

# THE PUBLIC DEFENDER OF GEORGIA



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

# 2015

### FOREWORD

ON DECEMBER 10, THE CIVILIZED WORLD CELEBRATES THE INTERNATIONAL HUMAN RIGHTS DAY. UNDER THE DECISION OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, THIS YEAR THE MAIN MESSAGE OF DECEMBER 10 IS - "OUR RIGHTS. OUR FREEDOMS. ALWAYS". THE MESSAGE REVOLVES AROUND THE UNIVERSAL IDEA OF RIGHTS AND FREEDOMS AND EMPHASIZES THE IMPORTANCE OF THOSE ACTIVITIES THE IMPLEMENTATION OF WHICH STILL CONTINUES IN ORDER TO PROTECT AND UPHOLD THESE RIGHTS.

AS A LANDMARK ACHIEVEMENT OF THIS YEAR, THE PUBLIC DEFENDER OF GEORGIA HIGHLIGHTS THE ELECTION OF GEORGIA AS THE MEMBER OF THE HUMAN RIGHTS COUNCIL AT THE PLENARY SESSION OF THE UN GENERAL ASSEMBLY. HEREWITH, ACCORDING TO THE PUBLIC DEFENDER, IT IS CRUCIAL THAT GEORGIA NOT ONLY FULFILLS ITS OBLIGATIONS TO THE UN, BUT ALSO ACHIEVE MAXIMUM OF APPROXIMATION TO THE INTERNATIONAL STANDARDS AND APPLIES THE UN SYSTEM TO ADDRESS THE HUMAN RIGHTS VIOLATIONS AND IMPROVE THE HUMAN RIGHTS SITUATION. THE MEMBERSHIP OF THE COUNCIL IS A NEW CHALLENGE FOR THE COUNTRY AND THEREFORE, THE PRIORITY SHOULD BE GRANTED TO HUMAN RIGHTS ISSUES IN ITS INTERNAL AND FOREIGN POLICIES.

THE GIVEN REPORT REPRESENTS THE CONTINUATION OF THE INITIATIVE LAUNCHED BY THE PUBLIC DEFENDER OF GEORGIA IN 2013 IN ORDER TO SUMMARIZE THE SITUATION OF HUMAN RIGHTS AND FREEDOMS IN GEORGIA ON DECEMBER 10 OF EACH YEAR. OBVIOUSLY, IN CONTRAST TO THE ANNUAL PARLIAMENTARY REPORT OF THE PUBLIC DEFENDER, THE PRESENT DOCUMENT DOES NOT CLAIM TO BE ALL-INCLUSIVE. ITS MAIN GOAL IS TO INFORM THE SOCIETY ABOUT THE MAIN ACHIEVEMENTS AND PROBLEMS OF THE YEAR IN THE FIELD OF HUMAN RIGHTS; WITHOUT OVERCOMING OF THESE PROBLEMS, IT WILL BE IMPOSSIBLE TO REALIZE THE MAIN PRINCIPLES OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN GEORGIA

### INTRODUCTION

Throughout this year, as part of the international and national obligations undertaken by the State, the government of Georgia continued to reform the justice system and the law enforcement agencies.

The reforms undertaken in the system of the Prosecutors Office of Georgia, which improve the safeguards for the independence of prosecutors, are praiseworthy. However, there still remain a whole range of challenges, which unfortunately, were not taken into account within the ongoing reform. The changes carried out in the field of state security, namely the separation of the state security service from the Ministry of Internal Affairs are also commendable, However, it should be noted, that there still remain a number of challenges in this area.

One of the most important accomplishments of this year in terms of human rights protection still remains the liberalization of criminal policy, the consistent implementation of which has already been reflected in the imposition of proportional and reasonable sentences, as well as reduction of rate of usage of pre-trial detention as a constraint measure. Moreover, adoption of the Juvenile Justice Code calls for positive evaluation.

The Public Defender welcomes the changes to the Imprisonment Code, adopted in 2015, according to which the Public Defender of Georgia/special preventive group will be allowed to take photos in penitentiary facilities from September 1, 2016. The changes aimed at improving the centralized management and internal inspection of the penitentiary system also shall be evaluated positively.

This year, the important package of legislative amendments was drafted as part of the third wave of the justice reform. The legislative package took into account one of the main recommendations of the Public Defender of Georgia with regards to introduction of the electronic allocation of cases in courts. It is noteworthy, that despite the institutional reform carried out to strengthen the judicial independence, there still remain numerous challenges to be overcome to increase the trust towards the judiciary. Within the reporting period, the formal process of the promotion of judges carried out by the High Council of Justice was particularly alarming, as it was not based on a fair and impartial evaluation of professional performance of the judges. Similar to the practice of previous years, the Public Defender applied to the High Council of Justice on several occasions for the initiation of the disciplinary proceedings against judges, when there were signs of gross procedural violations committed by them during the trials. However, these applications were left without adequate response.

Despite the fact, that the torture and ill-treatment of prisoners do not represent the main challenge any more, thousands of complaints on torture, inhuman and degrading treatment of convicts are still under the investigation and except for individual cases, no tangible outcomes have been obtained with respect to those facts of systemic violations of human rights.

Within the reporting period, effective investigation of the alleged facts of ill-treatment in penitentiary facilities still remained a problem. Moreover, the excessive use of force by police in the process of arrest still represents a problem. There were also cases, when individuals were subject to violence after the arrest. Unfortunately, the activities of the Prosecutor's Office of Georgia with regards to investigation of the above-mentioned crimes and attribution of liability to offenders are not effective. Furthermore, the legal qualification of the alleged crimes committed by the law-enforcement officials still remains a problem.

In 2015, there still remains the problem of institutional independence of the investigation carried out on the facts of alleged violation of human rights by the employees of the law enforcement agencies. Hence, the Public Defender re-emphasized the need of establishing an independent investigation mechanism in the shortest time. The independent mechanism should investigate the facts of torture, inhuman and degrading treatment allegedly committed by representatives of the law enforcement agencies, including the violations committed in the penitentiary facilities.

Moreover, despite the legitimate expectations of the public, there is not formed a legal mechanism, that would allow the concerned individuals to challenge the final judgements and *inter alia*, to request restitution of property and compensation for moral damages emanated by the unlawful conviction, in case, there was such.

Despite the multiple calls of the Public Defender, the outcomes of the investigation of high-profile criminal cases, where public interest is high and which were included in the Parliamentary Reports of 2013-2014, still remain unknown. Unfortunately, the information on the course and progress of the investigation is not available to the families of victims, concerned individuals or public at large. We think that the actions taken by the law enforcement agencies should be more effective and transparent in this respect.

The important event of 2015 was the decision of the prosecutor of the International Criminal Court to apply to the Pre-Trial Chamber I of the Court for authorization of investigation of alleged war crimes and crimes against humanity during the armed conflict of August, 2008 in Georgia.

Numerous ex-officials were detained under various charges. The undue application of pre-trial detention towards them showed the signs of selective justice. In this respect, the progressive and landmark judgement of the Constitutional Court of Georgia in the case of "Citizen of Georgia, George Ugulava v. The Parliament of Georgia" is noteworthy.

Some of the demonstrations in 2015 were carried out without accidents. However, there were exceptions, when the state failed to ensure the enjoyment of the constitutional right to peaceful assembly to its participants and/or unjustified restriction on the freedom of assembly was used.

During this year, the diversity of media environment was secured. However, at the end of 2015, the judicial proceedings involving the Television Company “Rustavi 2” brought forward the acute issues maintaining the healthy media environment and unjustified interference in the freedom of expression by the judiciary. Moreover, in the reporting period, the number of issues related to the public information and access to it still posed the challenge.

Achieving gender equality in the country still remains to be a problem. In particular, the level of political and economic activities of women is low. Moreover, the scale of domestic violence and the violence against women is concerning, a particular problem being the femicide. Furthermore, the high rate of early marriages is noteworthy.

The homophobic attitudes towards LGBT persons and prompt and effective investigation of hate crimes still poses the challenge. The Public Defender of Georgia welcomes the peaceful conduct of the International Day Against Homophobia and Transphobia on 17 May, 2015. However, it is noteworthy, that the issue of attribution of criminal responsibility was not raised against the individuals, who participated in the violent acts committed on 17 May, 2013.

The fight against discrimination in Georgia is one of the most significant challenges. Adoption of the Law on the Elimination of All Forms of Discrimination is a step forward for the country. However, the gaps in the Law causes real impediments for the Public Defender in effectively carrying out its mandate on the elimination of discrimination and protection of equality; it also hinders the victims of discrimination to effectively restore their violated rights. In order to eliminate the legislative gaps, the Public Defender applied the Parliament of Georgia with the legislative proposal. Despite the fact, that this proposal was initiated by the Parliament, unfortunately the process has been delayed as no amendments have been made to the Law yet.

The important event in the reporting period was the judgement of the Constitutional Court, which upheld the claim of the citizens of Georgia, Ucha Nanuashvili and Mikheil Sharashidze. The judgement declared unconstitutional the norms of the Election Code of Georgia, which prescribed the rule of delineation of the 73 single-mandate majoritarian election districts.

This year also saw the mid-term elections of the members of the Parliament in the majoritarian districts of Martvili and Sagarejo. The wide public debate was caused by the formation of the election precinct in the military unit, as an exceptional case, in Sagarejo majoritarian election district. The Public Defender considers, that legislative regulations need to be amended in this respect.

The situation of protection of children’ rights is still alarming: the high rate of mortality and poverty of children, inadequate conditions of living of juveniles, inadequate access to the services of the public health care, public tolerance towards the violence against children. The government should focus its efforts on the particularly grave conditions of children in the mountainous regions. The acute problems are present in the small family-type children’s houses and boarding schools managed by the religious organizations. The problem of separation of juvenile defendants from the adult prisoners remains persistent.

The problems of accessibility of mental health care asylums and facilities and the institutions that issue the documents to obtain medicines, also development of the community-based services based on bio-psycho-social needs of individuals, inclusive education system, exposure of the facts of violence against disabled persons, employment of disabled persons and access to the physical environment still linger on.

Full exercise of of the right to religion is problematic; there are particular problems with acquisition of the construction permit for religious buildings, ownership on the disputed religious buildings, discrimination on the ground of religion in the public school education system and enforcement of the requirements of the Law on General Education, effective investigation of alleged crimes motivated by religious hatred.

