



Report of the Public Defender of Georgia

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

2021

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Introduction

This report of the Public Defender of Georgia has been developed Article 35 of the Constitution of Georgia, Article 22 of the Organic Law of Georgia on the Public Defender of Georgia and Article 163 of the Rules of Procedure of the Parliament of Georgia.

The report presents the challenges, progress in terms of the constitutional rights protection in 2021, and discusses the situation in terms of the compliance with the recommendations/proposals made by the Public Defender. The reporting period covers the year 2021; however, the report also analyses the problems that had originated before 2021 and continued to persist in the present reporting period as well.

During the reporting period, the Office of the Public Defender of Georgia received 4,666 applications about violations of human rights. Among them, only 3,805 applications fell within the competence of the Public Defender and, therefore, 861 applications were not admitted for the consideration of the merits. There is a hotline at the Public Defender's Office that is open 24 hours for citizens to receive information or report breaches of human rights. In 2021, 11,126 calls were received.

In 2021, as a result of the examination of individual applications, the Public Defender drafted and issued 67 recommendations/proposals. Out of the government agencies that received these recommendations, most recommendations were addressed to the Ministry of Justice of Georgia (9), the Office of the Prosecutor General of Georgia (8), the Ministry of Education and Science of Georgia (7), and the Ministry of Internal Affairs of Georgia (6). In 2021, the office prepared 20 special reports, 17 constitutional complaints and four communications to the Committee of Ministers of the Council of Europe. 13 amicus curiae were drafted and sent to the following bodies: the Tbilisi City Court (3), the Minsk City Court (1), Kutaisi Citi Court (2), Gori District Court (1), Tbilisi Court of Appeals (4), and the Supreme Court of Georgia (2). In the reporting period, the Public Defender motioned before the European Court of Human Rights to intervene as the third party in three cases.

The Report covers the following topics:

The first chapter of the 2021 Parliamentary Report of the Public Defender of Georgia starts with a discussion about the challenges the state faces concerning the protection of the right to life.

During the reporting period, it was unfortunate that two convicts died because of a fire in penitentiary establishment no. 17. The State Inspector's Service investigated this incident and carried out various investigative actions within its competence. It should be noted that, according to the Emergency Management Agency under the Ministry of Internal Affairs of Georgia, it was impossible to find the documents confirming the compliance of the safety conditions in penitentiary establishment no. 17 with the fire safety requirements. The reporting period also revealed that because of a confrontation between prisoners, two convicts were wounded and one convict died. There was also an attempt by a prisoner to kill a fellow inmate. The Public Defender's Office also examined the case of a possible official misconduct committed by the medical staff of the penitentiary system, resulting in the death of a prisoner. In particular, the emergency surgical procedure scheduled for a prisoner (to be carried out in 2-5 days) was

delayed for approximately seven months. It is imperative to establish within the ongoing investigation to what extent inadequate and delayed treatment contributed to the prisoner's death and the cause of the inadequate treatment. Unfortunately, the problems regarding the somatic healthcare of beneficiaries of psychiatric establishments lead to substantial worsening of patients' health and sometimes become the cause of death.

In terms of combating ill-treatment, the state has not taken effective measures to prevent cases of ill-treatment in closed establishments. In particular, the preconditions and practices that create the threat of ill-treatment or often lead to such treatment remain in place.

Similar to the previous years, the main problem in the penitentiary system is its informal rule, which, in turn, creates a violent environment in the establishments and affects a large number of prisoners. As in previous years, in 2021, the practice of frequent and unjustified placement of prisoners in de-escalation rooms and solitary confinement, which was assessed by the Public Defender as ill-treatment, remains in place. Furthermore, the practice of full examination of prisoners, during which the prisoner is stripped completely and not in two separate steps, continues. Problems of identifying and documenting ill-treatment, lack of rehabilitation activities, provision of adequate medical care to prisoners, the legal status of vulnerable persons and conditions of detention were problematic.

As for the system of the Ministry of Internal Affairs, the detainees in 2021 were still complaining about incidents involving the use of excessive force and physical and psychological violence by law enforcement officers. Possible incidents of ill-treatment by police officers during demonstrations remained problematic in the reporting period.

The methods of physical violence used by police officers in 2021, similar to 2019 and 2020, include tight handcuffing and beating with hands and feet. In contrast to previous years, in 2021, the Special Prevention Group became aware of two incidents where, according to some arrestees, police officers did not allow them to use the toilet, forcing them to urinate in their trousers. This happened, among others, in the yard of a police building, in front of about 20 people, which degraded the detainees and diminished their dignity.

The Public Defender paid special attention to psychiatric establishments and the legal status of patients placed there. Patients continue to be victims of violence, and their legal protection guarantees are ignored. Frequent and vicious practices of applying physical and chemical restraint to patients remain problematic. The living conditions in which patients have to live and receive treatment amount to ill-treatment. The country's psychiatric establishments do not meet even the minimum standards of psychosocial rehabilitation. So far, no strategy has been developed for their deinstitutionalisation. As in previous years, in 2021, the long-term hospitalisation of patients remains an unresolved problem. Patients who do not require active treatment cannot leave the facility due to the scarcity of community services and because they have nowhere to go.

As for the activities of the State Inspector's Service, it should be noted that, during the reporting period, the Public Defender's Office examined 52 criminal cases investigated by the State Inspector's Service. The study found that the investigations conducted by the State Inspector's Service had met the standards of an effective investigation. With this in mind, it is especially unfortunate that, as a result of the legislative amendments adopted by the Parliament of Georgia during the reporting period, the position of State Inspector was abolished on 1 March 2022. The OSCE/ODIHR observed in its report of 18 February 2022 that the legislative amendments and the ensuing process could affect the quality of human rights protection in the country, the investigations of cases of ill-treatment and the death of arrestees as the effectiveness of an independent institution is threatened.

Furthermore, the country does not yet have a unified state policy for the protection and rehabilitation of victims of torture and other forms of ill-treatment. Compensation cases that have been delayed for years in the common courts remain a challenge in the process of providing redress for victims of ill-treatment.

This report also reviews the situation concerning the right to liberty and security. In 2021, cases of arrests in violation of the statutory requirements, problems with the application of preventive measures and appeals, as well as particular shortcomings in the mechanism of parole, were identified. A new challenge in the reporting period was the flawed use of extradition terms against aliens and the practice of summoning ex-convicts to the police. It is noteworthy that the rate of use of parole has decreased. In 2019, 1,279 convicts were released on parole whereas 830 were released in 2020. This negative trend continued in 2021 wherein only 829 parolees were released on parole. As in previous years, the failure of local councils to provide sufficient reasoning for their decisions remains problematic. It is also a recurrent problem that inconsistent decisions are adopted in cases with identical factual circumstances.

In the context of the right to a fair trial, it should be noted that the non-fulfilment of the political agreement of April 19 had a significant impact on the development of the judicial system. Unfortunately, by refusing to honour the agreement, the government refused to implement fundamental reforms in the judiciary, and the process of fully staffing the Supreme Court continued despite calls from the Public Defender, the OSCE/ODIHR and other international partners.

This report focuses on the institutional challenges faced by the judiciary, such as decision-making in the High Council of Justice. The issue of staffing the High Council of Justice is also unresolved, as of 30 March 2022. The council is functioning without non-judicial members elected by the parliament. The report also discusses the electronic case-management system, which, due to the dangers of improper interference in the process, fails to secure public confidence.

Similar to the previous years, administration of prompt and effective justice remains a significant challenge. The terms for decision-making in the courts of general jurisdiction and the Constitutional Court do not meet the standards set by the right to a fair trial. Unfortunately, despite the fact that the Supreme Court is fully staffed, it is still problematic to uphold the principles of speedy and effective justice in the cassation proceedings. The Public Defender also assessed the individual workload of judges and

addressed the High Council of Justice of Georgia with a recommendation to ensure that judges in management positions have the same workload that ordinary judges have.

This report assesses criminal cases of high public interest in which the Public Defender has identified a number of significant shortcomings in terms of the administration of justice. Among them, the report discusses the charges against Iveri Melashvili and Natalia Ilychova ("Cartographers' Case"), the case of Mamuka Khazaradze and Badri Japaridze, the case of Davit Kezerashvili and other cases.

In 2021, as in previous years, various cases of violation of the right to privacy were revealed. Incidents of alleged illegal eavesdropping and surveillance were reported several times during the year. During the reporting period, unprecedented leaks of covert surveillance files took place. Given the volume of files leaked, the data contained in the files and their confirmation by a number of individuals, the Public Defender maintains that this material was obtained through illegal, covert surveillance allegedly carried out by state authorities. The leaked files, along with various types of personal data, are likely to contain information about sexual abuse of minors, alleged failure to report the crime and abuse of office by law enforcement officers. Illegal and large-scale wiretapping and surveillance allegedly carried out in the state allude to the threats of totalitarian control in the country. It can have a significant negative impact on each stage of the country's democratic development. This process, unfortunately, lacks institutional oversight and control.

In 2021, it was particularly troubling that, at the end of the year, through unconstitutional and accelerated proceedings, the Parliament of Georgia abolished within four days the State Inspector's Service, a public agency overseeing personal data protection and responsible for the investigation of incidents of ill-treatment allegedly committed by law enforcement officers. This resulted in the termination of the 6-year term of the head of an independent agency and her deputies. The expedited discussion of the draft law made it impossible for the public to be involved substantially in the discussion. The OSCE/ODIHR also criticised the draft law, noting that such an opaque adoption of the law would undermine the status of the Special Investigation Service and the Personal Data Protection Service as independent institutions. According to the Public Defender, the adopted amendment does not, cannot provide sufficient guarantees for the institutional independence of the two newly created agencies and their heads and creates risks in the future that those services will be also abolished if their activities are unacceptable for a particular political group.

The situation in the country in terms of equal protection has deteriorated dramatically. Extremist ideologues, through their actions and statements, promote homophobic sentiments, incite discrimination, and at the same time carry out actions that often amount to violations of the law. The government does not take the necessary preventive measures, nor does it respond effectively to concrete incidents.

This is demonstrated by the events of 5 July 2021, during which the Government of Georgia failed to protect the LGBTI+ community, activists and journalists or prevent violence against them. Moreover, the statements of high-ranking officials encouraged the violence. The authorities knew or should have known that there was a high risk of violence against the LGBTI+ community and their supporters, as the events

of 5 July had been preceded by public calls for violence by specific individuals and the mobilisation of certain groups. Nevertheless, the Ministry of Internal Affairs of Georgia did not take any effective measures to prevent violence and, unfortunately, the response to the incidents of human rights violations by violent groups was not appropriate either.

Unfortunately, in connection with the violence that took place on 5 July, the Prosecutor's Office of Georgia did not prosecute any of the individuals for organising and encouraging group violence despite the Public Defender's assessment that publicly available evidence meets the standard of proof so that charges could have been brought at least on two counts.

In 2021, the Public Defender reviewed 161 new cases of alleged discrimination, most of which - 17% - involved cases of alleged discrimination on political grounds. According to the information available to the Public Defender's Office, in the pre-election period of the local self-governments of 2021, 69 individuals were dismissed or allegedly harassed on account of their political views, which amounted to discrimination. The Public Defender has become aware of four cases where the acting principals of public schools have not had their employment contracts extended possibly for political reasons.

In terms of gender equality, it is unfortunate that no significant measures have been taken to promote equal participation of women and men in political life.

Gender-based murder of women (femicide) remains one of the main challenges in the reporting period. According to the statistics, as in the previous years, femicide and femicide attempts are not on the decrease. Compared to the previous years, the number of cases leading to women committing suicide and attempting suicide has increased. According to the Prosecutor General's Office of Georgia, 22 incidents of murder of women were revealed in 2021, out of which 11 incidents had the elements of domestic crime; out of 31 incidents of attempted murder of women, 16 incidents had elements of domestic crime.

The practice of early marriage and engagement remains one of the most important challenges in terms of the prevention and management of particular incidents. The lack of coordination among law enforcement agencies and the ineffective functioning of the referral mechanism are problematic. The Public Defender welcomes the campaign conducted by the Ministry of Internal Affairs about the prevention of early marriage.

In 2021, no significant steps have been taken to improve the legal status of the LGBTI+ community. The legal status of the LGBTI+ community is still critical in various spheres of life. Furthermore, there is no state policy to influence positively the LGBTI+ community's legal status.

No steps have been taken to address the problems identified in recent years in terms of freedom of belief and religion. Discriminatory provisions on taxation, state property and labour legislation of Georgia are still intact and in force. Furthermore, the problematic practices of funding religious associations and the shortcomings in the activities and mandate of the State Agency for Religious Affairs remain unchanged. The issue of returning buildings of worship, seized during the Soviet period, to the historical owners also

remains a challenge. During the reporting period, the religious needs of convicts from non-dominant religious faiths were identified. The events that unfolded in the village of Buknari of the Chokhatauri Municipality demonstrated that in most cases, government policies were focused on a single measure response to individual incidents rather than systematic prevention of violence.

Unfortunately, the space for freedom of expression in the country has been limited for years. In terms of assessing the state of media freedom, the threatening and hostile environment that has been observed in the country in recent times, especially in 2021, is worrying. In 2021, the incidents of physical retaliation against journalists increased. It is now normalised that political officials have a cynical/disrespectful attitude towards journalists, especially towards the representatives of the critical media, and discredit them.

The situation concerning human rights defenders is similar to the above. In 2021, too, there was a vexing trend of verbal and physical attacks and intimidation of human rights defenders. This unacceptable practice of discrediting human rights defenders included statements made by high-ranking political officials.

Issues related to the respect for freedom of assembly were particularly relevant in the reporting period as in the previous years. During the reporting period, numerous demonstrations of various sizes but mostly of political nature were organised throughout the country. Holding some of these demonstrations has once again raised the issue of improper fulfilment of the obligations imposed on the law enforcement authorities. Harmful practices of arrests by law enforcement officers for petty hooliganism and disobedience to a law enforcement officer's lawful request continued, often failing to meet the requirement for necessity of interference and constituting unjustified interference with the freedom of assembly.

In the 2021 parliamentary report, the Public Defender devotes a separate chapter to the freedom of information. Georgia's freedom of information legislation is flawed and needs to be fundamentally reformed.

In 2021, Georgia faced a number of challenges in terms of the right to environmental protection. As in previous years, the challenges in the reporting period were the shortcomings of the environmental impact assessment system and the problems of its implementation, neglecting human rights approaches in infrastructure projects and environmental interests in spatial planning as well as air pollution problems. The atmospheric air quality monitoring system is still flawed and it cannot provide a complete picture of pollution across the country. Similar to 2020, the challenges related to energy policy were particularly acute in 2021.

Regarding labour rights, it should be noted that, as a result of the reform of labour legislation carried out in 2020, the Labour Inspection Service of the LEPL has conducted 327 inspections/re-inspections of 249 facilities within the scope of its authorities vested to it on 1 January 2021. As a result of the inspections carried out, a total of 1,766 instructions were issued, most of which related to violations in terms of the

duration of working hours and the term and key conditions of the employment contract. The violations were related to the term and key conditions of the employment contract. The high rate of violations revealed as a result of inspections indicates the need for awareness-raising activities among employers as well as the importance of active and intensive inspections. Although the number of deaths at work has decreased in recent years, the number of deaths and injuries at work is still high. A significant number of deaths and injuries in 2021, as in 2020, are in the mining and quarrying industries and the construction sector, including residential and non-residential buildings.

A strong, sustainable primary health care system is a key factor in protecting the population's right to health. The shortage of nurses, the old infrastructure, weak links between rural doctors and other specialists, as well as the complicated and fragmented system of financing primary healthcare facilities are some of the challenges faced by the primary health care system in Georgia. Healthcare professionals often work at significant personal risk in harsh working conditions without adequate pay. Access to medicines remained a challenge during the reporting period. Furthermore, a unified state programme for the treatment of oncological patients has not been developed yet.

Approaches to the management of the Covid-19 pandemic were problematic during the reporting period, posing a real threat to the protection of the right to life and health. One of the goals of the COVID-19 National Vaccine Implementation Plan was to vaccinate 60% of the population over 18 by the end of 2021. However, as a result of ineffective information campaigns, delayed financial incentives or other measures by the executive, this figure did not exceed 47% as of January 2022.

Decisions to introduce and lift restrictions to combat the coronavirus largely negated scientific evidence and international best practices. As a result of lifting the restrictions from the autumn of 2021 and abandoning control over the implementation of the remaining preventive measures, the number of cases had increased at record speed.

In 2021, the Office of the Public Defender, as in previous years, actively monitored the protection of the right to social security. Most of the social programmes in the reporting period were designed to meet only the immediate minimum needs instead of solving long-term problems. In 2022, some changes were made to the programme of "targeted social assistance". This will be assessed by the Public Defender in the following reporting period.

As of December 2021, up to 1.7 million people are registered in the targeted social assistance database (approximately 27.4% of the population), of whom 532,242 (52%) receive subsistence benefits. Targeted social assistance covers about 14.3% of the population. For the last three years, the number of people wishing to enter the system has been growing, although the programme has not been able to meet the demand fully and the provision of the population with social benefits depends on the resources allocated to the programme from the budget.

Demand for free food pantries is high among citizens who find themselves in dire social situations across the country. However, some municipalities are unable to provide food to all beneficiaries living within their municipal limits.

In the chapter on the right to adequate housing, the Public Defender, similar to the last year, negatively assesses the failure of the Open Governance Georgia to fulfil its obligation to develop a policy document and an action plan to address the problem of homelessness in the country within the framework of the Action Plan for 2018-2019. Unfortunately, as in previous years, there is no comprehensive statutory definition of a homeless person or the framework legislation necessary for the exercise of the right to adequate housing. The state still does not process information to study the causes of homelessness in the country and the scale of homelessness, as a result of which the government does not have any study-based policy, which is necessary to prevent homelessness.

One of the main challenges of 2021 was to hold local self-government elections in a fair and equitable environment. The local self-government elections held on 2 October 2021 were preceded by a lengthy political crisis. The pre-election period and the voting days (the first and second rounds) passed in a tense atmosphere. The incidents of illegal and discriminatory dismissals, as well as alleged pressure on opposition party candidates, political pressure on kindergarten/public school staff, and alleged illegal processing of their personal data were revealed during this period. According to the information at the disposal of the Public Defender's Office, 59 opposition candidates were allegedly pressured and forced, with a few exceptions, to withdraw their candidacies. A hostile environment for the media and local organisations observing elections marked the same period. The Public Defender agrees with the assessments of local and international observer organisations that the incidents of alleged pressure and intimidation of voters and the intimidating environment created during the election period, had negatively affected the free will of some voters.

In the field of cultural heritage, the processes related to the rehabilitation of the world heritage site, Gelati were relevant in the reporting year. In 2021, issues related to the building of the Shalva Amiranashvili Georgian Museum of Art and the collections preserved in it warranted urgent attention. It is problematic, on the one hand, to plan and take the necessary measures for the protection of monuments and, on the other hand, make these processes public.

The Parliamentary Report of the Public Defender also reviews the issue of human rights education in the country. The steps taken towards ensuring continuous human rights education were significant during the reporting period. In particular, it is commendable that the human rights teaching component will be mandatory at all levels of general education for each class. Unfortunately, there was no progress in the reporting period in terms of proactive detection of cases of proselytism /religious indoctrination in schools.

In terms of the rights of children, in 2021, in the light of the developments around the Ninotsminda orphanage, the need to finalise promptly the process of deinstitutionalisation of large establishments was highlighted. Unfortunately, the state has not yet approved a specific plan for the replacement of large residential establishments with foster care and family and community-based care services. The monitoring conducted by the Public Defender's Office revealed systemic violations of the rights of children, degrading, inhuman and equal treatment of minors, in the Ninotsminda boarding school, which lasted for years. These cases have not been investigated to this day.

Significant challenges remain regarding the legal status of children living in poverty, meeting their needs and insufficient targeted public services and their ineffectiveness. It is also noteworthy that the pandemic had a severely negative impact on the socio-economic status of families. As a result, the number of children receiving subsistence benefits increased in Georgia from January to December 2021. In particular, in 2021, the number of children receiving subsistence benefits was 235,252, while in 2020 the figure was 18, 6131.

Issues concerning the prevention of domestic violence against children and the protection and assistance of victims are still problematic. A timely increase in the staff of social workers and psychologists is crucial for the resolution of these issues. Currently, there are just 257 social workers and 17 psychologists across the country.

During the reporting period, effective protection of the rights of persons with disabilities was still punctuated with a number of challenges. It is commendable that the Parliament of Georgia has ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities. The establishment of an Interagency Coordination Committee for the Implementation of the Convention on the Rights of Persons with Disabilities by the Government of Georgia should also be welcomed.

Unfortunately, it is still an unresolved issue to move to a fair system of granting disability status, which in addition to medical grounds, would focus on the psychological and social aspects of a person. The amount of social package defined by the current model, apart from not being tailored to the individual needs of persons with disabilities, does not satisfy their needs.

The services provided within the state programme of social rehabilitation and child-care have not changed substantially. Geographical coverage of services is problematic. It is not possible to cover all children/individuals with disabilities across the country, as the sub-programmes are still not based on statistical or research data.

In one of the chapters of this report, the Public Defender assesses the legal status of the elderly and notes that the elderly is one of the most marginalised and vulnerable groups of people in Georgia. Unfortunately, there is still no mechanism to implement the main policy document on the elderly, "the State Policy Concept on Aging in Georgia", as no action plan for the implementation of the concept has been drafted after 2018.

According to the Public Defender, the challenges in terms of the protection of national minorities and civic integration were unfortunately not eliminated during the reporting year either. In particular, the following problems persist: political integration of national minorities and their participation in decision-making, problems regarding access to education, the ineffectiveness of consultancy mechanisms, the scarcity of measures specifically to promote the culture of national minorities and access to the media remain problematic.

In the reporting period, in the field of defence, as in previous years, the practice of informal and collective punishment of military personnel was still a systemic problem. The monthly salary of conscripts enlisted in the Defence Forces is still GEL 50, which is not even enough to cover the monthly cost of transportation

from their home to their respective military units. The recommendation to the Government of Georgia to increase the income benefit for veterans is still unfulfilled. It should be noted that the recommendation, repeatedly made by the Public Defender, to allow translators to provide services to military service members not speaking Georgian was implemented in the reporting period.

This report also assesses the legal status of the conflict-affected population. Faulty medical services and infrastructure in the occupied territories, inadequate qualifications of medical staff and high prices for services, as well as the complications involving the movement of patients along the boundary line, have a severe impact on the population's right of access to health. Unfortunately, the practice of illegal arrests and ill-treatment of citizens continues. This chapter also discusses the legal status of women and girls living in the occupied territories and the challenges to the right to education.

During the reporting period, the illegal process of borderisation resumed in the villages of Jariasheni, Mejvriskhevi and Khurvaleti of Gori Municipality, in the villages of Atotsi and Takhtisdziri of Kareli Municipality and the village of Gremiskhevi of Dusheti Municipality. It significantly damages the security environment on the ground and complicates the daily lives of the locals.

The Public Defender, as in previous years, actively examined issues related to the legal status of IDPs. In 2021, compared to 2020, far fewer IDP families were relocated from high-risk facilities. The so-called special rules for the accommodation of IDPs living in dilapidated buildings have yet to be enacted. The state does not proactively check the status of buildings in poor condition.

Similar to the previous years, the legal status of eco-migrants did not improve in 2021 either. The lack of funds allocated for resettlement and the lack of preventive measures against the causes of eco-migration remain the main challenges.

In 2021, as in previous years, the Public Defender examined the legal status of foreigners. As in previous years, the main challenge is the low rate of involvement of beneficiaries in integration programmes. The main problem in this regard is the lack of command of the Georgian language, which hinders the involvement of beneficiaries in education, employment and health care programmes. The "Uniform Approach Document" on immigrant integration, which was planned to be developed in 2021, has not been developed yet. The Public Defender also assessed the issue of exemption from criminal liability for illegal border crossing in 2021 as well as the ban on leaving the territory of Georgia for persons registered as asylum seekers and other issues.

In 2021, in terms of the legal status of stateless persons, the lack of multifaceted and targeted integration programmes for stateless persons was problematic. It is commendable that the fee for establishing the status of a stateless person has been halved since May 2021. Another positive change was the inclusion of individuals seeking the status of a stateless person in emergency inpatient and outpatient services of the Universal Health Care Programme.

This report also discusses the issues of peaceful enjoyment of property. During the reporting period, the incidents of delays in the registration of property rights on legally owned land plots were revealed. Delays

were caused by the failure of the National Agency for State Property to submit relevant information to the registry within the established timeframe.

Courts are mostly unable to meet the short deadlines set by the eviction case law. Consequently, citizens face rather lengthy disputes in the courts of general jurisdiction over claims for the prevention of property rights violations.

Finally, the Public Defender assesses the state of implementation of the recommendations issued to state agencies in the previous year. In the 2020 parliamentary report, the Public Defender of Georgia addressed 360 recommendations to state agencies and local self-government bodies, and 51 proposals to the Parliament and the President of Georgia. 50 of the proposals issued by the Public Defender were not implemented. As for the recommendations, the state of their implementation is still unsatisfactory, similar to the last year, as state agencies implemented only 14% of the recommendations in full and 17% in part while 63% remained unfulfilled.

By the 2 December 2021 decision of the Tbilisi City Court, the Head of the Monitoring Department of the Special Penitentiary Service was found to have committed an administrative offence on account of the failure to submit the requested information and documentation to the Public Defender's Office within the timeframe established by law. Unfortunately, the Head of the Monitoring Department had not complied with the lawful request of the Public Defender/Public Defender's Office and had not submitted the requested information and documentation to the office to enable the latter to look into possible violations of the rights of specific prisoners.

1. Right to Life

1.1. Introduction

Numerous cases of life-threatening incidents have attracted public attention during the reporting period. However, the response of the state authorities to these incidents was met only with criticism.

This chapter reviews the measures taken by the state concerning protecting the health and life of people during the pandemic, the deaths of patients and prisoners in psychiatric and penitentiary establishments, the investigation of the murder of two minors in Khorava Street and the investigation of the possible abuse of official power by the President of Georgia about the pardon granted in 2019. This chapter also assesses the current situation in terms of the protection of the right to life in the occupied territories.

For years, the Public Defender's Office has been giving the Parliament of Georgia a proposal and requesting it to empower the Public Defender to study the casefiles of the investigation of ill-treatment and/or deprivation of life before the end of the investigation.¹ Unfortunately, the parliament did not agree on the need to extend the Public Defender's mandate last year either. In the 2020 parliamentary report, the Public Defender issued one proposal and eight recommendations to state agencies. In the light of the performance of state agencies, only one recommendation was assessed positively. In particular, we partially assess it as fulfilled that the General Prosecutor's Office of Georgia supplied to the Public Defender's Office the requested information about the investigative and procedural acts carried out within the investigation into a deprivation of the right to life.

1.2. State's positive obligation to protect the right to life during the pandemic

The lives and health of many people were endangered due to being infected with the Covid-19 virus. Since the beginning of the pandemic in Georgia, the highest daily death toll was registered in 2021.² During the reporting period, the Public Defender repeatedly criticised the government for its approaches to managing the Covid-19 pandemic, which posed a real threat to the human right to life and health.

According to the Public Defender, the information campaign related to the vaccination process by the state was ineffective. During 2021, decisions to introduce and lift regulations to combat coronavirus were largely made without regard for scientific evidence and international best practice.

The introduction of the so-called Green Passport and then its abolition, the temporary abolition of the obligation to wear a mask and the exemption of individuals from liability are the best examples that demonstrate the above.

In the same context, it is important to consider the statements made by high-ranking Georgian officials, which clearly harm the process of both the vaccination and pandemic management. The statement of

¹ The 2018 Parliamentary Report of the Public Defender of Georgia, p. 73; the 2019 Parliamentary Report of the Public Defender of Georgia, p. 39; the 2020 Parliamentary Report of the Public Defender of Georgia, p. 34.

