health and Social Affairs there was indicated that disease of Mr. Arbolishvili, myeloradiculopolyneuronitis, is connected with his occupation. On March 11, 1998 the chairman of the mentioned Parliamentary subcommittee petitioned the Chairman of the Georgian Trade Unions Association for final solution of the case in question, but the case was not completed.

The Chairman of the Georgian Trade Unions Association shares the opinions given in my recommendations and underlines the necessity of solution of this case. As to the General Director of Georgian Railways Ltd. Mr. A. Chkhaidze, in his letter he dismisses the opinions of the respective bodies, does not recognize in general the occupational disease of Mr. Arbolishvili and at the same time fails to detail "the availability of the environment detrimental; to health", as it is mentioned in his letter. He denies the possibility of occupational disease of not only the operator, but of representatives of other railway occupation and refuses to draw up From 164 on the occupational disease.

Thus, for more than twenty years the administration of the Georgian Railways and Georgian Railway Trade union have infringed the rights of L. Arbolishvili and groundlessly and unreasonably dismisses his request for recognition of the occupational disease.

M. Mamulashvili's Case

On January 11, 2001 the Public Defender of Georgia was applied with complaint by Mariam Mamulashvili who claimed that her mental health was examined at the psychoneurological hospital with violation of the law and that she was forcibly taken to the Scientific and Research Institute of Psychiatry by policemen.

From the study of the materials gathered during the examination of the complaint is was established that on December 12, 2000 3rd Station of Tbilisi Mtatsminda-Krtsanisi Interior Department received the application under Nkol-3 of 13 residents of Petriashvili and Larsi streets in Tbilisi. They claimed that during the last two years Ms. Mamulashvili tried to hamper construction of a house on the opposite side of Larsi street, using and language, cursing and by throwing the flammable things. The authors of the collective letter in order to prevent an accident and to stop the actions of Mamulashvili requested examination of the mental health of the latter.

Simultaneously, the mentioned police department received the individual applications of the same context from S.V. residing at 3, Larsi street, D.Sh. residing at 66/26, Barnov Street and G.N. and V.G., the watchmen of the house under construction at 28, Petriashvili street as well as the house-builder L.J.

There should be mentioned that Mariam Mamulashvili is the leader of the initiative group against the illegal construction of houses in Petriashvili Street and she ahs filed not one statements of complaint on this matter to the decree of jurisdiction.

Nevertheless, the officer of 3rd station of Mtatsminda-Krtsanisi Interior Department I. Shigardelashvili charged with the chief of division to examine the collective and individual applications failed to study profoundly and essentially the facts given in the applications and real motives of the applicants. The policeman did not question 10 persons from 13 applicants; he failed to study the personality of Ms. Mamulashvili as well as the cases of her possible reference for the psychiatric aid to the medical institution according to the place of residence.

In such conditions 3rd station of Tbilisi Mtatsminda-Krtsanisi Interior Department in its Letter N 104/29-86 of December 29, 2000 applied to Tbilisi psychoneurological hospital for examination of the mental health of Ms. Mamulashvili.

In spite of the flat refusal from the side of M. Mamulashvili to undergo the medical examination the employees of the mentioned hospital carried out the single interview with her from the aspect of her social danger and established that the implementation of the forcible measures against her are unreasonable.

Having disregarded the opinion of the medical commission on January 9, 2001, at 9:00, policeman A. Shigardelashvili from the

mentioned police station forcible took M. Mamulashvili to the M. Asatiani Scientific and Research Institute of Psychiatry. There she was examined by the medical commission which did not recognize the patient as a mental one and gave recommendation for discharge. It turned out that policemen in Petriashvili street forcibly put her in the car, covered with the plaid and took to the M. Asatiani Scientific and Research Institute of Psychiatry without required documents mocking at her all the way long. At the Psychiatry Institute in spite of her flat refusals she was forcibly examined. The doctors shouted at her, pulled her hairs, examined the skin and did not give her possibility to call home. As M. Mamulashvili explained after some hours she was let home on receipt when notified by strange persons being in the hospital her folk came to the Institute.