The rate of participation and involvement of the national minorities in the decision-making process and level of awareness of population on the current situation in the country is low. In the regions of compact settlement of national minorities, the issue of teaching native language as part of the school education needs to be improved.

During this year, infringement of the right to privacy became a widespread occurrence. There were facts of spreading and public transmission of footages depicting torture, inhuman and degrading treatment, as well as audio-recordings of personal telephone conversations.

Despite the fact, that the Parliament of Georgia adopted the legislative package on secret investigation activities and introduced the new regulations on secret surveillance on communications and for protection of personal data (which is clearly a step forward), the Law of Georgia on Electronic Communications still contains the norm, which allows the state agencies to copy the identification data and to have the real-time incessant access to the contents of the communication.

The absence of minimum standards of labor safety and a fatal accidents or work-related injuries .at the work-places is alarming. Unfortunately, no effective steps were taken by the government to form the agency in charge of monitoring the labor rights – Labour Inspection Service.

Absence of uniform database of the homeless individuals remains a problem, due to which it is unknown how many people are in need of shelter in Georgia. Furthermore, the financial funds allocated either in central or local budgets are not sufficient for targeted assistance to homeless people.

The socio-economic conditions of people living in highland regions is particularly grave, including the access to health care, living conditions and the environment. This year, the adoption of the Law of Georgia on Development of Highland Regions calls for positive evaluation. However, the government of Georgia should elaborate the uniform state strategy and action plan for improvement of the human rights situation in highland regions in the shortest term.

The problems of employment, access to health care, agricultural activities and migration still plague the population affected by the conflicts. The problems related to safety and movement are acute for the population residing adjacent to the boundary line with Abkhazia and South Ossetia. The restriction of right to receive education in the native language in Gali district is particularly alarming.

The accommodation of internally displaced people and their residence in the life-threatening environment still poses a challenge to the country.

One of the most acute problems is the exercise of right to live in the healthy environment. The level of timely provision of information and involvement of stakeholders in the decision-making and in the implementation of those important projects that may have adverse effects on the right to live in the healthy environment remain low.

Similar to the previous years, situation of the tens of thousands of families affected by natural disasters is still alarming. The State does not implement the programs that would ensure adjustment and settlement of environmental migrants in the regions of accommodation. Moreover, no preventive measures are taken against the natural disasters. It is noteworthy that all these problems were also revealed during the disaster of 13-14 June, 2015 in Tbilisi.

Return of the Meskhetians who were exiled from the Southern Georgia and in particular, the issue of granting citizenship of Georgia to them is the subject of active debate until now. Implementation of the UN Convention on the Rights of Persons with Disabilities of December 13, 2006, social security of disabled persons, exercise of the right to adequate housing, employment, access to information, infrastructure, transport or physical environment still pose a challenge.

Within the reporting period, numerous problems were identified with respect to the protection of the rights of elderly people. For example, majority of the elderly persons have no access to adequate housing, social services and protection mechanisms, , due to which they are under the threat of poverty, homelessness and isolation. Moreover, there are no effective mechanisms for identifying the elderly victims of violence, as well as their protection and prevention of violence. The State still has no effective policy for elderly people and strategy to protect their rights and social welfare.

There are number of problems with regard to the protection of human rights in the sphere of defense. For example, the medical examination of conscripts has significant flaws, which lead to infringement on honor and dignity of the conscripts in certain cases. Moreover, it is noteworthy, that compulsory military servants mostly work for the Protection Service and do not undergo the physical and military training. Therefore, it is necessary to undertake systemic reform of the compulsory military service. Unfortunately, within the reporting period, 6 military servicemen died, two of which committed suicide. It was revealed that the suicide was mostly caused by the social problems.

The assessments of the Public Defender on the above-mentioned and other problems in the protection of human rights are summarized in the chapters below. However, naturally, in view of the limited format, the report does not include all the rights comprised in a parliamentary report of the Public Defender of Georgia. Therefore, the present document does not purport to be all-inclusive. The trends and topics, which are being studied, will be addressed in the Parliamentary Report. Moreover, it shall be underscored, that the numbering of sub-chapters does not mean that any specific right is given priority or is less important.

## 1. SITUATION IN THE PENITENTIARY FACILITIES

The Public Defender welcomes the amendments to the Imprisonment Code, that were adopted in 2015. According to these amendments the Public Defender of Georgia/ the Special Preventive Group will be allowed to take photos in penitentiary facilities from 1 September, 2016. The changes aimed at the improvement of the centralized management of the penitentiary system and the system of internal inspection call for positive evaluation. The Public Defender also welcomes the introduction of the risk-assessment of convicts and emphasizes that in the process of operationalizing this system it is crucial to correctly assess the risks and then to review the decision periodically. Convicts should have full and unimpeded access to the legal safeguards in this process.

Within the reporting period, effective investigation of the alleged facts of ill-treatment in penitentiary facilities still remains a problem. Therefore, the stance of the Public Defender with regards to the formation of the independent investigation mechanism still remains unchanged. There are substantial flaws with regards to due documentation of the nature and origins of the injuries present on the body of prisoners and adequate response to them. Investigation authorities often cannot seize the footages from surveillance cameras as these footages are not stored for a reasonable time. Despite the recommendation of the Public Defender to store these footages for a reasonable period, pursuant to the №35 Order of the Minister of Corrections of 19 May, 2015, these footages are stored for no less than 24 hours. Therefore it is still not clear, what is the actual term for which the footages of surveillance cameras are stored. It should also be noted that, unfortunately, the Public Defender of Georgia/ a member of the Special Preventive Group is not allowed to examine these footages, which is extremely important for the exercise of the mandate of the National Preventive Mechanism. In view of the above-mentioned, the Public Defender deems that there still is the high risk of ill-treatment in the penitentiary facilities.

From the perspective of guaranteeing security in the penitentiary system, the practice of unreasoned and disproportionate use of security measures represents a problem. The decisions on the use of electronic surveillance provide scarce information on the necessity of the use of these measures and have standard content. Furthermore, despite the recommendation of the Public Defender of Georgia, under Article 54, paragraph 6 of the Imprisonment Code, the administration of the penitentiary facility is still authorized to carry out visual monitoring on the meeting of a defendant/convict with the Public Defender/a member of the Special Preventive Group via technical means for surveillance and recording at distance, but without listening. This is at odds with the principle of confidential meetings, according to the Public Defender. Moreover, the trend of increased use of placement under solitary confinement, as a disciplinary sanction and the nonuniform practice of application of disciplinary sanctions in general, which raise doubts about the proportionality of use of disciplinary sanctions represent problems.

As a result of the monitoring undertaken in the Special Facility for Women, the main problems found are related to the procedures for admission of female prisoners to the prison and their transportation. It is noteworthy that as a result of recommendations issued after the monitoring, the sanitary-hygienic care was improved.

The important challenge for the penitentiary facilities are - prevention of violence among the prisoners, taking effective measures against the influence of the criminal subculture of prison and observance of the order, which in addition to other factors, is also problematic due to the scarcity of activities for rehabilitation and re-socialization of prisoners in the facility. The infrastructure of the closed-type facilities does not allow the prisoners to do sports or other interesting activities, which has negative effect on their health and welfare. The discontent of prisoners grows under these conditions. In the absence of effective internal mechanism for claims/complaints, the discontent is expressed through the self-injury or other extreme forms of protest by the prisoners.

The Public Defender is concerned that the human rights of defendants under pre-trial detention are extremely limited, which in conflict with the principle of presumption of innocence. The defendants spend 23 hours every day in their cells and their contact with the outer world depends on the permission of the court and/or Prosecutors Office; they are not allowed to have long visits, which represents the unjustified interference in their private and family life. According to the Imprisonment Code, the living area of a defendant should be no less than 3 square meters, whereas the same area for convicts should not be less than 4 square meters. It is important to adopt the relevant legislative amendments and to take practical measures for improvement of the conditions of defendants under pre-trial detention.

Within the reporting period, it was found out, that prisoners are often transferred from the penitentiary facilities of the Eastern Georgia to the Western Georgia and vice versa. Moreover, it is noteworthy, that often, the decision on the transfer is based on the secret letter of the Director of the facility, which is not disclosed to the Public Defender/ a member of the Special Preventive Group. After transfer to such a long distance, the prisoners face the problem of keeping ties with their families and lawyer.

Sanitary and hygienic conditions are satisfactory in the majority of the penitentiary facilities; however, the ventilation system is malfunctioning in certain facilities and not all the convicts are provided with 4 square meters of living area.

It is noteworthy, that in the Facility N7 the physical environment and sanitary and hygienic conditions still remains the most acute problem. In view of the grave situation present in the Facility, the Public Defender issued multiple recommendations to close the facility. However, instead of improvement of the situation in the Facility, it deteriorated further as the number of its prisoners were increased. Therefore, the recommendation of the Public Defender with regards to the closure of the Facility remains unchanged. However, prior to the closure, as a temporary measure, it is deemed necessary to immediately take specific steps to relieve the grave situation of prisoners to certain extent.

In the reporting period, the issue of adequate supply of products to the shops on the territory of penitentiary facilities represented an acute problem. The prisoners were strongly concerned due to the scarce supplies in the shops and this problem led to collective protests on multiple occasions. The Public Defender applied the Minister of Corrections with regards to the adequate supply of the shops. As a result of the measures taken by the Minister of Corrections the supplier company of the shops of penitentiary facilities was changed and at present, the problem of scarce supply is solved.

In spite of this, it is noteworthy, that compared with the previous year, the number of deaths of prisoners, including the number of suicides has reduced. On 10 November, 2015 there were 12 cases of deaths in the penitentiary system, out of which 2 were suicides, whereas in 2014, 27 prisoners died in the penitentiary system and 7 out of these were suicides. The reduction of deaths shows the progress achieved in the field of penitentiary health care. However, it is still important to continue the efforts for further improvement of the penitentiary health care system.

## 2. POLICE AND SITUATION IN THE TEMPORARY DETENTION ISOLATORS

Within the reporting period, use of excessive, disproportional force for arrests by the employees of the Police remained a problem. There were also cases, when a person was subjected to violence after the arrest. It is noteworthy, that complaints on the facts of ill-treatment by policemen from the regions, in particular from Adjara, Imereti and Kakheti regions became more frequent.