² As of 17 March 2022, 16,612 people died from Covid-19 in Georgia. The highest death toll was registered on 30 November 2021 - 80 deaths.

the Prime Minister of Georgia that vaccination does not work against the coronavirus is not true and counterproductive to the process of protection of the right to life and health.³

As a result, the vaccination rate is very low in Georgia.⁴ As of 3 March 2022, only 42% of the population over 16 is fully vaccinated, and the number of fully vaccinated over 80 is also very low. Only 29% are vaccinated in this latter age group. The low rate of vaccination among the elderly is particularly alarming as this group is highly vulnerable to the new coronavirus. The death rate from Covid-19 in Georgia is the highest among unvaccinated persons over 60. Unfortunately, even in this case, the state failed to make it simpler for this age group of the population to be vaccinated and, for a long time, the registration of those wishing to be vaccinated was possible only through a website, which in many cases created an insurmountable obstacle for the elderly to get vaccinated. At the same time, it should be noted that, in the autumn of 2021, the state launched a campaign to encourage people over 60,⁵ which significantly increased the rate of vaccination. Approximately three weeks after the programme was launched, an additional 52,000 senior citizens had been vaccinated.⁶

1.3. Situation in terms of protecting the right to life in penitentiary establishments

1.3.1. Fire in penitentiary establishment no. 17

On 14 October 2021, a fire broke out in penitentiary establishment no. 17, resulting in death of two convicted persons.⁷ The State Inspectors Service launched an investigation into the incident and, within its competence, carried out various investigative actions.⁸

As a result of the examination of the incident by the Public Defender's Office, it was established that the Emergency Management Service, a legal entity of public law under the Ministry of Internal Affairs of Georgia, is responsible for checking the fulfilment of fire safety requirements in the establishments of detention and imprisonment. A detailed fire-technical inspection in penitentiary establishments is carried out at least once in three years, and control inspection is conducted at least once a year. Facilities, where people are present at night, are subject to targeted (operative) inspections at night, at least once every six months.⁹

³ Available at: <https://bit.ly/3hZtRar> [accessed on 11.03.2022].

⁴ Available at: <https://datacov.moh.gov.ge> [accessed on 17.03.2022].

⁵ An individual over 60 would receive GEL 200 from the state in case of getting vaccinated.

⁶ Available at: <https://bit.ly/3KPPki9> [accessed on 17.03.2022].

⁷ Available at: <https://bit.ly/3Jn0BXf> [accessed on 10.03.2022].

⁸ Letters nos. SIS 7 21 00026809 and SIS 9 21 00033687 of the State Inspector's Service, dated 31 December 2021 and 31 December 2021 respectively.

⁹ Resolution no. 371 of the Government of Georgia of 23 July 2015 Approving Regulations on State Fire and Civil Security Supervision in Georgia.

According to the information provided by the Emergency Management Service of the Ministry of Internal Affairs of Georgia, it was impossible to find the documents certifying the compliance of the safety conditions in penitentiary establishment no. 17 with the fire safety requirements.¹⁰ The Emergency Management Service, based on the request of the Public Defender's Office, continues to search for information and documentation on whether any other penitentiary establishment has been inspected in the past and, if any were conducted, for the time and results of such inspections.¹¹

Within the framework of the examination of this case, the Office of the Public Defender of Georgia also applied to the Special Penitentiary Service.¹² Unfortunately, the Office has not yet received final information from the Special Penitentiary Service¹³ on whether penitentiary establishment no. 17 or any other penitentiary establishment was inspected in the past in accordance with statutory requirements.

It should be noted positively that in the period following the fire in penitentiary establishment no. 17, in October-November 2021, based on the request of the Penitentiary Service and in accordance with fire safety standards, the Emergency Management Service of the Ministry of Internal Affairs inspected all penitentiary establishments.¹⁴ The Special Penitentiary Service started taking appropriate measures, preparing and updating the evacuation plan in case of fire.¹⁵

1.3.2. Inter-prisoner confrontation

In July 2021, the media reported on a confrontation between convicts in penitentiary establishment no. 17.¹⁶ As a result of the confrontation, two convicts were injured, and a convict named Sh.A. died.

Based on the examinations of the materials obtained by the Public Defender's Office and the available video recordings, the possible delayed response of the administration of the establishment was revealed. For further information, relevant questions were sent to the State Inspector's Service.

¹⁰ Letter no. 15- 3/10550 of the Emergency Management Service, a state agency under the Ministry of Internal Affairs, dated 4 November 2021.

¹¹ Letter no. MIA 0 22 00227299 of the Emergency Management Service, a state agency under the Ministry of Internal Affairs, dated 28 January 2022.

¹² Letters nos. 15-3/9909 and 15-3 / 605 of the Office of the Public Defender of Georgia, dated of 19 October 2021 and 18 January 2022 respectively.

¹³ The so-called interim answers have been received, namely, letters nos. 27498/01 and 27919/01 of the Special Penitentiary Service, dated 31 January 2022.

¹⁴ Letter no. 32360/01 of the Special Preventive Group, dated 4 February 2022.

¹⁵ *Idem*.

¹⁶ Available at: <https://bit.ly/3t4eyDu> [accessed on 10.03.2022].

According to the information provided by the State Inspector's Service,¹⁷ investigations are underway into both premeditated murder¹⁸ and breach of duty by staff at penitentiary establishment no. 17 that resulted in the death of a convict.¹⁹ Investigations are also underway into the incident of intentional grievous bodily harm²⁰ inflicted on two convicts.

As of 28 January 2022,²¹ the State Inspector's Service had not received any reports on micro particle, traceology or medical forensics regarding the criminal case. The circumstances of criminal acts allegedly committed by specific individuals, including employees of the penitentiary establishment, had not been established or assessed. Consequently, criminal proceedings were not launched against specific individuals. The Public Defender requested an exceptional review of the materials of the investigation instituted by the State Inspector's Service. At the material time, the State Inspector's Service had not been able to submit materials to the Office of the Public Defender of Georgia due to intensive investigative acts pending.²²

The Public Defender's Office will also study the case of the attempted murder of a fellow prisoner by a prisoner in penitentiary establishment no. 3. In the morning of 4 March 2021, an inmate, using a sharp weapon and a bottle full of salt, inflicted multiple injuries to a sleeping fellow inmate in the head, neck, face, and ear. The physical violence was committed in a cell equipped with a video surveillance system and the whole incident lasted for 3 minutes.

The Public Defender's Office, based on the video recordings, identified several noteworthy circumstances: a) during the violent attack by convict V.A. against convict N.K., the employees of the establishment looked into the cell twice through an observation window of the door. They should have observed the act of physical violence going on in front of the window. However, they entered the cell only 47 seconds later. b) After this, three staff members entered the cell and they could have seen how one prisoner continued to inflict injuries on the other prisoner. Employees stayed in the cell for 24 seconds but did not try to stop V.A. and left the cell. c) The staff of the establishment, accompanied by the medical staff, returned to the cell after only 53 seconds.

Furthermore, the materials obtained by the Public Defender's Office established that the management of penitentiary establishment no.3 was aware of the previous tense relations between the prisoners involved in the case. In particular, prior to the attempted murder of N.K., there were incidents of verbal abuse and

¹⁷ Letters nos. SIS 2 21 00019730, SIS 4 21 00023430 2021 and SIS 1 21 00028531 of the State Inspector's Service, dated 12 August 2021, 24 September 2021, and 15 November 2021 respectively.

¹⁸ The Criminal Code of Georgia, Article 108.

¹⁹ The Criminal Code of Georgia, Article 342^{1.2}

²⁰ The Criminal Code of Georgia, Article 117.1.

²¹ Letter no. SIS 0 22 00001952 of the State Inspector's Service, dated 28 January 2022.

²² Letter no. SIS 2 21 00033220 of the State Inspector's Service, dated 27 December 2021.

aggression against him, in which V.A. also participated. Moreover, one of the prisoners filed a request with the prison management to separate N.K. and V.A. from each other to avoid potential conflict.²³

The above-mentioned prisoner also applied to the investigative agency and stated that he was ready to supply information to the investigative agency regarding the circumstances causing the confrontation. It should be noted that, only after a motion from the Public Defender's Office,²⁴ an investigator met and interviewed the convict.²⁵

In this case, the Public Defender's Office still has some questions regarding the actions of the management of penitentiary establishment no. 3 and those responsible for security in it. It is unknown whether the investigation established the preventive measures taken by the establishment before placing V.A. and N.K. together; whether security risks were examined and ruled out, whether the actions of the managers of the establishment were investigated and assessed (in terms of the crime committed by the act or possible omission). Accordingly, the Public Defender's Office requested access to the investigation files in an exceptional manner.²⁶ The General Prosecutor's Office rejected this motion.²⁷

1.3.3. The right to adequate medical care

During the reporting period, the Office of the Public Defender examined one of the cases of possible official misconduct by the medical staff of the penitentiary system that resulted in the death of a prisoner. In particular, a citizen of the Islamic Republic of Iran, Sh.M., who had been arrested on 25 August 2018, was serving his sentence in penitentiary establishment no. 5. He was suffering from health problems while serving his sentence. He was taken to a Civil Sector Clinic on 26 November 2019, where he died on 17 January 2020. An investigation into the death of Sh.M. was launched by a division of one of the district departments of the Ministry of Internal Affairs of Georgia,²⁸ on account of killing by negligence.²⁹

The results of the examination of the convict's medical records revealed that the emergency treatment prescribed to the prisoner, to be carried out within 2-5 days, was delayed by about 7 months. The medical services provided to him during this period were limited to administration of symptomatic drugs.

The Public Defender, having examined the case, addressed a proposal to the Prosecutor General of Georgia, requesting a change in the qualification of the case and redirection of the case to the State Inspector's Service for Investigation.³⁰

The Prosecutor General of Georgia accepted the proposal of the Public Defender of Georgia. The qualification of the ongoing investigation into the death of Sh.M. was changed to the relevant article of

²³ The 2021 Report of the Criminal Justice Department of the Public Defender's Office.

²⁴ Letter of motion no. 15-15/5997 of the Public Defender's Office, dated 22 June 2021.

²⁵ Letter of reply no. 8737 of the General Inspection of the Ministry of Justice, dated 30 June 2021.

²⁶ Letter no. 15-15/4516 of the Public Defender's Office, dated 11 May 2021.

²⁷ Letter no. 1813/28390 of the General Prosecutor's Office, dated 18 May 2021.

²⁸ Letter no. 13/36825 of the General Prosecutor's Office, dated 6 July 2021.

²⁹ The Criminal Code of Georgia, Article 116.1.

³⁰ Proposal no. 15-2/3379 of the Public Defender of Georgia.

official misconduct³¹ and the case was transferred to the State Inspector's Service for further investigation.³²

The investigation should answer questions related to the timeliness and adequacy of medical care provided to the prisoner in the penitentiary system and the delay in providing surgical treatment. In addition, the investigation should determine to what extent the inadequate and delayed treatment of the prisoner contributed to his death and the reason for the deficiencies in the treatment. Unfortunately, as of 28 January 2022, the Levan Samkharauli National Forensics Bureau had not yet sent to the State Inspector a medical forensics report drafted by a commission of experts which would be instrumental in finding answers to these questions.³³

The Public Defender requested an exceptional review of the materials of the investigation.³⁴ At the material time, the State Inspector's Service was not able to submit the materials to the Office of the Public Defender of Georgia due to pending intensive investigative procedures.³⁵ The Public Defender's Office continues to monitor the case.

1.4. Incident of patients dying in psychiatric establishments

Lack of, or limited, access to somatic health services significantly worsens the health condition of patients placed in psychiatric establishments. This in some cases can even lead to the death of the patient.³⁶

The National Schizophrenia Management Guideline³⁷ specifically addresses the importance of monitoring antipsychotic medications and their correct selection for the early detection of somatic problems, severity assessment and antipsychotic treatment strategies.

Patients placed into a psychiatric hospital benefit from a Universal Health Care Programme. However, the mental health programme does not provide funding for patients' somatic healthcare. Consequently, patients have to pay for additional examinations and long-term treatment themselves. Even when some patients have been in an establishment for a long time, and some of them do not have a family, they do not have access to such treatment due to the lack of financial resources (plus the problem of transportation, which is related to additional costs and human resources) and thus endanger their life and health.

³¹ The Criminal Code of Georgia, Article 342.2.

³² Letter no. 13/26148 of the General Prosecutor's Office, dated 30 April 2021.

³³ Letter no. SIS 1 22 00001953 of the State Inspector's Service, dated 28 January 2022.

³⁴ Letter no. 15-4/12060 of the Office of the Public Defender of Georgia, dated 17 December 2021.

³⁵ Letter no. SIS 2 21 00033220 of the State Inspector's Service, dated 27 December 2021.

³⁶ The 2021 Report on the Activities of the Public Defender's Office, National Prevention Mechanism.

³⁷ The same problem is pointed out in the report of the European Committee for the Prevention of Torture on its visit to Georgia on 10-21 September 2018. The CPT points out that the fact that indigent mentally disordered in-patients are expected to fund their own somatic health care is absolutely unacceptable. The Committee recommends that urgent action be taken to remedy this. The Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, CPT/Inf (2019) 16, para. 128.

As a result, inadequate treatment of somatic health problems, inadequate monitoring of health conditions and neglect of relevant risk factors may result in the death of beneficiaries. The Public Defender reiterates that, under the case law of the European Court of Human Rights, the state bears responsibility for the violation of the right to life if the lack of adequate care and treatment for persons placed in psychiatric establishments leads to their death.³⁸ It should be noted that the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia does not provide complete statistics on deaths in psychiatric establishments. This is confirmed by the work done by the Office of the Public Defender of Georgia. According to the information provided by the ministry, 12 inpatients died in the National Centre for Mental Health in 2020-2021. However, according to the information obtained by the members of the National Preventive Mechanism, 14 patients in total died after being transferred to a local inpatient facility of the National Centre for Mental Health and other inpatient facilities from 1 January to 8 October 2021 alone.³⁹

The Public Defender calls upon the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to take timely steps to systematise a register of statistics on patients who die after being transferred to psychiatric establishments due to deteriorating health. Accurate accounting of deceased patients is essential for the ministry to respond to these incidents and prevent such incidents in the future.

In turn, it is important that psychiatric establishments themselves maintain comprehensive statistics on patient deaths. Accordingly, the ministry should oblige psychiatric establishments to provide relevant information in the event of a patient's death. It is also important that somatic hospitals also have an obligation to notify the Ministry of Health about the deaths of patients who have been transferred from a psychiatric facility.

In addition to maintaining statistics on deaths, it is important to study each death and determine the timeliness of the medical care received by the patient and the cause of death. Based on the analysis of this information, the ministry should take measures to prevent the death of patients as much as possible.

1.5. Ongoing Investigation into the pardons granted by the President

In 2019, the Public Defender assessed the pardoning by the incumbent President of Georgia of those convicts who had been serving a sentence for premeditated murder and left penitentiary establishments without serving a significant part of their sentences as a violation of the right to life. This issue was also

³⁸ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, application no. 47848/08, judgment of the Grand Chamber of the European Court of Human Rights of 17 July 2014

³⁹ The information was obtained by the National Prevention Mechanism both through the examination of transfer and discharge logbooks at the National Centre for Mental Health and through the examination of notifications in the Khoni District Division. The inspection of the logbooks revealed 10 deaths, and 4 additional deaths were identified in the Khoni District Division.

addressed in the 2020 report of the Public Defender.⁴⁰ However, unfortunately, the criminal investigation into granting pardon, which started on September 20, 2019, is still going on without tangible results.⁴¹

Given the fact that the Prosecutor General's Office did not provide the Public Defender's Office with an exceptional opportunity to review the current criminal case,⁴² it is unknown how the investigation is progressing and how effectively, promptly and thoroughly the relevant investigative/procedural actions are carried out. The investigative agency supplied the Public Defender's Office only with general information about the progress of the investigation and. It also informed us that the President of Georgia had been questioned during the investigation.⁴³

1.6. Ongoing official inquiry into the so-called Khorava case

It is known to the public that for years the Public Defender's Office has been awaiting the outcomes of the ongoing enquiry at the General Inspection of the General Prosecutor's Office of Georgia and has been requesting information about the enquiry.⁴⁴

Unfortunately, the Prosecutor General's Office did not make a decision in 2021 either. Moreover, the Prosecutor General's Office does not explain the reason for what hinders the final decision and the legal assessment of the actions of the law enforcement officers. The prosecution has been limited to identical abstract and formulaic responses for the past four years that the General Inspection is still conducting the investigation.⁴⁵

1.7. The situation in terms of protection of the rights to life in the occupied territories

In the occupied territories, the situation with regard to the right to life, unfortunately, did not improve during the reporting period. Unfortunately, the individuals who murdered Davit Basharuli in 2014, Giga Otkhozoria in 2016, Archil Tatumashvili in 2018 and Irakli Kvaratskhelia, a citizen of Georgia, in 2014, at the Russian military base in the village of Nabakevi in the Gali district of occupied Abkhazia, as of today, have not been punished according to the law.

Gennady Bestaev, a Georgian citizen illegally arrested by the occupation regime for crossing the border and other crimes and sentenced illegally by the *de facto* court of Tskhinvali to three years in prison on 21 November 2019, died in February 2022. Gennady Bestaev developed a stroke in the *de facto* Tskhinvali prison and it led to the deterioration of his health.

⁴⁰ The 2019 and 2020 Parliamentary reports of the Public Defender of Georgia.

⁴¹ Letter no. 13/78621 of 28 December 2021 of the Office of the General Prosecutor of Georgia. Investigation is pending into possible abuse of official authority in the process of granting pardon under Article 332.1 of the Criminal Code of Georgia.

⁴² Letter no. 13/53054 of the Office of the Prosecutor General of Georgia, dated 14 September 2020.

⁴³ Letter no. 13/78621 of the Office of the Prosecutor General of Georgia, dated 28 December 2021.

⁴⁴ Letter no. 13/555 of the Office of the General Prosecutor of Georgia, dated 6 January 2021; also, letters nos. 13/86091, and 13/39978, dated respectively 9 December 2019 and 17 July 2020.

⁴⁵ Letters nos. 13/555 and 13/771 of the Office of the Prosecutor General, dated 6 January 2021 and 6 October 2021, respectively.

During the reporting period, it was also reported that 24-year-old Henri Ateiba died of his injuries after being beaten in the Gagra police temporary detention centre. Unfortunately, the Public Defender's Office was not able to obtain any further information about this case.

Furthermore, in the context of the violation of the right to life, one of the important challenges is the closing down of so-called checkpoints by the occupation regime. It prevents patients from crossing the territory controlled by the Georgian government to receive qualified, vital medical services.

Proposal

To the Parliament of Georgia:

- To amend the Organic Law on the Public Defender of Georgia to the effect of vesting the Public Defender with the power to access case-files of cases involving ill-treatment and/or deprivation of life before the termination of investigations.

Recommendations

To the Prosecutor General of Georgia:

- To inform the public regularly about the outcomes of an official inquiry instituted on account of the shortcomings identified in the investigation of the murder of juveniles on Khorava Street; to share the casefiles of the inquiry with the Public Defender's Office; based on the outcomes of the official inquiry, to consider instituting an investigation on account of either official negligence or exceeding official powers;
- The Prosecutor General of Georgia to present an opinion – submitted following Article 172 of the Rules of the Parliament of Georgia – concerning the effectiveness of the investigation on deprivation of life; and
- Within the framework of the investigation into deprivation of life, to supply to the Office of the Public Defender of Georgia requested information regarding investigative and procedural actions, indicating respective dates.

To the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To instruct the ministry's relevant unit to maintain statistics on patients transferred to psychiatric establishments or from psychiatric establishments to regular civil sector clinics and on those deceased due to deteriorating health, including indicating the causes of death and the place of death;
- To ensure a change in the existing funding model for somatic healthcare so that patients admitted to a psychiatric hospital for somatic (physical) health problems are fully and promptly provided with the necessary medical care, including a) patient transportation costs; b) if necessary, the costs

of hiring a doctor-therapist or a family doctor in the establishments; c) expenses required for full reimbursement of planned medical services;

- Introduce changes in the mental health care programme and, in accordance with the existing guidelines in the country, provide for the management of side effects of medications through appropriate examinations and consultations; and
- To instruct the Agency for Regulation of Medical and Pharmaceutical Activities to study the practice of using antipsychotic drugs in psychiatric establishments and managing the side effects.

2. Prohibition and Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

2.1. Introduction

In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations, the Public Defender of Georgia is the National Preventive Mechanism in Georgia. The Public Defender of Georgia also examines complaints lodged by persons placed in closed establishments.

In 2021, following up on citizens' applications as well as acting proactively, i.e., responding to publicly disseminated information, representatives of the Public Defender of Georgia held 1,493 meetings in total with persons deprived of their liberty. While performing the function of the National Preventive Mechanism, 107 regular and random visits were paid to 69 closed establishments.

In this chapter, the report reviews incidents of ill-treatment revealed in penitentiary establishments, the Ministry of Internal Affairs, and psychiatric establishments, as well as relevant risk factors and legislative gaps.⁴⁶ This chapter consists of three subchapters: 1) practice that amounts to or may amount to ill-treatment; 2) safeguards against ill-treatment and risk factors causing ill-treatment; and 3) investigation of alleged incidents of ill-treatment.

To combat effectively ill-treatment, it is particularly important that an independent body in charge of the monitoring should be able to conduct its activities without facing any obstacles. Unfortunately, in this regard, similar to 2020,⁴⁷ at the beginning of 2021 as well, representatives of the Public Defender were subjected to numerous verbal attacks on the territory of various penitentiary establishments. These attacks were organised directly or indirectly by the administrations of penitentiary establishments. The purpose of such action was to prevent the representatives of the Public Defender from conducting confidential interviews with prisoners and disrupt the monitoring process. It is alarming that the illegal actions committed against the representatives of the Public Defender, which had been coordinated between the administrations of penitentiary establishments and a small group of prisoners, became extremely dangerous.⁴⁸

It should be noted that, after January 2021, the Public Defender's Office faced obstacles only during the monitoring of Mikheil Saakashvili's health condition. In particular, there were incidents of lengthy delays (approximately 1.5 hours) in allowing the Public Defender's representatives to enter the Gori Military Hospital (23.11.2021) and penitentiary establishment no. 12 (11.01.2022). On another occasion (28.12.2021),

⁴⁶ Detailed information on the implementation of the Public Defender's recommendations made in terms of combating and preventing ill-treatment in 2020, as well as a detailed analysis of the issues discussed in this chapter, can be found in the 2021 Report of the Special Preventive Mechanism of the Public Defender of Georgia. See also the 2021 Report on the Activities of the Department of Criminal Justice of the Public Defender's Office of Georgia, which, among other issues, discusses in detail the incidents referred to in this chapter.

⁴⁷ The 2020 Report of the Public Defender of Georgia, p. 40.

⁴⁸ See <https://bit.ly/3HawzVy> [accessed 26.01.2022].

the Public Defender's representative and a medical expert authorised by the Public Defender of Georgia were not allowed to enter the Gori Military Hospital at all. It is noteworthy that, after the publication of the conclusion of the group of physicians set up by the Public Defender in relation to Mikheil Saakashvili's health condition, the Chairman of Georgian Dream made a threatening statement about the possible responsibility of the Public Defender and the physicians – members of the group.⁴⁹

Similar to the previous years, in 2021, the overcrowding in penitentiary establishments and the prison management based on the informal rule remained serious challenges within the penitentiary system. This kind of management aims at silencing prisoners, banning them from complaining about their problems and maintaining an illusory order in penitentiary establishments. In the course of the year, the practice of placing prisoners in de-escalation rooms in penitentiary establishments, which the Public Defender assesses as ill-treatment, was maintained. The issues of identifying and documenting ill-treatment, lack of rehabilitation activities,⁵⁰ provision of adequate medical care to prisoners, protection of the rights of vulnerable persons and conditions of detention were problematic. The Public Defender believes that, in order to provide an incentive to prisoners to engage them in various rehabilitation activities, it is important to start working on the introduction of a mechanism that would have a direct impact on reducing the remaining sentence or changing the type of sentence.

As for the protection of the rights of arrested persons within the system of the Ministry of Internal Affairs of Georgia, in 2021, arrested persons still alleged the use of excessive force and both physical and psychological abuse by law-enforcement officers. This issue was particularly problematic in the cases of individuals arrested in administrative proceedings. Based on the monitoring activities conducted, the following issues have been identified as problematic: informing arrested persons about their rights, ensuring for them timely access to a lawyer, informing their families and maintaining comprehensive records about arrested persons. These are effective means to prevent ill-treatment. However, they remain problematic in practice. Furthermore, the police still are not obligated to use body cameras and store audio and video recordings, the recording of the interrogation of arrested persons. Areas where an arrested person is kept in police agencies are yet to be fully covered by a CCTV system. All these issues remain serious challenges.

In the course of years, no significant improvement has been observed in psychiatric establishments, where patients are still victims of violence and safeguards of patients' legal protection are constantly neglected. Despite the fact that their right is clearly stipulated by law, voluntary patients cannot leave the hospital if they wish to do so. Psychiatric establishments do not meet even the minimum standards of psychosocial rehabilitation that are in force in the country. The existing infrastructure does not meet either international or national standards.

⁴⁹ The Statement of the Public Defender of Georgia, made on 18 November 2021, available at: <<https://bit.ly/3JuhnU3>> [accessed 21.03.2022].

⁵⁰ One challenge in terms of rehabilitation activities, among others, is to grant the right to academic higher education to all convicted persons.

An effective response to the incidents of ill-treatment is an important component of the fight against ill-treatment. However, there are still a number of shortcomings in this regard. Furthermore, a unified state policy for the protection and rehabilitation of victims of torture and inhuman and degrading treatment has not yet been developed in the country. Compensation cases that have been pending for years in the courts of general jurisdiction remain a challenge in the process of restoring the rights of victims of ill-treatment.

2.2. The practice amounting to ill-treatment

This subchapter concerns incidents of ill-treatment in closed establishments. It also reviews the conditions and practices that exist in these systems often leading to such treatment.

Violence committed by employees of establishments or law-enforcement officers

In 2021, the Public Defender's Office received 36 applications/complaints, in which the applicants, in addition to verbal abuse and threats by the staff of penitentiary establishments, in some cases, alleged incidents of physical violence. Prisoners in their applications/complaints stated that, for writing the complaints, including the applications filed with the Public Defender, they were subjected to retaliation in penitentiary establishments nos. 2, 3, 6, 10 and 12. According to the prisoners, violence is committed in various forms such as beating with a bottle of water on the head and beating the face and body with the hands and feet. According to them, the penitentiary staff incited some prisoners in penitentiary establishments to abuse verbally other prisoners by shouting from their cells on a systematic basis. According to the prisoners, they were subjected to rude and cynical comments, verbal abuse and threats by penitentiary staff and in some cases, also by the management of penitentiary establishments that their conditions would be even worse and sentences would be increased.

Unfortunately, similar to prisoners, patients in psychiatric establishments are also vulnerable to violence and inhuman or degrading treatment. Patients report that staff of the psychiatric establishments shout at them, speak aggressively and threaten them with physical restraint or isolation. Patients reported beatings and verbal abuse. They also reported that the staff put crumbled medicines in the patients' mouths and administer injections forcibly.

As regards the Ministry of Internal Affairs system, the Public Defender's Office has received numerous reports about the use of disproportionate and clearly excessive force by police officers during the arrest and incidents of alleged ill-treatment after the arrest. Alleged ill-treatment of participants of rallies by police officers after arresting them in administrative proceedings remained a problem during the reporting period.⁵¹

The methods of physical violence used by police officers in 2021, similar to 2019 and 2020, mostly include tight handcuffing and beating with hands and feet. In contrast to previous years, in 2021, on two occasions, the arrested persons alleged that police officers had not allowed them to use the toilet, forcing them to urinate in their trousers. Furthermore, in one case, the individual alleged that after he had been

⁵¹ See the 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

arrested, the arresting police officers spat into his face. In another case, an arrested person alleged that police officers had threatened to rape him. It is also revealed that despite one arrested person's repeated requests to the police department, the medical aid team was delayed for one hour and water was not given to the individual concerned. It is also noteworthy that, in one case, a semi-naked person was not allowed to put on his clothes and was stopped outside the building in the cold for some time before allowing him to enter the police building. There was also pressure on arrested persons at police stations to obtain confessions and statements incriminating other persons.

During the reporting period, the National Preventive Mechanism of the Public Defender examined personal files of persons arrested and placed in temporary detention and isolators identified 495 suspicious incidents.⁵² These incidents are both among administrative and criminal cases. According to the data, in 129 (26%) out of the 495 cases, individuals arrested in administrative proceedings sustained injuries during and/or after the arrest.⁵³ As regards the yearly trends, in 2016, individuals arrested in administrative proceedings sustained bodily injuries during the arrest and/or after arrest in 12.8% of suspicious cases studied by a Special Preventive Group; in 2017 it was 26.4%; in 2018 - 26.8%; In 2019 - 31.8%; and in 2020 - 34.4%. The 2021 statistical data (26%) compared to those of 2019 and 2020, shows decrease and it is closer to the data of 2017 and 2018 (26.4% and 26.8% respectively).

The Public Defender believes that, in terms of treatment of arrested persons by the police, the situation has not changed significantly in 2021 compared to the previous years. Since 2017, there has been a deteriorating trend in the treatment of individuals arrested in administrative proceedings. However, compared to 2019 and 2020, the number of cases of bodily injuries sustained by persons arrested in administrative proceedings during and after the arrest has decreased in 2021.