From Letter N 101/5-126 of Tbilisi Mtatsminda-Krtsanisi Regional Interior Department of January 23, 2001 is evident that for the faults when on duty there was raised question on dismissal of policeman A. Shigardelashvili. As to the administration of M. Asatiani Scientific and Research Institute of Psychiatry, they allege in their Letter N 12 of January 12, 2001 that they have not violated provisions of the law On Psychiatric Aid that does not coincide with my opinion.

On January 15, of the current year M. Mamulashvili applied to Tbilisi Mtatsminda-Krtsanisi Region Prosecutor for the response to her forcible placing at the M. Asatiani Scientific and Research Institute of Psychiatry but was groundlessly dismissed.

Only after my interference the said prosecutor's office accepted the application of the victim which then was forwarded for consideration to Tbilisi prosecutor. To date the prosecutor's office has not made any decision on this case that cannot satisfy me.

ON REALIZATION OF PUBLIC DEFENDER'S RECOMMENDATIONS OF JANUARY-NOVEMBER 2000 REPORT

In the previous report there was given a number of recommendations on elimination of the facts of infringement of the human rights and freedoms. Unfortunately, the said recommendations of the Public Defender often are still not realized. We are to apply to the Parliament once more to highlight them.

The Parliament of Georgia and the Ministry of Justice has not yet decided the following issues:

- the recommendations referred to in the annual report of the public Defender on examination of legitimacy of serving sentences for elimination of the judicial errors;
- the recommendations of the annual report of the Public Defender on withdrawal of item 6 from Article 162 of the Criminal Procedure Code of Georgia which provides that while determining the term of imprisonment as a preventive measure the term used by the advocate for acquainting with case materials is not taken into consideration;
- concerning the opinion of the alternative expertise appointed by a party and its submission to the investigation bodies with its obligatory attachment to the files thereafter, under the Criminal Code;
- on making the relevant supplements to para 1 of Article 137 and Article 84 of the Criminal Procedure Code, on the obligation of the access by the expert appointed by a party, or the doctor for examination to the institution and on taking by the advocate of the expert and doctor to the place where detainees prisons stay;
- of determination of the term of proceedings in the case instituted for presentation of new revealed circumstances at two months in para 1 of Article 596 of the Criminal Procedure Code of Georgia, and in the extraordinary cases - prolongation of this term for two months more;
- on making supplement to para 2 of Article 145 of the Criminal Procedure Code of Georgia to provide the right of a person on explanation upon his/her detention of the request of the advocate's aid, that shall be satisfied and put in the record on detention;
- on making supplement to Articles 234 and 594 of the Criminal Procedure Code of Georgia and to Articles 422 and 423 of the Civil Procedure Code of Georgia on consideration of the recommendations of the Public Defender of Georgia an on the compulsory nature of recommendation of judgements due to the new revealed circumstances.

The General Prosecutor's Office of Georgia has not shared the recommendations of the Public Defender's report without proper substantiation:

- on replacement of imprisonment sentenced to Zarkua with another non-imprisonment preventive punishment. At present the court judgement passed towards Zarkua provided the sentence not related to the confinement;
- on institution on proceeding and investigation in the criminal cases of T. Shaphatava, Zh. Avaliani, T. Kurtanidze;
- Tbilisi District Court groundlessly did not satisfy the Public Defender's recommendation on replacement of the imprisonment sentenced to Navoli Kobalia of the age over 65 with the non-imprisonment preventive punishment. At present N. Kobalia is sentenced without confinement.

The Ministry of Defense of Georgia, did not execute the Public Defender's recommendations:

- on establishment of the alternative military service;
- on introduction of the human rights implementation practice of the aimed formation of the Western democratic countries;
- on preparation of a small collection on the main international documents and on the rights guaranteed by the Constitution and law of Georgia for enhancement of the education of military servants in the human rights sphere and free distribution of it among the military servants.