It is noteworthy, that often, the protocol on arrest does not contain information on the use of force by the policemen, which s/he is authorized to use under specific conditions according to the law; if the protocol contains

information on the use of force, it does not describe the manner of the use of force and whether the injuries on the body of the arrested person is due to the use of force. Such a situation gives rise to a presumption on the alleged ill-treatment against a person. It is noteworthy, that the Special Preventive Group identified the alleged fact of unlawful use of arms by the policeman during the examination.

Conduct of independent and impartial investigation is problematic. There are cases, when no separate investigation is initiated on the alleged facts of excessive use of force for arrest and/or on the physical violence after arrest. Investigators of the Ministry of Internal Affairs only question the defendant on the use of force within the ongoing investigation against the arrested person. It is indispensable, that the investigation in such cases is conducted by the Prosecutors' Office of Georgia.

The visits to the police departments within the reporting period revealed that the lack of safeguards against the ill-treatment of the detained persons poses an important problem. It is true, that body injuries are documented in the temporary detention isolators in the absolute majority of incidents, but there still remain some flaws. It is also noteworthy, that the monitoring revealed a number of occasions, when the doctor of the medical emergency team did not document the injuries on the body of an arrested person. There was a tendency revealed which shows, that in a number of occasions the protocol of external examination drawn in the temporary detention isolator described more injuries, than the detention protocol. Moreover, it is noteworthy, that in some cases, the arrested person had such injuries on the face and head, which could not go unnoticed by the official, who carried out the arrest. Therefore, this leads to the strong presumption, that in the above cases, a person might have been subjected to the physical violence after placement in the temporary detention isolator.

The flawed processing of books at the departments still remains to be a problem. In the majority of cases, there are no surveillance cameras in the police department buildings. Such cameras are installed only at the entrances of the buildings of some departments. Therefore it is impossible to find out, what are the conditions under which a detained person is kept in the police department building. In the temporary detention isolators cameras are installed in the halls, but the employees of the isolators, as well as the representatives of the Main Division of Human Rights Protection and Monitoring of the Ministry of Internal Affairs assert, that the video surveillance is conducted in real-time and no records are stored. The storage of records takes on a particular importance, as it is recommended, that all the investigation activities are conducted in the isolator. It is important, that all the places, where investigation activities are carried out are equipped with cameras and that footages are stored for a reasonable period.

### 3. ILL-TREATMENT AND NECESSITY OF CREATING AN INDEPENDENT INVESTIGATION MECHANISM

In 2015, the Office of the Public Defender of Georgia studied the numerous applications on the alleged ill-treatment by the employees of law enforcement agencies and penitentiary facilities. In view of the fact, that in the majority of cases, these acts are not effectively investigated, one of the main recommendations of the Public Defender of Georgia in 2015 has been the formation of the independent investigation mechanism on the alleged commission of facts of killing, torture, ill-treatment and degrading treatment by the law enforcement officials.<sup>1</sup>

While working on the applications, the Office of the Public Defender of Georgia acquired the relevant information and supporting documents for a dozens of cases and provided them to the law enforcement agencies. In 12 cases, the Public Defender of Georgia proposed to the Chief Prosecutor of Georgia to start investigation on the specific facts.

The information received from the investigation agencies demonstrates, that the process of investigation of the criminal cases on the alleged facts of ill-treatment still show the signs of delayed and ineffective investigation. Among these signs, the delays in the process of recognition of a person as a victim of the alleged fact of ill-treatment is noteworthy. It should also be mentioned, that effectiveness of the investigation of alleged cases of ill-treatment committed in the penitentiary system has been significantly reduced by the fact, that no effective protection measures were employed to ensure the security of prisoners. In particular, they are not

<sup>1</sup> Out of these proposals, 4 cases dealt with the facts of probable ill-treatment committed by the employees of the penitentiary facilities, while the other 7 cases dealt with the probable cases of ill-treatment by the employees of the law enforcement agencies. One proposal of the Public Defender of Georgia described the case of ill-treatment committed by the employees of law enforcement agencies, as well as employees of the Penitentiary Department.

immediately transferred to the other penitentiary facility, are not separated from the other inmates, are not placed under the video-surveillance and/or no other relevant measures are taken.

The positive event of this year was the considerable improvement of practice of legal qualification in the criminal cases on the facts of the alleged ill-treatment. The necessity to provide correct legal qualification to these facts had been the subject of the multiple recommendations of the Public Defender of Georgia throughout the years. Namely, the incorrect practice persisting in the country for years allowed to evaluate the facts of ill-treatment under Article 333 of the Criminal Code of Georgia (Exceeding the Official Powers). This year, the information retrieved by the Office of the Public Defender from the law enforcement agencies shows, that the number of cases were evaluated under the relevant, special Article – Article 144<sup>3</sup> of the Criminal Code of Georgia (Degrading or Inhuman Treatment).

The most well-known case of 2015 against the defendant, G.O, who was been charged for the false accusation, should be mentioned. The law enforcement official asserted, that the prisoner provided false information to the proxy of the Public Defender of Georgia, in response to which the investigation was launched on the alleged facts of ill-treatment in the penitentiary facility. Later, the investigation of the above case was terminated and the prisoner himself was charged with the crime of false accusation for personal motives.

The information provided to the Public Defender of Georgia on the facts of torture or ill-treatment cannot be used against an individual/prisoner and cannot serves as a ground for initiation of criminal prosecution against him or her. This is what follows from the absolute prohibition of torture and international treaty obligations, as well as legal basis for the exercise of the mandate of the National Preventive Mechanism. Moreover, this case entails the well-grounded probability, that detained persons will abstain from complaining due to the real risk of criminal liability. This, in its turn may, transform into the impediment for the fight against ill-treatment.

The activities of the Prosecutors Office of Georgia in this and other cases once again underscores the necessity of formation of the independent investigation mechanism in the shortest time, which will investigate the facts of inhuman and degrading treatment and torture committed by the representatives of law enforcement agencies, including those, committed in the penitentiary facilities.

#### 4. SITUATION IN THE MENTAL INSTITUTIONS

The preliminary findings of the monitoring undertaken in the reporting period reveal the number of acute problems present in the mental institutions. The challenges faced by these institutions include - ensuring physical security of patients, prevention of violence among the patients and self-ijuries. In the process of the monitoring, the cases of violence by the staff, as well as violence among the patients were revealed. In some mental institutions, there is a problem of excessive use of physical restraints; observance of the procedure of physical restraint and provision of legal safeguards are also problematic.

The physical conditions and therapeutic environment present in mental institutions pose a challenge. In this respect, the situation is particularly alarming in the LLC “A.. Kajaia Surami Mental Hospital”, LLC “Academician B. Naneishvili National Center of Mental Health”, LLC “Senaki Inter-District Psycho-Neurological Dispensary”.

Provision of adequate psychiatric care represents an acute problem. Bio-psycho-social model of the psychiatric care is not accessible. The care is limited to pharmacotherapy. Several institutions have the problem with respect to provision of the good quality medicines. The operation of social service is flawed and provision of rehabilitation services to patients poses the major challenge. The situation is aggravated by the problems related to the stay in the open air and recreation. There are also problems with regards to the care for physical health of the patients, as often diagnosis and treatment of somatic diseases is not adequate.

The important problems were identified with regards to the legal protection of patients. The monitoring revealed several occasions, when the patient had signed the letter on medical care for the patient and thus formally, had given his or her written and informed consent, but actually they were kept in the institution and received medical treatment against their will. In spite of this, they are not allowed to leave the hospital. Thus such patients, are *de facto* deprived of their liberty and they have no access to legal safeguards. The majority of incapacitated patients have no social support; in some cases the guardians avoid to perform their obligations and refuse to take the patient from the inpatient institution and to protect their legal interests, which at the end leads to the long institutionalization of the patients for several years.



The representatives of administration of mental institutions refer to the scarce funding, barriers in using the allocated funds, lack of staff and inadequate remuneration of their work. The professional training of the staff also poses a challenge.

In view of all the above-mentioned, it is important, to review the amount and cost-effectiveness of the funding of the mental care. The oversight on the fulfillment of the terms of license by the inpatient psychiatric institutions should be reinforced. It is necessary to take effective steps to raise awareness on the mental health and for the eradication of the existing stigma.

## 5. RIGHT TO LIBERTY AND SECURITY

Throughout the years application of detention was considerably frequent and at the same time, the judicial decision on the application of this most harsh preventive measure was not accompanied with the full reasoning. This fact has been the subject of criticism of the Public Defender on several occasions in the annual parliamentary reports. As a positive trend, it is noteworthy, that the rate of application of pre-trial detention has been reducing during the last several years. Namely, the Supreme Court of Georgia presented the comparative statistics, which demonstrates, that 32.4% of the overall number of preventive measures was pre-trial detention in 2014, while the same rate for the past 10 months of 2015 is 30.00 %.

The case of the three persons participating in the rally in front of the Parliament building in Kutaisi should be separately mentioned. They were placed under pre-trial detention for the insult of the Member of the Parliament from the “Georgian Dream” faction, Davit Lortkipanidze. There was no case, when individuals charged for intimidation of the members of the “United National Movement”, were placed under pre-trial detention; court only imposed administrative fines on them in the latter case.<sup>2</sup> This gives raise to the signs of selective application of law in the process of administration of justice.

It is noteworthy, that the Criminal Procedure Code of Georgia does not provide explicit and clear regulations on the repeated use of pre-trial detention as a preventive measure to the defendant. Therefore, according to the established practice in the country, the common courts used to apply the pre-trial detention several times to a defendant, who had already been imposed the pre-trial detention for another criminal charge.

The established practice of repeated use of pre-trial detention was recently adjudicated by the Constitutional Court of Georgia. In its judgement delivered on 15 September, 2014, the Constitutional Court of Georgia underscored the number of important circumstances. It is noteworthy, that according to this judgement, it is not allowed to apply pre-trial detention as a preventive measure to a person in the criminal case, if the time spent in pre-trial detention after bringing the charges against the defendant in this case amounts to nine months.

The Office of the Public Defender of Georgia studied the criminal cases with regards to repeated application of pre-trial detention, which revealed certain flaws in the administration of justice by the common courts and which are at odds with the contents of the present judgement of the Constitutional Court of Georgia. The common courts do not apply the judgement of the Constitutional Court to specific cases at hand and do not evaluate its application in each individual case. Namely:

On 17 September, 2015, Tbilisi City Court cancelled the pre-trial detention imposed on the defendant George Ugulava on the basis of the judgement delivered by the Constitutional Court of Georgia, however the court did not follow thoroughly the obligation/standard of adoption of a reasoned judgement: it did not analyze the factual circumstances of the case, did not examine whether the state prosecution abused its powers to leave the defendant under the detention, whether bringing of charges was intentionally delayed, and whether the indictment was artificially divided.

