REPORT OF THE PUBLIC DEFENDER OF GEORGIA

Second half of 2002

WITH THE FINANCIAL ASSISTANCE OF UNDP
AND GOVERNMENT OF THE NETHERLANDS

Public Defender of Georgia

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

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Introduction

The Periodic Report of the Public Defender of Georgia on the situation of protection of human rights and freedoms in the country prepared in accordance with the provisions of the Organic Law on the Public Defender of Georgia covers the period from July to December of 2002.

The Report was prepared on the basis of different materials, namely, notices and complaints referred to the Public Defender's Office, information provided by governmental agencies, and data collated by non-governmental organisations active in this field.

The State is the people it represents at a given moment in history. The situation we live in today is that of economic predicament and widespread poverty, and the hardships endured by an increasing number of people impair their attitudes. Today, social and economic issues have come to the fore, and this is not only typical of Georgia. In the previous decades civic and political rights prevailed, however, today pressing economic and social issues have clearly spiralled in their importance internationally. An increasingly wide gap between the poor and the rich is destructive for both, however, this fact is not always adequately understood. Poverty does not only mean economic hardship, it breeds crime and goes hand in hand with prostitution, abuse of drugs and violence.

Years after independence have appeared to be years of economic hardships, fight to overcome subjective and objective contradictions and challenges, internal and external threats, years of transformation of mentality. Ten years is too short a period to build a fully-fledged state, however for people living

now, these years appeared to be the long years of privations, black-out, cold and poverty.

The Report of the Public Defender aims to bring up the question of protection of social and economic rights. In November 2002, the UN Committee an Economic, Social and Cultural Rights considered Georgia' second periodic report on implementation of the International Covenant of Economic, Social and Cultural Rights. The Committee gave recommendations and suggestions to the government of Georgia. The recommendations cover a broad range of economic, social and cultural rights. The Committee urges the State to implement in a consistent manner the various plans and programmes on human rights, to take effective measures to combat corruption, to improve the situation of internally displaced persons, accord the Public Defender with adequate resources, intensify steps to ensure labour rights, undertake reform of the social security system, improve the situation of women, fight against domestic violence, take effective steps against trafficking, address the problem of street children, actively engage civil society in the work to develop the poverty reduction strategy, continue efforts to better the living conditions of the population. The Committee requests the State to include, in its next periodic reform, detailed information of the process of agricultural reform, etc.

The Public Defender could see the urgency and relevance of these problems through daily contacts with thousands of people who refer to the Public Defender seeking her assistance in redressing their impaired rights.

The Report covers a broad range of these rights.
I would like to emphasise once again the need to follow on the recommendations of the Public Defender. In this regard, the

situation has to a certain measure improved. However, unfortunately, many of the Public Defender's recommendations are not acted on duly.

Another problem, still unresolved, is the Public Defender's relations with the judiciary. Nothing meaningful has been done so far to consider the Public Defender's suggestions in the Parliament.

There is a continuing breach of norms related to the budget formation for the Public Defender and her office, prescribed by the law. This problem has persisted from the day of inception of the Public Defender's Office; it will clearly not be limited to the reporting period and continue further.

Several months are left before parliamentary elections. The Public Defender cherishes a hope that the fundamental right of the citizens– the right to elect and to be elected to the country's supreme body of governance will be protected. The basic precondition, however, is the adoption of such electoral law that will ensure that the voice of the citizens is heard, the votes are protected, and the Public Defender no longer needs to point to imperfections of the law.

Finally, I would like once again to express my sincere gratitude to the United Nations Development Programme for its continued support and assistance to the Public Defender's Office, both generally and in preparing this Report.

Chapter 1.

THE SITUATION OF PROTECTION OF CIVIL, POLITICAL, ECONOMIC SOCIAL AND CULTURAL RIGHTS IN GEORGIA

Crime-Breeding Situation in the Country. Fight Against Crime and Delinquency

Over the second half of 2002, the crime-breeding situation in the country deteriorated. The level of crime showed an increase, including the number of grave and especially grave crimes. Crime statistics signals an increase in the number of offences committed by juveniles or with their participation. In the period under review there was a total of 7687 documented cases of crime, of which 2341 and 1857 cases accounted, accordingly, for grave and especially grave crimes. Thus, a rise in the level of crime amounted to 175, 21, 269 and 9 cases. The rate of crime detection in general decreased by 0.5%, whereas that of especially grave crime by 16%, bringing the relevant figure to 83.3% and 82.1%, accordingly.

Premeditated murder was reported in 272 cases, signalling an increase of 47, or 20.9%; murders were registered in 158 cases, the number showing an increase of 13, or 0.9%; the number of murderous attempts increased by 34 cases, or 42.5%.

Particularly disturbing is an increasingly widespread character of premeditated murder with aggravating circumstances, committed with sub-machine-guns or other types of firearms, as well as explosives. In some cases these were assassinations

or murders resulting from confrontation between criminal groups and their sort-out fights.

Personal larceny increased by 150 cases, or 4.8%, of these, thefts showed an increase of 68 cases, or 3.9%, and robbery – an increase of 9 cases, or 4.6%.

Theft of vehicles increased by 146 cases. If the first half of 2002 there were 10 recorded cases, in the later half of 2002 the relevant figure rose to 156. Unlawful deprivation of liberty and hooliganism also showed an increase and amounted to 3 and 42 cases, respectively. Crime against aliens or by aliens increased by 44 and 3 cases, accordingly.

Over the later half of 2002 the rate of crime solution fell down: personal larceny (70% in the first half of 2002, 68% in the second half of 2002); theft (67.2% % in the first half of 2002, 64.4% in the second half of 2002), including from apartments and storages (60.4 % in the first half of 2002, 54.9 % in the second half of 2002), robbery (79.3 % in the first half of 2002, 75.4 % in the second half of 2002), and misappropriation of property through fraud (100% in the first half of 2002, 99.6 % in the second half of 2002). Over the reference period 42 cases of premeditated murder, 29 cases of murder and 13 cases of attempted murder remained uncleared, as did 4 cases of unlawful deprivation of liberty.

There was a decrease in the detection statistics of such crime as tax evasion. In the earlier half of 2002, the number of identified cases was 171, in the later half of 2002 it fell to 148, a decrease of 23 cases. Identification of bribery decreased by 1 case, with 14 cases of bribery detected in the first half of 2002 and 13 cases in the second half of 2002.

As known, the imports of contraband goods in the country have increased. This notwithstanding, the detected movement of items in large quantities across the customs border of Georgia bypassing customs control or secretly, through fraudulent use of documents or means of customs identification, and indication of false data in customs declaration only accounted for 44 cases.

Identification rate of such crimes as stealing of arms and materiel decreased by 1 case and that of violation of traffic rules and transport service regulations – by 44 cases.

The situation with investigation of cases falling under the category of "bribery" is highly unsatisfactory. In the later half of 2002, only 2 out of 13 identified cases of bribery were referred to the court, with no indictment found against them. Also, over the same period criminal proceedings were dismissed in respect of 2 cases of bribery.

A similar situation is observed regarding the investigation by prosecuting bodies of criminal cases related to violation of customs regulations and tax evasion. Over the reporting period, investigative bodies of the Prosecutor General's Office referred to the court 4 criminal cases initiated against abuse of customs rules and 10 criminal cases initiated on allegation of tax evasion, which can hardly be seen as satisfactory.

Neither does the work of investigative bodies of the Ministry of Internal Affairs afford satisfaction, with only 93 criminal cases of tax evasion detected over the reporting period.

There are widespread facts of non-enforcement of valid judgements or other court decisions. However, over the second half of 2002, prosecuting agencies initiated 4 criminal cases in

respect of this offence, and only one criminal case was referred to the court. As a result, no action is taken against representatives of authorities, officials of local governments or local authorities, or people vested with managerial powers in business or other organisations that in this manner violate citizens' rights.

According to the information provided by the Ministry of Internal Affairs of Georgia, in the second half of 2002, 137 files on offences committed by police officers or with their involvement were sent to prosecuting agencies. However, according to the data of the Prosecutor General's Office, statistics on investigative work of prosecuting agencies indicate that criminal cases were initiated in respect of 64 offences of this category, i.e. 46.7% of the cases referred to prosecuting agencies. Of these, proceedings were terminated in respect of 11 criminal cases, i.e. 17.8%, and only 26 cases, or 40.6% of initiated cases, were referred to the court, which is a highly unsatisfactory result.

Serious shortcomings are evident in the work of procuracy's investigative bodies, which affects negatively the fight against crime. In the later half of 2002, the said bodies completed 253 criminal cases in violation of the schedule, showing an increase of 15 cases, or 6.3%, compared with the figure for the first half of 2002. Thirty-three criminal cases were remitted for further inquiry, an increase of 6 cases, or 22.2%, as compared with the previous reporting period.

Ninety criminal cases in respect of 78 persons were terminated on allegation of absence of a crime in the act or absence of unlawful action, which is accordingly 18 and 28 cases (25%) more than in the first half of 2002. Notably, one out of

terminated criminal cases was initiated against a juvenile delinquent.

334 criminal cases were suspended on allegation of their non-solution, i.e. 89 cases, or 36.3% more than in the first half of 2002.

The period under review showed continuing violation of human rights and liberties, as people were held criminally liable without a fault, and subjected to detention on remand as a measure of restraint. There was an increase of 38 in the number of cases with a subsequently terminated procedure either by the court or in preliminary investigation as a result of absence of the crime in the act or absence of unlawful action. Also, there was an increase of 7 in the number of persons subjected to pre-trial detention in violation of the law, despite absence of the crime in the act or absence of unlawful action on their part.

What causes concern is that in many occasions no criminal charges were initiated against offences identified in the second half of 2002, or they failed to reach judicial bodies. According to 2002 statistics on trials by first instance courts, a total of 8670 cases were referred to these courts during a 12-month period, whereas according to the data provided by the Prosecutor General's Office, approximately the same number of crimes were reported in the later half of 2002 alone.

The number of criminal cases terminated by courts of the first instance or remitted for further inquiry remains significant. The 2002 statistical report made available by the Supreme Court of Georgia shows that proceedings were completed on a total of 8572 criminal cases, with proceedings terminated on

245 cases, and 292 cases remitted to investigative bodies for further inquiry.

According to the same statistical report, courts of the first instance almost completely fail to apply such form of punishment as punitive detention provided for by the Criminal Code of Georgia. In the past year, this form of punishment was only applied to 21 persons, i.e. 0.2 % of cases. Another form of punishment, correctional labour, is not adequately applied either, accounting for only 0.4 % of total number of enforced penalties.

Analysis of action taken by first instance courts in response to applications by investigative agencies demonstrates that preliminary investigation bodies mostly refer to the courts motions for detention as a measure of restraint. In 2002, courts examined 5993 motions of this kind submitted by investigative bodies, with 4905 (or 81.8%) of them satisfied. Investigative agencies fail to apply such measures of restraint as home arrest or release on bail. Over the reporting period, motions for these measures of restrain were submitted in 159 and 48 cases, respectively.

Analysis of the first instance courts' performance on civil suits over 2002 shows a total of 29507 cases referred to the courts, with 24624 cases (83.4%) examined by the court and judicial decision awarded. Of these, the claim was satisfied in 21101 cases, or 74.9%, and proceedings terminated in 1527 cases, or 5.2%.

By the end of the reporting period there remained 4098 uncompleted cases and 73,681.069 GEL paid as charges

In 2002, the first instance courts took over 7628 administrative cases, with 5741 cases examined and judicial decision rewarded. Of these, the claim was satisfied on 5041 cases, including 665 cases where the interest of the state was taken into consideration. The amount of compensation by the state was 158057 GEL, whereas the amount of compensation awarded in favour if the state was 7,498790 GEL. The total of awarded charges was 150781.35 GEL, with 64992.03 GEL paid.

Considering the backlog of uncompleted cases and cases taken over by courts, in 2002 proceedings were completed on 6898 cases, including 135 cases with proceedings completed in violation of a 5-month period provided for by the law. Out of 1339 cases on which proceedings were not completed, 106 cases remained in proceedings for over and above the period stipulated by the law.

In 2002, 25842 administrative offences were identified, with court orders issued in respect of 24873 persons, including: administrative responsibility imposed on 20901 persons, termination of proceedings and recommitment of a case for further inquiry in 62 cases, and termination of proceedings on other grounds in 3910 cases. Administrative responsibility in the form of warning was imposed on 1516 persons, 18566 persons received pecuniary penalty of 1,946484 GEL, with 158409 GEL collected, which does not afford satisfaction.

On Violations of Human rights and Freedoms Resulting from Judicial Error and the Need to Make Amendments and Additions to the Criminal and Civil Procedural Codes of Georgia

The desire to build democracy in Georgia in the form of a unified and integral state, as corroborated by the results of the popular referendum held on 31 March 1991 and the Act on Restoration of Georgia's State Independence adopted on 9 April 1991, is a manifestation of the firm will of the people of Georgia to protect the rights and freedoms of Georgia's citizens and aliens residing in the country, as guaranteed by international law.

The main guarantor of fundamental human rights and freedoms is the Constitution of Georgia. Having pledged its support to universally recognised human rights and freedoms, the State of Georgia made a commitment to protect them, as demonstrated by the adoption, on 4 February 1998, of the Law "On Institution of Human Rights' Day" that is marked yearly on 10 December.

An important landmark on the way to a democratic state was the Organic Law on the Public Defender of Georgia adopted by the Georgian Parliament on 16 May 1996.

Within the limits fixed by the Constitution of Georgia, the Law on the Public Defender and other legislative acts, with the aim of protection and promotion of human rights and freedoms by the State, the Public Defender shall supervise the activities of public authorities, national or local, public officials and legal persons, shall evaluate all acts passed by them, shall give recommendations and proposals.

Unfortunately, the implications of the norms of international law, constitutional provisions and the requirements of the law are not fully captured by public authorities, their executives, as well as legal and physical persons. As a result, not infrequently the Public Defender has to explain his/her powers, and to address proposals and recommendation to relevant bodies.

This primarily refers to general courts and the Supreme Court of Georgia that appear to misinterpret provisions of Chapter 5, Articles 82 and 84 of the Constitution concerning judicial power, independence of the judge, his being subject only to the Constitution and the law, impermissibility of any interference in a judge's activities in order to influence his decisions, which results in a failure to consider recommendations addressed to judicial bodies by the Public Defender and fulfil the relevant requirements of the Constitution and the Law on the Public Defender.

Needless to say, there should be no misconception as far as the relevant constitutional provisions are concerned. Any interference in a judge's activity, the more so, for the purpose of influencing his decision is to be prohibited. However, this requirement does not rule out the possibility of examining the legality of the court decisions that have already entered into force, whereby the judicial errors have led to the violation of human rights and freedoms elucidated by the Public Defender on the basis a citizens complaints (applications) or independently, as a result of his/her verification in cases as prescribed by the law.

Under Article 42 of the Constitution, each individual has the right of appeal to the courts to protect his rights and freedoms.

This imperative requirement of the Constitution is ignored by the Criminal Procedural Code and Civil Procedural Code of Georgia that have legitimately abrogated the review by way of supervision of the court decisions that have entered into force, and declared cassation as the final instance for examination of litigants' complaints concerning decisions of appeals courts that have not entered into force.

In this connection it is necessary to state clearly that while considering as absolutely legitimate the immediate entry into force of the cassational court decisions, which renders impossible their review in the course of supervision, the Criminal Procedural and Civil Procedural Codes effectively deny the parties in litigation their constitutional right to appeal to the court in the event of violation of their rights and freedoms as a result of judicial error by the court of cassation. To clarify our view based on constitutional provisions, it is important to note that in this case we are talking not about the appeal of cassational court decisions in general, but of the neglect, evident in the said Codes, to observe the constitutional right of every individual to appeal to a higher court in the event of a judicial error or deliberately unfair decision by a judge. In such cases, the Criminal Procedural and Civil Procedural Codes of Georgia make no provision as to which judicial authority is to examine the appeal. Neither is this judicial instance provided for in the Law "On the Supreme Court of Georgia" of 12 May 1999, which is to be seen as a violation of Para.1, Article 42 of the Georgian Constitution.

Thus, there is no question as to the value and validity of the provision making cassation the final instance; quite the contrary, it has to be seen as one of the most important achievements of the judiciary reform carried out in the country. At the same time, in order to overcome a certain measure of

discredit thrown on the reform, it is necessary to restore the right guaranteed to citizens of Georgia by Article 42 of the Constitution - to appeal to the court to redress violations of their rights.

The Criminal Procedural and Civil Procedural Codes of Georgia do not take into account provisions of Para.e) of Article 21 of the Organic Law on the Public Defender of Georgia concerning the Public Defender's power to address recommendations to relevant judicial bodies to examine the legality of the court decisions which have entered into force, completely ignoring therewith the authorisation granted by the said law and Article 43 of the Constitution to the Public Defender to reveal facts about the violation of human rights and freedoms and to report on it to relevant bodies and Officials.

It is true that while addressing recommendations to relevant bodies and officials, the Public Defender exercises her constitutional rights, these latter are not further provided for in the Criminal Procedural and Civil Procedural Codes of Georgia passed in violation of the Constitution and the Organic Law on the Public Defender of Georgia, and are not implemented due to lack of relevant provisions in organic laws "On General Courts of Georgia" and "On the Supreme Court of Georgia".

On 17 October 2000, by decision of the Chamber of Civil, Entrepreneurial and Civil Cases of the Supreme Court of Georgia, the "Georgian Railway" Ltd was charged with payment of 172928 GEL in favour of the "Mrevli" Fund.

On the grounds of non-participation of the Ministry of State Property Management, the then owner of the state property, in the court proceedings, the Chamber of Civil, Entrepreneurial

and Civil Cases of the Supreme Court of Georgia by its order No 33/133 of 24 January, 2001 reversed all previous judicial decisions on the case and remitted the case for retrial to the Gldani-Nadzaladevi district court.

This decision of the Supreme Court is in conflict with the provisions of Para. 1 Article 422 of the Civil Procedural Code, under which the court decision can be reversed on appeal of the party concerned, if one of the parties or its lawful representative, was not invited to participate in the examination of a case.

The Ministry of State Property Management of Georgia could not be involved in the examination of the case, as at the time of the court trial it did not represent a party, whereas under Article 79 of the Civil Procedural Code of Georgia, considered as parties in litigation are those interested persons that initiate the proceedings. In the case under review, the litigation was initiated on the basis of a claim filed by the Chairman of the "Mrevli" Fund for War Veteran Children and Children Deprived of Parental Care against the "Georgian Railway" Ltd., at which time the representative of the latter did not raise an issue on inviting the Ministry of State Property Management of Georgia, as the owner of the Limited Liability Company's property, to participate in the trial.

According to the decision of the Chamber of Civil, Entrepreneurial and Civil Cases of the Supreme Court of Georgia of 24 January 2001, the award of the non-living space, i.e. the cellar, kitchen, bathroom and toilet to A. Kulijanashvili was unfounded, as by the time of the award there existed a decision of 1 November 1993 of the Mtatsminda District Court of Tbilisi by which the said space had been given to D.Jashi,

and A. Kulijanashvili had never raised any claim concerning that decision.

The decision of 12 July 2000 of the Chamber of Civil, Entrepreneurial and Civil Cases of the Tbilisi Regional Court , and the decision of 22 November 2000 of the Chamber of Civil, Entrepreneurial and Civil Cases of the Supreme Court of Georgia recognised as lawful the discharge of K. Kokosadze from the position of Chief Advisor of the President's Representative's Office owing to reduction of staff.

Refusal by the courts, namely by the Chamber of Civil, Entrepreneurial and Civil Cases of the Supreme Court of Georgia (decision No 3 k/683), to reinstate K. Kokosadze in the position of Chief Advisor of the Mtskheta-Mtianeti Regional Service on allegation of non-availability of other "vacant" positions and as a result of misinterpretation of provisions of Para.2 Article 97 of the Law "On Public Service" concerning inadmissibility of public servant's dismissal, and provisions of Article 19 of the Law "On Veterans of War and Armed Forces" concerning privileged right to remain in office, as well as on allegation of non-availability of evidence attesting to such privileged right, was absolutely unfounded.

In order to give more credibility to its refusal to reinstate K. Kokosadze in office, the court misrepresented the wording of the law, namely added the word "vacant" to the word "another ... position" in Para.2 Article 97, which position of a chief adviser was in fact not available at that time in the Office of the President's Regional Representative. Thus, it changed the essential condition to the detriment of the injured party. In reality, Para. 2 of the said article, where the word "vacant" is not mentioned, reads: "The public servant shall not be

dismissed owing to reduction of staff if he agrees to take **another** position".

In addition, as evidenced by the materials relating to the case, at the time of K. Kokosadze's dismissal on grounds of redundancy, there were other chief advisor positions at the Office of the President's Representative in the Mtskheta-Mtianeti Region manned with persons compared to whom K. Kokosadze, as a war invalid, clearly had a privilege in terms of staying in office, as provided by Article 19 of the Law "On Veterans of War and Armed Forces".

The decision of the Borjomi District Court of 21 February 2000 satisfied the Likani Ltd.'s claim to have the case revised upon discovery of new facts, and T. Mamijanashvili, a shotfirer worker of the Borjomi road-construction unit No 229 was awarded a monthly allowance of 34.92 GEL (equal to three-month average wages) on account of injury and loss of the ability to work.

The decision of the court id manifestly unfounded, as by the time of award, Presidential Decree No 48 of 9 April 1999 "On Procedure of Compensation of Damages as a Result of Injury to Worker's Health in the Line of Duty" was in place. According to the decree, "in case, the said or equivalent positions no longer exist in the organisation, the amount of allowance payable to an injured person shall be equal to 10 times minimal wage". At the same time, under the Decree of the President of Georgia of 4 June 199, the minimum level of wages was established a 20 GEL. Therefore, considering the 10 times amount of minimal wage, 85 % loss of the ability to work and the injuries sustained, the monthly allowance payable to T. Mamijanashvili should have been established at 85 GEL.

As far as court decisions of 21 February and 18 May are concerned, it should be noted that Under Para.3, Article 423 of the Civil Procedural Code of Georgia, the Borjomi District Court and the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi Regional Court could have issued an order on re-examination of the case, if a party, through no fault of its own, was not in a position to point to new facts and evidence during the trial or at the time of delivery of the court's decision.

The alleged lack of awareness on the part of the "Likani" Ltd. concerning the non-existence of the established post of shotfirer in the said entity does not exempt the organisation's management from a liability. Quite the reverse, they should have been aware of the fact and made it known to the district and appellate courts during the judicial proceedings, which they failed to do. However, the court accepted the claimant's application and rendered its decision without considering the case, having ignored therewith the relevant provisions of Article 429 of the Civil Procedural Code of Georgia.

According to the decision of 23 January 2001 of the Chamber of Civil, Entrepreneurial and Bankruptcy Matters of the Supreme Court of Georgia, T. Shapatava was restored in his rights, the minutes of the "Astra-Digomi" Ltd.'s meeting of 6 January 1999 was invalidated, as was the court order of 8 January 1999 issued by the Didube District Court of Tbilisi, which registered T. Shapatava's expulsion from the "Astra-Digomi" Ltd. partnership.

Based on this decision, T. Shapatava made a cassational appeal concerning the reversal of the decision of 18 October 2001 issued by the Collegium of Administrative Justice and Tax

Issues of the Tbilisi Regional Court that had denied him the reparation of material damages in the amount of 503674 GEL.

The Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia (Chairman B.Metreveli, reporting judges B. Koberidze and N.Klarjeishvili, No 3g/ad-215-k-01) by its decision of 13 February 2002 rejected T.Shapatava's cassational appeal claiming to charge the Ministry of Finance with the payment of unpaid dividends and remuneration, and left in force the decision of 18 October 2001 issued by the Collegium of Administrative Justice and Tax Issues of the Tbilisi Regional Court.

During the oral hearing of the case in the court of cassation, the claimant's representative Ts.Tskhvediani reduced the claimed amount and requested to charge the defendant – the Ministry of Finance – with payment of 277918 GEL, the unpaid dividends and remuneration due to T. Shapatava.

Having considered and analysed the said decision of the court and the response No 3g/ad-215-k-01 (3 July 2002) by Mr. Badri Metreveli, Deputy Chairman of the Supreme Court of Georgia, to my recommendation, I concluded that they were expressly unfounded; moreover, they misinterpreted the relevant provisions of Article 105 of the Civil Code of Georgia and Articles 50 and 57, Para.2 of the "Law on Entrepreneurs".

In his cassational appeal of 20 November of 2001, T Shapatava appended the "Astra-Digomi" Ltd. auditing report, indicating that the audit report established the amount of dividends due to him (according to taxable profit) at 292139 GEL, or 262918GEL considering the tax on dividends (10%).

This notwithstanding, in the judgement of 13 February 2002, the Chairman and the judges of the Chamber misrepresented the matter, alleging that "the materials relating to the case do not confirm, and neither was the claimant able to prove, whether or not he had received dividends in the past years, before his expulsion from the "Astra-Digomi" Ltd. partnership, and what their size was".

The audit report prepared by the "Audit and Financial Consulting" Ltd. in 2001 shows that according to "Astra-Digomi" Ltd.'s primary accounting documents, the reduction of equity capital based on the results of 1999-2000 business years, compared to 1998 (Tamaz Shapatava was expelled from the partnership on 6 January 1999 in violation of legal provisions, and restored on 23 January 2001) was 349000 GEL in 1999, 126000 GEL in 2000, which was due to a reduction in the enterprise income: against 1998 the income in 1999 fell by 84%, in 2000 – by 93.5%, whereas costs amounted to 38.7% and 47%, respectively.

Thus, since the reduction in costs (38/7% and 47%) was not proportional to the reduction in incomes (84% and 93.5%), the audit concluded that in 1999-2000 "Astra-Digomi" Ltd operated at the expense of disposal of its owned assets (property), which led to an additional damage of 223000 GEL.

"Astra-Digomi" Ltd.'s aggregate income in 1998 was 986387 GEL, in 1999 – 160315 GEL and in 2000 – 64074 GEL. Thus, compared to 1998, in 1999 the aggregate income decreased by 826072 GEL, and in 2000 – by 922313 GEL, i.e. by the total of 1, 748385 GEL.

In order to calculate the 1999-2000 unearned profit (income) of "Astra-Digomi" Ltd., experts of an independent auditing firm

applied the method of arithmetical mean factors and established that the aggregate income in 1996 was 506883 GEL; 1997 – 559874 GEL (an increase of 10% compared to the previous year); 1998 – 986387 GEL (an increase of 76 % compared to the previous year).

At the same time, analysis of aggregate income (13513) in February 2001 (T. Shapatava was restored in the partnership on 23 January 2001) showed an increase of 57% in the aggregate income generated in March, compared to the previous month.

Based on the growth dynamics of aggregate income for 1996-1998 suggesting an average increase of 43%, the aggregate income generated by "Astra-Digomi" Ltd. should have amounted to:
1,4190533 in 1999 (the difference of 1, 250218 GEL with the actual figure); 2,017062 GEL in 2000 (the difference of 1, 952099 GEL with the actual figure). In total, the difference between provisional and actual figures should be 3, 203206 GEL.

According to the books, costs of 'Astra-Digomi" Ltd. amounted to: 155683 GEL in 1996; 201988 GEL in 1997 (n increase of 30% compared to 1996); 207933 GEL in 1998 (an increase of 3% compared to 1997), which means that according to 199601998 data, an average increase of costs was 16.5%.

Proceeding form the above, presumably,' Astra-Digomi" Ltd.'s costs should have amounted to 242312 GEL in 1999 and 282293 GEL in 2000.

The share of price differential in the aggregate income amounted to:

157326 GEL in 1996, i.e. 31% of the income; 225121 GEL in 1997, i.e. 40% of the income; 197457 GEL in 1998, i.e. 20% of the income. Hence, average price differential was 30% of the income.

Based on the analysis and comparison of the figures, the audit report established that the size of price differential would have been 423169 GEL in 1999, and 605119 GEL in 2000; hence total price differential in 1999 and 2000 would have been 1,028279 GEL.

Based on comparison of the price differential and expenses, the audit report established the amount of "Astra-Digomi" Ltd's unearned profit (income) in 1999 and 2000: for 1999 – 180848 GEL (=423160-242312), and for 2000 – 322826 GEL (=605119-282293).

The total amount of unearned profit (income) in 1999 and 2000 was established at 503674 GEL.

In order to calculate the amount of unpaid remuneration and dividends due to T. Shapatava in the period between August 1998 and March 2001, experts of an independent auditing firm analysed the agreement concluded between T. Shapatava and "Astra-Digomi" Ltd., as well as calculations and payroll sheets. It was established that the amount of unearned profit (income) was 503674 GEL. T. Shapatava's average monthly salary was 306 GEL, hence the amount of unpaid remuneration in the period between 12 August 1998 and 1 March 2001 was found to be 9680 GEL.

According to Para. 5 of the section dealing with the Company's obligations and Para. 7 of the section dealing with additional terms and conditions of the said agreement, the

Limited Liability Company was under an obligation to compensate T. Shapatava for his unused leave in 1999 and 2000 (612 GEL) and pay to him a withdrawal benefit in the amount of 2-week pay (153 GEL), i.e. the total of 765 GEL.

As a result of violation of contractual provisions contained in the agreement concluded between "Astra-Digomi" Ltd. and the director of the company, "Astra-Digomi" Ltd.'s debt liability to T.Shapatava was 10445 GEL, which the court failed to consider and rejected T.Shapatava's claim in this part, too.

Taking into account the above actual figures as well as the estimated amount of unearned profit (income) (503674 GEL, the amount of unpaid dividends due to T. Shapatava, who had 72.5% interest in the company's authorised capital, amounted, according to the audit report, to 262918 GEL (after deduction of the tax on dividends).

In this context I want to once again emphasise that together with the cassation appeal, T. Shapatava presented to the court the audit report on the amount of his unpaid dividends and salary. It seems crystal clear that **the court deliberately or through gross negligence misrepresented the case and alleged the non-availability of evidence concerning the dividends due to the claimant.**

It is not clear what was meant in the decision issued by the court, and the statement contained in B.Metreveli's letter alleging the failure by the claimant to prove to the court "whether or not he had received any dividends (including their amount) in the past years, before he was expelled from the "Astra-Digomi" Ltd. partnership, the more so as in his cassation appeal T. Shapatava claimed unpaid dividends and not the "dividends related to the past years before he was

expelled from the "Astra-Digomi" Ltd. partnership". Thus, the court has manifestly gone beyond the framework of the cassation appeal, and flagrantly violated provisions of Article 404 of the Civil Procedural Code of Georgia regulating these matters.

According to the audit report, in 1996, 1997, and 1998 (before T. Shapatava was expelled from the partnership), the aggregate revenues of "Astra-Digomi" Ltd. showed a growth (1996 – 506883 GEL, 1997 – 558874 GEL and in 1998 – 986387 Gel), whereas after his expulsion the figures dropped markedly.

The interpretation of Article 50 of the "Law on Entrepreneurs" by the Chamber is expressly unfounded, as under this article "Partners shall be entitled to get undivided annual profit including the remainder less the losses", which, according to the audit report presented to the court, was not the case with T. Shapatava.

The chamber of cassation misinterpreted T. Shapatava's complaint pointing out in its ruling of 13 February 2002 that on account of unprofitability of the "Astra-Digomi" Ltd.' operation, T. Shapatava's claim concerning the payment to him of omitted dividends was unfounded. **On the contrary, because the operation of the said limited liability company turned to be unprofitable owing to an unlawful decision issued by the Didube District Court, T. Shapatava demanded that the Chamber placed on the Ministry of Finance the responsibility for the damage that, according to the audit report, amounted to 503674 GEL, and charged the Ministry to compensate the unpais dividends and remuneration in the amount of 262918 GEL.**

Despite the fact that in his cassation appeal of 20 November 2001 T. Shapatava emphatically stated that the Collegium of Administrative Justice and Tax Issues of the Tbilisi Regional Court applied the inapplicable statutory provision, namely Article 57 of the "Law on Entrepreneurs" that deals with joint-stock companies and not with limited liability companies, which is expressly pointed out in Para. 2 of the same article, the Chairman of the Chamber and its judges wrongfully noted that since the operation of "Astra-Digomi" Ltd. in the years when T. Shapatava was dismissed from the office, was unprofitable, the applicant's claim concerning the unpaid dividends was unfounded.

On the contrary, the said article stipulated that "the stockholders may not be given other remuneration except company dividends. In the case of the infringing of this rule the stockholder having received such remuneration must either refund it or compensate in cash for non-monetary remuneration received".

At the same time, **I wish to stress once again that this statutory provision is only applicable to stockholders of a joint stock company and not to partners of a limited liability company, for which reason any reference to it as an argument in order to justify an unfair decision by the court is absolutely inadmissible.**

Also, in its decision the court chaired by B. Metreveli pointed out, without any grounds whatsoever, that the claimant (T. Shapatava) should have raised his claim concerning the unpaid dividends and salary not against the Ministry of Finance, but the then management of "Astra-Digomi" Ltd.

By the judgement of 23 January 2001, the Chamber of Civil. Entrepreneurial and Bankruptcy Cases of the Supreme Court of

Georgia (Chairman: N.Tsikvadze; Judges: L. Gochelashvili and M.Gogishvili) satisfied T. Chapatava's cassation appeal, invalidated the results of the meeting held by M. Jincharadze representing G.Kikabidze, as reflected in the Minutes of the meeting, annulled the Business Register records concerning T.Shapatava's expulsion from "Astra-Digomi" Ltd. partnership effected on the basis of a ruling of the Didube District Court o Tbilisi of 8 January 1999 (dated 8 January 1998) and restored him in his rights and position existing before 8 January 1999. The judgement reads:

Under the "Law on Entrepreneurs", the expulsion of a Partner from a company is conditional on the decision concerning expulsion taken by a Meeting of Partners by majority vote. The Partner whose expulsion is considered, shall not vote at the Meeting. A decision of the Meeting of Partners on expulsion of a partner from the partnership does not directly ensue his expulsion from the Company. This decision can serve a basis for referring to the court an application concerning expulsion of a Partner. Decision on expulsion of a Partner shall be taken by the court. The legal framework relevant to a Company's decision to expel a Partner is contained in Article 47.3 of the "Law on Entrepreneurs". In a dispute concerning a Company's Partner, the Company is a claimant, whereas the Partner is a defendant. In the legal proceedings concerning the expulsion of a Partner, a company is represented by its directors. In this case, even if the extraordinary meeting of partners convened on 6 January 1999 had been competent to make a decision (it was held by the representative of the owner in possession of 25% interest), the Didube District Court of Tbilisi was not authorised to expel T. Shapatava for the simple reason that a newly appointed director of the Company did not take a legal action concerning T. Shapatava's expulsion from the partnership, and there was no court trial concerning the matter. *Ex parte* proceeding on such

case is impermissible. Expulsion of a person can only be decided by the action proceeding, which was not done either by the Company's new director (he did not initiate a legal action), or the court (which did not examine T.Shapatava's expulsion from the partnership in the course of action proceedings).

Thus, by the judgement of 23 January 2001, the Chamber of Civil. Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia established that the record in the Business Register concerning T.Shapatava's expulsion from "Astra-Digomi" Ltd.' partnership effected on the basis of a ruling of 8 January 1999 of the Didube District Court of Tbilisi (dated 8 January 1998) was made in violation of the law. Expulsion was effected in the absence of the action proceeding. As a result, once T. Shapatava, owning 75% equity interest was expelled from the partnership, his share was captured by M.Jincharadze, the representative of M.Kikabadze owning 25% equity interest, and the newly appointed directors. **Thus, the court deprived T.Shapatava of his legitimate right to participate in the governance of the company, control its management, request the Company's director to provide him with information concerning the Company's activities, and familiarise himself with the Company's books and records, as stipulated by the "Law on Entrepreneurs", Article 46, Paras.9 and 10, and led him to bankruptcy. T. Shapatava could not address his claim concerning the unpaid salary and dividends to the Company's unlawful and incompetent new management, as it was not that management that took, and neither could it take, the decision on his, T.Shapatava's expulsion from the partnership, with all the ensuing harmful consequences. This decision was made by the Didube District Court in violation of the law, which enabled M.Jincharadze and the new management to govern the Company proceeding from their private interests and eventually lead it to full and complete**

bankruptcy, which has become a ground for institution of a criminal charge on which the Tbilisi Procuracy is conducting a preliminary investigation. Therefore, it has to bear sole and undivided responsibility for the damage caused to the company and T.Shapatava's unpaid dividends and remuneration.

Considering the above facts, the statement contained in the decision issued by B.Metreveli, B.Koberidze and N.Klarjeishvili on 13 February 2002 to the effect that T.Shapatava should have raised his claim concerning the unpaid dividends and salary not against the Ministry of Finance, but the then management of "Astra-Digomi" Ltd. is expressly ill-founded both in fact and in law.

Hence, the decision issued on 13 February 2002 by the Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia (B.Metreveli, B.Koberidze and N.Klarjeishvili) **implies misinterpretation of Article 1005 of the Civil Code of Georgia, as in the opinion of the Chamber, in making its judgement the Didube District Court of Tbilisi did not violate the provisions of the said Article.**

The said article of the Civil Code stipulates that in case "a public servant by deliberate or gross negligence violates his official functions before other persons, the state or that body where the servant is engaged, shall compensate the occurred loss. In the event of deliberate or gross negligence, the servant bears joint responsibility with the state".

The case law of the European Court of Human Rights contains similar cases and in most cases upholds this principle (for instance: *Matas e Silva, and others v. Portugal, Giemen v. France, Zubani v. Italy*). The ownership of property per se

implies the right to dispose of it, and we speak about the property already acquired, which means that it has already generated the proprietary right and not the right to acquire property (the latter being subject to regulation and limitation by the state). **Denial of the right to control one's interest in property (effected through the decision of the court made in procedural infringement) effectively implies denial of the right to own and dispose of one's property.** At the same time, it is to be noted that inability for 2 years to exercise the unlawfully denied proprietary right caused an injury to T.Shapatava's "good reputation" in business, which eventually led to "Astra-Digomi" Ltd.'s complete bankruptcy, as it undermined its credibility with major European partners. Frequently, an injury to good reputation is equated by the European Court of Human Rights with the infringement of the proprietary right, when it has a direct bearing on the ownership of property, the right to dispose of it or benefit form it. For instance, in the *Van Marle and others v. the Netherlands* case the Court judged that "good reputation" is to be considered as property in the sense of Article 1, Protocol 1 of the European Convention of Human Rights and Fundamental Freedoms: "...through their work the applicants have attracted their customers; this per se had the nature of a personal right and represented a value and, hence, a property under Article 1, Protocol 1". In T. Shapatava's case we see a similar situation, where it is obvious that one unfair court decision, made by the Didube District Court of Tbilisi on 8 January 1999, resulted in an injury to the person's reputation, and complete loss of property acquired through his work.