Inter-prisoner/patient violence

In 2021, incidents of inter-prisoner and inter-patient violence were still problematic. A uniform analysis of the situation shows that neither penitentiary establishments nor psychiatric establishments are able to respond adequately to the problems in this regard.

Domestic issues – such as one prisoner using another prisoner's phone card without permission, one prisoner asking another prisoner for a cigarette or taking it by force and the extortion of money – are mostly the cause of conflict among prisoners. The linguistic barrier is an additional cause of conflict when it comes to foreign prisoners. During the reporting period, it was unfortunate that, because of a

⁵² Members of the National Preventive Mechanism inspect the personal files of all arrested persons placed into a temporary detention isolator prior to the visit of the NPM. The circumstances of the arrest give rise to the monitoring team's suspicion that arrested persons have been possibly subjected to ill-treatment. These circumstances include the location of an injury, the number and nature of injuries. The inspection was conducted in the territorial police agencies and temporary detention isolators in Tbilisi, Kakheti, Imereti, Ajara, Guria and Kvemo Kartli regions.

⁵³ In Tbilisi temporary detention isolators, this data was 33.8% (in 45 out of 133 cases, an individual arrested in administrative proceedings sustained injuries during and/or after arrest). As for the other temporary detention isolators, in 84 out of 362 cases, an individual arrested in administrative proceedings sustained injuries during and/or after arrest, which accounted for 23.2% of the cases.

confrontation between prisoners, two convicted persons were wounded and one convicted person died in penitentiary establishment no. 17.

It should be noted that physical and psychological violence among prisoners in penitentiary establishments is often due to overcrowding and the informal rule. The informal rule is characterised by physical and serious psychological violence among prisoners. Prisoners who fall victims of violence often avoid talking to the penitentiary establishment's administration and medical staff about the real causes of the injury in order to avoid the expected retaliation.

As regards psychiatric establishments, conflicts among patients are mainly related to one patient stealing or taking by force another patient's personal belongings. When there are physical confrontations among patients, staff are unable to respond in a timely manner and break up patients. As a result, patients sometimes sustain injuries. In the cases of conflict among patients, in all the psychiatric establishments visited, personnel often administer injections to patients irrespective of whether they are receiving voluntary or involuntary treatment.

Physical environment

In terms of the physical environment, acute problems have been identified in psychiatric establishments. The living conditions that exist in psychiatric establishments in which patients have to live and receive treatment, amount to ill-treatment. In this regard, during the visits in 2021, the situation was especially dire at the Tbilisi Mental Health Centre, units nos. 9, 10, 11, and 12 of the Academician B. Naneishvili National Centre for Mental Health and in the men's unit of the psychiatric establishment of the Batumi Medical Centre. There are acute problems in Surami Psychiatric Clinic as well. Furthermore, it is noteworthy that patients are not fully provided with the statutory standard of 8 m² of living space in any of these establishments.⁵⁴ Patients have 4-5 m² of living space on average.⁵⁵

Restrictions in penitentiary establishments and psychiatric establishments

Persons placed both in penitentiary establishments and psychiatric establishments are faced with a number of restrictions. The application of certain restrictions, given their nature, may amount to ill-treatment. In particular, the current practice of restricting the rights of prisoners in special risk and closed penitentiary establishments and the lack of activities tailored to prisoners' needs have a negative impact on the physical and mental health of prisoners. This, in turn, increases the risk of violence against prisoners⁵⁶ and may amount to cruel, inhuman and degrading treatment in violation of international standards.⁵⁷ Prisoners in these penitentiary establishments are kept in a cell for 23 hours without any

⁵⁴ Resolution no. 385 of the Government of Georgia of 17 December 2010.

⁵⁵ For instance, in the Academician B. Naneishvili National Centre for Mental Health, the Batumi Medical Centre and the Surami Psychiatric Clinic.

⁵⁶ See the Report of the Public Defender of Georgia on the Impact of the Imprisonment Conditions on Prisoners' Health, 2018, pp. 118-124, available at: < <https://bit.ly/3qYPlcz>, > [accessed 16.03.2022].

⁵⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 21st General Report, CPT/info(2011) 28, Strasbourg, the Council of Europe, 2011, para. 52, available at: < <https://bit.ly/3ic198K> > [accessed 16.03.2022].

activity of interest available to them. They can walk only for one hour in the walking yard, the poor infrastructure of which does not allow the prisoners to relax or enjoy some recreational time.⁵⁸

In addition to the above, unfortunately, similar to the previous years, long-term isolation of prisoners in closed and special risk establishments is still practised. For example, a visit to penitentiary establishment no. 6 revealed that, as in 2020,⁵⁹ more than half of the prisoners were accommodated separately. Being in solitary confinement for months and years is a violation of international standards and, in the assessment of the Public Defender, is a form of ill-treatment.⁶⁰ The statutes of the special risk penitentiary establishments still allow the directors of the establishments to place prisoners in single-occupancy cells for a long time without a reasoned decision and limit their contact with other prisoners.

Regarding the restrictions imposed in penitentiary establishments, the practice of placing prisoners in de-escalation rooms and solitary (safe) cells is also noteworthy. Unfortunately, in 2021, prisoners were placed in de-escalation rooms and solitary (safe) cells for a long and unjustified period for punitive purposes. This practice amounts to cruel, inhuman and degrading treatment. It is noteworthy that prisoners are transferred to the de-escalation rooms and solitary (safe) cells, in most cases, for a maximum period of time and they are kept there continuously for several days and weeks with intervals of minutes only between the statutory maximum periods of time allowed for keeping a prisoner there.⁶¹ It is also noteworthy that, in some cases, despite the lack of risk to their own or someone else's life and health, the prisoner is still placed in a de-escalation room or a solitary (safe) cell without a legal basis.

For years, the Public Defender has been demanding the reduction of the maximum statutory period determined for a prisoner's placement in a de-escalation room to 24 hours. However, the statutes of the penitentiary establishments still provide for 72 hours as the maximum period for the placement of an accused/convicted person in a de-escalation room. Furthermore, there is no limit to the number of times a prisoner can be placed in a de-escalation room or a solitary (safe) cell for security reasons.

As for psychiatric establishments, similar to the previous years, physical restraint and rapid tranquilisation, which is essentially a chemical restraint, are actively used to manage the behaviour of agitated or aggressive patients.⁶² It is noteworthy that chemical restraint is used in combination with physical and/or manual restraint. According to the Public Defender, the above-mentioned practice of restraint methods

⁵⁸ These courtyards are cell-type rooms enclosed by walls on all four sides, with a metal lattice as an open ceiling. Exercise equipment is minimal in these yards.

⁵⁹ The 2020 Parliamentary Report of the Public Defender of Georgia, p. 55.

⁶⁰ See, *Harakchiev and Tolumov v. Bulgaria*, applications nos. 15018/11 and 61199/12, judgment of the European Court of Human Rights of 8 July 2014, para. 204

⁶¹ For example, in penitentiary establishment no. 8, in one case, a prisoner was placed in a de-escalation room 16 times in a row, and the prisoner was in the de-escalation room for virtually 48 consecutive days. In penitentiary establishments nos. 2 and 8, there are occasional incidents of prisoners being held for up to 35 days in a de-escalation room, and incidents of being kept in a de-escalation room for more than 15 days are frequent. As regards special risk penitentiary establishments, namely penitentiary establishments nos. 3 and 6, there are occasional cases of prisoners being held in de-escalation rooms for up to 10 days.

⁶² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Means of Restraint in Psychiatric Establishments for Adults (Revised CPT standards), available at: <<https://bit.ly/3texFLj>> [accessed 16.03.2022].

is explained by the fact that the establishments do not have the policy of crisis prevention or non-violent (de-escalation)⁶³ management methods that would eventually eliminate the use of restraint methods. Unfortunately, the management policy of the establishments is not aimed at minimising the risks of escalating the situation. In the opinion of the Public Defender, the use of such methods of restraint amount to ill-treatment. It is imperative that the state authorities should facilitate the reduction and eventual elimination of the use of physical and chemical restraints against inpatients.

Furthermore, the National Centre for Mental Health and the Batumi Medical Centre use static safety measures such as long-term separation of patients from other patients. Prolonged isolation of the patient based on “mental state” indicates that dynamic security and proper patient supervision are not provided in the establishments’ wards.

The practice of full search of prisoners

During the reporting period, when members of the Special Preventive Group visited penitentiary establishments nos. 2, 3, 5, 6 and 8, they were informed that in these establishments, in 2021, as in the previous years, the practice of full search of prisoners and making them squat was still in place and resorted to during the initial placement of prisoners, their removal from the establishment and their return.

According to the standards of the European Committee for the Prevention of Torture, detained persons who are searched should not normally be required to remove all their clothes at the same time.⁶⁴ Contrary to this standard, the statutes of penitentiary establishments⁶⁵ allow for removing all the clothes at the same time. As for ordering prisoners to squat, the statutes of penitentiary establishments do not provide for this practice. In the opinion of the Public Defender, such a practice amounts to degrading treatment of prisoners.

In the 2020 Parliamentary Report, the Public Defender of Georgia addressed the Minister of Justice of Georgia with a recommendation to determine by legislation certain aspects that need to be followed during full searches of prisoners. Full searches should be based on an individual risk assessment and carried out with the respect for the principle of proportionality. Ordering to remove all the clothes at the same time during the full search should be prohibited. Unfortunately, the recommendation was not implemented.

⁶³ The components of de-escalation techniques are the following: immediate assessment of a potential crisis and prompt intervention, problem solving orientation, empathy and persuasion, capacity of stress management or relaxation techniques such as breathing exercises, giving a person space, offering to make a choice, giving time to reflect.

⁶⁴ The Council of Europe, the European Committee for the Prevention of Torture, Report to the Czech Government on the visit to the Czech Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 1 to 10 April 2014, para. 86, available at: < <https://bit.ly/35cCmvg> >[accessed 10.12.2021].

⁶⁵ In accordance with the statutes of penitentiary establishments, during the full search, the accused/convicted person is obliged, following the instruction of the authorised person, to strip completely or expose the respective parts of the body.

Medical care in penitentiary establishments

For years, the Public Defender has been discussing the challenges in terms of providing timely and quality somatic (physical) and mental healthcare services for prisoners in penitentiary establishments. The failure to address these challenges amounts to ill-treatment in a number of cases. In 2021, the following issues remain problematic: access to medical services, the number⁶⁶ and qualifications of medical staff, proper maintenance of medical documentation, respect for medical confidentiality,⁶⁷ timely implementation of medical referrals, and the situation in terms of mental healthcare and preventive healthcare.

In the context of penitentiary healthcare, it is particularly important to develop a plan for the full integration of penitentiary healthcare into the civil sector healthcare system.

During the reporting period, the Public Defender's Office examined a number of incidents where belated or inadequate medical care of particular prisoners was confirmed.⁶⁸

Providing access to primary healthcare in penitentiary establishments is crucial for timely medical care. Unfortunately, the important recommendations made by the Public Defender in this regard have not been implemented and the number of mid-level medical staff in penitentiary establishments, including the number of nurses on duty, has not increased; the proper frequency of visits by physicians specialised in some field is not ensured in penitentiary establishments, and the waiting time for patients exceeds two weeks.

Timely referral to specialists is also important for receiving timely and adequate medical care. In March 2021, the implementation of planned outpatient and inpatient medical referrals in civil sector medical establishments was resumed. The monitoring revealed that, due to the overload caused by the suspension of the electronic referral through electronic database, the deadlines of the medical referrals were violated.

Also noteworthy are the cases of urgent delayed transfers, which, in some cases, took one month or more. Furthermore, cases were reported where patients had been waiting for a medical referral for more than a year rather than a few months.

There is no periodic mental health screening in penitentiary establishments. Timely referral to a psychiatrist and timely transfer to a psychiatric hospital remained problematic. These issues are related to conducting timely examinations.

Psychiatric care in penitentiary establishments does not comply with the modern biopsychosocial approach and evidence-based health care principles. It is limited to consultation with a psychiatrist and does not involve multidisciplinary work. It is imperative to ensure that the psychologist and social worker

⁶⁶ The report by the European Committee for the Prevention of Torture (CPT) on its 2007 visit to Greece states that there should be no more than 300 prisoners per doctor and 50 per nurse. In Georgia, the ratio of prisoners to nurses in large penitentiaries is high and, consequently, it is necessary to hire more mid-level medical staff.

⁶⁷ During the visits, prisoners again pointed out the problem of the non-medical staff attending the meeting with the physician.

⁶⁸ The 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

are involved in the psychiatric assessment process and management, and, for this, communication between the psychiatrist and the establishment's social service should be increased.

Involuntary treatment of patients placed in psychiatric establishments

It is essential for the state to ensure that a person is placed in a hospital without consent only in the extreme cases provided for by domestic legislation. This decision should be subject to judicial review and adequate legal guarantees should be provided.

The involuntary transfer of a person to an inpatient hospital with the help of emergency medical care and patrol crews is a restriction of a person's liberty. At the initial stage of involuntary hospitalisation,⁶⁹ and from this point on, the grounds for deprivation of liberty and his / her rights must be explained to him/her in a form understandable to the patient. Unfortunately, after the involuntary transfer of a person to a hospital, the necessary legal procedures for involuntary inpatient care are not enacted. In order for establishments to avoid the procedures required for involuntary inpatient psychiatric care, patients sign an informed consent form in ways that exclude, or question, the veracity of the exercise of free will. Unfortunately, after the involuntary transfer of a person to a hospital, the necessary legal procedures for involuntary inpatient care are not conducted. In order for establishments to avoid the procedures required for involuntary inpatient psychiatric care,⁷⁰ patients sign informed consent forms in ways that exclude, or question, the veracity of the exercise of free will. Most patients unknowingly or forcibly sign an informed consent form upon entering the facility. It should be noted that treating a patient without consent might even reach the threshold of torture and other forms of ill-treatment.⁷¹

The Public Defender welcomed the amendment to the Law of Georgia on Mental Health regarding the review of the patient's legal status when using the method of restraint on a patient undergoing voluntary treatment.⁷² However, unfortunately, the change in the law did not affect the established practice in establishments. The above provision is completely ignored. The establishments failed to submit a document confirming that they had discussed the voluntary status review and made a reasoned decision that there was no need to appeal to the court.

⁶⁹ The Law of Georgia on Mental Health, Article 18.3.

⁷⁰ In accordance with a decision of the doctor on duty at the hospital, a patient's preliminary involuntary placement in the hospital is carried out. Within 48 hours after admission to the hospital, the panel of psychiatrists should examine the patient's mental state and decide on the involuntary inpatient psychiatric care. If the commission of psychiatrists concludes that involuntary inpatient psychiatric care is not appropriate, the patient should be discharged from the hospital immediately. If the Psychiatric Commission concludes that the statutory criteria for involuntary inpatient psychiatric care are not met, and involuntary inpatient psychiatric care is necessary, the administration of the psychiatric establishments applies to the court with a request to issue a corresponding order for the patient to be admitted to the hospital for involuntary psychiatric care within 48 hours after the person is admitted to the hospital (the Law of Georgia on Mental Health, Article 18).

⁷¹ The Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Report to the General Assembly, A/63/175, 28 July 2008, para. 63, available at: <<https://bit.ly/3uecqqF>> [accessed 30.12.2020].

⁷² This, along with the Public Defender's recommendation, was also a recommendation of the European Committee for the Prevention of Torture, (Report to the Georgian Government on the visit to Georgia by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 September 2018, para. 136).

It should also be noted with regret that the legislative framework does not yet stipulate the obligation to obtain separate informed consents for hospitalisation and treatment. Consequently, as in the case of consent to hospitalisation, the will of the patients is still neglected when selecting treatment methods. Obtaining informed written consent from the patient is important at both the start and continuation stages of treatment and changing the treatment regimen.⁷³

In the psychiatric establishments visited in 2021, as in previous years, the majority of patients did not know the medications they were taking or the injections that were administered to them. They did not know the side-effects of these medications and the significance of taking certain medications. Unfortunately, patients have noted that forced injections are a common practice and resistance does not make sense. In this process, medical staff use security guards, paramedics or other patients. Unfortunately, incidents of using rapid tranquilisers against the will of the patient and monitoring of the patient's state of health in the process are not documented. The practice established in these facilities not to justify the need for over-the-counter injections increases the risk of the arbitrariness of the staff.

Similar to the previous years, long-term hospitalisation of patients remains an unresolved problem in 2021. The recommendation made by the Public Defender regarding assessing the needs of patients admitted to psychiatric establishments for more than six months, discharging them from the establishment and referring them to community services is still unfulfilled. Patients, who do not require active treatment due to the scarcity of community services, cannot leave the establishment because they have nowhere to go.⁷⁴

Extradition

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.⁷⁵ Unfortunately, incidents inconsistent with this principle were identified during the reporting period. For example, during the reporting period, the Public Defender's Office looked into the extradition of a convicted person to the Republic of Azerbaijan. According to the convicted person, the extradition, due to the person's past political activities and belonging to the LGBTI+ community, posed a significant threat to the person's right not to be subjected to torture and inhuman treatment.⁷⁶

Following the examination of the incident, the Public Defender addressed a proposal to the Prosecutor General of Georgia regarding the appropriateness of extraditing the convicted person to the Republic of

⁷³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 8th General Report, Involuntary placement in psychiatric establishments, para. 41.

⁷⁴ At the Centre for Mental Health and Drug Prevention Ltd., by 12 June 2020, there were 12 patients for more than six months, five of whom were hospitalised for more than a year. Among them are patients who have been in a psychiatric hospital since 2011. By 16 September 2020, 71 patients (24 men and 47 women) had been in Tbilisi Mental Health Centre Ltd. for more than six months, out of whom five patients had been hospitalised for more than a year. The establishment has patients who have been placed in a psychiatric hospital since 2008, 2014, 2015, 2016, and 2017.

⁷⁵ The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3.1.

⁷⁶ The 2021 Report on the Activities of the Department of Criminal Justice of the office of the Public Defender of Georgia.

Azerbaijan.⁷⁷ According to the proposal, despite the legalisation of homosexuality in 2000, Azerbaijan remains the most dangerous country in Europe for the LGBTI+ community.⁷⁸ Unfortunately, despite the position of the Public Defender, substantiated by relevant arguments, the General Prosecutor's Office of Georgia did not agree with the proposal of the Public Defender of Georgia.⁷⁹

During the reporting period, the Public Defender's Office also continued to monitor the case of I.S., who was extradited from Georgia to the Russian Federation in 2019. In this case, the Russian Federation had given legal guarantees to the state of Georgia that the rights of the individual concerned would not be violated and that he would not be subjected to ill-treatment in the penitentiary establishment of the Russian Federation. In contrast, in 2021, the Public Defender's Office was informed that there had been a continuing violation of the rights of this prisoner,⁸⁰ which was confirmed by a letter from the Commissioner for Human Rights of the Russian Federation.⁸¹ It is important that the Georgian authorities take this particular case into account while considering other cases where a person is to be extradited to the Russian Federation.

It should be noted that, in the above case, the Russian Federation has additionally requested the aggravation of the charges against the person to be extradited. The Public Defender opposes this decision as the new charges envisage the death penalty. As of January 2022, no decision on this issue had been made by the Office of the Prosecutor General of Georgia.

The case of a Georgian citizen arrested in the Republic of Belarus was also noteworthy during the reporting period. The Public Defender submitted an *amicus curiae* brief to the President of the Minsk City Court arguing that, due to the high risk of torture and inhuman treatment as well as the death penalty, the Republic of Belarus was not allowed to extradite the person to the Republic of Lebanon.

2.3. Safeguards against ill-treatment and factors causing ill-treatment

In order to prevent ill-treatment, it is imperative to ensure that, within the legislative framework and in practice, persons deprived of their liberty are provided with minimum safeguards of legal protection. The availability of these safeguards in the legislation and their effective enforcement reduces the risks of ill-treatment as it becomes possible to reveal and respond to illegal actions. In this chapter, we also present the existing circumstances that pose a threat of ill-treatment or, in many cases, lead to such treatment.

Deficiencies in revealing and documenting ill-treatment

To prevent ill-treatment, it is important to ensure that the process of revealing and documenting such treatment is flawless. Unfortunately, during the reporting period, this issue was problematic in the case

⁷⁷ Proposal no. 15-3/10221 of the Public Defender of Georgia, dated 27 October 2021.

⁷⁸ Available at: <https://bit.ly/3Awkwh7> [accessed 16.03.2022].

⁷⁹ Letter no. 13/71783 of the Office of the Prosecutor General of Georgia, dated 26 November 2021.

⁸⁰ The lawyer of I.S. pointed out the dire conditions in the penitentiary establishment, regular and planned searches involving strip search without a specific ground, problems regarding the terms of extension of detention, violation of the principle of confidentiality of the prisoners' meeting with the lawyer and restriction of calling family members and their visits.

⁸¹ Letter of the Commissioner for Human Rights of the Russian Federation, dated 17 December 2021.

of both the penitentiary system and the Ministry of Internal Affairs as well as the psychiatric establishments.

In the context of penitentiary establishments, it should be noted that, despite the amendment of the legislation in 2020,⁸² it remains a problem to identify and document the incidents of alleged ill-treatment if the prisoner refuses a medical examination. In particular, under the regulation in force, if a physician cannot obtain the informed consent of a prisoner, the physician is not allowed to fill out the special injury registration form. Under such regulation, there may be cases where a prisoner does not consent to a medical examination upon admission to a penitentiary establishment or when leaving or returning to the establishment, although he or she may have been ill-treated.

It is also noteworthy that, according to the practice established recently, in some cases, where a prisoner placed in a penitentiary establishment reports that he or she has sustained a regular injury, penitentiary establishment does not notify the General Inspection of the Ministry of Justice. It should be noted that the documents produced in penitentiary establishments indicate regular injuries as prisoners' bodily injuries. However, the analysis of the nature, location and source of these injuries raises reasonable suspicions that the injuries were probably sustained as a result of violence.

It should be noted that, according to the information provided by the Medical Department of the Special Penitentiary Service of the Ministry of Justice, in 2021, 2,172 prisoners in penitentiary establishments sustained bodily injuries, out of which 310 injuries were caused by another person, and the prisoner did not indicate the source of injuries in 93 cases.⁸³ Accordingly, based on this data, it can be established that the bodily injuries sustained by 1,769 prisoners were registered as self-harm or regular injuries.

The effectiveness of the mechanism for documenting incidents of violence in penitentiary establishments is hampered by the established practice of a prisoner and a doctor meeting in a non-confidential environment. In the absence of proper qualifications and information, physicians are unable to explain the importance and purpose of documenting injuries and gain the confidence of the inmate.

With regard to the system of the Ministry of Internal Affairs, it is noteworthy that the documentation of arrested persons is still flawed unfortunately in the territorial agencies of the police. In 11 out of the 35 facilities visited by the Special Prevention Group, substantial deficiencies in maintaining logbooks were identified.

As in previous years, there is still a tendency in about one-third of the incidents examined and processed by the members of the National Preventive Mechanism (in 2021 - 29.1%, in 2020 - 26.3%, in 2019 - 30.7%, in 2018 - 27.6%, in 2017 - 30.1%, and in 2016 - 31.3%), where the arrest report does not indicate the injury described in the medical records drafted in temporary detention isolators. Out of the 495 incidents handled in 2020, in 145 incidents injuries described in the temporary detention isolator were not listed in

⁸² The change in 2020 allows the doctor, after obtaining informed consent for a medical examination, to send a notification to the state inspector even in cases where the prisoner does not allege violence and the doctor still has suspicions.

⁸³ Letters nos. 309509/01 and 15421/01 of the Medical Department of the Special Penitentiary Service of the Ministry of Justice of Georgia, dated 21 December 2021 and 18 January 2022, respectively.

the arrest reports drafted regarding the respective persons. There is a strong presumption with regard to these incidents that the arrested person may have been subjected to physical violence when in police custody.⁸⁴

It is also problematic that the reports on the arrests carried out in administrative proceedings do not contain any column where the police officer has to indicate bodily injuries sustained by an arrested person. This contributes to the non-uniform practice of some police officers describing the injuries in the column of the reports on the arrests carried out in administrative proceedings while some do not.

It is noteworthy that the documentation by physicians of bodily injuries sustained by arrested persons placed in the temporary detention isolators has been slightly improved. Nevertheless, in 2021 too, in more than half of the entire number of cases, the circumstances of the injury are not completely described or not described at all.

In addition to the above, statistics related to photographing injuries are important. Out of 421 documented files that were examined by the Special Preventive Group in the light of the Istanbul Protocol, photos were taken only in 35 (8.3%) cases. Not a single photo examined by the National Preventive Mechanism was satisfactory in terms of quality. The photos were blurred, inadequate and taken in either too bright or too dim lighting. Temporary detention isolators still do not have a uniform rule for storing photos taken in accordance with the Istanbul Protocol.

It is also noteworthy that, similar to the previous years, there are still incidents where, despite the fact that an arrested person suffered injuries, no notification was sent to the State Inspector's Service. Out of 495 cases processed in 2021, notifications were sent to the State Inspector in 441 (89%) cases, while 54 (11%) cases were not sent. There were incidents among the cases that were unreported where an arrested person had sustained an injury to the face and eye socket and the degree and colour of the injuries indicated that these were fresh injuries possibly sustained as a result of violence.

Like the penitentiary system, within the Ministry of the Internal Affairs of Georgia, the effectiveness of the mechanism for documenting incidents of violence is hampered by the established practice of an arrested person and a physician meeting in a non-confidential environment. Furthermore, the Public Defender's recommendation, reiterated over the years that medical records compiled by ambulance physicians should be kept only with physicians working at temporary detention isolators, is noteworthy. While the Ministry of Internal Affairs of Georgia has been providing the originals of documents drafted by the ambulance physicians to the physician of the isolator since 19 July 2021, copies still remain with the isolator's staff.⁸⁵

It is also problematic that medical documents of a particular arrested person are transferred to the investigating body investigating the criminal case without his/her consent and a court decision. The problem is that documenting injuries should serve the purpose of revealing the incidents of torture and

⁸⁴ See *Salman v. Turkey*, application no. 21986/93, judgment of the Grand Chamber of the European Court of Human Rights of 27 June 2002, para. 100.

⁸⁵ The Law of Georgia on Personal Data Protection, Article 6 and the Law of Georgia on Patient Rights, Article 28.

ill-treatment and not creating pieces of evidence against the arrested person. Furthermore, it is problematic for physicians in the temporary detention isolator to take a sample from an arrested person's body.⁸⁶ The involvement of a physician in taking a blood sample without the consent of the arrested person damages the relationship between the patient and the physician,⁸⁷ undermines trust and ultimately has a negative impact on revealing incidents of possible ill-treatment.

As far as psychiatric establishments are concerned, one of the risk factors for conflict and violence among patients is placing patients in a chaotic environment where patients have different degrees of mental health problems and different needs and this is done without proper care and supervision. Unfortunately, no psychiatric establishment has taken sufficient measures to protect patients from ill-treatment. One of the causes of inter-patient violence in psychiatric establishments is the lack of a conflict prevention strategy. Consequently, due to the lack of an effective system for assessing and reducing patient risks, staff are unable to identify patient risks.

There is no legal mechanism established in psychiatric establishments to document possible violence against a patient and send a notification to the investigating authorities. Psychiatric establishments practically leave the conflicts that have already taken place without response, as the establishments do not have the obligation to record incidents of violence in a special logbook and to respond appropriately.

Inadequate qualifications and insufficient number of medical staff

The challenge of inadequate qualifications and insufficient number of staff was identified during the reporting period in both the penitentiary system and psychiatric establishments. This challenge creates risks of ill-treatment in these establishments.

During the reporting period, ongoing preventive visits to penitentiary establishments revealed that the imbalance caused by the large number of prisoners and the small number of staff could not ensure a safe, secure and orderly environment in the establishments.⁸⁸ The problem of overcrowding is present in both semi-open and closed penitentiary establishments.

During the monitoring visits made by the members of the National Preventive Mechanism to the psychiatric establishments, the obvious shortage of professional and support staff was identified as a significant problem, which has a negative impact on the quality of psychiatric care.⁸⁹

⁸⁶ The United Nations General Assembly Resolution 37/194 of 18 December 1982 on Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, available at: < <https://bit.ly/3w5dVLY> > [accessed 16.03.2022].

⁸⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Slovenian Government on the visit to Slovenia by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 January to 8 February 2006, para. 99, available at: < <https://bit.ly/3tZxker> > [accessed 16.03.2022].

⁸⁸ The legal regime and security department staff.

⁸⁹ Detailed information on psychiatric care, including treatment with antipsychotic medications, is available in the 2021 report of the National Prevention Mechanism of the Public Defender's Office.

