

# THE PUBLIC DEFENDER OF GEORGIA



## 10 DECEMBER REPORT ON THE SITUATION OF THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA

# 2017

### FOREWORD

Human Rights Day is observed by the civilised world every year on 10 December. On 10 December 1948, through the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly, the Member States proclaimed the idea of respect for inherent human dignity and equality to be the common achievement of all people and nations. Today, almost 70 years after the adoption of the Declaration, when the main achievement of the humanity is questioned in the face of authoritarian regimes and terrorist threats, the Declaration, as a living document, obliges us to raise our voices for the protection of each individual's rights.

In line with the spirit of the Universal Declaration of Human Rights, the Public Defender of Georgia, as the national human rights institution, submits in the form of the present report the assessment of the situation in Georgia in terms of protection of human rights and fundamental freedoms in 2017. The report is the continuation of the initiative started by the Public Defender of Georgia in 2013 – every year on 10 December – to summarise and share with the public the main challenges and achievements in terms of protection of fundamental human rights in the country.

### INTRODUCTION

In the course of the current year, the ratification of the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence has been a milestone achievement in the sphere of human rights protection. The Convention was ratified in 2017 through which the state made a significant step towards the improvement of the protection of women's rights and enhancement of gender equality. Furthermore, the Parliament of Georgia adopted the Law of Georgia on Adoption and Foster Care, and the standards of early and pre-school upbringing and education have been approved.

In the current year, there has been a decrease in the number of incidents of violence motivated by religious intolerance, which indicates a downward trend in similar crimes. The problem, however, is not overcome, namely, investigation of the cases from previous years is mostly pending.

The Ministry of Education and Science of Georgia accepted numerous recommendations made by the Public Defender with regard to the protection of minority rights and promotion of civic integration. Some of the accepted recommendations concern the introduction of the new bilingual model and corresponding manuals, providing for diversity in school manuals and developing and publishing manuals in mother tongue for Armenian and Azeri schools in Georgia. Acceptance of the recommendations is a significant step forward and now their comprehensive fulfilment is necessary.

In the reporting period, the authorities did not disrupt peaceful assemblies and did not use disproportionate force against demonstrators. As regards disruption of the protests organised in Batumi on 11-12 March, the Public Defender considers the response of the law-enforcement authorities to be late; the protests promptly went beyond the scope of a peaceful assembly and freedom of expression and escalated into altercations that resulted in violence, causing injuries to individuals and disruption of property.

In the reporting period, when discharging the constitutional mandate of supervising protection of human rights and freedoms, the Public Defender of Georgia and his Office have been attacked by political officials, representatives of the court and the prosecutor's office many times. This went beyond the reasonable criticism of the Public Defender's reports and assessments, descending into personal attacks and determined attempts to discredit the institution.

On 10 October 2017, the representatives of the Public Defender were not given information for more than 3 hours in the main division of Tbilisi police about the whereabouts of the demonstrators arrested near Tbilisi Sakrebulo.

The conflicting norms in the Organic Law of Georgia on the Public Defender and the Law of Georgia on Personal Data Protection hinder implementing the activities covered by the Public Defender's mandate and require legislative amendments.

In the reporting period, the State Constitutional Commission completed its work. The Commission failed to cover issues of fundamental importance, thus weakening fundamental rights protection standards in some cases. Against the background, where the Constitutional Commission refused to cover by the constitution the issue of setting up an effective state mechanism for supervising protection of labour rights, 18 employees died at workplaces in the first half of 2017 alone.

The new edition of the constitution does not provide for setting up an independent investigative mechanism for the investigation of torture and ill-treatment by law-enforcement officials, whereas, the analysis of the information received from the Chief Prosecutor's Office reveals that investigation of pending criminal cases of alleged ill-treatment by law-enforcement officials are usually ineffective. Compared to 2016, the number of complaints concerning alleged ill-treatment by police officers during and/or after arrest has increased in the reporting period.

The absence of a civic monitoring mechanism over security systems remains problematic in the reporting period. There were no large-scale violations of the right to respect for private life in 2017. However, even 633 days after publicising the videos depicting private life on 11 March 2016, those persons who disseminated videos are not identified yet.

The reasoning of a court judgment as one of the significant aspects of a fair trial remained to be a challenge. The shortcomings related to the exercise of the right to a fair trial were demonstrated in the criminal case against archpriest Giorgi Mamaladze. Despite great interest shown by the public in this case, investigation and trial were conducted without public scrutiny.

On 29 May 2017, in the evening hours, Azeri journalist Afgan Mukhtarli disappeared from Tbilisi city centre. The next day, he was arrested on the territory of Azerbaijan. Having partly accepted the Public Defender's suggestion, this case was referred to the investigative unit of the Office of the Chief Prosecutor of Georgia. However, today, six months after instituting investigation, there are still doubts that the Georgian state chose to ignore or treat Afgan Mukhtarli's disappearance with indifference.

The authorities denied refugee and humanitarian status to Turkish teacher Mustafa Emre Çabuk who is currently in detention, pending extradition, applied by Tbilisi City Court. It is the assessment of the Public Defender that considering the human rights situation existing in Turkey, if extradited to the Republic of Turkey, Mustafa Emre Çabuk could be subjected to ill-treatment.

The Public Defender's assessments about the above and other problems existing in terms of protection of human rights are summarised in the following chapters. Due to format constraints, this report does not cover all of the rights discussed in the Public Defender's parliamentary report. This report, therefore, does not claim to be all-embracing. Particular cases and topics that are under consideration will be discussed in the Public Defender's parliamentary report.

## 1. SITUATION OF HUMAN RIGHTS PROTECTION IN THE PENITENTIARY SYSTEM

In 2017, the Public Defender did not request the Prosecutor's Office of Georgia to institute investigation in the incidents of alleged physical violence against prisoners by officials of penitentiary establishments.

The Public Defender welcomes the institutional reform implemented in the penitentiary system in 2017, in the framework of which significant amendments were made to the Code of Imprisonment. The following should be positively assessed: providing a possibility of receiving higher education to the prisoners held in low risk prison facilities; reduction of the terms of administrative detention; allowing two long visits in a year for prisoners in high risk prison facilities; allowing female convicts with a child aged up to three years to leave penitentiary establishments on weekends during the year after the child left the establishment, etc.

The Public Defender also welcomes the measures taken in terms of organisation of health care in the penitentiary system, namely, the enforcement of the new procedure for documenting bodily injuries that complies with Istanbul Protocol and determining job descriptions for the medical department staff and the statutory regulation of the system for quality management for improving medical services.

The Public Defender positively assesses the amendments made to the statutes of penitentiary establishments. These amendments concerned changing the procedural security rule of routine and unjustified handcuffing, and limiting the maximum term of placement of prisoners in de-escalation rooms to 72 hours. However, the recommendation of the Public Defender remains the same that the maximum term of placement of prisoners in de-escalation rooms should be reduced to 24 hours.

The introduction of 120 hours (five days) as the minimum term for storing video recordings is welcomed by the Public Defender as a step forward. The recommendation of the Public Defender, however, remains the same that it is necessary to store the said recordings at least for ten days and the recordings from de-escalation rooms should be stored for one month. Furthermore, it is necessary to ensure that members of the Special Preventive Group have unimpeded access to these recordings.

Despite the above positive changes, numerous problems and challenges remain in the system.

It is the assessment of the Special Prevention Group that serious threat in terms of ill-treatment of prisoners is posed by criminal underworld in penitentiary establishments; it often becomes the reason for violence and bullying among inmates. Considering the fact that it is within the interest of administrations of penitentiary establishments to maintain order, there is a temptation on their part to allow, to a certain degree, or even foster, informal rule in their facilities. It is necessary that the Ministry of Corrections of Georgia understands the challenges posed by criminal underworld in penitentiary establishments and elaborates a strategy to overcome these problems.

The Public Defender negatively assessed the legislative changes prohibiting correspondence among accused and convicted persons held in a penitentiary establishment; introducing electronic surveillance over short and video

visits; limiting a convict's right to participate in educational process within the period of serving a disciplinary penalty and right to use video and long visits.

Despite the enactment of the new procedure for documenting prisoners' bodily injuries in penitentiary establishments, similar to the previous years, the reporting period was punctuated with irregularities, therefore failing to ensure effective identification of the incidents of ill-treatment and their documentation.