Thus, on account of the expulsion from the partnership effected by the Didube District Court of Tbilisi on 8 January 1999, the changes made to the Business Register, and an unfounded refusal by the same court on 18 January 1999 to have the

changes in the Business register deleted, according to Article 1005 of the Civil Code of Georgia, the Ministry of Finance of Georgia is obliged to compensate the financial damage caused to T.Shapatava, which right was expressly unjustifiably denied to him by the decision of 13 October 2001 (case 35/98) issued by the Collegium of Administrative Justice and Tax Issues of the Tbilisi Regional Court and the decision of 13 February 2002 of the Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia (No 3g/ad-215-k-01).

The ruling issued by the Didube-Chugureti District Court of Tbilisi on 30 October 2000 satisfied the claim filed by the "Akhali Kselebi" Limited Liability Company and by way of provisional remedy, the property of "Astra-Digomi" Ltd. was attached. At the same time, the attachment on "Astra-Digomi" Ltd.'s movable and immovable property levied in accordance with the ruling of 6 December 1999 issued the Didube-Chugureti District Court of Tbilisi as provisional remedy for the claim of the Postal Bank was withdrawn.

The decision of 8 August 2001 issued by the Didube-Chugureti District Court of Tbisli satisfied the claimant's, "Akhali Khazebi" Ltd.'s, action, and charged "Astra-Digomi" Ltd. with the payment of the principal amount of 47000 USD, the interest of 8969GEL and penalty of 1891 GEL.

On 17 December 2001 the Appellate Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi District Court issued a new decision which satisfied the "Akhali Kselebi" Ltd.'s claim and charged "Astra-Digomi" Ltd. with the payment of the sum equivalent to 47000 USD - 100855 GEL.

The Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia examined materials of the case, heard explanations by the parties and by judgement of 7 June 2002 (No 3k-432-02) refused to satisfy the claim filed by T. Shapatava, Director of "Astra-Digomi" Ltd., and affirmed the decision issued by the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi District Court on 17 December 2001.

Having examined the above court decisions, I concluded that they were made in gross violation of the law; more specifically, they show misinterpretation of a number of articles contained in the Civil Code of Georgia, which, according to Article 21 of the Organic Law on the Public Defender of Georgia, shall be the basis for addressing recommendations to relevant judicial bodies to examine the legality of the court decisions. Namely: the Chamber (Chairman: Murman Tsakvadze, reporting judge: Roza Nadiriani, Michael Gogiashvili) justly points out in the reasons for the decision that the claimant - "Akhali Kselebi" Ltd. does not represent a bank, other credit institution or insurance company (Article 879 of the Civil Code) for which reason it could not act as a guarantor, but only as surety for other person's creditor. True, the document provided by "Akhali Kselebi" Ltd. bears an inscription "Letter of Guarantee" it cannot be considered as a bank guarantee, as under Article 52 of the Civil Code "in defining the expression of the will, the will shall be established as a result of reasonable consideration and not only from the oral word-by-word sense of the expression.

In the considered case it is established that the "Akhali Kselebi" Ltd. undertook an obligation that in the event of non-repayment of the loan and the accrued interest on maturity it

would remit to the Georgian Postal Bank JSC the due amount to pay off the debts.

It is also established that the relations between the parties are gratuitous, whereas a bank guarantee is subject to payment of the agreed fee, as stipulated in Article 880 of the Civil Code of Georgia.

Taking into account the described circumstances, the Chamber unfoundedly considered the "Letter of Guarantee" as the document confirming suretyship, and misinterpreted Articles 891, 892, 905 and 337 of the Civil Code. Namely, according to Article 891, Para.1 the surety is established by the contract of suretyship. In this case, execution of a contract is an imperative requirement of the law. The creditor and the debtor are the subjects of suretyship. At the same time, without the debtor, the suretyship relations cannot be considered as valid.

The Chamber justly points out in its judgement that under Article 892, Para.1 of the Civil Code in order for the suretyship to be valid it has to be accompanied by the surety's written application which is allegedly represented by the Letter of Guarantee. However, the Chamber overlooks the fact that the surety (as mentioned above) is established by the contract of suretyship, which was not the case. At the same time, in the credit agreement of 1 April 1999 (No 26) no mention is made of one of its principal subjects – "Akhali Kselebi" Ltd. Also, in the "Letter of Guarantee" of 1 April 1999, that the Chamber unfoundedly considered as the document confirming suretyship, no mention is made of such subject of the contract of suretyship as "Astra-Digomi" Ltd. This fact, namely that "Astra-Digomi" Ltd. was not mentioned in the Letter of Guarantee led to the attachment of the said limited liability company's movable and immovable property under the order of the Didube-Chugureti District Court of Tbilisi, which was

later, equally unfoundedly, withdrawn under the order of the same district court on 30 October 2000. This raises a number of questions that still remain unanswered by any of the judicial instances. If on 6 December 1999 the Letter of Guarantee issued on 1 April really existed, why was it necessary to levy attachment on "Astra-Digomi" Ltd.'s movable and immovable property? ; Why did the order of 6 December 1999 issued by the Didube-Chugureti Court make no mention of the Letter of Guarantee? Maybe this letter bearing no signature and seal of "Astra-Digomi" Ltd. as one of the subjects of the contract of suretyship, was compiled in reality not on 1 April 1999 as indicated by the date of the letter, but after the issuance of the court order on 6 December 1999? Thus, the allegation of the Cassation Chamber that the law does nor prohibit the execution by one document of both the surety's application and essential terms and conditions of the contract is unjustified and is expressly in conflict with the provisions of Articles 891 and 892 of the Civil Code.

Under Article 327, Para.1 of the Civil Code of Georgia, "a contract is considered to be concluded where agreement regarding all the material terms and conditions of the contract has been reached in the required form". We have seen that neither the Credit Agreement of 1 April 1999, nor the Letter of Guarantee bearing the same date, are in line with the requirements of Article 327, Para.1 of the Civil Code of Georgia. Thus, despite the manifestly groundless allegation contained in the judgement of 7 June 2002 by the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, they cannot be considered as documents standing for the contract of suretyship and the surety's application.

Proceeding from the above, the arguments contained in the judgement of 7 June 2002 to the effect that for the contract of suretyship to be valid it is sufficient to have the consent

of its principal subjects, namely, the surety and the creditor, without the consent of the debtor, are unjustified and insufficient.

Also, Article 892, Para. 2 stipulates that if anyone states on suretyship within the limits of his professional activity, observation of the form is not required.

In the given case, the Postal Bank JSC and "Akhali Kselebi" Ltd did not represent the subjects of any similar professional activity. As is know, the Postal Bank JSC performs the functions of a credit institution, the "Akhali Kselebi" Ltd is provider of telephone services, whereas the "Astra-Difomi" Ltd. performs vehicle servicing. Thus, under Article 892, Para. 2 of the Civil Code they could not state on suretyship within the limits of their professional activity.

At the same time it is important to note that that "Astra-Digomi" Ltd. has a legitimate claim concerning Credit Agreement No 26 of 1 April 1999 concluded with the Postal Bank, as the said agreement is executed in infringement of Article 47, Para g) of the "Law on Entrepreneurs" as "the borrowing of funds or receiving of credit exceeding, taken separately or in aggregate, the amount stipulated by the Meeting of Partners shall be subject to a decision by the Meeting of Partners". Decision to borrow from the Postal Bank was made not by a Meeting of the Company Partners but solely by Director M.Janelidze. Article 8, Para.3 (g) of the Charter of „Astra-Digomi" Ltd clearly states that the basis for borrowing shall be a decision by a meeting of Partners, not the request of the company director.

T. Shapatava appealed the said ruling and requested to reverse it on the basis of Article 422, Part 1 (a), reasoning that R. Nadiryan did not have the right to participate in the hearing as a judge who might have personal interest in the outcome of proceedings.

The complainant pointed out in his appeal, that after the issuance of the decision of 7 June 2002, the overly active position of judge R. Nadiriani aroused certain suspicion that M.Jincharade was involved in wrongful acts against him, which prompted him to try to ascertain M.Jincharadze's contacts, to which end he checked the latter's detailed telephone bills. T. Shapatava also indicated that initially he knew nothing about R. Nadiriani and thus, during the examination of his cassation appeal he did not raise a question on challenge to the judge. However, after checking I.Kobakhidze's telephone bills whose mobile phone was used by G.Jincharadze, he found that in the period between 15 January and 22 February 2001, the latter made 46 telephone calls both to R.Nadiriani's home number, and her mobile, including on 23 January when the Chamber of Cassation was considering his reinstatement in office at "Astra-Digomi" Ltd.

To prove his allegation, T. Shapatava adduced as evidence bills for telephone calls between G.Jincharadze and R.Nadiriani.

Article 31, Para.1 of the Civil Procedural Code clearly states that "a judge cannot examine a case or participate in a hearing, if he is personally, directly or indirectly, interested in its outcome, i.e. **if there exist circumstances that cast doubts as to his impartiality**", whereas Article 32 of the same code states that **if this is the case, the judge is obliged to take a self-exception**, which R.Nadiriani failed to do.

Despite the reasonableness of the complaint and its full conformity with provisions of Article 427 of the Civil Procedural Code, the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia by its decision of 26 July 2002 dismissed T.Shapatava's appeal to

examine the case in the light of Article 427, Part 2 of the Civil Procedural Code of Georgia.

I think that in deciding whether or not to accept T.Shapatava's appeal concerning the reversal of the judgement of 7 June 2002 and re-examination of the case, the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia should have relied not only on Article 427, Part 2 of the Civil Procedural Code, but also on provisions of Article 429 of the same Code that directly regulate such matters, and if there were no conditions preventing the admissibility of the appeal, it should have decided not to consider it, which could have been challenged by taking a separate appeal.

Apart from the fact that the decision of 26 July 2002 to decline T.Shapatava's appeal issued by the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia was absolutely unfounded and made without proper consideration of the relevant provisions of the Civil Procedural Code, it also stated that "the judgement is final and cannot be reviewed". In doing so, the court violated T. Shapatava's rights, having deprived him of any possibility to take a separate appeal for re-examination.

On 23 October 2002 I addressed the Chairman of the Supreme Court of Georgia with Recommendation No. 1759/03/325-s concerning the above errors of law, requesting him to examine the legality of the court decisions and the issue of disciplinary responsibility of the judges. However, the Chairman of the Supreme Court did not react to the recommendation according to the provisions of the Organic Law on the Public Defender of Georgia.

There is plenty of evidence on similar judicial errors at the Public Defender's Office, however, its detailed discussion does not fit in the format of this report.

Despite the fact that in all the described cases there is a direct evidence of gross infringements of the law on the part of cassation courts, the defects present in the Civil Procedural Code of Georgia prevent taking review against a judgement made with error of the law, which is to be seen as the violation of the provisions of international law and the Constitution of Georgia.

It is to be noted that under the Law of Georgia "On Normative Acts", in relation to the Organic Law on the Public Defender of Georgia, the Criminal Procedural Code and the Civil Procedural Code of Georgia have a subordinate status in the hierarchy of the bodies of laws, therefore failure to accommodate in these codes provisions of the Constitution and the Organic Law is to be seen as inadmissible.

According to the Supreme Court of Georgia, the Criminal Procedural Code and the Civil Procedural Code of Georgia are formulated in accordance with the organic laws "On General Courts" and "On the Supreme Court of Georgia". However, these laws do not make any provision concerning the consideration of the Public Defender's recommendations to examine the legality of the court decisions that have already entered into force. Therefore, any verification of the circumstances or examination of judicial errors made by courts in considering concrete cases is irrelevant, as the law does not provide for any mechanism to rectify the errors.

There is abundant evidence of such breaches in the judicial practice, namely in the practice of cassation instances. This is

clearly confirmed by the examples described above. However, since the law does not provide for the mechanism to rectify errors made by the cassation court, denial of the right to have the judgements of cassation courts reviewed is tantamount to legitimisation of illegitimacy. In the given circumstance it stands to reason to amend the organic laws "On General Courts" and "On the Supreme Court of Georgia", as well as the Criminal Procedural Code and the Civil Procedural Code of Georgia, and to determine as to which judicial body should reveal errors of law made by courts, consider recommendation addressed by the Public Defender and make relevant decisions.

One has to question the validity of the statement that the Criminal Procedural Code and the Civil Procedural Code of Georgia are based on the organic laws "On General Courts" and "On the Supreme Court of Georgia". It is interesting to know why should the Criminal Procedural Code and the Civil Procedural Code of Georgia be based on the said organic laws and not on the Constitution of Georgia. Why do the proponents of this approach refuse to acknowledge that according to Article 2 of the Criminal Procedural Code, the sources of the law of criminal procedure is the Constitution of Georgia, Georgia's international treaties and agreements, other laws, as well as universally recognised principles and norms of international law?

Article 6 of the European Convention on Human Rights and Fundamental Freedoms (Rome, 4 November 1950) states that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law".

The Criminal Procedural Code and the Civil Procedural Code of Georgia should provide for a possibility for a review of the

case and the issuance of a final decision by a specially established judicial body in the event of judicial errors, including those revealed in the course of examinations conducted by the Public Defender. In our view, such mechanism could be a Special Council established under the Chairman of the Supreme Court of Georgia that, in the event of judicial error, would present its opinion and request the Grand Chamber of the Supreme Court of Georgia to review the case.

We firmly believe that denial, in the event of judicial error, of the right to review the decision of the cassational court that has already entered into force, is expressly in conflict with the provisions of the European Convention on Human Rights and Fundamental Freedoms, since in case of judicial error the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal is violated.

Proceeding from the letter and spirit of this norm of international law, an unfair decision stemming from the judicial error committed by the cassational court is to be seen not only as the violation of the provision concerning a fair a public hearing, but also of the one that speaks about a hearing within a reasonable time. On many occasions the time allowed by the law for such a procedure is not fully used, which often leads to hasty and unfounded decisions. At the same time, the said Convention carries no provision that would prevent further movement of the case in process in the event of an unlawful decision by the court.

Similar provisions are contained in the relevant articles of the Constitution. The right of every individual to appeal to the courts to protect his rights and freedoms is not limited to the right to appeal to the first instance, appellate and cassational

courts, if there are reasonable doubts as to the validity of a decision taken by the court of cassation.

It is difficult to find any lawyer both on the theoretical and on the practical side who could give different interpretation of the provisions of international law and the Constitution of Georgia establishing the right for everyone to appeal to the courts to protect his rights and freedoms and demand a fair hearing by the court within a reasonable time. It seems that general courts represent the only exception. Anti-constitutional provisions contained in the Criminal Procedural Code and the Civil Procedural Code of Georgia, according to which the judgement of the cassation court is final and it cannot be reviewed in the event of judicial error, create fertile soil for unlawful decisions by the judges, and not infrequently incite them to issue such decisions.

In this context it is imperative to align the Criminal Procedural Code and the Civil Procedural Code of Georgia the provisions with European Convention on Human Rights and Fundamental Freedoms (Rome, 4 November 1950), the Constitution of Georgia and the Organic Law On the Public Defender of Georgia, to which end it will be necessary to make amendments and additions to the said bodies of laws, namely, to make it mandatory to consider the recommendations of the Public Defender of Georgia, and in the event of a judicial error – to enable the concerned party or the Public Defender to request the examination of an appeal and issuance of a decision.

We believe that such amendments to the Criminal Procedural Code and the Civil Procedural Code of Georgia will serve to significantly improve the situation of protection of human rights and freedoms in Georgia.

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

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Upon the recommendation of the Public Defender concerning S.Beriashvili's statement of the claim, the Isani-Samgori District Court of Tbilisi by its order of 25 October 2001 reversed, on the basis of Article 423, Part 1, Para. (a) and (b) and Article 430, Part 3 of the Civil Procedural Code of Georgia, the decision of the Samgori District Court of Tbilisi of 2 March 1999 concerning the invalidation of privatisation of the "Metsarme" (Entrepreneur) Joint Stock Company, and a new hearing of the case at the preparatory meeting was appointed for 9 November 2001.

Due to the absence from court of the third party, the hearing of the case at the preparatory meeting was postponed from 9 November to 21 November 2001.

According to the note by G. Onashvili, assistant judge of the Isani-Samgori District Court of Tbilisi dated 21 November 2001, the case was not considered on the appointed day owing to judge G.Utiashvili's sickness, and it was again postponed for a later date.

Materials of the case contain the order issued on behalf and under the name of G. Utiashvili which shows that the proceedings were suspended till 1 February. 2002 at the plaintiff's request, on the basis of Article 280 of the Civil Procedural Code, allegedly for the purpose of presenting the relevant documents to the court.

According to the claimant, S. Beriashvili, he did not apply to the court for suspension of the case. At the same time, the court did not hear the case on 21 November owing to the absence from court of G. Utiashvili, who had an incurable disease. Thus, the order of 26 November 2001 on suspension of the case, not signed by G. Utiashvili, must be a forgery, the more so as Article 280 of the Civil Procedural Code of Georgia does not provide for the suspension of proceedings at the plaintiff's request for the submission of documents.

There seems to be another forgery, namely the written instructions, allegedly by G. Utiashvili, on the letter of 20 November 2001 issued by the "Khuntsaria and Partners" law firm: "To the assistant judge: the application to be satisfied and the indicated persons be engaged in the preparatory meeting. Sincerely, G. Utiashvili". As already mentioned, on the said day, and later, G. Utiashvili was absent from his office. Later he died.

Only on 1 February 2002, as per written instructions of the Chairman of the district court, was the case reassigned to Judge G. Nachkebia, who took no action until 23 May 2002.

Thus between 26 September 2001, after Judge G. Utiashvili's death and 23 May 2002, i.e. during 8 months, until the case was assigned under the order (Judge G. Nachkebia) to the Chairman of the court for its collegial examination, there was no action by the court, which is an infringement of Article 26, Part 1 of the Civil Procedural Code of Georgia.

One month and 3 days later, namely on 27 June 2002, G. Nachkebia (Chairman), Lomidze and Bakradze issued a ruling to refer the case, according to judicial jurisdiction, to the Administrative Chamber of the Tbilisi Regional Court.

However, the case was not transferred without delay and only reached the court 19 days later, on 16 July 2002. In this case, in addition to the already described breaches, the court was also unable to meet the provisions of Article 22 of the Civil Procedural Code, according to which the court should have examined the case and decide on the merits, even if later it would have been examined by other court.

The Tbilisi Regional Court, for its part, did not respect the statutory period of 5 days, prescribed by Article 183 of the Civil Procedural Code, and with a delay of 18 days, on 9 August 2002, issued an order (Chairman: A.Pruidze, T.Shevashidze and I. Zarkua) to refer the case to the Chamber of Administrative and Other Categories of Cases of the Supreme Court of Georgia in order to determine a controversy concerning the judicial jurisdiction. Here, too, the court violated provisions of Article 286 of the Civil Procedural Code and served a photocopy of this order to S.Beriashvili, the claimant, only on 15 October 2002, i.e. with a delay of 2 months and 6 days.

Despite the claimant's persistent written applications and verbal requests, the Tbilisi Regional Court and the Supreme Court of Georgia refuse to provide information concerning the acceptance of the case or the date of hearing. Neither is the applicant aware of the jurisdiction within which the case is to be considered.

Thus, in contravention of Article 59 of the Civil Procedural Code of Georgia, according to which examination of civil cases shall start not later than 2 months after the acceptance of application (for particularly complicated cases the allowed period is 5 months), examination of S.Beriashvili's claim has been unfoundedly delayed for 11 months.

On 25 October 2002, I addressed Recommendation No 1773/03/281-b to the Chairman of the Supreme Court of Georgia and requested him to consider the issue of disciplinary responsibility of those judges of the Tbilisi Regional Court and the Supreme Court whose negligence led to a prolonged violation of the statutory period prescribed by the law for examination of claims.

In his letter, the Chairman of the Supreme Court informed me that he brought up with the Chairman of the Tbilisi Regional Court the question concerning the failure by the judges of the Chamber of Administrative Justice and Tax Issues of the same court A.Pruidze, T.Shervashidze and I.Zarkua to serve to the parties the decision on the judicial jurisdiction in accordance with the statutory procedure – it was served to S. Berishvili with a delay of 2 months. As far as other violations are concerned, the Chairman of the Supreme Court chose not to give his evaluation of these in his letter.

* * *

On 31 October 2000, G. Jikia residing at 27, V.Orbeliani street, Tbilisi, applied to the Chairman of the Mtatsminda-Isani District Court of Tbilisi with a petition concerning the changes to be introduced in the order on his reinstatement in office.

By the decision of 14 November 2001, Judge Z. Mebonia (clerk of the court: N.Tarkhnishvili) (Case No 2/629) satisfied the claim and introduced changes in Order No 549 issued by the Minister of Internal Affairs of Georgia on 17 October 1986. Namely, the word " new recruitment " was changed by the word "reinstatement" and the period of involuntary inactivity - from 21 December 1981 to 17 October 1986 (4 years, 10 months and 27 days) was included in the length of service.

The circumstances used to validate the claim on introducing changes in the Order of Minister of Internal Affairs of Georgia, as well as allegations to be used as legal rationale by the court were taken by Z.Mebonia as an established fact which he did not even try to substantiate, which is an infringement of Articles 105 and 249 of the Civil Procedural Code of Georgia.

More specifically: the judge made no request for information to the Ministry of Internal Affairs. Neither was the claimant able to present to the court a relevant document. Nevertheless, the judge assumed that the Ministry of Internal Affairs must have issued a resolution by which G. Jikia was reinstated in office, and took it for an established fact.

There is no such resolution available to the Ministry of Internal Affairs, neither was it ever drafted in the past. On the contrary, the Public Defender has available the resolution of the Personnel Department of the Ministry of Internal Affairs of Georgia dated 26 August 1986, by which G. Jikia was recruited again, and not reinstated in office.

G. Jikia did not deny this fact in his claim: he was aware that he was re-recruited and not reinstated in office. By way of proof, he pointed to the decision of 13 October 1986 of the Personnel Department of the Ministry of Internal Affairs of Georgia. At the same time, he deliberately gave false evidence stating that despite the issuance of a special resolution by the Personnel Department of the Ministry of Internal Affairs denying G. Jikia's professional incapacity for the post and stressing that the penalty was overly strict, he was nevertheless recruited, and not reinstated in office, by the Ministry of Internal Affairs, for which reason he requested that changes be introduced in the relevant order.

Later, when the issue on violation of the statutory period of claim was raised during the hearing, he falsely alleged at the court session of 14 November 2001 that he only learnt about his re-recruitment, and not reinstatement, by the Ministry of Internal Affairs in 2000 (he allegedly forgot the month) at the session of the Commission ascertaining the length of military service, and within one week applied to the court with a petition.

The minutes of the session of the Commission tasked with ascertaining the length of service for award of long-service bonus by the Prosecutor General's Office shows that the length of G. Jikia's service at the bodies of the Ministry of Internal Affairs, Ministry of Defence and the Chief Military Prosecutor's Office was ascertained not in 2000, but on 29 August 1994.

Despite the fact that G. Jikia alleged at the court session that he only learnt about his new recruitment, and not reinstatement, by the Ministry of Internal Affairs at the session of the Commission ascertaining the length of service, Z. Mebonia did not request any documents either from the General Prosecutor's Office or from the party to the case, in order to verify the dates of the Commission's work. Apart from that, he failed to take into account G. Jikia's admission, contained in his claim, according to which he was aware of his re-recruitment. This notwithstanding, Z. Mebonia did not request from the Ministry of Internal Affairs any document (that does not exist) to confirm that G. Jikia was reinstated in office, unfoundedly accepted the claim and without any grounds whatsoever had the changes made in Order No 49 of the Ministry of Internal Affairs dated 17 October 1986 where the words "recruit again" is substituted by the word "reinstate".

It has been established that G. Jukia and Z. Mebonia studied together at the Law Department of the Tbilisi State University. Considering that this could have raised doubts as to his impartiality, Z.Mebonia should have not participated in the examination of the case, as stipulated by Article 31, Part 1, Para. (d) of the Civil Procedural Code of Georgia. In addition, according to Article 32 of the Code, he should have taken a self-exception.

On 29 October 2002 I addressed Recommendation No 34/03 concerning this case to the Chairman of the Tbilsi Regional Court Mr. D. Sulakvelidze, requesting to consider imposing disciplinary responsibility on Z. Mebonia.

Reasoning that the Ministry of Internal Affairs has not applied its right to appeal the decision, the Chairman of the Court did not examine the legality of the judge's decision. Neither did he consider that the studies with G.Jikia at the Law Department of the Tbilisi State University could cast any doubt as to Z.Mebonia's impartiality as a judge.

* * *

Examination of G.Chumburidze's application makes it clear that "Arili-2000" Ltd. was established by the order of the Ministry of State Property Management of Georgia dated 21 June 2000 on the basis of a motor transport facility, "Avtoservis-96" and "Arili". On the basis of a contract, "Arili-2000" performed repair and restoration works worth 93095 USD (119353 GEL). By the decision of 25 September 2001 issued by Judge N.Zarkua of the Didube-Chugureti District Court of Tbilisi, "Arili-2000" Ltd. was charged with the payment of this sum in favour of G. Chumburidze. However,

the debt has not been reimbursed to this date and litigation has been going on for years, which in our view is due to some judges.

On 24 December 2002 I addressed a recommendation to the Chairman of the Supreme Court of Georgia, Mr.L.Chanturia, requesting to consider imposing disciplinary responsibility on the judges. However, Mr. Chanturia believes that there has been no violation of provisions of the law in the proceedings, while by Decision No 1/435-2003 on the same case issued on 6 January 2002 by the Council of Justice, the actions of Ms. L. Mskhiladze, the judge of the Didube-Chugureti District Court are qualified as violation of the law.

* * *

Conclusions of the Department of State Property Management of the Tbilisi Municipality, Special Commission established by Resolution No 705 (2001) of the Premier of Tbilisi, and the Georgian Chamber of Control concerning the opening and operation, in the territory of the Saburtalo Agrarian Market, of the company shop of the Tbilisi Bread-Baking Plant No.5 establish that the non-residential area occupied by the "Lomoido" Ltd. represented the property of the "Saburtalo Market 2000" Ltd., that has been lawfully reinstated to it through our active intervention and the 8-year-long efforts on the part of Ms. N.Tsikarishvili, director of the market. Presently, the staff of the market fights against unlawful occupancy by another company, "Mamuli" Ltd., of the territory belonging to the market. According to the decisions issued by the District, City, Regional and the Supreme Courts, the contested area is the property of the market. However, the

dispute has been going on and will probably continue in future, unless the case is heard and examined in trial by the court. Hereby I refrain from any detailed analysis of the case, to avoid being misinterpreted. I only want to say that Ms. N.Tsikarishvili has experienced lawlessness firsthand. By the judgement of 13 November 1986 she was sentenced to 14 years of deprivation of liberty, and after 4.5 years of imprisonment, by resolution of 16 July 1993 of the Supreme Court of Georgia she was rehabilitated. By the order of the Tbilisi Prosecutor's Office dated 5 March 1999, the criminal charge against her was dismissed on account of absence of crime in the act. I am saying this in order this stress that Ms. N. Tsikarishvili is a fighter for her rights. No everyone dares to fight in order to protect his rights and we, the human rights organisations, are called to assist in this cause.

***

Mr. J.Gersamia, Chief Engineer of the Sea Trading Port of Poti was dismissed from his post on 12 August 1996 by the order of the port director, and from 1 October 1996 this position was eliminated owing to the downsizing of staff. On 18 December 1996, The Poti Court satisfied J.Gersamia's claim and ordered to reinstate him in his previous position. Despite the entry into force of the court decision, J.Gersamia still remains out of office, having his labour rights violated for 6 years. Recommendations concerning this matter have been repeatedly addressed to the Ministry of Transport of Georgia, and the Sea Trading Port of Poti. The issue was discussed in the 1998-1999 Parliamentary Report of the Public Defender, with no actual results to this day. Citizen J.Gersamia legitimately demands restoration of his impaired rights. On 31 October 2002 we requested the Ministry of Transport and Communications of Georgia to address this issue, however the failure by the

Ministry of Transport and the enforcement officer to exercise their powers under the law has resulted in a continued impairment of J.Gersamia's rights.

* * *

Ms. M.Betsiashvili, Director of the secondary school at the village of Vejini, was dismissed from her post on 8 June 1995 by the order of the Minister of Education of Georgia. The case was refereed to the court and by the decision of 26 August 2002 of the Didube-Chugureti District Court of Tbilisi she was reinstated in office. The court decision was enforced by the order of the Minister of Education issued on 26 August 2002, and M.Betsiashvili entered upon her official duties as director of the school. However, two weeks later, on 13 September 2002, the Ministry, without a proper consideration of the case, again dismissed M. Betsiashvili from office alleging that "the decision of the court on M.Betsiashvili's reinstatement in office was received by the school's teaching staff with anger and indignation, and they requested to suspend the order pending proper examination". However, the case has not been considered in accordance with the established procedure. The judicial decision remains unexecuted and M. Betsiashvili again seeks to protect her rights through the court.

* * *

Citizen K.Adamia's labour rights have been the matter of consideration by the Public Defender's Office since 1998. Relevant recommendations have been addressed to the Ministry of Justice where she was dismissed from the advisor post of the Citizenship and Immigration Department on the management's initiative without any proper grounds for

dismissal. The issue was discussed in our pervious parliamentary report. However, the problem remains and I have to revert to this issue in the light of the new circumstances. When the announcement on two openings for the said position were published in the press, we recommended, by way of proposal, to appoint K. Adamia to the advisor post without selection competition, the more so as by the order of the Ministry, dated 14 March 2002, she had included on the shortlist. On 13 June 2002 we received a letter from the Ministry indicating that "the management and the Selection and Attestation Commission sees it reasonable to hold a selection competition, given the availability of several candidates on the shortlist", and that K.Adamia was required to take part in the selection competition. According to Article 30, Para.(c) of the Law on Public Service, shortlisted candidates can be appointed without any competition, and under Article 5 of the General Administrative Code, an administrative body has no right to effect any action contradicting the law. This notwithstanding, the selection competition was held and K. Adamia passed it successfully. However, one out of 4 candidates who took part in the selection competition, interestingly, the one not included in the shortlist, was appointed to one of openings. As for the remaining 3 candidates, because it was impossible to give preference to one of the candidates, the results of the competition were considered null and void. On 10 August 2002, the newspaper "Sakartvelos Respubika" again announced a selection competition, and on 23 August applied for participation. At the same time, on 1 August 2002, she filed an administrtaive claim with the Krtsanisi-Mtatsminda District Court of Tbilisi. On 5 August 2002, the case was referred by jurisdiction to the Tbilisi Regional Court. The decision of 11 December 2002 of the Collegium of Administrative Justice and Tax Issues of the Tbilisi Regional Court invalidated the decision of the

Selection and Attestation Commission according to which the competition for the position of adviser of the Citizenship and Immigration Department was considered null and void. The Minister of Justice of Georgia was tasked to issue and administrative enactment on the appointment of shortlisted reservist K.Adamia to the position of adviser at the Citizenship, Legal Status Registration and Immigration Department. True, the Court decision has not entered into force, as it is examined by cassation at the Supreme Court of Georgia, but our recommendations are in full consonance with the decision of the Tbilisi Regional Court stating that K. Adamia's labour rights are impaired. I want to once again appeal to Mr. R. Giligashvili to have K. Adamia's impaired labour rights restored.

* * *

In 2001, The Constitutional Court of Georgia abrogated certain articles of the Law "On Relations Arising from the Use of Housing" and requested the Parliament of Georgia to introduce a number of amendments in this law, taking into account the existing factual circumstances. However, the Law still remains unamended. This creates hurdles with compensation for the housing. Currently, the Legal Committee of the Parliament is drafting a law to carry out the resolution of the Constitutional Court, which, in our view, should provide for protection of both the lessor's and lessee's rights. However, the adoption of the law has been delayed for the second year already, which causes the citizens' legitimate dissatisfaction. For instance, N.Tkeshelashvili, Chairman of a Georgian NGO "Union for the Protection of Housing Buyers' Rights" thinks that failure to adopt the law has created multiple problems for citizens willing to purchase housing, as lack of the documentary proof of a deal in the form of contract presents an insurmountable obstacle. As

known, the buyer can only present a received "unofficial receipt" as a proof of transaction, and even this is not always available. On the other hand, the Constitutional Court refuses to recognise the unofficial receipt as the documentary evidence, which enables housing owners not to consider their previously expressed will. In this context the Union believes that since the party to a deal is fully aware of the deal substance, it has to be interpreted in accordance with the Civil Code effective at the time of entry into relations.

* * *

Citizen E.Abashidze filed a claim with the Vake-Saburtalo District Court of Tbilisi on allegation of the damage of 437 GEL caused to his residential apartment by the claimant's neighbours. By the decision of the district judge, Mr. N.Durglishvili delivered on 25 March 2002, the court did not satisfy the claim and indicated that E. Abashidze had the right of appeal of the court decision within one month. E. Abashidze used the right of appeal, however on 7 June 2002 the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Tbilisi Regional Court adjudicated (M. Nasaridze, M.Partsvania, Ts.Devrisashvili) that under Article 365 of the Civil Procedural Code of Georgia, appeal is only accepted in case it concerns the amount above 500 GEL. The Chamber of the Supreme Court confirmed this judgement on 28 October 2002. Thus, the law *a priori* impairs the citizen's rights, as it prevents him to file an appeal. However, under Article 42 of the Constitution "each individual has the right of appeal to the courts to protect his rights and freedoms". E. Abashidze has been deprived of this right. Presently, we are preparing a constitutional claim. I would only add that Judge N.Durglishvili of the Vake-Saburtalo District Court should have known the provision of

the law concerning the appeal procedure, and he should have informed E. Abashidze accordingly.

On the Responsibility of the Prosecutor General and Chief Military Prosecutor for Professional Incapacity, and Inappropriate Response Concerning Extradition of Chechen Nationals

On 5 July 2002, I addressed Recommendation No. 453/04-14 to the Prosecutor General of Georgia questioning the reasonableness of further stay of G. Jikia, the Chief Military Prosecutor of Georgia, in office.

My recommendation was motivated both by G. Jikia's professional performance and his personal traits, continued abuses and frauds committed by him in the discharge of duty, leading to a high risk of violation of human rights and freedoms.

By decision No 25 (4 December 1981) of the Ministry of Internal Affairs of the Georgian SSR, and the order of the Minister of Internal Affairs of 21 December G. Jikia was discharged from the Internal Affairs bodies as professionally incompatible with the job.

The reason for his dismissal was that during his service as Head of the Investigation Subdivision at Marneuli, he, together with investigators A.Natadze and L.Panasyan, conducted a biased and prejudiced preliminary investigation on the criminal case initiated on allegation of profiteering against Karapetyan and Akopov, by which he tried to corroborate a dubious alibi raised by the perpetrators.

In November 1982, the Collegium of the Ministry of Internal Affairs of Georgia considered G. Jikia's petition and by unanimous decision of all members of the Collegium refused to reinstate him in office. Notable, G. Jikia's behaviour at the session of the Collegium was defiant and provocative.

In 1986 G. Jikia filed a petition with the new leadership of the Ministry, in which he admitted his past errors and requested to reinstate him at the bodies of internal affairs.

In October 1986, considering his past professional experience, the Ministry of Internal Affairs decided to recruit him again to the internal affairs bodies. On the basis of a letter of 22 September 1986 of the Gardabani District Department of Internal Affairs, and the Resolution of 9 October 1986 of the Personnel Department of the Ministry of Internal Affairs, G. Jikia was appointed as expert criminologist of the Marneuli District Division of Internal Affairs.

On 21 October 2000, in violation of the statutory period prescribed by Article 204, Parts 1 and 5 of the Labour Code of Georgia, G. Jikia applied to the Krtsanisi-Mtatsminda District Court of Tbilisi with a petition to render unlawful the wording of Order No. 949 of the Ministry of Internal Affairs of Georgia of 13 October 1986 concerning his recruitment for the job. In the same claim, G.Jikia admitted that on 13 October 1986 he started working at the Gardabani District Division of Internal Affairs by the order of the Minister of Internal Affairs not through reinstatement in office, but through new recruitment.

Later, when the question on violation of the statutory period prescribed by law for filing of a claim was brought up during the hearing, he falsely alleged at the court session of 14 November 2001 that he only learnt about his new recruitment,

and not reinstatement, by the Ministry of Internal Affairs in 2000 (he allegedly forgot the month) at the session of the Commission ascertaining the length of military service, and within one week applied to the court with a petition concerning the changes to be introduced in the order on his reinstatement in office. Notably, he failed to present to the court any document to prove his words. Neither was any such document available in the materials of the case.

The minutes of the session of the Commission tasked with ascertaining the length of service for award of long-service bonus by the Prosecutor General's Office shows that the length of G. Jikia's service at the bodies of the Ministry of Internal Affairs, Ministry of Defence and the Chief Military Prosecutor's Office was ascertained not in 2000, but on 29 August 1994, which proves once again that he misled the court, which is an inappropriate conduct for an executive.

It is to be noted that he failed to present to the court the document referred to in his claim, according to which the Personnel Department of the Ministry of Internal Affairs allegedly denied G. Jikia's professional incapacity and stressed that the penalty was overly strict. Neither is any such document available in the materials of the case. On the contrary, according to the resolution of the Personnel Department of the Ministry of Internal Affairs of Georgia dated 26 August 1986, G. Jikia was recruited again, and not reinstated in office.

Thus, according to G. Jikia's claim, in 1986 he was aware of the unreasonableness of his dismissal from the bodies of internal affairs for professional incapacity, and his new recruitment, and not reinstatement, at the Gardabani District Division of Internal Affairs. Despite that, it took him 14 years,

instead of one month prescribed by the law, to appeal this resolution.