As to the exceptional cases of application of the pre-trial detention, in one of the cases studied by the Office, the Tbilisi City Court decided that the repeated application of pre-trial detention to a defendant was an exceptional case, without deliberation on the compliance with the standards set forth by the Constitutional Court of Georgia, its analysis and relevant findings. According to the judgement of the Constitutional Court of Georgia the pre-trial detention conflicts with the Constitution also in the case, when indictment is artificially delayed and is used to artificially prolong the term of pre-trial detention. In spite of this, the judge of the common court

<sup>2</sup> See the public statement of the Public Defender of Georgia, dated 7 September, 2015 <http://www.ombudsman.ge/ge/news/saxalxodamcvelis-gancxadeba-qutaisshi-parlamenttan-gamartul-aqciaze-dakavebuli-pirebis-shesaxeb.page>

did not ascertain whether the prosecution maliciously and intentionally delayed the indictment of the defendant. This is a particular problem in view of the fact that in case of the defendant G.O., the new charge was brought against the defendant days before the exhaustion of the 9-month pre-trial detention, that was used as the preventive measure. Moreover, bringing of the new charges took place without finding or presence in the case of any new substantial evidence and in fact, the prosecution clearly showed this before the court.

According to the Public Defender of Georgia, the common courts are obliged to develop uniform and consistent case law and to avoid incorrect/incomplete interpretation and expounding of the judgement of the Constitutional Court of Georgia. Otherwise, it will amount to violation of the legal rights of defendants and to unconstitutional restriction of liberty of individuals.

## 6. RIGHT TO A FAIR TRIAL

This year, within the third wave of the reform of justice system important legislative package was developed. The legislative package took into account one of the main recommendations of the Public Defender on introduction of the electronic assignment of cases in the courts and hopefully, the law will be timely adopted by the Parliament.

To guarantee the independence of courts, it is necessary to conduct the process of appointment and promotion of judges in a fair and transparent manner. As the final author of justice is a judge, it is crucial, that the High Council of Justice ensures recruitment of honorable candidates. In this process, it would be beneficial, if the Council takes into account the reports of the Public Defender of Georgia and as well as the periodic recommendations on the activities of judges.

On October 30, 2015, the Public Defender of Georgia responded and negatively evaluated the process occurred in the High Council of Justice of Georgia, related to the appointment and promotion of judges to the Appellate Court without competition and under the summary procedure. The criticism was caused by the fact, that in absence of the objective, clearly prescribed, fair and transparent criteria and procedure, it was categorically unacceptable to the Public Defender of Georgia to launch the process of transfer/promotion of judges to the Appellate Court. Moreover, the Public Defender responded to the formal process of interviews conducted for the purposes of promotions and was critical to the speedy conduct of the process without the due evaluation of the professional experience of candidates. Moreover, it should be considered, that in the process of promoting judges the High Council of Justice did not take into account the information provided by the Public Defender of Georgia on the findings of the monitoring on trials in the common courts.

The attention should be paid to the fact, that the issue of fulfillment of the recommendations/proposals of the Public Defender of Georgia by the High Council of Justice of Georgia still remains a problem. The Public Defender of Georgia is provided by the High Council of Justice of Georgia with the unreasoned and scarce information on consideration of the proposal to initiate disciplinary proceedings against the specific judges and on the decision adopted as a result. In 2015, the number of applications to the Public Defender of Georgia on the delays in adjudication of cases by the first instance courts has significantly increased. In view of this, it is important that the High Council of Justice of Georgia provides adequate legal response to the disciplinary offenses committed by the judges, in order to avoid the delays in adjudication of cases and to ensure prompt and fair administration of justice.

Moreover, in 2015, the study of applications of convicts revealed the systemic problem of violation of the right to fair trial due to the failure to deliver the copy of the judgement in the criminal cases to the convicts by the Gori District Court within the legal term, as well as due to the unreasonable delays of transferring the appellate complaint and the case from the Gori District Court to Tbilisi Appellate Court. Due to this situation, the Public Defender considers, that the exercise of the right to fair trial is under the risk. Therefore, in the opinion of the Public Defender, it is necessary to carry out specific, effective measures to ensure the adjudication of criminal cases within a reasonable time and delivery of copies of the reasoned judgements to the convicts. With regards to this issue the Public Defender of Georgia applied to the Chairperson of the Supreme Court of Georgia, Chairperson of the Gori District Court and the Secretary of the High Council of Justice of Georgia with his recommendations.

## 7. RIGHT TO RESPECT OF PRIVATE AND FAMILY LIFE

Throughout this year, the violations of the right to private life of individuals has become a wide-spread event. There were cases when the videos depicting torture, inhuman and degrading treatment were spread and transmitted in public. Moreover, audio recordings of the private telephone conversations were uploaded on the Ukrainian website.

The disclosed video records allowed to identify the victim of the torture and contained the shots of the grave sexual and physical violence. In spite of this, the public broadcast of these recordings were organized in Tbilisi and Zugdidi and Television Company "Objective" aired them on several times. The Public Defender considers it should not be allowed to distribute such material in the manner that allows for identification of persons, and that makes these recordings available to juveniles. It is noteworthy that such records may also cause the secondary traumatization of victims.

As to the audio records, that became available, they depict the conversation of certain politicians, as well as the head of the media outlet with the ex-president of Georgia, Mikheil Saakashvili. The distributed materials also contained other private phone conversations.

In all the above-mentioned cases, to ascertain the circumstances of acquisition of the video records and the distributed audio record, depicting the private life, as well as to identify the circumstances of their distribution and persons who committed it and to adjudicate them, it is necessary to carry out effective, prompt, independent, impartial and thorough investigation. The Public Defender considers, that otherwise the repetition of similar grave violations of rights cannot be deterred.

From the perspective of inviolability of the personal and family life, the issue of conduct of secret investigation activities should also be mentioned. It is true, that from 31 March, 2015, two-stage electronic system of exercise of secret surveillance activities were launched; however, the competent state agency (The Ministry of Internal Affairs of Georgia, and from 1 August, 2015 – Operative-Technical Department of the State Security Service) is authorized to acquire real-time information. The legislation of Georgia does not provide for any oversight mechanism on these activities. Moreover, the Law of Georgia on Electronic Communications provides the legislative basis to carry out secret investigation activity independent of the Criminal Procedure Code of Georgia. This provision confers the competent state agency with the practically unfettered power to interfere in the privacy without the defining the public interest that would justify the restriction of the right. Therefore, on 2 February, 2015, the Public Defender brought the constitutional complaint to the Constitutional Court of Georgia to claim the unconstitutionality of Article 8<sup>3</sup>, paragraph 1 of the Law of Georgia on Electronic Communications.

## 8. FREEDOM OF RELIGION

2015 did not see any improvement from the perspective of full enjoyment of the freedom of religion by the minorities.

The main problem in the field of freedom of religion still remains to be finalization of the investigation of religiously-motivated hate crimes, attribution of criminal liability to the offenders, identification of the motive of hatred in the course of investigation and due legal qualification of the facts of offense. Moreover, in some cases, prompt response to the religiously-motivated hate offenses is also problematic. Furthermore, individuals who participated in the acts violating the rights of Muslims in various regions of Georgia in 2012-2014 were not prosecuted until now. In view of the Public Defender of Georgia, the lack of liability imposed on offenders encourages the future cases of violations of rights.

This year, the Office of the Public Defender of Georgia was informed about the dozens of cases of verbal and physical abuse of the Jehovah's witnesses. Moreover, the facts of damage and destruction of the Kingdom Hall and religious literature also took place.

Within the reporting period there still remains a problem of ownership of the disputed religious premises. Despite the fact that some time passed after establishing the so called Mokhe Commission by the Agency of Religions, the outcomes of the study on the ownership of the disputed building in Mokhe village still remains unknown.

There is a pending problem of religious discrimination in the public domain of schools and implementation of the requirements of the Law on General Education. Namely, there were several applicants, who referred to the facts of organized participation of school children in the rallies against religious organizations and the lack of measures taken by the Minister of Education and Science after these facts were studied.

The regime of taxation still remained inequitable towards the non-dominant religious organizations throughout the reporting period.

## 9. NATIONAL MINORITIES

2015 saw no fundamental changes from the perspective of protection of national minorities and fostering the civil integration. However, minor positive trends in this respect should be noted.

Namely, in 2015 the Government of Georgia approved the State Strategy of Civil Equality and Integration and the Action Plan for 2015-2020. The Strategy and the Action Plan set forth numerous important activities, that should be carried out in the coming years to foster the civil integration.

Moreover, in 2015, the Ministry of Education and Science approved the Plan of Teaching of Languages of National Minorities. The plan provides for teaching of native languages of ethnic minorities living in Georgia in public schools, where Georgian is and is not the language of instruction.

It is noteworthy, that the Council of National Minorities at the Public Defender regularly draws attention of the Ministry of Education to the issue of providing opportunity for small ethnic groups to learn their native languages since 2007.

It is noteworthy, that the issues of bilingual instruction, bilingual teaching materials and training of bilingual teachers still pose the major challenge in the sphere of education of representatives of national minorities.

In the regions with compact settlement of national minorities – in Kvemo Kartli and Samtskhe-Javakheti, the level of knowledge of the official language and number of people, who know it has increased due to the educational programs implemented there in the last years. However, it should be noted, that the implemented activities are not enough and it is necessary to further enlarge and improve the study programs of the official language.

In the higher education institutions of Georgia the representatives of national minorities are successfully admitted through operating the “One Plus Four” system. However, it is noteworthy, that the law also provides for admission to the higher education institutions of Georgia through taking the Ossetian-language admission test for the applicants. Despite the mentioned provision in the law, the Ossetian-speaking applicants had not had such opportunity so far. The provided reason is still the difficulties in preparation of the Ossetian language tests.

The protection of rights of Roma people, their integration, education, health care, access to social security and other numerous issues still pose the important challenge in Georgia. In this respect, 2015, similar to the previous years, has seen no effective program of activity undertaken by the State

There still remain the problem of rehabilitation and full functioning of the Petros Adamiani Armenian Theater and Heidar Aliev Theater in Tbilisi.