REORGANIZATION OF THE PUBLIC DEFENDER'S STAFF

Certain shortcomings in the activity of the Public Defender's staff were detected through the passed period of her work (1998-2000). The staff structure existing on establishment of the institution of Public Defender, consisted of three departments and two services (Department of Civil and Political Rights, Department of Social and Economic Rights and Administrative Department; Service for relations with international organizations and PR service) at the initial stage of formation of the staff was justified and played a certain positive role. The process of activity of the staff, relations with the applicants have shown us the necessity of its reorganization,

perfection of the structure more rapid and transparent decision-making by the Public Defender and provision of required conditions for this. The years long activity of the Ombudsman's staff of many countries has developed the optimal structure of the Ombudsman's staff determined by the international standards. In consideration of the international standards and home conditions for reorganization of the Public Defender's staff of Georgia, support of UNDP and on invitation of the Public Defender in Georgia the expert of Danish Human Rights Centre Mr. Thomas Trier visited Tbilisi. During his visit Mr. Trier met the heads of all departments and services of the staff, examining the current practice of reception and response to the complaints and applications of citizens, and submitted his remarks on the further perfection of the staff activity.

We could not keep note the long and fruitful activity in the implementation of the structure of Public Defender's staff of the UNDP Chief Technical adviser Mt. Bill Chapman and OSCE expert Mr. Andrzej Malanovski.

The experience of activity of the Public Defender's staff in consideration of recommendations of the international experts has provided us with the possibility of the perfection of the structural reorganization of the staff. For this in March 2001 there was established the Commission for structural reorganization of the staff. The Commission finally developed the staff reorganization schedule, the staff structure, determined the vacancies and announced the completion on vacancies in press on March 15, 2001. 21 persons responded to the advertising. From these 21 persons 8 were selected for work in the Public Defender's staff, some of them - under the contract.

As a result of reorganization of the Public Defender's staff was determined the final structure of the staff with the following structural subdivisions:

- for application ad reception of citizens;
- for information;
- for strategy;
- department of administrative affairs, and
- the Public Defender's office.

The functions were distributed among the departments as follows:

1. *Department of Reception and Application of Citizens*

The Department of Reception and Application of Citizens carries out reception of citizens, monitoring, consideration, registration of applications and keeping files thereof. The Department of Reception and Application of Citizens should be the most significant department since. Th heaviest burden of the Public Defender is reception of citizens and examination of complaints. The public appraises the activity of the Public Defender by the work of this Department.

The Department consists of:

a) Division of Reception of Applications and Complaints.

The main purpose of the division is reception of the materials for applications and complaints, sorting of them, and then providing to the general division of the respective Department. The receptionists and registrar sort the entered applications and complaints according to the spheres of work of the Department (criminal, civil law, penitentiary system, civil disputes and socio-economic matters, etc.) and the content of application. The applicant is explained the terms of reference of the Public Defender on the case and provided information on the direct responsible person.

b) General Division.

The General Division consists of:

- registration and monitoring;
- office equipment and facilities, documentation processing, keeping and protection;
- group of active members.

The division registers the entered applications and complaints referring to them registration numbers and codes. The division finally decides on admissibility or dismissal of an application (complaints).

c) Division of Examination of Applications and Complaints.

d) The division arranges the thorough study of the complaints an applications in the fixed terms, makes the timely and high-quality opinions, recommendations and other documents as a result of their examination.

Regional Representatives

The statistical study and analysis of the applications filed at the Public Defender's staff exposed the necessity of establishment of regional representatives, due to the grave socio-economic situation in the country. In many cases the applicants could not arrive to the Public Defender's staff the remote regions for the lack of funds. We have established in kind of an experiment the regional representatives offices in Samegrelo and Imereti, which are included in the Department of application and reception of citizens.

The regional representatives receive the applicants on the place, decide on admissibility of their complaints and applications, register them and provide the most complicated and large applications (complaints) to the Department of Reception and Application of Citizens. They shall provide the quarterly report on the carried out activity to the Public Defender's staff.

2. Information Department

The Department consists of:

a) PR division;

b) Division of relations with international organizations;

c) Library.

The detailed information about the functional charge and activity of the divisions is given below, in the Chapter "International Relations".

3. Strategy Department

The Department consists of:

a) Legal expertise sector;

b) Strategic research, analysis and reporting;

c) Children's rights center.

The Department shall study the defects in the applicable law from the aspect of the human rights and for improvement and perfection of those defects will elaborate adequate recommendations and proposals for presentation to the national legislative body, elaborate the priority directions and guidelines in the human rights sphere, shall be responsible for preparation of special reports and parliamentary reports and coordinates the information search.