Apart from that, on 30 November 2000 G. Jikia filed an application with the Krtsanisi-Mtatsminda District Court of Tbilisi concerning the substantiation of his participation in the military operation in Abkhazia, which the court satisfied by its decision of 1 March 2001 (case 2/830).

G. Jikia annexed his application with the document of battlefield inquiry signed by T. Mirianashvili, Chief of the Legal Department of the Ministry of Defence; T.Sharashidze, Chief of the Anti-Drug Department of the Ministry of Internal Affairs and L. Pavlenishvili, Chief of the 1st Department, Deputy Head of the Department of Law and Order of the Army Service of the Ministry of Defence.

I obtained a conclusion, signed by L. Pavlenishvili on 21 October 1999, which shows that signatures affixed on the two documents on behalf of the latter belong to different persons.

L. Pavlenishvili stated in a private conversation that the document of battlefield inquiry was not signed by him, which should have become a subject for further investigation.

In view of the expiry of a one-month period established by Article 24 of the Organic Law on the Public Defender of Georgia for consideration of recommendations and proposals, on 29 August 2002 I addressed the Prosecutor General with Letter No. 558/03 with a request to provide to the Public Defender materials related to G.Jikia's case.

On 9 September 2002, the General Prosecutor's Office forwarded its conclusion "On information concerning the

malpractice by the Chief Military Prosecutor of Georgia G. Jikia disseminated by mass media, G. Jikia's letter and explanatory note addressed to the Prosecutor General, and facts pointed out in the Public Defender's letter addressed to the Prosecutor General".

I wish to note that by its structure, form and content, the conclusion does not comply with the existing requirements. Namely, it does not contain any section intended for confirmation of the conclusion by the Prosecutor General, neither does it contain the substantive part intended for evaluation of the examined facts and proposals concerning the elimination of deficiencies and imposition of disciplinary responsibility on the culpable persons, or grounds for not taking such action.

The descriptive part of the Prosecutor General's conclusion confirms the charges, mentioned in the Recommendation of 5 July 2002, that G. Jikia had acted for mercenary motives in the investigation of a concrete criminal case, for which reason, by the decision of the Collegium of the Ministry of Internal Affairs of 4 December 1981 he was discharged from the bodies of internal affairs for professional incapacity and incompatibility. On 25 and 31 November 1982, the Minister of Internal Affairs of Georgia advised the Head of the Personnel Department of the USSR Ministry of Internal Affairs of the grounds for the decision of the Collegium, and informed him that the Ministry of Internal Affairs considered G. Jikia's petition for reinstatement in office and refused to satisfy it.

The conclusion points out that in April 1986, G. Jikia filed an application with the newly appointed Minister of Internal Affairs in which he did not challenge the rightfulness of the penalty imposed on him and expressed his consent to accept

the post of inspector at the Tskhakaia District Department of Internal Affairs offered to him.

The General Prosecutor's Office agreed to my opinion concerning G. Jikia's appointment, as a newly recruited and not reinstated officer, to the position of expert criminologist at the Gardabani District Department of Internal Affairs.

The conclusion affirms that G. Jikia was not reinstated in the bodies of internal affairs, and his judicial recourse was motivated by a desire to return to his position, be compensated for involuntary inactivity and establish an uninterrupted record of service.

The conclusion also affirms that the G. Jikia applied to the court in violation of the statutory period of claim, and in order to refute the opposite view of the defendant's (the Ministry of Internal Affairs), he falsely alleged at the court session that he only learnt about his new recruitment, and not reinstatement, in 2000 (though he failed to specify the time) at the session of the Commission of the Prosecutor General's Office ascertaining the length of service. As reported, the session of the Commission was held not in 2000 (as alleged by G. Jikia), but on 29 August 1994, which is corroborated by the signatures of former First Deputy Chief Prosecutor General G. Zagania and 4 members of the Commission.

The conclusion affirmed the facts pointed out in my recommendation and covered by mass media concerning delays in initiation of criminal charges, protraction of investigation on some categories of cases, placement of suspects in pre-trial detention cells of the military commandant's office, as well as other violations in the operation of the Chief Military Prosecutor's Office.

Thus, the conclusion of the Prosecutor General's Office fully corroborated the facts, indicated in my recommendation, of G.Jikia's unlawful recourse to the court with a claim to have changes introduced in the order of the Ministry of Internal Affairs concerning his discharge from office for mercenary motives in his actions and deliberately false representation of facts in order to justify violation of the limitation of action.

In this context I can hardly accept the half-way evaluation, contained in the conclusion, on "possible lawfulness of G. Jikia's actions".

On 18 September 2002 I addressed the Prosecutor General of Georgia with Recommendation No 482/03 in which I brought up the issue of Jikia's dismissal from the post of the Chief Military Prosecutor of Georgia in view of the numerous facts of abuse of powers and misuse of office that undermine his authority, negatively affect the discharge by him of his official duties, create conducive conditions for widespread violations of human rights.

The Prosecutor General considered my recommendation only on 7 October 2002, with a delay of over one month, violating therewith the one-month statutory period prescribed by Article 24 of the Organic Law on the Public Defender for consideration of the latter's recommendations, and informed me on 9 October 2002 of his refusal to act on my recommendation.

The Prosecutor General gave rationale for his decision, reasoning that G. Jikia's recourse to the court with a claim for having changes introduced in the Order of the Ministry of Internal Affairs dated 17 October 1986, and, hence, the decision of the Krtsaninsi–Mtatsminda District Court of Tbilisi

of 14 November 2001 to satisfy his claim are possibly unlawful, but the decision has already entered into force and the Prosecutor's Office is not authorised to raise the question of the review of judgement, whereas the court, in order to reverse the decision, would first have to satisfy itself concerning the incontestability of the facts.

True, the decision of the Krtsaninsi–Mtatsminda District Court of Tbilisi of 14 November 2001 concerning the changes in the in the Order of the Ministry of Internal Affairs dated 17 October 1986 has entered into force and Prosecutor's Office is not authorised to raise the question of the review of judgement, but it does not rule out the placing of moral responsibility on G. Jikia for giving deliberately false information concerning his discharge from the bodies of internal affairs, and intentionally misleading the court in trying to justify the violation of the statutory period of the claim.
As far as the lawfulness of the decision of the Krtsanisi-Mtatsminda District Court of Tbilisi is concerned, it can be examined in accordance with the procedure prescribed by the Civil Procedural Code of Georgia.

Despite the availability in Jikia's personal history of records concerning his abuses and malpractice pointed out in my recommendation, the leadership of the Prosecutor Genera's Office of Georgia promoted him to the position of Head of the Department of the Chief Military Prosecutor, and one year later – to the position of Chief Military Prosecutor of Georgia, he was awarded the military rank of Major-General of Justice and nominated for the Order of Vakhtang Gorgasali.

The Prosecutor General of Georgia seems not to take a determined and legally provided approach to the problems

concerning the extradition of Chechen nationals to the Russian Federation.

On 4 October 2002, The Prosecutor General's Office of Georgia extradited to the law-enforcement bodies of the Russian Federation, at their request, 5 citizens of Chechen origin, held criminally liable under Articles 314 and 235 of the Criminal Code of Georgia for the transfer across the customs border of Georgia of large quantities of movable items, unlawful possession, use and transfer of firearms and materiel.

Extraditions were effected in violation of the rights of those extradited stipulated by the law, such as access to legal advice and recourse to the court for defending themselves, and without properly collecting, in respect of some of them, personal data and evidence relating to the crimes committed by them in a foreign state.

In his letter No 35/1-1319-02 of 27 September 2002, the acting Prosecutor General of the Russian Federation, V.V.Kolmogorov requested his Georgian counterpart to address the question of extradition to the Russian Federation, together witt other detainees, of Adlan Lechi Adaev. The files concerning extraditions contain ordinances on institution of criminal proceedings against the person reported as the accused and prescription of imprisonment as a measure of restraint. The ordinances indicate that he was born in 1974 in the village of Yandy of the Achkhoi-Martanski district of the Chechen Republic. The materials also contain the old Soviet passport, confiscated during the apprehension indicating that the holder of the passport is not Adlan Lechi Adaev, but Aslan Lechi Adaev, born in the village of Orekhovo, and not Yandy. The record of interrogation conducted on 6 August 2002 by the Ministry of Security of Georgia clearly demonstrates that the

prisoner extradited to the Russian side was not Adlan Lechi Adaev born in 1974, but Aslan Lechi Adaev born in 1968.

Despite the record of interrogation conducted on 6 August 2002 by the investigative service of Ministry of Security of Georgia, indicating the name Aslan Lechi Adaev, the ordinance of the General Prosecutor's Office of Georgia dated 2 October 2002, signed by L. Darbaidze, prosecutor of the Foreign Relations Department of the General Prosecutor's Office, and P.Mskhiladze, Chief of the said department, and approved by V. Benidze, deputy Prosecutor General, states that the person to be extradited to the Russian Federation is Adlan Lechi Adaev.

The files also contain the record of 13 September 2002 signed by L. Darbaidze, prosecutor on probation at the Foreign Relations Department of the General Prosecutor's Office, V.K.Kheryanova, senior prosecutor at the same department and detainee A.L.Adaev, indicating that the latter refused to testify concerning extradition on the grounds of non-presence of his lawyer during the interrogation, which signals the violation of Article 259, Part 4 of the Criminal Procedural Code of Georgia by the prosecuting bodies.

This warrants a conclusion that on 4 October 2002, he Prosecutor General's Office of Georgia extradited to the law-enforcement bodies Russian Federation, not Adlan Lechi Adaev, requested by them, born in 1974 in the village of Yandy of the Achkhoi-Martanski district of the Chechen Republic, but Aslan Lechi Adaev of the village of Orekhovo of the same district, born in 1968, who was deprived of the right to have access to legal assistance and apply to the court to defend himself.

Under the order of A.Gribenyukov, investigator of cases of particular importance of the Prosecutor's Office of the Chechen Republic, dated 22 September 2002, criminal proceedings were initiated against Faizula Ayub Baisarov, born in 1977. The same person is indicated in the order of 16 August 2002 on prescription of imprisonment as a measure of restraint.

However, according to the order of V. Osipov, senior investigator of the Prosecutor's Office of the Chechen Republic, dated 8 August 2002, criminal charges were initiated against Seibula Aibul Baisarov, and the same person, by the order of the Deputy Prosecutor of the Chechen Republic of 8 August 2002 was given imprisonment as a measure of restraint .

Letter No 8/2099 of the Passport and Visa Service of the Chechen Republic dated 8 August 2002 points not to Feizula Ayub Baisarov, or Seibula Aibul Baisarov, but Seizula (Faizula) Ayub Baisarov, born in 1976.

However, on 5 August 2002 the investigative service of the Ministry of Security of Georgia carried out interrogation and heard testimony of a different person, namely Feizul Aiub Baisarov born in 1977.

Given these circumstances, before establishing complete and authentic data, it is inadmissible to extradite persons, named by the prosecuting agencies of the Russian Federation. At the same time it is imperative to make available to detainees the rights provided under international and domestic law, such as access to legal assistance and recourse to the court to defend them.

Another contradiction can be seen in the request of the Prosecutor General's Office of the Russian Federation concerning the extradition of Temur Sultan Baemurzaev.

Under the order of A.Gribenyukov, investigator of cases of particular importance of the Prosecutor's Office of the Chechen Republic, dated 22 September 2002, accusations were brought against Timur Sultan Baemurzaev, born in 1974.

By the order of V. Osipov, senior investigator of the same Prosecutor's Office, dated 8 August 2002, criminal charges were initiated against Timur Sultan Baemurzaev, born in 1974. However, investigator Z.Vanishvili of the investigative service of the Ministry of Security of Georgia carried out interrogation and heard testimony of a different person, namely Temur Sultan Baemurzaev born on 10 June 1975.

Thus, one can notice contradictions and inconsistency in the materials of the Prosecutor's Office of the Chechen Republic: on the one hand, they initiated criminal proceedings against Timur Sultan Baemurzaev, born in 1974, however, on the other hand, materials of the investigative service indicate another person, namely Temur Sultan Baemurzaev born in 1975. Therefore, before collecting complete and reliable information about the persons concerned and establishing conclusive and sufficient evidence of a crime, it is inadmissible to extradite them to the Russian Federation. At the same time it is imperative to make available to detainees the rights provided under international and domestic law, such as access to legal assistance and recourse to the court to defend them.

Under the order of A.Gribenyukov, investigator of cases of particular importance of the Prosecutor's Office of the Chechen

Republic, dated 22 September 2002, criminal proceedings were initiated against Khazmat Golidkovich Isaev, born in 1972.

By the order of V. Osipov, senior investigator of the Prosecutor's Office of the Chechen Republic, dated 8 August 2002, criminal charges were initiated against Khazmat Golidokievich Isaev, whereas by the ruling of A. Alkhanov, judge of the Staropromyslovski District Court of Grozny, dated 16 August 2002, imprisonment as a measure of restraint was prescribed not for Khazmat Golidkovich Isaev, born in 1972, but for Khazmat Golidokievich Isaev born in 1975.

On 5 August 2002, investigator A. Khurtsidze of the investigative service of the Ministry of Security of Georgia carried out interrogation and heard testimony of an absolutely different person, namely Khazmat Movlidovich Isaev, born on 18 October 1974.

Hence, before establishing complete and authentic data about the persons concerned, it is impermissible to extradite them to the Russian Federation. At the same time it is imperative to enable Khazmat Movlidovich Isaev have implemented the rights provided under international and domestic law, such as access to legal assistance and recourse to the court to defend himself.

In October 2002, namely on 11 and 24 October, I addressed letters No. 663/03 and 696/01 to the Prosecutor General of Georgia, inviting him to make available to me, under Article 23 of the Organic Law on the Public Defender, the reliable data concerning the persons requested by the Prosecutor General's Office of the Russian Federation and evidence of their crimes collected by law-enforcement of both the Russian and Georgian sides. However, the Prosecutor General's Office

ignored the requirements of the law and has failed to provide me with the relevant information.

As for verbal explanations given by officers of the Prosecutor General's Office of Georgia concerning photograph identification of the persons concerned by the law-enforcers of the Russian Federation, they cannot be considered as a valid argument and taken as competent evidence, as according to Article 347, Part 7 of the Criminal Procedural Code of Georgia, photograph identification is only possible in special cases, when investigative action in respect of a person cannot be performed due to absence of a person, and lack of information concerning his whereabouts.

The Georgian and the Russian sides are both signatories to the Minsk Convention of 22 January 1993 "On Legal Assistance in Civil, Family and Criminal Cases, and Legal Relations"; besides, the General Prosecutor's Offices of the Russian Federation and Georgia signed an agreement on mutual assistance in legal matters. In this context, failure to perform identification in accordance with the provisions of the criminal procedural law is inadmissible, as it impairs the rights of the accused persons.

According to the letter of 6 November 2002 addressed to the Ministry of Justice of Georgia by Section 4 of the European Court of Human Rights, the Court Chamber invited the governments of Georgia and the Russian Federation to make a written submission concerning the admissibility of the case and its examination on merits. The same letter pointed out that the temporary sanctions taken by the Vice-President of the Chamber under Article 39 of the Regulations of the Human Rights Courts and supported by the Chamber were extended till 26 November 2002.

As breaches of justice by the Prosecutor General of Georgia with respect to G.Jikia's case and the question of extradition of Chechen nationals were interpreted by me as extraordinary cases on the basis of Article 21, Para. (j) of the Organic Law on the Public Defender of Georgia, on 11 November 2002 I addressed Recommendation No. 736/01 to the Chairman of Parliament Ms.Nino Burjanadze proposing that pending setting up a temporary investigation commission of the Parliament, the question of responsibility on the part of the Prosecutor General of Georgia Mr. N.Gabrichidze and the Chief Military Prosecutor of Georgia MR. G.Jikia be considered by the ad hoc commission of the Parliament of Georgia tasked with examining the actions by certain officials. However, the recommendation was referred to the Legal Affairs Committee of the Parliament of Georgia that returned it to the Chairman of the Parliament. Consideration of the recommendation is deliberately protracted to this day.

On Mass Violations of Human Rights and Freedoms in the process of the So-Called Anti-Criminal Operation, and on Responsibility of Power Structures' Leaders

The so-called anti-criminal preventive operation held on 7 December 2002 in Tbilisi with major infringements of international norms and standards, resulted in gross violations of the rights and freedoms of Georgian citizens, and foreigners residing in Georgia.

Particularly alarming is the fact that the operation was carried out under the joint plan elaborated by the Ministry of Internal

Affairs, Ministry of Security and the General Prosecutor's Office.

I insist that this action by the power structures of Georgia signalled a rejection of democratic values gained by the state, and furnished a clear example of violence and lawlessness. Particularly alarming is the massively cynical character of the operation, with minors, women and old people apprehended in the process.

Chechens represent an absolute majority of those subjected to this outrageous violation of human rights, which led to their well-founded fears of deportation to the Russian Federation, as all of them were photographed and their fingerprints taken.

The operation was conducted with the armed invasion of the homes of innocent persons by representatives of power structures, their arbitrary and illegal apprehensions, initiation of criminal charges against them, denial of the right to have access to legal assistance, physical violence and verbal assault against journalists covering these events.

In the course of this expressly and deliberately illegal operation by power structures, their representatives committed criminal offences punishable under Articles 143 (unlawful deprivation of liberty), 146 (malicious criminal prosecution of innocent person), 147 (malicious illegal arrest or detention), 154 (illegal interference into professional activity of journalists), 332 (abuse of official authority), 333 (exceeding official powers), 160 (encroachment upon inviolability of house or other possession) of the Criminal Code of Georgia. Apart from that, the operation was conducted in violation of the requirements of Articles 73, 141 and 142 of the Criminal Procedural Code of Georgia, under which detained persons shall be given access to

legal assistance, as well as the provisions of Articles 141 and 142 of the Code concerning the purposes and grounds of detention.

The operation led to a gross violation of the rights established by Article 18 of the Constitution of Georgia, under which the "arrest or other restrictions on personal freedoms are prohibited without a court order", "the detained individual must be immediately made aware of his rights and the basis for his detention", and "the detained individual may demand the assistance of a lawyer".

Unlawful actions by the Georgian power structures are expressly in conflict with the requirements of Article 5, Para. 1 (a, b, c, d, f,) and Para.2 of the European Convention on Human Rights and Fundamental Freedoms (Rome, 1950) concerning the security of person and procedure of detention.

In view of the above circumstances, on 10 December 2002, on the basis of Article 21, Para. (j) of the Organic Law on the Public Defender of Georgia, I addressed Recommendation No. 35/03 to the Chairman of the Parliament of Georgia, Ms. Nino Burjanadze, inviting the parliamentary committees for human rights, citizens' respect and civil society, legal affairs, reform of justice and administrative reform to examine the lawfulness of the anti-criminal operation by Georgian power structures, and consider the question concerning the responsibility of Mr. Koba Narchemashvili, Minister of Internal Affairs of Georgia, and Mr. Valeri Khaburzania, Minister of Security of Georgia. The recommendation has not been followed on to this day.

On Validity of Refusal by the Prosecutor General's Office to Consider the Public Defender's Recommendations on Complaints and Applications Concerning the Violation of Rights and Freedoms of Certain Citizens and Convicted Persons

The activity of the Prosecutor General's Office in terms of protection of human rights and freedoms does not afford satisfaction.

While the letters and recommendations of the Public Defender of Georgia clearly point to unlawful acts by representatives of prosecuting agencies and judicial bodies, namely to infringements of the accused persons' rights through falsification and misrepresentation, the Prosecutor General's Office unfoundedly refuses to bring criminal charges and conduct investigation against perpetrators.

The Prosecutor General's Office fails to react properly on newly revealed irrefutable facts indicated in the Public Defender's Recommendations and initiate criminal proceedings as appropriate.

The Public Defender's recommendations addressed over the reference period to the Prosecutor General's Office point to a number of cases whose competent and timely verification would enable it to ascertain the facts of violation of human rights and freedoms of persons employed by entities operating under public and private law. However, failure by the General Prosecutor's Office to promptly and competently inspect them results in incapacity to reveal the facts of impairment of human rights and freedoms in the said cases.

In a number of cases, the Prosecutor General of Georgia refuses, often unfoundedly, to initiate criminal proceedings, with due regard to the parties's complaints and new findings of criminal cases, indicated in the Public Defender's recommendations, which results in the infringement of human rights.

On 30 January 2002 and in the later period, the Public Defender was addressed by V.Kiria who complained of forgery and falsification by high-ranking officers of the Prosecutor General's Office and the Supreme Court of materials related to the criminal case of convicted T.Kurdiani, under his defence. The complainant pointed to acts of forgery, tampering of materials related to N.Kurdiani's indictment, and other malfeasance committed by T. Moniava, head of the Department of Public Prosecution of the Prosecutor General's Office of Georgia, G. Beriashvili, senior investigator of the Prosecutor General's Office of Georgia, and J.Glonti, judge of the Supreme Court of Georgia.

Namely, G.Beriashvili manufactured false evidence to support the framed-up charge against T.Kurdiani: despite the absence of evidence of a crime by the defendant, he alleged in the indictment that the indictees Giorgi Melashvili, Gocha Tediashvili, Gocha Gelashvili and Levan Madzgarashvili testified in the record of investigative actions T. Kurdiani's involvement in the terrorist acts. Besides, he stated that the charge against T.Kurdiani was allegedly supported by the witnesses' and victims' testimonies, which was not true. On 2 May 1997, G. Beriashvili made up a forged record according to which the indictee and his lawyer were offered for familiarisation Volume 18 of the file containing 5009 pages, and a video-film. In reality, no video-film was attached to the record, whereas the said volume only contained 4699 pages.

Besides, Volume 19, of 321 pages, that allegedly was presented to the indictee and his lawyer, contained no materials of preliminary investigation, whereas the court chamber chose not to consider it, in order to conceal the framed-up materials contained in it.

The complaint filed by T.Kurdiani's lawyer also points out that on 19 November 1998, judge J.Leonidze of the Chamber of Criminal Cases of the Supreme Court of Georgia, without any conclusive evidence confirming the crime, delivered the judgement of conviction against T. Kurdiani relying only on trumped-up materials of investigation, and sentenced him to 12 years of deprivation of liberty.

After having examined and analysed V.Kiria's complaints and judging that they were justified, on 8 February 2002, 14 May 2002 and 13 June 2002, under Article 21, Paras. (a), (b),(c) and (d) of the Organic Law on the Public Defender of Georgia, I addressed Recommendations No. 14/03, 737/03/107-k and 1055/03/107-k to the Prosecutor General of Georgia, inviting him to consider the question of objective examination of the materials of the said criminal case, initiation of the criminal charge and responsibility of the persons mentioned above. Despite my recommendations, so far there has been no competent objective examination of the materials. At the same time, I have repeatedly received stereotyped, unverified and groundless responses concerning the unfounded character of allegations of crime, contained in V. Kiria's complaints. All this can only be interpreted as abuse of T. Kurdiani's rights and freedoms, as well as V. Kiria's rights. Notably, at the moment T. Kurdiani is exempted from criminal liability.

On December 20, 2001, April 4 and 22, May 14, June 7, July 12 and 18, 2002, 1 October, 27 November 2002 and 14 January

2003, I addressed to the Prosecutor General of Georgia Recommendations Nos. 1333/03/897-m, 527/03/897-m, 604/03/897-m, 936/03/897-m, 736/03/404-m, 1182/03/897-m, 1192/03/897-m, 1653/03/1053-a, 1981/03/1053-a and 45/03/1053-a, concerning admission to work and dismissal of teachers M. Murusidze and M.Abrakhadze from I. Otskheli Gymnazia in Kutaisi, through possible fraud in office by G. Tevdoradze, director of the same educational institution.

The recommendations pointed out that:

On 20 August 1996, the fixed-term (one year) contract of employment of teachers M. Murusidze and M. Akhrakhadze of I. Otskheli Gymnazia in Kutaisi, executed on 5 September 1995, but predated by 20 August 1995, expired.

On the same day, i.e. 20 August 1996, G. Tevdoradze, director of the gymnazia took an unlawful decision and wilfully, without consulting M. Murusidze and M. Akhrakhadze, extended the said contract until 25 June 1997.

G. Tevdoradze had no right to extend the contract of employment until 25 June 1997, as its term was one year and the term could only be changed with M. Murusidze's and M. Akhrakhadze's consent, through execution of a new contract with them. The said persons, as of 20 August, practically continued working in school, and final settlement, in accounting terms, was not effected. The parties did not request to terminate the contract, therefore, on the basis of Article 31 of the Labour Code of Georgia, the contract of employment executed on 20 August 1995 should have been considered prolonged for an indefinite period.

Similarly, G. Tevdoradze, again without consulting M. Murusidze and M. Akhrakhadze, repeatedly extended the said contract by 10 months, till 25 June 1997, 1998, 1999.

On 25 June 1999, G. Tevdoradze issued an order on M. Murusidze's and M. Akhrakhadze's dismissal in connection with the expiration of their term of contract. At the same time, nothing was said in the contract about the final settlement of accounts, nor was it effected. Thus, as of 29 August 1999 the teachers continued working in the school and under the law, their contract of employment was considered prolonged for an indefinite period.

As far as G.Tevdoradze's order of 20 August 2000 on acceptance of M. Murusidze and M. Akhrakhadze for a fixed term, till 25 June 2000 is concerned, it is not valid, as it was not issued on the said day: G. Tevdoradze, for his own ends, issued the order on 1 September 1999, but predated it 20 August 2000, thereby committing a fraud in office. By this order, M. Murusidze and M. Akhrakhadze, employed already for an unlimited period, were transferred to a fixed-term employment, which is a gross violation of Article 31 of the Labour Code, and later, on 25 June 2000 dismissed with the final settlement effected, which is to be considered an unwarranted act, based on the above circumstances.

Proceeding from the above, the decision of 18 August 2000 of the Kutaisi City Court, concerning the refusal to reinstate M. Murusidze and M. Akhrakhadze in their positions should be considered as unfounded, and it can be appealed on account of new findings in the event of ascertaining fraud in the director's orders of 1995 and 1999.

However, so far no competent and objective examination of facts pointed out in my recommendations has been carried out. The Prosecutor General continues presenting his unfounded and unwarranted conclusions concerning the legality of the orders on M. Murusidze's and M. Akhrakhadze's acceptance, and then dismissal from jobs, with which I emphatically disagree.

On 20 May 2002 (No. 29/03/4), 12 July 2002 (No. 30/03/3), 1 August (No. 32/03/4-of), 5 December 2002 (N0.793/03/71) and 14 January (No.13/03/761-of), I addressed to the Prosecutor General of Georgia Recommendations concerning the verification of legality of dismissal of the criminal charge and discontinuation of criminal proceedings on the fraud in office by Lia Ramishvili, the notary of Lanchkhuti district

On 6 February 1998, in the evening, L. Ramishvili was visited at her residential apartment by G. Sarjveladze, the director of "Teka" Ltd., O.Davitadze, deputy director of operation at the SunTree JV, and T. Gugenava, Chief specialist of "Conditrade"Ltd. The mentioned persons handed to L.Ramishvili a contract on the purchase of black tea, dated 6 February.

Despite the fact that Z.Abashidze, President of the SunTree JV was not present at the meeting and had not signed the contract, O.Davitadze did not represent the JV director (then J.Akhmeteli), the contract did not bear the SunTree JV's round seal, but only the storage office stamp, L. Ramishvili nevertheless certified the contract (incidentally, on the car boot) and then made an entry in the notary register, signed by G.Sarjveladze, O.Davitadze,(in this case, outsiders) and T. Gugunava, thereby committing a fraud allegedly motivated by her personal respect to T. Gugunava and G.Sarjveladze.

The unlawfulness of the act was acknowledged by D.Khusitashvili, Chairman of the Notary Chamber of Georgia. Namely, the notarial authentication of a transaction did not bear the ribbon, pages were not numbered, the number of pages was not mentioned, though these details are stipulated by the Law of Georgia "On Notary". During the authentication of the transaction, the notary was under an obligation to establish by passport or an equivalent document the personality of a person or his representative, at whose request she performed the said notarial act. It was not clear from the presented documents whether the persons present during the act were senior members of the JV management, or whether they had the necessary authorisation to perform the transaction. This led to the violation of requirements contained in Para. 17 of the Regulations on the Notarial Act Procedure.

The notary certified the signatures of three persons, allegedly parties to the contract, while in reality there were only two signatures, as the contract, as already mentioned, did not bear the signature of Z.Abashidze, President of the SunTree JV, which is another gross abuse of the Law of Georgia "On Notary".

The Prosecutor's Office of Guria Region unfoundedly qualified L. Ramishvili's fraud in office as an act punishable by disciplinary sanctions, which led to a decision of 8 November, again absolutely unjustified, to dismiss the criminal charge and criminal proceedings, whereas the prosecutor of the General Inspectorate of the Prosecutor General's Office in his ordinance of 3 August 2001 did not examine the legality of dismissal of proceedings against L.Ramishvili.

On the basis of the fraudulent contract, and a fraudulent bill of transportation and customer acceptance, signed by the persons

not duly authorised, the SunTree Ltd allegedly received 48790 tonnes of black tile tea which, according to the applicant, has never been delivered to it, and by decision of the Lanchkhuti District Court of 17 December 1998, the SunTree Ltd is charged with the payment of 277317 GEL in favour of "Teka" Ltd.

In the event the forgery in the notarially authenticated contract is ascertained, as well as the fictitious character of delivery to the SunTree JV of the said amount of black tea supported by a forged bill of transportation, the proceedings can be reopened on account of new findings, as stipulated by Article 423 of the Civil Procedural Code of Georgia.

Since L.Ramishvili authenticated G.Sarjveladze's, O.Davitidze's and T.Gugunava's signatures on the Contract for the purchase of black tile tea that was not invalidated by the Lanckhuti District Court, the ordinance of 8 November 2000 of the Guria Regional Prosecutor's Office on dismissal of the criminal charge and criminal proceedings has been qualified as legal. In this connection, the Prosecutor General's Office (First Deputy Prosecutor General D.Bitsadze), despite the numerous explanations provided by me, failed to check, and in fact paid no attention to the fact that apart from the signatures of the above-mentioned persons, L. Ramishvili also authenticated the non-existent signature of the SunTree Joint Venture's director Z.Abashidze, who was not present at the notary's during the notarial act.

Proceeding from the above, in my letter No 13/03/1761-o of 14 January 2003, I informed the Prosecutor General of Georgia about the incompetent and protracted consideration of my recommendations, with no reaction received so far. At the same time, in his response letter (No 15-1-7g-2003) the

Prosecutor General, willingly or unwillingly, left out the fact that the Lanchkhuti District Court did not examine the question of authentication of Z. Abashidze's signature, owing to which it could not, and neither did it, leave in force the ordinance of the Guria Regional Prosecutor's Office on dismissal of the criminal proceedings.

Over the past year I have repeatedly addressed the Prosecutor General of Georgia concerning the validity of a decision not to initiate a criminal charge on the dismantling and theft of high voltage power lines.

More specifically, I addressed submissions concerning this matter to the Prosecutor General's Office of Georgia on 27 February, 25 April and 9 October 2002 (No 153/03, No 267/03-191-of and No 658/03). However, the response has been essentially similar: allegedly, there has been no dismantling and theft of high voltage power lines in the Marneuli district.

The letter of 11 December 2002 (No 19/2-11-2002, signed by the deputy Prosecutor General Mr G.Tvalavadze, it is pointed out, again absolutely unfoundedly, that the Algeti power transmission line has nothing to do with the 'Lomtagora" Ltd, or "Garakha" Ltd, as these two have never derived power from this line. At the same time, the letter points, again incorrectly, to the power transmission line laid on the basis of the agreement of 26 January 1990, from the Marneuli-2 substation to the territory of the "Lomtagora" Ltd.'s farm, that is listed in the company's fixed assets. The validity of the decision to dismantle this line has never been raised in my recommendations.

In this connection I again drew the Prosecutor General's attention to the fact that the recommendations concerned the dismantling and theft of the 10 kV Algeti high voltage transmission power line running from 110/35/10 kV Marneuli substation that was connected to the Garakhi: auxiliary farm, which is supported by the layout diagram attached to my recommendation (see Certificate of 25 July 1990, JBI Plant, Director E.Kobuladze, Chief Power Engineer M.Abdulaev).

In this regard, I think that the statement in the Prosecutor General's letter alleging that the said layout diagram has nothing to do with the Algeti high voltage power lines is not true.

As repeatedly pointed out in my recommendations, in order to examine the matter of argument it was necessary to compare the above-mentioned certificate with the actual situation, which would have cleared up the questions related to the possible dismantling and misappropriation of the Algeti high voltage power lines; besides, it was necessary to compare the documentation related to the work carried out by the "Shadrevani" Cooperative with the actual current situation, which has not been done either.

In view of the above, in my letter of 24 December 2002 (No 897/03-666-of) I again had to send to the Prosecutor General's Office the layout design of the Algeti high voltage power transmission line, connected to the "Garakhi" Ltd.'s auxiliary farm and request it to carry out competent examination of the repeatedly raised issues. At the same time, I considered it feasible to have sent to the Public Defender's Office of Georgia qualified and responsible officers of the Prosecutor General's Office. On 4 February 2003, the Public Defender's Office hosted a meeting with participation of the officers of the

Prosecutor General's Office, Marneuli District Procuracy and the investigator of the investigative service of the Marneuli District Division of Internal Affairs. Participants of the meeting agreed with the demands concerning the examination of issues raised in the Public Defender's recommendations.

For two years the Prosecutor General's Office of Georgia has refused to reopen proceedings and conduct an investigation in connection with the new findings concerning U.Avaliani's indictment.

Under the Judgement of the Chamber of Criminal Cases of the Supreme Court of Georgia was charged for criminal contacts with his acquaintances G. Sinjiashvili, T.Efremidze and M. Glonti. Allegedly, on 1 February 1996, at 8.30 a.m., with the motive of violent assault, he arrived to 13, Tsereteli Avenue in a VAZ-2107 car driven by M.Glonti, went to apartment 30, fired at Z.Dzeria 3 times with an intention to murder him, wounded him in the right thigh area, and murdered his father, V.Dzeria with 3 shots.

By its ruling of 21 June 2000, the Cassation Chamber of the Supreme Court of Georgia, confirmed the original judgement.

After entry into force of the judgement, the order of 24 April 2001 of the investigative department of the Tbilisi Prosecutor's Office and the judgement of the Gldani-Nadzaladevi District Court of Tbilisi discharged M.Glonti and T. Efremidze of accusation concerning their involvement in the violent assault.

G.Sinjiashvili had not been interrogated concerning the case, while U.Aavaliani both during the preliminary investigation and in the court hearing consistently denied his participation in the crime. After the delivery of the judgement of conviction,

Sh. Kurtauli, G, Samkharadze and T. Kavtaradze submitted an explanation to the Prosecutor General's Office, stating categorically that at the time of the violent attack on the Dzeria family and murder, U. Avaliani was in Irkutsk, Russian Federation.

Verification of these new facts is impossible without conducting investigative actions provided by the Criminal Procedural Code of Georgia. Therefore, by refusing to follow on my recommendations of 7 September 2001 (No 600-01-01-791-i), 6 October 2001 (No 1041/03/903-i), 20 December 2001 (No 1335/03/903-I), 21 June 22002 (No 1018/03/903-i), 1 August 2002 (No 1315/03/903-i) and 20 September 2002 (No 1618/03/903-i) concerning the reopening of proceedings and conducting investigation on the case, the Prosecutor General's Office is grossly violating the convicted person's rights and freedoms. Considering the above, my evaluation of the Prosecutor General's Office's activity in terms of the protection of human rights and freedoms is expressly negative, which was notified to the Prosecutor General in my letter of 8 January 2003 (No 11/03/903-I).

On Examination of Petitions Made by the Public Defender in Response to Applications of Citizens of Georgia Concerning Their Rights Granted under the Law

On T. Asanidze's Illegal Detention

Since 1999, the Public Defender of Georgia has repeatedly brought up with the leadership and law enforcement bodies of the Ajara Autonomous Republic the question concerning

T.Asanidze's release from illegal detention. T.Asanidze's case signals the violation of many basic requirements of international law and our national legislation pertaining to human rights and freedoms. In this connection, I would like to once again urge all those concerned to take measures to redress T. Asanidze's impaired rights.

Since 2001, T. Asanidze's case has been the matter of consideration by the European Courts of Human Rights that has dealt with it as a matter of priority, which was notified accordingly to the Government of Georgia. The Information Bulletin of the European Court of Human Rights (November 2002) states that despite the pardon granted by the President with regard to the first case, and acquittal granted by the central courts with regard to subsequent cases, the said person is being unlawfully detained on the order of Ajara's leadership (Asanidze v. Georgia, No 71503/01, Judgement of 12 November 2002).

The Bulletin states that in November 1994, by decision of the Ajara judiciary, T. Asanidze was sentenced to 8 years deprivation of liberty. The Ajara Autonomous Republic is part of Georgia. By the Order of October 1999, the President of Georgia granted a pardon to T. Asanidze, and had him released from custody. In October 1999, the Supreme Court of the Ajara Autonomous Republic recognised the President's order as unlawful. This decision by the Supreme Court of Ajara was declared unlawful by the Supreme Court of Georgia. Meanwhile, the applicant, still held in custody, was accused of providing support to a criminal group and conniving in organising a kidnapping. In December 1999, the first instance court of the Ajara Autonomous Republic issued an order on his detention until trial. In October 2002, the Supreme Court of the Ajara Autonomous Republic found him guilty of the crime.

The leadership of Georgia took a number of steps to have the applicant transferred from Ajara to Tbilisi, however, with no result. In January 2001, the Supreme Court of Georgia heard the case in absentia of the party. It reversed the judgement, adjudged T. Asanidze not guilty and issued an order on his immediate release. The authorities of the Ajara Autonomous Republic refuse to fulfil the order. Representatives of the central government of Georgia stated repeatedly that T.Asanidze's detention by the leadership of Ajara is contrary to the law. The Judgement of the European Court of Human Rights is based on Article 5 (1), (3), (4), (6): 10 and 13 (Protocol 4, Article 2) of the Convention.

L.Vakhanyalova-Melashvili's Case

In the period between August to November 2002, I was addressed, both in writing and orally, by an IDP from Abkhazia L. Vakhanyalova-Melashvili with a request to assist her with improving her living conditions and receiving a lump-sum allowance and a sum of money needed for surgery.