The Public Defender's recommendation remains the same about making it obligatory for doctors to notify the Chief Prosecutor's Office of Georgia whenever they discover incidents of ill-treatment.

The outcomes of the inspection of penitentiary establishments carried out by the Special Preventive Group again revealed that, according to the established practice, the decisions ordering surveillance contain scarce information and standard wording. In the reporting period, the provisions of the Code of Imprisonment allowing prison administration to monitor meetings of members of the Special Preventive Group with inmates have not changed. This monitoring is conducted visually, through observation and recording with technical means from a distance but out of hearing of those monitoring, contradicting the Organic Law on the Public Defender of Georgia.

The Public Defender negatively assesses the policy of the Ministry of Corrections in special risk prison facilities, which fails to ensure positive change in convicted persons' behaviour, their rehabilitation and social reintegration. The limitations imposed on the convicted persons placed in special risk prison facilities are as a rule unsubstantiated and not based on individual risk assessment of a particular prisoner.

Despite the fact that, in accordance with the Public Defender's recommendation, examination by a scanner was determined as an alternative to a full body search of accused and convicted persons, in establishment no. 5 for women, a scanner was not always used as an alternative method of search. The monitoring revealed that, in the penitentiary establishment for women, scanning was used as an additional measure, along with the full body search and not as an alternative measure. The Public Defender considers it imperative to have this vicious practice eradicated.

The regulations under the statutes of penitentiary establishments, which allow full body searches of accused/convicted persons in all occasions of their first arrival, temporary leave and return to the penitentiary establishment is a blanket provision allowing routine and unjustified strip-searches.

The Public Defender welcomes the implementation of infrastructural projects in penitentiary establishments in 2017. However, some of the establishments are still challenged with the lack of adequate natural and artificial ventilation, and light and heating; sanitation and hygiene standards are not complied with either. Providing prisoners with clothing according to the season and items of personal hygiene, exercise of the right to stay in the open air and equipment in yards remain problematic. In the reporting period, ensuring that a living space of 4 m<sup>2</sup> is made available for each prisoner remains problematic.

It is impossible to use telephone in an environment that allows privacy in closed type establishments.

In 2017, various rehabilitation activities were carried out in penitentiary establishments; some of them are still ongoing. Some prisoners have been given the opportunity to take part in cultural and sporting events, pursue general/professional education and study various trades. With regard to diversity of rehabilitation activities, establishments nos. 16 and 5 set the best example. However, despite enhancing rehabilitation component, significant challenges persist in this regard. There is a lack of rehabilitation activities in most of the penitentiary establishments, especially in closed type and special risk prison facilities. Besides, the indicators of prisoners' participation in ongoing activities are low. Due to language barriers, foreign prisoners find it difficult to communicate with prison administration, including social workers, and therefore are virtually unable to be involved in rehabilitation activities.

Mental healthcare remains one of the major challenges of the penitentiary health-care. Providing adequate mental healthcare remains problematic. In order to identify persons with mental ailments and provide them with ade-

quate psychiatric assistance, it is necessary to enhance cooperation with psychologists and social workers, apart from improving access to a psychiatrist. Furthermore, the Public Defender positively assesses introduction of suicide prevention programme in all establishments of the Penitentiary Department.

According to the assessment made by the Special Preventive Group, the function of social services aimed at enabling prisoners to exercise their right to lodge a motion/complaint should be enhanced. Copies of relevant legislative acts are still unavailable in cells; information on prisoners' rights and duties is not provided to prisoners.

It is important that the establishments maintain the existing well-qualified resources. To this end, salaries should be adequate and working conditions should be favourable to hard and labour-consuming work. The working conditions of on-duty doctors and nurses, paramedics, psychologists, and social workers are quite hard. The establishments' personnel are not provided with insurance.

## 2. THE SITUATION OF HUMAN RIGHTS PROTECTION IN FACILITIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

In 2017, the Special Preventive Group conducted large-scale monitoring in police stations and temporary detention isolators. The monitoring results show in numerous cases that, when making arrests, police officers could have resorted to excessive force, abused arrestees physically and verbally. In 2017, the Public Defender sent 10 recommendations to the Prosecutor's Office of Georgia, concerning institution of investigation in alleged ill-treatment by police. This indicator is higher in comparison to 2016. Processing and storage of patrol officers' body camera recordings remain a problem and must change. Taking notes by ambulance doctors and describing bodily injuries in a thorough manner remain problematic. Sometimes, existing injuries are described without using medical terminology.

Documenting injuries in temporary detention isolators in accordance with the Istanbul Protocol is problematic. In most of the cases, injuries are not photographed. Resistance from an arrestee is cited as a reason for this. Besides, in case of photographing, technical specifications of photo cameras available in isolators do not allow taking images with required clarity. Furthermore, filed information about injuries are incomplete and superficial. In order to rectify these irregularities in accordance with the Istanbul Protocol, it is imperative to conduct relevant training sessions for medical personnel and equip isolators with photo cameras of better quality.

Haphazard maintenance of logbooks in police stations is a problem. For instance, it is impossible to establish in a number of cases the date and time of arrest of a person by a police officer and what happened to the arrestee later. There are no uniform logbooks in police stations/divisions, registering the exact time of entry and exit by citizens, witnesses, and persons to be interviewed.

The monitoring outcomes reveal that ensuring the involvement of a lawyer in the proceedings in the shortest time possible after arrest remains to be a significant challenge. The Public Defender observes that the highest risk of torture and other ill-treatment exists at the early stage of arrest. Therefore, it is imperative to take legislative, administrative and other measures to ensure that access to a lawyer is guaranteed in the shortest time possible after arrest.

The Public Defender welcomes the completed, planned and ongoing renovation works in various isolators. Despite positive changes, central heating, natural light and ventilation, full isolation and technical maintenance of water closets remain problematic in some temporary detention isolators in the regions of Georgia.

### 3. HUMAN RIGHTS IN THE SPHERE OF DEFENSE

Together with the restoration of compulsory military service, the Ministry of Defence established new approaches towards military conscripts. Conscripts, similar to regular service personnel, undergo full-fledged combat training within 3 months. After this period, along with sentry duties, they are assigned with the hours of combat training, which significantly improves their situation.

Unlike the Ministry of Defence, the situation of conscripts serving in the External Protection and Escort Division of the Penitentiary Department has not changed. Guarding the perimeters of penitentiary establishments remains their main duty and their food and transportation expenses are not reimbursed. Besides, the living conditions of military conscripts serving in the system of the Ministry of Corrections are extremely hard; they have to sleep on torn mattresses and sanitary standards are not met in canteens. The conditions in the barracks and dormitories in the system of the Ministry of Internal Affairs are satisfactory.

A vice practice in military units of punishing conscripts with additional physical load for their disciplinary misdemeanors continued in 2017. On one occasion, following the principle “all for one and one for all,” the entire platoon was punished for the misdemeanor of a single conscript.

Living conditions are inadequate in a number of military units. In particular, they lack air conditioning system; extraction and ventilation systems are broken in almost all bedrooms, toilets and shower rooms; a problem of artificial lighting is faced by all units because of poor electrical wiring system. Especially conspicuous are the problems concerning the infrastructure and living conditions of first, second and third infantry brigades.

In several subunits, paid leaves of military servicemen are scheduled in advance and broken up in phases; servicemen have to comply with them rather than take their paid leaves during those periods and for that duration which would be convenient and desirable for them. In often cases military servicemen cannot use up all the days of their paid leave due to a shortfall of military servicemen on the payroll. The majority of military servicemen serve far from their living places, in some other regions and therefore, they have to either rent flats or live in military barracks.

### 4. ILL-TREATMENT AND THE NECESSITY TO SET UP AN INDEPENDENT INVESTIGATIVE MECHANISM

In 2017, similar to the previous years, the Office of the Public Defender of Georgia studied numerous applications/complaints concerning alleged ill-treatment by law-enforcement authorities and officials of penitentiary establishments.

The analysis of the information received from the Office of the Chief Prosecutor of Georgia shows that investigation of pending criminal cases involving incidents of alleged ill-treatment is delayed and ineffective. Despite this, the authorities have not made any positive efforts towards setting up an independent mechanism of investigation of torture, inhuman and degrading treatment by law-enforcement officials.