Also challenging are the qualifications of the staff, especially in terms of psychosocial rehabilitation, improper discharge of authority, lack of motivation, low pay and unfavourable working conditions. Furthermore, it is important for the state to take all measures to monitor the compliance of the conditions of psychiatric establishments with the standards set by the statute on the issuance of licences for medical activities and licences of inpatient facilities through systematic monitoring. In the context of psychiatric establishments, it is also important to revise the existing model of funding somatic health services so that patients admitted to a psychiatric establishment are provided fully and promptly with treatment for somatic diseases, therapist services of inpatient care, dental services, etc.

As regards the system of the Ministry of Internal Affairs, the monitoring results show that, during the period of being in police custody, arrested individuals were promptly provided with medical services. However, it is noteworthy that unfortunately, in 2021, the number of temporary detention isolators where there is a dispensary and a physician on a regular basis is reduced. In particular, as of 2021, the medical unit operated in 21 temporary detention isolators, while this number was 23 last year, an increase compared to the previous years. It is also noteworthy that, unfortunately, the medical staff are constantly on duty in only 10 isolators and there is no progress in terms of adequate recruitment and employment of medical staff.

Request/complaint – shortcomings of complaint mechanism

The most important guarantee of protection against ill-treatment is the existence of an effective complaint mechanism. Unfortunately, during the reporting period, as in the previous years, the challenge was the effectiveness of the complaint mechanism in penitentiary and psychiatric establishments. In both systems, it was revealed that prisoners in penitentiary establishments and patients in psychiatric establishments lack information on legal protection mechanisms.

The 5 July 2021 judgment of the Constitutional Court of Georgia is commendable. It upheld the Public Defender's constitutional claim and found that certain provisions of the Imprisonment Code were inconsistent with the Constitution of Georgia. These provisions routinely prohibited the accused and convicted persons from using the hotline to contact the Public Defender while serving a disciplinary sanction and while in solitary confinement.⁹⁰

Monitoring of penitentiary establishments in 2021 again revealed that the exercise of the right of prisoners to appeal is hampered by the administration of penitentiary establishments, in addition to the criminal underworld. Most applications to the Public Defender's Office were still received from closed penitentiary establishments while the number of applications received from semi-open penitentiary establishments is still smaller. Under the influence of the criminal underworld, convicted persons placed in semi-open establishments refrain from sending complaints. Receipt of confidential complaint envelopes depends on the employee of the establishment. Even if the content of the complaint remains unknown to the establishment, the fact that a complaint was written may pose a problem for the prisoner. Prisoners

⁹⁰ Judgment no. 1/3/1441 of the First Section of the Constitutional Court of Georgia of 5 July 2021, available at: <<https://bit.ly/3fvTxUd>> [accessed 03.11.2021].

therefore might refrain from requesting and sending a confidential complaint envelope. In terms of refraining from sending complaints, the problem is exacerbated by the fact that, in closed and special risk penitentiary establishments, complaints and letters are lost and some prisoners do not have the necessary means to write a complaint.

Like penitentiary establishments, the complaints mechanism was also flawed in psychiatric establishments during the reporting period. While the law provides for the patient's right to lodge a complaint and application with the domestic court and other state institutions,⁹¹ the procedure for the patient to use these mechanisms is not regulated by legislation.

Patients contact state authorities, including the Public Defender, mainly through telephone calls. The Public Defender's hotline number is posted in psychiatric establishments. However, due to telephone-related problems,⁹² a non-confidential environment and lack of information, incoming calls and applications from psychiatric establishments are very scarce in both the Public Defender's Office and the non-governmental organisations working on patients' rights. It should also be noted that patients do not have access to legal advice, regardless of whether there is a lawyer in the psychiatric establishment.

Overcrowding in penitentiary establishments

Overcrowding of penitentiary establishments was still problematic during the reporting period. In 2021, the situation has not changed in penitentiary establishments nos. 2 and 8, where accused and convicted persons are still housed together. International standards⁹³ and the requirement of the Imprisonment Code to place accused separately from convicted persons⁹⁴ continue to be violated. In these penitentiary establishments, due to overcrowding, during the placement of prisoners in cells, the personal characteristics, habits, behaviour and risks posed by the prisoner are still ignored. As a result, prisoners of different categories and worldviews have to coexist in one cell, which often leads to disagreements between prisoners in closed space.

Arbitrary restriction of the rights of patients in psychiatric establishments

Under the Legislation of Georgia,⁹⁵ in the cases of utmost necessity, the physician is entitled to decide about restriction of a number of patients' rights for their own safety, which should be indicated in the medical documentation.⁹⁶ It is unclear what kind of a restriction of the patient's rights has any implications for safety. It is also unclear on what security reasons the physician has the possibility of restricting the patient's rights. At both the legislative and practical levels, the procedure for restricting any rights

⁹¹ The Law of Georgia on Mental Health, Article 5.1.g).

⁹² See the 2021 Report of the Public Defender of Georgia, the chapter on the right to respect for private life.

⁹³ According to the United Nations General Assembly Resolution no. 70/175 on Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), untried prisoners shall be kept separate from convicted prisoners (Rule 11.b).

⁹⁴ The Imprisonment Code, Article 9.2.

⁹⁵ The Law of Georgia on Mental Health, Article 15.3.

⁹⁶ In particular, the physician has the right to restrict the patient from using the telephone, the right to leave the hospital for a short period of time, the right to receive letters, parcels and visitors, the right to own a personal item, the right to receive audio-visual information, as well as the right to information and medical documentation about one's health condition.

provided to patients by law must be strictly regulated. In order to prevent arbitrariness, it is important to specify the maximum time, criteria and appeal procedures for each right.⁹⁷

Physical environment in temporary detention isolators and penitentiary establishments

Unfortunately, semi-isolated sanitary facilities in two or more-occupancy cells in temporary detention isolators⁹⁸ are still problematic. In case of placement of two or more arrested persons there, they would have to meet their natural needs in front of other arrested persons. Furthermore, there is no flushing system in the toilets of the isolator cells; a water pipe located a few centimetres above the open sewer hole in the cell toilets is used instead. Prolonged placement⁹⁹ of arrested persons in such conditions may amount to degrading treatment.¹⁰⁰

In terms of the physical environment, the situation in penitentiary establishments is still problematic. In 2021, the problem of overcrowding remained in both semi-open and closed large penitentiary establishments. Unfortunately, the so-called barrack-type dormitories have not still been abolished in penitentiary establishment no. 17. Sanitary and hygienic conditions are non-existent there, and most of the convicted persons are not provided with 4 m² of private living space.

Safeguards against ill-treatment of an arrested person

Informing arrested persons. Informing arrested persons about their rights by the police was still problematic, similar to the previous years. Interviews conducted by the Special Preventive Group found that persons arrested, in most cases, at the time of arrest or before the interview, are not notified of their rights at all or were only partially provided with such information.

Access to a Lawyer - According to the data processed by the Special Preventive Group using a statistical software, in 2021, the rate of involvement of a lawyer in the case during the first 24 hours has deteriorated significantly. In particular, in 2021, during the first 24 hours, this rate was 17.4%, while in 2020 it was 45%. The rate of involvement of a lawyer in the case during the first 48 hours has increased from 29% to 37.6%.¹⁰¹ None of the arrested persons interviewed by the Special Preventive Group in 2021 met a lawyer at a police station. It is noteworthy that the persons arrested in criminal proceedings pointed out the

⁹⁷ The 2020 Report of the National Preventive Mechanism, pp. 124-128.

⁹⁸ Semi-isolated toilets still function in temporary detention isolators in Marneuli, Kutaisi, Zestaponi, Samtredia, Tchiatura, Batumi, Kobuleti, Lanchkhuti and Ozurgeti.

⁹⁹ Under the Administrative Offences Code of Georgia, Article 32.1, administrative detention may be imposed for up to 15 days.

¹⁰⁰ The European Court of Human Rights, when dealing with a violation of Article 3 of the European Convention of Human Rights, is guided by its own standard and states that the material conditions of detention/imprisonment must not violate human dignity and must not be extent the severity inevitably inherent to imprisonment. For an example, see *Vasilescu c. Belgique*, application no. 64682/12, judgment of the European Court of Human Rights of 25 November 2014, para. 105.

¹⁰¹ Statistics by years, regarding the involvement of a lawyer in a criminal case during the first 24 hours: in 2017 – 15%, in 2018 – 11.9%, in 2019 – 24.6%, and in 2020 – 45%.

problem of obstruction of communication with the lawyer and neglect of the lawyer's request.¹⁰² The time when an arrested person requested or contacted a lawyer is still not recorded. Providing a confidential meeting with a lawyer at a police station remains a challenge. In non-confidential circumstances, the lawyer will not be able to interview the arrested person adequately, which is a violation of procedural provisions¹⁰³ and gross neglect of the safeguards against ill-treatment.¹⁰⁴

Informing the Family - According to the data processed by the Special Preventive Group, in 2021, families were contacted within three hours as prescribed by law¹⁰⁵ in 94% of the total number of processed criminal cases. Compared to the previous year, the situation has improved in this regard.¹⁰⁶ The Public Defender, Similar to the previous years,¹⁰⁷ believes that the Ministry of Internal Affairs should develop a specific mechanism that would enable checking the extent to which the right to communicate with family members, relatives and a lawyer and to inform them about the arrest is exercised.

Maintaining Audio-Video Recordings. The Public Defender has been issuing recommendations regarding video recordings for years. On the one hand, these recommendations concern issues to be regulated by a normative act, such as the obligation to maintain recording by body cameras, to maintain recording in a police car and store the material for a reasonable period. On the other hand, these recommendations concern fully equipping police establishments with video infrastructure and full coverage of the arrested person's movements.¹⁰⁸ Unfortunately, in 2021, no changes were made in this regard to the legislative framework. There is still no obligation, in particular, for patrol inspectors/employees of the Central Criminal Police Department and territorial bodies to videotape their interactions with citizens. There are no statutory terms and procedures to store video material except for patrol inspectors.¹⁰⁹ The interrogation process of arrested persons in police stations is still not audio-video recorded.¹¹⁰ Police surveillance does not cover all areas where an arrested person may be held.

The Role of a Judge. The Criminal Procedure Code of Georgia stipulates that if at any stage of the criminal proceedings a judge suspects an accused or convicted person has been subjected to torture, degrading and/or inhuman treatment, or if the accused or convicted person has informed the court about it, the judge refers the case for a follow-up to the competent investigative body.¹¹¹ However, it is imperative to

¹⁰² In order to guarantee procedural safeguards against the above-mentioned procedural and substantive ill-treatment, the Public Defender has been issuing a recommendation for years to register requests of accused persons for contacting a lawyer.

¹⁰³ The Criminal Procedure Code of Georgia, Article 38.5.

¹⁰⁴ Those temporary detention isolators should be noted positively, where investigation rooms are allocated for meeting with a lawyer and, in this regard, no complaints were made in 2021.

¹⁰⁵ The Criminal Procedure Code of Georgia, Article 177.1.

¹⁰⁶ They statistics by years are as follows: in 2017 - 71%, in 2018 – 86.8%, in 2019 – 94.4%, and in 2020 – 84%.

¹⁰⁷ The 2019 Report of the Public Defender of Georgia, p. 89 and the 2018 Report of the Public Defender of Georgia, p. 61.

¹⁰⁸ A detailed analysis of the current legislation on video cameras can be found in the 2020 report of the National Preventive Mechanism, pp. 131-136.

¹⁰⁹ Order no. 1310 of the Minister of Internal Affairs of 15 December 2005 on the Approval of the Instruction on the Rules of Patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia, Article 121.

¹¹⁰ Under the Criminal Procedure Code of Georgia, Article 287, video and audio recording is allowed during the investigative action.

¹¹¹ The Criminal Procedure Code of Georgia, Article 191.

ensure that amendments are moved to the Administrative Offences Code of Georgia and those prosecuted in administrative proceedings are given the same opportunity. The importance of this is indicated by the fact that incidents of alleged ill-treatment of persons arrested for administrative violations are still frequent. It should be noted that, according to the information provided by the Supreme Court of Georgia, in 2021, judges referred to the State Inspector's Service 93 cases because they suspected that the arrested person had been subjected to torture, inhuman and/or degrading treatment or because the arrested person had complained about such treatment.¹¹²

2.4. Investigation of incidents of ill-treatment

An effective investigation into ill-treatment is one of the most important safeguards to prevent this crime. Unfortunately, by 2021, a number of challenges have been identified in this regard.

During the reporting period, the Parliament of Georgia adopted legislative amendments, based on which the position of the State Inspector and the State Inspector's Service were abolished on 1 March 2022. Instead, two separate services were established, viz., the Special Investigation Service and the Personal Data Protection Service. Considering the effective activities of the State Inspector's Service, the Public Defender of Georgia is extremely concerned about the expedited abolition of the State Inspector's Service by the Parliament of Georgia and considers it unconstitutional. The process of abolishing the independent state body was not transparent and carried out without prior consultation with stakeholders.¹¹³

The establishment of the institution of the State Inspector, which had been effective since 1 November 2019, served important legitimate purposes. Its main function was to investigate ill-treatment effectively, which, stemming from the obligation to prohibit torture, inhuman or degrading treatment, is the most important mechanism for ensuring the positive obligation of the state. It is noteworthy that the legislative amendments do not and cannot provide sufficient guarantees for the institutional independence of the two newly established services and give rise to risks in the future that these services will also be abolished if their respective activities are unacceptable to a particular political group.

The Special Investigation Service (formerly the State Inspector's Service) is the most important guarantee for the detection and investigation of incidents of ill-treatment, for which temporary detention isolators are one of the main sources of notifications. In 2021, the Public Defender, by processing the data submitted by the temporary detention isolators, studied both the rate of timely appearance of the investigator of the State Inspector's Service in the temporary detention isolators and the duration and conditions of the interviews with arrested persons.

An analysis of 495 cases¹¹⁴ handled by the Special Preventive Group reveals that, out of 441 cases sent to the State Inspector's Service, the investigator of the State Inspector's Service met the arrested persons in

¹¹² Letter no. P-81-22 of the Supreme Court of Georgia, dated 4 February 2022.

¹¹³ See the assessment of the Public Defender of Georgia regarding the abolition of the State Inspector's Service in the 2021 Parliamentary Report of the Public Defender of Georgia, the chapter on the respect for private life

¹¹⁴ Members of the Special Preventive Group inspect the personal files of each arrested individual placed in the isolator before the visit. The circumstances surrounding the arrest as well as the location, number and nature of injuries sustained give rise to suspicion among members of the Special Preventive Group about the possible ill-treatment of an arrested

350 cases in a temporary detention isolator.¹¹⁵ Out of this, investigators of the State Inspector's Service met arrested persons within an average of seven hours after a notification was sent from the temporary detention isolator. The Public Defender of Georgia observes that, considering the resources of the State Inspector's Service and its representation, visiting an arrested person in the isolator within seven hours on average is a good indicator.¹¹⁶

Unfortunately, due to the pandemic, the meeting with the investigators of the State Inspector's Service in the temporary detention isolators was mostly held remotely even in 2021. Because arrested persons in temporary detention isolators are not left alone in the remote meeting room, a confidential environment is not provided during remote meeting, which affects a prisoner's open conversation with an investigator of the State Inspector's Service.

Furthermore, the Public Defender's Office examined 52 criminal cases investigated by the State Inspector's Service.¹¹⁷ A thorough examination of the cases revealed that the investigations conducted by the State Inspector's Service largely met the standards of an effective investigation. Ordinarily, investigators carry out all necessary and urgent investigative actions in a timely and thorough manner. In addition, while the status of a victim was only granted in one case,¹¹⁸ the alleged victims were not identified in the above cases. In many cases, the investigation provided them with information on the progress or termination of the investigation. Among the cases examined, an isolated case was identified where a number of investigative actions should have been carried out in a timelier manner. However, some delays did not affect the outcome of the investigation.

Furthermore, it is noteworthy that the grounds for criminal responsibility of particular law-enforcement officers were revealed in four criminal cases¹¹⁹ examined by the Public Defender's Office. The State Inspector's Service submitted a written proposal to the prosecutor's office. The prosecutor's office did not institute criminal proceedings in any of the cases and stated that additional investigative actions had to be carried out. This position of the prosecutor's office is assessed extremely negatively by the Public Defender. The prosecutor's office did not initiate criminal prosecution, despite the fact that the State Inspector's Service had identified specific law-enforcement officers in all four cases and the facts and

individual. Inspections were conducted in the territorial police bodies and temporary detention isolators in Tbilisi, Kakheti, Imereti, Adjara, Guria and Kvemo Kartli regions.

¹¹⁵ According to the Special Preventive Group, the reason for the State Inspector not visiting arrested persons in the isolator was the fact that the arrested persons were brought to the temporary detention isolator late at night and taken to the court the next morning.

¹¹⁶ According to Letter no. SIS 4 21 00033583 of the State Inspector's Service, dated 30 December 2021, between 1 January 2021 and 30 November 2021, the Investigation Department of the State Inspector's Service received 1,012 reports concerning 1,062 individuals subjected to physical and/or psychological violence allegedly committed by officers of the Ministry of Internal Affairs.

¹¹⁷ The objective of the Public Defender's Office was to examine the cases conducted by the State Inspector's Service and terminated without prosecuting concrete individuals, from 1 November 2019 to 20 September 2021.

¹¹⁸ Investigators do not have the authority to grant a victim's status to a person. It is prosecutors' authority.

¹¹⁹ Apart from the 52 cases mentioned above, as an exception, the State Inspector's Service allowed the Public Defender's Office to study case-files of other eight ongoing criminal cases as well. Out of the eight cases, the problem mentioned above was revealed in four cases.

information formed the basis for instituting criminal prosecution. Prior to the establishment of the independent investigation mechanism, this was the function of the Prosecutor's Office of Georgia. The ineffective performance of the prosecutor's office that went against human rights has been confirmed in numerous researches. The fact that the State Inspector's Service investigated these cases and the prosecutor's office refused to conduct criminal prosecution by giving some obscure reasons to justify this refusal gives rise to the suspicion that the prosecutor's office wishes to cover up the crimes of law-enforcement officers.

The Public Defender of Georgia, Similar to the previous years,¹²⁰ calls upon the Parliament of Georgia to start the reform of the Prosecutor General's Office to improve the institutional organisation and accountability mechanisms of the prosecutor's office, which is especially important given the essential role of the Prosecutor General's Office in restoring violated rights and preventing further violations.¹²¹

General inspections

The existence of a service within law-enforcement agencies that is responsible for monitoring the proper exercise of powers by staff is of critical importance. In addition to proactive monitoring, the same agencies are also responsible for responding effectively to citizens' complaints about possible illegal actions committed by the employees of these agencies. During the reporting period, the Public Defender's Office examined the case-files of official inspection conducted by the General Inspection of the Ministry of Internal Affairs and the Monitoring Service of the Special Penitentiary Service.¹²² As a result, in 2021, the Public Defender submitted four proposals to the Minister of Justice and requested the initiation of disciplinary proceedings referring to an insufficient official inspection conducted by an employee of the Monitoring Department. The Public Defender submitted similar proposals to the Minister of Internal Affairs in two cases.

The lack of prompt, objective and appropriate response to possible violations on the part of the Monitoring Department of the Penitentiary Service and the General Inspection of the Ministry of Internal Affairs remains a challenge. To date, delayed official inspection, which, in turn, further hinders the comprehensive official inspection, has been a problem. While it is the duty of both the services to respond effectively to applicants' complaints and thoroughly investigate possible violations of the law by all available legal means, improper performance of obligations, unsubstantiated completion of inspections and the failure to inform citizens undermine public trust in agencies and undermines their reputation.

In terms of improper performance of activities by the General Inspection of the Ministry of Internal Affairs, the essential shortcomings found in the official inspection carried out by the General Inspection are noteworthy. For example, in one of the cases where the applicant alleged ill-treatment and verbal abuse by police officers, no action was taken other than questioning these officers. Eventually, no violation of the applicant's rights was established. Similarly, in one of the cases involving possible verbal abuse of

¹²⁰ The 2020 Parliamentary Report of the Public Defender of Georgia, p. 61.

¹²¹ The Public Defender addressed the Parliament of Georgia with a proposal to start the reform of the General Prosecutor's Office. However, similar to 2019-2020, this proposal was not implemented during the reporting period either.

¹²² The 2021 Report of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

three juveniles by police officers, the General Inspection limited its actions to interviewing three officers. The General Inspection based its findings only on the information received from these officers.

The improper work of the General Inspection of the Ministry of Internal Affairs is also evidenced by the case of the service members of the Iagluji military base, who were forced for punitive purposes by their superiors to scrub the barracks on their knees with a toothbrush or a shoe brush. Information on these criminal incidents had already been at the disposal of the General Inspection of the Ministry of Internal Affairs for some time. However, prior to the official written request from the Public Defender's Office,¹²³ the General Inspection did not refer the case to the State Inspector's Service.¹²⁴ As of today, criminal proceedings have been initiated in this case against two persons,¹²⁵ who were found by the Tbilisi City Court guilty as charged.

As regards the cases examined by the Public Defender's Office during the reporting period in terms of investigating incidents of alleged ill-treatment, which attracted particularly high public interest, a brief overview of these cases is presented below.

[The case of Mikheil Saakashvili:](#)¹²⁶ As soon as Mikheil Saakashvili was admitted to the penitentiary establishment, he resorted to a hunger strike, a form of protest provided by law. Political officials and the Ministry of Justice/Special Penitentiary Service have repeatedly made statements and carried out actions to cast doubt on the prisoner's hunger strike.¹²⁷ The on-site inspection of the documents by the Public Defender's Office confirmed that Mikheil Saakashvili, despite receiving medical supplements, did not change the form of his hunger strike and the prisoner continued to starve himself. The Public Defender's Office assessed the statements made by officials as expressly negative and described them as an attempt to create additional risks to the health of the prisoner.¹²⁸ Many years of the experience of the Public Defender's Office show that questioning a prisoner's protest pushes them to aggravate the form of their protest and/or to stop receiving medical care, which worsens the health condition of the prisoner.

It should be noted that, on 8 November 2021, the Ministry of Justice/Penitentiary Service forcibly transferred Mikheil Saakashvili, who was on a hunger strike, to the special penitentiary establishment no. 18. This was despite the fact that, according to the Public Defender, penitentiary establishment no. 18 did not respond fully to the recommendations made by a multi-profile group of physicians (invited by state authorities) regarding Mikheil Saakashvili's medical needs. There were also risks to Mikheil Saakashvili's safety.

¹²³ Letter no. 14/7360 of the Public Defender of Georgia, dated 27 July 2020.

¹²⁴ By Letter no. MIA 9 20 01750649 of the Ministry of Internal Affairs of Georgia, dated 30 July 2020, the Public Defender's Office was informed that on 29 July 2020, the case had been referred to the State Inspector's Service.

¹²⁵ A decision not to institute criminal proceedings was made with regard to one person due to his death.

¹²⁶ The 2021 Report of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

¹²⁷ A statement of the Public Defender of Georgia, dated 12.10.2021, is available at: < <https://bit.ly/3CMwaa7> > [accessed 28.03.2022].

¹²⁸ A statement of the Public Defender of Georgia, dated 12.10.2021, is available at: < <https://bit.ly/3CMwaa7> > [accessed 21.03.2022].

The Public Defender has repeatedly stated in her statements that the transfer of the prisoner to penitentiary establishment no. 18, due to the significant risk of verbal aggression, noise and abuse, would lead to the disorganisation of penitentiary establishments nos. 8 and 18. For several days after being transferred to the penitentiary establishment, Mikheil Saakashvili had to hear insulting and threatening shouts from prisoners. This was clearly a psychological pressure and hereby the state violated its obligation to ensure the respect for a person's dignity.¹²⁹ It is noteworthy that, in 2021 and the previous few years, no other prisoners of penitentiary establishment no. 12, except Mikheil Saakashvili, were transferred to penitentiary establishment no. 18.

Penitentiary establishment no. 18 was not ready to provide the necessary medical care to Mikheil Saakashvili and the multifunctional group of doctors selected by the state was no longer allowed to visit the patient and enter penitentiary establishment no. 18. The public was unaware of the state of Mikheil Saakashvili's health. It was unclear how adequate the management of his health condition was.

Therefore, on the 47th day of Mikheil Saakashvili's hunger strike, in accordance with the Organic Law of Georgia on the Public Defender of Georgia, the Public Defender formed a multi-profile group of experts/specialists. The group had to assess the adequacy and timeliness of the medical services provided to Mikheil Saakashvili. Due to the critical state of the patient's health, the team of experts formed by the Public Defender repeatedly recommended that the patient's treatment be resumed immediately in a functioning and well-experienced multi-profile hospital, the conditions of which were not met by penitentiary establishment no. 18.

Based on the conclusion of the Public Defender's group of experts, following an interim decision of the European Court of Human Rights, the Ministry of Justice/Penitentiary Service finally transferred Mikheil Saakashvili on 19 November 2021 from penitentiary establishment no. 18 to the LEPL Giorgi Abramishvili Gori Military Hospital of the Ministry of Defence.

After Mikheil Saakashvili was transferred to Gori Military Hospital and then to penitentiary establishment no. 12, the group of experts established by the Public Defender visited him three more times. After the positive results (elimination of vital risks) achieved in the process of refeeding after the hunger strike had been stopped, no significant improvement in the patient's state of health (in terms of neurological status) was detected. The patient was diagnosed with post-traumatic stress disorder and depression requiring psychological and physical rehabilitation. Despite repeated recommendations, the issue of Saakashvili's psychotherapeutic and physical rehabilitation has unfortunately remained an unresolved issue.¹³⁰

¹²⁹ For more details, see the 2021 Parliamentary Report of the Public Defender of Georgia, chapter on the right to respect for private life.

¹³⁰ A statement of the Public Defender of Georgia, dated 25.11.2021, is available at: < <https://bit.ly/3KHJTIi> > [accessed 16.03.2022]. A statement of the Public Defender of Georgia, dated 14.12.2021, is available at: < <https://bit.ly/3tdTNVU> > [accessed 16.03.2022]. A statement of the Public Defender of Georgia, dated 19.01.2022, is available at: < <https://bit.ly/3MTg96W> > [accessed 16.03.2022].

Furthermore, it is noteworthy that, according to Mikheil Saakashvili, he was forcibly transferred to penitentiary establishment no. 18. The Special Penitentiary Service posted the footage of Mikheil Saakashvili's accommodation in penitentiary establishment no. 18 facility on social media. According to the Public Defender, the dissemination of the video diminishing prisoner Mikheil Saakashvili violated his right to dignity. It should be noted that the Public Defender's Office immediately informed the State Inspector's Service about the incident of forcible admission of Mikheil Saakashvili to penitentiary establishment no. 18. The State Inspector's Service, in turn, launched an investigation into the possible inhuman treatment of Mikheil Saakashvili.¹³¹ The Public Defender's Office still periodically requests information on the progress of the investigation.

The case of Luka Siradze:¹³² Based on the outcomes of the examination of the case of Luka Siradze (officials of the Ministry of Internal Affairs compelled underage Luka Siradze to give a statement, which led him to commit suicide) by the Public Defender, a proposal was issued to the Prosecutor General of Georgia regarding various issues identified in the case and a response was requested. It should be noted that, on the basis of the proposal, the State Inspector's Service – with the participation of the indirect victim, who described in detail the psychological duress exerted on Luka Siradze by another investigator apart from M.Ch. during the questioning – carried out the investigative action indicated in the proposal, i.e., identification.¹³³ The investigation is still pending. In the context of the case of Luka Siradze, it should be mentioned that the meeting with the juvenile was held in the office of the Deputy Chief of Police. For years, we have been recommending the elimination of the practice of meeting with arrested persons in the offices of police chiefs and deputy chiefs and ensuring to hold such meetings with them only in a space equipped with video surveillance.

The Office of the Public Defender of Georgia also examined the release of M. Ch., the person convicted in the case concerned, on parole. In the Public Defender's opinion, granting conditional early release to M. Ch. has violated the constitutional principle of prohibition of ill-treatment by resorting to this preferential measure, as the convicted person eventually did not have to serve a significant part of the sentence. In particular, M. Ch. was sentenced to three years of imprisonment, however, one year, four months and thirteen days of her sentence remained unserved. It is noteworthy that M. Ch. did not have the consent of the victim's family and did not plead guilty to the charges. The local councils usually pay considerable attention to the confession and repentance of convicted persons as well as to the position taken by the victim party if they still have claims against the convicted person.¹³⁴ In the present case, the

¹³¹ The Office of the Public Defender cooperated closely with the State Inspector's Service, providing the investigation with full information and all relevant documents at its disposal. Based on a permit issued by the Public Defender, the Public Defender's representatives, including medical experts acting on a special permit, were questioned on the premises of the State Inspector's Service.