By the letter of 29 September 2001 (No 9042/02), the City Health and Social Protection Service of the Tbilisi Municipality informed me that L. Vakhanyalova-Melashvili had already received a lump-sum allowance of 150 GEL, which was not a sufficient amount to fully cover the surgical operation required. It was also made known to the Public Defender's Office, that the applicant lived together with her 5 family members, including an infirm husband and a child, in a small room and suffered from paranoid schizophrenia.

On 5 November 2002, I sent petitions (No 1852/03/862-m and No 1853/03/872-m) to the Deputy Minister of Labour, Health and Social Protection of Georgia, Mr.M.Khachidze, Head of the City Health and Social Protection Service of the Tbilisi Municipality, Mr D.Pavliashvili, Director of the Medical Academy Clinic, Mr. A.Tsintsadze and the Minister of Refugees and Accommodation of Georgia, Mr. V.Vashakidze requesting to render material aid to L.Vakhanyalova-Melashvili, transfer 57.20 GEL needed for surgery to the Medical Academy Clinic, and provide her with living space.

In his letter of 18 November 2002 (No 05/01-17/4047), the Head of IDP Department of the Ministry of Refugees and Accommodation, Mr. Z.Todria informed me that the Ministry made a decision to provide L.Vakhanyalova-Melashvili with an additional living room in the Gladani district of Tbilisi, in the JSC Orioni building, immediately upon completion of the rehabilitation works in the premises. The Minister of Health of the Abkhazian Autonomous Republic, in his letter of 16 January 2003 (No 02/06-b/2-12) informed me of the transfer of 53.30 GEL needed for L.Vakhanyalova-Melashvili surgery to the director of the clinic.

M.F.Karpenko's Case

On 7 November 2002 I was addressed by Maria V. Karpenko residing at 41 Risvlyany street in Cherkasy, Ukraine with a request to examine the lawfulness of the failure by the relevant authorities for 2 years to consider her application on secession from the Georgian citizenship.

With a view to expedite the due settlement of this issue, on 12 November 2002 (No 1898/03/1192-k) I addressed the Ministry of Justice of Georgia that informed me by the letter of 26 November 2002 (No 06/01-354) that the Collegium of Citizenship and Immigration Issues of the Ministry of Justice satisfied the M.Karpenko's and her family's applications concerning secession form the Georgian citizenship, and forwarder the relevant materials to the President of Georgia for a final decision.

M.V.Karpenko was informed about the allowance of her application by my letter of 5 December 2002 (No 2018/03/1192-k).

M.B.Labadze's Case

On 9 October 2002, I was addressed by Neli Labadze, residing in the village of Shroma of the Zestafoni district with an application concerning the reasons for her son's detention and his location.

After 2 days of the receipt of the application, it was found that in January 2002 M.Labadze was subjected to pre-trial detention as a measure of restraint for theft, sentenced to 2 years of imprisonment by the ruling of the Sharipovo City Court of the Krasnoyarsk Region of 19 June 2002 and placed into the investigative isolation ward in the town of Achinskof the Krasnoyarsk Region.

The findings were made known to the applicant

G.A.Michitashvili's Case

On 8 October 2002, I received information from Prison No 5 of the Department of Execution of Punishment of the Ministry of Justice, concerning the placement into the facility on 7 August of Giorgi.A.Machitashvili, wanted by the Prigorodny District Prosecutor's Office of Vladikavkaz, The initiator of retrieval did not react to the notification from the Ministry of Justice of Georgia, in order to extend the period of investigative action and term of imprisonment.

On 1 November 2002 I addressed the Prosecutor General of Georgia concerning this breach of law, and invited him to determine, within the 3 month period stipulated by the law, the reasonableness of G. Machitashvili's further remand.

By the letter of 5 December 2002 (No 24-4-80-cont-2002), the Prosecutor General's Office informed me that, on Prosecutor General's motion, G. Machitashvili was released from custody on 6 November 2002.

V.T.Dudaev's Case

On 29 October 2002, I was addressed by Liana G.Kvertskhishvili, residing at 1 Iluridze street in Tbilisi, with an application requesting to examine the lawfulness of her son, Vazha Dudaev's extradition to the Russian Federation.

The applicant reported that on 18 August 2002 she addressed an application to the Prosecutor General of Georgia, requesting to examine, in view of the nearing expiry of the 3 –month term in custody, the reasonableness of Vazha Dudaev's extradition

to the Russian Federation. However, the application was not followed on.

On the same day, I addressed motion No 1793/03/1166-k to the Prosecutor General of Georgia and Chief of Prison No 1 of the Ministry of Justice to release V.Dudaev in the event of non-extension of the time of holding in custody.

By the letter of 7 November 2002 (No 24-4-66-cont-202), the Prosecutor General informed be that owing to the expiry of the 3-month term of pre-trial detention, V.Dudaev was released from custody by the order of the Deputy Prosecutor General, Mr.V.Benidze.

A.Kapianidze's Case

On 19 October 2002, I was addressed by N.Enukidze-Kapianidze with an application, concerning the lawfulness of her husband's second conviction on one and the same charge.

The examination showed that on 9 September 1997, Avtandil V. Kapianidze, father of 2 minor children, was convicted by the Adigeni District Court under Article 150, Part 2 of the Criminal Code of Georgia and sentenced to one year term of deprivation of liberty in a general regime correctional institution. Under the same judgement he was cleared of the charge under Article 91, Para. 3, and acquitted.

By Presidential Decree No 035 of 23 December 1997, A.Kapianidze was pardoned and released from custody.

However, under the ruling of the Collegium of Criminal Cases of the Supreme Court of Georgia of 26 February 1998, the

Judgement of 9 September 197 of the Adigeni District Court was revoked and the case was referred for examination to the Borjomi District Court. The Chamber of Criminal Cases of the Supreme Court of Georgia (judge A.Liluashvili) requested to reverse the judgement in view of the expressly light punishment and relegate the case for further examination. By the court ruling of 18 August 1998 of the Borjomi District Court (judge A.Kvirkvelia), A.Kapianidze was sentenced to imprisonment.

On the basis of the said court ruling, on 24 August 2002 was again placed in custody by the Gldani-Nadzaladevi Department of Internal Affairs for the same charge, despite his pardon by the President.

In order to have these breaches eliminated, on 25 October 2002 I addressed the Secretary of the National Security Council, and on 30 October - the Secretary of the Council of Justice. As a result, on 8 November 2002 the Borjomi District Court dismissed the proceedings against A.Kapianidze under Article 150, Part 2 of the Criminal Code of Georgia and he was released from custody.

In his letter of 3 February 2001, Mr. Z.Abashidze, the Secretary of the Council of Justice, informed me that the decision of the Council of Justice was made known to the Chairman of the Borjomi District Court Mr. R Varazashvili by the recommendation note.

On Improper Consideration of the Public Defender's Recommendation Concerning the Allowance of R.Agumava's, A. Bigvava's and I.Zukhbaia's Motions

On 27 July 2002, I was addressed by the leadership of the Institute for Georgian-Abkhaz Relations requesting to assist pensioner Ivan Zukhbaia, currently residing in Rostov, Russian Federation, R. Agumava, deputy chief of traffic inspection of the Sukhumi Department of Internal Affairs, and A.Bigvava, operational officer of the same department in establishing their length of service at internal affairs bodies.

On 30 July 2002, I addressed letter No 1301/03/860-z to Mr.K.Narchemashvili, Minister of Internal Affairs of Georgia, with a view to expediting the processing of the request.

The Minister of Internal Affairs of Georgia refused to act on the recommendation, saying that satisfaction of the officers' request would only be possible in case of submission, together with the available documents, of their personal files. At the same time, the letter of 20 August 2002 (No 5/201852) was silent about the measures to be taken in order to procure the relevant materials and personal files.

Thus, refusal by the Ministry of Internal Affairs to satisfy R.Agumava's, A. Bigvava's and I.Zukhbaia's motions concerning the determination of their length of service at the internal affairs bodies leads to further abuse of their legitimate rights and interests.

On Impairment of A.Gogichaisvili's Labour Rights

The Public Defender's Office was addressed by A. Gogichaishvili who thought that his discharge from the post of Deputy Chairman of the Department of Geology on the basis of Order No 4 (20 March 2001) by T.Janelidze, Chairman of the said department, was contrary to law.

Examination of the case materials showed that on 19 March 2001 in his application to the Chairman of the Department, A.Gogichaisvili requested to relieve him temporarily of his duties for family reasons, which cannot be interpreted as a validation for his discharge from the post, as in this case we have to deal with a suspension of official relations by a public officer.

A.Gogichaisvili's request to relieve him temporarily of his official duties, under Article 88 of the Law on Public Service, was prompted by a libellous article in a newspaper (Martali Gazeti) defaming his honour and dignity, which led to the initiation of an inquiry by the internal affairs and tax bodies with a view to verifying the facts. After these bodies proved A.Gogichaisvili's innocence and pointed out an expressly defamatory nature of allegations carried by the newspaper, on 3 July 2001 A. Gogichaissvili applied to the Chairman of the Department of Geology concerning his return to the post.

In the letters addressed to the Public Defender's Office and to the applicant, the leadership of the Department of Geology alleged that A.Gogichaishvili was appointed to the position of the Deputy Chairman of the Department on a temporary basis, as a non-staff employee, for carrying out a concrete assignment. However, this allegation is not true. On 22 May 2002, the management of the Department of Geology received

a response letter from P. Mamradze, head of the State Chancellery, and the conclusion prepared by Sh.Kokhreidze, Head of the Public Service Bureau of the State Chancellery and K. Koridze, Head of the Sectoral Economic Service of the State Chancellery. On the basis of these documents, the leadership of the Department of Geology could decide on its own the question concerning the need to establish the post of the fifth deputy chairman of the department within the limits of budget allocations for the Department. The same position was formulated by Deputy Minister of Finance V.Gigolashvili in his letter of 29 March 2000 addressed to the Chairman of the Department. Based on these letters, T. Janelidze appointed A.Gogichaishvili to the post of the Deputy Chairman of the Department, but not got an indefinite period, but on a temporary basis, which, I emphasise, is contrary to Article 23 of the Law on Public Service.

Para. 1 of the said article stipulated that "a servant is appointed to a vacant position for an indefinite period, with the exception of cases defined in Para. 2 of this Article", where the servant is appointed for a fixed term. The list, contained in the law, does not include the position of deputy chairman. Thus, A.Gogichaishvili should have been appointed to his position not for a temporary term, but for an indefinite period.

In addition, A.Gogichaishcili has been confronted with an infringement of his labour rights in terms of his salary compensation, as the letter of 13 August 2001 signed by the Chairman of the Department states that his work should have been remunerated from the investments he was supposed to mobilise, which he failed to do.

This argument by T.Janelidze is in conflict with the requirements of the Law on Public Service. Under Article 9,

Para. 6 of the law "the list of official salaries of public servants and names of posts shall be established by the law, whereas salary rates shall be determined by the President of Georgia".

As A. Gogichaishvili should have been appointed to his post in conformity with the statutory provisions, hence his salary should have compensated from the amount of budget appropriations allocated to the Department. Article 37 of the Law on Public Service clearly establishes that "the source of labour remuneration (salary) fund is the relevant budget".

Hence, form the very first day in office A. Gogichaishvili was entitled to a remuneration, comprising official salary, bonus, seniority pay and other allowances provided for by the Georgian law; besides, under Article 38 of the Law on Public Service, A. Gogichaishvili is fully entitled to demand full compensation of his duty trip expenses, and all this has nothing to do with contractual amounts, either attracted or not attracted by him.

It is to be noted that these transgressions against A. Gogichaishvili were examined by the Public Service Bureau of the State Chancellery. In the letter of 25 February 2002 addressed to the Chairman of the Department of Geology, T.Janelidze by the Deputy Head of the Bureau, I. Kvelidze, it was recommended to bring the relations with A. Gogichaishvili in conformity with the effective legislation.

In my recommendation addressed to the President of Georgia on 3 April 2002 on the basis of Article 21, Para. (h) of the Law on the Public Defender of Georgia, I appealed to assign the relevant services with examination of the legality of A. Gogichaishvili's discharge from office. On the basis of a memorandum of 2 May 2002 prepared by the Head of the

Public Service Bureau of the State Chancellery, that fully supported our view regarding this issue, the President instructed the Chairman of the Department, of Geology, T.Janelidze, to review the administrative act issued by him. Hereby I wish to emphasise that the view concerning unlawfulness of A. Gogichaishvili's dismissal is supported by the conclusion prepared by the office of Ms. R.Beridze, Deputy Secretary of the National Security Council for Human Rights.

This notwithstanding, the leadership of the Department of Geology insistently fails to follow both on the President's instruction, and on the Public Defender's recommendation concerning the redress of A. Gogichaisvili's impaired rights.

On 19 August 2002, I again appealed to the President of Georgia concerning this matter, and on 29 October 2002 I brought up with the State Minister the question concerning the responsibility of T. Janelidze, Chairman of the Department of Geology, that has not been addressed so far.

G.Kvitatiani's Case

Presumption of innocence is the cornerstone of civil rights. Its main purpose is to prevent prosecution of a person in the absence of well-founded and irrefutable evidence of a crime, relying only on hypothetical suspicions and false surrogated evidence. This principle is enshrined in the Constitution of Georgia and provided for by the Criminal Procedural Code, as well as by the norms of international (European) law. However, today the presumption of innocence claimed to be applied in Georgia is often merely cosmetic.

Examination of the case of Gocha Kvitatiani, an IDP from Abkhazia made it clear that the Sukhumi Procuracy had illegally and unfoundedly instituted a criminal charge against him on allegations of fraud and use of forged documents (passport) (under Article 362, Part 2, Paras. (a) and (b), and Article 180, Part 2, Para (c)), punishable with 2 to 6 years deprivation of liberty. G. Kvitetiani was accused of illegal acquisition of the IDP status, misappropriation of allowances and benefits assigned for IDPs, the use of forged passport, etc.

It transpired from our examination of the case that the charge raised against G.Kvitetiani was unsubstantiated. The procuracy alleged that he was Zugdidi's native, and had never lived in Sukhumi, as he was unable to present any document in support of his former residence in Sukhumi. However, neither was it possible to obtain any document in support of his residence since 1987 across Enguri, in Zugdidi. On the other hand, various witnesses do confirm that he resided in Sukhumi with his father (who lived there from 1973). Besides, G. Kvitetiani was the only apparent heir and co-owner of the house in Sukhumi. The fact of expressly malicious use of a forged passport was never substantiated either.

In view of these circumstances, I addressed a motion to the Vake-Saburtalo district procuracy and the investigative service. I have to commend a highly objective and professional approach displayed by Mr. Gia Nukradze, investigator of the Vake-Saburtalo district. He conducted a genuinely new and unprejudiced investigation that led him to a conclusion to dismiss the criminal proceeding on the case. He was able to conclusively substantiate and defend his position at the procuracy. After a further examination of the case, Mr. Beso Tkhiladze, Head of the Department Investigation Procedural Supervision at the Prosecutor General's Office of Georgia, and

Ms. Nazi Geladze, Prosecutor of the same department, demonstrated high level of professionalism and responsiveness and supported the decision.

Concerning Extradition of an Abkhaz Convict from Russia

The Public Defender's Office was addressed by relatives of V.Z., an Abkhaz from Sukhumi, born in 1975, with a request to prevent occurrence of any problems for V.Z. on ethnic grounds, in his relations with other prisoners. V.Z. was extradited to Georgia from Russia.

From the first day of V.Z.'s transfer to Prison No 5, together with the Department of Execution of Punishment, we started seeking ways to avoid the anticipated problems. I met V.Z and talked to him. It emerged that he was only 17, when the war started, and it all passed before his eyes. His placement in the prison raised certain concerns, as placement of Georgians in the prison in Sukhumi often ended in their death.

To V.Z's surprise, everything worked the other way round. In fact, the Georgian inmates and the prison administration lavished attention on him, and his IDP relatives in Tbilisi did their best to assist him.

Now V.Z is in Sukhumi, together with his family. He noted in a conversation that in Russian prisons he had experienced severe pressures from prison administration for the simple reason of coming from the Caucasus. Hence, he could see for himself that in Georgia he was not discriminated on the basis of his ethnicity.

Situation in the Penitentiary System

Despite the action taken, penal institutions and prisons of the Ministry of Justice display instances of violation of prisoners' rights provided by the law.

At present, penal institutions and custodial facilities of the Department of Execution of Punishment accommodate a total of 6749 inmates. Of these, 4587 sentenced prisoners are accommodated in penal institutions, and 2162 persons, including 1902 remand prisoners, are accommodated at detention facilities.

The inmates' breakdown by the security regime at penal institutions is as follows:

- General regime establishments (Nos. 1-8) – 1208
- Strict regime establishments (Nos. 3, 2, 6) – 2238
- Combined regime establishments (TB treatment facility, healthcare premises for sentenced prisoners and detainees, institutions Nos. 4 and (9) – 684
- Penitentiary regime – 323
- Women's establishment – 112
- Juveniles' establishment – 2

The inmates' breakdown by term of imprisonment is as follows:

- Up to 3 years – 695
- Up to 5 years – 129
- Up to 10 years – 1955
- Up to 15 years and over – 1068
- Life-term imprisonment – 18

1869 prisoners serve strict sentences for crimes punishable under the Criminal Code of Georgia, namely:

- Article 109 (old version, Article 104) - 497
- Article 108 (old version, Article 105) - 522
- Article 137 (old version, Article 117) - 79
- Article 143 (old version, Article 133) - 103
- Article 236 (old version, Article 238) - 163
- Article 184 (old version, Article 243) - 157
- Article 260 (old version, Article 252) - 348

Conditions of detention fall short of the minimum international requirements. Inmates are not provided with adequate material conditions of detention, clothing, bedding, mattresses and blankets, often not even beds (Law on Imprisonment, Article 26). In most establishments visited, the number of prisoners exceeds the number of beds available. Transgressions of inmates' rights are caused, among other things, by inadequate occupancy rates that follow old standards. At present, the capacity of some of the establishments was reduced: for instance, two detention blocks at institution No 6 and one entire building at institution No 2 burned down; the quarantine section at Prison No 5 is no longer in use, in line with the Council of Europe recommendations, etc. At present, the occupancy rates do not correspond with the situation at hand: a number of establishments, especially Prison No 5, are overcrowded. There are cases when prisoners have to sleep in turns because of an inadequate number of beds available (which is a breach of Article 33 of the Law on Imprisonment). The situation in terms of provision of health care in the Georgian prison system in grossly inadequate. Namely, the supply of drugs and medications has been reduced to a minimum, which has been reflected in the information

concerning comprehensive examination of health care facilities at establishments Nos. 2, 3, 6 and 1 and Prison No 5. This leads to the violation of both minimum standards of treatment of prisoners, as provided for by international conventions, and requirements of the Law on Imprisonment (namely, provisions of Chapter 6 "Prisoners' rights and responsibilities", Article 25, Paras. (a), (b), (c), (d), and (e); Chapter 8 "Material conditions of detention"; and Chapter 9 "Prisoners' health care services", Article 38).

According to the lists, made available at our request, of prisoners whose court trials were delayed for over 3 months and of prisoners at bar awaiting trial for extended periods of time, no such cases were observed over the reference period at Prison No 2 in Kutaisi, Prison No 1 in Tbilisi, as well as prisoners' health care facilities. However, in other penal institution the breakdown was as follows:

- Prison No 4 in Zugdidi – 15;
- Prison No 3 in Batumi – 3;
- Prison No 5 in Tbilisi – 69.

We also received lists of prisoners subject to Article 697 of the Criminal Procedural Code, and those released from prison on medical grounds. Over the reference period, their breakdown by penal establishments looks as follows:

- Institution No 1 in Rustavi – 8;
- Institution No 2 in Rustavi – 2;
- Prison No 3 in Batumi – 5.

In terms of conditional early release of convicts from penalty, delays in issuance of references for those released remains an unresolved problem, which results in impairment of their rights

and favours corruption. The effective normative documents do not specify the period of issuance of a reference to persons transferred from cellular confinement to a regime of servicing the prison, or from prison to other sentence-serving institutions. Not infrequently, there are cases where a prisoner, owing to a relatively minor seriousness of the crime, has already enjoyed this benefit (while being in prison), because of the delayed investigation and trial. In such cases, it is necessary to clarify whether the prison administration is authorised to consider such inmates for the said benefit.

Situation in Tbilisi Prison No 5 of the Ministry of Justice of Georgia

Monitoring at Prison No 5 of the Ministry of Justice was carried out in October – November 2002 within the framework of the project "Prisoners' Clinic" funded by the Centre for Protection of Constitutional Rights and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

By the time of the start of the monitoring exercise, the prison had overall 1649 inmates, including 1463 men, 62 women, 36 juveniles and 79 sentenced prisoners (service section).

The prison has a staff of 283, including 17 medical workers (9 doctors and 8 nurses).

The establishment is surrounded by a patrolled perimeter fence. The fore-part of the prison premises houses an administrative block of three floors and a basement.

The basement contains a connecting tunnel to the main detention block and the former death-row corridor.

The first floor accommodates the guards' premises, 2 rooms for meetings, reception room for newly arrived prisoners, fingerprint identification service, canteen for prison administration and staff.

The second floor accommodates offices of the establishment's director, his deputies, chiefs of departments (operational, security, regime and personnel), special division for custody of personal files of the remand prisoners, defendants and sentenced prisoners, the registry, inquiry rooms for interrogation of remand prisoners.

The third floor accommodates the accounting and finance divisions, a meeting room where trials are held in certain cases, and a library.

The left wing of the administrative building houses parcel-acceptance premises - a one-level building with 3 windows, where prisoners' close relatives can deliver parcels for them.

The central part of the establishment's premises features a four-floor building that accommodates prisoners (accused persons, defendants, inmates in transit to other establishments. This building has a basement with the "quarantine" section whose main function is to receive newly arrived prisoners and to send them, after the quarantine procedure, to the regime blocks (respective floors).

The administrative building and the detention block are connected with an underground tunnel that is used to bring prisoners to inquiry rooms.

The process of monitoring revealed that the regime requirements are not always followed strictly. Some of the cells accommodate a mixed population of inmates placed in custody for the first time for relatively minor offences, those having a record of several convictions and, sometimes, remand unsentenced prisoners.

On a number of occasions, the system of inmates' cards does not work as intended, meaning that a prisoner may be on the list in one cell, but held in a different regime cell.

According to the prison administration, this situation is caused by excessive numbers of prisoners, well above the capacity of the establishment, as a result of delays in pre-trial investigation arrangements and court trials. Some of the inmates indicate that the problem is caused by certain covert deals between prisoners and the prison's staff, as well as their conflicts with the "criminal authorities".

Each of the floors in the detention block has 25-30 cells, differing form each other in size and capacity. The examination of cells showed that some of them accommodated less than the intended number of prisoners, whereas others had 1.8, even 2 times more inmates than their capacity, owing to which prisoners have to sleep in turns because of insufficient numbers of beds available.

The left wing of the prison's premises houses a three-floor building for juveniles, women prisoners and those sick. The first floor of the building accommodated juvenile prisoners (that, because of the attempted escape in September 2002, were transferred to the regime block located in the central part of the premises). The second floor houses the prison's medical

facility, whereas the third floor accommodates women prisoners.

Examination of the section for women by the monitoring group revealed an advanced state of decay and dilapidation, which may cause the facility's collapse any time leading to victims both among the inmates and the staff.

The two-floor building located between the central building and the block for juveniles accommodates the section for sentenced working prisoners that voluntarily chose to work in the prison's workshops and day-to-day servicing of the establishment. The section has a dormitory and a restroom, with a small workshop adjacent to it.

The prison's central part has 12 outdoor exercise areas. One of these areas comprises a building with a sports ground arranged at the inmates' request and on the initiative of Kakhaber Gogashvili, member of the Board of Penal System Independent Expert under the Ministry of Justice.

The prison's premise houses a storage, a catering facility, providing food for inmates.

The detention blocks are in advanced state of decay, despite a major repair and current maintenance works performed over the recent decades. Despite these attempts at improving the existing facilities, the premise's material conditions are grossly inadequate and unfit for accommodation, with wet walls, crumbling plaster, worn out water system, leaky taps in some of the cells resulting in damp walls. Windows in some of the cells are covered with slatted metal blinds, which severely restrict access to fresh air leading to very poor ventilation, which could be very clearly seen in the process of monitoring.

The cells have the so-called "Turkish toilet" inside, with a 50-cm high partition on one side. The blocks are in need of major overhaul and refurbishment.

As far as the prison's administrative building is concerned, its condition id far better, as repair works there were carried out some 4-5 years ago. However, some of the rooms showed crumbling plaster and peeling paint, and require repair.

Cells have no hot water. Inmates have to rely on themselves to maintain cleanliness. Cells mostly show largely anti-sanitary conditions, with no proper temperature conditions provided. They are rarely ventilated, only when inmates are taken for an outdoor exercise. Cell windows are covered with slatted metal blinds, which restricts access to natural light. Cells are inadequately lit, with artificial lighting 24 hours a day. The are packed with double bunk beds, with almost no lockers. All cells have a long table and a long stool fixed to the floor. The prison does not provide inmates with mattresses and bed linen, that are mostly delivered by the inmates' relatives, and those of inmates that have no close relatives to care about them often have to sleep in beds without any bedding. Bed linen is not washed for months. Each cell has a water tap and an electric switch, though in some cells these are out of order and inmates sometimes try to fix the hazardous electric wiring and installations themselves, which can led to grievous results. In 2000-2002, four inmates died when trying to switch the electric spiral.

The inmates wear clothes brought from their homes, and they wash and dry them in cells.

As of November 2002, the prison's health care premises accommodated 49 prisoners, and the TB facility – 37 prisoners.

According to the establishment's health care service's staff, they are experiencing a severe shortage of medications and materials, particularly pain-relief drugs, needles and transfusion solutions. Medications are mostly supplied by the prisoners' families. Besides, there is a shortage of medical staff. Considering the disease incidence among inmates, particular demand for dermatologist-venerologist is evident. The health care service is inadequately equipped, with only X-ray room and ECG equipment available. However, even this equipment is antiquated and badly maintained, and oftentimes it is impossible to perform reliable diagnoses with it. According to the physicians, it is necessary to provide diagnostic equipment such as ultrasonographer, and an apparatus for gastrofibroscopy. It is not possible to perform analysis owing to a lack of laboratory.

On 22 November 2002, one prisoner held in Prison No 5 fatally wounded with a Makarov type firearm his cell-mates, the Mikeltadze brothers, who died. This indicated that the establishment sometimes fails to ensure fulfilment of the most basic regime requirements, which threatens safe operation of the prison.

Stage 2 of the monitoring of Prison 5 envisioned direct polling of the establishment's inmates and staff. To this end, the project-implementing group developed two questionnaires – one for the inmates and another for the establishment's staff.

The survey was conducted with 16 men (11 sentenced prisoners, 3 prisoners on trial, and 2 remand prisoners) and 5 women (2 prisoners on trial and 3 remand prisoners).

Most of inmates (remand prisoners and prisoners on trial) refused to fill out the questionnaire, with some of them saying that the exercise could probably create some problems for them. The question by the monitoring group as to who would create these problems remained unanswered.

Juvenile prisoners refused to fill out the questionnaire without giving any reasons for their refusal. Survey showed that 2 prisoners on trial had been kept on remand for 1-2 years.

In the course of survey it was found that the number of women and juvenile prisoners is lower than the allowed occupancy rate in their respective sections, due to which they did not encounter any problems in terms of bed availability and a possibility to sleep. A similar situation is observed in the section for working sentenced prisoners. However, some of the cells in the section for men are severely overcrowded, which results in a need, as already mentioned, for inmates to sleep in turns.

The monitoring group interviewed the establishment's director (J. Batsashvili) and asked him about the overcrowding observed in some of the cells. According to him, the number of prisoners placed in cells depends on the cell area and hence, capacity. However, occupancy above the capacity and overcrowding are mostly caused by delays in pre-trial investigation and protracted court trials.

Women prisoners expressed their dissatisfaction with the absence of mattresses in cells.

Nineteen polled prisoners said that their cells had a window, but they were mostly covered with slatted metal blinds. They said the ventilation air duct was obstructed with a thick layer of

dust, which prevents proper ventilation, leads to specific smell and makes it difficult to breath. Cells are mostly ventilated when inmates are outdoors for exercise.

Women prisoners said they would prefer to be provided with the foodstuffs intended for them, and cook their food themselves. They explained that though the provisions are fresh, but the kitchen is filthy, due to which the food smelled and tasted unpleasantly, and it was impossible to eat it.

The order of 2 December 1999 (No 5/500/o) of the Minister of Justice of Georgia established a daily required diet for prisoners. Despite the order's requirement to provide various products, in reality the daily diet consists of: oatmeal porridge, cereals or boiled buckwheat and 500 g bread in the morning; soup or borsch in the afternoon; spaghetti soup, or potato and spaghetti soup in the evening. Prisoners placed in TB dispensaries and prison infirmaries, as well as juveniles are given 40 g sugar daily, whereas other inmates only receive sugar 2-3 times a week. 4-5 times a week they are given meat or fish.

According to the prison administration, some cells have improvised showers (water-heaters). In general, access to showers is restricted to once every 7-10 days.

Bed lined for prisoners is provided by their friends and families. Two respondents said they washed their bed linen themselves.

Nineteen polled prisoners said they had no impediments in getting their parcels.

One has to note good relationship existing between the inmates and the staff of the establishment, which was confirmed by all respondents; 7 of them said the relationship was very good, 8 said it was good, and 5 said it was normal.

To the question of the monitoring group: "Do you think your rights are violated?", 18 polled inmates answered "No", and only 3 said "Yes". According to the respondents, delays in investigation and court trial on criminal charges against them constituted a violation of their rights. One of the prisoners said 15 minutes allocated daily for personal hygiene (washing and toilet) was not enough, and it was necessary to give at least 30 minutes. It was found that medical examination is provided to all inmates at least once a month. Six prisoners said that it is possible to have an additional examination on request. However, one of the polled prisoners questioned the effectiveness of such consultation as the health care staff experiences a drastic shortage of medications and the necessary medical equipment.

It was also found that most of prisoners face no problems in sending or receiving letters (14 respondents), whereas some of inmates do face certain difficulties. Namely, two prisoners reported they were told by the prison administration that they had no right to send or receive messages. According to the establishment's deputy director (N. Chikviladze), the correspondence is subject to censorship and occasionally inmates' letters to their friends and relatives are not dispatched, and the inmates are informed accordingly. Ass for letters addressed to human rights governmental or non-governmental organisation, or a body conducting proceedings, these are not subject to censorship restrictions.

One of the parts of the monitoring exercise involved inquiring about prisoners' meetings with their friends and family. All of the polled prisoners reported they could meet their relatives without any impediments 5 times a month (5 respondents) or 4 times a month (4 respondents).

All of the polled prisoners reported their access to outdoor exercise, though they think one hour is not enough and it is necessary to extend the time of outdoor exercise to 2 hours.

Most of the polled prisoners reported an unimpeded access to books, press and television (16 respondents). Three respondents only had access to books and the press, because they had no TV set available. Books and the press are delivered to prisoners by their lawyers or relatives.

The findings indicate that only 4 of the polled prisoners had problems concerning access to lawyer. According to the respondents, this was not caused by any impediments by the prison's administration, but by the non-availability of a lawyer defending their interests (2 respondents), or by the fact that the lawyer had reportedly cheated them, and they refused to have any legal assistance (2 respondents).

General comments were offered by four polled inmates, with 3 of them pointing to the non-availability of a general-use telephone and a need to have it installed, and one pointing to a need of providing hygiene and cleaning products.

Most of the polled staff reported that conditions of detentions were "bad" (5 staff respondents), some thought they were "normal" (4 staff respondents), and one assessed them as very "bad".

One of the monitoring objectives was to assess the establishment's staff's working conditions and availability of technical facilities. It emerged from the survey that apart from telephone, the staff had no access to other means of communication (fax, mobile phones, portable radio-transmitter, Internet access).

Most of the staff think their working premises need repairs. Three of the staff respondents indicated that the rooms were worn-out, and one respondent said it was necessary to move the establishment to new premises.

All of the respondents indicate that office furniture is antiquated and inadequate, they have no equipment or stationery, which, in their view, is one of the major impediments encountered by them in their work.

The establishment has no computers; letters and documents are typed on antiquated typewriters, records of incoming and outgoing correspondence are kept manually, with entries made in a register.

Most of the respondents said that unless the problems of logistics are addressed, it would be extremely difficult to carry out any meaningful reform.

Two of the respondents indicated it was necessary too provide the staff with uniforms, to distinguish them from inmates.

Considering the findings of the opinion survey, the PDO recommends:

- For the Ministry of Justice and the Department of Execution of Punishment – to introduce systematic

control with a view to ensuring compliance with regime requirement in Prison No 5 in Tbilisi;

- For the administration of Prison No 5 – to systematise inmate's cards in conformity with the requirements of the law, on instruction and under direct supervision of the Department of Execution of Punishment;
- For the administration of Prison No 5 - to ensure the change of detention regime for prisoners in conflict with "criminal authorities, and guarantee their safety and protection;
- To clean ventilation air ducts in cells and remove slatted metal blinds, to ensure proper ventilation of cells and access to natural light;
- For the administration of the establishment – to secure proper and safe operation of electric wiring/installations, and ensure proper sanitary conditions in the kitchen;
- To extend the period allowed for personal hygiene in the morning form 15 to 30 minutes, in order to ensure the right to personal hygiene as stipulated by the Law on Imprisonment;
- For the Ministry of Justice of Georgia – to bring up the issue of carrying out, as a matter of urgency, of repair and refurbishment at Prison No 5 with the relevant government agencies, ministries and departments;
- For the Ministry of Justice and the Department of Execution of Punishment – to carry out negotiation with international humanitarian organisations (UMCOR Counterpart International) with a view to ensuring provision of mattresses, bedding and hygiene products for prisoners, and to strengthen co-operation with the Ministry of Labour, Health and Social Protection of Georgia, as well as with international organisations (WHO – the World Health Organisation, UNICEF – UN Children's Fund, UMCOR, MSF, Acts Georgia – Red

Cross Committee, IRD) with a view to ensuring supply of the necessary medication and medical equipment for the health care staff of Prison No 5)

- To prepare project proposals to be submitted to international organisations (UNDP – UN Development Programme, Human Rights Directorate of the Council of Europe, TACIS, PRI – Prison Reform International) and foundations (OSGF, Eurasia Foundation, OSI COLPI) with a view to ensuring provision of computers, office furniture and communication facilities for the prison staff.

On the Situation of Protection of Human Rights and Freedoms by Internal Affairs Bodies (Police)

According to the information provided by the Minister of Internal Affairs of Georgia, 137 files concerning various criminal offences perpetrated by officers of internal affairs (police) were sent to prosecuting agencies.

However, according to the data of the General Inspectorate of the Ministry of Internal Affairs, the number of police officers' files sent to the prosecuting agencies stood at 287.

In addition, according to the information of the General Inspectorate of the Ministry of Internal Affairs, 92 officers were dismissed for various transgressions and breaches, of which 12 were senior officers. Seventy-four officers were discharged from office, including 33 top-level officers; 198 police officers received severe reprimand and warning, 177 – reprimand, 5 officers were downgraded from special ranks, and 2 officers were censured.

Over the reference period, the Ministry of Internal Affairs and the General Inspectorate reported the following offences by police officers:

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Police lieutenants D. Koiava and T.Adamia, inspectors of the unit for fight against property crimes of the Criminal Investigation Division of the Didube-Chugureti District Department of Internal Affairs, apprehended and brought to the police station juvenile G.Marsagishcili, suspected of theft committed in the Kodak shop. The police officers failed to properly draw up an arrest report, and recorded the offence with a delay. Moreover, they only sent a telephone message concerning the crime to the Chief City Department of Internal Affairs, after the offence was covered by the "Courier, 9 p.m." TV programme.

D. Koiava, T. Adamia, and senior police lieutenant I.Bitukashvili, chief of the unit for fight against property crimes, were discharged from office, whereas police major G. Kobachisvili, chief of the Criminal Investigation Division received a reprimand.

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On 9 April 2002, the Rustavi-2 TV Company reported in its programme "60 minutes" about illicit possession and use of 10 g narcotic drug by a person illegally held in custody at the Vake-Saburtalo District department of Internal Affairs.

The examination revealed that on 23 March 2002, citizen G. Khutsishvili was carrying out his duties at the ERK Ltd, when he was approached by police lieutenant M. Chiviashvili, chief

of the anti-drug division of the Vake-Saburtalo District Department of Internal Affairs, and police major V.Chinchaladze, deputy chief of the same division. They took G. Khutshsvili and subjected him to physical pressure to confess that allegedly he, together I.Kokashvili, bought the narcotic drug and gave it to A.Gagoshvili and Sh. Tvauri. To clear up the situation, G. Khutsishvili called I.Kokashvili by V. Chinchaladze's mobile phone and asked to meet him. At about 3 p.m., M. Chiviashvili and V. Chinchaladze together with G. Khutsishvili went to the agreed place. M.Chivisahvili and V. Chinchaladze forced I. Kokashvili into the car and returned to the Vake-Saburtalo district police station. G. Khutishvili and I. Kokashvili were put in separate rooms where they were illegally kept: G.Khutsishvili – until afternoon 24 March, and I.Kokashvili – until 1 p.m. 28 March. From the police station they were transferred to the temporary detention isolator of the Tbilisi Chief Department of Internal Affairs, where G.Khutsishvili was held till 26 March, and I.Kokashvili till 28 March. At the Vake-Saburtalo district police G. Khutsishvili and I. Kikashvili were forcibly given Coca-Cola with an admixture of heroin, then police officers forced them to write an explanation, after which they drew up the file and took them to the Centre of Narcology for examination.

Materials of the case were sent to the Prosecutor General's Office of Georgia that instituted criminal charge No 7402855 against M. Chiviashvili, V. Chinchaladze, D. Tabatadze and other police officers for offence under Article 147, Part 1 of the Criminal Code of Georgia.

*

On 21 April 2002, officers of the Rustavi Department of Internal Affairs, allegedly on the basis of operational

information, apprehended A.Ghughunishvili and D. Chichiboshvili. During a search conducted in witnesses' presence, the police seized a sawn-off gun, two shells and a mask from A. Ghughunishvili, and 0.2 g marijuana from D. Chichiboshvili.