According to the ten-month data from 2017, in comparison with the last year, there has been an increase in the number of applications on alleged ill-treatment by police officers during and/or after arrests on the one hand and, on the other hand, the Public Defender did not file any proposal on the commencement of the investigation in this regard. However, the number of violence among prisoners, self-harm and household traumas is still high in prisons. In 2016, the Public Defender submitted to the Chief Prosecutor proposals for instituting investigation on alleged ill-treatment by police officers on 7 occasions. In 2017, according to the ten-month data only, this number increased to 10.

In comparison to the previous years, the situation concerning qualification of incidents of alleged ill-treatment has improved. In the last year, investigation of incidents of alleged ill-treatment usually would be instituted under the

article on abuse of official power (Article 333 of the Criminal Code) instead of the articles on torture, inhuman or degrading treatment (Articles 144<sup>1</sup>–144<sup>3</sup> of the Criminal Code). In the reporting period, investigation in 4 incidents out of 10 incidents of alleged ill-treatment was instituted under *lex specialis* articles (Articles 144<sup>1</sup>–144<sup>3</sup> of the Criminal Code). The acts committed in other six incidents were qualified as abuse of official power. The Public Defender commends this approach and regards it as necessary to maintain and improve it in future.

## 5. RIGHT TO LIBERTY AND SECURITY OF PERSON

For years, the Public Defender has been discussing the dire outcomes of the repressive and inhuman drug policy existing in the country and the necessity for systemic changes pertaining to the allocation of resources to rehabilitation and treatment of substance abusers instead of enforcement of punitive measures. The Public Defender, therefore, welcomes the legislative proposal of the Georgian National Drug Policy Platform aimed at replacing the state's repressive drug policy with a liberal and balanced policy.

The Public Defender assesses negatively the amendment to the Code of Administrative Violations of Georgia, to be enforced from 1 November 2017. The amendment leaves room for unlawful deprivation of liberty of persons arrested in administrative proceedings and deteriorates their legal status. In particular, under the aforementioned amendment, despite the statutory 12-hour term of administrative arrest, a person arrested during non-working hours can be placed in a temporary detention isolator for no more than 48 hours, until the hearing of his/her case begins. The Public Defender observes that the fact that a person is arrested by state authorities out of their working hours cannot justify the increase in the duration of arrest and arresting a person in administrative proceedings for an unreasonable term. In this context, it is worth mentioning that it is necessary to finalise the reform, aimed at overhauling the Code of Administrative Violations that will improve legal safeguards for administrative offenders.

In the reporting period, there was an increase in the number of application of detention as a preventive measure, whereas there was a downward trend in the number of detentions during the previous year. According to the statistics published by the Supreme Court of Georgia, the number of detentions during nine months in 2016 constituted 28.2% of the total number of preventive measures applied, whereas in the same period, in 2017, the number of detentions reached 33.5% of the total number of preventive measures applied. There has been a decrease also in the number of application of non-custodial preventive measures (apart from bail).

In the reporting period, there were numerous applications lodged with the Office of the Public Defender of Georgia by persons in extradition related detention. The Public Defender of Georgia observes that the state is obliged to provide reasoning as to why any type of deprivation of liberty (either domestic or extradition related) is necessary and whether it would be possible to achieve statutory objectives of the preventive measure by alternative and less intrusive measures. In this regard, the Public Defender of Georgia submitted an *amicus curiae* brief to Tbilisi City Court concerning lawfulness and reasonableness of extradition related detention of accused I.S.

## 6. RIGHT TO A FAIR TRIAL

The Public Defender considers it risky to vest the High Council of Justice with the power of submitting candidatures for the Supreme Court judgeship to the Parliament of Georgia. Considering the well-grounded criticism towards the performance of the Council, this amendment will negatively reflect on the independence of the judiciary and public trust in the court system.

In the current year, the Public Defender of Georgia studied numerous violations of the right to a fair trial, among others, incidents involving the violation of judicial ethics by a judge, violation of the principle of continuation of judicial composition and other incidents. The reasoning of a court judgment as one of the significant aspects of a fair trial remains to be a challenge. In terms of administration of justice, in the reporting period, the process of selection and appointment of judges by the High Council of Justice of Georgia again attracted much criticism. An

independent inspector in charge of examining disciplinary violation by judges was selected in violation of statutory time-limits.

The shortcomings related to the exercise of the right to a fair trial were demonstrated in the case against archpriest Giorgi Mamaladze. Despite great interest shown by the public in this case, investigation and trial were conducted without public scrutiny.

In discharging the authorities within his mandate, the Public Defender examined the case-files and staff members of his office attended all the trial hearings. Considering the great interest the public showed in the criminal case against archpriest Giorgi Mamaladze and the Public Defender's constitutional mandate of supervising the protection of human rights and freedoms on the territory of Georgia, the Public Defender communicated to the public the principal findings from the monitoring of the "cyanide case," entailing unjustified attacks by the prosecutor's office, the court, and the Ministry of Justice on the institution of the Public Defender.

The Public Defender considered the statements concerning Giorgi Mamaladze, made by various representatives of the state authorities, to be in violation of his presumption of innocence. Much ahead of Giorgi Mamaladze's conviction, preliminary statements made by public figures contributed to shaping public opinion about his guilt. The Public Defender considered that holding the trial fully in camera was a disproportionate measure. The defence was put in an unequal position by virtue of the imposition of the obligation of non-disclosure on lawyers, which, in the Public Defender's opinion, did not serve the objectives determined by procedural legislation. The violation of equality of arms was apparent against the background, where the Office of the Chief Prosecutor of Georgia made public the major evidence and the identity of witnesses.

## 7. RIGHT TO PRIVACY

In contrast to the previous reporting year, 2017 has not seen gross violations of the right to privacy.

Within the framework of the campaign "Timer is turned on" the Public Defender continued the monitoring of criminal cases related to the violation of privacy in 2015 and 2016. The information requested from various entities shows that criminal prosecution has not been instituted on a number of high-profile cases, including:

- Secret audio recordings released on 24 and 29 October and 2 November 2015;
- A secret video recording released on 17 October 2015;
- Secret audio recordings released on 14 September, 27 September and 3 November 2016;

The exception is the case of video footage featuring private life, which was released in 2016. The police detained several former high officials on charges of illegal acquisition of the mentioned recordings, though persons who released the footage have not been established yet. Of the 26,000 files of the secret recordings cases, the number of individuals charged or awarded victim status is unknown. Besides, it is unknown whether there were any convictions or acquittals.

To comply with a decision of the Constitutional Court of 14 April 2016, by which the Constitutional Court of Georgia found the provisions regulating covert investigative actions unconstitutional, the Parliament of Georgia, on 22 March 2017, adopted the Law on Legal Entity in Public Law Operative-Technical Agency. Based on this law, the Legal Entity in Public Law Operative-Technical Agency of Georgia was established under the administration of the State Security Service. In the Public Defender's view, the legislative amendments are inconsistent with the Constitutional Court's decision of 2016 as they fail to ensure a proper independence of the Agency from the State Security Service and create a high risk of interference into a person's private life which is an absolutely inviolable sphere.

## 8. FREEDOM OF RELIGION

Election campaigns conducted by political subjects ahead of the local elections of 21 October 2017 were least distinguished for their religious rhetoric and manipulations, something which is a welcoming development.

During the reporting period, the Public Defender was approached for only three incidents of violence on the ground of religious intolerance, which shows a downward trend in such crimes. However, judging by the response to the facts of similar violence committed in previous years, the problem has not been overcome yet as old cases largely remain uninvestigated.

The reporting period has not seen the settlement of the problem concerning the restitution of religious buildings seized during the Soviet period. It has been years now that the Public Defender has urged for the introduction of equal tax regime for and equal treatment of those religious associations that despite the damage sustained during the Soviet period have not been recognized by the state as victims of Soviet repression.

In the current year, the so-called Mokhe commission, operating under the aegis of the State Agency for Religious Issues, has failed to establish the origin of the historic mosque in the village of Mokhe. Therefore, instead of handing over the Mokhe mosque, the local Muslim community was offered another place in the same village for the construction of a new mosque. Nor was the Catholic Church allowed, notwithstanding the court ruling, to build a church on the land which it owned in Rustavi and was also offered another territory for the construction of the church. The issue of building a new mosque in Batumi has remained unsolved this year as well.

## 9. PROTECTION OF THE RIGHTS AND CIVIL INTEGRATION OF ETHNIC MINORITIES

Teaching the state language effectively remains a serious challenge in the regions with compact settlements of ethnic minorities. Although public servants and other interested persons were provided with the opportunity to study the Georgian language at the Zurab Zhvania School of Public Administration, the knowledge of the state language is still a problem in the regions with compact settlements of ethnic minorities.