¹³² The 2021 Report of the Department of Criminal Justice of the Office of the Public Defender of Georgia and the 2020 Parliamentary Report of the Public Defender of Georgia, p. 63.

¹³³ Letter no. SIS 5 21 00004207 of the State Inspector's Service, dated 5 March 2021.

¹³⁴ For instance, see the 2019 Special Report of the Public Defender of Georgia on the Practice of Conditional Early Release and Commutation of Unserved Sentence with a Lesser Penalty in Georgia, pp. 30-32, available at: < <https://bit.ly/3uHbLQ> > [accessed 30.03.2022]. See also the 2020 Report of the Department of Criminal Justice of the Office of the Public Defender of Georgia, pp. 27-28, available at: < <https://bit.ly/3wKa1bl> > [accessed 30.03.2022].

local council did not consider these circumstances at all, did not substantiate its position and still reached a decision to grant conditional early release the convicted person.

The case of the Ninotsminda Boarding School: Significant substantive deficiencies were identified in the investigation of alleged crimes against children at the Ninotsminda Boarding School. The Public Defender's Office examined four criminal cases, the investigation of which started in 2016 and 2019-2021.¹³⁵ The study of the case-files revealed that the persons in charge of the investigation are unfortunately often indifferent to the criminal acts committed against minors. They have been delaying the investigation for years, failing to properly characterise the investigation and failing to protect the best interests of the child victims. Investigative authorities have been acting stereotypically, refusing to grant the children victim status.¹³⁶ They are refusing to obtain the full picture of the criminal scheme and expose the criminal practice of violent punishment. It is noteworthy that the examined case-files revealed signs of alleged sexual offences committed against children. However, the investigation in this direction was not conducted within the framework of the case, and separate criminal proceedings were not severed from the case. Unfortunately, the investigative authorities did not take any measures to ensure the safety of the children in the boarding school and protect them from the alleged violent environment.

The Public Defender addressed the Prosecutor General with a proposal to conduct an effective investigation¹³⁷ and demanded the following: to merge the cases into one case, change the characterisation, structural unit of the investigation and supervising prosecutor, dismiss the active social worker, conduct a number of investigative and procedural acts, use special protection measures in certain cases, etc. It is noteworthy that the Prosecutor General agreed to only a part of the Public Defender's proposals.

It is imperative to conduct a systematic investigation of the alleged crime in the boarding school under Article 144³ of the Criminal Code (degrading or inhuman treatment) because the testimonies of children reveal violent methods of ill-treatment and punishment, which were permanent and applied not to specific but to almost all children. In these circumstances, the characterisation of the acts under Article 126 of the Criminal Code (violence) is insufficient and cannot cover the severity of the alleged incidents of inhuman and degrading treatment.

The criminal case of Temur Abazov:¹³⁸ In the 2020 parliamentary report, the Public Defender discussed the case of Temur Abazov.¹³⁹ The former mayor of Marneuli was accused of subjecting a person to acts

¹³⁵ Three cases were given the characterisation under Article 126 of the Criminal Code (violence) and one was characterised under Article 137 of the Criminal Code (rape).

¹³⁶ It should be noted that the Committee of Ministers of the Council of Europe, in its decision adopted in 2022 on the *Tsintsabadze group v. Georgia*, with regard to the general measures, called upon the authorities to take rapid, concrete and effective steps for improving the legislation and/or practice on granting victim status (the decision of the Committee of Ministers of the Council of Europe regarding the *Tsintsabadze group v. Georgia*, para. 7, available at: < <https://bit.ly/3lfcwVz> > [accessed 16.03.2022]).

¹³⁷ Proposal no. 15-5/11525 of the Public Defender of Georgia of 7 December 2021.

¹³⁸ The 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

¹³⁹ The 2020 Parliamentary Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, p. 64.

that amounted to inhuman and degrading treatment and organising the public distribution of footage of these acts. At the final stage of the proceedings, the prosecution dismissed one out of two charges without any justification, thus depriving the court of the possibility to examine the criminal case before it and virtually contributing to the acquittal in this case.

The acquittal was appealed on charges of inhuman and degrading treatment and violence.¹⁴⁰ On 27 January 2022, the Tbilisi Court of Appeals dismissed the appeal of the Prosecutor's Office and acquitted all persons, including Temur Abazov. The charges of obtaining and divulging a secret of personal life, due to the dismissal of the charges at the stage of proceedings in the court of first instance, was again left without legal assessment and criminal responsibility was not imposed on the persons concerned.

[Investigation of the violent acts of 5 July:](#)¹⁴¹ The incidents of group violence committed by organised groups on 5 July 2020 at various locations were particularly disturbing during the reporting period. As a result of the violence, citizens and journalists sustained injuries of various types and degrees. The media reports and the public calls made by various persons showed elements of public appeals for organising group violence and violent acts. However, as of December 2021, no criminal proceedings had been instituted against these individuals. In this context, it is noteworthy that the authorities' failure to act, including not investigating alleged criminal acts and failure to take the necessary measures to prevent violent incidents, has a particular impact on the scale of violence perpetrated by various groups in the country.¹⁴²

The investigation of the events of 20-21 June 2019¹⁴³ is also noteworthy. It should be pointed out that the Public Defender's main findings in this regard remained the same. Unfortunately, there are still a number of shortcomings punctuating the investigation, including the delay in submitting an expert's opinion to the investigation. Furthermore, it is noteworthy that, in 2020-2021, on several occasions, the court avoided the consideration of the merits of the complaint and rejected the attorney's motion for granting the victim's status to a person citing formulaic reasons.

Proposals

To the Parliament of Georgia:

- To start the reform of the Office of the Prosecutor General of Georgia; to involve the Prosecutorial Council in the process of determination of jurisdiction and separation of competences among

¹⁴⁰ The other individuals were suspected of assaulting the victim after the charges against them concerning obtaining a secret about the private life and its disclosure were dropped.

¹⁴¹ The 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

¹⁴² The European Court of Human Rights had arrived at the same conclusion in a judgment adopted against Georgia on 16 December 2021. In the case *Women's Initiatives Supporting Group and Others v. Georgia*, the Court found that the violence committed on 17 May 2013 was conditioned by the domestic authorities' failure to secure a timely and objective criminal investigation and punishment of the perpetrators of previous violent attacks on the LGBTI+ community. In this regard, the European Court of Human Rights pointed out the case of *Identoba and Others v. Georgia*, in which the Court found the violation of the Convention for the Protection of Human Rights and Freedoms in 2015.

¹⁴³ The 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

structural units; approving guidelines and adopting normative acts stemming from criminal law policy that regulate systemic aspects of the prosecutor's office;

- In 2022, to determine by the Imprisonment Code the duty of providing the minimum personal space of 4 m² per accused person;
- To amend the relevant provisions of the Imprisonment Code to the effect of granting each convicted person the right to receive academic higher education;
- To amend the Administrative Offences Code of Georgia to the effect of determining that, whenever a judge suspects that a person under administrative responsibility could have been subjected to torture, inhuman or degrading treatment or that person him/herself states about it before the court, a judge applies to the competent investigative authorities for the follow-up;
- To amend the Criminal Procedure Code of Georgia and prohibit the removal of medical documents produced by physicians of temporary detention isolators without the consent of the arrested person and a court decision by other than an independent investigative body;
- By amending the Law of Georgia on Mental Health, to determine that in the case of forced rapid tranquilisation of a patient, the requirements and guarantees given in Article 16 of the Law of Georgia on Mental Health (application of restraints on the patient) shall be applied;
- By amending the Law of Georgia on Mental Health, to determine the obligation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to impose on psychiatric establishments an obligation to elaborate and approve binding internal guidelines on crisis prevention and management to minimise risks of escalating situations into crises and avoid the use of measures of the last resort in psychiatric establishments;
- By amending the Law of Georgia on Mental Health, to determine in clear terms the measures to be taken in psychiatric establishments in the case of use of restraint against a patient receiving voluntary treatment and the procedures for reviewing the legal status of the patient and, in the case of their non-observance, appropriate sanctions;
- By amending the Law of Georgia on Mental Health, to determine a clear procedure for restricting a patient's rights by a physician for safety reasons. The procedure should be accompanied by legal safeguards (the following should be determined: the criteria allowed to restrict each right, the duration for which each right can be restricted and the procedure for appealing this decision); and
- By amending the Law of Georgia on Mental Health, to distinguish in express terms between informed consent for hospitalisation and informed consent for treatment.

Recommendations

To the Minister of Justice of Georgia:

- In accordance with Article 11 of the European Convention on Torture, Inhuman or Degrading Treatment or Punishment, to publish the report on the *ad hoc* visit of the delegation of the

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out to Georgia in May 2021;

- In 2022, by amending penitentiary establishments' statutes, to determine the maximum duration of prisoners' isolation and the duty to review isolation 14 days after the application of this measure and, thereafter, within the same time interval; to ensure that statutes of penitentiary establishments are amended to the effect of stipulating that placing prisoners in de-escalation rooms and solitary confinement (safe) cells can only be a measure of last resort. The use of these measures must be substantiated. It must be explained why it was deemed to be without any alternative. Furthermore, the statutes should determine that the use of de-escalation rooms and solitary confinement (safe) cells should be preceded by other, less intrusive measures such as personal supervision by a staff member and video monitoring;
- When placing a prisoner into a de-escalation room or a solitary (safe) cell, to ensure a joint participation of the multidisciplinary group of a psychologist, a psychiatrist, a social worker, a doctor and the penitentiary personnel;
- To ensure a safe environment in de-escalation rooms and solitary (safe) cells, including lining the walls and floors with soft material;
- To determine 24 hours as the maximum term for placing a prisoner in a de-escalation room; and, if placement in a de-escalation room or a solitary confinement (safe) cell for 24 hours proves to be insufficient, the prisoner should be immediately transferred to the psychiatric unit of medical establishment no. 18 or a psychiatric clinic in the civil sector for adequate psychiatric care;
- For preventing the ill-treatment of prisoners, through systemic inspections, the Monitoring Department of the Special Penitentiary Service should:
 - Ensure the examination of an appropriate response to the practice of placing prisoners with psychiatric problems in de-escalation rooms and solitary confinement (safe) cells for a long time, the use of handcuffs against them and the failure to provide them with psychiatric care in penitentiary establishments, and to ensure follow-up response to prevent ill-treatment; and
 - Ensure the examination of an appropriate response to the practice of placing prisoners in de-escalation rooms and solitary confinement (safe) cells without any legal ground and for punitive reasons; to ensure follow-up response to prevent ill-treatment in penitentiary establishments.
- By amending the statutes of the penitentiary establishments, to prohibit requesting prisoners to strip completely at once during full searches;
- The Monitoring Department of the Special Penitentiary Service, by conducting a systematic inspection, should detect and eliminate the practice of requesting accused and convicted persons to do so-called squats during full searches;
- For overcoming the problem of overcrowding in penitentiary establishments, to determine in the action plan the duty of increasing the number of regime officers working in the prisoners'

accommodation blocks so that there is at least one officer per 15 prisoners, responsible for order and security;

- For addressing the problem of the criminal underworld and its informal rule in penitentiary establishments, to develop a strategy for overcoming the criminal underworld and to submit the drafted document to the Office of the Public Defender of Georgia for comments;
- To determine by a secondary legislation act the duty of physicians of penitentiary establishments to establish consistency between the injuries found on an arrested person's body and the origin of those injuries based on the person's report of ill-treatment and to indicate in writing in the relevant document whether there was a suspicion of possible violence; furthermore, to determine the duty of the physician to notify the investigative body in the case of suspicion of violence in the above-mentioned cases, according to the investigative jurisdiction;
- To ensure training sessions on documenting and photographing injuries for all medical professionals that document injuries in accordance with Order no. 633 of the Minister of Justice of Georgia Approving the Procedure for Documenting Injuries of Accused and Convicted Persons Sustained as a Result of Alleged Torture and Other Cruel, Inhuman and Degrading Treatment;
- To amend the procedure approved by Order no. 633 of the Minister of Justice of Georgia of 30 November 2020 and to determine the duty of a physician to act in those cases where the accused or a convicted person does not consent to the medical examination upon admission to the penitentiary establishment or upon the removal from and return to the establishment, however, considering the visible bodily injuries and/or the prisoner's psycho-emotional state, the physician suspects violence. In such cases, the physician must describe the visible injuries and notify the Special Investigative Service;
- To amend the procedure approved by Order no. 633 of the Minister of Justice of Georgia of 30 November 2020 and to determine the duty of a physician to offer the prisoner to undergo a medical examination again no later than 24 hours in order to obtain consent for a medical examination in those cases where the accused or a convicted person does not consent to the medical examination upon admission to the penitentiary establishment or upon the removal from and return to the establishment and there are no visible bodily injuries;
- To amend the statutes of penitentiary establishments and determine the confidentiality of meetings between medical staff and prisoners and, in the case of third-party attendance, the duty to justify such attendance in writing;
- To ensure that vacancies in the medical sector are filled up as soon as possible;
- To at least double the number of nurses;
- Considering the current epidemiological situation in the country, by following all the measures of infection control, to ensure the timely implementation of the scheduled medical referral system;
- To ensure professional training sessions and courses for the establishments' medical personnel in terms of continuous medical education;

- Ensure the introduction of an electronic information system in the penitentiary system and the entry of health information into the Electronic Health Records (EHR) system, which will facilitate the systematisation of information;
- To develop and introduce a tool for periodic mental health screening of prisoners in penitentiary establishments;
- To ensure that the staff of penitentiary establishments are trained in the management of psychiatric crisis incidents;
- Taking into account the specifics of penitentiary establishments, to determine by secondary legislation the composition of a psychiatric multidisciplinary group, duties of each member of the multidisciplinary group and the procedure for organising and providing psychiatric care;
- To ensure that a multidisciplinary group assesses the needs of those psychiatric patients that do not need in-patient treatment; based on identified needs, to develop individual biopsychosocial intervention plans and provide appropriate assistance;
- To ensure confidential dispatch of complaints from establishments, to place confidential complaint envelopes so that they do not depend on a prison officer to receive them, thus leading to the identification of a prisoner. Furthermore, to ensure that logistical means are freely accessible to all prisoners (paper, pens and envelopes) and to allow prisoners to keep a certain number of envelopes in a cell;
- To ensure complaint boxes are placed in such a way that they do not fall into the area of video surveillance and the anonymity of the sender of the complaint is respected;
- Through a systematic inspection and appropriate response, the General Inspection of the Ministry of Justice should identify and investigate incidents of violation of the procedure for sending complaints from penitentiary establishments nos. 2, 3, 6 and 8, incidents of retaliation against prisoners because of complaints and ensure those responsible are adequately punished;
- To enable the Public Defender's Office to access and make comments about the concept of small establishments developed by the ministry;
- To abolish the so-called barrack type dormitories in penitentiary establishment no. 17;
- To ensure that each prisoner in penitentiary establishments is provided with 4 m² of living space;
- To examine and respond appropriately to the shortcomings related to the physical environment identified by the National Preventive Mechanism in monitoring reports on penitentiary establishments;
- To ensure the alternative possibility of rehabilitation activities with the maximum respect for infection control rules in all penitentiary establishments and introduce new and diverse rehabilitation activities. To increase opportunities for the involvement of convicted persons in rehabilitation activities;
- To allow prisoners in closed and special-risk prison establishments to spend more than one hour in the open air;
- To enable prisoners in establishments nos. 2 and 8 to have a stroll during the time determined by the daily schedule;

- To ensure balancing the number of social workers and psychologists in penitentiary establishments with the number of prisoners by increasing the number of social workers and psychologists;
- To continue retraining of those social workers who do not have a bachelor's degree, master's degree /equivalent to a master's degree or doctorate in the field of social work;
- For motivating prisoners to engage themselves in various rehabilitation activities, to start working on the introduction of a mechanism that will have a direct impact on reducing the remaining sentence or changing the type of sentence;
- In 2022, to ensure isolation of accused persons from convicted persons in establishments nos. 2 and 8, at least in cells separated from each other;
- All foreign prisoners should be provided with the services of an interpreter, if necessary, including providing information about services and regulations of the penitentiary establishments in a language they can understand;
- To take into account the linguistic, religious and cultural peculiarities when placing prisoners in cells; and
- To take all measures to improve the rights of female prisoners, including the use of computers, the confidentiality of telephone conversations and the installation of telephones in booths on the outer walls of residential blocks, carrying out the necessary repairs in the wards next to the showers of the medical unit and adapting the postoperative ward for the postoperative patients, as well as the possibility of accessing care personnel for the persons placed in the maternity and paediatric ward.

To the Minister of Internal Affairs of Georgia:

- To ensure proper documentation of arrested person's requests for notifying a family or contacting a lawyer at police stations through the maintenance of appropriate registers;
- To ensure the confidentiality of meetings between the arrested person and the lawyer at the police station, if necessary, by establishing appropriate infrastructure;
- In 2022, to increase the number of those temporary detention Isolators where a medical centre is operating;
- To ensure conducting training sessions for medical professionals employed in temporary detention Isolators about instructions on photo-recording injuries of arrested persons and storing the respective photographic material;
- To ensure that, in those temporary detention Isolators where medical centres operate, the reports drawn up by the ambulance doctors are kept with the physicians of temporary detention Isolators;
- In 2022, to equip gradually officers of territorial agencies with body cameras with improved technical capacities and to determine by secondary legislation their duty to record their communication with citizens as well as the procedure and terms of storing recordings;
- To determine by Order no. 1310 of the Minister of Internal Affairs of Georgia of 15 December 2005 on Approving Instructions on the Rules of Patrolling by the Office of the Patrol Police of the

Ministry of Internal Affairs of Georgia, the duty of video recording communications of patrolling inspectors with citizens. The duty of video recording should be introduced for the following instances: identifying a person; frisking and examining a person; carrying out special inspection and examination; restricting a person or a vehicle from moving or restricting actual possession of an item and arresting a person;

- To equip gradually police vehicles with an internal and external CCTV system;
- To determine by a normative act the duty of uninterrupted video recording of a person placed in a police vehicle with an internal and external CCTV system or, if there is no such system, with a body camera;
- To install CCTV systems everywhere in police departments, divisions and stations where an arrested person or a person willing to give a statement has to stay;
- To eliminate the practice of conducting questioning of arrested persons in the offices of a Chief of Police/Deputy Chief of Police and to ensure such meetings take place only in the areas that are equipped with a CCTV system;
- To ensure uninterrupted audio and video recording of questioning an arrested person in several police agencies in pilot mode;
- To amend Order no. 625 of the Minister of Internal Affairs of Georgia of 15 August 2014 and to add a column to the sample of a protocol approved by Annex 9 for entering the following information: the time of drawing the report; the decision on the injuries on an arrested person's body; the circumstances of the arrest; whether there was resistance to police; whether any force was used and in which manner;
- Through maintaining a register, to ensure documenting all persons brought to police departments, divisions and stations indicating their status, the time of entering and leaving administrative buildings;
- To introduce systematised, standardised and unified databases replacing the logbooks maintained in police agencies;
- Prior to the introduction of the electronic database, ensure the replacement of journals produced in the establishment in consultation with the National Mechanism for the Prevention of the Public Defender;
- Prior to the introduction of the electronic database, to ensure the replacement of logbooks maintained in psychiatric establishments in consultation with the National Preventive Mechanism of the Public Defender;
- To ensure that meetings (including remote meetings) between persons placed in a temporary detention isolator, and an investigator of an independent investigative body are conducted in a confidential environment;
- To ensure that remote court hearings in temporary detention isolators are held in a confidential environment, in the absence of Ministry of Internal Affairs staff;

- To ensure the solution of the problems regarding detention conditions and nutrition in temporary detention isolators described in the 2021 report of the National Preventive Mechanism and that the Public Defender is informed about the measures taken; and
- To eradicate the practice of returning patients receiving voluntary treatment to the hospital and those who have escaped from psychiatric hospitals.

To the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- To ensure that the ministry develops and implements regulations on identifying, documenting and notifying independent investigative authorities about incidents involving the acts referred to in Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities (torture or cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse);
- To ensure that the ministry develops and implements the strategy for preventing and responding to inter-patient conflicts, incorporating the duty to document the incidents of violence in a special logbook as well as the duty to provide relevant psychological assistance to victims of violence;
- To ensure that the ministry, through monitoring conducted in psychiatric establishments, identifies and prevents incidents involving violence against patients by staff, including forcible administration of injections and medications against patients' will;
- To ensure that the ministry develops and implements detailed instructions on staff relations with patients in psychiatric establishments, incorporating the standards of protecting patients' rights and providing adequate psychiatric care;
- To ensure that the staff of psychiatric establishments undergo training, covering the following topics: multidisciplinary work, de-escalation techniques, patients' rights and standards of professional conduct, recovery-based approach and modern psychiatry, with particular emphasis on ensuring that the staff understand the significance of biopsychosocial model of psychiatric care and develops the skill-set necessary for its practical implementation;
- To examine and eliminate the practice of long-term separation of patients from other patients at the Academician B. Naneishvili National Centre for Mental Health and the Batumi Medical Centre Ltd.;
- To develop and introduce binding internal guidelines for psychiatric establishments on crisis prevention and management to minimise risks of escalating situations into crises so that it is not necessary to resort to extreme measures in psychiatric establishments;
- To examine, through monitoring the psychiatric establishments, the legality and justification of restraint methods as well as the revision of the status of formally voluntary patients after the use of restraint methods;
- To update the instructions on the rules and procedures for the use of methods of physical restraint through consultation with the Public Defender's Office and organisations working on the rights of persons with disabilities;

- To examine the cases of involuntary hospitalisation of patients receiving formal voluntary psychiatric care and take all necessary measures for the immediate discharge of patients from the hospital concerning whom there is no legal basis for applying the procedure of involuntary psychiatric care;
- For emergency medical crews sent to respond to reports of psychiatric incidents received from the Public Safety Management Centre (112) of the Ministry of Internal Affairs, to develop detailed instructions on persuading a patient for psychiatric care, details of the need for involuntary placement in a psychiatric hospital and explaining patients' rights;
- To develop and approve, by an order of the minister, a unified form of consent for placement in a psychiatric inpatient facility, providing complete, accurate and detailed information on psychiatric care and patients' rights in a comprehensible manner; furthermore, the order should determine the duty of a psychiatric establishment to provide a patient with a copy of the informed consent and information on to whom the patient should apply if he/she does not want to stay in the inpatient facility;
- To amend the minister's order¹⁴⁴ to the effect of rendering it obligatory – at each stage of starting, continuing and changing a patient's course of treatment – to fill out the questionnaire (no. IV-300-12/A) approved by Order no. 108/N;
- To develop and approve, by an order of the minister, the duty of a psychiatric establishment to provide a patient with oral and written information about the establishment's regulations, patient rights and inpatient policies, upon his/her placement in an inpatient facility and, later, regularly in a language that the patient understands;
- To develop and approve by an order of the minister mandatory internal and external procedures for lodging applications/complaints in psychiatric establishments that are accessible, simple and confidential;
- In accordance with the Law of Georgia on Mental Health and in full compliance with the epidemiological requirements, to ensure that patients can leave the hospital for a short period without being discharged from the hospital, taking into account the patient's mental condition;
- To take all measures to ensure the systematic monitoring of the compatibility of conditions in psychiatric establishments with the standards established by regulations on issuing a licence for medical activities and a permit for an inpatient facility;
- To take all measures, including allocation of financial resources, to eliminate the problems in psychiatric establishments in terms of a safe and therapeutic environment indicated in the 2021 report of the National Preventive Mechanism;
- To study whether patients are provided with information about the treatment regularly and in a language understandable to them;
- To promptly eliminate the problem of supply of the medicine Cyclozolol, so that psychiatric establishments can use it to manage side effects;

¹⁴⁴ Order no. 87/N of the Minister of Labour, Health and Social Security of Georgia of 20 March 2007 on Approving the Procedure for Admission to Psychiatric In-Patient Facility.

- To provide training for psychiatric staff so that they can identify the side effects of Clozapine that can be fatal;
- To instruct the relevant service to regularly check medical cards in psychiatric establishments so that inpatient medical cards are manufactured in accordance with the requirements¹⁴⁵ of the country;
- To amend the mental health programme to make the psychosocial rehabilitation component available to patients on short-term treatment as well;
- To collaborate with psychiatric establishments to ensure the introduction of psychosocial rehabilitation programmes for beneficiaries, which will be focused on rehabilitation and will facilitate the individual's independent life and involvement in all spheres of public life;
- To ensure that the role of social workers employed in establishments is enhanced so that social workers have a responsibility to find community-based programmes and introduce them to patients;
- Revise the existing funding model for somatic health care to ensure that patients admitted to a psychiatric hospital are fully and promptly provided with dental care;
- For managing side-effects of medicines, to ensure clinical and laboratory dynamic evaluation and control of agranulocytosis, metabolism and, particularly, the risk of developing hyperglycaemia and also leukocyte control for managing side effects of medicines;
- To provide screening examinations for patients admitted to the establishment
- To provide counselling by the therapist to all patients upon admission into the establishment;
- To study the financial situation of psychiatric establishments and to ensure through cooperation and support of psychiatric establishments:
 - Increase in the number of personnel working day and night in the inpatient departments of psychiatric establishments;
 - Increase in the salaries of the employees of the psychiatric establishments and provide them with insurance;
 - Establishing therapeutic areas equipped accordingly for specialists working in psychosocial fields in psychiatric establishments; and
 - Ensuring catering for employees working 24-hour shifts in establishments.
- To facilitate the elaboration of professional development programmes for psychiatric establishments, including the introduction of and access to qualified training programmes.

¹⁴⁵ The Rules on Maintaining Medical Documentation in Medical Establishments approved by Order no. 108/N of the Minister of Labour, Health Care and Social Affairs of Georgia of 19 March 2009.

Recommendation to the Minister of Justice and the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia

- To elaborate, through mutual cooperation, the plan for the full integration of the penitentiary health care into the system of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

3. Right to Liberty and Security

3.1. Introduction

This chapter reviews the following challenges in terms of violations of the right to liberty and security of a person during the reporting period: incidents of arresting persons in violation of the statutory requirements, problems regarding the application and appeal of preventive measures, and the most serious shortcomings of the mechanisms for early release of prisoners.

It should be pointed out that, during the reporting period, along with issues unresolved for years, new challenges emerged as a trend, namely, the flawed use of extradition terms against foreigners and the practice of summoning former convicted persons to the police.

It is noteworthy that the recommendations issued by the Public Defender over the years are still unfulfilled. The Public Defender of Georgia made two recommendations and four parliamentary proposals in the chapter on freedom and security in the 2020 Parliamentary Report. Unfortunately, none of the proposals or recommendations has been fulfilled. The amendment did not affect the Administrative Offences Code of Georgia in terms of introducing the obligation to review the legality of administrative arrests for the court hearing the administrative case. The timeframes for applying to a court for parole and exercising the right to pardon by the President of Georgia have not been reduced. Unfortunately, the use of the so-called distancing¹⁴⁶ and its legislative regulation remained problematic. The problem that the use of this mechanism is not governed by legislation¹⁴⁷ gives police officers a wide discretion to act.¹⁴⁸

Two recommendations given to the Minister of Internal Affairs of Georgia are also unfulfilled. In particular, the law does not stipulate the obligation of law-enforcement officers participating in a special operation to use body cameras and the rules for using a body camera during a special operation.

3.2. Arrests made in violation of statutory requirements

During the reporting period, the Public Defender's Office, similar to the previous year, again detected cases where witnesses were arrested in violation of the law. Unfortunately, the practice of forcibly transferring persons who are going to be charged to police stations continues. The police question them as witnesses, and after that, they are formally charged and arrested. It is identified in the cases examined by the Public Defender that, when taken as witnesses to the police station, individuals are deprived of their personal belongings and are not allowed to move freely or leave the building. Consequently, these persons are in actual police custody, although they are unable to enjoy the rights of an accused person because they have not yet been formally charged.

¹⁴⁶ This mechanism implies the instruction of a police officer given to a person to leave a certain place for a certain period of time and prohibit him/her from entering a specific area.

¹⁴⁷ Under the Law of Georgia on Police, Article 25, "a police officer is entitled to require a person to leave a certain place for a specified period of time and prohibit him or her from entering a particular area if it is necessary to avoid danger. This restriction may be extended until the threat is eliminated." Although not officially provided in this article, this article or section does not cite its references or sources. However, even in this case, it will be necessary to regulate this issue in detail in the following normative act and to state clearly the grounds and procedures.

¹⁴⁸ The 2020 Parliamentary Report of the Public Defender of Georgia, p. 81.