Awareness of the national minorities on the developments in the country is crucial for their civil integration and effective protection of rights of minorities. In recent years, there is only 15-minute news program in the languages of minorities aired by the Public Broadcaster to this end. It cannot provide the national minorities residing in Georgia with the full information on the events ongoing in the country. 2015 saw no improvement of the present situation in this respect.

## 10. FREEDOM OF EXPRESSION

Throughout the year the diverse media environment was secure. However at the end of 2015, the ongoing legal dispute related to the Television Company “Rustavi 2” raised the acute issues of retention of the healthy media environment and unjustified interference in the freedom of expression by the judicial branch. Moreover the certain issues related to public information and access to it still pose the challenge.

The rulings of the Tbilisi City Court on imposing lien on the property of the television company “Rustavi 2” and on the appointment of the temporary manager calls for negative evaluation, as the unjustified interference in

the freedom of expression. It is necessary, that the judicial system takes into account the risks emanated by the unreasoned judgements related to the freedom of expression. It is particularly noteworthy, that the court has no right to adjudicate, evaluate and to build the reasoning of the judgement on the editorial policy of the Company.

During the reporting period, the representatives of the media made statements on their surveillance and blackmail twice. Each information on the probable facts of crime requires prompt and effective investigation for retention of the healthy media environment in the country. Moreover, it is necessary that the investigation authorities publicize the findings of the investigation in view of the heightened public interest to the case.

Moreover, the reporting period saw the facts of unjustified restriction of freedom of expression by the law enforcement authorities. For example, the police arrested three individuals for putting the posters on the construction fence and street light poles, one of them being representative of the media outlet. In view of the Public Defender, their acts did not constitute the administrative offense and even use of arrest was not lawful. The number of other cases are discussed in the chapter on freedom of assembly and manifestation.

As to the public information and access to it, the freedom of information is not sufficiently protected in practice. There are certain cases when the state and local self-government agencies unduly refer to the Law on Protection of Personal Data for denial of provision of public information. Even when there are grounds for provision of information, some public agencies refuse to do that only with the excuse, that there is no consent of the subject of data. The fact that there are also alternative conditions provided by the law for provision of such information, such as, presence of the important public interest as prescribed by the law, is disregarded.

Despite the number of recommendations of the Ombudsman, the Georgian legislation still does not provide the penalties for unlawful denial of provision of the public information and there is no appropriate oversight mechanism to ensure the access to information. It is noteworthy, that the Council of Europe Convention on Access to Official Documents of 18 June, 2009 is still not ratified. Moreover, the new draft of the Law on Freedom of Information still has not been proposed to the Parliament. Originally, planned time for proposal was spring, 2015.

## 11. FREEDOM OF ASSEMBLY AND MANIFESTATION

Within the reporting period, there were individual cases, where the government could not fulfill its positive and negative obligations. The facts of participation of employees of the local government and public agencies in the rallies and violent acts were also revealed.

During this year, the Public Defender found the violation of freedom of assembly and manifestation and in conjunction with it, also of the freedom of expression on several occasions. Specifically, these facts include: ineffective steps taken by the law enforcement authorities during the incident that took place in Zugdidi, on 15 March, 2015,<sup>3</sup> unjustified interference in the rights of individuals, who planned to gather in the Heidar Aliev Park, arrest of one of the organizers of the rally "Stop Russia" in Tbilisi, arrest of 10 individuals on the rally against "PanoramaTbilisi" and so forth. These facts of violations of rights call for due response, which will also prevent the similar facts in the future.

Moreover, it is noteworthy, that the announced and rather wide-scale rally of the "United National Movement" was carried out in a peaceful manner and without accidents on 21 March. The same is true for the rally on the Day Against Homophobia and Transphobia on 17 May.

## 12. PROHIBITION OF DISCRIMINATION

Fight against the discrimination poses one of the most important challenges to Georgia. The adoption of the Law on the Elimination of All Forms of Discrimination is the step forward for the country; However the gaps in the law entail real impediment for the Public Defender to effectively exercise the function of elimination of discrimination and protection of equality conferred on him; the legislative gaps also hinder the victim of discrimination to effectively remedy their infringed rights. In order to correct the gaps, the Public Defender of Georgia applied the Parliament of Georgia with the legislative proposal on 11 February, 2015. Despite the fact, that the proposal was initiated by the Parliament, unfortunately the process was delayed and no amendments

<sup>3</sup> The part of activists of the Coalition "Georgian Dream" violently invaded the office of the organization "Center of Freedom and Support" on 15 March

were adopted to the law so far. The amendments provided in the legislative proposal deal with obligation to provide information by the private parties, increase of terms for complaint, notification of the Public Defender on the outcomes of fulfillment of recommendations, and so forth.

The 57 % of the pending cases on discrimination before the Public Defender of Georgia deal with public sector and 43 % - deal with the private sector. 15 % of the complainants argue about the discrimination in labor relations on the ground of political or other opinions; sexual orientation and gender identity is referred to as ground of discrimination in 11% of disputes and the same is true for discrimination on the ground of religion and faith. The following grounds of discrimination – disability, gender, belonging to the national or ethnic minorities – each is claimed by the 10 percent of complainants.

The families with disabled members still face the discriminatory attitudes in provision of services, for example, in renting house, using transport and participation in cultural events. Discrimination is also evident in exercise of right of education and access to employment.

Despite the general proposal of the Public Defender on the discriminatory announcements of vacancies, it is noteworthy that still companies often publish such announcements. Moreover, facts of dismissal from the job, denial to employ and offer of disparate working conditions out of various discriminatory intents are frequent.

The applicants to the Public Defender of Georgia often indicate their sexual orientation, gender identity and its expression as the grounds for their discrimination and harassment in various fields of provision of services.

It is important to carry out the educational campaign on the equality, tolerance and multicultural environment for the various target groups in the society and representatives of the state. Implementation of the wide educational campaign for this purpose is the recommendation provided to Georgia within the frames of visa liberalization.

### 13. RIGHT TO PROPERTY

The important development from the perspective of protection of right to property was the initiative to cancel the police eviction mechanism.

According to the draft amendments, the owner will have no possibility any more to demand eviction by the police of a person, who arbitrarily took over the owner's immovable property. To enforce this claim, the owner will have to apply to court in every case. The legislative draft, that was initiated in the Parliament contained considerably reactionary provisions. The draft was subjected to modifications throughout discussions in the Parliament, due to which this negative initiative became milder. Namely, present version of the draft reduces the time limits of court adjudication, the court fee will not serve as hindrance to apply to the court, as the complainant can bring the motion to postpone the payment of the state fee. These amendments also provided opportunities for injunctions and immediate enforcement of judgements. It is important to see how these amendments are enforced in practice, in case they are adopted. It is particularly important to see, if the courts will manage to observe the short terms of adjudication and to promptly restore the infringed right to property.

As to the registration of immovable property, it is true that there were certain steps taken with regards to correction and eradication of flaws in the data of the LEPL Public Registry, however the problem of so-called overlapping/duplicated registrations still remain to be significant.

### 14. RIGHT TO VOTE

The significant development in the reporting period was adoption of the judgement of the Constitutional Court of Georgia which upheld the constitutional claim of Citizens of Georgia, Ucha Nanuashvili and Mikheil Sharashidze. As a result, the norms of the Election Code, which provided the rule for delineation of the 73 single-mandate majoritarian election districts was declared unconstitutional. Throughout the years, the existing system could not ensure the principle of equality of votes, as the number of voters registered in different majoritarian election districts drastically differed. The present judgement of the Constitutional Court should be considered as the step towards improvement of election environments. One of the recommendations of the Public Defender had been the improvement of the election system in order to ensure proportional distribution of votes.

This year the mid-term parliamentary elections were held in Martvili and Sagarejo majoritarian districts. The formation of the election precinct as exception in the military unit in Sagarejo majoritarian district stirred the wide public debate. In view of the Public Defender, there is the present need to change the legislative regulations in this respect. Moreover, there was information about the facts of violence in proximity to the election precincts during the process of mid-term elections. It is important that these cases are investigated and the offenders are punished.

It is important, that in line with the Report of 2014 and recommendations of the Public Defender the work for improvement of the election legislation continues, particularly in view of the fact that the next year the country faces the next parliamentary elections.

## 15. RIGHT OF PROTECTION OF THE CULTURAL HERITAGE

During the reporting period, both individual facts of violating the right of cultural heritage and systemic problems existing in the practice have been identified.

It should be emphasized that the recommendation regarding legitimacy of Removal of Status of the Cultural Monument from Sakdrisi-Kachagiani ancient gold mine, issued by the Public Defender of Georgia in 2015, has not been fulfilled.

During the reporting year, several facts of illegal works carried out on the premises of the cultural heritage had been reported.

It should be noted, that often the Ministry of Culture and Monument Protection of Georgia is not informed regarding the construction of the buildings of the special importance and/or mineral extraction, so that the mentioned works are carried out without the positive opinion issued by the ministry.

## 16. RIGHT TO WORK

This year, there still remains the problem of the absence of the official body, responsible for labor rights and occupational safety. It is true, that within the reporting period, the Government of Georgia adopted the Resolution to approve the state program for monitoring on labor conditions. However this cannot be considered to be an effective monitoring mechanism. Namely, the program provides for inspection of those companies, which give prior consent to inspection. If violations are found, the monitors are authorized to issue only recommendations, which are not compulsory to implement. Hence, in case there is no will of the employer, there is no mechanism to eradicate the identified violations.

Within the reporting period several applicants applied to the Office, who stated that the competitions announced for public offices were formal and preselected candidates were appointed at respective positions. Study of the applications revealed the cases, when the protocol of interview with candidates was not properly drawn; it was also hard to ascertain, specifically which criterion served as ground to choose other candidate instead. All this generates probable cause to believe, that the competitions were not held in a fair manner.

Moreover, we also find problematic the issues related to appointment and dismissal of heads of structural units of local government bodies. Namely, according to the Code of Local Self-Government of Georgia, they are appointed to the position without competition; in case of dismissal, the adopted decisions are not duly reasoned – they assert, that this falls within the power of heads of municipalities. The Constitution of Georgia, Article 29 recognizes the right of employees to hold any position in public service. The Constitutional Court of Georgia interpreted this right to also protect citizens in the process of dismissals. In this case, the citizens do not have equal opportunity to occupy position of the head of the structural unit through competition. At the same time, the employees, who have legitimate expectation of indefinite term in office, are dismissed from their positions without giving reasons, which violates their constitutional right.