In his parliamentary reports of previous years, the Public Defender repeatedly emphasized the inefficiency of bilingual education and proposed model of textbooks. Although the Ministry of Education shared this opinion, the teaching is still carried on with these textbooks. According to the Ministry of Education, an intensive work is underway for the establishment of a new bilingual model and creation of corresponding textbooks.

In his 2016 parliamentary report, the Public Defender issued a recommendation to the Ministry of Education to clearly define, in the rule of textbook approval, a requirement to reflect diversity in school textbooks and to establish a control on the fulfillment of this requirement. The Ministry of Education agreed to the recommendation. A process of development and approval of new textbooks will be completed in the spring of 2018. Yet another recommendation of the Public Defender, which was also accepted by the Education Ministry, concerned the development and publication in Georgia of native language textbooks for Georgia's Armenian and Azerbaijani schools.

The rehabilitation of so-called Ossetian House in the Museum of Ethnography, which began upon the recommendation of the Public Defender in 2015, was completed in 2017. The reconstruction works on the Petros Adamian Tbilisi State Armenian Drama Theatre have also been underway in the reporting period, which is a welcoming development. However, the issue of rehabilitation of the Heydar Aliyev State Azerbaijani Drama Theatre remains outstanding as well as the rehabilitation of a number of monuments related to ethnic minorities, which are included in the list of cultural heritage of Georgia with some of them being in a state of disrepair.

As a result of the 2017 local elections ethnic minorities are represented in almost all local municipal councils in the regions densely populated by ethnic minorities. This is in contrast to the Tbilisi local council which, much like in pre-

vious years, lacks even a single representative of ethnic minority as a council member. A full-fledged participation of ethnic minorities in the self-governance of the capital city remains one of serious challenges.

A problem of providing ethnic minorities with comprehensive information about developments inside and outside Georgia persisted in 2017 too. One should commend the efforts of the Public Broadcaster to translate news programs in the languages of ethnic minorities as well as the initiative of the Georgian Association of Regional Broadcasters to provide the retransmission of news program Moambe with simultaneous translation into Armenian and Azerbaijani languages via regional TV channels to Kvemo Kartli and Samtskhe-Javakheti regions. Nevertheless, additional efforts are required from the state to ensure that ethnic minorities receive comprehensive information about the developments in the country. Against this backdrop, one must commend the establishment of a special media strategy and action plan to provide information to ethnic minorities as well as provide information about ethnic minorities to the majority. This strategy is the result of consultations conducted between the Public Broadcaster and Council of Ethnic Minorities at the Office of Public Defender in November 2017. The management of Public Broadcaster declared the implementation of this strategy and action plan as one of its priorities.

## 10. FREEDOM OF EXPRESSION

In the reporting period, the events unfolded in the Public Broadcaster attracted public interest. The Public Defender opines that the vision of the new management of the Public Broadcaster, which involved shutting down programmes according to their ratings, was not based on a comprehensive study of the issue and he raised questions about the entire process of the reform.

In the reporting period, the examination of the Rustavi-2 case was finalised at the domestic level. Under the judgment of the Grand Chamber of the Supreme Court of Georgia, the share of the TV company was fully transferred to Kibar Khalvashi and to the company owned by him. The Court of Cassation examined the case without an oral hearing. Despite the fact that two founders of the TV company applied to the prosecutor's office in 2012, there has been no legal assessment to date as to how Kibar Khalvashi became the owner of Rustavi-2 at the material time. As of today, the case is being considered by the European Court of Human Rights, which suspended the enforcement of the Supreme Court's judgment.

The case of Birzha Mafia was a subject of particular interest to the public. The case raised misgivings about the arrest of the rappers on account of their music video where, in one scene, one of the police uniform-clad characters wore a dog collar. The family members of the rappers alleged that the arrest was due to the music video. Later, this was confirmed by the accused persons before a court. They were released from detention only after paying bail. It is the assessment of the Public Defender that the content of the video and the used imagery was protected fully by freedom of expression. Against the background, where misgivings about the rappers' arrest are still floating, it is imperative that the Prosecutor's Office of Georgia promptly and effectively investigates alleged abuse of official power and fabrication of evidence by police.

## 11. FREEDOM OF ASSEMBLY AND DEMONSTRATION

In 2017, citizens mostly managed to enjoy their right to peaceful assembly. However, on several occasions, the authorities restricted demonstrators' freedom illegally.

There were incidents in the reporting period, where police officers prevented demonstrators from using tents, patio umbrellas, chairs and banners. The Public Defender assessed such incidents as illegal restriction of freedom of assembly. The Ministry of Internal Affairs failed to respond in any way to the aforementioned.

Citizens' protests, which started in Batumi on 11 March after a verbal dispute between police officers and citizens over a parking violation, escalated promptly from a peaceful assembly into altercations that resulted in violence,

injuries to individuals and destruction of property. The Public defender considers the response of the law-enforcement authorities to be late.

## 12. RIGHT TO EQUALITY

Fighting discrimination remains one of the most significant challenges in Georgia. Insufficient legislative safeguards, wrong perceptions existing among the public and scarcity of measures taken by the state in terms of elimination of discrimination are negatively reflected on a daily basis on the legal status of vulnerable persons.

The Public Defender of Georgia submitted a legislative proposal to the Parliament of Georgia in February 2015. The proposal concerned amendments on procedural issues. Despite the fact that the proposal was initiated in October 2015, the Parliament has not resumed discussions about the draft law.

Apart from legislative shortcomings, it is problematic for various groups to enjoy effectively their right to equality in practice. As practice shows, women, persons with disabilities (among them children), LGBT community and representatives of religious minorities remain among the most vulnerable groups.

Discrimination against women is manifested in the inadequate responses to incidents of violence, when such allegations are perceived as not enough grievous by law-enforcement officials. There were incidents in the reporting period, where after the expiry of the term of labour contract with female employees, the contracts were not extended on account pregnancy. Sexual harassment at workplace remains a significant problem. However, the number of applications concerning this form of discrimination is rather low due to the latent nature of sexual harassment and victims' fear of stigmatisation.

The Public Defender found that most of the cases of discrimination or enabling discrimination are based on disability, as specific needs of this group are not accommodated comprehensively in almost all the spheres of social life. It is problematic to implement the rights of children with disabilities to inclusive education; the relevant legislation is defective; the role of special education teachers in the educational process is not comprehended adequately and they are in short supply in some schools. Children with autism disorder spectrum and their parents have to endure aggressive attitude from drivers and passengers on municipality transport as in most cases public members do not understand that a child with autism disorder spectrum can be difficult to manage. Furthermore, persons employed in public sector with significant (except for those persons who have significant disability due to eyesight) and moderate disabilities are not eligible for disability allowance. However, persons with the same disabilities but employed in private sector are eligible for the same social benefits package. Certain measures have been taken at the legislative level towards shifting from medical model of disability to social model by introducing a support institution.

Religious minorities still face obstacles in Georgia. The analysis of the cases considered by the Public Defender of Georgia shows that in a number of public schools, when exercising the right to education, there were incidents of restricting pupils' right to expressing their religious identity, as well as incidents of religious indoctrination, and proselytising or forced assimilation in educational process. One of the examined cases is about an incident that took place in the village of Mokhe, when an acting school director requested a Muslim girl not to wear her Muslim headscarf (hijab) in the school building as a precondition for enrolment in the school. This became a reason of protests by the school's Muslim pupils. In parallel to this incident, there were controversies concerning construction of an Islamic place of worship in the same village. The Muslim community is unable to use the building rented in Kobuleti as the local population prevents them from connecting the property to the wastewater system. Furthermore, there are incidents, where Muslim individuals faced problems when crossing the state border of Georgia. Namely, they were delayed at the border, questioned about the purpose of their travel, their links with the Republic of Turkey and relations with other Muslim persons. In this regard, the Public Defender made a recommendation concerning discrimination on account of religion to the Ministry of Internal Affairs of Georgia and LEPL Revenue Service under the Ministry of Finance of Georgia.