In the process of inquiry, A.Ghughunishvili confessed commission of burglaries at the "Maskarad" café, several apartments and offices. However, when interrogated as a suspect and a defendant, he used his right of silence. During the inquiry and investigation, A.Ghughunishvili displayed signs of bodily injury. According to the report of forensic medical examination, A.Ghughunishvili's injuries in the face, spine and leg areas were caused by a hard blunt object and represented light lesions. Upon his transfer to Prison No 5, A.Ghughunishvili was examined by forensic expert M. Nikoleishvili, who indicated in the act of forensic medical examination that lesions on A.Ghughunishvili's feet were possibly caused by the impact of electric wiring wound round the feet.

A.Ghughunishvili confirmed that officers of the Rustavi Department of Internal Affairs tortured him with electric shock to confess, whereas the items found in the search had been planted upon him by police. The act of planting was confirmed by the persons who happened to be on the site at the moment of apprehension. However, the fact is categorically denied by the Rustavi police officers.

The materials of the case were sent for further follow-up for the Prosecutor General's Office of Georgia that instituted a criminal charge for offence under Article 333, Part 1 of the Criminal Code of Georgia.

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On 3 June 2002, police lieutenant G. Sidamonidze, senior inspector at the Public Order Protection Unit of the administrative police of the Vake-Saburtalo District Department of Internal Affairs, together with the other, so far unidentified, police officer, put citizen J.Gasviani into a BMW car, allegedly for a check, examined his arms and asked him whether he was a drug user. Upon a "no" answer, instead of releasing him the policemen demanded money. Upon J.Gasviani's refusal they started the car and drove in the direction of the Heroes' Square. J.Gasviani opened the door, G.Sidaminidze pushed him and threw him out of the moving car. Having passed several meters, the driver stopped the car, baked it and drove over J.Gasviani's leg, causing a fracture. The police then abandoned J.Gasviani in a helpless state.

G. Sidamonidze was dismissed from police, while police lieutenant G.Alpaidze, chief of the 3rd Division was discharged from office.

Materials of the case were sent to the Prosecutor General's Office of Georgia that instituted criminal charge against officers of the Vake-Saburtalo District Department of Internal Affairs for offence under Article 118, Part 1 of the Criminal Code of Georgia.

*

Over the reference period, a number of corruption-related offences were revealed.

- Officers of Unit 8 of the Gldani-Nadzaladevi District Department of Internal Affairs apprehended and brought to the police station juvenile Vilen Morokhia. During a

search the police found an F-1 type grenade. On 17 October 2001, A criminal charge was instituted and Morokhia was placed under the oversight of police, as a measure of restraint. Unit 8 received a copy of the order on 19 November, however, the unit's senior staff did not task anyone with execution of the order. Moreover, Vice-Colonel M.Gabunia, deputy chief of Unit 8 in charge of criminal police operation, entered into illicit relationship with V.Morokhia and exacted a bribe. The act was shot by the latter with a candid camera.

On the basis of inspection, police major L.Jashiasvili, chief of a police subdivision at Unit 8, and Vice-Colonel M.Gabunia, chief of criminal police, were dismissed from police service, whereas police major N.Ronsadze, Chief of Unit 8, was discharged from office.

Materials of the case were sent to the Prosecutor General's Office of Georgia, which instituted criminal charge No 7402802 against M.Gabunia and other police officers for offence under Article 333, Part 1 and Article 338, Part 1 of the Criminal Code of Georgia.

*

In March 2002, the Rustavi-2 TV Company reported in its programme "60 minutes" about the fact of extortion by T.Masurashvili, chief of the Sagarejo Investigation Division, and investigator M.Jikurashvili, of 2500 USD from citizen D.Tediashvili.

It emerged from the checkout that on 14 May 2002 the Sagarejo District Department of Internal Affairs received a notice concerning the wounding of 3 persons from a firearm by

D.Tediashvili. On 17 May, materials concerning this fact were sent to the investigative division of the Sagarejo District Department of Internal Affairs, and investigator M.Jikurashvili was entrusted with an investigation. Inquiry and investigation was carried out in gross violation of procedural law. Namely, M. Jikurashvili, without any valid reasons, started the investigation only on 8 June 2001, i.e. with a delay of 22 days. He failed to promptly follow on the case and instituted a criminal charge only on 17 September, i.e. after 4 months of the receipt of the case. The primary investigative action was performed on 9 October, 2 months after the institution of the charge, and in the course of 3 months assigned for investigation, he only performed 5 investigative actions.

In addition, investigator M. Jikurashvili entered into an illicit relationship with the accused D.Tediashvili's mother and their conversation was filmed by journalists of the Rustavi-2 TV Company.

Investigator M. Jikurashvili grossly violated the provisions of Article 265, Part 1 of the Criminal Procedural Code of Georgia and Article 8, Para 8 of the Law on Police, and committed a wrongful act incompatible with his position as police officer.

The above gross abuses were caused by a lack of proper control on the part of police colonel T.Masurashvili, Chief of the Sagarejo Investigative Division, slack discipline and default of professional duties, which resulted in inadequate investigation, carried out with gross transgressions of the procedural law. Besides, T.Masurashvili entered into an illicit relationship with representatives of the defendant's side.

As a result, police lieutenant M.Jikurashvili, investigator of the Sagarejo Investigative Division and police colonel

T.Masurashvili, chief of the same division were dismissed from police.

Materials of the case were sent to the Prosecutor General's Office of Georgia, which instituted criminal charge No 7402839 against T.Masurashvili and M.Jikurashvili for offence under Article 332, Part 1 of the Criminal Code of Georgia. The case is investigated by the Sagarejo District Procuracy.

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Frequent are cases of excess of authority by officers of internal affairs bodies (police)

- On 23 June 2002, the Rustavi-2 TV Company reported in its programme "60 minutes" about the fact of pressure on a police agent by police colonel K. Jurashvili, head of a department at the National Bureau for Fight against Drugs and Drug Trafficking, who tried to force him by blackmail to plant a narcotic drug upon an innocent person.

  The checkout showed during a ride in a car together with police officers V.Monaselidze and G.Bakuradze, a person connected with them shot with a candid camera their conversation and later, a conversation with K.Kurashvili, and accused the said police officers of illegal activity and criminal offence, namely, the planting upon him of heroin for the purpose of incriminating a crime. K. Kurashvili was dismissed from police for a discredit on officer's status.

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Nine checks were conducted to verify the facts of illicit receipt and possession of narcotic drugs by officers of the General Inspectorate, resulting in dismissal of ten police force (7 officers and 3 privates) from police and institution of criminal charges against 7 police staff, including:

- On 15 March 2002, Private Sh. Gachechiladze, of the patrol service of the Vake-Saburtalo District Department of Internal Affairs was found to be under the influence of narcotic drugs. T. Gachechiladze was dismissed from police.
- On 5 April 2002, senior inspector D. Kukhianidze of the Tskaltubo District Department of Internal Affairs was found to possess 16.5 g heroin. D. Kukhianidze was dismissed from police.
- On 26 June 2002 G. Sherozia, chief of the Anti-Drug Unit of the Marneuli District Department of Internal Affairs was found to possess a large quantity heroin. G. Sherozia was dismissed from police.
- On 13 November 2002, investigator M.Shengelia of the investigative service of the Isani-Samgori District Department of Internal Affairs was found to illicitly possess and use narcotic drugs. M.Shengelia was dismissed from police.

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Over 2002, 7 facts were revealed of illegal convoying of cargoes by police officers, including:

- On 3 January, senior inspectors N. Adeishvili and Z. Bezhuashvili of the Tbilisi Traffic Police were found to illegally convoy a cargo.
- On 6 March, S. Beradze, traffic inspector of the Academy of Internal Affairs was found to illegally convoy a Kamaz type truck loaded with flour.
- T. Valishvili, senior inspector of the Isani-Samgori District Department of Internal Affairs was found to carry from Ergneti to Tbilisi 10 boxes of contraband cigarettes by an office car VAZ-2106. T. Valishvili was dismissed from police.

*

Over 2002, officers of the General Inspectorate found 83 police employees stopping cars without any valid reason. They were subjected to respective disciplinary sanctions.

Worthy of special mention is a vicious tendency by local police units to conceal facts of crime to prevent their entry into centralised record. Over the reference period, 44 instances of this offence were revealed, with relevant follow-on measures taken, though these clearly fail to reflect the real situation in this regard.

As mentioned above, according to the data of the General Inspectorate of the Ministry of Internal Affairs, 287 files concerning various criminal offences perpetrated by officers of internal affairs (police) were sent to prosecuting agencies.

This notwithstanding, according to the statistical data concerning the investigative activity of prosecuting agencies presented by the Prosecutor General's Office, only 64 criminal cases were initiated against perpetrators of the said crimes, i.e. 46.7 % of cases sent to the prosecuting agencies. Criminal

proceedings were dismissed on 11 criminal charges, i.e. 17.8 % of cases, whereas 26 cases were tried in court, i.e. 40.6 of initiated criminal cases, which is by far an unsatisfactory result.

As far as examination of such cases by the first instance courts is concerned, according to the 2002 Statistical Report of the Supreme Court of Georgia, materials on this category of cases were not submitted to the Supreme Court and, hence, no police officers or employees of internal affairs bodies were convicted.

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

Over 2001 and 2002, recommendations concerning examination of cases of detainees' transfer from police custody to pre-trial establishments with bodily injuries and breaches in respect of the duration of police custody established by procedural legislation, and the need to eliminate such practices were systematically addressed to the Ministry of Internal Affairs and the Prosecutor General's Office of Georgia.

Despite the action taken by the Ministry and the Prosecutor General's Office of Georgia to remedy the situation, such cases are nevertheless widespread, which points to inadequacy of efforts undertaken so far, and the need to raise the effectiveness of the measures taken.

Examination of materials available at the Department of Execution of Punishment of the Ministry of Internal Affairs, in

the period between 1 July 2002 and 1 January 2003, a total of 304 persons were placed in prisons in violation of procedural rules: 221 of these were placed in prisons with visible physical marks of injuries, and 83 – in violation of the period of police custody stipulated by the law. Of the said number, 275 persons were placed in Prison No 5 in Tbilisi, 23 persons in Prison No 3 in Kutaisi, and 6 persons in Prison 4 in Zugdidi.

More specifically, from among persons transferred to prisons with different injuries, 195 were placed in Prison No 5 in Tbilisi, 21 in Prison No 2 in Kutaisi, and 5 in Prison No 4 in Zugdidi.

From among persons transferred to prisons in violation of the period of police custody stipulated by the law, 80 were placed in Prison No 5 in Tbilisi, 2 in Prison No 2 in Kutaisi, and 1 in Prison No 4 in Zugdidi.

The breakdown of prisoners arriving in Prison No 5 in Tbilisi from different detention facilities with lesions and injuries looked as follows: from the temporary detention isolator of the Tbilisi Department of Internal Affairs – 75; from the temporary detention isolator of the Ministry of Internal Affairs – 14; from the temporary detention isolator of the Ministry of Security – 16; from transport police – 1; form the Tbilisi Military Prosecutor's Office – 1; from the Gldani-Nadzaladevi District Division of Internal Affairs of Tbilisi – 3; from the Isani-Samgori District Division of Internal Affairs of Tbilisi – 10; from the Vake-Saburtalo District Division of Internal Affairs of Tbilisi – 3; from the Didube-Chugureti District Division of Internal Affairs of Tbilisi – 3; from the temporary detention isolator of the Gori Department of Internal Affairs – 9; from the temporary detention isolator of the Mtskheta Department of Internal Affairs – 3; from the Kaspi District Division of

Internal Affairs – 7; from the temporary detention isolator of the Rustavi Department of Internal Affairs – 11; from the Telavi District Division of Internal Affairs – 3; from the Gardabani District Division of Internal Affairs – 5; from the Khashuri District Division of Internal Affairs – 3; Form the Ministry of Internal Affairs of Abkhazia – 1; from the Marneuli District Division of Internal Affairs – 4; from the Tsalka District Division of Internal Affairs – 1; from the Borjomi District Division of Internal Affairs – 2; from the Gurjaani District Division of Internal Affairs – 2; from the Tetritskaro District Division of Internal Affairs – 1; from the Sighnaghi District Division of Internal Affairs – 2; from the Dusheti District Division of Internal Affairs – 1; from the Tianeti District Division of Internal Affairs – 4; form the Kvemo Kartli Regional Department of Internal Affairs – 1; from the Dedoplitskaro District Division of Internal Affairs – 1; from the Kareli District Division of Internal Affairs – 2; from the Akhalkalaki District Division of Internal Affairs – 1; from the Akhaltsikhe District Division of Internal Affairs – 2; from the Akhmeta District Division of Internal Affairs – 1; from the Sagarejo District Division of Internal Affairs – 1, and from the Kvareli District Division of Internal Affairs – 1.

Prisoners **with lesions and injuries** placed in Prison No 2 of Kutaisi were transferred from: the temporary detention isolator of the Kutaisi Department of Internal Affairs – 4; Baghdadi District Division of Internal Affairs – 1; Khoni District Division of Internal Affairs – 1; Terjola District Division of Internal Affairs – 1; Sachkhere District Division of Internal Affairs – 1; Martvili District Division of Internal Affairs – 1; Samtredia District Division of Internal Affairs – 6; Tskaltubo District Division of Internal Affairs – 2; Zestafoni District Division of Internal Affairs –2; Oni District Division of

Internal Affairs – 1, and Chiatura District Division of Internal Affairs – 1.

Prisoners **with lesions and injuries** placed in Prison No 4 of Zugdidi were transferred from: Senaki District Division of Internal Affairs – 1; the temporary detention isolator of the Zugdidi Department of Internal Affairs – 3, and form Tsalenjikha District Division of Internal Affairs – 1.

Prisoners placed in Prison No 5 of Tbilisi **with a breach of the period of policy custody stipulated by the law** were transferred from: the temporary detention isolator of the Tbilisi Department of Internal Affairs – 18; temporary detention isolator of the Ministry of Internal Affairs – 3; Gldani-Nadzaladevi District Division of Internal Affairs of Tbilisi – 1; Vake-Saburtalo District Division of Internal Affairs of Tbilisi – 1; Isani-Samgori District Division of Internal Affairs of Tbilisi – 1; Marneuli District Division of Internal Affairs – 2; Akhaltsikhe District Division of Internal Affairs – 2; Akhmeta District Division of Internal Affairs – 4; Borjomi District Division of Internal Affairs – 4; Kvareli District Division of Internal Affairs – 1; Khashuri District Division of Internal Affairs – 3; Dmanisi District Division of Internal Affairs – 1; Kareli District Division of Internal Affairs – 2; Gori District Division of Internal Affairs – 3; Sighnaghi District Division of Internal Affairs – 1; Dedoplitskaro District Division of Internal Affairs – 1; Kaspi District Division of Internal Affairs – 11; Lagodekhi District Division of Internal Affairs – 9; Gardabani District Division of Internal Affairs – 4; Tianeti District Division of Internal Affairs – 2; Dusheti District Division of Internal Affairs – 1, and Telavi District Division of Internal Affairs – 3.

Prisoners placed in Prison No 2 of Kutaisi **with a breach of the period of policy custody stipulated by the law** were transferred from: Khoni District Division of Internal Affairs – 1; Samtredia District Division of Internal Affairs – 1.

Prisoners placed in Prison No 4 of Zugdidi **with a breach of the period of policy custody stipulated by the law** were transferred from: Zugdidi District Division of Internal Affairs – 1.

Particularly conspicuous are certain cases of prisoners' transfer with bodily injuries and with breaches of the statutory period of police custody:

- Khvicha O. Mgebrishvili was transferred to Prison No 5 in Tbilisi on 26 June 2002 from the temporary detention isolator of the Ministry of Internal Affairs of Georgia. He displayed a dissected wound in the occipital area of 3x4 cm in size, with 3 sutures put in the wound;
- Temur Sh. Shevardenidze was transferred to Prison No 5 in Tbilisi on 29 June 2002 from the Ministry of Internal Affairs of Georgia. He showed bruises in the left eye socket area, multiple excoriations on the back, a lesion in the left kidney projection area, 1 cm injuries on both feet toes, black-bluish haematomas on the soles of both feet;
- Soso A. Megrelishvili - was transferred to Prison No 5 in Tbilisi on 31 July 2002 from the temporary detention isolator of the Gori District Division of Internal Affairs with 2 gunshot lacerated wounds on the inner surface of the right arm, a surgically debrided and sutured wound of 4 cm in size on the right forearm's outer surface, a gunshot wound of about 1 cm in size on the thorax posterior surface, 0n the axial line at the level of 7th rib;

- Alexander D. Vashakahvili – was transferred from the Kvareli District Division of Internal Affairs to the medical facility for sentenced prisoners and detainees of the Ministry of Justice on 11 December 2002. Upon examination, he displayed multiple lesions, namely: post-traumatic haematomas in both eye socket areas, nasal bone fracture and incised wounds in the vertex area, dissected wounds on both lips, excoriations in the face area, lacerated wounds on forehead, nose, thorax, abdomen, loin, both thighs and both cruses;
- Alyosha A. Izoria – was transferred to Prison No 2 in Kutaisi from the Samtredia Transport Police District Division with a lacerated wound on the right thigh, bruise in the left eye socket area, lacerated wound with a suture on forehead, etc;
- Adam A.Mirzoyan was detained on 20 July 2002, and was transferred from the temporary detention isolator of the Ministry of Internal Affairs to Prison No 5 in Tbilisi on 28 July 2002, i.e. with 8 days delay;
- Gela A. Shubitidze was detained on 23 July 2002, and was transferred from the Lagodekhi District Division of Internal Affairs to Prison No 5 in Tbilisi on 29 July 2002, i.e. with 6 days delay;
- Avtandil G.Goginashvili was detained on 23 July 2002, and was transferred from Gori District Division of Internal Affairs to Prison No 5 in Tbilisi on 31 July 2002, i.e. with 8 days delay;
- Zviad J. Gogatishvili was detained on 3 August 2002, and was transferred from the temporary detention isolator of the Ministry of Internal Affairs to Prison No 5 in Tbilisi on 15 August 2002, i.e. with 12 days delay;
- Simon N. Lutsubidze was detained on 13 November 2002, and was transferred from the Lagodekhi District

Division of Internal Affairs to Prison No 5 in Tbilisi on 19 November 2002, i.e. with 6 days delay;

- Vepkhia G. Gvaladze was detained on 13 November 2002, and was transferred from the Lagodekhi District Division of Internal Affairs to Prison No 5 in Tbilisi on 19 November 2002, i.e. with 6 days delay;
- Gia I. Natsvlishvili was detained on 13 November 2002, and was transferred from the Lagodekhi District Division of Internal Affairs to Prison No 5 in Tbilisi on 19 November 2002, i.e. with 6 days delay;
- Davi E. Javakhishvili was detained on 13 November 2002, and was transferred from the Lagodekhi District Division of Internal Affairs to Prison No 5 in Tbilisi on 19 November 2002, i.e. with 6 days delay;
- Gocha M. Bazikadze was detained on 21 September 2002, and was transferred from the Lagodekhi District Division of Internal Affairs to Prison No 5 in Tbilisi on 28 September 2002, i.e. with 8 days delay;

On 26 March 2003, I addressed to the Prosecutor General Of Georgia and the Minister of Internal Affairs of Georgia Recommendation No 170/03 drawing their attention to the need to have these violations eliminated.

Concerning Inadequate Operation of Water Rescue Service

On 23 August, I addressed the Minister of Internal Affairs of Georgia with petition No 770/03 requesting him to consider improvement of the water rescue service.

The petition reasoned that individuals' safety at the sea, lakes, rivers and water reservoirs of Georgia was not assured, which led to a heightened risk of water accidents. The leadership of

the Ministry of Internal Affairs agreed with my request concerning the need to enhance the capacity and improve the organisational structure of water rescue service. However, nothing was one to follow on this recommendation.

Over 2002, the Ministry of Internal Affairs of Georgia reported 50 accidents on water, namely: in Tbilisi – 5; Gori – 5, Kobuleti –3, Khashuri –3, Kutaisi – 2, Chiatura –2, Zugdidi – 2, Abasha – 2, Sagarejo –2, Lagodekhi – 2, Adigeni – 2, Khelvachauri – 2, Gardabani – 2, Kharagauli, Rustavi, Akhaltsikhe, Akhalgori, Terjola, Shuakhevi, Keda, Samtreida, Poti, Mtskheta, Akhmeta, Senaki, Bolnisi, Tskaltubo, Tkibuli, Tsalenjikha and Bagdadi – one in each.

In July 2002, a discharge of water from the Avchala hydropower plant water reservoir on instruction of local police searching for a lost person resulted in an accident, with 2 persons drowned.

With a view to expediting solution of this problem, on 26 July 2002, I again addressed a recommendation to the Minister of Internal Affairs who informed me by his letter of 7 October 2002 (No 49/1-794) that before 1993 the operation of water rescue service in Georgia had been financed from the central budget, however presently, under Resolution No 364 of the Cabinet of Ministers of the Republic of Georgia, financing of the water rescue service is to be provided by local budgets, which has led to a collapse of the service.

Rescue services do not even have premises of their own: conditions at water rescue stations at the Tbilisi Sea, Lisi Lake and Turtle Lake are grossly inadequate. The attendant rescue staff has no access to the most basic conditions (electric light, telephone, radio-communication), as well as boats and

facilities. Rescuers' equipment is antiquated and often unoperational. This is one of the reasons for a death-roll of 43 persons drowned in various parts of Georgia (except Abkhazia and Tskhinvali region) over the earlier half of 2002, which id far greater that the comparable figure for 1993.

The leadership of the Ministry of Internal Affairs considered it expedient to entrust local authorities with the task of setting up water rescue services in their territories taking into account the character and the size of respective sites (beaches, water reservoirs, rivers, etc).

As most of these sites are privatised and belong now to legal entities under private law, it was considered expedient to provide for water rescue services operating an a contractual basis, with the private sector undertaking their logistics and financial support.

It emerged from the letter of the Minister of Internal Affairs that the Interdepartmental Standing Commission for Emergencies and Civil Defence of the National Security Council of Georgia would discuss this issue at a special meeting to be convened within a short period of time, and information concerning the results of discussion would be made available to the PDO.

However, the Ministry of Internal Affairs has so far been unable to follow on questions brought up in my recommendations, which is corroborated by the Ministry's letter of 7 February 2003 (No 49/1-67). In 1998, 1999, 2000, 2001 and 2002, the Main Department for Emergencies and Civil Defence of the Ministry of Internal Affairs of Georgia did nothing to provide for the necessary organisational and

practical measures to ensure proper work of the water rescue service in the country.

Concerning Seizure of a Vessel off the Somali Coast and Taking of Six Georgian Crew Members as Hostages

In June 2002, pirates seized for ransom, off the Somali coast, a vessel belonging to a PALAS NAVIGATIONAL of Greece. Six of the crewmembers were Georgian citizens, residents of Poti. Several weeks later, the sailors contacted their families and said the attackers demanded 600 000 USD for their release, and that they were held in captivity in very bad conditions and needed undelayed assistance.

Upon being informed about the fact, I immediately started action to address the problem (Article 12 of the Law on Public Defender of Georgia), the more so as the ship owner in Greece declared itself bankrupt and refused to pay the ransom or assist in any other way. We contacted the Ministry of Foreign Affairs of Georgia to assist us in addressing this extraordinary situation.

In July 2002, I requested the International Committee of Red Cross to provide assistance to the Georgian sailors held in extreme conditions of hardship, suffering a drastic shortage of food, with one of them in need of urgent medical aid.

ICRC representatives visited the sailors and provided assistance to them.

In September 2002, from a talk with the Georgian sailors it emerged that neither the Greek, nor the Georgian side was conducting any negotiations with the attackers, whereas the sailors' condition was getting worse

On 9 September 2002, the sailors' trade union requested our assistance.

On 18 September 2002, I addressed a letter of appeal to the President of the Hellenic Republic, HE Konstantinos Sevastopulos, and the Ombudsman of the Hellenic Republic, M. Nikophoros Diamandoros, requesting them to do all they could to assist persons in an extraordinary situation, no matter what their ethnicity or nationality was.

The Ombudsman of the Hellenic Republic responded several times, informing us that he addressed the relevant department of the Ministry of Foreign Affairs of Greece, and expressed hope that the critical situation would be settled peacefully.

On 29 October 2002, the Ministry of Foreign Affairs of Georgia had a meeting with the sailors' families, who expressed their profound dissatisfaction with inaction by the Georgian authorities. They expected the relevant entities of the Georgian government whose responsibility it is to protect the rights of their citizens, to react accordingly, and carry out their obligations.

The Greek side, reportedly, transferred the required sum to Ahmed Genusa, a go-between to deliver it to the attackers, which aroused hope that our citizens would be released from captivity, but nothing of the kind followed. However, the sailors' plight was getting further worse, and they were experiencing dire shortage of food and water.

I appealed to international organisation, namely, to Mr. Alvaro Hil-Robles, Human Rights Commissioner of the Council of Europe, Mr. Richard Miles, US Ambassador to Georgia, Mr. Romano Prodi, President of the European Commission, Mr. Costas Somatis, President of the CoE Council of Ministers with a request to assist the Georgian sailors held in extreme conditions of privation.

I am pleased to note that these endeavours, both ours and of all those organisations that took part in resolving the problem, had a positive outcome, and in March 2003 the six Georgian sailors returned to their homes.

Living Standards of Georgia's Population

Many legal and normative acts have been adopted in recent years with a view to ensuring protection of legitimate rights and interests of Georgia's citizens. However, none of these has led to any tangible improvement of the population's living standards. Let us try to explain the reasons behind the failure to improve in any meaningful way the lives of the people. It is necessary to clarify from the outset that we by no way intend to duplicate the functions entrusted to other agencies and describe in detail the socio-economic situation in the country; we only wish to discuss those parameters that have a direct bearing on human rights. Over the recent years there have been several attempts to integrate economic and social aspects in plans for socio-economic development. Suffice it to say that on 10 March 2001, Presidential Decree No 89 endorsed the Programme of Socio-Economic Development and Economic Growth. The Programme aimed to address the socio-economic problems faced by the country, improve the efficiency of

domestic production, and ensure economic growth, which would serve as a prerequisite for reducing poverty and creating an efficient economic system.

According to the experts of the Ministry of Economy, Industry and Trade of Georgia, the Poverty Reduction Programme is an integrated document that reflects the process of socio-economic transformation, envisions comprehensive and well-sequenced reformation, and covers almost every aspect of public policy. To this end, the President of Georgia has set up a special commission that brings together senior officials of various governmental agencies. A number of sub-commissions comprise senior representatives of executive bodies and chairmen of a number of parliamentary committees. Hence, development and implementation of the Programme envisions engagement of many people in positions of leadership. However we have to admit that no tangible improvements have been achieved.

Georgia is now living through transition, and is confronted with problems typical of all other countries in transition: mass impoverishment of the population, increase of unemployment and the resulting labour migration, the problem of unaccompanied minors, access to education, labour, health, problems related to old-age pensions, IDP subsistence level, average wages and the host of other problems typical of our everyday life. In short, the social environment we exist in poses numerous problems, and the state has a shared responsibility with the private sector to address them. In 2002, the subsistence minimum of an employable age man was 127.9 GEL, and that of an average family 222.4 GEL, whereas the cost a minimum consumer basket is far out of the reach of an average wage. At the same time, the purchasing power of wages is low too, the process of income and property

redistribution is continuing, with entailing deterioration of material status of the absolute majority of population. In the past, wages, pensions, stipends and other social benefits represented a stable source of income, today they are no longer meaningful, at least so for the urban population. Expenditure pattern has also changed. If 50% of income was spent on food in the past, today the figure stands at 70%, which, according to the estimates by the UNDP-funded National Human Development Report team, is reflective of poverty indicators calculated with consideration of food expenses.

Region	Poverty in %	
	Winter	Summer
Tbilisi	38,2	27,8
Imereti	61,4	58,1
Kvemo Kartli	55,7	43,8
Kakheti	67,7	37,7
Samegrelo	29,9	47,9
Ajara	39,6	22,8
Shida KArtli	51,5	46,2
Samtskhe-Javakheti	55,7	36,3
Guria	64,9	55,8
Mtskheta-Mtianeti	42,2	41,9
Racha and Kvemo Svaneti	61,1	48,5
Georgia in general	50,71	41,55

As shown by these data, in summer the number of the poor is significantly lower than in winter, whereas in winter over 50 % of population live in absolute poverty, with the result being

daunting social conditions, increase of unemployment and lack of job security with those employed. Everyone tries to do all in his power to earn the living for the family to survive. The rights of these people have to be protected, and those guilty have to be held accountable. Today, despite the presence of many human rights organisations, we are still far from desired results, and this is not because human rights organisations are inactive, but because the culprits are not held accountable. No one considers the validity of recommendations, proposals, conclusions, opinions, appeals and the law in general. This, in turn, favours unhealthy attitudes resulting in frustration and disillusionment among a larger part of the population.

Problems in Employment

Analysis of Georgia's foreign trade demonstrates that the country's economy is in a dire situation. Over the recent years, Georgia has invariably shown an unfavourable trade balance of 364 million USD in 1999, 320 million USD in 2000, 364 million USD in 2001 and 325 million USD in 2002. A certain decrease of foreign trade deficit over the last years has been caused mostly by a considerable increase of the proportions of scrap metal in Georgia's exports, yielding a total of 250 million GEL over the last 3 years, with a share of 10-12 % in exports. An extremely volatile situation in economy prevents any consistent elimination of negative trends in terms of employment. The more so, as it is almost impossible to define a precise number of those unemployed. According to official data, the number of job-seekers registered in 2002 by employment services was 39.3 thousand, which was 2,2 % higher compared to 2001, while the 2001 figure was 2.1% higher than in 2000, signalling an increase of unemployment by year. However, in accordance with labour assessment

methodology used by the Department of Statistics, a person who worked for at least one hour in the past week is considered as employed. Thus, the actual number of unemployed is far higher than the officially registered numbers. Moreover, according to 2002 indicators, almost half (49.2%) of the registered unemployed are specialists, every third unemployed person is a worker. In 2002, the unemployment benefit was 13.2 GEL. Many of the job seekers address their complaints to the Public Defender's Office. For instance, according to Mrs. Nazi Kashibadze, Chairman of the Mothers' Union of Georgia "The State has failed to improve the lives of pensioners in any material way with the 14 GEL pension. Moreover, the numbers of young unemployed is increasing. The parliament has taken care of MPs' interests and assigned 500 GEL pensions to them. But who cares about ordinary pensioners, those who elect them?" This is not an invalid complaint. The more so as the minimum subsistence wage in 2002 was 20 GEL, an amount in no way sufficient to support a wage earner. A person, whether employed or unemployed, has to use transport, which takes 8.8. GEL out of his budget (22 working days x 0.20 GEL), pay a minimum of 9.62 GEL for electricity (which only covers one 100 Wt bulb on for 5 hours a day, a fridge for 4 hours a day and one small water heater once every 4 days. Consumption of 12 GEL worth of gas allows cooking once a day and space heating for 4 hours a day. Thus, minimum expenses of a single adult person (electricity, gas, and public transport) come to monthly 35.4 GEL, whereas the minimum wage in 2002 was 20 GEL. Though, according to the 2003 budget, the minimum salary has raised to 35 GEL, this is in no way an adequate increase to improve the situation. It is to be noted that unemployment hits mostly young adults: half of the population aged 20-30 and two-thirds of adults within 30-45 age group have no permanent employment. According to official statistics, the level of unemployment in Georgia is 25.6 %,

whereas in Tbilisi it reaches 30-40%. Every third resident of employable age in Tbilisi is outside the labour market, as he either fails, or gave up any hope, to find a job. Thus, there are many problems to be addressed in terms of employment. It is imperative to take action now, otherwise the situation will be worsening further.

Health Care

Every person has the right to an adequate standard of living for himself and his family, including the right to health care and social protection in the event of unemployment, disease, disability, old age, etc. This right is provided for both by international law, and the law of Georgia. However, due to social hardships, most of Georgia's citizens have a limited access to health care and appropriate medical treatment. They refer for medical assistance only very late, which has a severe impact on individuals' health. The statistics of the Ministry of Labour, Health and Social Protection, and the data of the Information Bureau shows a decrease of life expectancy in Georgia. According to the Department of Statistics, in 2000 the rate of birth was 8.9 per 1000 of population, whereas the death rate reached 9.1 per 1000 of population, which signals an alarming demographic tendency. A steadily declining rate of birth results in demographic ageing of the population. As of 2002, the number of people aged 60 and above was 931 thousand. Logically, today one of the priority tasks is to address the health care needs of the elderly with due regard for age-specific factors, provide for the management of widespread chronic diseases and carry out monitoring of their health status. It is to be noted that a larger part of the population with insurance cover under the state programme comprises pensioners, and even though the Ministry of Labour, Health

and Social Protection has expanded the eligibility criteria for the most vulnerable population to include unaccompanied elderly, recipients of a special pensions, all IDP pensioners, people of 90 and above, as specified in Presidential Decree No 117 of 20 March 2002 "On Social Protection and Health Care for People in Especially Vulnerable Situation", no programme, even the best-structured one, will never be effective, unless all the necessary resources are mobilised. The health care reform started in 1992, however the funds allocated for the reformation of the health system in Georgia have so far failed to yield any signal success. Commercialisation of the system after decades of free health care resulted in a state of chaos. Fees charged by clinics are prohibitively high for the majority of population, barring for many an access to medical treatment. Poor people tend to postpone a visit to the doctor until it is really needed, often with dire effects on the health of the individual and the budget of the family.

The system the reform aimed to establish is already in place. Priorities set for different stages of the reformation process are also being met. The issue addressed in the most expeditious manner has been the establishment of tariffs for services, disregarding almost completely an ordinary citizen's paying capacity. One may legitimately ask a question: "What is the cost of health care in Georgia?", in other words "How much does an a citizen of Georgia pay for his health?". In the Soviet period the allocations for health care accounted for 2.8 to 4.2 % GDP. In 1994, this figure dropped to 0.3%. Following the reform, in 1999, budget allocations for health care were 8.95 GEL, and in 2001 – 12.11 GEL per capita. True, in 2002, GDP share for health care and social security increased (by 0.1%), but the increase was too insignificant to have any effect on the population. It is for this reason that private sector is increasingly playing a leading role in the provision of health

care services, which is a result of a severe shortage of state resources. The management of self-financed health care institutions has to incorporate utility costs into fees for services payable by patients. The ensuing results can easily be seen even from one example, the Institute of Cardiology. The clinic's design capacity was 200 beds, and it used to operate at its full capacity. Today, a daily fee of 50-60 GEL has led to a significant drop in the clinic's workload, with an average of 15-16 patients a month.

Another problem I would like to raise was covered in the Public Defender's previous parliamentary report. However, considering the relevance of the issue I have to address it again. In Georgia there are a considerable number of institutions and societies dealing with the elderly's problems, including the Scientific-Research Centre of Gerontology and Geriatrics that, since 1976, has been a structural unit of the Institute of Therapy. The Centre has its own 10-bed geriatric hospital – so far the only one in Georgia. Thus, it has an important role to play in the examination and rehabilitation of the elderly. According to informed estimates by the Centre's experts, in the event the Gerontology Centre becomes an autonomous entity independent from the Institute of Therapy, and provision of food, medications and medical care is funded from the state budget, with the yearly 53.0 thousand GEL it will be possible to provide medical care to over 1000 elderly patients. Note that in 2002, due to a lack of funds, the care was only provided to a few patients. Considering the urgency of the matter, I addressed a recommendation to the State Minister of Georgia, Mr. A. Jorbenadze, and the problem is being addressed. However, there is no special provision in the 2003 budget for the Centre of Gerontology. It is imperative that gerontology be included into the list of priorities in the context of health sector reform, and we hope that the Ministry of Labour, Health and

Social Protection will make all the necessary provisions. Here I would like to note the regular, business-like and good relationship we have developed with the leadership of the Ministry, both past and present (A. Jorbenadze, A. Gamkrelidze) that promptly considers and follows on our recommendations.

On Implementation of Recommendations Concerning the Cases Taken under Control by Executive Bodies

In my position as the Public Defender of Georgia, I have repeatedly indicated specific facts of human rights violations, however, many of the problems still remain unresolved, as the authorities often fail to show good will to redress the impaired rights, not because our recommendations are unfounded, but because they are reluctant to comply with the law, often with respect to cases not requiring any additional funding, which can be illustrated by a number of concrete examples.

The Situation at Construction Trust No 13

Under the executive order of 17 February 1992 of the Cabinet of Ministers of Georgia, Construction Trust No 13 was assigned to carry out rehabilitation work at administrative building of the Supreme Council (Parliament), with the Provision Service of the State Chancellery and the Parliament Staff acting as the customer. Trust No 13 carried out the rehabilitation work in good faith, in full conformity with the contract executed between the customer and the general contractor. It is established that the effective debt to be repaid by the customer to the said trust is equivalent of 1878 620 USD

payable in national currency. Several recommendations have been addressed to the State Chancellery and the Ministry of Finance of Georgia, the case was brought under "strict control", however, no action has been taken so far. As a result, labour rights of the Trust's numerous employees have been violated, and the Trust has gone bankrupt.

On Violation of Labour Rights of Tax Officers

The reform carried out in the Tax Office in 2000 led to the violation of labour rights of many tax officers in Tbilisi, and following the dissolution of the Ministry of Tax Revenues, these problems were "inherited" by the Ministry of Finance of Georgia. The problems existing in the tax system were emphasised in the Public Defender's previous reports to the Parliament, covered by mass media and discussed at a number of meetings. Instead of following on the problems in order to resolve them, the Ministry of Finance has chosen to apply a new "form" of work, completely ignoring the Public Defender's recommendations, thus violating requirements of the organic law. The Minster of Finance, Mr. M.Gogiashvili refuses to follow provisions of Article 16, Para (d) of the Law "On Structure and Order of Work of the Executive Authority" under which "the Minister shall oversee the functioning of structural units of the Ministry and public institutions within its authority, and supervise decisions and activities of the Ministry's officials". In accordance with the Public Defender's recommendation, the Chairman of Parliament of Georgia Ms. Nino Burjanadze assigned the Tax Revenues and Economic Policy Committee to consider the issue. Upon examination, the Committee invited the Minister to take measures to restore lawfulness, however, no action followed. Nothing has been done to carry out concrete instructions given by the State Minister, Mr. A.Jorbenadze on 17 December 2002 and 7

February 2003, as well as the instructions given to the Minister by the President of Georgia. One may ask whether the Minister and the Head of the Tax Department (M.Gogiashvili, I, Zautashvili) are instructed to do something illegitimate. They are not. What we see is lack of executive discipline and adequate responsibility on the part of top executives. In this context, we requested that the issue be discussed and evaluated at the meeting of the government. Currently we are closely examining the facts of abuse of labour rights of its officers by the Custom's Department. In case the Ministry of Finance again assumes the kind of hands-off attitude it showed with respect to the abuses in the tax system, it will be extremely difficult to protect the interests of the people whose rights have been grossly impaired.