It is also noteworthy, that this year new Law on Public Service was adopted, which will enter into force from 1 January, 2017. Part of the numerous suggestions of the Public Defender was taken into consideration, however, there is also part, which was not accounted for. The example of such a case, is increase of the maximum probationary period of public servant from 6 to 12 months, which is unfavorable for public servants and puts them under certain risks.

## 17. RIGHT TO LIVE IN THE HEALTHY ENVIRONMENT

One of the most acute problems within the reporting period was exercise of the right to live in the healthy environment. Study of this issue revealed important systemic problems, which, first of all, is due to the dysfunctional legislative framework and its incompatibility with the international standards. The competent state agencies did not take any effective measures in this respect so far.

The issue, that is particularly important currently, is the system of environmental impact assessment, which has numerous flaws and which negatively affects the exercise of the right to live in a healthy environment in the country, at the end. Naturally, these problems are reflected in practice, including

construction of the hydro power plants and other infrastructural projects. There is a grave lack of involvement and awareness of the public about the decision-making and implementation of such important projects, which may affect the right to live in a healthy environment. It is noteworthy, that according to the information acquired by the Public Defender, there is an ongoing investigation related to natural disaster, that occurred on 13-14 June in Tbilisi. However, its results are unknown to the public.

## 18. RIGHT TO HEALTH CARE

*Within the reporting period, the individuals who need funding for various medical services applied to the Public Defender's Office and stated that the Ministry of Labor, Health and Social Affairs of Georgia does not cover those types of expenses.*

*It is noteworthy that in 2015, the draft law On Tuberculosis Control was initiated in the Parliament. The Public Defender welcomes the efforts of the Parliament and the Government of Georgia to introduce the unified system of tuberculosis control measures in the country. It is necessary, that draft law states clearly and explicitly the standards and procedures of involuntary isolation. In the process of decision-making on isolation of a patient right to fair trial should be guaranteed and the issue of geographical accessibility should be accounted for.*

It is noteworthy, that within the reporting period, the patients with tuberculosis applied to the Public Defender's Office with regards to the facts of violations of authorization conditions by JSC National Center for Tuberculosis and Lung Diseases. After involvement of the Public Defender's Office in the study of the problem, the living, treatment and nutrition conditions of the patients were improved to a certain extent.

Moreover, the steps were taken by the Government of Georgia, aimed at reduction of the sickness, mortality and transmission of infection of hepatitis C, diagnostic services for hepatitis and access to free treatment for persons infected with hepatitis C.

In the Parliamentary Report of 2014 the Public Defender gave particular attention to promotion of the development of health of children. The competent agencies were issued recommendation, to prepare the list of necessary measures for protection of health of children and adolescents. The Ministry of Labor, Health and Social Affairs of Georgia, has developed the national recommendation (guideline) on protection of public health – "Healthy and Safe Food at School". It is important to put these standards to practice.

In spite of some progress, there still remains the problem of geographic access to health care within the reporting period. During the visits of the Public Defender to regions of Georgia, problems related to the lack of proper equipment of medical points and insufficient number of medical points and medical personnel were revealed.

## 19. SITUATION OF THE RIGHTS OF CHILDREN

The Public Defender of Georgia welcomes the several efforts of the Parliament of Georgia and the Government of Georgia with regards to the improvement of children's rights. Among the steps taken with regards to the protection of children's rights, the following are noteworthy: adoption of the Juvenile Justice Code by the Parliament, as well as preparation of the draft law on the pre-school education, initiation of the amendments to the Law on Adoption and Foster Care and preparation of standards of foster care.

In spite of this, there are several challenges with regards to the protection of children's rights in Georgia.

The issue of signature and ratification of the Third Optional Protocol to the UN Convention on the Rights of the Child is still on the agenda. It is also noteworthy, that adoption of the National Human Rights Strategy and



Action Plan by the Government of Georgia in 2014, was to be followed by the more consistent implementation of obligations by the state agencies.

Despite the fact, that there is the high rate of violence against the children in the country, the legislation of Georgia still has not incorporated the amendments, under which the state would take more responsibility for protection of children from all forms of violence. Moreover, no effective measures were taken for public awareness-raising. Often, the professionals who work with children do not possess the necessary skills for identification of victims of violence and for prevention of such facts. The weak coordination between the state agencies, which are responsible for implementation of the Order on procedures of application and referral for protection of Children also present a problem. It is noteworthy, that the Child's Rights Center of the Public Defender has revealed the high rate of crimes committed against the sexual freedom and security of children in the course of its work. The Public Defender of Georgia issued a proposal to the Government of Georgia and required development of the action plan in this field, including the necessary sub-programs for active implementation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. However, it is noteworthy, that within the reporting period, the Public Defender did not receive a response letter from the Government.

Protection of children, who live and work on the streets poses a particular problem. The Public Defender issued a recommendation to the Minister of Internal Affairs to undertake necessary activities for their protection.

In case of divorce of parents, enforcement of judgement on determination of the residence of the child still poses a problem. Moreover, part of the assistance sub-programs operating within the state program on child care do not cover fully the needs of juveniles. The social service still is not provided with sufficient, qualified personnel and technical resources, including vehicles.

Child poverty and mortality still pose an acute problem. Despite the trend towards reduction, further reduction of the mortality of children under 5 is still an urgent task.

The issues studied by the Public Defender of the infrastructure, systemic specialized trainings of teachers, as well as full introduction of inclusive education program in the public schools of the highland regions and provision of continuous and high quality education to juvenile convicts and defendants in penitentiary facilities are problematic.

Improvement of the situation of rights of juveniles in penitentiary facilities presents an important task. Measures should be taken urgently, in order to secure the juvenile convicts/defendants from all forms of violence, particularly bullying. The process of rehabilitation and re-socialization of the former juvenile convicts is also problematic.

In the reporting period and within its current mandate the Public Defender's Office carried out the monitoring in the juvenile boarding-schools operated by the Patriarchate of the Orthodox Church of Georgia and the Muslim confession in Georgia. As a result of monitoring, it was found that the present boarding-schools operated by religious organizations provide to beneficiaries the service, which need to be harmonized with the official standards of child care and to provide the beneficiaries with the environment, that is as close to the family environment as possible. It is necessary, that the authority of guardianship and custodianship has rights and duties of legal representative for the beneficiaries of the religious boarding-schools. Moreover, the results of the monitoring show that the beneficiaries are not provided with the full psychiatric/psychological care, while majority of the carers need to undergo special training in the field of child care. The measures taken by the state in this respect maybe evaluated as unsatisfactory.

## 20. SITUATION OF THE RIGHTS OF WOMEN AND GENDER EQUALITY IN GEORGIA

In spite of the positive steps taken by the State, protection of women's rights and promotion of achievement of gender equality still presents a problem.

It is commendable, that the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence was signed and package for ratification is prepared. We consider the ratification of the Convention, which should be accompanied by development and improvement of the respective services, will significantly improve the ways to overcome the violence against women and domestic violence. Unfortunately, the Convention has not been ratified until now.

The **reality of violence against women and domestic violence** is extremely harsh. Number of cases of murders of women is particularly alarming. According to the data of the Chief Prosecutor's Office of Georgia, in the first part of 2015, there were 17 investigations launched on facts of murders or attempted murders against women. In 9 cases out of 17, the crime was committed in the context of domestic violence, while in 3 cases it was a gender-based violence.

It is particularly alarming, that in practice, there still are cases of inadequate response by the police. However, the trend of growth of use of protective measures is noteworthy. According to the data of the Ministry of Internal Affairs of Georgia, in the first part of 2015, 1478 restraining orders were issued.

In view of the scale and intensity of the problem, more efforts are needed, for every women to feel secure from violence, to have hope, that in case of application, they will be granted the needed help. For example, in the issues of preventing the violence against women and domestic violence and protection from violence, involvement of the social worker has particular importance, which still is not achieved in Georgia.

The **early marriages** still present a very grave problem in Georgia. According to the statistical data, in the first part of 2015, there were registered 265 weddings of individuals of 16-18 age (when at least one persons was a juvenile). However, the number informal weddings at an early age is much higher and unfortunately statistical data cannot account for it. This is clear from the number of girls, who delivered a child while not being even adult. In 2014, there were 1627 juvenile parents registered.

Weddings at an early age often happen at the initiative of the parents of juveniles and in some cases they even coerce their children. In view of the recommendation of the Committee on the Elimination of Discrimination Against Women, the Public Defender of Georgia issued a legislative proposal to the Parliament of Georgia. According to this initiative, only courts can issue the permit for wedding of persons of 16-18 age. This initiative, which passed the first reading in the Parliament of Georgia, will allow to prevent such cases.

**Consideration of role and needs of women in peace and security issues** poses an important challenge. In this respect, the Public Defender's Office of Georgia carried out the monitoring on the National Action Plan "On Women, Peace, Security" in 2015.<sup>4</sup> The results of monitoring showed the lack of protection, assistance and rehabilitation measures for the female victims of conflict and IDPs, as well as particularly low rate of their participation in the decision-making process. The major part of the agencies responsible for implementation of the Action Plan carry out the incurred obligations only formally. However, here we should mention the successful practice of the Ministry of Defense of Georgia and number of successful measures aimed at institutionalization of the issue.

**Enhancement of women involvement and participation in political processes** remains to be a very important issue. In 2015 the Public Defender of Georgia presented the opinion to the Legal Committee of the Parliament of Georgia on special temporary measures – introduction of quotas, to support the initiative of the women's movement 50/50. According to the initiative, every other candidate in the list of candidates for Parliamentary elections should be of opposite gender. This distribution is the only way to achieve a real result.

**Protection of Women's labor rights** and equal participation in the country's economic development processes pose an important challenge. Unfortunately no effective measures were taken for the refinement of the legislation. Women encounter problems in the workplace through the issues of sexual harassment, promotion to a higher position, equal pay for equal work. Despite the recommendation of the Public Defender, the Minister of Labor, Health and Social Affairs had taken no effective steps to change the disparate attitude towards enjoyment of parental leave.