Pre-contractual and labour relations are one of the spheres in which incidents of alleged discrimination occur most frequently. Vacancy notices that contain discriminatory criteria are widespread. For example, some employers

seek an “unmarried girl with pleasant looks and aged between 18 to 25”. Furthermore, according to the applications lodged with the Public Defender of Georgia, incidents of alleged discrimination of persons employed in public schools and kindergartens, as well as self-government bodies, on account of their political and different opinions. In the reporting period, the Public Defender identified two incidents of discriminatory treatment based on holding different opinions and trade union activities.

Investigation of alleged hate crimes remains to be the most important challenge. The cases examined by the Public Defender concern the hate crimes allegedly committed on account of religion, ethnic origin, sexual orientation, gender identity, or other protected grounds. Such cases involve crimes allegedly committed by discriminatory motives, where investigation failed to establish hate as a motive and later investigation was either continued or discontinued; there are also cases where investigation was not instituted due to non-existence of elements of crime. The Public Defender also studies incidents of discriminatory physical and verbal abuse allegedly committed by law-enforcement officials.

Making public statements by public officials that encourage discrimination is a significant challenge in terms of protection of the right to equality. Against the background, where negative attitudes towards various vulnerable groups are still firmly rooted, voicing discriminatory phrases and opinions by the public figures are a step backwards in the process of fighting discrimination.

## 13. RIGHT TO PROPERTY

There are numerous problems with regard to the right to property. Unfortunately, the process of the initial registration of the title to immovable property, ensuring the accuracy of data and eliminating defects in the data of the public registry, and systematisation and digitalisation of the so-called paper versions of documents confirming title to a property has not yet been finalised.

The fulfilment of obligations undertaken by the state towards the persons who are victims of cooperative housing construction remains problematic. The activities carried out by various agencies to date cannot be considered to be effective. The criteria for the selection of victims for pre-emptive accommodation are unclear considering that there are no relevant regulations. It is imperative to elaborate a uniform rule of fulfilment of the existing obligations that would regulate the manner and terms of honouring the state’s commitments.

## 14. LOCAL ELECTIONS OF 2017

The Public Defender’s representatives observed the local self-government elections of 21 October 2017 throughout the day in 64 municipalities of Georgia, including the villages along the Administrative Boundary Line.

The elections were mostly conducted in a peaceful environment. Isolated violations were mainly caused by the inefficiency of election commission members. The Public Defender’s representatives identified incidents where election precincts were opened with delay; commissions refused to register complaints; control ballot sheets were inaccurately filled in; voting started without putting a control ballot sheet in the ballot box; one of the election precincts’ seal was lost; demonstration forms were inaccurately filled in; vote registering personnel signed bulletins in advance; voting was allowed upon presenting a driving licence; police were deployed on the territories adjacent to a precinct without the necessity envisaged by the Election Code, etc.

The law enforcement bodies were adequate to the incident of physical altercation at precinct no. 58 of Kvemo Sarali, Marneuli.

## 15. RIGHT TO PROTECT CULTURAL HERITAGE

The problems identified by the Public Defender in terms of cultural heritage have not been solved in the reporting period. Despite numerous recommendations made by the Public Defender, no amendments have been made to the Law of Georgia on Cultural Heritage. The law exempts the Autocephalous Orthodox Church and other religious denominations from administrative responsibility for the violation of the rules of maintenance of cultural monuments that are in their ownership (possession). Similar to the previous years, LEPL National Environmental Agency, when adopting decisions on large-scale works, fails to request the relevant findings from the Ministry of Culture and Monument Protection of Georgia.

Another noteworthy issue was identified in the reporting period. Under the pretext of having delegated its authorities fully to Tbilisi Municipality, LEPL National Agency for Cultural Heritage Preservation of Georgia does not respond to illegal activities carried out with regard to cultural monuments in Tbilisi, even though the full-scale delegation of authorities is questionable and Georgian legislation vests the agency with a number of authorities.

## 16. RIGHT TO WORK

According to the information provided by the Ministry of Internal Affairs, in the first half of 2017, 18 employees died and 34 were injured at workplaces. Despite the alarming situation, non-existence of an effective mechanism responsible for monitoring labour rights and safe working environment remained a problem in the reporting period. Presently, the Parliament of Georgia discusses a draft Law on Occupational Safety. The scope of application of the draft law is limited to working in hard, harmful and dangerous conditions. Under the document, the agency in charge of the supervision will be authorised to conduct inspection of companies once a year, by random control and without prior permission. In other cases, the agency will be authorised to conduct inspections based on court orders. Among other shortcomings of the draft law, the extremely narrow scope of application of the draft law and access of the control agency's representatives to employers are particularly problematic. It is imperative that the law applies to all employers and the control agency has the possibility of unhindered inspection of all premises without prior permissions and court orders.

The analysis of the applications lodged with the Office of the Public Defender in the reporting period revealed incidents of dismissal of employees from public agencies without legal grounds, as well as restriction of the right to childcare leave. Allowing male employees to use childcare leave remains a problem. To this date, an amendment has not been made to the relevant order of the Minister of Labour, Health and Social Affairs of Georgia, which contradicts the law and prevents men from using paternity leave.

## 17. RIGHT TO LIVE IN HEALTHY ENVIRONMENT

The adoption of the Environmental Assessment Code is the significant and positive change in the sphere of environmental protection in 2017. The Code resolved numerous defects in the existing legislation. The legislative amendments made with regard to noise regulation are also noteworthy. However, it is imperative that the provisions of the code are enforced comprehensively in order to remedy the existing situation.

The lack of involvement of the public in the decision making process related to environment, unjustified conclusion of special zone agreements (development intensity coefficient growth), and number of problems in construction law and procedures failing to ensure healthy living environment remain problematic. The problems of air pollution and maintaining green cover remained to be acute problems in the reporting period too.

## 18. RIGHT TO HEALTH CARE

The realisation of the right to health care is linked with problems. The state programme of universal health care is not fully accessible for those who use private insurance schemes as of 1 January 2017. This limitation of technical nature, and based on a fixed date, is unjustified and requires revision.

The cases examined by the Public Defender's Office revealed shortcomings in the performance of LEPL State Regulation Agency for Medical Activities. It concerns the delay in examining complaints lodged with the agency and not allowing applicants to attend oral hearings, thus depriving them of the possibility to express their opinions.

The Public Defender of Georgia welcomes the amendments made to the legislation in the sphere of tobacco control in 2017. It is however assessed negatively that 2 months later the law again was amended to the effect of delaying the enforcement of several provisions for 5 years. The Public Defender expresses his hope that this will not become a trend; otherwise, the protection of residents of Georgia, including minors, from the harmful effects of tobacco will be endangered.

## 19. CHILDREN'S RIGHTS

In the reporting period the Parliament of Georgia adopted the Law on Adoption and Foster Care. The current year also saw the approval of standards of early and preschool education which, in the Public Defender's view, will improve the situation regarding the rights of the child. However, despite positive steps taken towards the improvement of legislative framework, the situation in the area of the child's rights remains a matter of concern.

According to the data of the first 10 months of 2017, the Public Defender, on the basis of applications as well as upon his own initiative, studied 426 cases on violations of the child's rights. The majority of them concerned violence against children, child poverty and improper social conditions as well as relations between a child and both parents.

The reporting period was again marked with a high indicator of violence against children in families, care and educational institutions. Among the problems that persist are the failure to identify victims of violence and to carry out effective measures for rehabilitating such victims and protecting them from violence. In the Public Defender's opinion, the indicator of violence against children is in direct correlation with those wrong opinions that are widespread in society with regard to the methods of upbringing of children and a dominating tendency of ignoring the child's interests and rights. It should also be noted that despite repeated recommendations, including the obligation assumed under the universal periodic review, a corporal punishment of children has not been prohibited on a legislative level yet.

During the 2016-2017 academic year, the problem of violence against children in general educational institutions was studied for the first time ever within the scope of Public Defender's mandate. Representatives of the Public Defender inspected 109 public, private and boarding schools. The findings of the monitoring have made it clear that the protection of children from abusive attitudes and improper treatment remains a serious challenge within the system of general education of Georgia; children are frequently subject to psychological and physical abuse by adults and peers; bullying among pupils is a widespread form of interaction among minors; level of pupils' awareness of their rights is low; responsible persons are poorly informed about the mechanism of response to violence against children.

As of July 2017, over 200 public schools operated in a state of disrepair or ruin countrywide. The number of such schools in 2016 stood at 209 with 42 schools amongst being unfit for repair or rehabilitation. This especially holds true for schools in mountainous regions and villages. According to the Public Defender's recommendation, it is necessary to improve the infrastructure of general educational institutions and to renew educational inventory. In this regard, a greater deal of attention should be paid to schools in mountainous regions and villages.