On the Problems Existing in Housing Construction

In 2002, 412 residential houses with a total living space of 203.4 thousand square meters were constructed with the funds provided by population, and 1280 square metres of housing was built with the funds provided by enterprises and organisations. Of these, 154 residential houses with a total area of 21.4 thousand square meters were built in Tbilisi However, there is a critical situation in some of the housing co-operatives where the state fails to fulfil the obligations it assumed. A collective application of members of housing co-operatives No 632, 651, 652, 641, 660 and others shows that on 9 October 1992, under resolution No 983 of the Government of Georgia, the state assumed an obligation to complete the construction of co-operative apartment houses not completed by 1 January 1992 and tasked the Ministry of Architecture and Construction to complete construction of those houses where 75 % of construction works had been accomplished. Under the same

resolution, the remaining houses were to be completed not later than 1995, in order of priority established by the "SAKCOPMSHENI" amalgamation and the Co-ordination Board responsible for the protection of the rights of members of construction co-operatives. It is to be noted that most of uncompleted residential houses are located in Tbilisi, and members of co-operatives have already covered construction costs in accordance with the estimated construction budget. Considering this situation, in 1999, by Decree No 592 the President of Georgia approved a special programme under which "completion of construction works at 92 co-operative houses (7186 apartments) with a total living space of 548780 sq. m, required 319.6 million GEL". However, due to lack of funds, it was decided to implement the programme in stages. Within Stage 1, before 1 September 1999 it was planned to complete construction of those houses where the cost of the already accomplished work was above 20% of the estimated construction budget. Commissioning of residential houses constructed through allocations both from the central and territorial budgets was planned for 1999- 2005. However, the programme is not being realised within the specified timeframe. As a result, one part of co-operative members trespassed on the premises of certain administrative buildings, including the building of the Caucasian Institute of Minerals. Besides, a number of protest actions were organised in front of the State Chancellery, whose participants demanded that the state met its obligations or repay compensation. However, no progress has been made to resolve the problem. Let us consider only one example.

Citizen N. Chkhobadze (temporarily residing at 342 Ninoshvili street in Tbilisi), senior research associate of the Research Institute of Farming, became member of housing-construction co-operative No 647 (Resolution No 1063 of Mtatsminda

District Council, 25 April 1990) of the "Tavtavi" scientific-cum-production amalgamation with a right to receive a 59.6 sq. m co-op apartment. On 18 June and 5 November 1990, Ms. N. Chkhobadze fully paid the cost of construction, however, the house has not been built, and N. Chkhobadze is left without an apartment. She lives in her relative's house and has no financial capacity to buy an apartment for herself. It is to be noted that under Order No 226 of the Minister of Finance of Georgia (11 October 1999) issued on the basis of Resolution No 983 (9 October 1992) of the Government of Georgia "On compensation of price difference caused by a increase of co-operative construction costs", and the laws "On the State Debt" and "On Measures to Repay Domestic Debt", a compensation amount payable to members of housing-construction co-operatives shall be calculated on the basis of the market value of 1 sq. m, to enable the individual to buy an equivalent apartment at the market price. According to the conclusion of 3 September 2002 of the Ministry of Urban Development and Constriction, as of 26 July 2001, the market price of 1 sq. m of space in Didi Digomi where N. Chkhobadze was expected to receive an apartment was the equivalent of 122 USD in GEL, which makes 7273 USD in terms of the apartment space to be received by N. Chkhobadze. On 23 October 2002, we requetsed the Mayor of Tbilisi, Mr. V.Zodelava to assist in addressing the problem, however, no action has been taken so far.

In connection with the problems existing in housing construction, I would also like to address one example that clearly shows abusive practices by some construction companies, in this case "Kavunitex" Ltd. On 18 February 1998, the president of the said company M. Mirtskhulava and citizen E.Koniashvili signed a contract for a purchase 2-room apartment in a residential block under construction in the

Saburtalo district, between Akalsheni and Khiliani streets. However, the company violated its obligations under the contract. The decision rendered by the Vake-Saburtalo District Court on 2 May 2002 has not been fulfilled.

On 6 November 2002, I addressed a recommendation to the Prosecutor of the Vake-Saburtalo district, who informed me that the Prosecutor's Office instituted a criminal charge against the "Kavunitex" Ltd., and that investigation was conducted by the investigative service of the Tbilisi Main department of Internal Affairs.

Similar facts abound, and are taken under control.

In our previous parliamentary report, we discussed the case related to the internal debt derived from arrears in the payment of remuneration to contractor drivers of the "TbilTrans" municipal enterprise. Under 1997 Ordinance No 374, the President tasked the Mayor of Tbilisi and the Ministry of Finance to ensure phased repayment of arrears to "TbilTrans" contractor drivers before the end of 2002, however, no action has been taken so far.

On Protection of Consumers' Rights

No service contract has been executed so far between the AES-Telasi Company and individual consumers, which is a violation of the Laws of Georgia "On the Protection of Consumers' Rights" and "On Electricity and Natural Gas", as well as Ordinance No 10 (20 September 2001) of the Georgian National Energy Regulatory Commission (GNERC) (despite the fact that the deadline established by GNERC was extended from 31 December 2001 to 31 December 2002).

On Local Elections of 2 June 2002

On 2 June 2002, the majority of the population exercised their constitutional right to vote and took part in local elections. However, the Tbilisi *Sakrebulo* (City Council) only started its work in late 2002, which led to the violation of the provisions of the Law "On the Capital of Georgia, Tbilisi". In accordance with Resolution No 1142 of the Parliament of Georgia issued on 26 October 2001, the Tbilisi *Sakrebulo* elected in 1998 completed its term of powers on 20 June 2002, whereas the *Sakrebulo* elected on 2 June 2002 by general ballot was not constituted, which infringed the principle of continuity, leading to the violation of civil and political rights recognised by international and European law. More specifically, this led to the violation of the universally recognised requirement of the Charter of Paris of 21 November 1990. This violation was partly due to the fact that election results counted by the Central Electoral Commission appeared to be unacceptable for certain political parties. They challenged the total number of voters, the number of participating voters and the number of votes cast in favour of each one of the political parties. The elections were considered null and void. Under the decision rendered by the court, the Central Electoral Commission counted the election returns again. The process appeared to be overly extended in time and the *Sakrebulo* only started its work in November 2002. On 2 and 8 October 2002, the Public Defender's Office hosted the meetings of NGO representatives, who came up with recommendations addressed to the President of the country, the Chairman of Parliament, different political parties and members of the Central Electoral Commission inviting them to show good will and come to a consensus in order to avoid escalation of differences to the extent of growing into confrontation, and take efforts to resolve the existing problems. Very shortly, the *Sakrebulo* started its work.

On the Activity of Public Defender's Special Representative in Imereti Region

Over the reporting period, the Public Defender's Representative Office in Imereti Region received 357 applications, including 252 complaints, and provided legal advice and assistance to 546 citizens.

The special representative of the Public Defender in Imereti Region conducted regular monitoring of remand wards in all five district divisions of the Kutaisi Department of Internal Affairs, Prison No 2, correctional labour establishment in Geguti and colony in Khoni.

The premises of Prison No 2 in Kutaisi are in a very advanced state of decay, the compound is worn out, and walls are eroded, which endangers the lives of both prisoners and prison staff.

The Public Defender's Representative Office received notices of 67 prisoners complaining of the infringement of procedural norms during their detention, which led to gross violations of their statutory rights. More specifically, they were subjected to physical and psychological pressure and torture to force them to confess. The allegation was corroborated by the fact that upon examination, prisoners displayed physical signs of injuries.

The prison's administration frequently requests the Public Defender's special representative to meet with prisoners on a hunger strike; these meetings often demonstrate unprofessional and unsympathetic attitude to inmates by law-enforcers.

On 29 November 2002, the Public Defender's Representative Office received an application from Nugzar Kharatishvili, residing at 8, G. Abesadze street, Zestafoni, alleging that on 28 November 2002 he was brought to Zestafoni police station,

where police officer Emzar Bogveradze (chief of unit at the Zestafoni District Division of Internal Affairs) demanded that he, N.Kharatishvili, brought 300 USD, otherwise he would fabricate evidence of crime with the help of investigator, or force him to leave the town.

The representative of Public Defender's regional service met with police officers, the complainant, received his explanation, after which he addressed the Prosecutor of Kutaisi Region, Mr. T.Chumburidze, to conduct an inquiry concerning the facts described in the complaint.

On 23 September 2002, the Public Defender's Representative Office received an application from Natela Dvalishvili with a request to assist in the provision of early release of her son Vepkhia Khurtsidze from custody. Upon petition of the Public Defender's special representative, the convict serving his sentence at Geguti establishment No 8 was released before the end of his term.

On 9 September 2002, the Public Defender's Representative Office received an application form Revas Kvatashidze, residing in village Banoja, Tskaltubo district. The applicant had a dispute with his wife concerning partition of common property. Initially, the case was examined by the Tskaltubo District Court that satisfied the request of Kvatashidze's wife, after which the applicant appealed to the Kutaisi Regional Court.

The Regional Court delivered its decision on 16 August 2002 in absence of the victim. On 17 September 2002, the Public Defender's representative addressed an appeal to the Chairman of the Kutaisi Regional Court with a request to restore lawfulness. The regional court followed on the

recommendation of the Public Defender's representative and appointed a new hearing of the case for 31 October 2002.

The Public Defender's Representative Office was addressed by Nugzar Dakhundaridze, residing at 47, Vazha Pshavela street, Kutaisi. Before discharge, the complainant worked at Unit 3 of the Kutaisi Department of Internal Affairs. He considered that the Inspectorate of Special Cases of the Ministry of Internal Affairs showed partiality in dismissing him from office. Following the recommendation of the Public Defender's special representative, N. Dakhundaridze was reinstated in office.

The Public Defender's Representative Office received a collective application from residents of the Asatiani Street, Kutaisi, in which the applicants complained that after the purchase and installation of expensive gas meters they only had natural gas supplied for one month. Following the recommendation of the Public Defender's representative, the problem of gas supply to the Asatiani Street was solved.

On 5 June 2002, the Public Defender's Representative Office received an application from Nino Dadunashvili, residing at 12, Chabukiani Street, Kutaisi. N. Dadunashvili is a single mother with a minor child, in a difficult economic condition. She requested to solicit for her exemption from the government duty. Following the motion of the Public Defender's special representative in Imereti Region, N.Dadunashvili was exempted from the government duty.

On 5-10 December 2002, the Public Defender's Education Centre in Imereti Region held the Week to mark the UN International Day for Human Rights. The event engaged a large part of Kutaisi general public and young people. On 5 December, I. Otskheli Classic Gymnazia No 2 hosted the

official opening of the Week, attended by representatives of the Municipality, law enforcement bodies, the University, institutes and schools, schoolchildren and their parents.

On 6, 7, 8, 9 December 2002, Kutaisi schools held open interactive lessons and discussions on the following topics jointly identified by school representatives and the Public Defender's special representative:

1. Freedom of thought, conscience and religion;
2. Illicit use of narcotic drugs.

One of the most active contributors to the Week was School No 23. The Public Defender's representative and members of his staff took part in open lessons attended by NGO activists and media representatives. All eighth grade students, their teachers and parents were given the book "The Road to Power" published by the Norwegian Refugee Council. The event was covered by TV and press of Imereti Region.

With a view to raising public awareness on the rights of the child, the Education Centre announced an art competition with a title "I am a human", followed by an exhibition in the Varla exhibition hall on 10 December 2002.

A training workshop for teachers was organised in Imereti Region with the UNDP financial support, followed by workshops with a theme "How to Teach Human Rights" held in Baghdadi and Samtredia. Teachers were offered a five-day training course on teaching human rights and freedoms. All workshop participants were given certificates and the book "The Road to Power" published by the Norwegian Refugee Council.

The Education Centre actively co-operates with the region's educational institutions and military units. The Public Defender's Representative Office in Imereti Region supports a social research centre, a library, centres for women's rights, the rights of the child, IDP rights, and has a web-page.

On the Activity of Public Defender's Special Representative in Samegrelo and Zemo-Svaneti

In 2002, the Public Defender's Representative Office in Samegrelo and Zemo-Svaneti Region established a working network. A branch of the Public Defender's regional office was installed in Senaki, in local government premises, to cover Abasha, Khobi, and Martvili districts. Another branch was set up in Tsalenjikha district, to monitor activities of governmental and non-governmental human rights entities in Tsalenjikha and Chkorotsku districts. It is planned to set up another branch in Poti.

In 2002, the Public Defender's Representative Office in Samegrelo and Zemo-Svaneti Region received 211 applications and complaints: 37 of these concerned the violation of social rights, 12 – economic rights, and 162 – civic rights.

Many of the complaints concerned violations of rights in detention (beating, violence, etc.).

23 applications dealt with the action by law-enforcement bodies, with the following break-down: police –7, prosecuting agencies – 6, courts –3, enforcement of court decisions – 6, and IDP problems –12.

Abuses by police during police custody remain a serious issue. The project "Monitoring of Deprivation of Liberty in Samegrelo and Zemo-Svaneti" implemented with the financial support of the British Embassy enabled us to closely address this problem.

In the course of the project, the Public Defender's Regional Office in Samegrelo and Zemo-Svaneti examined 38 applications and complaints concerning custody in 2002 alone. All of them were acted on immediately, with 16 facts of violations identified. Under Article 21 of the Law on the Public Defender of Georgia, 3 recommendations were sent to those officials whose activities had caused violation of human rights, and 4 suggestions were addressed to competent bodies on disciplinary responsibility and criminal liability against persons whose actions caused a violation of human rights.

The recommendations led to the institution of 4 criminal cases and 3 disciplinary charges.

On 9 April 2002, Jumber Kiria, residing in village Kamiskuri, Khobi district, was apprehended, with no valid reason whatsoever, and beaten by police officers K. Shushania (former criminal police chief) and R.Kebularia. Beating caused injuries and lesions.

This fact caused the protest of the Kamiskuri community, with protesters blocking the Zugdidi-Tbilisi highway for several hours. The regional Prosecutor's Office instituted a criminal charge (investigator Z.Kutalia). K. Shushania was discharged from office.

The complaint is taken under special control, as criminal investigation on the case is delayed, whereas the discharge of

the criminal police chief was only nominal, as K. Shushania was later appointed to the Poti Department of Internal Affairs.

On recommendation of the Public Defender's special representative in Samegrelo and Zemo-Szaneti Region, a criminal charge for the beating of juvenile I.Zarkua was instituted against police captain G.Kalichava, inspector of the Zugdidi investigative division. Materials related to the fact of beating (forensic report, photos of injuries on I.Zarkua's body) were attached to the materials of the case; a report was sent to the General Inspectorate of the Ministry of Internal Affairs concerning procedural breaches reported in I. Zarkua's detention (no protocol of detention, etc.), that entail disciplinary responsibility.

Police captain G.Kalichava was given a rebuke. Investigation on the case suspended with no valid reason, was resumed. However, despite the availability of evidence, the investigation is not completed, and the police officer responsible for beating a juvenile (captain G.Kalichava) is still in office. Moreover, G. Kalichava took an active part in the unlawful apprehension and beating of Nika Nikabadze in Zugdidi on 28 June 2002 resulting in the death of the latter.

On 11 July 2002, Paata Gotsadze was placed in custody under Article 177 of the Criminal Code of Georgia at the investigative Division of the Senaki District Division of Internal Affairs. He was beaten by police to confess. Many of procedural requirements were violated too, including the failure by police to fill in the protocol of detention.

On 16 May 2002, the Public Defender's representative and representatives of the Zugdidi Prosecutor's Office examined a criminal case against Zviad Pertakhia residing in Zugdidi

district, who was charged with a murder of 3 police officers in 1999 and wanted by police. It emerged that Z.Pertakhia was not guilty, and official retrieval for him was withdrawn.

Often prosecuting bodies suspend investigation on cases, involving police officers, which often encourages a repetitive crime.

On 28 June 2002, Nika Nikabadze, resident of Zugdidi, was apprehended and beaten to death by police officers of the Zugdidi Department of Internal Affairs. The case is being investigated by the regional procuracy, but investigation is delayed.

Examination of this criminal case demonstrates that no medical analysis of brain EEG was undertaken to see whether the late N. Nikabadze was inflicted brain injuries. Neither were the witnesses confronted to clarify the details. Investigator V.Kutalia witnessed the fact of N.Nikabadze's beatings, and he did not deny in his testimony that he drove N. Nikabadze home after the police beat him, but he refuses to give any exhaustive evidence of the circumstances he witnessed himself.

On the recommendation of the Public Defender's representative, a criminal charge was instituted against the Zugdidi communal services for misappropriation of funds allocated for IDPs' communal expenses, however the Zugdidi procuracy has failed to provide any further information on the case.

On 9 April 2002, the Senaki procuracy instituted a criminal charge against Zviad Tsotseria for a crime punishable under Article 260, part 1, Article 236, Parts 1,2, and 3, and Article 187 of the Criminal Code. In the course of the suspect's

detention and investigation of the case, there occurred a number of procedural breaches: the police did not fill in the protocol of detention, which prevented the court form checking the investigative action performed. Also, Z. Tsotseria was beaten by police.

Despite these procedural breaches, the Senaki District Court sanctioned 3-month detention on remand for Z. Tsotseria. Public Defender's special representative visited him at Prison No 4 and could see physical signs of violence, however Z. Tsotseria refused to answer as to who exactly had beaten him.

The 3-month preliminary investigation did not confirm the commission of above crime by Z. Tsotseria. As far as the crime under Article 177, Part 1 is concerned, he confessed it, for which crime he was sentenced by the Senaki District Court to 10 months of deprivation of liberty. After having served half of the sentence, Z. Tsotseria was released.

On 8 August 2002, Merab Goniava and Gocha Murgulia were taken into custody for a crime punishable under Articles 236 and 260 of the Criminal Code of Georgia. When apprehended, they were beaten by police. Besides, there were procedural beaches related to their taking into custody. However, the Poti District Court decided to apply to these persons remand detention as a measure of restraint.

At the request of the Public Defender's special representative, the Kutaisi Regional Court ruled to apply to M. Goniava and G. Murgulia a non-custodial measure of restraint.

On 27 September 2002, Elguja Songulia, resident of Tsalenjikha, murdered Dato Saria for revenge. The victim's parents forced E. Songulia's aged parents, his wife and minor

children to leave their home. The persons concerned have found shelter with their relative, the children do not go to school, their house and other property was assaulted by D. Saria's relatives.

Examination of the application concerning the case revealed a partial and biased attitude to the problem by the governor of Tsalenjikha (R. Kacharava) and district police (police chief G. Kvaratskhelia). Namely, they make the issuance of permission (!) for the Songulia family to live in their own house conditional on their "uncovering" of E. Songulia's hiding place.

Over the reporting period, the Public Defender's Regional Office received 162 applications concerning abuses of social, economic and other civil rights. Most of them pointed to arrears in wages and pensions. Upon consideration of these applications, about 30 requests were sent out to various organisations, with 14 of them satisfied.

Seven requests were sent to the UNDP Office in Zugdidi and ICRC local office concerning provision of humanitarian relief and other assistance.

On 5 December 2002, the Public Defender's Regional Office was addressed by a group of workers from village Lia of the Tsalenjikha district. The applicants requested to assist them in getting compensation for the work hey had performed in 1998, 1999 and 2000 for "Lia" Joint Stock Company (tealeaf plucking). According to the application, despite their demands, the JSC management refused to provide any information about their compensation.

In September 2002, teachers of all the 15 secondary schools in Zugdidi went on strike. They demanded the payment of arrears in their salary for 2001 and 6 months of 2002. During two weeks schools were paralysed, Despite this massive action, the teachers only received half of what they demanded, which implies that similar actions of protest may repeat in future.

During 3 days, beginning from 4 December 2002, the medical staff of the Zugdidi outpatients' clinic (89 persons) were on strike, demanding the payment of arrears in wages (July – November). They held a sit-in action in front of the regional administration's premises, with no progress on the matter. Only through the involvement of the Public Defender's special representative was it possible to partly solve the problem and have the relevant entities compensate for 3-month arrears.

A similar demand is put forth by the staff of another outpatients' clinic (250 signatures).

In 2002, the Public Defender's Regional Office in Samegrelo and Zemo-Svaneti received 16 applications (3 collective, and 13 individual) concerning IDPs' rights. Most of the applications, namely, 9 of them, concerned social problems: 5 applications indicated problems with the provision of relief and allowances; 1- arrears in pensions; 1- inadequate living conditions; 3 of the applications concerned criminal cases; and 1 dealt with personal matters.

Over the reporting period, the Public Defender's special representative and members of the Regional Office took part in a number of meetings and seminars held both in the region's periphery and its centre.

On 21 March 2002, the Public Defender's regional staff met with the Samegrelo- Zemo Svaneti regional branch of the Georgian Journalists' Federation, and on 22 March they attended the presentation of the joint project initiated by the Association "Atinati" and IREX.

On 11 May – the International Day of the Red Cross and Red Crescent, the ICRC Office in Zugdidi held a quiz for schoolchildren "What is humanity".

On 4 November 2002, the Public Defender's regional staff met with the leadership of the ICRC Office in Zugdidi to discuss issues of international humanitarian law.

On 4 December 2002, the ICRC Office in Zugdidi and the local branch of the Lawyers' Union of Georgia held a seminar on international humanitarian law.

Chapter II
WORK OF THE PUBLIC DEFENDER'S OFFICE

Report of Strategy Department

Over the reference period, the Strategy Department examined 100 draft laws.

Apart from that, in conjunction with the Centre for the Rights of the Child, the Strategy Department drafted additions and amendments to be made in the Criminal Code of Georgia. Thus, for instance, the wording of Article 171 was refined, and a new one – Article 171^1 added. It is to be noted that the new article describes a new type of crime – minors' pornography, and provides its definition. Significant changes were made in Article 172 of the Code that now provides an instrument for law enforcement bodies and courts to combat trafficking in persons. The penalty specified by Article 254 for offences committed through the abuse of office and authority was made more stringent.

In 2002, the Public Defender made an emphasis on the powers entrusted to the Public Defender under Article 21, Para (i) of the relevant organic law. Namely, a constitutional action was brought to the Constitutional Court, in which the Public Defender requested to abrogate those normative acts that restrict the human rights and freedoms enunciated in Chapter 2 of the Constitution of Georgia. To this end, in constitutional claims filed on 24 May and 26 June 2002, the Public Defender requested to invalidate those articles of the Code of Criminal Procedure of Georgia that deny the right to have an immediate

access to a defence lawyer to persons kept in custody or detention, and the right to be released upon expiry of a 9-month period of remand to accused persons.

The first of these constitutional claims has already been examined by the court. In its decision of 29 June 2003, the 2nd Collegium of the Constitutional Court adjudicated as unconstitutional the first sentences of Article 72, Parts 3 and 5, Article 73, Part 1, Paras (a) and (d), certain wordings in Article 83, Para 5, Article 142, Part 2, Certain wordings in Article 146, Parts 2 and 3, and the last provision of Article 284, Part 2 of the Criminal Code. In the reasons for the decision, the Court pointed to many ambiguous and indistinct formulations that need to be amended by the Parliament. Speaking generally, this decision by the Constitutional Court of Georgia is a step forward in the protection of statutory rights of detainees and suspects. The changes made in the Criminal Procedural Code of Georgia will help to reduce the number and duration of unlawful detentions in remand cells, as well as other actions impairing the rights of individuals, and enhance the role of defence lawyer in the process of investigation, which will undoubtedly help to establish the true facts. The judicial process at the Constitutional Court revealed a highly unenthusiastic position of the law enforcement bodies. They opposed our position and stated that recognition of some articles as unconstitutional would hamper and impede their fight against crime. It is unfortunate to hear this position articulated by the leadership of power structures, as, following their logic, fight against crime is only possible through impairment of human rights. They fail to realise that violation of the rights of individuals is a crime, and one cannot fight against one crime committing another.

On 12 November 2002, the Public Defender brought a constitutional action requesting to recognise as unconstitutional Article 5, Article 58, Para 1 and Article 81, Para 1 of the Law "On Disciplinary Responsibility of General Courts' Judges and Disciplinary Proceedings", and Para 10 (7) of Decree No 176 of the President of Georgia dated 25 March 1998 "On Regulations of Selection Competition for Judges". During the examination of the claim by the court, the Public Defender also raised the question on unconstitutionality of Article 85^{II}, Para 1 of the Organic Law on General Courts. The claim was motivated by the drive to ensure genuine independence of the judiciary, as an independent branch of power, and the judges. The said paragraph of the presidential decree, contested by the Public Defender in the constitutional claim, did not enable the applicants taking part in the selection procedure, to be informed, in case of their rejection, of the reasons for the decision, and challenge it in the court. The contested provision obscured from the public the results of the selection. The applicants with higher examination grades failed to understand why they were rejected, while applicants with lower grades were appointed as judges. In the course of judicial process, the President himself abrogated the contested provision. As far as the issue of unconstitutionality of Article 85^{II}, Para 1 of the Organic Law on General Courts is concerned, despite the term of judiciary powers stipulated by the law (10 years), the provision in question allowed to reduce it to 18 months, which effectively limited and negatively affected the independence of judges (116 persons have been granted judiciary powers for the period of 18 months). On 26 February 2003, the First Collegium of the Constitutional Court adjudicated this article as unconstitutional and abrogated it. It is expected that following this decision of the Constitutional Court, the procedure of appointment of judges will become more transparent, which will enable us to verify the fairness of

selection procedure. It is unlikely to administer justice, unless the body of judges comprises the best. At the same time, only those judges whose independence is guaranteed and protected, can ensure efficient delivery of justice. Strangely enough, in our drive to ensure the independence of judges we were not supported either by the Supreme Court, or by the Council of Justice, whose representative in fact opposed our position during the proceeding. It is disappointing that constitutional norms are not well understood even by members of the Council of Justice (the validity of our position was confirmed by the Constitutional Court). It is interesting to know how they select judges, if they themselves are ignorant of the requirements of the Constitution and are hardly interested in strengthening the independence of judges.

On 12 November 2002, the Public Defender of Georgia brought a constitutional claim with the Constitutional Court requesting to recognise as unconstitutional provisions 52 (d), 53 (d), 54 (d), 55 (d), 56 (d), 58 (b), 59 (b) and 69 (b) of Decree No 294 of Head of State, dated 2 September 1994. Under the contested provisions, military commanders have the right to detain subordinate military servicemen for periods of up to 10 days. Application of detention to military servicemen does not require a court decision to that effect, which is clearly in conflict with the Constitution, as only the court can decide on detention of a person for a period above 48 hours. The Public Defender's claim challenges the right of the commander to detain his subordinates as a form of disciplinary punishment. Detention shall only be effected on the basis of the court, and not individual, decision. This constitutional claim has not been examined yet.

Report of the Centre for the Rights of the Child

Looking back after the two years of existence of the Centre for the Rights of the Child, one can safely state that the current situation of children in terms of their rights and social status has not changed in any significant way from what it was 2 years ago.

Rapid change of stereotypes, transformation of moral and ethical values, coupled with a marked worsening of social conditions of life for the majority of population have led to a psycho-emotional overload and crises in families, contributing to the emergence of the following alarming tendencies:

- Social desadaptation of children, early alcoholism, smoking and drug addiction, immoral behaviour and unlawful acts;
- Homelessness among children, as a social phenomenon;
- Exacerbation of the problem of social orphanage;
- Growth of infant delinquency;
- Increasing numbers of children - victims of criminal acts, exploitation and sexual harassment.

According to the Social Research Centre of the Zhordania Institute of Human Reproduction, the number of smokers among juveniles is fairly high (over 60% girls, and over 90% boys); alcohol is regularly consumed by over 70% girls and over 90% boys. 23.9% of young people use narcotic drugs, with the share of street children among drug users being very high: among the children registered by Juveniles' Inspectorates over the reporting period, 23 are drug users, 94 – alcohol consumers, 130 – prostitutes and 130 are beggars and vagrants. One of serious impediments on the way to addressing this problem is the fact that its root causes are not studied on the

ground, there is no co-operation between anti-drug services, narcological and venerological clinics.

The rate of juvenile delinquency remains high. According to the Ministry of Internal Affairs, in 2002 there were 674 documented crimes committed by juvenile delinquents, which is 12 cases more than in the previous year. This figure accounts for 4 % of all recorded crimes in Georgia. It is particularly distressing that the rate of property-related offences committed by juveniles shows a steady increase; in 2002, this type of crime accounted for 69.3% of all crimes committed by juvenile delinquents. Other types of crime also show an increase, for instance: premeditated maiming – 13 cases, drug-related offences – 30 cases, etc. Delinquency in the provinces of Georgia also deteriorated, signalling an increase in the level of crime. The number of crimes committed by juveniles in Shida Kartli was 23; Kakheti – 22; Kvemo Kartli – 20; Samegrelo, Zemo Svaneti and Ajara – 10; Guria – 2. A rise in the level of crime was reported in Gori – 20, Dedoplis-Tskaro – 16, Zugdidi – 10, Gardabani – 9, Sighnaghi – 8, Telavi – 6, Bolnisi, Rustavi, Kaspi and Samtredia – 5 each, Tsalenjikha, Lanchkhuti and Tbilisi Metro operational area – each, Dusheti and Zestafoni – 3 each, Vake-Saburtalo district of Tbilisi, Akhalgori, Borjomi and Terjola districts – 2 cases each.

Another serious problem is possession and carriage of cold weapons and firearms by juveniles. In 2002, there were 46 documented crimes committed with the use of knife: 5 murders, 8 attempted murders, 27 cases of maiming, 4 each cases of mugging and robbery. Thirty-nine juveniles became victims of criminal assaults committed by young delinquents. It is to be noted that among young perpetrators many are school students. In 2002, 11 secondary school students committed 2

murders, 2 attempted murders and 7 offences involving maiming. For instance:

- Koba Natroshvili, a tenth-grade student of secondary school No 71 of the Gldani-Nadzaladevi district of Tbilisi mortally wounded with knife Besik Azmaiparashvili, an eighth-grade student of secondary school No 115, who died in hospital;
- Gocha Tevzadse, a student of secondary school No 183 of the Mtatsminda-Krtsanisi district of Tbilisi committed an murderous attempt, wounding juvenile Saba Gakhokia in the chest area;
- Nika Modzgvrishvili, student of secondary school No 175 of the Gldani-Nadzaladevi district of Tbilisi, wounded Mamuka Jalabadze with knife in the chest area.

Over the reference period, the number of documented gang offences in Georgia was 1279; 217 of these were committed by juveniles or with their involvement, which accounts for 17% of all recorded gang offences. Every one of five gang offences committed by juvenile delinquents is recorded in Tbilisi. Analysis shows that most of gang offences are property-related, including 76 cases of mugging and robbery, and 467 cases of theft. For instance:

- On 10 September, in the territory adjoining the Navtlugi market, police apprehended members of a juvenile criminal gang specialising on theft: Tedo Khurtsidze, born 1988, residing at 38, Block 2, Gldani District, and Kakha Kapanadze, born 1986, residing at 17, Gudushauri street. On 4 September, they plundered S. Begalishvili's apartment in 3, Tsulukidze street; on 8 September – G.Kalichava's and M. Sikharulidze's

apartments in 9, 8th Legion Settlement; on 9 September - V. Kvrivishvili's apartment in the same block; on 10 September – Nazi Zurabiani's apartment in 10, 8th Legion Settlement;

- On 10 December, police apprehended Giorgi Goderdzishvili, born 1986, residing in village Tskarotubani near the Gldani district, and Murman Katamadze, born 1988, residing at 9, Adigeni street. The delinquents plundered the basement, belonging to M. Mechiauri at 13. Block 5, Gldani District;

These facts indicate that Juveniles' Inspectorates hardly give due attention to early identification of criminal gangs. They do not co-operate with school and university administrations. In certain cases, inspectors working with juveniles, face opposition from administration of some schools when they try to establish contacts with them. School administrations refuse to provide data on those students who were observed to breach public order, miss classes, etc.

Analysis showed that despite the instructions given to relevant agencies, they failed to give adequate attention to organising preventive work to unaccompanied juvenile delinquents. As a result of the action taken, local law-enforcement bodies identifies 6103 juvenile delinquents; 485 juveniles (358 boys and 127 girls were sent to the Minors' Reception, Crime Prevention and Orientation Centre of the Ministry of Internal Affairs.

Recent health care statistics demonstrates the growth of morbidity rate among children. Low levels of family income compounds further the problem of their treatment, contributing to a threat to their health.

In December 2002, two children were referred to the Zubalashvili paediatric clinic - 4-year old Oksana Kolder and 11-year old Nikusha Kolder, who made their living and supported their grandmother by begging. In addition to scabies and lousiness, one of the kids showed signs of freezing. Due to involvement by members of the Public Defender's Office, the children were given medical examination and treatment.

Citizen T. Asatiani requested us to assist her with provision of medical treatment to her son having serious eyesight disturbance. We applied to Dr.L.Chanturia, Head of Minors' Ward at the Eye Disease Clinic in Ortachala, who was very responsive and provided the necessary assistance to the patient. We also assisted a number of disabled children: 5-year old Jonari was included into the rehabilitation programme at kindergarten No 16 in the Didube-Chugureto district; I.Shonia's 11-year old paralysed son was refereed to a specialised NGO "First Steps".

A larger part of Georgia's population are living below the poverty line. Often, people do not have enough money to subsist, let alone send their children to school. After reorganisation, R. Goderdzishvili was left without a job, despite having a dependant mentally insane husband and a 6-year old child. At the Public Defender's solicitation, she has been registered with the City Employment Bureau, whereas the child has been sent to kindergarten No 76, where he received free meals.

The Public Defender's solicitation helped to partially ease the lot of children living in unbearable conditions, though this is far from remedying the problem.

The available information suggests that institutionalised children at the Martkopi orphanage live in unbearable conditions – they are undernourished, and despite the proximity of a livestock farm attached to the institution, the children are hardly ever given dairy products; they receive no medical care, etc. The most serious problem is that at nighttime the children are left alone, without anyone's supervision, which enables anyone to enter the building. There was a number of shocking facts at the orphanage. A 16-year old inmate was raped by boys from a nearby village, but for fear of the director she concealed the fact. After finding her pregnant, the director expelled the frustrated and traumatised girl from the institution. If it were not for the Martkopi nunnery that gave shelter to the girl, she would have found herself completely abandoned. Another awful fact is related to a murder committed by a 14-year old mentally insane girl, who mutilated another inmate, a 10-year old boy and then murdered him. It is to be noted that during a whole week before the tragedy, she kept repeating: "I want blood". Should the administration have paid attention to what was happening at the institution, it would have been possible to avert the murder.

These facts point to the indifferent and negligent attitude of the administration to inmates, leading to chaos at the institution, favouring repetitive crimes. As a result, the children develop an inferiority complex, they are unable to integrate into social life, and demonstrate asocial forms and patterns of behaviour.

These facts led to the institution of a criminal charge against the administration of the Martkopi Children's Home.

Particularly acute is the problem of institutionalised orphans, who upon reaching a certain age, have to leave the institution,

but have no dwelling, or skills. Currently, there are 40 such juveniles, and in future their number is expected to increase.

Unfortunately, statistics shows an increasing number of violation of juveniles' rights.

In School No 17 of Kutaisi, the ninth-grade I.Davituliani was expelled from school for a fight with his classmate, which constituted a violation of his right to education. After the Public Defender's intervention, the juvenile was re-enrolled in school. A similar case occurred at secondary school No 55 in Tbilisi.

On 2 December 2002, a teacher of secondary school 67 inflicted a battery on a school student. Forensic examination showed that bodily lesions in the form of multiple bruises were caused by a hard, blunt object. The victim's parents were given legal advice, with legal proceedings on the case started.

The drop-out rate from general schools remains high (8540 children). Of these 4839 children left Georgia, while 3701 dropped out from school for various reasons. In addition to low level of family income, another contributing factor to high drop-out numbers is irresponsible attitude of parents to their children's education and rearing. It is distressing that for some families, begging by their children has become a source of family income.

Children's rights are often sacrificed to private interests of one of the parents, and no one cares what impact this might have on the child's psychological condition, or his future. An illustrative example is furnished by a collective application requesting to assist journalist N.Bibileshvili to redress her impaired rights. On 19 October 2002, N.Bibileshvili's former

husband and father in law – an investigator of the Kutaisi investigative department, forcibly took the applicant's son, 3-year old Giorgi, and in spite of the court decision, refuse to return the child to his mother.

Today, there is a total of 68 776 schoolteachers in Georgia; of these, 2 707 teachers work in elementary schools, 11 254 in basic schools, and 54 815 in secondary schools. Most of schoolteachers have for years been involved in educational work, but their work is oriented towards one uniform approach that was typical of the Soviet educational practices. It is necessary to make them familiar with new methodology, not only theoretically –through manuals and instructions, but also through practical arrangements, regularly engaging them in retraining activities.

Jointly with representatives of the UNDP Project "Assistance to the Public Defender's Office in Georgia", the Centre for the Rights of the Child held workshops for teachers in Imereti Region (Kutaisi, Baghdadi, and Samtredia) and representatives of law enforcement bodies (in Rustavi and Gori).

Six meetings were held at the PDO premises to discuss the following themes:

- Disabled children;
- Orphans and children deprived of parental care;
- Children – victims of violence;
- Juvenile delinquents;
- Street children;
- IDP children.