4. Administrative Department

The Department unites the logistic service of the Public Defender's staff, personnel affairs and accounting service. Its main goal is to promote the adjusted work for the staff, to elaborate the programs for improvement of the material and technical base of the staff, ensure the adjusted operation of the economic and financial activity of the staff, communication facilities an computers, prepares recommendations, proposals for perfection of work with the staff.

As a result of reorganization of the Public Defender's staff significant change have taken place inside. Two departments of the old structure - the Department of Civil and Political Rights and the Department of Social and Economic Rights were united. Among the problems connected with the previous record-keeping the following shall be noted: distribution of the filed applications among the old structural units was often conditional. The monitoring of those applications between two departments delayed consideration of applications. In overall, the procedure of record-keeping was less transparent. As a result of reorganization two department of the old structure were united into the Department of Application and Reception of Citizens. By this way processing of applications, the total cycle of record-keeping beginning from the reception of applications and finishing with preparation of recommendations was framed into one service, that has facilitated study of applications, decision on admissibility of applications, monitoring of applications, registration. All these steps conditioned more rapid and timely response, intermediary, preparation of recommendations. Noteworthy also is establishment of two new units of the Public Defender's staff - the Information Division and Strategy Department, considered above.

During reorganization of the staff there was taken into account the staff schedule determined by the 2001 budget, where the number of staff employees should be 44. The total reorganization of the Public Defender's staff as it was planned in the recommendations of the human rights international experts at the current stage is impossible for small staff, lack of material and technical base and lack of financing.

INTERNATIONAL RELATIONS

Information Department

As you are aware from the previous report since 1999 the staff has worked under the 4-year project of UNDP on promotion of Public Defender staff with the technical adviser Bill Chapman. The cooperation agencies are: the Sweden International Development Agency (SIDA), Raul Wallenberg Institute (RWI), the Danish Center of Human Right (DCHR), the Government of Netherlands, the UN High Commissioner for Human Rights, the United Nations High Commissioner for Refugees (UNHCR), including the Georgian Government which should allocate for the Project 100,000 USD but in spite of out repeated applications has charged no cent (that prevents attraction of the amounts for other international co-donors).

Under this Project the following activity was implemented: training of the staff employees in the human rights sphere in Sweden and Germany, establishment and development of the library with the collection of normative acts and reports of the UN and international organizations, as well as Georgian laws. The library is open and available for any citizen. With assistance of donor-organizations the staff was equipped with office facilities and computers, the references of international human right instruments were translated and published, the staff was provided with the management and record-keeping software, connection to Internal, we carried out workshops for policemen, military servants and prosecutors (April, May, June, July 2001). From January of this year commenced the Project of the Government of Netherlands "Public Education in Human Rights" which covers the following events: the series of TV

programs by I Channel of Georgian TV once a month (five programs were transmitted already) distributed via the local cable channels, regular radio broadcasting (for programs were transmitted), there was held the sociological poll On Public Informing about Human Rights, the Web-page in Georgian and English was opened in Internet, this Web-page provides information about the legislative base, structure and functions of the staff, application form, annual reports and other information about the staff activity (magazine, newspaper page).

In last August for implementation of the European standards of reorganization and with support of the UNDP and on invitation of the Public Defender staff Mr. Thomas Trier, the expert of Danish Center of Human Rights visited Georgia. The project proposed by the Danish expert with supplements made by the Public Defender's staff and with their support we made the structural reorganization of Public Defender's staff this spring. As a result of the structural reorganization three main departments was added with the 4th one - the Information Department. The Information Department consists of the Public Relations Division, International Relations Division and Library.

PR division provides the close relationship of the Public Defender's staff with the press and public, NGOs, carries out the educational activity for more informing of them from the aspect of human rights.

The International Relations Division provides the relationship with the appropriate services of foreign countries and international organizations, renders assistance in arrangement of exchange delegations and visits of staff employees.

The library carries out activity in translation and popularization of the kept foreign literature and provides the following enrichment of the library funds and its proper operation.

FINANCING OF PUBLIC DEFENDER AND STAFF

Since the second half of 2000 notwithstanding many applications to Mr. Nogaideli, the Minister of Finance and the Presidential instruction and the Presidential edict No. 543 of December 29, 2000

the matter of financing of the Public Defender and the staff has not been settled yet.

From the 2000 slashed budget the Finance Minister allocated to the Public Defender and the staff the amount by 24,000 lari less than provided for the economic expenses, that is 67% of the total Public Defender's budget i.e. the staff was financed at 33%.