Child poverty and inadequate level of living remains an unsolved issue. A process of engagement in state programs and provision of relevant services is often procrastinated which significantly undermines the efficiency of the programs.

The situation regarding the rights of children working and/or living on the street is especially worrying as the response undertaken by responsible entities often proves not to be effective and timely.

During 2016 and 2017, the Public Defender of Georgia carried out a study into the safety of toys available on the Georgian market. The study revealed that this sphere is not regulated on the level of legislation and lacks any mechanism of control. It is therefore crucial to undertake effective measures in order to introduce the Toy Safety Directive of the European Union into the national legislation, especially considering that the state is obligated to fulfill this by 1 September 2019. Consequently, the state has to develop a legislative framework on toy safety within a reasonable timeframe.

One should highlight the issue of availability of safe water to minors. The study carried out by the Public Defender has revealed that the situation concerning the availability of safe water in child placement institutions, communities or regions falls short of national and international standards of sanitation and hygiene. In a number of instances, a central water supply system does not operate properly, creating problems in observing hygiene and sanitation. No effective mechanism is in place to control availability and quality of water.

In 2017, the Center of Child's Right of the Public Defender's Office, together with the National Preventive Mechanism, studied the situation concerning the rights of beneficiaries of small-size family-type homes and children's homes subordinated to religious organizations. One should note that religious homes that have already obtained state license have been harmonizing the implementation of care-related activities with the Technical Regulation on Child Care Standards. Problems remain in boarding schools subordinated to the Patriarchate of Georgian Orthodox Church and the Muslim denomination in Georgia in terms of implementation of child care standards and the upbringing of minors in family-type environment. Insufficient involvement of the Social Service Agency in the upbringing of children leads to the failure to properly ensure the protection of fundamental rights of the child.

Although small-size family-type homes basically create an environment resembling that of a family, they still fail to fully ensure emotional and social development of beneficiaries; minors lack motivation to obtain appropriate education which adversely affects their preparedness for an independent life; the identification of facts of violence against children remains a problem.

## 20. WOMEN'S RIGHTS AND GENDER EQUALITY

By ratifying the 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence the state, in 2017, took a significant step forward in the improvement of women's rights and gender equality. The Convention broadened the mechanisms of combating domestic violence and violence against women and of protecting and assisting victims of violence. Despite significant steps taken on the legislative level, domestic violence and violence against women continue to be serious challenges in Georgia and require adequate response from the state.

According to information provided by the Chief Prosecutor's Office of Georgia, over the period from 1 January to 20 September 2017, investigations were launched into 22 facts of femicide (including 13 facts resulting from domestic violence) and 11 facts of attempted murder of women (including 8 facts related to domestic violence). Against the increase in killings of women on the ground of gender in the past few years, the Public Defender of Georgia took a decision to prepare and present an annual report on the monitoring of femicide. The conduct of such monitoring was also recommended by the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences.

In the current year problems have been observed in the assessment by law enforcement agencies of risks of domestic violence and violence against women as well as in the monitoring of compliance with the restraining and

protective orders that were issued. In the Public Defender's opinion, measures to prevent domestic violence and violence against women are not effective due to the absence of a proper system of protection, assistance and rehabilitation of victims of violence. As a result, the correction of offenders' behavior, the diversion of offenders and issues related to psychological, social and economic rehabilitation of victims of violence remain problematic.

The Public Defender commends the Ministry of Internal Affairs of Georgia for processing the data on forms of violence. The highest number of incidents categorized as "domestic conflict/violence" was reported to the Legal Entity in Public Law 112 from Tbilisi (4,436 reports) whereas the lowest number of such incidents were reported from Racha-Lechkhumi - Zemo Svaneti (23 reports). During six months of 2017, as many as 1,845 restraining orders were issued.

One should note an amendment which was introduced upon a legislative proposal of the Public Defender to prohibit the registration of marriage of under-18 persons from 1 January 2017; this is a significant achievement in the prevention of early marriages. Nevertheless, actual co-existence of minors and the practice of formal engagement remain a problem. However, compared to the data of previous years, one can see a decline in early motherhood: during six months of 2017, the Public Service Development Agency registered 382 under-age mothers and 14 under-age fathers.

The 2017 local elections have not shown any progress in terms of equal political participation of women. Women make up a mere 7.62% of members elected to self-government bodies under the majoritarian system; moreover, of 54 self-government units only one elected a woman as a mayor. These are critically low indicators showing the need of the involvement of the state to redress the balance.

Problems persist in the area of women's employment rights. Sexual harassment both at workplace and in public space, remains unregulated. Although by signing the Council of Europe Convention on preventing and combating violence against women and domestic violence the state committed itself to make sexual harassment at workplace and in public space a punishable offence, Georgia has not fulfilled this obligation yet.

Childcare leave is an issue that also remains unregulated; it is still perceived as an exclusive responsibility of women. Consequently, the burden of care is not equally distributed among parents, therewith preventing women's equal economic participation. A status of multi-children parent is unregulated too, whereas a status of single parent, because of serious shortcomings in the rule of granting the status, continues to be granted to women alone.

The level of awareness of sexual and reproductive health and rights is low. Problems remain in incorporating gender equality and reproductive health issues in educational plan. One should note in this regard that 2017 saw a step up in the activity of anti-gender groups who oppose the idea of gender equality in general.

In such setting, in 2017, the Office of Public Defender considered several applications which concerned the facts of intimidation of women and LGBT+ defenders. The state still lacks mechanisms for assessing heightened risks of violence against women and LGBT+ defenders and protecting them from such risks; such a state of affairs complicates the activity of human rights watchdogs.

## 21. RIGHTS OF LGBTQ PEOPLE

LGBTQ (Lesbian, Gay, Bisexual, Trans and Queer) community is one of most vulnerable groups with their representatives facing discrimination in almost every sphere of social life. LGBTQ people do not feel safe when exercising fundamental rights such as the rights to education, employment, healthcare, et cetera. Yet, they often refrain from making instances of alleged discrimination against them public because of mistrust in state authorities and fears of being stigmatized by society.

Negative attitudes that arise from deeply-rooted stereotypes in society encourage intolerance and violence against LGBTQ community. The Public Defender reacted with a public statement to an alleged mistreatment of L.B. and T.K., the members of LGBT rights advocacy organization Georgia Equality, by law enforcement officers in Batumi

on 25 August 2017. In the statement the Public Defender stressed repeated incidents of violence and homophobia in recent years, in which, according to LGBTQ representatives, police showed inaction and offensive treatment towards them.

Representatives of LGBT community often face discrimination in obtaining services. There are instances when, according to applicants, they are subject to discrimination regardless of whether they belong to the LGBT community or not. This is mainly conditioned by their appearance, dressing style and behavior which is a matter of their personal autonomy and self-realization.

In the setting where stereotyped attitude towards LGBTQ people is rife in public discourse, physical violence and ineffective investigation of hate related crimes are matter of concern, the Public Defender of Georgia was not convinced of the necessity to define the notion of marriage as a union between a woman and a man in the Constitution of Georgia as this may enhance the negative attitudes towards LGBTQ persons. This approach does not make protecting LGBTIQ persons' rights and enhancing equal environment to be the state's priority.

According to the data of the Chief Prosecutor's Office of Georgia, covering first six month of 2017, hate crime was committed against three persons (one crime on the ground of sexual orientation and two crimes on the ground of gender) in two criminal cases. One person was found guilty. When deciding on a sentence, the judge took the aggravating circumstance into consideration. However, measures for the identification of alleged hate crimes are still insufficient. As the practice of the Public Defender shows, investigations into offences against LGBTQ people do not make clear what kind of investigative actions were undertaken to identify a motive of discrimination.

On 17 May 2017, unprecedented safety measures undertaken by the government enabled LGBTQ activists to mark the International Day Against Homophobia and Transphobia. The event was conducted in a territory that was agreed in advance and protected by a cordon of police officers with the participants in the event transported to the place in minibuses. This action, which was conducted within a limited space and time and in parallel with a counter-action, proves the need for raising the awareness of society in order to reduce prejudices existing in relation to LGBTQ community.