In the context of incidents of arrests affected in violation of the law, it is also noteworthy that a number of incidents related to arrests made in administrative proceedings were examined during the reporting period. For example, in the case of four persons arrested on 30 October 2021, the Public Defender's Office found that the maximum statutory 48-hour arrest period for all four arrested persons had expired at the time the Zugdidi District Court began hearing the case.¹⁴⁹ Nevertheless, the arrested persons were not released and the court did not find that the arrested term had been violated.

3.3. Unjustified restriction of the right to freedom of movement

During the reporting period, the Public Defender's Office examined a case in which individuals were restricted from exercising their right to freedom of movement due to misinterpretation of the criminal procedure law and seizure of passports as a result of a search. In particular, as a result of the search, the passports of an Israeli citizen and his wife, a Belarusian citizen, were seized, among other items. This was done despite the fact that there had been no criminal investigation pending into possible forgery of passports or any similar act.

It should be noted that the persons concerned were not accused or prosecuted. Therefore, the rule established by the Criminal Procedure Code regarding the suspension of a passport, a neutral travel document, could not have been applied to them.¹⁵⁰ After the communication sent by the Public Defender's Office, the passports seized as a result of the search were returned to the persons two months later.

It is also noteworthy that, similar to the previous years,¹⁵¹ according to some applications lodged with the Public Defender, there still are incidents of unjustified prohibition of entry and exit for certain citizens by the employees of the Ministry of Internal Affairs of Georgia. For example, on 20 December 2021, law-enforcement officers did not allow a citizen to cross the state border of Georgia without the grounds determined for this restriction by the legislation of Georgia. It should be noted that, during the attempt to cross the state border of Georgia, on 20 December 2021, the criminal prosecution against the applicant had not started and they had not been restricted in their right to cross the state border of Georgia.

In another case, it was established that a citizen, according to the Ministry of Internal Affairs of Georgia, was not allowed to travel to Poland on 24 May 2021, despite the fact that they had not been prosecuted and their passport had not been suspended. It is noteworthy that in this case, as a result of multiple communications¹⁵² by the Public Defender's Office with the Ministry of Internal Affairs, an inspection was

¹⁴⁹ In particular, the persons were arrested on 30 October 2021, between the hours of 10:25 a.m.-11:25 a.m. The case-files were presented before the court on 1 November 2021, at 10:15 a.m. By 11:25 a.m. on 1 November 2021, the maximum 48-hour period of their arrest had expired. However, the arrested persons were not released. They were presented to the judge and the court hearings started on 1 November 2021 at 12:13 p.m., 02:13 p.m., 03:30 p.m. and 15:42 p.m. respectively.

¹⁵⁰ The Criminal Procedure Code of Georgia, Articles 163-165.

¹⁵¹ The 2019 Parliamentary Report of the Public Defender of Georgia, p. 102; The 2018 Parliamentary Report of the Public Defender of Georgia, p. 76.

¹⁵² Letters of the Office of the Public Defender of Georgia: Letter no. 15-8/8829, dated 14 September 2021; Letter no. 15-8/9953, dated 20 October 2021; Letter no. 15-8/200, dated 6 January 2022 and Letter no. 15-8/1330, dated 2 February 2022.

conducted by the General Inspection, during which a violation of civil rights was established, and the investigator was disciplined.¹⁵³

3.4. The practice of appealing a decision on the application/change of preventive measures

In the cases examined by the Public Defender, it was revealed that the practice of courts of general jurisdiction violates human rights when it comes to the consideration of appeals against the decisions concerning the application or change of preventive measures. In particular, it is established from the examined cases¹⁵⁴ that the decisions regarding the application or change of preventive measures adopted at the trial stage of proceedings are appealed in the Court of Appeals not within 48 hours¹⁵⁵ but after the termination of the consideration of the merits of the case, along with the sentence. In the opinion of the Public Defender, such a practice makes it impossible to appeal against the decision on the preventive measure, since the preventive measure imposed on a person is automatically terminated when a judgment is adopted on the case after the end of the trial. Accordingly, the practice of the court considering the legality of the application of a preventive measure after the measure is not valid anymore is meaningless.

In addition to the above, during the reporting period, there was also a case when the Ozurgeti District Court considered extending detention as a preventive measure against a person without having provided information about the hearing to the parties and, consequently, extended the detention in the absence of the parties. It should be noted that the decision of the judge to extend the detention in the absence of the parties contradicts the criminal procedure law.¹⁵⁶ With this in mind, the Public Defender addressed an Independent Inspector with a request to study the issue. The Inspector's Office upheld the request of the Public Defender's Office and identified disciplinary misconduct under the Organic Law on Courts of General Jurisdiction, namely, the actions of a judge that do not correspond to the high status of a judge. Due to the fact that the judge concerned was retired from the position of a judge due to reaching the age of sixty-five, the disciplinary proceedings were terminated.¹⁵⁷

3.5. The case of Ivane Merabishvili

In the Parliamentary Reports of the past years, the Public Defender informed the public about the progress of execution of the judgment made by the Grand Chamber of the European Court of Human Rights in the case of Ivane Merabishvili.¹⁵⁸ In 2021, the Public Defender's Office continued to review the

¹⁵³ Letters of the Ministry of Internal Affairs of Georgia: Letter no. MIA 8 22 00220393, dated 27 January 2022 and Letter no. MIA 7 22 00330859, dated 8 February 2022.

¹⁵⁴ Such judgments were adopted in the cases of accused S.Q., accused N. M., as well as in nine cases considered by the Tbilisi Court of Appeals.

¹⁵⁵ Under the Criminal Procedure Code of Georgia, Article 207.1, "The decision on the application, change or revocation of the preventive measure may be appealed once, within 48 hours after its adoption, to the Investigative Panel of the Court of Appeals by the prosecutor, the accused and/or his/her lawyer. An appeal shall be lodged with the court that adopted the decision, which shall immediately send that appeal and the case-files to the competent court according to the jurisdiction. An appeal shall not suspend the execution of the judgment."

¹⁵⁶ The Criminal Procedure Code of Georgia, Article 206.3.

¹⁵⁷ Letter no. 125-69-03 of the Independent Inspector's Service, dated 25 February 2022.

¹⁵⁸ *Merabishvili v. Georgia*, application no. 72508/13, judgment of the Grand Chamber of the European Court of Human Rights of 28 November 2017.

renewed investigation case-files on the possible abuse of office committed during the removal of Ivane Merabishvili from his cell.

The Public Defender's Office, on the basis of direct access to and study of the case files, submitted another communication to the Committee of Ministers of the Council of Europe, assessing the effectiveness of individual and general measures taken by the state to execute the judgment of the European Court. According to the communication, the investigation into removal of Merabishvili from his cell was carried out with significant delays. The Public Defender pointed out the lack of timely questioning of key witnesses, lack of identification and improper involvement of the victim in the investigation. According to the Public Defender, due to the incomplete and delayed nature of the renewed investigation, the obligation undertaken by Georgia before the Committee of Ministers cannot be considered fulfilled.

3.6. Shortcomings concerning detention pending extradition

During the reporting period, the Public Defender examined several cases related to the legality of the use of detention pending extradition.¹⁵⁹ The examination of the cases revealed that the examination of the merits of extradition, in most cases, begins only after the convicted person subject to extradition is released from a penitentiary establishment. Thus, according to the current practice, if a foreign citizen is placed in a Georgian penitentiary establishment and the prosecutor's office of Georgia receives a request from a foreign country for the extradition of this person, the prosecutor's office of Georgia waits until the person serves fully his sentence and only then begins the extradition proceedings. In the course of the proceedings, the prosecution motions for the use of additional detention against the person, which is upheld by the courts of general jurisdiction. This leads to additional detention since, if the prosecution had immediately instituted extradition proceedings, it would not have been necessary to re-arrest the person after the release, as the issue of extradition would have been examined prior to the release from prison.

In order to resolve the above-mentioned problem, on 7 December 2021, the Public Defender addressed a legislative proposal to the Parliament of Georgia. In case of accepting the proposal by the Parliament of Georgia, it will be inadmissible to use and/or extend detention pending extradition in those cases, where after the identification of sufficient grounds for extradition proceedings against the person, he/she has been detained for nine months in total in relation to a criminal case pending against him/her, including with regard to the crimes committed on the territory of Georgia.¹⁶⁰

3.7. Prisoner release mechanisms

During 2021, Similar to the previous years, the practice of conditional early release of convicted persons and commutation of unserved part of the sentence with a lesser penalty was still problematic as was the legal framework governing these issues. The current practice and legal framework do not establish clear basis to predict who has the opportunity to enjoy this legislative benefit. It is completely unclear for prisoners who and in what circumstances, based on which formal or substantive grounds early release is

¹⁵⁹ In 2020-2021, the Public Defender examined the applications lodged by lawyers, M. Z. and I. K. concerning the legality of detention pending extradition applied against foreign citizens, I. O., B. Ch., A. I. and T. E.

¹⁶⁰ Proposal no. 15-2/11520 of the Public Defender of Georgia of 7 December 2021.

granted or refused. From our many years of observation, it is clear that the practical enforcement of legislative regulations takes place arbitrarily and it leads to the daily annoyance and particular dissatisfaction of prisoners.

On the positive side, during the reporting year, the Minister of Justice implemented recommendation no. 15-10/9226's of the Public Defender of 28 September 2021, which was aimed at eliminating established illegal practices. According to the established practice, if a convicted person had appealed the decision of the local council in court, his/her application would no longer be reviewed periodically by the local councils until the end of the process. The reason for this was the fact that the personal files of the convicted person, which were sent to the court, were no longer available to the council.¹⁶¹ Consequently, convicted persons had to choose between two rights guaranteed by law – either to appeal against a negative decision of the council on conditional early release or commutation of unserved sentence to a lesser penalty or to withdraw the appeal and take advantage of the mechanism of conditional early release or commutation of unserved sentence to a lesser penalty, again within the time limit established by law. The Ministry of Justice responded appropriately to eliminate the illegal practice and gave specific instructions to all penitentiary establishments.

It should be pointed out that the Public Defender's Office examined the 1,777 decisions adopted by the local councils on conditional early release and commutation of unserved part of the sentence with a lesser penalty in 2021 in order to provide a qualitative assessment of the parole mechanism.

Unfortunately, during the reporting period, the problem of unjustified and inconsistent decisions in cases with identical factual circumstances was revealed again.¹⁶² The analysis of local councils' decisions reveals that the practice has not changed and, in many cases, councils still show inconsistencies in the case review process. It remains unclear why local councils adopt different decisions in the cases with identical factual circumstances, as the reasoning part of such decisions is stereotypical and formulaic and does not allow foreseeing as to why the local council made a positive decision in one case and a negative decision in another. For example, we review the decision made by the local council regarding the conditional early release of a person convicted in the case of Luka Siradze.¹⁶³ This case is similar to many other decisions. The local council decided to release the convicted person on parole at the material time when the convicted person had had almost half of her three-year sentence unserved - one year and four months; she did not have the consent of the victim party and did not plead guilty to the charges. In contrast, the Public Defender's Office is aware of a number of other decisions in which a convicted person was refused the conditional early release on the grounds that that person had not pleaded guilty as charged.

The examination of the cases reveals that, when it comes to providing reasoning for negative decisions, the local councils indicate the criteria in a formulaic manner, especially the gravity and nature of the crime. The reasoning of the decision does not include any discussion on the process of re-socialisation of the

¹⁶¹ The statement of the Public Defender of Georgia, dated 02.02.2022, is available at: < <https://bit.ly/3sF0e47> > [accessed 04.03.2022].

¹⁶² The 2021 Report on the Activities of the Department of Criminal Justice of the Office of the Public Defender of Georgia.

¹⁶³ The 2020 Parliamentary Report of the Public Defender of Georgia, pp. 63-64.

convicted person and the progress of improvement in an offender's behaviour. It is also noteworthy that the main criterion for determining a negative decision remains the nature and seriousness of the crime committed.

The reference by local councils to the involvement of a prisoner in social activities when serving the sentence is also problematic. As a rule, the reasoning for a negative decision is a stereotypical statement that the prisoner "did not participate in social activities". This is done against the background of sporadic and a small number of psycho-rehabilitation, educational, cultural, and sporting activities being available in penitentiary establishments. It is also noteworthy that the activities are not tailored to the individual needs of convicted persons.¹⁶⁴

Unfortunately, the problem of the lack of reasoning becomes even more acute in those cases where a positive decision was reached. In adopting a positive decision, the local council does not provide reasoning and therefore the criteria it used in a particular case, why it did not pay attention to the many negative characteristics and what became the basis for a positive decision remain unknown.

When analysing negative and positive decisions, it becomes obvious that different decisions are reached in the same or similar factual circumstances. It is also noteworthy that local councils, in many cases, do not pay proper attention to incentives or disciplinary punishments of the convicted person, do not discuss the chronology of his/her behaviour, and do not assess how much the behaviour of the prisoner changed after the disciplinary sanction.

It should be noted that the decisions of local councils reviewing female convicted persons and juveniles are much more informative. In particular, the decisions provide a social worker's report on the convicted person's family and the environment in which the convicted person is to return in the event of his or her release.

In addition to pointing out the lack of reasoning for negative and positive decisions, it is essential to research the root causes and take appropriate action. After summarising and analysing the statistical data provided by the Local Council Service Department, it can be said that each member of the council has to do quite a time-consuming job. Another problem is that the members of the local councils are not paid when paying full attention to the characterisation of each convicted person, evaluating them according to the criteria established by law and then collectively discussing each characterisation in the decision-making process. Each council member carries out this responsible mission in parallel to some other activities.

As regards the statistics on the use of the parole mechanism by years, it should be noted that the statistics have unfortunately deteriorated. In particular, 1,279 prisoners were released on parole in 2019 and 830 in 2020.¹⁶⁵ This negative trend continued in 2021 – only 829 prisoners were released on parole.

¹⁶⁴ The 2019 Report of the National Preventive Mechanism, p. 49 and the 2018 Report of the National Preventive Mechanism, p. 35.

¹⁶⁵ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, p. 85-86.

Similarly, compared to 2020, the statistics of commutation of unserved part of the sentence with a lesser penalty has also deteriorated. In particular, in 2020, 545 convicted persons had their sentence commuted,¹⁶⁶ and in 2021 - 440 convicted persons.¹⁶⁷ However, it should be noted that, compared to 2019, the data increased in 2020-2021; in 2019, this mechanism was applied to 236 convicted persons.¹⁶⁸

Based on the above-mentioned, the Public Defender believes that it is imperative to improve the legislative framework and pay attention to more criteria that, among others, would address the convicted person's future plans, prospects and other matters in the process of conditional early release or commutation of unserved sentence with a lesser penalty.¹⁶⁹ It is important that the councils' negative decisions should no more stem from the nature and seriousness of the crime committed by an offender, especially in those cases where the offender was characterised positively while serving the sentence.

The effective functioning of the sentence review mechanism is particularly important for convicted persons sentenced to life imprisonment. Deprivation of liberty, without any hope of regaining liberty, is incompatible with human dignity and contrary to Article 3 of the European Convention on Human Rights.¹⁷⁰ Serving a minimum of 20 years of imprisonment by a prisoner is one of the prerequisites for reviewing the sentences of persons sentenced to life imprisonment and pardoning them by the President.¹⁷¹ The Public Defender considers that, for a person sentenced to life imprisonment, it is important to reduce the time limits for applying to a court for parole as well as for exercising the right to pardon by the President. In this regard, the Public Defender addressed proposals to the President of Georgia and the Parliament of Georgia in the 2020 Parliamentary Report. However, her proposals were not accepted.¹⁷²

It should be noted that, with the hope of returning persons sentenced to life imprisonment to society, it is extremely important to develop a release plan, which should be defined as soon as the judgment is adopted and subsequently reviewed regularly.¹⁷³ It is commendable that, since 2021, the successful completion of a training programme for parole and the conclusion of a summary report based on it have been determined as a prerequisite for a court decision to review a sentence.¹⁷⁴ It should also be noted that, in 2021, the introduction of the programme for the preparation and release of a person sentenced

¹⁶⁶ *Idem*.

¹⁶⁷ Letter no. 5083/01 of the Official Support Department of the Local Councils of the Special Penitentiary Service, dated 10 January 2022.

¹⁶⁸ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, p. 85-86.

¹⁶⁹ The Public Defender of Georgia, the Practice of Conditional Early Release and Commutation of Unserved Sentence with a Lesser Penalty in Georgia, available at: < <http://bit.ly/37NBXy5> > [accessed 04.03.2022].

¹⁷⁰ *Vinter and others v. The United Kingdom*, applications nos. 66069/09, 130/10 and 3896/10, judgment of the Grand Chamber of the European Court of Human Rights of 9 July 2013, available at: < <https://bit.ly/3nTum91> > [accessed 12.11.21].

¹⁷¹ The Criminal Procedure Code of Georgia, Article 72¹.1 and Order no. 556 of the President of Georgia of 26 November 2019 on Approving the Procedure for Pardon.

¹⁷² The 2020 Parliamentary Report of the Public Defender of Georgia, p. 112.

¹⁷³ European Prison Rules, Rule 103.8.

¹⁷⁴ The Criminal Procedure Code of Georgia, Article 72¹.1 and Article 73.7.

to life imprisonment in penitentiary establishments began.¹⁷⁵ However, unfortunately, the programme does not have a regime tailored to individual needs, which might affect its effectiveness.¹⁷⁶

3.8. Summoning former convicted persons to police

Another challenge was identified during the reporting period, namely, the flawed practice of summoning former convicted persons to the police. This issue is regulated by a joint confidential order of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia and the Minister of Internal Affairs of Georgia.¹⁷⁷ The Ministry of Internal Affairs of Georgia failed to inform the Public Defender of Georgia whether interviews in police stations with prisoners released from penitentiary establishments are voluntary, or whether they can be held responsible in any way for refusing to appear before the police or participate in an interview.

In the opinion of the Public Defender, it is important to declassify this order so that citizens are aware of their duties and possible responsibility in case of the failure to appear before the police. In this regard, it is noteworthy that classifying information that could potentially restrict human rights and violate the legal interests of an individual is prohibited.¹⁷⁸ Due to the confidentiality of this document and the failure to inform persons of their rights and obligations, the sanctioning of a particular person may in the future pose a problem in terms of the principle of legality.

Proposals

To the Parliament of Georgia:

- To amend the Administrative Offences Code of Georgia to the effect of determining the duty of a trial court to examine the legality of administrative arrest;
- Through amending the Criminal Code of Georgia and the Criminal Procedure Code of Georgia, to reduce by several years the term of motioning before the court parole by a convicted person serving a life sentence;
- To amend the Law of Georgia on International Cooperation in Criminal Law to the effect of adding paragraph 12¹.1 to Article 30, prohibiting the application and/or extension of detention pending extradition in those cases where, after identification of sufficient grounds for extradition proceedings against the person, he/she has been detained for nine months in total in relation to

¹⁷⁵ According to the Special Penitentiary Service, there are 43 prisoners involved in the programme: two prisoners in penitentiary establishment no. 5, nine prisoners in penitentiary establishment no. 6, 27 prisoners in penitentiary establishment no. 8, one prisoner in penitentiary establishment no. 10, and four prisoners in penitentiary establishment no. 15. As regards individual sentence planning, since January 2021 until present, 37 individual sentence plans have been developed for convicted persons serving a life sentence (Letter no. 276853/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia, dated 18 November 2021).

¹⁷⁶ For more details, see the 2021 Report of the National Preventive Mechanism.

¹⁷⁷ Namely, Order no. 02S-N010 of the Minister of Corrections, Legal Aid Affairs and Probation of Georgia and the Minister of Internal Affairs of Georgia, adopted on 1 July 2009 (Letter no. MIA 1 21 01125329 of the Ministry of Internal Affairs of Georgia, dated 5 May 2021)

¹⁷⁸ The Law of Georgia on State Secret, Article 7.1.

a criminal case pending against him/her, including in relation to crimes committed on the territory of Georgia;

- To amend the Criminal Procedure Code of Georgia, to the effect of determining in express terms the duty of the court of appeals to examine immediately the legality of the use of a preventive measure in the case of the appeal of a decision on the application or change of a preventive measure at the trial stage; and
- To amend the Imprisonment Code to the effect of determining the mandatory criteria for holding an oral hearing by a local council. At the same time, to maintain the council's authority to hold oral hearings as an additional measure, if needed.

To the President of Georgia:

- To amend Order no. 556 of the President of Georgia of 26 November 2019 on Approving the Procedure for Pardon with the effect of determining 15 years of serving a sentence as the eligibility term for parole for convicted persons serving a life sentence.

Recommendations

To the Minister of Internal Affairs of Georgia:

- In 2022, to determine by a normative act the duty of law-enforcement officers taking part in special operations to use body cameras as well as the rules for the use of body cameras during special operations;
- In 2022, to equip law-enforcement officers taking part in special operations with body cameras; and
- To declassify and make public joint classified Order no. 02S-N010 of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia and the Minister of Internal Affairs of Georgia, adopted on 1 July 2009.

To the Minister of Justice of Georgia:

- To amend Order no. 320 of the Minister of Justice of Georgia of 7 August 2018 and to add further elements to the established assessment criteria that address the convicted person's future plans, prospects and other matters; and
- To declassify and make public joint classified Order no. 02S-N010 of the Minister of Corrections, Probation and Legal Aid Affairs of Georgia and the Minister of Internal Affairs of Georgia, adopted on 1 July 2009.

4. Right to a Fair Trial

4.1. Introduction

The level of the realization of the right to a fair trial deteriorated during the reporting year, traditionally, like prior years. The problems in the justice system at the institutional as well as the legislative level necessitate an extensive and fundamental reform. In a rule-of-law state, fair trial, due to its instrumental nature, is the most effective means for the protection of human rights and restoration of a breached right. Unfortunately, the development of institutionally well-functioning and independent judiciary remains among the principal challenges of the country.

The political agreement – A Way Ahead for Georgia (hereinafter also April 19 Agreement) brokered by the President of the European Council was signed to defuse political crisis following 2021 Local Elections in Georgia.¹⁷⁹ The Agreement provided a historical opportunity for the formation of deep and institutionally well-organized safeguards for fair trial in the country. Under this agreement the ruling political force undertook to carry out a fundamental reform within the judiciary; until the reform would be completed, the state had to suspend the process of staffing the Supreme Court; which, unfortunately, did not take place, despite the calls from the Public Defender¹⁸⁰ and OSCE/ODIHR¹⁸¹.

Since the state did not suspend the staffing of the Supreme Court, the PDO did not take part in the process of public hearing of candidates.¹⁸² The process of appointments was assessed negatively by international partners. It is worth noting that the EU Foreign Office assessed the continuation of the appointment of the Supreme Court judges as a breach of the April 19 Agreement that further undermined judicial independence and compromised public trust in the Georgian justice system.¹⁸³

The fast-track initiation and passage of the Amendments to the Organic Law of Georgia On Common Courts at the end of 2021 can be assessed as another step backwards in the justice system; these amendments have considerably weakened legal safeguards for judicial independence.

In the 2020 Parliamentary Report the Public Defender of Georgia put forward 12 proposals and 7 recommendations in relation to the right to a fair trial. Like prior years, the indicator of the fulfillment of recommendations is unsatisfactory. Unfortunately, the Parliament of Georgia did not consider any of the 12 proposals put forward by the Public Defender, as for the recommendations, just 3 recommendations are assessed as partially fulfilled.

Along with the Public Defender's recommendations/proposals, the Parliament of Georgia, unfortunately, also did not take into consideration the Public Defender's important proposals related to legislative amendments for the enforcement of the ECtHR judgement for the prevention of the provoking of crimes. Unfortunately, Georgia still has the Administrative Violations Code from the Soviet times that is not in line

¹⁷⁹ Available at < <https://bit.ly/34oNDc2> > [last viewed 06.03.2022].

¹⁸⁰ The Public Defender's May 19, 2021 statement, available at < <https://bit.ly/3sShmDy> > [last viewed 06.03.2022].

¹⁸¹ OSCE/ODIHR Report The Nomination and Appointment of Supreme Court Judges in Georgia, Fourth Report, available at < <https://bit.ly/3CrHMzI> >, 2021, August 23. [last viewed 06.03.2022].

¹⁸² The Public Defender's June 30, 2021 statement, available at < <https://bit.ly/3tDtual> > [last viewed 06.03.2022].

¹⁸³ The EU Foreign Office December 2, 2021 statement, available at < <https://bit.ly/373G6jM> > [last viewed 06.03.2022].

with constitutional standards. Furthermore, no tangible measures have been taken for the adoption of the new Administrative Violations Code during the reporting period. The Composition of the Plenum of the Supreme Court of Georgia, unfortunately, still includes chairs of the Appeals Court.¹⁸⁴ The Public Defender deems that their role in the composition of the Supreme Court Plenum is unclear, especially following the establishment of the High Council of Justice.¹⁸⁵

The COVID-19 pandemic continues to have an important impact on the degree of the realization of the right to fair trial. Unfortunately, the flaws indicated in the Special Report of the Public Defender concerning remote trials have been identified again, like prior years.¹⁸⁶ The problems were particularly relevant with respect to the inmates of penitentiary institutions. They complained about the inability of full-fledged participation in trials, since due to technical issues it was often impossible to follow or participate in trials.

The present Chapter particularly focuses on institutional challenges in the judiciary system – the process of staffing of the High Council of Justice, accountability, electronic case distribution system, problems in the area of judicial discipline, etc. Evidently, prompt and effective justice was a problem in 2021, as in prior years. Despite the appointment of the Supreme Court justices, problems with the expediency of cassation justice have regrettably persisted.

During the reporting period access to judgments, as well as the cases of restriction of communication with defence lawyers at penitentiary institutions remained a problem. Despite the decision of the Constitutional Court, obtaining neutral evidences remains a significant problem in the course of the administration of justice. Unfortunately, several criminal cases examined by us were conducted in violation of the principles of legality and adversariality.

Throughout 2021, the ECtHR rendered 3 decisions against Georgia¹⁸⁷ in the context of the right to a fair trial; of those, it established the breach of Article 6 of the ECHR in two¹⁸⁸ cases.

The Public Defender received 259 applications concerning the flaws in the administration of justice during 2021; of these, 100 applications related to the duration of the investigation of criminal cases.

4.2. Institutional problems within the judiciary

The formation and effective institutional functioning of the judiciary is one of the principal preconditions for a rule-of-law state. Independent and well functioning judiciary ensures democratic development of a

¹⁸⁴ The Organic Law of Georgia on Common Courts, Article 18.

¹⁸⁵ The Venice Commission shares this opinion as well – in the initial version of the draft law prepared as part of the third wave of the judiciary reform appeal court judges were not considered in the plenum, and this was considered positive by the Commission, the Venice Commission October 14, 2014 Opinion, available at: < <https://bit.ly/38G9VUQ> > [last viewed 30.03.2022].

¹⁸⁶ The Public Defender's Special Report on Remote Monitoring of Criminal Hearings, available at: < <https://bit.ly/3tANb4y> > [last viewed 06.03.2022].

¹⁸⁷ (1) ECtHR February 25, 2021 Decision №894/12 on the case Mchedlishvili v Georgia; (2) ECtHR March 18, 2021 Decision №42371/08 on the case Tortladze v Georgia; (3) ECtHR November 16, 2021 Decision №57542/12 on the case Kikabidze v Georgia.

¹⁸⁸ (1) ECtHR February 25, 2021 Decision №894/12 on the case Mchedlishvili v Georgia; (2) ECtHR November 16, 2021 Decision №57542/12 on the case Kikabidze v Georgia.

state that is bound by human rights and freedoms. Pursuant to the practice of the Constitutional Court of Georgia, the constitutional right to a fair trial applies within institutional boundaries prescribed by the Constitution¹⁸⁹, rather than abstractly, and it is closely linked to human rights.¹⁹⁰

Changes in the justice system known as various waves, unfortunately, failed to enhance the degree of independence of the judiciary and conversely, they further exacerbated the problems of internal independence of the judiciary. An influential group of judges within the judiciary, in agreement with the ruling political party, administers the judiciary authority under corporate influences. Pursuant to the research of the Association of Young Lawyers of Georgia (GYLA), following the „First Wave“ of the reform none of the changes were aimed at bolstering democratic processes within the judiciary. And ultimately, the changes have resulted in further strengthening of the existing influential group within the judiciary system.¹⁹¹

It has been evidenced multiple times over the past years that the judiciary was managed by an influential group of judges. For instance, on October 31, 2021, at 30th Conference of Judges, two members of the High Council of Justice¹⁹² resigned and they still have not spoken about the reasons for resignation. They had been elected for a 4-year term. Naturally, their decision raises suspicions concerning the independence of judicial members of the High Council of Justice and concerning that decisions on the appointment as a member of the Council or resignation are taken behind the closed door, by others. Furthermore, monitoring report produced by us over the past years has clearly showcased preliminary agreement of certain members of the Council in the process of the voting.¹⁹³ Parallel to this, over years, the transparency of the High Council of Justice has been steadily diminishing. The Council applies isolationist and closed approach in its decision making and this reinforces the suspicion that significant decisions are taken informally, by an influential group.