Together with the challenges posed by **Human Trafficking**, the important issue is also evaluation of the present services. In 2015, the monitoring undertaken in the Trafficking Victims Service Facility (Shelter) showed, that there is a friendly and reliable environment. However, there were certain problems identified, solution of which will significantly improve the quality of provided services. For example, the Facility has no standard for arrangement of residential space and no rules for provision of determined services. Moreover, there are problems with regards to the infrastructure too. No shelter is adjusted to the needs of a disabled person and in case, there is such a need, it will be practically impossible to accommodate them. Accommodation of persons with contagious infectious diseases in the shelter also presents a problem.

4 The National Action Plan for 2012-2015 for implementation of the UN Security Council Resolutions №1325, 1820, 1888, 1889 and 1960

## 21. SITUATION OF RIGHTS OF LGBT PEOPLE

The studies and reports on the situation of LGBT people in Georgia unanimously recognize, that the needs of transgender people are inadequately considered, which in some cases, leads to violation of their fundamental rights.

The transgender people encounter problems, when they want to change their gender in the civil records, which in its turn impedes them in the process of education, employment and so forth. The Public Defender of Georgia issued a proposal to the Minister of Justice of Georgia to regulate the case under the special rule in line with the international standards, as the rule prescribed by law is vague. Unfortunately, up to now, no effective steps were taken for fulfillment of the recommendation of the Public Defender of Georgia.

The Public Defender of Georgia welcomes the peaceful celebration of the International Day against Homophobia and Transphobia on 17 May, 2015. The proxies of the Public Defender of Georgia monitored the development of events in the country throughout the whole day. The monitoring of three demonstrations did not reveal any case of violence, obstruction of demonstrations or violation of human rights.

However, it is noteworthy, that issue of attribution of responsibility was not raised with regards to any of those individual who participated in the violent acts on 17 May, 2013.

LGBT prisoners are particularly vulnerable in the penitentiary facilities, as stereotypes deep-rooted in public are expressed in a more intensive and often aggressive manner there. The situation of LGBT prisoners in penitentiary facilities are clearly different from situation of GBT prisoners, which is mostly related to the allocation issues and acceptance among the prisoners. The monitoring of the Public Defender of Georgia found, that awareness-raising of employees of penitentiary facilities is necessary. It is also necessary to form the State policy to ensure acceptance between the prisoners, change of present discriminatory attitudes and such measures of safety, which would not hinder LGBT prisoners, to have equal access to the programs and services within the facility.

## 22. SITUATION OF RIGHTS OF DISABLED PERSONS

In the reporting period, implementation of the UN Convention on the Rights of Persons with Disabilities of 13 December, 2006 still poses a challenge. The Parliament has not ratified the Optional Protocol of the Convention, which would entitle the disabled persons to apply to the respective UN Committee in case of violation of their rights. Moreover, in spite of the fact, that the agency for implementation of the Convention is the Coordination Council on the Issues of Persons with Disabilities at the Prime-Minister, the state failed to form a reliable and effective mechanism, which would ensure the coordination of the issues of implementation of the Convention.

From January, 2015, the Public Defender's Office of Georgia, as the agency for popularization, protection and monitoring on implementation of the Convention, started to form the mechanism, which includes the Department of the Protection of Rights of Persons with Disabilities, Consultation Council and Monitoring Group. To ensure the involvement of the disabled persons in the activities of the mechanism, the consultation council has members, who are representatives of organizations of disabled persons.

The amendments made to the legislation should be considered as a step forward. They aim at reform of the incapacitation institute and change of the principle of "substitution of the incapacitated person" with that of "assistance in the process of decision-making". However, it is noteworthy, that in the process of preparation of legislative amendments, certain circumstances were not duly foreseen and considered. This is mostly true with regards to the situation of deterioration of the mental health of a persons, when they have no ability to take decisions and problems are related to regulation of risks emanated by this situation.

It is a problem to ensure the disabled persons with access to the physical environment, infrastructure, transportation and information. In the process of implementation of the various infrastructural projects by the state and local government bodies, needs of the disabled persons are often ignored and present rules are violated. Within the reporting period, the Public Defender studied the several cases related to access and issued recommendations to the responsible state agencies. One of these agencies, is LEPL Municipal Development Foundation of Georgia; the latter should ensure to take into account the needs of disabled persons and "universal design" principle in the process of construction of the subway "University".

The present situation with regards to the exercise of the right of equal access to information is still problematic. In this respect, the Public Defender applied to the National Communications Commission of Georgia with the general proposal. The proposal dealt with the access to information for disabled persons, including mass media, television shows and movies through the use of various forms, methods, means and technologies.

One of the most important challenges still facing Georgia is the social security of the disabled persons, exercise of the right to housing and employment. During the last months, the number of applications to the Public Defender of the disabled citizens has significantly increased. The applicants think that the new “Methodology for Evaluation of Social and Economic Situation of the Socially Vulnerable Families (Households)”<sup>5</sup> substantially complicated for them acquisition of the right to benefit from social assistance, which in its turn aggravates their social and economic situation. Moreover, challenges related to the exercise of the labor rights of these persons are important. The state still has not developed the policy for employment of the disabled persons, respective legislative framework and programs. This problem is particularly acute for individuals who are under the state care since their childhood. After reaching the age of adulthood they leave the state institutions absolutely unprepared for independent life and mostly are left without accommodation.

Finally, it is noteworthy, that the implementation of the inclusive education process is flawed. The significant part of the disabled children, particularly in the regions, are not involved in this process. Moreover, quality and continuity of the education also poses a challenge.

### 23. SITUATION OF RIGHTS OF ELDERLY PEOPLE

In the reporting period, several problems were identified with regards to the rights of older people. Based on the analysis of applications to the Public Defender’s Office, it was found, that majority of the aged people have no access to the adequate housing, social services and safeguards, due to which they are under the risk of poverty, homelessness and isolation. Often they are subject to violence. Moreover, there is no mechanism to identify and prevent the violence, and protect the victim.

The state still has no effective policy for older people and no strategy to protect their rights and social welfare. The present programs and services are not focused on the special needs of older people. The majority of the older people live below the poverty line, while the State offers them the survival minimum assistance and placement in the specialized facilities. Sufficiency of the offered services of day and night care specialized facilities with the actual demand for these services is problematic. This is proved by the queue of individuals, who are waiting to be admitted to these facilities. The state programs do not provide for alternative services of care for older people, such as home care and so forth.

It is noteworthy, that in the specialized facilities for older people of Tbilisi and Kutaisi, as well as in 5 community organizations which provide specialized services of day and night care for older people, the monitoring revealed the following serious violations: facts of ill-treatment towards beneficiaries, lack of supervisory mechanism on fulfillment of standards, etc. These flaws provide ground to evaluate the present situation in specialized facilities as degrading.

Formation of the multi-sectoral working group for development of the action plan on aging with coordination of the Parliamentary Committee for Protection of Health and Social Affairs should be evaluated as step forward. Within a year, the group should develop three-year action plan on aging. The Public Defender considers, that the process for development of the state policy and action plan is delayed and evaluation of the effectiveness of the working of the group is premature.

### 24. RIGHT TO ADEQUATE HOUSING

In 2015, exercise of the right to adequate housing still remains a problem. There are the following impediments in this respect: dysfunctional legislative basis; the lack centralized or regional databases of homeless persons; lack of necessary infrastructural resources for these persons and scarcity of funds allocated for this purpose, as well as absence of any funds in some cases.

5 Decree N758 of Government of Georgia/ December 31<sup>st</sup> 2014 <https://matsne.gov.ge/ka/document/view/2667586>

Moreover, there remains the major flaw of inclusion of homeless persons in the state program for socially vulnerable people, when the state is not able to offer them needs-based assistance. In view of the importance of the problem, the Public Defender published a special report in March 2015, which reviews in detail the challenges of legal framework or practice with regards to the exercise of the right to adequate housing in Georgia.<sup>6</sup>

With regards to exercise of the right to adequate housing, the situation of the citizens living in the so-called “cardboard settlement” in Batumi, on the former territory of the 25th and 53<sup>rd</sup> battalions, remains alarming. Majority of residents settled here due to the lack of alternative living space and their living conditions are very harsh.

It should be noted here, that the measures taken by the state on this issue, is not sufficient to handle the actual challenges. Therefore it is of fundamental importance, that the government reinforces its efforts and takes real steps to overcome the problem of homelessness.

## 25. RIGHT TO SOCIAL SECURITY

As in the previous years, the demand for inclusion in the program for protection of socially vulnerable families who live below the poverty line is high again this year. This is due to the fact, that this program identifies the most indigent parts of society over the country and provides them with the basic benefits.

From 1 May, 2015, the evaluation of economic and social situation of the socially vulnerable families is undertaken under the so-called new methodology. During this year, the citizens actively applied to the Public Defender of Georgia to request the study of lawfulness of the evaluation of social and economic situation of their families under the new methodology. The Office of the Public Defender is working to identify the possible flaws in the new methodology. The findings of the study will be available to the public at a later stage.

The fact, that Law on Development of the Highland Regions was adopted this year calls for positive evaluation. Drafting of special legislative basis on the development of highland regions has been the subject of numerous recommendations of the Public Defender of Georgia for years. During the discussions of the draft law in the Committees, several recommendations of the Public Defender were taken into account. However, it is noteworthy, that the package of social allowances does not fully comply with the objective of the Law – deterrence of migration of population from the Highland regions, their settlement and integration and return to these regions. Moreover, it is noteworthy, that development of the draft law was carried out withoutwide public engagement. There is a lack of public awareness about the adoption of the law and allowance and benefits provided by it.

## 26. RIGHTS OF INTERNALLY DISPLACED PERSON (IDPS)

In 2015, the long-term accommodation of the IDPs in Tbilisi and Zugdidi calls for positive evaluation and the same applies to the new program of long-term accommodation of IDPs, which provides for co-financing the mortgage of IDPs by the state. As in the previous years, the main challenge faced by the state is accommodation of IDPs. Many families of IDPs continue living in the environment that is incompatible with the respect for dignity. It is important, that the state takes steps to rehabilitate these residences, through temporary accommodation of IDPs or other means. Provision of IDPs with rent for homes, for their temporary accommodation continues for only 6 months, which causes the feeling of instability in IDPs and cannot address the real needs of many families.