The issue of legal recognition of the sex of transgender persons remains a problem in the reporting period. As a result, transgender persons are not allowed, on certain occasions, to use their identification documents whereas by using them they expose themselves to heightened risk of violence and discrimination. Another problematic issue is the situation regarding a sexual and reproductive health of LGBTQ persons, which results from the absence of special guidelines and instructions tailored to the needs of LGBTQ representatives and especially, transgender persons.

## 22. THE SITUATION REGARDING THE RIGHTS OF PERSONS WITH DISABILITIES

2017 has not seen any substantial change in the area of protection of the rights of people with disabilities (PWDs). Problems observed in previous years persisted, including a proper exercise of PWD rights to education, health care, habilitation-rehabilitation, labor and employment, accessibility, social protection. The introduction of social model for the award of the status of disabled person has been impeded.

With three years having passed since the ratification of the UN Convention on the Rights of Persons with Disabilities, the country lacks a viable and effective mechanism of enforcement of the Convention. This prevents state bodies from coordinating issues related to the implementation of the Convention. The Optional Protocol of the Convention has not been ratified either, which would enable PWDs to effectively defend the rights envisaged in the Convention before the committee established under the Optional Protocol. Nor were the changes introduced into the legislation, that are necessary to comply with the requirements of the Convention.

The access to physical environment, infrastructure, transport and information for PWDs remain a problem too. Despite the Public Defender's recommendation, a new metro station "Universiteti" has not been adjusted to the needs of PWDs.

A serious challenge in the exercise of the right to health care by PWDs is the provision of mental healthcare. Changes made to the funding methodology in the reporting period resulted in a number of mental health care service providers, namely, general health care institutions, refusing to provide relevant service under the state program. The problem was partially solved owing to the involvement of the Office of Public Defender, in particular, the medical institution #5 resumed the admittance of patients and the changes were made to the budget of the program.

As the result of inspecting LEPL Academician B. Naneishvili National Centre for Mental Health, the Special Preventive Group assessed positively the renovation works conducted in the centre and construction of a new building. According to the administration, wards will be arranged in the new building.

The multidisciplinary team that has been formally existed in the establishment since 2014 and since May 2017 has been conducting meetings, examining patients' individual cases.

Despite changes, the protection of the rights of the patients in the establishment remains to be a challenge. In the first place, it should be mentioned that the state funding for mental healthcare is insufficient and it directly affects the quality of the psychiatric assistance provided. Shortage of personnel, their qualification and absence of social benefits remain to be a problem. Infrastructure is obsolete and patients' living conditions may amount to inhuman and degrading treatment from the point of sanitation and hygiene standards. The establishment is overcrowded, due to which patients of some units have to lie on the beds placed in a corridor for several days.

According to the administration's information, the establishment does not have any financial and infrastructural possibilities for examination and treatment of somatic diseases. The protection of confidentiality between a doctor and a patient, awareness among patients and their involvement in treatment remain problematic; relations with family members cannot be maintained properly and adequate psychosocial rehabilitation cannot be ensured.

Shortcomings are also observed in the exercise of the right of adult PWDs to habilitation and rehabilitation. Effective state social programs do not provide adequate specialized services to all persons with relevant needs. Health care and social programs for children with disabilities are not sufficient.

Problems are seen in the exercise of the right to preschool and general education by children with disabilities, including the problems related to the adjustment of infrastructure of educational institution, the number and qualification of special pedagogues.

Participation of PWDs in social and political life remain a challenge. During 21 October 2017 local elections problems were observed in terms of independent participation of PWDs in the elections, which mainly manifested in difficulties in physical access to polling stations and a low awareness of the rights of PWDs among representatives of electoral administration.

Maintenance of statistics on PWDs by state entities remains a problem. The lack of comprehensive data impedes the planning of programs/measures necessary for PWDs.

In the reporting period, the Public Defender of Georgia, as a body mandated to promote, protect and monitor the implementation of the Convention, submitted a shadow report on the fulfillment by Georgia of obligations assumed under the Convention to the UN Committee on the Rights of Persons with Disabilities.

## 23. THE SITUATION REGARDING THE RIGHTS OF OLD PEOPLE

The situation in terms of protection of the rights of old people remained a serious challenge in the reporting period. The Public Defender of Georgia welcomes the approval of the 2017-2018 National Action Plan for State Policy

Concept on Aging of Population of Georgia. Furthermore, it is important for the protection of the elderly that the activities envisaged in the action plan are carried out in an adequate and timely manner.

Applications submitted to the Public Defender in 2017 show that a segment of old people live in grave social and economic conditions. The majority of them face a threat of poverty, homelessness and isolation. A large segment of old people have no access to social services and adequate living. Care programs targeting these people are insufficient. Healthcare needs of old people are often ignored in practice.

Old people often become victims of violence, including physical, psychological and economic forms of violence. Applications submitted to the Public Defender prove that there are problems in identifying instances of violence as well as in identified cases, in adequately responding and protecting victims from repeated violence.

## 24. RIGHT TO ADEQUATE HOUSING

Realisation of the right to adequate housing remains problematic. The issues related to processing data on homeless persons, the requisite methodology for its functioning and addressing the needs of homeless persons in the budgeting process still remain problematic. In individual cases, competent authorities are not informed sufficiently about the rationale of the right at stake. The authorities construe it as transferring living premises into the ownership of homeless persons, which is certainly wrong.

Even those issues that do not require financial resources are frequently left unresolved both at local and central level. Among other things, legislation and procedures are still in disarray, and the scope of homelessness is unclear. The scarcity of infrastructural resources and allocated funds remain problematic.

Observation of the process at stake in Tbilisi revealed that the procedure of providing shelter to registered homeless persons according to the points based system is not governed by any legal acts. Therefore, the commission members give points based on personal opinions and determine independently the number of points to be given to a person based on a specific criterion or priority. In reply to the proposal made by the Public Defender, Sakrebulo of Tbilisi Municipality and the City Hall expressed their readiness to work in this regard and improve the procedure.

Similar to the previous years, the situation and unsuitable living conditions of minors, elderly and disabled in the so-called “Cardboard House” in Batumi remain problematic.

## 25. RIGHT TO SOCIAL SECURITY

In the reporting period, the Public Defender’s Office was again addressed actively by the persons who considered it illegal to be denied a subsistence allowance. They often argued that their points had been increased without any change in their socio-economic situation. It should be noted that these persons perceive the procedure to be vague and questionable. The analysis of applications yields the impression that the current methodology of assessment of socio-economic situation of families does not allow accurate identification of vulnerable groups and some of the data unreasonably increases the beneficiaries’ rating points.

It is, therefore, imperative that the authorities took certain measures to ensure accurate identification of vulnerable persons, transparency of procedures and awareness among citizens.

## 26. LEGAL STATUS OF INTERNALLY DISPLACED PERSONS (IDPS)

Similar to the previous years, in 2017, the Public Defender of Georgia examined actively the legal status of internally displaced persons all over the country. Staff members of the Office of the Public Defender of Georgia visited over 300 densely settled places, and provided legal consultation to more than 850 IDPs.

The outcomes of the monitoring conducted by the Public Defender show that IDPs are less involved in the decision making process, which generally complicates acceptability of the decisions concerning them. Similarly, IDPs do not have complete information about the flat owners' partnership in IDP settlements. There is still a problem with the so-called semi-owned premises where measurements have been done numerous times but still have not been fully privatised to date. Due to this problem, IDPs are unable to set up partnerships.

2017 was marked by the largest long-term settlement of IDPs. Despite the fact that, in the reporting period, numerous families living in dilapidated and life-threatening premises were accommodated, the problem of IDPs living in dilapidated buildings is still acute.

Apart from long-term settlements, it is necessary to integrate IDPs in the places of their settlement. For furthering socio-economic integration of IDPs, it is important that the state ensured accessibility to livelihood resources for IDPs. The state should continue active work towards needs oriented assistance. It is also imperative to continue transferring state-owned premises that are in legal possession of IDPs into their private ownership. It is important to conduct renovation works in the former settlements before their privatisation and transfer into IDPs' ownership.

## 27. THE SITUATION REGARDING THE RIGHTS OF CONFLICT-AFFECTED POPULATION

In the reporting period, the government of Georgia carried on the implementation of significant educational, social, healthcare and infrastructure projects designed to improve social and economic conditions of conflict-affected population. Nevertheless, serious challenges in the protection of human rights remain in the occupied territories as well as in the villages along the dividing line.