Regional meetings were held in four regions of Georgia – Shida Kartli (Gori), Ajara (Batumi), Imereti (Kutaisi) and

Kakheti (Telavi) with a view to improving co-ordination and strengthening co-operation with various governmental and non-governmental organisations. A follow-up meeting was held in Tbilisi to take stock of co-operative efforts undertaken as a result of regional seminars, and develop plans for future activities.

The Centre operates the "trust telephone line" that is an instrument to identify problems, study their causes, provide an adequate response and, what is most important, offer rehabilitation assistance and legal advice.

The UN Children's Fund (UNICEF) helped to procure 100 special mail-boxes, installed in schools of Vake-Saburtalo, Didube-Chugureti and Mtatsminda-Krsanisi districts, the Avchala rehabilitation facility for juveniles, and the Minors' Reception, Crime Prevention and Orientation Centre of the Ministry of Internal Affairs, in order for children to relate their problems in letters.

Processing of children's messages from these mail-boxes provided information about the violations of their rights. Violations of children's rights were categorised into 3 segments: violation by school, by family, and by society.

The category of school-related violations included:

- Violation of children's rights by teachers and school administration (33.7%)
- Violation of children's rights by their mates (16.8%).

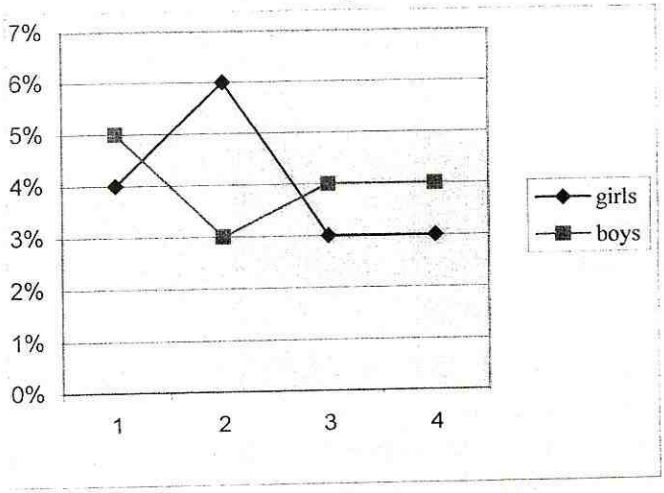
The subcategory of violation of children's rights by teachers features such factors as: 1. Ignoring attitude; 2. Non-objective

assessment of knowledge; 3. Verbal assault; 4. Physical assault; 5. Inappropriate remarks.

The subcategory of violation of children's rights by their mates features such factors as: 1. Mockery; 2. Treating one as an outcast; 3. Verbal assault; 4. Physical assault; 5. Inappropriate remarks.

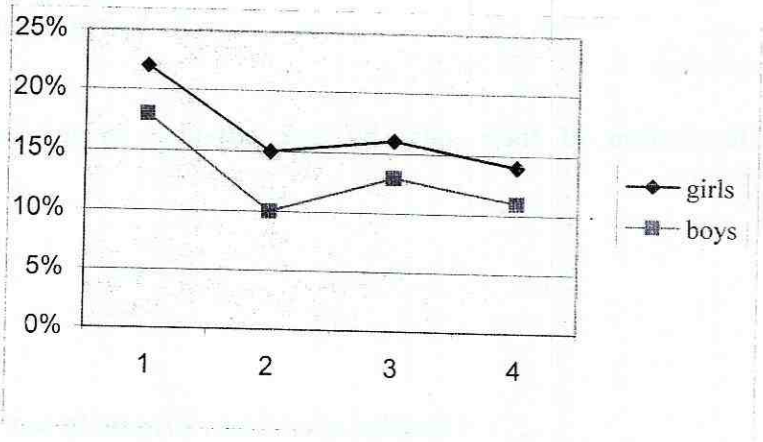
Distribution of these data by age provides an interesting picture.

Violation of children's rights by teachers



1. 9-10 years; 2. 11-12 years; 3. 13-14 years; 4. 15-17 years

Violation of children's rights by their mates



1. 9-10 years; 2. 11-12 years; 3. 13-14 years; 4. 15-17 years

As seen, perceived violations by teachers sharply increase, in fact double, in 11-12 year old girls, and in 13-14-year old boys. In the older age group, incidence of violations is steadily high both in girls and in boys.

A different picture is observed in terms of incidence of violation of children's rights by their mates. The boys show a general decrease of incidence of violations, whereas girls first show an increase (11-12-year olds), and then a decrease of incidence of violation of their rights by mates.

The incidence of verbal and physical assaults indicates that such transgressions by teachers are not rare. To this must be

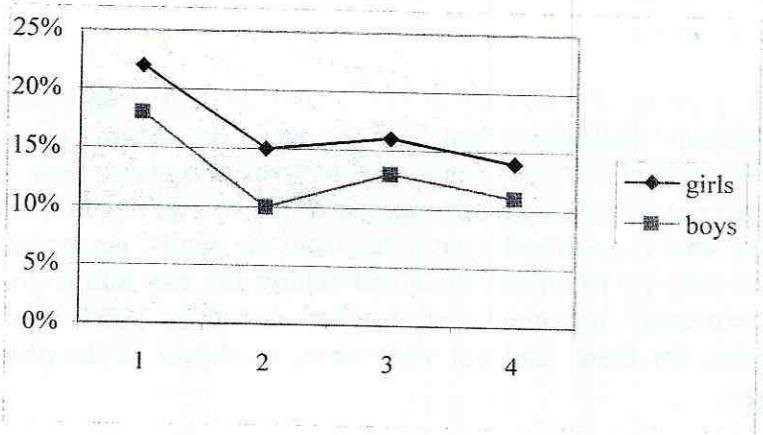
added the ignoring attitude, which can be considered as a form of psychological violence, and the situation appears even more compounded.

The process of internalisation of moral values and social behaviour includes identification and simulation phases. Children first observe behavioural patterns acceptable from the viewpoint of public morals, demonstrated by adults and realise as to what is good and what is not from the adults' perspective. Later they try to imitate them and behave the way adults do. It is extremely important that teachers serve as positive role models for them, and not vice versa, as shown in the above cases.

Notable, mockery and verbal assaults are typical of all age groups, whereas physical assaults are only found in age groups 1 and 2. This points to a need of special programmes to develop children's interpersonal communication and co-operation skills.

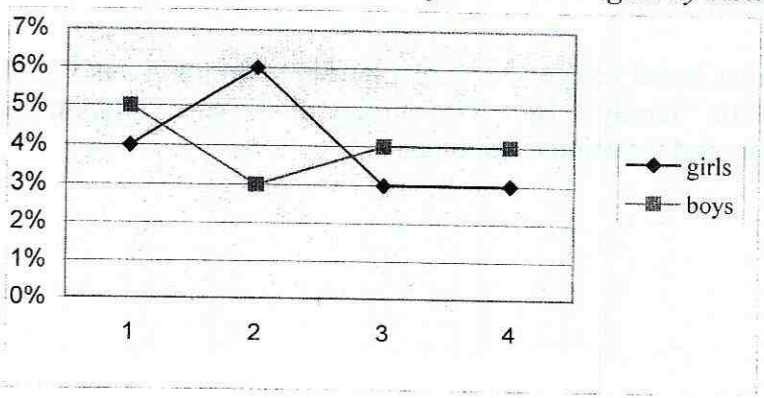
Another broad category of violation of children's rights has to do with "family". Here two subcategories are violation by parents and violation by siblings.

Violation of children's rights by parents



1. 9-10 years; 2. 11-12 years; 3. 13-14 years; 4. 15-17 years

Violation of children's rights by siblings



1. 9-10 years; 2. 11-12 years; 3. 13-14 years; 4. 15-17 years

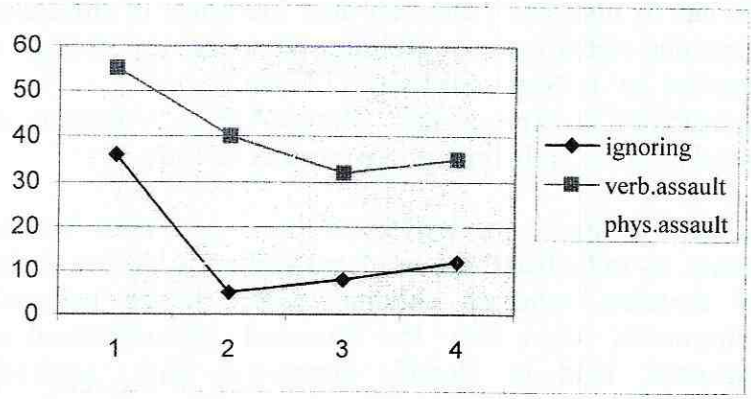
The chart demonstrates that violation by parents is more of problem for girls than it is for boys. Though, with age this category of perceived violation goes down. Violations of rights by parents are described as 1. Not letting to go somewhere; 2. Singling out favourites; 3. Non-objectivity; 4. Impossibility to express one's views; and 5. Beating and quarrel.

One has to note and extremely low incidence of differences concerning rights between siblings. Violations by siblings are described as 1. Non-objectivity (12.2%); 2. Impossibility to express one's views (4.9%); 3. Beating and quarrel (75.6%); 4. Inappropriate remarks (2.1%).

Children feeling care, tenderness, love and trust by their parents, try to be like them and learn to display similar feelings and attitudes, whereas children reared in an aggressive environment, where they feel alienated, misunderstood and mistrusted, tend to identify themselves with 'aggressive attitudes'. In spite of feeling fear of their parents, they develop the latters' antisocial behaviours. Physical punishment and permanent rebukes result in an increasingly antisocial behaviour, and eventually, in delinquency. Parents giving preference to punishment fail to achieve the desired results. Frequently applied stringent punishment, the more so in families with a negative interpersonal environment, leads to indifference and lack of discipline. The children get used to fear and hatred, they are unwilling to care about anyone and get positively evaluated. One can force the child to obey and do what one demands, but once the threat is gone, his behaviour becomes potentially antisocial. At the same time, one has to emphasise that overly pliable parents impede the process of socialisation and ethical development, as they fail to train their children to control themselves.

Hence, it is important as to what extent do parents realise the results of their style of rearing.

As far as violation of children's rights by "society" is concerned, here the categorisation looks as follows: 1. Shop; 2. Transport; 3. Police; 4. Street and neighbourhood.



As seen from the chart, the incidence of verbal violence is steadily high in all categories. The incidence of physical assault is high in the "police" and "street and neighbourhood" categories. Ignoring attitudes are mostly displayed in "shop" and "transport", with higher incidence in age group 1.

Familiarisation with the society's moral foundations and the system of spiritual values, inculcation of respect for social norms represent an important stages of the child's ethical development.

The available data suggest that unfortunately our society all too often serve a model of violence and aggression, causing a backlash of violence and aggression in children.

Psycho-emotional attitudes of juvenile delinquents are a matter of particular concern, showing a need to carry out a well-targeted psycho-diagnostic and educational work. According to the data of the Association of Psychologists and Psychotherapists, juveniles are susceptible to drug use, they are overly sensitive to all developments around them, feel constant discomfort, which may result in higher likelihood of deviant behaviours. They often try to avoid being influenced by others. This makes it imperative to help them realise their purpose in life, and make adjustments, if necessary, of their purposes and values.

One may conclude that:

- Not in all age groups children equally realise the meaning of the "right", and the difference between violation of rights and breach of rules. We think the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights should be taught more substantially;
- High incidence of violations of children's rights at school calls for serious attention. It is necessary not only to improve the level of teacher's legal and psychological education, but to familiarise them with interpersonal skills and instruments for the management of behaviours and emotions in stressful and conflict situations;
- Development of interpersonal communication and co-operation skills will bring down the incidence of violation of children's rights by their mates;
- It is extremely important that schools co-operate with parents (involvement of appropriately skilled psychologists would be highly desirable).

Individual laws and regulatory acts regulate issues related to the protection of the rights of the child, though they need to be improved in order to create an effective legal framework for a relevant national policy that would be reflected in the national budget. Georgia has become party to the UN Convention on the Rights of the Child, adopted the law "On Foster Care of Orphans and Children Deprived of Parental Care", the law "On Child Adoption", endorsed the Programme for Protection, Development and Adaptation of Juveniles (Decree No 80 of the President of Georgia). However, practical results attained so far are not sufficient, primarily owing to lack of co-ordination between central and local authorities, and co-operative efforts by the school, family, mass media, law enforcement bodies and other social institutions.

It is virtually impossible to obtain reliable statistics on exploited children, as parents and relatives of the victims of this crime rarely refer to law enforcement bodies for fear of social censure. The issue is not addressed by the Georgian law either. The Criminal Code makes no provisions for criminal liability for production and dissemination of pornographic works, printed images and other forms of minors' pornography. Neither does it provide for penalty for dissemination of minors' pornography via Internet. The law does not contain any provisions concerning exploitation of humans as a criminal offence. There is no regulatory framework to address the problem of psychological rehabilitation and social reintegration of minors – victims of sexual exploitation.

In this context, it is necessary to improve the relevant legislative base.

A democratic state that recognises and abides by democratic principles requires an adequate system of education. It is

necessary to implement both conceptual, and practical transformations which would contribute to greater flexibility of the structure of education and favour the achievement of education goals pursued by the state.

Report of the Centre for Women's Rights

The Centre for Women's Rights was established as part of the Strategy Department over a year ago with the purpose of improving protection of women's rights in Georgia. The Centre works to develop mechanisms to ensure protection of women's rights, carry out social research on prevailing conditions, promote their fuller participation in public life, foster their level of legal knowledge of their rights, raise public awareness on issues related to women's protection.

A rise in aggressiveness, stemming from a daunting economic situation of a larger part of the population, lack of social protection and widespread corruption needs to be overcome by joint co-operative efforts of the society and state institutions. Often, women are not aware of their rights and mechanisms to protect them; they tend perceive the system of human rights as something abstract and hardly accessible for them. To overcome this misconception, the Public Defender's Office, jointly with representatives of the UNDP Project "Capacity Building for the Public Defender's Office in Georgia", held workshops for teachers in Imereti Region (Kutaisi, Baghdadi, and Samtredia) and representatives of law enforcement bodies (in Rustavi and Gori).

The work carried out by the Centre has clearly demonstrated an urgent need to establish a national service to protect children

and women from violence, which would enable the Public Defender, PDO members and NGOs to operate in a more efficient manner the protection leverage they possess.

With a view to providing assistance to women and children who became victims of violence, the PDO Centre for Women's Rights and the women's NGO "Peoni" established, on the initiative of the Public Defender and Ms. M.Tabukashvili, OSGF Programme Coordinator, an initiative group, that developed the project "National Service for Protection of Women and Children from Violence" that was launched in September 2002 with the financial support of the Open Society – Georgia Foundation (OSGF). The Service co-operates with governmental entities, women's and children's rights NGOs with adequate expertise and resources, regional committees against violence, Public Defender's special representatives in the regions of Georgia, and the Tbilisi Municipality social service.

The Service promptly and duly follows on the facts of violation of women's and children's rights. Victims of abuse are offered free medical examination, legal counselling, psycho-social rehabilitation, necessary medications (with the support of non-governmental organisations). When necessary, victims of violence are provided with free legal assistance. Lawyers of the service attend court proceedings in order to protect victims' legitimate interests and rights, assist them in their relations with law enforcement personnel, which sometimes requires the engagement of the Rapid Response Group.

The Centre for Women's Rights works in close co-operation with the administration of Prison No 5 of the Ministry of Justice, and carries out regular monitoring of conditions of detention of women prisoners. In private talks, they sincerely

repent of their crimes, express willingness to lead normal, socially useful life after they serve their sentences, although we do realise that some of them committed serious crimes and are serving a well-deserved punishment. However, we also need to consider what was the reason causing a person to perform a criminal act – to commit a crime. Physical or verbal violence and aggressiveness displayed by family or by society give rise to reciprocal aggressiveness that sometimes manifests itself in outrageous acts – murder, robbery, etc.

Often, economic hardships force women to commit extremely grave crimes, such as trading in drugs and other dangerous psychoactive substances. However, the state fails to take a global look at the problem. It is necessary to eliminate the main source of the crime, the so-called "narcobarons" who, more often than not, go unpunished.

Every act of pardon granted to sentenced women convicts is a highly humane act, as it implies trust, and as such, gives them a chance to return to normal life. The most convincing evidence is furnished by relevant statistics: pardoned convicts do not commit repetitive grave crimes.

The Public Defender appealed to the President of Georgia to manifest good will and grant pardon to this category of women prisoners and reduce their remaining term of imprisonment by one year.

In December 2002, 69 convict women had their remaining term reduced by one year.

One has to note that crimes are committed not only by women; statistics shows a high incidence of crimes committed against women.

Over the entire history of humankind, violence has invariably been the attending factor of human life. Women represent the most vulnerable part of the humankind, and violence against women is a manifestation of the gender inequality dating back to very early history of mankind. Violence suppresses individual's will, infringes on his dignity and freedom, and threatens his safety and security.

The existing gender misbalance, and gender-related violence mostly directed against women, appears to be seen as a trivial phenomenon. Almost all forms of violence against women are considered as commonplace. Violence can be seen in any community, any segment of society, irrespective of religious beliefs, ethnicity, social status, age, education or cultural level.

The root causes of violence are common in any state. However, depending on the lifestyle, mentality, ideology, traditions, customs and many other factors, the problem manifests itself differently in different countries.

In Georgia, the economic and financial predicament, collapse of social protection, disruption of health care system, together with many other factors, have led to extremely difficult social situation of women. In this context, facts of violence committed against women have markedly increased in numbers and acquired different forms, becoming, unfortunately, an attribute of our life.

In spite of the fact that women are often afraid of violent strangers, the surveys show that often the victim appears to

know the violator, or even has close relationship with the latter. Analysis demonstrates that it is in family that the woman is most often threatened with violence, and it is domestic violence that is psychologically destructive.

Our society, still in captivity of traditional stereotypes, fails to adequately realise this problem. That is why most of domestic offences go undeclared. On the one hand, this is caused by a stereotyped conception that woman, allegedly, provoke violence themselves. Traditionally, this is a tabooed theme in our society, in-family conflicts are not considered officially. As a rule, women do not trust the law enforcers (according to our data, 85 % of victims of domestic violence do not refer to law enforcement bodied), or expect any help from them. Quite the reverse: they would rather expect additional complications and threats. This explains the non-existence of official statistics on domestic violence. Domestic violence is criminalised as a separate offence, representing a closed quarter for the society. The actual picture concerning domestic violence is unknown, which is to a large measure due to the non-disclosure of such acts by the women themselves. Oftentimes, due to lack of information, many women are not aware of their being victims of domestic violence

Among various forms of violence, rape is in effect the most dangerous and cynical form of crime, which implies abuse of woman's honour, dignity and freedom.

On 10-11 November 2002, an employee of Sheraton Metechi Hotel became victim of gang rape. The General Manager of the hotel applied for assistance to the Parliament, the Public Defender and the Prosecutor General. After the Public Defender brought up the issue of liability of perpetrators with the district procuracy, V.Khizambareli, K.Lomidze and

D.Apkhazishvili were apprehended and placed in detention. The victim was given examination, free medical treatment and psychological assistance at the Psycho-Social Rehabilitation Centre "Sakhli".

This fact was covered by newspaper REZONANSI in its publication of 27 November 2002 that stressed the poor performance of the Isani-Samgori District Police and district procuracy in terms of crime detection. The publication also emphasised lack of co-operation by witnesses of the crime. The victim recognised four assailants, but witnesses of the crime, except one person, refused to give incriminating testimony, namely, the woman residing near the site of the crime, and the minibus driver, who saw the assailants pulling the victim out of the minibus and taking her away.

Abduction is a serious offence, but when it comes to abduction of a girl by a young man, it is not even considered as crime, entailing institution of a criminal charge, etc. Often, the families concerned appear to come to some sort of an agreement, which results in either concealment of the fact, or a family created through violence; both sides are satisfied, and no one cares either about the victim's condition and feelings, or about the future relations in such a family.

Unfortunately, our society is too loyal to this form of violence. That is why the young men are almost invariably confident of impunity.

On 3 December 2002, the Public Defender's Office received an application from T. K. which stated that her 16-year old daughter T.P. was abducted by D. B. The family referred to Vake-Saburtalo district police to have the abductor's car detained. However, the car was not detained, and the girl was

taken to Gori. The PDO's Rapid Response Group contacted chief of the Gori police. A group of police officers from Vake-Saburtalo district police were sent to Gori, and the girl returned to her family. The two families reconciled, and the girl's parents withdrew their claim.

The Centre of Women's Rights received a notice about an Azerbaijani girl abducted in Gori for marriage. Representatives of the Rapid Response Group were sent to Gori to examine the case on the ground. It emerged that the girl feared the abductor, and she forcibly agreed to marry him. On the initiative of the Public Defender, the girl met with her father at the lawyer's office, where she said she did not want to marry her abductor. The girls returned to her family.

Unfortunately, there occur cases of violence in new families, where a husband or a mother in law insist on the young wife's medical examination to ascertain whether she is virgin.

Such anomalous forms of violence can only be eliminated through consistent education of the public, otherwise such facts will be qualified as just an in-house problem or conflict.

The situation is even more distressing when children become witnesses of violence. Their psyche is particularly affected if they see their mother being beaten, abased and humiliated. In such cases children automatically become victims of their parents' violence. As a rule, such children show aggression, animosity, inferiority complex, and disposition to violence. In such families there is wide gap between children and their parents, deficit of care and affection. Beating is often used to replace normal conversation. Studies show that a larger part of delinquents is brought up in such families where children adopt their family's pattern of behaviour.

The surveys conducted in Georgia in recent years, as well as practical experience of psychologists and psychiatrists are indicative of a high incidence of domestic violence in the country.

In any patriarchal-masculine society, men see women as their inferiors. They tend to believe that women only live to please them, whereas they are born to rule. It is easy to imagine how would a woman involved in sex industry feel in a society where gender violence is an accepted norm. Georgia makes no exception.

Many international legal instruments have been developed to address sexual exploitation and other related forms of exploitation (slavery, forced labour, trafficking, forced prostitution, etc.). Georgia has become party to many of these international conventions and agreements. However, the Georgian legislation needs to be seriously improved and harmonised with international standards. Notably, there is no definition of "commercial sexual exploitation" in the domestic legislation, whereas over the recent decade the number of prostitutes in the country has increased significantly. Widespread are facts of trafficking in women for sexual exploitation, which is corroborated by applications registered with the Ministry of Security. Family members and relatives are looking for young women who went abroad in search of employment, and there is no mechanism to counter their exploitation because of their illegal stay there. Not infrequently, the violence against them ends in murder. In the process of illegal migration, women often become victims of trafficking. In the context of trafficking, a woman is perceived as a thing to buy and to sell. Trafficking has become a serious problem for Georgia, with all signs typical of trafficking present. The Organisation for Security and Cooperation in

Europe refers to Georgia as a "new problem state" – a sending and transit country for traffickers.

The dimensions of women's rights violation, violence against women and trafficking has grown to an extent, where in addition to local governmental and non-governmental organisation, a profound concern is expressed by foreign states and international organisations.

In such environment, fight against violence cannot be limited to one person or group striving to protect their impaired rights. Unless these problems are addressed with full involvement of both the state and the public, the country will face a disaster.

Another, common form is psychological violence. K. Kapanadze occupied K.Kenchosvili private apartment through fraud, and in order to retain the seized property, she constantly applied psychological and physical violence against the lawful owner. The Public Defender addressed Mr. I. Tsereteli, Prosecutor of the Didube-Chugureti district of Tbilisi with a request to carry out inquiry on the case and, if necessary, to institute a criminal charge against M. Kapanadze for fraud. PDO representatives warned M. Kapanadze about possible results unless she stopped the practice of violence. The procuracy is conducting inquiry of the case.

Under Article 159 of the Labour Code, women are granted maternity leave of 70 days before the childbirth and postnatal leave of 56 days. However, this provision of the law is not always fulfilled. On 24 October 2002, Ms. D.Tsertsvadze, chairman of education workers' free trade union "Ertoba" informed M.Sturua, head of the Education Sector City Service about the facts of incomplete provision of benefits stipulated by the law. Namely, I. Psuturi, psychologist at school No 191,

was granted only 90 days of leave, instead of 126. According to the law, duration of the leave is calculated as a sum total of prenatal and postnatal leaves, and it has to be granted fully, irrespective of the number of days actually used for leave before the childbirth. The school director failed to comply with the requirement of the law. Neither did the City Service provide any prompt follow-up on the matter.

A similar situation can be observed in other schools. Thus, for instance, I.Tikaradze, teacher of school No 183 was granted less days than stipulated by the law; L. Ungiadze, teacher of school No 170 – only 105 days, etc. these facts show that provisions of the law are not met, and no one is held responsible for breach of the law.

Notably, efforts to create in Georgia the institute of social worker has so far been vain. On the other hand, the institute of social worker is a vital need, which is corroborated not only by the above, but also many other, facts.

Report of the Centre for the Rights of Military Servicemen

The situation in the armed forces and issues concerning protection of the rights of military servicemen have become a matter of particular concern for the public.

Mass media often provide information concerning the depressing situation in the army: murders, suicides, people killed in accidents, desertion, injuries, diseases among servicemen, etc. Probably, our armed forces have reached a critical threshold where it is necessary to take immediate and vigorous action, be it a change in the financing policy or complete revision of the ways and approaches by the state. One

of the most distressing results stemming from the existing situation in the army is the failed conscription. Some government officials think that our statements serve to discredit the army, leading to difficulties in terms of conscription. However, this is not true. Our grave concern about these problems stems from one simple reason; when a military servicemen is unprotected, the army can hardly be a guarantor of the state's security, nor can it defend the state.

These problems are unlikely to be resolved, unless our state renounces a mass army and compulsory military service. One cannot expect everyone to serve in the army, just as one cannot everyone to be a doctor, a teacher, etc. The way to overcome this problem is to create a professional army, i.e. a contract-based system of military service. It is time to replace quantity by quality, to create an army manned with people having adequate physical capacity and, what is most important, willing to serve in the armed forces.

It is distressing to look at the situation of the servicemen. The Ministry of Defence has partially introduced the contract-based military service. Compare the Commandos Battalion and any one other of military units to see the stark contrast between them. It is this distressing situation in the army that causes a conscription failure, desertion and many other problems related to the army. That is why parents do all they can to have their sons exempted from compulsory service. It is time to draw appropriate conclusions.

List of military servicemen of the Ministry of Defence lost in 2002:

N	Military	Family	Military unit	Date	Cause of death

	rank	name, first name		of death	
1	2	3	4	5	6
1	Private	Nozadze Kakha	Headqurters of Land Forces, Unit 44761	01.02	Electric shock in high voltage vault in the territory of the unit
2	Private	Tatarashvili Zurab	Air Force Unit 44761	01.02	Stray bullet, on guard
3	Captain	Lomsadze Mamuka	Air Force Unit 45445	21.02	Infection, died at home
4	Sergeant	Bronikov Artur	Air Force Unit 22683	21.02	Infarction, died at home
5	Student	Kiladze Vakhtang	National Military Academy	13.03	Killed himself with a hunting gun at home
6	Private	Tamarashvili Zviad	Infantry battalion No 21 Unit 30232	16.03	Blown up, when disassembling the Alazani type missile in the territory of the unit
7	Private	Jashiashvili Vakhtang	Anti-aircraft division Unit 30240	16.03	Blown up, when disassembling the Alazani type missile in the territory of the unit
8	Private	Mamedov Niyaz	Brigade No 11 Unit 10143	13.04	Blown up in Vaziani testing ground
9	Leuitenant	Shubitidze Jumber	Financial and Budget department	27.04	Car accident
10	Private	Beridze Anzor	Air Force Unit 22684	19.05	Accidental burst of machine-gun when on guard

11	Sergeant	Katamadze Badri	Brigade No 25 Unit 20350	13.06	Killed himself when at home
12	Private	Chikhladze David	Infantry brigade No 21 Unit 10144	28.06	Killed in Kodori Valley in action
13	Vice-Colonel	Sanikidze Arvel	Central Logistics Bureau Unit 06328	05.07	Electric shock on high voltage pole, when at home
14	Captain	Chikhladze Givi	National Guards Unit 55066	21.07	Car accident
15	Private	Shukakidze Koba	National Guards Unit 55066	21.07	Car accident
16	Private	Kashabidze Zurab	Anti-aircraft division, Kutaisi, Unit 21240	16.07	Infection
17	Private	Kobiashvili Temur	Brigade No 11	17.09	Fatal knife wound in the chest area, during squabble with civilian persons
18	Private	Mumladze Shermadin	Kojori base, Unit 15777	08.09	Electric shock in high-voltage vault

19	Private	Shishkov George	Infantry brigade No 21 Unit 10144	14.10	Accidental burst of submachine fire when on guard

Suicides:

N	Military rank	Family name, first name	Military unit	Date of death	Cause of death
1	Student	Kiladze Vakhtang	National Military Academy	13.03	Killed himself with a hunting gun at home
2	Sergeant	Katamadze Badri	Brigade No 25 Unit 20350	13.06	Killed himself when at home
3	Lieutenant	Khachapuridze George	Communications Battalion, Unit 43718	10.11	Killed himself with service firearm

Information of the Ministry of Defence Concerning Financial Situation in Armed Forces

In 2002, planned targets for budget allocations to the Ministry of Finance were 36 million GEL, including planned targets for the first half of 2002 equal to 18 million GEL.

In 3rd quarter of 2002, the Parliament of Georgia decided to increase by 11 million GEL budget allocations to the Ministry of Defence for the "Train and Equip" joint US-Georgian programme, improving the material and technical base of

Kakheti-2000 military exercise, and strengthening the combat capacity of the armed forces. Thus, the final 2002 budget of the Ministry of Defence was fixed at 48.6 million GEL (with 1.3 million GEL allocated for payment of arrears in wages for the previous year), with the planned 29.4 million GEL for the second half of the year. The actual financing in 2002 amounted to 44 039.8 thousand GEL, including 28457.1 thousand GEL received in the second half of the year. Thus, the total budget gap in 2002 was 4613.5 thousand GEL , with 940.1 thousand Gel in the second half of the year.

Budget gap in September 2002 was 7691.9 thousand GEL, and in October – 340.9 GEL, the reason being a failure to finance the additional 11 million GEL allocated from the budget by the Parliament. These expenditures were financed at the end of December 2002, which led to a budget surplus of 6641.3 thousand GEL in December compared with the planned target, which was used to cover the Kakheti-2000 field military exercise held within the "Train and Equip" joint US-Georgian programme, as well as costs, incurred for special programmes (purchase of arms).

Information of the Ministry of Defence Concerning Desertion, and Its Causes

The Ministry of Defence is giving much consideration to each fact of desertion, identification of their root causes and their elimination. Compared to previous years, baseline conditions in 2002 in terms of provision of food and uniforms improved, as did the everyday living conditions. Nevertheless, desertion still accounts for a larger part of all offences in the armed forces (65%).

In the period between 1 July 2002 to 1 January 2003 there were 280 cases of desertion, which is 22 % less than in the period of January to July 2002.

The situation in the armed forces mirrors the prevailing processes in our country.

Analysis of individual cases of desertion points to a certain pattern, which allows a certain measure of prediction.

Today one may speak about a number of factors causing desertion from the army

Difficult conditions in the family (28%)
About 65 % of soldiers come from socially unprotected segments of population. Difficult socio-economic conditions back home compel them to leave their units, or not to return from furlough. Certain categories of servicemen leave military units for seasonal agricultural works. Many of the servicemen, whose period of furlough expired, are reluctant to return for fear of punishment.

Language problem (5%)
This category of deserters come form non-Georgian families. Apart from other problems they face in the course of military service (religious beliefs, food diet), they are also confronted with the language problem, as many of them do not speak Georgian, and hence, fail to fulfil commander's orders, finding themselves in an awkward and degrading position, which often causes them to desert.

Bulluing harassment in the army (21%)
This category of desertion is caused by conflicts between soldiers, or between soldiers and officers. A soldier not

fulfilling the commander's orders is subject to disciplinary penalty, though not infrequently the penalty is preceded by physical or verbal assaults.

Heath condition (16%)
Often, military commissions fail to provide qualified medical examination for conscripts. To this must be added specific conditions of military service, as well as other social and psychological factors. Due to inadequate financing, military units often lack even the most basic medications, for which reason sick servicemen have to leave military units for medical treatment. Depending on the gravity of disease, some of them are subject to demobilisation, while others after convalescence choose not to return to their units because of squalid conditions there.

Forcible conscription (16%)
This category of deserters are draft-evaders who were conscripted forcibly. They account for 20% of all conscripts. 10-15% of them leave military units on the very first day and return home.

Impunity syndrome (11%)
In fact, there is no adequate legal follow-up on cases of desertion or persons who refuse to fulfil their obligation under the Constitution. Difficult social conditions in the army, the level of legal culture and educational work among servicemen is clearly in conflict with the legislation, owing to which the facts of desertion, which is a form of criminal offence, are not followed on duly. Hence, deserters are not punished, which logically leads to high incidence of desertion.

Analysis of factors leading to desertion clearly points to their non-uniform and complex character. Disciplinary measures

alone are not sufficient to eliminate desertion. It is necessary for the state to develop a new, adequate response to this phenomenon.

As seen, desertion is caused by many different factors and circumstances.

Needless to say, desertion is widespread in the Georgian army, as it is in some other countries, and it is often caused by a desire of servicemen to change their setting. However, in Georgia, the main root cause of desertion is to be seen in the daunting socio-economic conditions that lead to an extremely unhealthy situation in the armed forces, both in terms of material conditions of service, and generally. In the event of offence, the servicemen have almost no idea of what their rights are, and they fail to protect their interests even if the facts speak in their favour. As far as legal assistance is concerned, lawyers or legal counsellors rarely, if ever, participate in the process. In such cases, the serviceman's fate depends fully and entirely on professionalism and responsiveness of an investigator or prosecutor in determining the real cause of the offence committed by a serviceman.

Probably, several amnesties declared by the Parliament were a reaction to the existing situation in the army, releasing deserters from liability for their desertion. To a certain degree, this was a frank admission of error by the state that has failed to create adequate conditions for military service, thus pushing servicemen to perpetrate an offence – desertion. The society would of cause prefer if the state, instead of admitting its fault, created proper conditions in the army that would not compel servicemen to commit an offence. A number of servicemen are still wanted for desertion or other offences, while often the root

causes of their perpetration of an offence are to be seen in inadequate performance of their superiors.

Veteran Servicemen

The Assembly of non-governmental organisation of war veterans and war invalids (21 NGOs) signed a Memorandum on Co-operation with the Public Defender's Office with a view to ensuring protection of the rights of war veterans who fought for Georgia's territorial integrity, the rights of the families of those lost in action or missing, enhancing the process of social adaptation and integration, ensuring the implementation of benefits for this category of population, supporting the activities of veterans' NGOs, improving the legal framework, finding the ways to implement proposals and recommendations, and elaborating programmes of employment.

The Public Defender's Office held a number of meetings with representatives of relevant government bodies responsible for addressing the problems of war veterans and war invalids: the Department of Veterans' Affairs, the Ministry of Defence, Parliamentary Committee on Defence and Security, Tbilisi Municipality, and local government, as well as with representatives of local NGOs, the State Minister, the Minister for Special Affairs, mass media representatives.

The problems are many, and they call for immediate action. On the initiative of NGOs, on the basis of our recommendation and decree No 56 of the President of Georgia (21 February 2003), the National Co-ordination Council was set up with a view to promoting legal support and social protection of war veterans who fought for Georgia's territorial integrity, and the families of those lost in action or missing. The Council will work in

close co-operation with representatives of the Parliament, the State Chancellery, relevant ministries, as well as veterans' organisations.

Report of the Centre for Protection of Religious Rights

Freedom of consciousness and religious extremism

Honouring and protection of the right to freedom of religion and beliefs as well as promotion and development of religious identity is an essential condition for the existence and development of a legal state.

The Document of the Copenhagen Meting of the Conference on the Human Dimension of the CSCE, adopted on 29 June 1990 " Everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change one's religion or belief and freedom to manifest one's religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards."

The states participating in the drafting of the above document believed that recognition and protection of human rights and fundamental freedoms was the basis for justice and peace. Therefore, they firmly resolved to support and develop those principles of justice which, in turn, lay the foundation of a legal state. The participating States unanimously resolved that a legal state means not just formal legitimacy, but also justice

founded on the recognition and full acceptance of human values and safeguarding their protection.

Georgia as a state geared towards democracy, gives high consideration to the issues related to the freedom of religion and beliefs. Chapter I Article 9, Chapter II Article 19 and Chapter III Article 66 of Georgia's fundamental law - the Constitution - define these issues. As we may see, reference in the Constitution to the issues of freedom of religion and beliefs highlights the importance that the Georgian legislation gives to the above matters.

Regardless of the above, for the past three years I have expressed my grave concern and have clearly observed considerable discrepancy between the Constitution, international instruments and the actual religious life in the country.

Qualitatively new phenomenon of a higher degree - religious terrorism - has sprouted from yesterday's boundless religious extremism. Numerous notices from the victims of religious extremism and terrorism that are referred to the Public Defender's Office are a manifestation of this.

I should openly state that the Parliament has found no time to adopt much awaited bill on religious associations. Although it is common knowledge that for two years the Ministry of Justice has been working in this field.

Various religious confessions and their followers professing in Georgia are patiently waiting for the adoption of the above bill by the parliament as there are nuances to the freedom of conscience, confession and belief which the legislation should define and regulate in detail. Neither freedom of belief

guaranteed solely by the Constitution, nor references to the Constitution may solve problems daily confronted by various religious confessions and their followers. In this regard, I have repeatedly stated that the Ministry of Justice should revise, with a more critical attitude, its bill "On the freedom of consciousness and religious associations." Open discussions and public debates of the bill should be initiated by the Ministry as the law on religious associations should ultimately assist religious confessions and communities in their work.

In this regards we believe, that:

1. the state should take effective steps to prevent and eradicate discrimination against religious groups often caused by the lack of legal status by some of these groups;
2. the state should maintain a dialogue with religious communities to better understand their problems and promote mutual respect and develop tolerance;
3. religious organisations should have the right to registration and on that basis have the opportunity to worship all types of religion;
4. setting up religious entities should be quick and simple and, more importantly, should not incur significant costs;
5. review of documentation required for registering religious organisations with the Ministry of Justice and courts should be based on formal indicators and be devised in such a way that minimises the risk of interference into a religious doctrine;
6. chances for bureaucratic opportunities should be minimised through introducing such changes as provision of automatic registration following a definite, sensible period of time given no relevant decision is taken.
7. the bodies responsible for registration should request a minimal number of documents

8. appeal procedures should guarantee the possibility to refer to independent courts.