The state should continue transfer of the state-owned property, which is under legal possession of IDPs to the private ownership of IDPs. It is crucial to timely solve the problem of accommodation of IDPs who live in the deconstructing buildings that are dangerous for their life and health in order to provide them with safety and living conditions that are compatible with the respect for dignity.<sup>7</sup>

<sup>6</sup> <http://www.ombudsman.ge/en/reports/specialuri-angarishebi/the-right-to-adequate-housing-special-report.page>

<sup>7</sup> Public Defender’s Statement on Resettlement of IDPs Living in Shaky Buildings, October 06, 2015

<http://www.ombudsman.ge/ge/news/saqartvelos-saxalxo-damcvelis-gancxadeba-ngrevad-obieqtebshi-mcxovreb-idzulebit-gadaadgilebul-pirta-gansaxlebastan-dakavshirebit.page>

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

The situation of the conflict-affected population is still grave. Across the occupation line, both in Abkhazia and South Ossetia, the vicious practice of detention of residents of the territories under the control of Georgia, as well as on the occupied territories still continues. The Public Defender has registered the facts of detention of babies and their parents, school children, patients and older people. The locals state, that frequently Russian border guards enter the territory under control of Georgia and detain residents there. According to the information of the detained persons, there are inappropriate conditions of detention in the basement of military units of the Russian Federation, they are not provided with food and water during the detention and tens of individuals are placed in one room without consideration of their age and gender. According to the official statistics, by 30 November, 2015, 148 persons were detained at the boundary line with so-called South Ossetia (in 2014, number of detained persons was 142), and 272 persons were detained close to Abkhazia (in 2014, the number was 380). However, there is high probability that number of those detained at the boundary line with Abkhazia is substantially higher.

The situation of civil and social rights have been aggravated in the Occupied Territories. Specifically, in Gali District, there were schools, where ethnic Georgians were allowed to receive school education in their native language. However, *de facto* government adopted decision that the language of instruction should be Russian in the primary schools from September, 2015. This fact caused outcry and tension in the local population, as this decision violates the right to receive education in the native language, worsens the quality of education and limits the access to education.

The problem of identification documents of Gali residents is still unsolved. In 2014, the *de facto* government suspended the so-called Abkhazian passports of Gali population with the excuse, that these passports were issued in violation of law. In 2015, the *de facto* government spread information, that the Gali residents would receive residence permits, if they would report citizenship of Georgia. As the authorities asserted, residence permit, allows to move across the boundary line, to register the property and to participate in the local elections. The majority of the residents of Gali District reported that they are citizens of Georgia, however until now no residence permits were issued to them.

The social and economic situation in Shida Kartli and Samegrelo villages, which were affected by the conflicts are still grave. The local population still suffers the lack of irrigation and drinking water, kindergartens, roads, schools and medical points. In 2013-2015 infrastructural works for gasification were finalized in 50 villages, wells for irrigation water and reservoirs for drinking water were provided, 29 public schools were rehabilitated and one new school was built. Approximately 600 students from the villages adjacent to the boundary line will receive funding for higher education. Despite of these extremely important social projects, the biggest problem for the locals is finding the source of subsistence, as due to installation of barbed wires and blockage of irrigation water, the population cannot continue traditional agricultural activities. The problem of reconstruction of houses damaged during the War of 2008 is still unresolved in 2015, whereas the population did not receive any compensation from the state.

The important event of 2015 was the decision of the prosecutor of the International Criminal Court to apply to the Pre-Trial Chamber I of the Court for authorization of investigation of alleged war crimes and crimes against humanity during the armed conflict of August, 2008 in Georgia. The investigation of the probable crimes committed during the war by the International Criminal Court will foster the finding of truth, restoration of rights of victims and acceleration of peace processes between the parties to the conflict and conflict-affected population.

## 28. SITUATION OF RIGHTS OF PERSONS AFFECTED BY NATURAL DISASTERS – ECO-MIGRANTS

In 2015, the number of accommodated environmental migrants has increased, which is due to the increase of budget. Despite this positive trend, the lack of special law on environmental migrants, electronic database, strategy and action plan, which has been emphasized by the Public Defender for years should be emphasized. Relevant legislative regulations would ensure provision of the first emergency aid to the persons displaced due to natural disasters and also help with their long-term accommodation and integration at the places of settlement.

Furthermore, there still remains the problem of taking preventive measures to avoid natural disasters. It is noteworthy that all the above-mentioned problems were also exposed during the natural disaster of 13-14 June, 2015 in Tbilisi.

## 29. ON REPATRIATION OF PERSONS FORCIBLY DEPORTED BY THE SOVIET GOVERNMENT IN 1940S FROM THE SSR OF GEORGIA

Return of the Meskhetians who were exiled from the Southern Georgia remains to be a topic of active discussions. It is a known fact, that Georgia assumed the obligation to develop the legal framework for repatriation and integration, including the regulation to grant citizenship of Georgia to the population deported from the Southern Georgia, when it became the member of the Council of Europe in 1999. Indeed, in September 2014, the “State Strategy on Repatriation of Forcibly Removed Persons from the SSR of Georgia by the Former Soviet Union in the 1940s” was approved. It aims to foster voluntary process of return of repatriates, which is based on respect of their dignity. However no action plan was adopted based on this strategy, which would determine in detail the specific activities for integration.

It is particularly important, to grant Georgian citizenship to the exiled persons. It is true, that legislation of Georgia provides for summary procedure of granting citizenship to repatriates, however there are problems in this respect. Study of the applications to the Public Defender’s Office shows, that small number of Meskhetians has acquired citizenship of Georgia. However, the warrant will enter into force, when they submit the document certifying cessation of citizenship of other countries to the competent bodies. This is not an easy procedure for these persons, as due to the bureaucratic or other barriers in the countries of their citizenship, they are not able to cease citizenship of that country and therefore they cannot obtain citizenship of Georgia.

## 30. SITUATION OF RIGHTS OF FOREIGNERS IN GEORGIA

This year, positive changes were made to legislation in this respect. Specifically, the Ministry of Foreign Affairs is authorized to issue an electronic visa to a foreigner who is abroad, while the respective visa application can be submitted through a special web-site e-VISA PORTAL. The Resolution of the Government of Georgia defined the list of 94 countries, whose citizens can enter Georgia without visa and stay for full 1 year.

As in the previous years, foreigners and stateless persons, who were denied residence permit on the grounds of national security, applied to the Public Defender this year again. Due to the positive amendments made to the Law of Georgia on Foreigners and Stateless Persons in 2014, the cases when application for residence permit may be denied on the national security grounds are determined in detail in the Law.

It is noteworthy, that the study of the applications by the Public Defender’s Office of Georgia, exposed the facts, when the Counter Intelligence Department of the Ministry of Internal Affairs did not indicate in its decision, which precondition caused the necessity to protect the national security. Such cases practically eliminate the possibility to present proof in the court, as the reasons for denial of residence permit are unknown to the applicant. The Public Defender Considers, that the effective steps should be taken to eradicate the above-mentioned practice.

## 31. SITUATION OF RIGHTS OF ASYLUM-SEEKERS, REFUGEES AND PERSONS WITH HUMANITARIAN STATUS

The numerous conflicts ongoing in the world, left millions of people homeless. In 2015, amendments were made to the legislation and the government of Georgia took into account recommendations of the European Commission on Implementation of the Action Plan for Visa Liberalization and recommendations provided by the Public Defender on Georgia in the Reports of 2014 on the Situation of Protection of Human Rights and Freedoms in Georgia.

However, in spite of these changes, the legislation still contains certain flaws, which may impede enjoyment of their rights and freedoms by individuals protected by the law. It is true, that the amendments to the Administrative Procedure Code of Georgia increased the term to challenge the individual administrative-legal act for asylum-seekers, refugees and persons with humanitarian status from 10 to 15 days, but this still is not a reasonable time. The rights of beneficiaries are violated as under Article 16 of the 1951 Convention Relating to the Status of Refugees, the State is obliged to provide the same legal rights for refugees, as are enjoyed by the citizens of Georgia.

In addition to the legislative gaps, the explanation of the denial of refugee or humanitarian statuses on the national security grounds for asylum-seekers remains to be the main problem until now. This violated the prin-

principle of effective proceedings. It is important that the response of the administrative agency contains reasoning through outline of the factual circumstances, in a way that would not endanger the state safety.

## 32. SITUATION OF HUMAN RIGHTS PROTECTION IN DEFENSE

Since March, 2015, the Department of Human Rights Protection in Defense started to function in the Public Defender's Office. The Department studies the situation of rights of active military servicemen, as well as conscripts, war and armed forces veterans.

The monitoring in the Coordination of Mobilization and Conscription Department of the Ministry of Regional Development and Infrastructure revealed, that conscripts are examined by the doctors in groups. There is no confidentiality observed and even individual's diagnosis is discussed in the presence of others. The examination does not show respect for conscript's honor and dignity. Moreover, no appropriate information is provided to conscripts on their rights in the mobilization points.

Within the reporting period the monitoring was carried out in military units and guardhouses. The monitoring of the military units showed, that mostly the compulsory military servicemen are employed in Protection Service, their function being to serve as guards in guard points and to carry out various physical and maintenance activities; they do not undergo the military or physical training. It is noteworthy, that the armed forces of Georgia has no resources allocated for development of the compulsory military servicemen. As to the situation in the guardhouses, there is no sufficient light, ventilation, heating system and toilets in the cells. The inmates sleep on the wooden berths without mattresses, pillows and beddings.

Within the reporting period, there were 6 deaths of military servicemen, 2 out of which were evaluated as suicide and investigation was terminated. The investigation was initiated under the Article of incitement to suicide in the remaining 4 cases and in one case, the legal evaluation of the crime changed to intentional infliction of grave injury, which led to death. The investigation of these cases are ongoing. It was found that suicide was mostly caused by the social conditions.

The situation in the residence of veterans is alarming; they are not provided with elementary living conditions. Veterans and their families live in the deconstructing, not-fit-for-exploitation buildings, which is dangerous for life and health. The situation is analogous in the Republican Hospital for War Invalids and Veterans. The medical devices are outdated and mostly useless, no sanitary and hygienic norms are observed. Moreover, the environment is not compatible with the dignity of patients and the remuneration of doctors is extremely small.

It is noteworthy, that the only state assistance that the veterans of war and military forces receive is the subsidy in the amount of 22 GEL to cover the utility fees.



EUROPEAN UNION



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