Considering the afore-mentioned, it is particularly worthy of mention that the ruling political force directly supports such activities of the High Council of Justice. As has been mentioned above, in December, 2021, amendments in the Organic Law of Georgia on Common Courts have considerably weakened the safeguards of independence of judges. According to the Public Defender, considering the that the constitutional obligation of the High Council of Justice is to protect the independence of individual judges,¹⁹⁴ the Council must have focused on a draft law that encroaches upon the independence of the judiciary. Nevertheless, the High Council of Justice did not make even a single announcement concerning

¹⁸⁹ The Constitutional Court of Georgia December 29, 2015 Decision №3/5/768,769,790,792 on the case A Group of MPs of Georgia (David Bakradze, Sergo Ratiani, Roland Akhalaia, Levan Bezhashvili et al, a total of 38 MPs) and citizens of Georgia Erasti Jakobia and Karine Sakhparonyan v the Parliament of Georgia, II Para 68.

¹⁹⁰ The Constitutional Court of Georgia November 10, 2009 Decision N1/3/421,422 on the case the Citizens of Georgia – Giorgi Kipiani and Avtandil Ungiadze v the Parliament of Georgia, II, Para.1.

¹⁹¹ „The Justice System Reform in Georgia, 2013-2021“, 1. Available at <<https://bit.ly/3vRsQD5>> [last viewed 25.02.2022].

¹⁹² Tamar Oniani, Tea Leonidze.

¹⁹³ Monitoring of the Selection of the Supreme Court of Georgia Judicial Candidates by the High Council of Georgia, 5-29.

¹⁹⁴ The Constitution of Georgia. Art. 64.

the draft law, nor has participated in the hearings. Therefore, a legitimate suspicion arises that the draft law had been pre agreed with an influential group of judges.¹⁹⁵

The monitoring of the judiciary system over the years shows that the High Council of Justice maintains influence over regular judges via court chairpersons who are appointed by the Council, based on its authority. It is by means of this vertical management that the High Council of Justice maintains influence over judges. Since 2017, the Public Defender has actively been indicating to the necessity of legislative amendment to achieve decentralization of decisions related to the selection of chairpersons.¹⁹⁶

Given that the April 19 Political Agreement is not fulfilled, as well as considering the corporate influences within the judiciary, another reform would not result in any tangible improvement. The developments during the reporting period have further highlighted the necessity of discussions around an opinion expressed by the Public Defender in the last year's Parliamentary Report about the need for a radical reform of the Judiciary.¹⁹⁷ Variable experience should particularly be mentioned, the matter was assessed positively by the ECtHR¹⁹⁸ and the Venice Commission.^{199 200}

4.2.1. Decision making at the High Council of Justice

The High Council of Justice is comprised of 15 members. Eight members of the Council are elected by the Conference of Judges, and five ones – by the Parliament of Georgia, and one is appointed by the President of Georgia, and the Chair of the Supreme Court is automatically a member of the High Council of Justice.²⁰¹ The High Council of Justice decides on some of the significant matters with 2/3 majority votes. Decisions on other matters are taken by a majority of the members present or by a majority of full membership of the Council.

Pursuant to the Organic Law of Georgia On Common Courts, the High Council of Justice is accountable before the Conference of Judges of Georgia.²⁰² As part of this accountability, the Chair of the High Council of Justice submits to the Conference of Judges a report about performance of the Council, which, in turn, is approved by the High Council of Justice based on a 2/3 majority of the full membership of the Council.

As has been mentioned above, the signs of corporativism can be identified in the administration of the judiciary, the members of the High Council of Justice are appointed, dismissed, their decisions are

¹⁹⁵ December 30, 2021 Statement of the Public Defender. Available at < <https://bit.ly/3Jb3Kt7> > last viewed 16.03.2022].

¹⁹⁶ The Public Defender's Parliamentary Report 2017, 68-69.

¹⁹⁷ The Public Defender of Georgia 2020 Parliamentary Report, 197.

¹⁹⁸ ECtHR February 9, 2021 Decision №15227/19 on the case XHOXHAI v. ALBANIA. P. 299.

¹⁹⁹ The Venice Commission December 12, 2016 Amicus Curiae Opinion №868/2016 for the Constitutional Court of Albania, available at: < <https://bit.ly/3vsxtab> > [last viewed 25.02.2022].

²⁰⁰ A fairly active discussion is led on similar matters in Georgia - (1) „Examination of the Conformity of Judges with the Position in Theoretical and Comparative Perspective”, available at: < <https://bit.ly/3h2xifY> > [last viewed 27.02.2022]. (2) “Judiciary Reforms in Transitional Democracy – The forms of Lustration and Vetting in the Judiciary”, available at < <https://bit.ly/3KL2Nij> > [last viewed 27.02.2022].

²⁰¹ The Organic Law of Georgia on Common Courts, Art. 47. 2.

²⁰² The Organic Law of Georgia on Common Courts, Art. 47. 1¹.

supported at the decision of the so-called influential group. Given such circumstances, it is particularly important to enhance the accountability of the judiciary. This was one of the principal and key topics of the April 19 Agreement of the political parties. Along with the PDO, OSCE/ODIHR has placed particular emphasis on the change of the balance of powers within the High Council of Justice.²⁰³

Pursuant to the Constitution of Georgia, the public is the source of authority and the government is limited by the human rights and freedoms in the course of making decisions. Therefore, it is important that individuals enjoying public legitimization are represented in the Council's decision making in a way as to make it impossible to detach them from the process and to make their support necessary in taking any decisions.

This can be achieved by changing the rule of decision making within the High Council of Justice. To ensure the constitutional concept of maintaining continuous public legitimization, it is important that the decision making by the Council is organized in a manner that even the theoretical possibility of disregarding the position of the members of the Council elected by the Legislature is precluded. Hence, it is important that the High Council of Judges decisions are taken with 2/3 majority on the condition that it is supported by the double majority of judicial and non-judicial members.

4.2.2. Staffing the High Council of Justice

Election of non-judicial members

From June, 2021, positions of 5 non-judicial members at the High Council of Justice have been vacant.²⁰⁴ Currently²⁰⁵ the Council is not fully staffed, non-judicial members who are appointed by the Parliament are not represented at the Council at all. The Parliament still has not elected 5 members of the HCJ; as a result, government branches are not fully represented at the High Council of Justice. Any constitutional body in a democratic rule-of-law state should possess the elements of public legitimization. Given that the High Council of Justice currently does not include members that have been elected by the Parliament, the Council is effectively beyond constitutional legitimization, respectively, it is crucial to start the procedures of election of non-judicial members as soon as possible.

Considering that the non-judicial members of the Council should be elected by the Parliament with the support of three fifths of the full membership, the decisions should be based on actual political consensus and the process should be maximally transparent.

The Public Defender responded to the obvious avoidance of the selection procedure of council members by the Parliament of Georgia and called on the Parliament to launch the process of staffing the Council with non-judicial members via wide public consensus.²⁰⁶

²⁰³ OSCE/ODIHR Fourth Report on the Nomination and Appointment of Supreme Court Judges in Georgia", available at < <https://bit.ly/3CrHMzI>, >2021, August 23. [last viewed 06.03.2022].

²⁰⁴ The term of a former member of the HCJ, Shota Kadagidze, expired on March 23, 2021, and in June 2021 powers also expired for: Nazi Janezashvili, Zaza Kharebava, Irma Gelashvili and Levan Gzirishvili.

²⁰⁵ March 31, 2022.

²⁰⁶ The statement of the Public Defender of Georgia, available at < <https://bit.ly/365enyD> > [last viewed 28.02.2022].

The staffing of the Council with judicial members

On October 31, 2021, on the day of the second round of local elections of Georgia, XXX Conference of the Judges of Georgia was held. The judges elected two new members of the HCJ of Georgia. The purpose of holding the Conference of Judges on this day was to take important decision in the absence of public attention; the mentioned decision ultimately strengthened the existing corporate environment at the Council. In the opinion of Western partners, this conference was a step backwards.²⁰⁷

It transpired from the agenda published on October 27 that, among other matters, the Conference also envisaged the election of new judiciary member/members of the High Council of Judges,²⁰⁸ although none of the judicial members of the HCJ had their powers expired by that time. It became known only on the Conference day that the High Council of Justice members Tamar Oniani and Tea Leonidze had filed personal applications to the Administrative Committee and requested early termination of the mandate of a member of the High Council of Justice. Tamar Oniani's mandate were set to expire in March 2022 and Tea Leonidze's - in October 2024;. The candidatures of Paata Silagadze and Giorgi Goginashvili, judges of the Tbilisi Court of Appeals were nominated for the vacancy of judicial members. No competition was held this time either, and candidates did not present their visions with respect to the situation, achievements and challenges in the justice system.

4.2.3. Judicial discipline

On December 31, 2021 the Parliament of Georgia adopted the amendments to the Organic Law of Georgia on Common Courts in a fast-track mode, without consultations with stakeholders. According to the amendments to the Law, the decision of the High Council of Justice on a disciplinary matter will be deemed taken in case during secrete voting it is supported by the majority of the full membership of the High Council of Justice. Prior to the amendment, decision was regarded taken in case it was supported by the 2/3 majority of the full membership of the High Council of Justice.²⁰⁹

The afore-mentioned amendment has resulted in the simplifying the mechanism of disciplining judges and it has an immediate effect on Article 25 of the Constitution and also jeopardizes the right to a fair trial protected under Article 31 of the Constitution. The High Council of Justice, contrary to the principle of the separation of powers, can take a decision on a disciplinary matter (only judicial members, without other members) via confidential judicial process that reduces democratic accountability and increases the risks of arbitrariness. Such regulation is hazardous to any fundamental right but especially to the right to a fair trial, which is an instrumental safeguard and a means for realization of all fundamental rights.

The Public Defender of Georgia responded to these amendments while the Parliament was holding hearings.²¹⁰ The Public Defender is of the opinion that bringing down the number of votes necesary for

²⁰⁷ (1) Statement available at < <https://bit.ly/35J8Cae> > [last viewed 28.02.2022]. (2) Statement available at < <https://bit.ly/3KvqCDA> > [last viewed 28.02.2022].

²⁰⁸ XXX Conference of the Judges of Georgia, October 27, 2021, The Supreme Court of Georgia website, , available at: < <https://bit.ly/3u2GSFK> >, updated: 01.11.2021.

²⁰⁹ The Organic Law of Georgia on Common Courts. Art. 50.3.

²¹⁰ The statement of the Public Defender of Georgia, December 30, 2021, available at:

adopting disciplinary measure against judges is contrary to the principle of the separation of powers and to the right to holding a public position stipulated under Article 25 of the Constitution.

The amendments to the law have also introduced additional grounds for disciplining judges. A judge will be subjected to disciplining if he/she publicly expresses opinion in violation of the principle of political neutrality.²¹¹ The Public Defender regards that setting forth such a nontransparent provision as the grounds for disciplining is contrary to legal security constitutional safeguard as well as the freedom of expression and it becomes particularly hazardous in the context of reduced legitimization of the Council's decisions and non-transparent procedures.

Based on non-transparent provisions that also leave space for future manipulations, the removal of judges from cases becomes extremely easy. The amendments also envisage four-fold increase of the timeframes of involuntary business assignments of judges, and cancel the prohibition of involuntary business assignment of a judge of an appeals court to a lower instance. Under the afore-mentioned amendments, an influential group of judges will effectively acquire new punishment levers against colleagues they deem unacceptable.

The Public Defender is of the opinion that the motivation of the Legislature to pass such amendments raises suspicion. The passage of the Law was preceded by the statement by an Administrative Committee of the Court criticizing Georgia's Western partners and calling on them to stay away from interfering in the internal affairs of a sovereign state.²¹² Some judges soon dissociated themselves from this statement.²¹³ According to the Public Defender, dissociation of specific judges from a stance of an influential group of the court served as the motivation for the afore-mentioned amendment that would make it considerably easier to intimidate such judges with potential sanctions.

4.2.4. Electronic distribution of cases

As in the previous year, the functioning of an electronic case distribution system in common courts remains a problem. Naturally, the introduction of an electronic case distribution system²¹⁴ is good, although the legal framework needs to be improved.

Pursuant to the Organic law of Georgia On Common Courts, the High Council of Justice has introduced an electronic software for random distribution of cases within common courts.²¹⁵ The cases throughout Georgia are to be distributed randomly, via an electronic software, at city/district, appeals and supreme

<<https://bit.ly/3Jb3Kt7>> [last viewed:14.03.2022].

²¹¹ The Organic Law of Georgia on Common Courts, Article 75¹ (a) (b.f).

²¹² Statement available at: < <https://bit.ly/3Hb5qB1> > [last viewed 28.02.2022].

²¹³ Statement available at: < <https://bit.ly/35mtP9y> > [last viewed 28.02.2022].

²¹⁴ The Electronic Case Distribution System in Georgia EMC - 2020.

²¹⁵ The High Council of Justice of Georgia May 1, 2017 Decision №1/56, available at: < <https://bit.ly/3aBAuLc> > [last viewed 17.03.2021].

courts. International and local organizations assessed this change as a positive step.²¹⁶ Although, despite this explicitly positive reform, deficiencies have been identified following practical application of the afore-mentioned method; it involves individual possibilities of influencing the composition of courts in exceptional cases, via bypassing the electronic distribution system; and it raises suspicions on the credibility of the process. The Public Defender of Georgia referred to these gaps in the previous year Parliamentary Report as well, although, unfortunately, the proposals Issued by the Public Defender were not acted upon.²¹⁷

At the decision of the High Council of Justice, the authority to determine the composition of a bench at first instance courts was granted to chairpersons of courts. It is interesting that under the original edition of the Council decision, the electronic case distribution system was to be used for determining the composition of panels. The Public Defender of Georgia put forward a similar recommendation to the High Council of Justice in the last year's Parliamentary Report.²¹⁸ The High Council of Justice thinks that carrying out the Public Defender's recommendation will result in the procrastination of cases, affecting the prompt and effective administration of justice.²¹⁹

For reviewing the cases by panels at the Appeals and Supreme courts, the electronic software is used to allocate a case to a chair/presenting judge of a hearing only. The selection of remaining judges of a panel is unclear. Both the Appeals and Supreme Courts admit that this matter is vague.²²⁰

One of the principal goals of the electronic case distribution system was to boost public confidence towards the judiciary and eliminate internal manipulations for assigning cases to specific judges (or vice versa). Public confidence towards the judiciary cannot be enhanced if a panel includes only one judge selected randomly by the system. Respectively, such approach of the judiciary towards this issue fails to meet legitimate public interest and the risks that court chairpersons may manipulate will linger.

4.3. The right to be tried with a reasonable timeframe

4.3.1. Criminal cases

The issue of prompt and effective administration of justice has remained a significant problem during the reporting period as well. Substantive hearings for criminal cases often goes beyond legislation prescribed timeframes and is unreasonably delayed. This may be due to inadequate legal framework although overload of courts is a principal challenge.

²¹⁶ The Venice Commission opinion on amendments to the Organic Law on Common Courts, available at < <https://bit.ly/37iVmo7> > [last viewed 18.03.2021]. The Coalition for Independent and Transparent Justice – Opinions about the Third Way of the Judicial Reform, available at: < <https://bit.ly/2RgnR0f> > [last viewed 17.03.2021].

²¹⁷ The Public Defender of Georgia 2020 Parliamentary Report, 101-102.

²¹⁸ Ibid., 117.

²¹⁹ The High Council of Justice April 19, 2022 Letter №245/33-01-5.

²²⁰ Human Rights Education and Monitoring Center (EMC) – Electronic System for Case Distribution in Courts, Tbilisi, 2020, 34. The Public Defender of Georgia 2021 Parliamentary Report, 131.

Like previous years,²²¹ during the reporting period there have been cases of failure to meet legislation prescribed timeframes and unreasonable delay in serving a substantiated judgement to a party. Signagi District Court June 9, 2021 Judgement was sent following over 4 months delay; this, according to the Signagi court, was due to overloading of the judge.²²² Gori District Court, likewise, has referred to case overload of a judge as a reason for over two months delay in sending a judgement rendered in relation to a convict.²²³

The delay in sending a judgment to a party by the Supreme Court is also alarming. The courts of first and second instance found an individual innocent in one of the cases, while the Supreme Court of Georgia found the person guilty and sentenced to 6 years in prison. As for sending a copy of the substantiated judgement, it was sent to the party only after over 8 months. Throughout this period, the convict was not aware of the legal justification the Supreme Court had invoked. In such cases a party is effectively unable to use international legal safeguards.

The problem of availability of a translated decision into a language understandable to a foreign speaking convict is still relevant. Often there is a delay in the serving a judgement to convicts therefore they are not aware of the evidences for a judgement of guilt and are unable to effectively exercise the right to appeal.

The problems of review within a reasonable timeframe have also been found at the Appeal and Supreme Courts. Out of 2,077 cases at the Tbilisi Court of Appeal Criminal Chamber, the review of 664 cases was delayed,²²⁴ and in case of the Kutaisi Court of Appeals, the review of 172 out of 922 complaints was delayed.²²⁵ Out of 1,452 cases completed at the Supreme Court of Georgia²²⁶ Criminal Chamber in 2021, 330 cases were reviewed in breach of the law prescribed timeframe.

4.3.2. Adjudication of civil and administrative cases

As in the previous year, deciding civil and administrative cases within the period determined by the law remained a challenge.

The statistical data received from the appeal courts of Tbilisi and Kutaisi suggest that a significant number of court cases are dealt with by these courts in breach of the procedural timeframes. Appeal courts have 2 months to decide civil and administrative cases according to the law, and this term can be extended in some special circumstances up to a total of 5 months.²²⁷

Because the Public Defender's Office was provided data for the period from 1 January 2021 to February 2021, we will assess only the data for the first nine months of 2021 concerning duration of case

²²¹ About the system issue identified in Gori District Court, See the Public Defender of Georgia 2014 Parliamentary Report, 236-237, 405; 2015 Parliamentary Report, 364-367.

²²² Signagi District Court October 4, 2021 Letter №2812.

²²³ Gori District Court April 23, 2021 Letter №4407/21.

²²⁴ Tbilisi Court of Appeals March 11, 2022 Letter №3/1635.

²²⁵ Kutaisi Court of Appeals March 16, 2022 Letter.

²²⁶ The Supreme Court of Georgia March 15, 2022 Letter №3-162-22.

²²⁷ The Civil Procedure Code of Georgia, Article 59(3).

proceedings in the appeals courts of Tbilisi and Kutaisi because the legal timeframe for deciding cases would not be expired yet for complaints lodged in October.

According to the data we have received,²²⁸ over the first nine months of 2021, out of 1,257 appeal complaints lodged with the Tbilisi Court of Appeals, only 213 cases (16.9%) were completed within 2 months timeframe; 272 cases (21.6%) were completed within 5 months. Respectively, at least 61.5% of the complaints registered by the Tbilisi Court of Appeal Civil Chamber in 2021 were not decided by the Court within the timeframe prescribed by procedural legislation.

Over the first nine months of 2021, 1,202 complaints were lodged with administrative cases chambers of the Tbilisi Court of Appeals. Of those, proceedings for 253 complaints (21%) were completed within 2 months and it took the court within 5 months to decide on 345 complaints (28.7%). Accordingly, about 50.3% of the complaints registered in 2021 were not decided within the timeframe prescribed by the procedural legislation by the administrative cases chambers of the Tbilisi Court of Appeal.

It is worth noting that Kutaisi Court of Appeals administrative and civil chambers have much better indicators. About 65% of the cases were completed within the legislation prescribed timeframe.²²⁹

Pursuant to the civil procedure law and the administrative procedure law, administrative and civil cases chambers of the Supreme Court of Georgia have 3 months to decide on admissibility of a cassation complaint²³⁰ and 6 months to render a final decision.²³¹

We have ascertained following our communication with the Supreme Court that the civil cases chamber of the Supreme Court registered 1,135 complaints during the reporting period.²³² Out of 300 dismissed complaints, the Court reviewed 187 complaints (62%) in breach of the 3 months term. Of the 835 admissible complaints, the Court completed proceedings within 6 months in only 25 cases (2.9%).

In 2021, the administrative cases chamber of the Cassation court received 1,106 complaints, of which the court dismissed 384 complaints. Of these 384 cases, 297 (77%) complaints were found inadmissible in breach of the 3 month timeframe prescribed by legislation. Of the 722 cases found admissible, the Supreme Court decided on only 1 case within the 6-month period.

Despite the fact that the number of judges within the Supreme Court has increased over the recent years, instead of progress, we have observed considerable setback in the area of promptness and effectiveness of justice at the court of cassation.

²²⁸ Tbilisi Appeals Court March 11, 2022 Letter №3/1635.

²²⁹ Kutaisi Appeals Court March 16, 2022 Letter.

²³⁰ The Civil Procedure Code, Article 401(3), Administrative Procedure Code, Article 41(3¹).

²³¹ Civil Procedure Code Article 391(6), Administrative Procedure Code, Article 34(4).

²³² The Supreme Court of Georgia, March 10, 2021 Letter №3-145-21.

4.3.3. The caseload of judges

Uneven workload of judges has been identified among the problems within the judiciary over the past years.²³³ This is due to the decision of the High Council of Justice on considerable and non-proportionate reduction of workload for judges who hold a position within the judiciary system.²³⁴ For instance, according to this decision:

- caseload for a member of the High Council of Judges of Georgia is 20%, and if such member is also a court chairperson, his/her deputy, chair of a panel/chamber - 10%.²³⁵
- caseload of a court chair, his/her deputy, chairperson of a panel/chamber where the number of judges is under 7, workload is 50%, and in case of a court chair, his/her deputy, panel/chamber chair where the number of judges is over 7 – 20%.²³⁶
- the caseload of distributed cases usually may not be higher than 5% in case of a chair and deputy chairperson of the Supreme Court of Georgia, chair, deputy chair and chair of a panel/chamber of the Appeals Court, chair of the Tbilisi City Court and chair of a panel, except for the cases explicitly stipulated by legislation, as well as in case of a chair and secretary of the High Council of Justice of Georgia.²³⁷

A total of only 24 cases were allocated to Shalva Tadumadze, Chair of the Criminal Cases Chamber of the Supreme Court of Georgia over 11 months of 2021, while a total of 1,482 cases were allocated to the remaining 4 justices (on average 370 cases distributed to each justice) of the Chamber over the same period.²³⁸ Giorgi Mikautadze, Chair of the Civil Cases Chamber of the Supreme Court, had just 15 cases allocated over 11 months in 2021, while during the same period a total of 1,429 cases (on average 143 cases each) were assigned to the remaining 10 justices of the Chamber.²³⁹ Over 11 months in 2021, a total of mere 2 cases were allocated to Nino Kadagidze, the Chair of the Supreme Court and the Chair of the Administrative Cases Chamber, while 1,129 cases (on average 161 cases to each) were assigned to the remaining 7 justices of the same Chamber over the same period.²⁴⁰ Furthermore, the case of the Chair of the Tbilisi Appeals Court and the Chair of the Investigation Panel of the same Court, Mikheil Chinchaladze, should be noted. Over 11 months in 2021 he had a total of 19 cases assigned, while during the same period 1,983 cases (on average 297 cases each) were distributed to the remaining 5 judges of the same Chamber.²⁴¹

²³³ Electronic System for Case Distribution in Georgia, EMC, 2020, 39-41. available at: <<https://bit.ly/3w8JiX>> [last viewed 12.03.2022].

²³⁴ The High Council of Justice of Georgia Decision №1/56; 01.05.2017. Available at: <<https://bit.ly/35OzxS9>> [last viewed 12.03.2022].

²³⁵ The Organic Law on Common Courts, Article 5(6)(a).

²³⁶ The Organic Law of Georgia on Common Courts, Article 5(6)(b).

²³⁷ The Organic Law of Georgia on Common Courts, Article 5(7).

²³⁸ The Supreme Court of Georgia December 23, 2021 Letter №3-880-21.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Tbilisi Appeals Court December 23, 2021 Letter №3/10827 and February 11, 2022 Letter №3/791.

It is also worth noting that when a judge holds a certain position within the judiciary system, this is related to considerable and disproportionate reduction of caseload, while such judge at the same time receives increased total salary. For instance, at the decision of the High Council of Justice,²⁴² a judicial member of the High Council of Justice receives a supplement of GEL 1,200, while his/her caseload is just 20%, and supplement for a Chair of the Appeals Court is GEL 1,950, while his/her workload is set as a maximum of 5%.

4.3.4. The review of cases at the Constitutional Court

Similar to common courts, the Constitutional Court of Georgia is also facing challenges related to prompt and effective justice. Due to vague provisions in the Organic Law of Georgia on the Constitutional Court, parties are unable to develop reasonable expectations as to the timeframes for the completion of proceedings and the rendering of final decision.²⁴³

During 2021, 106 constitutional claims and 5 constitutional submissions were registered at the Constitutional Court of Georgia. Only 6 of them were reviewed substantively by the Constitutional Court. And in relation to claims/submissions registered during the reporting period, the Court issued only 16 rulings and 19 recording notices.²⁴⁴

It is also important to note that during the reporting period the Constitutional Court reviewed only 28 cases substantively.²⁴⁵ The number of decisions taken by the Court over 2021 is also alarming. The Constitutional Court rendered only 10 decisions. Considering the caseload of the Court, respectively, considering the number of individuals awaiting decision, these numbers are explicitly non-satisfactory.

The information about the number of the cases in relation to which the Constitutional Court substantially breaches the principle of prompt and effective justice is worthy of a special mention. Below you can see information about the number of cases and registration dates for which the Constitutional Court has completed substantial review,²⁴⁶ although decisions are still pending.²⁴⁷

Complaint registration date	Number of cases
2015	5 cases
2016	16 cases
2017	11 cases
2018	12 cases
2019	16 cases

²⁴² The High Council of Justice January 23, 2020 №1/6 Order available at <<https://bit.ly/36jjqeU>> [last viewed 12.03.2022].

²⁴³ No specific deadline is prescribed for a final decision on a constitutional claim lodged based on Chapter 2 of the Constitution.

²⁴⁴ The Constitutional Court of Georgia March 25, 2022 letter №01/150.

²⁴⁵ Out of the reviewed cases, only 6 claims/submissions were registered in 2021.

²⁴⁶ It should be noted that the presented data is only about the number of cases for which the Court has completed merits review and the number of cases for which review has not been commenced or that have been accepted and where substantive review is pending is even higher.

²⁴⁷ The Constitutional Court of Georgia March 25, 2022 Letter №01/150.

2020	9 cases
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4.4. Legality of search conducted without neutral evidences

The Constitutional Court of Georgia, under its December 25, 2020 decision, declared the content of a number of the provisions of the Procedure Code unconstitutional, thereby cancelling the possibility of the use of an illegal item seized as a result of search in cases when investigators conducting search could have but failed to take relevant measures for obtaining neutral evidences of the credibility of search.²⁴⁸

During the reporting period, the PDO examined a number of criminal cases where it was identified that in the course of bodily search and investigation the standard of obtaining neutral evidence was clearly violated. For instance, in one of the cases,²⁴⁹ the Court issued rulings in response to the motions for personal search 4 days prior to a search. Respectively, police officers had sufficient time and possibility to obtain neutral evidences (at least for video recording of a search), but failed to do so. Based on the referenced circumstances, on April 12, 2021, the Public Defender submitted an Amicus Curiae Opinion to the Kutaisi City Court.

It is important to note that the Public Defender has examined numerous criminal cases where, in the course of search and seizure, the gaps were identified in the obtaining of neutral evidences. A trend has been identified as a result of the examination of the cases: neither the standard set by the Constitutional Court, nor requirements of legislative amendment that were adopted by the Parliament of Georgia in 2021 are met in any of the cases.²⁵⁰

4.5. Limiting communication with a defense lawyer at a penitentiary institution

Pursuant to the Imprisonment Code, under an investigator's or prosecutor's justified decision, an accused person may have their telephone communication possibility restricted.²⁵¹ Pursuant to applicable legal provisions, this restriction also applies to communication with a defence lawyer.²⁵²

Accused individuals applied to the PDO who had the entitlement to telephone conversation restricted and were thus unable to contact their lawyers under a prosecutor's decision. According to the Penitentiary

²⁴⁸ The Constitutional Court of Georgia December 25, 2020 Decision №2/2/1276 on the case Giorgi Kiburia v the Parliament of Georgia II-104.