In the Public Defender's assessment, Georgian population is subject to oppression on the ground of ethnicity and their rights are neglected in both occupied territories. The developments in the Gali district in 2017 represent a matter of serious concern for the Public Defender. The situation regarding the rights of local population of Georgian ethnicity has been grave for years now. Discrimination on ethnic ground, restriction of the freedom of movement, illegal detention by border guard officers of the Russian Federation, restriction of the right to obtain education in the native language and restriction of the freedom of expression are but a few of the problems the population has to deal with daily.

On 4 March 2017, on a decision of de facto Abkhaz government, the Khurcha-Nabakevi and Orsantia-Otobaia crossovers were closed down. Hence, only two so-called checkpoints, those of Enguri and Saberio-Tskou, are left for population to move across the dividing line with Abkhazia. According to a statement of international organizations, the closedown of crossovers will affect around 1,000 people daily and further isolate the population living along the dividing line.

In addition to the shut-down of the crossovers, the de facto Abkhaz authorities almost tripled the sanctions for so-called "illegal crossing of the border" - while until the end of 2016, a local resident detained on the occupied territory had to pay a fine of 2,000 rubles (approximately 80 laris), since 2017 this fine has increased to 4,800 – 6,000 rubles (approximately 210-260 laris). Moreover, an administrative detention is envisaged for a repeated violation.

The situation is further aggravated by the damage caused by stink bugs to fruit, citrus and hazelnut harvests which represent the main source of income for the population of Gali, Ochamchire and Tkvarcheli. The situation is similar in the villages of Samegrelo Region, situated along the dividing line. According to the information provided to the Office of Public Defender, the local population on both sides of Enguri River expects a humanitarian disaster; such state of affairs requires a special attention from the government of Georgia.

In 2017, the situation continued to be grave in Tskhinvali Region/South Ossetia. Like it happened in Abkhazia, on a decision of de facto Tskhinvali authorities, primary level pupils of Georgian schools began to study in the Russian

language whereas the Georgian language is maintained as one of school subjects; this means that ethnic Georgian population of Akhagori district will no longer be able to obtain education in their native language.

In the reporting period, the de facto Tskhinvali authorities enhanced the pressure on civil society representatives and activists. The de facto authorities illegally restricted the freedom of the Akhagori activist, Tamar Mearakishvili, twice; this, in the Public Defender's view, is yet another manifestation of the restriction of freedom of expression in this region.

The social and economic situation remained grave in the villages along the dividing line, being under the control of the central government. The biggest problem for villages along the dividing line in Shida Kartli is again a source of income and unemployment. Security along the dividing line is also compromised due to frequent detentions. According to official statistics, as of 17 October 2017, as many as 109 citizens of Georgia were detained along the dividing line with South Ossetia (corresponding figures for 2016 and 2015 were 134 and 148, respectively). The Office of Public Defender detected several facts of physical abuse of detainees too. Despite a demand from the Georgian side during the negotiations, the citizen of Georgia, G.G., who was detained in June 2016 and sentenced to 20 years in prison, remains incarcerated.

The problem of issuing the compensation to a segment of population whose houses were damaged as a result of the war remains unsettled. This is especially true for the village of Zardiaantkari in Gori municipality and the village of Khurcha in Zugdidi municipality. It is commendable that the Interim Governmental Commission for Response to the Needs of the Affected Population Living in the Villages of the Administrative Boundary Lines stepped up the consideration of the issue, but a final decision on the compensation has not been made yet. Therefore, despite implemented infrastructure and social projects, the population is concerned about a high level of migration from the villages along the dividing line.

## 28. LEGAL STATUS OF ECO-MIGRANTS

Despite the fact that eco-migration is acknowledged internationally as one of the forms of forced displacement, the efforts taken by authorities in this regard in Georgia are insufficient and much behind the measures taken with regard to IDPs. The major challenge is allocation of sufficient financial resources by the state. Current legislation does not cover the issues related to eco-migrants adequately. There is no special law that defines who an eco-migrant is and to what category of persons this legal status applies.

In 2017, setting up the data of eco-migrant families and transferring residential houses into the ownership of eco-migrants settled during 2004-2012 continued. However, the absence of a uniform strategy continues to be a significant problem. This uniform strategy should determine the necessity of conducting preventive activities in natural calamity risk zones and facilitating adaptation and integration of disaster stricken families in the places of settlement, as well as adopting guidelines and procedures for the relevant state agencies. Averting eco-migration in terms of timely coordination and adequate measures by competent authorities is problematic.

The case of Zviad Nazghaidze should be mentioned in terms of the disaster of 13-14 June 2015. The Public Defender found the act issued concerning compensating his damage to be illegal and requested it to be rendered null and void. There have been no rules enacted to this date that would determine the procedure for compensating damages for those whose nonresidential land was found within disaster zones. In those cases, where the local government considers the resolution of the issue to be problematic, systemic changes, instead of a single and partial resolution of isolated cases, are necessary and a uniform approach has to be established.

## 29. ON REPATRIATION OF PERSONS FORCEFULLY SENT INTO EXILE FROM THE SOVIET SOCIALIST REPUBLIC OF GEORGIA BY THE FORMER USSR IN THE 40'S OF THE 20<sup>TH</sup> CENTURY

Even after three years since the approval, in 2014, of the State Strategy on Repatriation of Persons Forcefully Sent into Exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 40's of the 20th Century, an action plan, that would determine specific mechanisms and procedures for the implementation of the objectives and tasks stipulated in the strategy document, still has not been adopted.

The legal status of persons seeking the repatriate status is also problematic. Implementation of Georgia's commitment regarding the repatriation of persons forcefully sent into exile from Georgia in the 40's of the 20<sup>th</sup> Century has been delayed.

Acquiring Georgian citizenship remains a challenge for the forcibly displaced persons. Despite the simplified procedure of giving Georgian citizenship, the so-called conditional citizens face the problem of presenting the document certifying renouncement of citizenship of another country, which is a mandatory precondition for awarding Georgian citizenship.

Out of the total number of 5841 persons seeking the repatriate status, only 1998 persons have been granted it, among them, 465 persons were granted the repatriate status in 2017.

## 30. LEGAL STATUS OF FOREIGNERS

In the reporting period, the Public Defender found on several occasions that refusals to grant Georgian citizenship or residence permit to foreigners by citing national security considerations have not been reasoned. The Public Defender reached this conclusion by familiarising himself with confidential information. The State Security Service, on several occasions, based on completely unreasonable arguments, failed to submit to the Public Defender confidential information. This issue is currently pending before a court.

In all the cases examined by the Public Defender, refusal to enter Georgia is based on the reference to "other situations stipulated by legislation". Such refusals are completely unreasoned since there is no reference in any of the cases to a specific legal act or its provision that would stipulate such situations. Similarly, there is no specific legal ground cited when adopting adverse decisions concerning foreigners based on national security considerations. Such practice indicates the existence of a systemic problem that requires immediate correction.

## 31. THE STATE OF PROTECTION OF RIGHTS OF PERSONS WITH REFUGEE/HUMANITARIAN STATUS AND ASYLUM SEEKERS

As of September 2017, 604 asylum seekers applied to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (hereinafter the "Ministry"). According to the information provided by the Ministry, as of September 2017, examination of 380 applicants' cases was pending. In total, 1480 persons have refugee and humanitarian status.

In May 2017, the Ministry, with the support of the Representative of the Office of the United Nations High Commissioner for Refugees in the South Caucasus, opened an integration centre. The centre aims at facilitating socio-economic and cultural integration of persons with refugee and humanitarian status and implementing projects tailored to their need. The Public Defender welcomes the opening of the centre and observes that, considering the difficulties linked with the integration process, it is important to extend the programmes elaborated in the centre and to apply them to particular beneficiaries.

In 2017, the Law of Georgia on International Protection was enforced. The law brought Georgian legislation closer in a number of aspects to the United Nations Convention Relating to the Status of Refugees of 1951. The new law follows the provisions of EU Qualification Directive adopted with regard to the standards of international protection. However, there are provisions that require revision. In particular, in the Public Defender's opinion, the terms determined for the procedure of granting international protection status are unreasonably lengthy. Delay in the determination of the status can prevent asylum seekers and persons under international protection from enjoying their rights afforded by legislation, among them, in terms of accessibility of education, employment, health-care and social security, which is of paramount importance for facilitating the integration process of these persons.



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