What we regard essential is that legislation with retroactivity that violates established rights should be abolished. Measures should be taken to avoiding such problems.

We believe that the authors of the draft law "On religious associations" should take account of the above views and recommendations.

Proceeding from the above, the regulation of the legislative basis will be a precondition for the development of a tolerant society in this country. All the religious persons should be given an opportunity to build their places of worship, carry out religious ceremonies of baptism, marriage and burials in accordance with their religious customs and habits. Believers should also be allowed to freely express their views in newspapers, magazines and other media.

An essential condition for the development of a society based on tolerance is to work out a unified - political, legal and social - approach to the issue of religious tolerance.

In this regard, religious leaders of various confessions bear special responsibility. Development of a dialogue and co-operation between various religious leaders will be necessary. A leader of each religious community has the highest responsibility and obligation to strengthen tolerance and unity among followers of various religions as belief should become a unifying rather than separating factor for humans.

Individuals as well as organisations (including NGOs), authorities and the media have a significant role to play in the development of a tolerant society.

In this regard, a significant positive tendency has been identified in Georgia and should be welcomed. It is as follows: if before only few individuals supported religious tolerance in our society, their number has grown. As regards the non-governmental sector, through its efforts a coalition is being formed with a view to support matters related to religion.

The Georgian Orthodox Church and the Patriarchy may play an essential role in developing religious tolerance. The Church having the richest history and highest merit, which has always shared hardships with the nation and is currently enjoying almost a governmental status, should take responsibility for solving the above-problem. The Church should hold a dialogue with Christian as well as non-Christian confessions. Tolerance towards other Christian confessions by individual orthodox priests alone will not change much.

However, alongside this positive tendency, one should mention that several non-governmental and governmental organisations have acquired clearly manifested features of religious terrorism. Today, mob aggression is obvious. It is pseudoreactionary and is based on the recognition of masses of people as an argument. Reasons for this dangerous tendency may regrettably be found in the Parliament of Georgia. The society may agree with me in saying that the majority of parliamentarians have no understanding of the basics of the protection of human rights and fundamental freedoms. This is coupled with a second very important issue: as soon as a novel positive development starts transpiring from the West, a powerful wave of religious extremism is boosted in Georgia,

repeatedly demonstrating that often, extremist tendencies in this country are directed from the outside; due to the difficult social, economic and psychological conditions they create a favourable climate for their flourishing.

A natural question arises: Is this all not dangerous for the country's statehood? Should we not once and forever realise that this is alarming?

It should be noted that education in the fields of history of religion and religious freedom is given special consideration in Georgia of today, however, devision relevant materials and manuals and finding qualified teachers of history of religion and religious freedom remain to be a problem.

One should openly state that over two dozen state higher educational institutions (not to mention hundreds of private ones) have failed to timely solve this problem. The state higher educational institutions have fully freed themselves of the responsibility and transferred it to the non-governmental sector. We regard this unacceptable.

The same complaints may be referred to the Georgian media. My colleagues should take no offence for the truth that the positive or traditional aspects of religious tolerance and freedom of religion are fully ignored by the Georgian media.

In the Report of the earlier half of 2002 on the state of protection of human rights and fundamental freedoms, I highlighted and drew public attention to the most dangerous and alarming tendency evidenced in the attitude of administrative bodies towards religious minorities, in particular:

"The police refuses to stop assailants driven by fanatism... Court cases against extremists are delayed with no substantial reason. Regrettably, this, in turn, is also a sign of moral support. Instead of providing adequate safety to religious minorities on the part of Georgian governmental bodies, some political figured openly confront them thus aggravating already tense political situation in the country."

The problem remains unresolved. Regrettably, the administrative bodies, certain political figures or Parliament have failed to realise a fundamental truth that such actions breach not only the rights and freedoms granted by the Constitution of Georgia but also undermine Georgia's commitments towards those international organisations where Georgia is a member (UN, OSCE and Council of Europe).

The data obtained in this regard as result of an opinion poll conducted by the Public Defender's Office are also alarming. Almost all interviewees believe that the abundance of religious organisations in Georgia is a source of instability.

This demonstrates that our society is not prepared psychologically to accept a different religion and the principle of peaceful co-existence of religions being a feature of a democratic civil society. The majority of the society sees it solely as a threat. Hence this major part of the society is not yet psychologically ready to accept and adapt to the presence of other denominations and truly support effective protection of their rights.

It is natural that this attitude on the part of the society hinders human rights protection system in general, aimed at strengthening and developing guarantees for religious tolerance and its protection to a higher stage.

The Centre for Protection of Religious Rights as a structural part of the Strategy Department was set up a year ago and has been carrying out activities in the following directions:

- receiving, responding and analysing correspondence and notices referred to the Public Defender's Office;
- receiving representatives of Christian and non-Christian confessions, promotion of co-operation and dialogue among them and provision of support within the Centre's competence;
- collection of modern religious literature and research;
- holding regular opinion polls on the current state of religion in Georgia;
- setting up a special library;
- holding regular round tables with the participation of representatives of religious organisations and governmental and non-governmental sectors;
- monitoring matters related to religion and freedom of religion in the national media and, resources permitting, in the foreign media.

In the second half of 2002 the number of notices concerning serious violations of the freedom of consciousness and religion referred to the Centre totalled 47. This number significantly exceeds the number of applications referred to the Centre in the earlier half of 2002. Among these prevail complaints on the failure, despite our intervention, by the law enforcement to take relevant legal actions.

It should also be noted that over 90% of appellants are members of Jehovah's Witnesses religious group.

Below are few examples:

*

On 23 July 2002 a notice was referred to the Public Defender's Office from L Khurtsidze, residing at 5, Rustaveli St. in the town of Samtredia, a member of the Jehovah's Witnesses. The notice refers to the alleged attempt to burn down the house G. Kokhreidze, another member of Jehovah's Witnesses. The notice continues to allege that three persons, one policeman among them, standing nearby, refused to put down the fire.

*

We referred a letter to Prosecutor General's Office (1273/09-1/811-6 of 26.07.2002) and received a reply that pre-investigation on the matter is ongoing and full information would be provided upon its completion.

*

On 23 July a group notice by Jehovah's Witnesses T.Kiparoidze and S. Mamporia residing in the Gori region village of Ortasheni and M Giorgashvili residing in the village of Shindisi was referred to the Public Defender's Office. The notice referred to the incident of 28 June at 2 am. Allegedly, the territory where they were holding a congress was "drowning in flames" and they had to put down the fire themselves. We referred a letter to Prosecutor General's Office to examine the above facts and received a reply that pre-investigation carried out by the Shida Kartli investigation unit was underway.

*

On 5 June 2002 a notice by G Gudadze, chairman of unregistered association of Jehovah's Witnesses was referred to the Public Defender's Office. Gudadze alleged that on 6

September 2002, in the yard of School 146 MP Sharadze was holding a rally following which "large stones which may have damaged people and children in the crowded street were thrown in the direction of the Jehovah's Witnesses office."

We referred a letter describing the incident to Mr Turabelidze, chief of Isani-Samgori Department of Internal Affairs. He replied that the facts described in G Turabelidze's notice couldn't be confirmed.

In the reporting period an alarming tendency that religious confrontation within families has become the source of acute conflicts resulting in their break-up, has been evidenced.

In the reporting period it was also noted that the number of notices by the orthodox population on the acts of violence against them on the part of Jehovah's Witnesses has grown.

On 29 July 2002, the Public Defender's Office received a letter from P Bluashvili, chairman of the Jvari [Cross] Patriotic Union, requesting to transmit to the Council of Europe their notice referring to the violation of the rights of the orthodox congregation. The notice was supported by the documentation on the violations that had been submitted to the Centre for Protection of Religious Rights. The Jvari leadership held a press conference on the matter in the Public Defender's Office.

*

On 18 July 2002, a group notice by the residents of Mukhiani micro-region 4a build. 9 referred to the Public Defender's Office described an "act of vandalism" in front of their building "during which three orthodox icons were burnt". The claim referred to the blackouts during almost all Christian holidays and called for the protection of the residents' rights.

*

We referred to Mr Anjaparidze, chief of Gldani-Nadzaladevi Department of the Internal Affairs. His reply based on pre-investigation results confirmed the fact of burning the icons. It is also unclear who committed this crime and if any relevant actions are underway.

*

The most alarming is the case concerning the Kutaisi Catholics. In October last year, representatives of the registered association of Georgian Catholics "Savardi" referred a notice to us requesting a handover of the Catholic church at Varlamishvili St. in Kutaisi to be used by their organisation. To that effect they had applied to the Kutaisi Mayor's Office with a request to issue a relevant administrative act. Following a denial they appealed to the President with an administrative claim. From the reply of the head of Public and Political Relations Department at the State Chancellery it becomes clear that their request may be met only when the legislation on the status of religious organisations is adopted; also, after the Union of Western Georgia Catholics, currently being a legal person of public law, is granted a status of a religious organisation and identified as a legal successor of the Catholic church.

It is beyond doubt that current legislation in Georgia fails to solve this matter due to the absence of a relevant legislative basis which would allow for a more convenient and transparent solution from a legal point of view.

The failure to solve the problem by the administrative bodies is not a favourable prospect for all those whose rights may be violated due to the absence of a relevant law or incapability of the administrative bodies. In the above case it would have been

appropriate to use a legal provision allowing civil servants to have a discretionary right (foreseen in the General Administrative Code) to draft an administrative act that would have temporarily settled the problem and would have taken into account the rights of religious minorities recognised by the Constitution and the international law; also, it would have respected the principle of historic justice (provided historians confirm that the church indeed belongs to the Catholic confession), especially that there is no other Catholic church in Kutaisi, whereas the Catholic community in Kutaisi and in the rest of Georgia is one of the oldest and traditional religious denominations in our society.

In this regard we recommended the President that a discretionary decision be taken for a just settlement of the above matter, which would take into account the Constitutional rights of the Catholic congregation in the interest of universal justice and peace. However, no solution has been found under the pretext that litigation on the case was ongoing in Kutaisi and Tbilisi courts. In accordance with the Civil Procedural legislation no other body but court is entitled to consider a dispute. It is necessary to note that litigation in courts, especially against the state, is not an end in itself. If the government demonstrated free will to find a prompt, although temporary, solution, it would have been possible to stop the litigation, however, regrettably, none of the government officials, at any level, have demonstrated this will.

The facts of serious violation of religious freedom should become subject to daily concern, discussion and analysis by legislative, executive and legal authorities.

Alongside the state, the society should spare no effort to remove this horrible stigma which is unusual, non-traditional and imposed.

Report of the Administrative Department

On the financial status of the Public Defender's Office

Since the second half of 2000 to this day, regardless of the presidential assignment, his Decree No 543 of 29 December 2000 and subsequent Instructions, no appropriate financing has been provided to the Public Defender and her staff.

The total expenses for 2002 to be covered for the Public Defender's Office and its staff amounted to 192,7 GEL, whereas factual expenditure totalled only 156,6 GEL (79,2 %).

In 2002, the Ministry of Finance delayed financing of expenditure on other goods and services of the Public Defender's Office, most part of which was used to cover earlier arrears of electricity, communications, postal, office, heating, fuel and other services.

The Public Defender faces serious obstacles while meeting legal requirements such as structural reorganisation of the staff, settling staff remuneration issues, business trips, administrative matters, etc.

Since setting up the Public Defender's Office the legislative norms related to drafting its budget have been breached. Every year, the Ministry of Finance, without prior agreement with the Public Defender's Office, submits to the Parliament data on its sequestrated budget. This is a clear excess of power on the part of the Ministry as, in conformity with Article 25 of the Organic Law of Georgia on the Public Defender "the expenditure related to the organisation and activities of the Public Defender

of Georgia and his/her staff shall be defined in a separate article of the state budget of Georgia." In conformity with the above article, the Public Defender of Georgia is liable for the submission of expenditure related to his/her activities.

In relation to the above the Public Defender referred a relevant letter to Mr. Gogiashvili, Finance Minister requesting a joint discussion on the parameters of the Public Defender's budget for 2003, but her legitimate request was not met.

In addition, the Minister ignored the President's assignment stipulated in Instruction
No 1052, Para 3 of 4 August concerning the allocation of funds for repairs and restoration of the Public Defender's premises. These funds were requested for the land plot and depreciated building that had been allocated to the Public Defender's Office at the junction of Dadiani and Lermontov streets. These buildings were constructed at the beginning of the past century and require substantial repair. In addition, damages caused by the earthquake of 2002 are so serious that it is impossible to accommodate the organisation in it.

Due to non-financing repair works have been delayed. We have to work in rather limited space and pay a rent amounting to 48 00 GEL per annum.

Even basic analysis demonstrates that budgetary organisations are in a discriminatory situation. Those budgetary organisations that have special funds have the opportunity to receive incomes from the sources being outside the budget. In addition to special funds, some organisations (Ministry of Justice, Economy and Finance, Department of Statistics) also use funds recovered by Customs and Tax and accumulated on special accounts. These funds are used as bonuses, provision of

material and technical support, etc. As regards organisations with no special funds, they depend solely on the good will of the Ministry of Finance and Treasury officials.

Article 16 of the Law of Georgia on the State Budget of 2002 (a similar situation is evidenced with Law of Georgia on the State Budget of 2003) defined the rule for covering arrears accumulated during the previous period and was aimed at covering arrears in expenditure. The law also defined the payment of redundancy payments, compensations and benefits to public servants made redundant before 1 January 2002. However, due to the amendments introduced on 15 February 2002 into the Law on Public Service, the payment of arrears to these persons was suspended until the adoption of state budget for 2003. It should also be noted that similarly to the parliament, constitutional and general courts, the Public Defender's Office has no source of special incomes as was communicated to the Ministry of Finance in August 2002 and mentioned during meetings with the State Minister. Promises were given by the President that while adopting the budget for 2003, a combination of ways would be found to finance the Office. The promises were not kept,as proven by the 2003 state budget. This gives no possibility to meet the requirement of sub-para "a" of Article 42-3 of the Labour Code concerning the payment of quarterly bonuses, supplementary payments for seniority in public service and payments of one-month remuneration during a holiday term. Therefore, it will be legitimate to request adding expenses for the Public Defender's staff to the fund from which the bonuses and assistance for the staff of the Parliament, Constitutional and Supreme Courts are paid.

There is no justification for the delays in settling matters related to the remuneration of the Public Defender's staff,

especially that the Public Defender has no funds for financial incentives and assistance and that Public Defender's services all over the world, including Georgia, are free of charge.

Chapter III.

CO-OPERATION WITH INTERNATIONAL ORGANISATIONS AND ACTIVITIES IMPLEMENTED WITH INTERNATIONAL SUPPORT

The Project "Capacity Building of Public Defender's Office in Georgia", implemented with the financial support of the United Nations Development Programme and Government of the Netherlands is in progress. Over the reference period, the Project undertook the following activities:

- A series of monthly 20-minute TV programmes "Your Rights" was launched on Channel I of the Georgian State Television; 12 programmes went on air, including 6 programmes with the theme "Your Rights" and other 6 programmes with the theme "Children's Rights". The programmes were relayed to other regions of Georgia, and shown by cable TV;

- Six radio programmes were put on the air. These programmes enable the public to directly contact the Public Defender;

- The newspaper group prepares and publishes articles; it prepares digests for seven newspapers, including 2 regional (Egrisis Matsne, Imeretis Moambe), one local (Sagamos Kutaisi) and 4 central (Akhali Taoba, Dilis Gazeti, Svobodnaya Gruzia, and The Georgian Messenger);

- Volumes 3 and 4 of the Journal "Your Rights" was published;

- The Information and Documentation Centre is expanding its stock of materials;

- Nine workshops and seminars were held for representatives of law-enforcement agencies and teachers;

- The Week to mark the International Day of Human Rights launched in commemoration of adoption, on 10 December 1948, of the Universal Declaration of Human Rights included:

    - The Public Defender's Press Conference;

    - Joint Session with the Ad Hoc Parliamentary Commission for Abkhaz Issues, and non-governmental organisation with the theme "Protection of Human Rights in the Territory of the Abkhaz Autonomous republic";

    - Seminar in Shida Kartli (Gori) on children's rights with participation of governmental and non-governmental organisations;

    - Round-table discussion "UN and Human Rights";

    - Journalists' Contest to identify authors of the best articles dealing with human rights. Winners received awards. At the decision of the Board of judges, the 1st and 2nd places were not awarded, the

3rd place was won by Eka Kevanishvili (newspaper Rezonansi). Five journalists received money awards and certificates: Tamuna Absava (Mtavari Gazeti), Emzar Diasamidze (Tribuna), Salome Jashi (Internet magazine "Civil Georgia"), Zurab Khrikadze (Georgian Times).

- Presentation of books donated to the PDO library by IRIS Georgia;

With UNDP financial support, the non-governmental organisation "International Institute for Human Rights" organised the following activities jointly with the Public Defender's Office:

- Book exhibition at the National Library;
- One week exhibition of children's paintings at E.Akhvlediani Children's Art Gallery;
- Concert of children performers at the Palace of Youth

The Public Defender's Office held a number of meetings and discussions, including:

- Round table discussion with the theme "The Role of Mass Media in Covering the Problem of Violence against Women";

- Meeting with the Assembly of NGOs working on problems of military servicemen, war veterans and war invalids;

- Round table discussion with the theme "Protection of the Rights of Disabled Children";

- Discussion with military servicemen with the theme "Violence in Military Units, Desertion and its Root Causes", held at Operational Brigade No 1 of Internal Troops jointly of K. Kobiashvili, military prosecutor of Tbilisi Military Garrison, and G. Shervashidze, Commander of Internal Troops.

I would like to take this opportunity and express my sincere thanks to Mr. Lance Clark, UNDP Resident Representative in Georgia, UN Resident and Humanitarian Coordinator; H.E. Mr.Harry Molenaar, the Ambassador, Royal Netherlands Embassy to Georgia; Mr. Bill Chapman, Project Technical Advisor, and Ms. Louise Nylin, Project Co-ordinator for all the invaluable support and dedication offered by them to the Public Defender's Office, which enabled the PDO to develop into a credible and efficient institution, and to continuously expand its activities. Due to their assistance, a new specialised legal centre was established within the framework of the PDO Strategy Department with a view to carrying out expert examination of draft laws submitted to the Public defender's Office, ensuring harmonisation of the active legislation with international norms and preparing constitutional claims.

The Public Defender's Office expanded its geography, with four new regional offices established in Kakheti, Kvemo Kartli, Shida Kartli and Javakheti.

Currently, there are five specialised centres operating within the Public Defender's Office:

- Centre for the Rights of the Child;
- Centre for Women's Rights
- Centre for the Rights of Military Servicemen;
- Centre for the Rights of Religious and Ethnic Minorities;
- Legal Centre.

In co-operation with the Council of Europe's Directorate General on Human Rights, the Public Defender's Office held, on 7-8 November 2002, a seminar for representatives of the Prosecutor General's Office and the Ministry of Internal Affairs with the theme "Methods and Rationale of Fight against Ill-Treatment of Detained Persons and Persons in Police Custody, in Line with the European Convention on Human Rights". The seminar was organised by the Strategy Department of the Public Defender's Office with the Council of Europe's financial support. The seminar was held with participation of two international experts: Mr Michael Gradwill – CoE expert from the United Kingdom, Senior Investigator of the Professional Standards' Division at Lancaster Constables Head Office and Ms. Thea Tsulukiani – lawyer at the Registrar Office of the European Court of Human Rights.

Also, within the programme of PDO co-operation with the Council of Europe, the Public Defender of Georgia made a visit to Sweden (9-16 November, 2002) where she had meetings with representatives of the Raul Wallenberg Institute (RWI), Swedish International Development Agency (SIDA), Central and Eastern Europe Department of the Ministry of Foreign Affairs of Sweden (Ms. Brigitta Weiber, Manager), Swedish Institute, Ministry of Justice, the Parliament, the Ombudsman for Invalids, Children and Press. Within the same programme, on 16-24 November 2002 the Public Defender made a visit to Strasbourg, where she had meetings with representatives of the CoE Committee for Human Rights Co-operation, Chief Administrator of the CoE Parliamentary Assembly Monitoring Unit, Head of Human Rights Co-operation Division, representatives of the Council of Europe's Directorate General on Human Rights. One of the issues

discussed at all meetings was the Public Defender's capacity building.

Successful co-operation with the Council of Europe has been largely due to the support of the Council of Europe Information Office in Georgia. In this connection, I would like to emphasise the role of the Special Representative of the CoE Secretary General in Georgia, Mr. Plamen Nikolov. I believe, his activity in Georgia will contribute to the strengthening of relations with the Council of Europe and implementation of our plans.

With the financial support and assistance of the Office of United Nations High Commissioner or Refugees (UNHCR), the Public Defender's Office drafted additions and amendments to the Criminal Code. I would like to express my gratitude to Ms. Valentina Tsoneva, UNHCR Legal Officer who successfully completed her term of office in Georgia.

The Centre for Institutional Reform and Civil Sector - IRIS Georgia and the United States Agency for International Development (USAID) helped to expand the book stock of PDO's library. They donated 1575 copies of 60 book-titles, which enabled us to provide books to the library network of the Public Defender's Regional Offices. I would like to offer my sincere thanks to Mr. Howard Fanton, Head of Rule of Law Programme Mission at IRIS Georgia, Mr. Gia Getsadze, Director of IRIS Georgia, Mr. Lekso Khubulava and Ms. Nona Tsotsoria. We continue our co-operation, both in terms of developing the library book stock, and in terms of legal advice and other forms of technical assistance.

OSCE/ODIHR - OSCE Office for Democratic Institutions and Human Rights based in Warsaw supported us in implementing the Project "Rapid Response Group" (discussed in detail in

PDO's previous report). It is planned to realise other joint projects with the OSCE/ODIHR.

The Swedish International Development Agency (SIDA) co-operated with us through the Raul Wallenberg Institute (RWI). The programme was completed in 2001. I am pleased to state that our co-operation with SIDA will continue. Starting from 2003, it is planned to realise a 3-year programme "Capacity Building for the Public Defender's Office in Georgia" that is very important for the Public Defender's educational activity provided for by the relevant Organic Law, and expanding further the activity of the Public Defender's Office. In Addition, this project will contribute to the strengthening of co-operation between the Public Defender of Georgia and newly established Ombudsmen's institutions in the post-soviet space, namely with the Ombudsmen in Azerbaijan and Kyrgyzstan appointed only a few months ago.

We owe a debt of gratitude to the British Embassy in Georgia and, in particular, to the Ambassador, H.E. Deborah Barnes Jones. With the assistance and financial support of the Embassy, the Public Defender's regional offices carried out their work in the regions Samegrelo-Zemo Svaneti and Javakheti.

The above list of programmes and activities, both accomplished and planned, in addition to purely information purposes, serve to demonstrate to the Parliament that without the assistance and support provided by international organisations, the Public Defender's Office would have never been able to carry out any work, let alone efficient. In this connection, I have to express my concern and dissatisfaction about the attitude of the Ministry of Finance to the Public Defender's Office. I am not going to speak about breaches of

statutory norms related to the formation of the PDO budget, but only about unjustified, to put it very softly, bureaucratic hurdles that seriously hinder implementation of the projects. To this day, the Public Defender's Office was unable to receive the funds allocated by international organisation, nor was it possible to have fulfilled financial obligations undertaken by Georgia with the UNDP. Failure to meet these obligations will be a serious impediment for mobilisation of funds from other sponsor organisations and full-fledged operation of the project, which threatens to paralyse the work of the Public Defender's Office that managed to expand its activities to cover not only various regions of Georgia, but also to develop co-operation with similar institutions established recently in other republics.

Two positive remarks are in order. One concerns active co-operation with NGOs that has expanded and strengthened due Public Defender's regional offices. The second remark concerns the PDO's relations with the parliamentary Committee for Human Rights, Citizens' Petitions and Civil Society, and active co-operation with the Chairman of the Committee Ms. Nana Bichiashvili. The Committee heard my Report covering the first half of 2002, attended to the opinions and recommendations expressed by committee members and invited experts, and decided to set up, together with the Public Defender's Office, non-governmental organisations and independent experts, a joint commission to co-operate with mass media, discuss priority issues and legislative initiatives aimed to promote human rights protection in Georgia and improve the efficiency of Public Defender's work. Such co-operation with the governmental and non-governmental sectors will serve to improve the situation of the protection of human rights and freedoms in Georgia - the issue of particular importance in 2003, the year of parliamentary elections in Georgia.

Concerning Consideration of Report on Implementation of the Covenant on Economic, Social and Cultural Rights by the Committee on Economic, Social and Cultural Rights

In the introduction to this report, I mentioned that at its 35th and 36th meetings held on 14 and 15 November 2002, the UN Committee on Economic, Social and Cultural Rights considered the second periodic report of Georgia on implementation of the Covenant on Economic, Social and Cultural Rights. As a result of consideration, the Committee made up with participation of the Georgian delegation drew up its Concluding Observations and recommendations to the government of Georgia aiming at overcoming difficulties existing in terms of protection of economic, social and cultural rights and better compliance with international obligations undertaken by our country.

It is relevant, in my view, to present here the basic recommendations contained in the Concluding Observations that fairly adequately reflect the situation, existing in the country and need to be followed on. The recommendations concern a whole range of economic, social and cultural rights. They were translated into Georgian by the Human Rights Service of the National Security Council Office and published in the newspaper "Sakartvelos Respublika" (No 18, 22.01.03). We grouped certain provisions of the document in a manner enabling a better understanding of the Committee's concern and its recommendations intended to remedy the situation. We provide our comments regarding individual observations contained in the document. The recommendations reflect objectively the problems encountered by our country. Needless to say, the concluding observations of the committee (as of

other contractual bodies of the United Nations) have to be taken into account and duly followed on by the State party.

1. ***The Committee notes the efforts of the State party to comply with its obligations under international human rights instruments to which it is a party, in particular the adoption of various plans of action on a number of human rights topics, such as children's rights, women (as recommended in paragraph 27 of the Committee's concluding observations of May 2000), and combating violence.***

2. ***The committee notes that the State party continues to encounter difficulties in implementing the economic, social and cultural rights contained in the Covenant, arising from the process of transition to a market-oriented economy.***

3. ***The Committee notes with regret that, despite the international assistance being provided to the State party, it has been unable to comply with the most basic of recommendations contained in the Committee's previous concluding observations on the State party's initial report.***

4. ***The Committee is concerned about the existing gap between legislation in the field of economic, social and cultural rights and its actual implementation.***

   The Committee recommends that the enforcement of legislation in the field of economic, social and cultural rights be improved and that the various plans and programmes on human rights be implemented in a consistent manner.

5. ***The Committee is further concerned about the lack of awareness in the State party about the provisions of the Covenant. The Committee also recommends that human rights education in the State party be improved and that adequate human rights training be provided to the judiciary and government officials.***

Regrettably, the population of Georgia and the government lack awareness about the Covenant and our country's obligations. Most NGOs also focus on civil and political rights. At the same time one should note a welcome improvement of the situation in this regard. For the consideration of Georgia's report, a number of non-governmental organisations prepared and submitted to the Committee on Economic, Social and Cultural Rights alternative reports, with relevant information and observations.

6. ***The Committee is deeply concerned that the State party has not been able to address adequately the widespread and rampant problem of corruption, as it is one of the primary causes of the decrease in, and the inappropriate allocation of, revenue and resources, thus adding to the extremely difficult economic, social and cultural situation in the State party. The Committee is particularly concerned about the limited effectiveness of the use of foreign funds received in the context of international cooperation.***

The Committee strongly urges the State party to take effective measures to combat corruption and, in particular, to increase transparency and consultations at all levels of decision-making and concerning the evaluation of distribution of funds, especially with regard

to determination of the use of aid, the monitoring of fund distribution and the evaluation of impact.

Corruption seems again to be one of the main impediments for the development of our country. Classically, corruption *per se* does not represent violation of human rights, however it appears to be one of important sources of such violations. Unfortunately, no signs of progress in fighting corruption were observed in the reporting period.

7. ***The committee expresses deep concern about the deplorable situation of internally displaced persons in the State party. The State party's efforts to provide basic services to this disadvantaged group and special legislation adopted to that end have succeeded only partially in meeting the most basic needs of internally displaced persons, particularly with regard to employment, social security, adequate housing and access to water, electricity, basic health services and education.***

   The Committee strongly recommends that the State party take effective measures, in consultation with relevant civil society organisations, to improve the situation of internally displaced persons, including the adoption of a comprehensive programme of action aiming at ensuring more effectively their rights to adequate housing, food and water, health services and sanitation, employment and education, and the regularisation of their status on the State party.

8. ***The Committee is concerned that the National Ombudsman is not able to function in an effective manner, owing to severe resource constraints.***

The Committee recommends that the National Ombudsman be accorded adequate resources. The committee further suggests that the State party seek international assistance concerning the effective functioning of the Ombudsman's office.

The observations of the Committee on Economic, Social and Cultural Rights reflect correctly the material and financial problems encountered by the Public Defender of Georgia which limit the effectiveness of the work. Despite our efforts, it has not been possible to resolve the issue concerning the increase of remuneration for the Public Defender and her staff; resources for other purposes are limited, too. I urge the Parliament of Georgia and the Ministry of Finance to consider this recommendation of the Committee on Economic, Social and Cultural Rights. Otherwise, international organisation may gain an impression that the state is not interested in the effective functioning of the Public Defender's Office.

9. ***The Committee is gravely concerned about the high unemployment rate in the State party, particularly in urban areas and among young people, despite the measures adopted to create jobs and to encourage entrepreneurship in the country. The Committee regrets that the State party does not have information or data on the informal economy and on the number of self-employed in the country. The Committee further espressos concern about the slow process of re-establishing incentives to motivate the labour force to seek employment.***

In reality, information on the informal (i.e. in most cases, shadow) economy does exist. This is confirmed by the 2002

Year Book of the State Statistics Department of Georgia, to take only one source. According to the data of statistical services, low level of tax and non-tax revenues in the national budget is associated with high proportions of irregular economy. Statistically unrecorded economy is reflective of non-disclosure of production and incomes for purposes of tax evasion. According to the State Statistics Department of Georgia, in 2002, irregular (i.e. statistically unrecorded) production in the business sector accounted for 57.1 % of production, which is 0.2% higher than in the previous year, and 2.6 % higher than in 1998. Statististicians suggest that the highest share of irregular production is accounted for by trade (67%), hotels and restaurants (70%). At the same time, according to special surveys of retail trade and restaurants undertaken by the State Statistics Department of Georgia and expert evaluations, in 2002 the actual amount of retail outlets was 2.2 times, and restaurants – 3.5 times higher than the declared indicators. Given the present situation, it is time to make adequate decisions. We do not intend to suggest any ready, off-the-shelf economic recipes (which is clearly beyond our scope of competence), but it is our duty to state that in a given situation, the likelihood of the violation of people's economic, social and cultural rights is far greater, as what is threatened is the interests of hired workforce employed both in the state sector, and in irregular economy.

10. The Committee is deeply concerned about the extremely low level of salaries in the State party, including the minimum wage which is far below the minimum level of subsistence. Moreover, the Committee reiterated its concern that employees in various sectors of the economy are often not paid on time.

The committee strongly recommends that the State party intensify steps to ensure the right to work and the right to just and favourable conditions of work, in particular more timely payment of wages, and to establish the minimum wage at a level adequate for the requirements of the minimum level of subsistence.

In the light of this observation by the Committee, I cannot but touch on a discussion early in 2003 concerning the increase of the minimum wage. The Public Defender, by definition, would only welcome the increase of the minimum wage, if it were not for one factor – I am not sure that all possible results of this step, short- and long-term, microeconomic, financial and social, have been adequately assessed. The increase of the minimum wage is not an end in itself. The thing is that its level should be adequate for the requirements of the minimum level of subsistence. The level of subsistence is increasing by day (in December 2002 it was 8.4% higher, than in the comparable period of the previous year). Does it imply the need of regular indexation of the minimum wages? If so, from what sources? Would the increase of the minimum wages lead to a change in the level of the non-taxable minimum (9 GEL)? And if the non-taxable minimum changes, what would the economic effect of such a decision be? What would the level of inflation be in the case of the minimum wages increase? What would happen to utility tariffs and consumer prices in general? It is necessary to give substantiated and defensible answers to these, and other, questions.

Wonders do not work in economy. Such a sizeable (almost 6 times) and immediate increase, without creating the necessary economic conditions hardly seems realistic. While sharing fully the concern expressed by the Committee on Economic, Social

and Cultural Rights, I urge government to take a more cautious and prudent approach, so that eventually the people are not left cheated and frustrated.

11. The Committee is concerned about the extremely low level of social security benefits, which is far below the minimum level of subsistence, and about the fact that these benefits are often paid in arrears.

The Committee strongly recommends that the State party undertake reform of the social security system, including the establishment of a clearer relationship between pensions and previous employment; the raising of social security benefits to a level closer to the subsistence minimum; and the payment of benefits in a more timely manner, in particular to those most disadvantaged and marginalised groups that have no other means of subsistence.

12. The Committee reiterates its grave concern about the constantly increasing level of poverty in the State party and the inadequacy of the measures undertaken to combat poverty. The committee also reiterates its previous observations that there seems to be a lack of effective management, transparency and accountability in the policy-making and implementation phases (paras. 7 and 8 of the Committee's concluding observations of May 2000).

The committee further reiterates its concern about the lack of clarity as to the analysis and evaluation of the level of poverty in the country, and the determination of

the real poverty line (para. 9 of the Committee's concluding observations of May 2000).

The Committee encourages the State party, in preparing its poverty reduction strategies, in particular the Poverty Reduction Strategy Paper for the World Bank, to ensure active and meaningful participation of members of civil society. The State party may also wish to take into account the Committee's Statement on Poverty, and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E/C.12/2001/17, annex VII) and the United Nations High Commissioner for Human Rights (HCHR) draft guidelines for the integration of human rights into poverty reduction strategies.

Regrettably, nothing much changed in this regard in the reporting period.

13. The Committee expresses concern about the poor living conditions of the majority of the State party's population, including an adequate supply of water and irregular provision of electricity and heating, which particularly affect the most disadvantaged and marginalised groups of society, such as older persons, persons with disabilities, internally displaced persons, prisoners and persons living in poverty.

The Committee urges the State party to continue its efforts to improve the living conditions of its population by ensuring that the infrastructure for water, energy provision and heating is improved, and by paying priority attention to the needs of the most disadvantaged and marginalised groups of society, older persons, persons

with disabilities, internally displaced persons, prisoners and persons living in poverty.

14. *The Committee expresses deep concern about the insufficiency of material and technical resources, medication. Hygienic and sanitary conditions and food in hospitals, as well as about the low wages of the medical staff, resulting in the common practice of charging informal fees for basic health-care services that are formally provided free of charge. A particular negative effect of such informal fees is that it puts basic health care even further beyond the reach of the poorest and most disadvantaged groups of society.*

    The committee urges the State party to undertake effective measures to improve the living and working conditions in hospitals, ensure adequate wages for the medical staff, and actively combat the practice of informal fees.

Information about the practice of informal fees has long been available both for us, and for international organisations (see, for instance, UNDP annual reports "Human Development in Georgia). This notwithstanding, no effective steps have been taken so far to remedy the situation.

15. *The Committee is especially concerned about the situation of persons with mental illnesses, who, in addition to suffering social stigmatisation, often spend a long time in psychiatric facilities where they live in substandard conditions and receive sub-standard treatment and care.*

    The Committee recommends that particular attention and adequate funding be devoted to improving the treatment of and care for persons with mental illnesses.

16. The Committee is concerned that, although primary education should be provided free of charge, as stipulated by law and in article 14 of the Covenant, parents are faced with payments for various purposes. The Committee is further concerned about the high rate of school dropouts, particularly in secondary education.

The Committee recommends that the State party undertake measures to ensure that access to free primary education is not impeded in reality by additional material costs and by informal fees. In addition, the Committee suggests that the State party continue its reform of the school system, which aims, inter alia, to reduce the number of dropouts.

17. The Committee recommends that, in its efforts to implement the rights contained in the Covenant, the State party continue to seek international assistance and engage in international co-operation with donors and relevant international organisations, including OHCHR. In this regard, the Committee recommends that the State party ensure that its international human rights obligations are taken fully into account when entering into technical co-operation and other arrangements.

The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, in particular among State officials and the judiciary.

Department of Citizens Notices and Applications– Statistical Information for the Second Half of 2002

Statistical Data	Total Number	%
1. Total number of the received persons	5167	
2. Number of oral and written applications	1828	
- From Tbilisi	1298	71.0
3. Applications according to context		
-Proceedings on criminal cases (inquiry-investigation)	396	21.7
Including unlawful imprisonment	95	5.3
Proceedings on civil cases	165	9.0
Including complaints on non-execution of court decisions	51	2.8
- Restriction on freedom of religion	46	2.5
- On military service	18	1.0
-Women's rights	7	0.4
-Children's rights	14	0.8
- Discrimination of ethnic minorities	3	0.2
- Questions of pensions and social assistance	216	11.8
- Labour rights	184	10.1
- Problems related to living space	196	10.7
- Land disputes	46	2.5
- Questions related to education and culture	32	1.8
- Medical issues	48	2.6
- Questions related to banking and finance	18	1.0
- Conflicts between neighbours	38	2.1
- Pardoning	91	5.0
- Family issues	74	4.0
- Other questions and issues	236	12.9
4. The complaints against:		
- State bodies	134	7.3
- Governance	63	3.4
- Courts	275	17.9
- Local self-government	15	0.8
- Ministry of Internal Relations	169	9.2
- Prosecutor's Offices	193	10.6
- Penitentiary system	21	1.1

- Subdivisions of Ministry of Defence	43	2.4
- State Security Service	2	0.1
- Tax authorities	20	1.1
- Election commissions of every level	3	0.2
- Healthcare and social security system	187	10.2
- Other bodies	703	38.5
5. Recommendations and mediations of the Public Defender	463	25.3

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