In 2001 the financing of total expenditures should make 90,000 lari, the actual costs totals 43,600 lari (48.4%) and mainly was referred to the payroll and charges in amount of 31,000 lari (71.1%). We should say that from June 1 of the current year the f Ministry of Finance began to finance the Public defender's staff according to the office and economic expenditures, but the main part of this financing was used for payment of the debts for the previous period (communication, postal, office, heating, fuel and other costs). Such approach of the Ministry of Finance prevents us from effective implementation of the rights vested by the organic law and the lack of funds creates serious obstacles foe business trips for our employees, solution of economic affairs and other significant problems. The created situation ha forced us to appeal to Vake-Saburtalo Regional Court with the lawsuit against Minister of Finance Mr. Nogaideli. The Public Defender's staff still is in process of its development and formation of its final budget. The Ministry of Finance has disregarded the opinion of the Public Defender in the budget cuts. The Ministry provides the information about reduction in the budget to the Parliament without cooperation with us that is exceeding of the powers provided by the law. However, in accordance with Article 25 of the Organic Law On Public Defender of Georgia "the estimate of costs related to organization and activity of the Public Defender of Georgia and his/her staff shall be provided in the separate item of the state budget of Georgia. The Public Defender of Georgia shall provide the draft of estimate thereof as established by the law", according to item 1 of Article 26 - to provide the proper activity of the Public Defender of Georgia the operating staff of the Public Defender of Georgia shall be established and its work shall be executed under the approved statute. The effective work of the staff requires the support of the Ministry of Finance even in those small limits which have not been yet attained and which have had unfavorable effect in our activity while implemented the rights under the law. Noteworthy also is that notwithstanding the objective assessment

of the unsatisfactory work of the Ministry of Finance, in the current economic year as a result of raising of the state funds, we were able to pay monthly wages to the employees of budgetary organizations though behind the schedule.

STATISTICAL DATA OF WORK OF THE PUBLIC DEFENDER OFFICE OF GEORGIA

During 6 months 2001 the Public Defender was applied by 1526 citizens, where 728 - orally, 798 - in written. The legal aid and advise was rendered to 611 persons, explanations were given to 111, the Public Defender personally received 792. Out of 798 written applications 643 were processed and settled, 155 are under consideration, 76 recommendations were prepared and forwarded to various instances, where 27 recommendations have been shared.

The filed applications:

on criminal case - 128, civil cases - 98, illegal arrest - 98, restriction of freedom of warship - 25, on military service - 7, on women's rights - 2, child's rights - 8, discrimination of national minorities - 1, on pensions and social allowances - 88, labor rights - 65, housing problems - 109, land disputes - 9, educational and culture affairs - 5, medical affairs - 11, bank and finance affairs - 18, neighboring conflicts - 15, partiality of judgement - 14, on pardon - 21, other affairs - 49.

Out of total number of the considered applications 35 was forwarded with recommendations.

According to the filed applications the activity of the following structures was appealed: state authority bodies - 13, judicial bodies - 42, interior bodies - 46, prosecutor office bodies - 34, penitentiary system - 2, division of Ministry of defense - 3, security bodies - 2, tax bodies - 11, health and social security bodies - 5, commission of appeals of all levels - 2.

Statistical Data on Imereti Office of Public Defender of Georgia

The office of Public Defender was applied by 102 citizens where orally applied 60, in writing - 52, applied for reception - 34, problem settled - 39, under consideration - 13, forwarded to various instances - 83, legal aid and advise rendered to 38, petitions and recommendations forwarded in 28 cases, explanations given to 28 persons.

The number of requests entered from:

1 Kutaisi - 22

2 Tskaltubo Region - 3

3 Khoni Region - 1

4 Bagdati Region - 2

5 Tkibuli Region - 6

6 Terjola Region - 3

7 Zestafoni Region - 7

8 Kharagauli Region - 4

9 Chiatura Region - 2

10 Sachkhere Region - 3

Statistical Data of Samegrelo and Zemo Svaneti Office of the Public Defender:

Total number of applications - 65, where:

orally - 5, in writing - 65, legal aid and advise given to 18, explanations - to 17, recommendations forwarded in 30 cases.