²⁴⁹ Specifically, according to case materials, the investigation has not drawn a biological (DNA) sample from a golden bracelet seized during bodily search of G.M, S.J. was not examined for the influence of drugs, no investigation activity was implemented to examine the fact of purchase of a drug substance and otherwise taking possession of it (route of movement, telephone calls, telephone towers, etc.). None of the neutral witnesses present on the site of S.J.'s bodily search and detention were interviewed.

²⁵⁰ June 28, 2021 Law on the Amendments to the Criminal Procedure Code of Georgia.

²⁵¹ The Imprisonment Code, Article 78(2).

²⁵² The Imprisonment Code, Article 78 (2¹),

establishments,²⁵³ this is due to the Imprisonment Code that does not include a defence lawyer under the list of exceptions.²⁵⁴

The Public Defender is of the opinion that assigning to a prosecutor such powers under a criminal prosecution that restrict an accused individual's telephone contact with a defence lawyer violates the principle of adversariality and effective defence according to which defence should be able to exercise defence right in a full-fledged manner, main element of which is unimpeded and confidential communication of an accused person with the outer world. Respectively, restriction of telephone communication with external world imposed by a prosecutor in relation to an accused person should not include the restriction of telephone conversation with a defence lawyer. It is worth noting that the General Prosecutor's Office of Georgia is of the same opinion.²⁵⁵

The Public Defender submitted a legislative proposal to the Parliament of Georgia to fix this gap in the legislation.²⁵⁶

The restriction of communication with a defence lawyer is also used as an administrative sanction. A convict, as part of a sanction, had telephone communication restricted for 2 months. According to the stance of a penitentiary institution, sanction and the restriction of telephone conversation also applied to telephone communication of an inmate with a defence lawyer.²⁵⁷ Such interpretation is contrary to legislation since it prohibits imposition of such restrictions over the relationships of an accused person and his/her defence lawyer that will interfere in exercising defence.²⁵⁸ Respectively, applying disciplinary sanction to communication with a lawyer is an unreasonable and disproportionate restriction.

4.6. Cases adjudicated in substantive breach of the law

4.6.1. The case of Iveri Melashvili and Natalia Ilichova ("the case of Cartographers")

Following the examination of the materials of the case of Iveri Melashvili and Natalia Ilichova, on February 25, 2021 the Public Defender presented an amicus curiae opinion to the Tbilisi City Court.²⁵⁹ The document covers two principal issues: the compliance of the brought charges with the constitutional principle of legality and with Article 18 of the ECHR.

²⁵³ N 12 Penitentiary Institution December 9, 2021 Letter №297077/27, N 8 Penitentiary Institution December 9, 2021 Letter №296746/24, N 5 Penitentiary Institution December 9, 2021 Letter №296736/22, N 2 Penitentiary Institution December 6, 2021 Letter №293017/20, N 6 Penitentiary Institution December 6, 2021 Letter №293525/23.

²⁵⁴ The Imprisonment Code, Article 79 (2¹).

²⁵⁵ According to the stance of the General Prosecutor's Office, the restriction (restriction of telephone conversation based on an investigator's/prosecutor's decision) does not include telephone conversation with a defence lawyer and applicants, do not have telephone conversation with lawyer restricted as part of such restriction. The General Prosecutor's Office of Georgia November 10, 2021 Letter №13/68197, The General Prosecutor's office of Georgia January 12, 2022 Letter №13/1014.

²⁵⁶ The Public Defender of Georgia February 18, 2020 №15-2/2008 Proposal to the Chair of the Parliament of Georgia.

²⁵⁷ The Special Penitentiary Service N 8 Institution 12.10.2021 Letter №241828/24.

²⁵⁸ The Criminal Procedure Code, Article 38(5).

²⁵⁹ The Public Defender of Georgia February 25, 2021 Amicus Curiae Opinion.

The document analyzes the elements of legality. According to the amicus curiae opinion, instituting criminal prosecution against an expert, in conjunction to his/her expert opinion, when the committing of an action prohibited under the Criminal Code by the latter cannot be proven, is fundamentally contrary to the interests of justice and represents a harsh violation of constitutional rights.

Considering the examination of case materials, as well as the clear political motive for the commencement and the process of investigation, and considering grave legal deficiencies identified in the case, the Public Defender deemed that the given case clearly has political or other illegal motif; and this, given the flaws in the case outweighs legal motif and is assessed as the breach of Article 18 of the Convention according to the ECtHR Case Law.²⁶⁰

4.6.2. The case of Mamuka Khazaradze and Badri Japaridze

On January 12, 2022, the Tbilisi City Court found Mamuka Khazaradze and Badri Japaridze innocent in the legalization of illegal income, although found them guilty of major pre-agreed group fraud. Due to the expiration of the statute of limitation for fraud, their sentences were commuted.

On January 9, 2020, the Public Defender of Georgia filed an amicus curiae brief in conjunction with the pending case.²⁶¹ The matters reviewed in the document indicated that based on the committed actions the money laundering could not be established.²⁶² The amicus curiae opinion reviews the content, structural and targeted elements of the legalization of illegal income (money laundering). Furthermore, it assesses why money laundering is a conventional crime and what special preconditions, scheme, and purpose is necessary for committing this crime. The document further reviews the need for a method of autonomous interpretation of the provision of the Criminal Code.

The amicus curiae brief, after the analysis of these theoretical matters, reviews the evidences within the specific case that indicated that the key elements of the money laundering – systematic and repeated predicate offence, multiple and divided scheme for the legalization of illegal funds and the return of funds to the defendants' account, the end goal for the legalization of illegal amount, were absent; and these were explicit indications that an action described in the charges could not have been money laundering.

It can be seen from January 12, 2022 decision of the Tbilisi City Court that the court fully shared the mentioned stance, having reviewed the mentioned money laundering scheme and preconditions and ascertained that the given action was not a conventional crime stipulated under Article 194 of the Criminal Code of Georgia.²⁶³ The PDO will continue to monitor proceedings at the Appeals Court as well.

²⁶⁰ The Public Defender of Georgia 2020 Parliamentary Report, 109-110.

²⁶¹ Available at: < <https://bit.ly/3H2dODx> > [last viewed 26.01.2022]. <https://www.ombudsman.ge/geo/sasamartlo-megobris-mosazreba/sasamartlos-megobris-mosazreba-mamuka-khazaradzisa-da-badri-jafaridzis-braldebis-sakmestan-dakavshirebit>

²⁶² The Public Defender 2019 Parliamentary Report, 117-118.

²⁶³ Tbilisi City Court January 12, 2022 Judgment, 36-40.

4.6.3. The case of David Kezerashvili

Under the Tbilisi City Court August 30, 2017 and the Tbilisi Appeals Court May 23, 2018 judgements, David Kezerashvili was found innocent in embezzlement.

According to the charges, under David Kezerashvili's orders, a fictitious contract was concluded in violation of the provisions of the legislation with an offshore company owned by an individual related to David Kezerashvili. The contract subject matter was scheduled combat trainings of the Ministry relevant subunits. According to the charges, such training was already underway at army units.

The judgments of acquittal indicate that according to the evidences filed by the prosecution certain trainings were underway at the Ministry relevant military units during the period of the alleged action, although the evidence whether those ongoing trainings were the ones for which the litigious contracts were concluded had not been presented. Hence, the courts regarded the prosecution's allegation about fictitiousness of contracts ungrounded. The Appeals Court additionally indicated that the prosecution failed to submit evidence that the trainings envisaged under the litigious contract did not take place.

At the Supreme Court, the court did not deliberate on the circumstance established by the two lower instance courts that the prosecution had not presented authentic evidences for the commissioning of the offence. In particular, comparative analysis of questionable contracts was not performed and it was not confirmed that the disputed trainings did not take place. The City and Appeal courts relied on the afore-mentioned when they did not consider the stance of the prosecution, unlike the Supreme Court.

The Cassation Court regarded that absence of the delivery and acceptance report and other written documentation as proof of embezzlement, and explained that documentary evidences are given superiority relative to other evidences. Thus, the court decided on the composition of embezzlement, fictitiousness of agreements, non-receipt of the service envisaged under contracts and other key matters against the defendant based only on the fact that a delivery and acceptance report was not drawn up.

According to the Public Defender, the decision of the Supreme Court of Georgia does not identify the circumstances that are necessary to qualify the identified action as embezzlement. The decisions of all three instance courts regarded it proven that the documents on the procurement of the disputed services and of the rendered services were not adequately drawn up. This may involve the elements of misdemeanor in office, although mere absence of written evidences cannot be used to prove embezzlement beyond reasonable doubt.

The conviction rendered against David Kezerashvili fails to meet the constitutional standard of beyond reasonable doubt and is contrary to the provisions of Article 6 of the ECHR since the decision is not adequately justified. The flaw in the justification of the judgement is particularly damaging considering that it has been rendered by the Supreme Court of Georgia which decision may not be challenged.

4.6.4. The right to be tried by an impartial court

In 2021, the PDO reviewed three criminal cases²⁶⁴ where Shalva Tadumadze, justice of the Supreme Court of Georgia, was involved in the review of the case, while he was the General Prosecutor when the Prosecutor's Office was prosecuting the case. In the course of the examination of the cases the Public Defender relied on the opinion of the ECtHR and noted that just the fact that the justice was discharging prosecutor's powers in the past is not sufficient to raise questions with respect to his/her impartiality. Although, according to the established standard, his status at the Prosecutor's office system, hierarchy and the possibilities of influencing the specific criminal case should be taken into account.²⁶⁵

Given the vertical hierarchy of the Prosecutor's Office of Georgia, general prosecutor (before – chief prosecutor) is an individual whose direction is compulsory for any prosecutor.

The Public Defender regards that the afore-mentioned standard was not breached in the course of the review of David Kezerashvili's complaint at the Supreme Court, since Shalva Tadumadze was not a general prosecutor when the cassation complaint was filed; hence, he would not have been able to influence proceedings at lower instances.

In one of the cases that was reviewed by Shalva Tadumadze at the Supreme Court the complaint was filed by the prosecution. It is worth noting that when the complaint was filed, as well as during the period of the entire appeal proceedings, Shalva Tadumadze was a General Prosecutor. Since the matter of objective impartiality of a judge and respectively the prospect of recusal is dependent on a number of specific circumstances and factors, in our opinion, this case clearly demonstrates active efforts of the Prosecutor's Office to have legal influence on the case. Therefore, having served as a justice in such circumstances is inadmissible.

Similar circumstances were identified in a third case examined by the PDO where a final decision on the case of the convicts was rendered by the Supreme Court of Georgia Criminal Cases Chamber with the involvement of Justice Shalva Tadumadze.²⁶⁶ Justice Tadumadze was the Prosecutor General when the case was under proceedings at lower instances. Hence, there was the basis to suspect impartiality of the justice; and this, due to the violation of objective impartiality test, excluded the possibility of the involvement of the given justice in the review of the case.

4.6.5. The case of Mikheil Saakashvili

On November 10, 15 and 16, 2021, Mikheil Saakashvili was deprived of the possibility to attend trial for 3 different criminal cases. In all three cases, the Special Penitentiary Service refused to take Mikheil Saakashvili to court. Citing the reason that Mikheil Saakashvili had discontinued medical treatment and that the State Security Service was performing investigation. It is worth noting that the court accepted such explanation without additional deliberation.

²⁶⁴ 1) The case of David Kezerashvili; 2) The case of S.G.; 3) The case of I.P. and D.I.

²⁶⁵ The PDO Department of Criminal Justice 2021 Activity Report, 93.

²⁶⁶ The Supreme Court of Georgia September 23, 2021 Ruling №229ၔ3-21.

The Public Defender indicated in her public statement²⁶⁷ that both grounds were unjustified – refusal to transport an inmate because of hunger strike was contrary to applicable legislation. Furthermore, Criminal Procedure Code and other regulations did not stipulate the option of refusal to take an individual to court because of ongoing investigation. Maximum term of the limitation for the investigation at the State Security Service is 10 years.

4.7. The Breach of the principle of legality

During the reporting period, the Public Defender examined the legality of one of the cases of criminal prosecution. According to the document on charges, on June 25, 2021 at Kutaisi International Airport, during search, large amount of psychotropic substance Pregabalin was seized from a bag. The accused individual noted that the person had been taking this substance since September 2020, regularly, as a painkiller, under a physician's prescription, along with other medicines. The testimony of the accused person was evidenced by medical documentation presented thereof. It is worth noting that neither the Prosecutor's Office nor pre-trial session judge considered evidences as a result of which the criminal case was transferred to hearing on merits.

The Public Defender filed an amicus curiae brief to Kutaisi City Court. According to the Public Defender, in such cases, the imposition of criminal liability is contrary to the principle of legality, since with the action, firstly, objective composition of a crime is not evidenced, and secondly, subjective elements of the crime cannot be established either.

4.8. Interrogation of a legal representative of an underage witness

In one of the cases examined by the PDO, the defense party was not allowed to interrogate a mother of a minor as a witness since she attended the previous hearing during which the minor was interrogated in the capacity of a legal representative. The defense party had put forward a request in advance, on not having the minor's mother in the capacity of a procedural representative during the interrogation, although court indicated that the legislation did not stipulate such grounds for replacing a legal representative.

Following the examination of the case, the Public Defender submitted a legislative proposal on amending the Juvenile Justice Code to the Parliament of Georgia. The amendment would authorize a prosecutor/judge to replace a minor witness/victim's legal/procedural representative, in case: (1) current legal/procedural representative is an individual who has to be interrogated by either of the parties in the capacity of a witness; (2) a party justifies that his/her interrogation is important to reinforce its position; (3) the replacement of a legal/procedural representative will not harm best interests of a juvenile.

The Parliament did not consider the Public Defender's proposal, deeming that the Juvenile Justice Code currently envisages the possibility of replacing a legal representative. The PDO is planning to work with Parliament on this matter in another working format since the current legal provision clearly does not

²⁶⁷ See the Public Defender of Georgia November 16, 2021 Public Statement, Available at: <<https://bit.ly/3lf2R1t>> [17.03.2022].

enable the possibility to replace a legal representative based on the interests of the defense; this has been confirmed by the explanation of the judge on the afore-mentioned case.

4.9. The adversarial principle

During the reporting period the PDO examined the case in which the court used an informal interrogation report in the condemnation. At the court of first instance 4 accused individuals did not admit crime. At the Appeals instance 2 accused individuals changed their position – they made a plea bargain, pleaded guilty, cooperated with the investigation and their sentence was reduced considerably.²⁶⁸ At the hearing when the plea bargain was made, the defendants, in response to Prosecutor’s questions, spoke about the culpability of two other convicts for the same case.

The Criminal Procedure legislation does not envisage asking such questions. It is worth noting that judge also told the prosecutor that the trial did not envisage „interrogation“. Despite such comment, the same judge nevertheless allowed the prosecution to continue with all their questions and get answers. As a result, the prosecutor actually interrogated them directly despite the fact that they had not been warned about criminal liability or had sworn. Furthermore, the defendants against whom the testimony was given were not given the opportunity to research information and/or cross-examine.

The Public Defender filed an amicus curiae brief to the Supreme Court of Georgia regarding this case.²⁶⁹ The document reviews legislation and ECtHR practices. According to ECtHR, in this case the defendant should have been given the right to cross examine the individual who was entering plea bargain. Respectively, depriving a defendant without this possibility is contrary to conventional as well as constitutional standard of fair trial. The Supreme Court indicated in the ruling that it agrees with the position of the Public Defender but nevertheless it dismissed the complaints of by I.P. and D.I.²⁷⁰ The court indicated that contested questioning reports of witnesses are not the sole incriminating evidence for the conviction of I.P. and D.I.

Proposals

To the Parliament of Georgia:

- Commence the procedure for the election of non-judicial members of the High Council of Justice as soon as possible, via wide public and political engagement;
- Conduct public hearing procedure with wide public and political engagement towards the implementation of the fundamental justice reform;
- Amend the Organic Law On Common Courts to change the rule of delivering decisions by the HCJ and to introduce the support of 2/3 majority of the members of the HCJ with the double

²⁶⁸ One of the convicts was released on the day of sentencing, and another one – in 2 months.

²⁶⁹ 12.04.2021 №. №15-5/3371.

majority principle (mandatory support from at least 5 judicial and 3 non-judicial members) for any decision;

- Amend the Organic law On Common Courts and stipulate the justices of the Supreme Court only as the members of the Plenum of the Supreme Court;
- Prescribe under the Civil Procedure Code that for the review of a case by a panel, the composition of a panel to be determined by an electronic case distribution system, rather than a court chairperson;
- Amend the Organic Law of Georgia On the Constitutional Court to set forth the timeframes related to the adjudication of cases at the Constitutional Court thereby prescribing the deadline for rendering a final judgement by the Court;
- Introduce legislative amendment to develop a mechanism for judicial oversight of the legality of evidences for cases when there is a risk of provoking an offence;
- Adopt a new administrative violations code that would be in line with international and constitutional standards of human rights;
- Amend the Criminal Procedure Code and stipulate the obligation of an entity conducting investigation activity that, except for the cases when it is objectively impossible, a uninterrupted video recording of search and seizure process and/or a neutral witnesses' testimony shall be submitted to the court to prove the legality of an investigative action;
- Reform the procedure for the election of court (panel, chamber) chairs and authorize the chairs of specific courts to elect chairs;
- Amend the Organic Law of Georgia on Common Courts and cancel the grounds for disciplining stipulated under Article 75¹ (a)(b.f);
- Amend Article 37¹ of the Organic Law of Georgia on Common Courts and determine maximum period of one year for the temporary change of station of a judge without his/her consent;
- Amend Article 45 of the Organic Law of Georgia on Common Courts and again stipulate the following as the grounds for removal of a judge from a case: institution of criminal proceedings against a judge, or a decision by a judicial discipline panel of the common courts of Georgia;
- Amend the Imprisonment Code and cancel the use of the restriction of telephone communication with a defense lawyer as of a decision by a prosecutor and an investigator, as well as as a disciplinary measure;
- Amend the Criminal Procedure Code to enable that a minor's representative is replaced in case when the parties are interested in having the representative interrogated in court.

Recommendations

To the minister of Justice:

- Improve technical facilities of penitentiary institutions to increase the number of special rooms and computer equipment to support the participation of defendants in distant hearings;

To the High Council of Justice of Georgia:

- Publish the conclusions produced by the HCJ Independent Inspector by respecting the personal data standards;
- Modify the rule of the electronic distribution of cases to ensure random selection of all three members of a panel at the appeals and Supreme courts;
- Improve and upgrade relevant equipment and software to ensure confidential communication between a client and a defense lawyer during remote trials;
- Amend the HCJ of Georgia May 1, 2017 Decision №1/56 and abolish Paragraphs 6, 7 and 8.

5. Right to Respect for Private Life

5.1. Introduction

In 2021, massive and systemic breaches of the right to respect for private life were identified. Throughout the year, information about alleged illegal eavesdropping and surveillance spread several times. The reporting period was marked by unprecedented disclosure of the content obtained via eavesdropping. Considering the volume of the disseminated content and the confirmation by a number of individuals, the Public Defender deems that evidently government authorities took possession of the mentioned content by means of presumably illegal, secret surveillance. These circumstances have reinforced the feeling among the society that the people are subjected to all-out eavesdropping and surveillance.

In 2021, the abolition of the state institution in charge of the supervision over the protection of personal data by means of an unconstitutional and fast-track procedure, within 4 days at the Parliament of Georgia, was particularly alarming. The abolition of this institution has stripped the head of the independent authority elected for a 6 year term and her deputies of their mandates.

The present chapter provides an overview of the following matters involving the right to privacy: alleged uncontrolled eavesdropping; cases of the breach of the right to privacy and the status of investigations launched for these cases; challenges with respect to the contact with the outside world of the individuals confined in closed institutions.

The degree of the response to the breach of the rights in this reporting period was no different than in prior years. Unfortunately, investigation launched for the crimes of such categories are ineffective and mostly unproductive. The law enforcement agencies have again failed to prevent illegal interference in the right and/or to detect relevant offenders through effective investigation.

The global context of the pandemic raises considerable challenges for the right to respect for privacy and family life. Additional restrictions on the communication with the outside world introduced due to the pandemic have been highly detrimental to the individuals confined in penitentiary and mental health institutions. Furthermore, measures carried out by the government for the compensation of the imposed restrictions are not sufficient for adequate communication with the outside world.

Unfortunately, the majority of recommendations submitted by the Public Defender of Georgia under the 2020 Parliamentary Report Chapter on the Protection of the right to respect for private life have not been fulfilled. The Public Defender made 12 recommendations and 8 parliamentary proposals in relation to the right to respect for private life in the 2020 Parliamentary Report.²⁷¹ It is worth noting that the Parliament of Georgia did not consider any of the proposals throughout 2021.

²⁷¹ The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2020, 128-129.

5.2. The Abolition of the State Inspector's Service

On December 30, 2021, the Parliament of Georgia enacted a package of legislative amendments to abolish the State Inspector's Service. The amendments were processed under an expedited procedure, within 4 days, terminating the mandate of the State Inspector and her Deputies.²⁷² The abolition of an independent state body is an absolutely unprecedented case and this decision is in contrary to the Constitution of Georgia and the Human Rights Law.

Under the amendments, two independent state entities were established: (1) the Special Investigation Service and (2) the Personal Data Protection Service.²⁷³ According to the authors of the draft law, the legislative amendments were designed to regulate the different mandates of two state entities in a way as to eliminate the conflict of interest between the functions. It is worth noting that in 2018, when the State Inspector's Office was being established, civil society representatives submitted to the Parliament of Georgia the views about the alleged threat of the conflict of interest. At that time the same ruling political force refused to establish the Inspector's Service as a separate entity and it was established on the basis of the Personal Data Protection Inspector's Office. Significantly, the conflict of interests in the activities of the State Inspector was not corroborated by the authors of the draft law. Furthermore, the results of the monitoring by the Public Defender's Office over the activities of the State Inspector's Service of Georgia evidence that what was needed in relation to the State Inspector's Service was not separation; rather, the Service needed strengthening from legislative as well as budget perspective.

It is worth noting that due to the fast track review of the draft law substantive engagement of the public in the hearings became impossible. Moreover, even the State Inspector was not involved in the drafting of the bill, let alone stakeholders. The Public Defender deems that such amendments should be passed by means of an open and transparent process, via substantive, wide debates, involvement of the civil society and the State Inspector's Service itself. Based on the afore-mentioned, it is evident that the legislative amendments were aimed at the interference in and influence over the activities of the independent authority.²⁷⁴

It is also important to note that the adopted amendments do not/cannot ensure sufficient safeguards of institutional independence of the two newly formed services and their heads and raises future risks that their offices may also be abolished if their activities appear to be unacceptable to a specific political group.

According to the Public Defender, early termination of the powers of the State Inspector represents the abridgement of the right stipulated under Article 25 of the Constitution of Georgia that prohibits unjustified dismissal of public officials, and also has an effect on the right to privacy envisaged under

²⁷² Amendments entered into force from March 1, 2022.

²⁷³ Prior to the legislative amendment, a single authority - the State Inspector's Office was in charge of the oversight over the protection of personal data and the exercising of independent investigation powers.

²⁷⁴ The Statement of the Public Defender of Georgia on Attempt to Abolish the State Inspector's Service, available at: < <https://bit.ly/3JivADs> > [Last seen 16.03.2022].

Article 15 of the Constitution. The Public Defender applied to the Constitutional Court, demanding declaring the legislative amendments enacted on December 30, 2021 unconstitutional, as well demanding the suspension of disputable provisions until a court judgement would be rendered, given the threat of irreparable damage arising from the afore-mentioned provisions.²⁷⁵ Unfortunately, the Constitutional Court disregarded the motion of the complainant and dismissed, on unjustified arguments, the motion on the suspension of disputed provisions.²⁷⁶

It should also be noted that based on the request of the Public Defender, legislative amendments were also assessed by OSCE/ODIHR.²⁷⁷ OSCE/ODIHR noted that expedited abolition of the State Inspector's Service at the Parliament that was contrary to international standards and the lack of consultations, seriously undermines the standing of the future Special Investigation Service and the Personal Data Protection Service as independent institutions. One of the recommendations of OSCE/ODIHR calls for the suspension of the implementation of the amended Laws as they undermine the independence of the Special Investigation Service and the Personal Data Protection Service and as such, could have detrimental effect on their effectiveness in the protection of human rights.²⁷⁸

5.3. Alleged uncontrolled eavesdropping

During the reporting period there were several occasions of the disclosure of the materials obtained allegedly by the State Security Service following the interception of personal communication of individuals.²⁷⁹ The Public Defender is of the opinion that, presumably, the purpose of the illegal eavesdropping and surveillance is to collect and disseminate discrediting information. On September 13 of current year the materials obtained via eavesdropping were massively disclosed. Alarming, these materials were temporarily posted on a public platform, and were open for view and download by anyone for a certain period of time. The disseminated files contain unprecedented number of data about personal life obtained by means of presumably illegal interception and surveillance. Furthermore, the materials supposedly contain the facts of sexual violence against minors, alleged failure to report an offence and the facts of the abuse of power by the representatives of law enforcement authorities.

The afore-mentioned files contain information about the communication of the clergy, civil society sector representatives, diplomats, politicians and other individuals. It is worth noting that numerous citizens involved in the communication attested to the authenticity of the information depicted in the disseminated materials, including the staff of the PDO. The Prosecutor's Office of Georgia shortly launched investigation concerning this fact.²⁸⁰ Considering high public interest, the Public Defender

²⁷⁵ The Statement of the Public Defender, available at: < <https://bit.ly/3i1E7P9> > [Last seen 13.03.2022].

²⁷⁶ The Constitutional Court of Georgia February 28, 2022 Recording Notice №1/1/1673, on the case Londa Toloraia v the Parliament of Georgia.

²⁷⁷ Available at < <https://bit.ly/3q2dqOL> > [Last seen 13.03.2022].

²⁷⁸ OSCE/ODIHR February 18, 2022 Opinion №GEN-GEO/436/2022 [NR], Para. 55, available at: < <https://bit.ly/3pW9VcP> > last viewed [13.03.2022].

²⁷⁹ The Public Defender's August 3, 2021 Statement, available at < <https://bit.ly/3trRNdx> >, [Last seen 31.12.2021].

²⁸⁰ The October 18, 2021 Statement of the Prosecutor General of Georgia, available at < <https://bit.ly/31K58SW> > [last viewed 31.12.2021].

addressed the Prosecutor General and requested familiarization with the materials of the launched investigation, as an exception.²⁸¹ The Prosecutor's Office rejected the Public Defender's request.

Later, the PDO solicited information about ongoing investigation²⁸² but the General Prosecutor's Office provided only general information about this investigation, as in other cases falling in the same category. According to the received information, no specific individual is recognized as an accused person or a victim under the investigation.²⁸³

Additionally, the Public Defender addressed the UN Special Rapporteur on the Right to Privacy with a letter and invited the Rapporteur to Georgia for the assessment of situation of the protection of the right to privacy.²⁸⁴

The alleged illegal and massive eavesdropping and surveillance raises the threats of an all-out control in the country. It may have considerable negative impact on every stage of the democratic development of Georgia, during elections or another significant process. Furthermore, it is important to note that eavesdropping of the diplomats from Georgia's partner states also represents grave violation of international law.

For years, the Public Defender has been referring to insufficient safeguards of privacy and high risks of arbitrary actions on the part of the government. Current legislation forms the basis for uncontrolled interception since it allows the security agencies to have uncontrolled, direct connection to the servers of mobile operators; it renders illegal wiretapping easier and reduces the risks of detection of such cases. The Public Defender appealed these provisions at the Constitutional Court,²⁸⁵ the Court completed substantial review of the case in 2018 but the decision is still pending.

It is also worthy to note that over the reporting period the Parliament of Georgia has not utilized the parliamentary oversight mechanisms to call the heads of the responsible government entities at the Parliament. Furthermore, the Parliament did not consider the possibility of establishing a temporary investigative commission.

5.4. The cases of the violations of the right to respect for privacy

In 2021, like in the previous years, various cases of violation of the right to privacy were detected. Under the present sub-chapter, we will review the cases that the PDO examined in accordance with the Organic law of Georgia on the Public Defender of Georgia.

²⁸¹The Public Defender of Georgia September 27 and November 4, 2021 Letters №15-2/9225 and №15-2/10536.

²⁸² The Public Defender's Office of Georgia December 2, 2021 Letter №15-2/11390.

²⁸³ The Prosecutor General of Georgia December 28, 2021 Letter №13/78738.

²⁸⁴ The Public Defender's October, 2021 Statement, available at: < <https://bit.ly/3td4Kb0> > [last viewed 31.12.2021].

²⁸⁵ The Public Defender's may 31, 2017 Statement, available at: <https://bit.ly/3GbXdMZ> > [last viewed 03.01.2022].

5.4.1. The case of Aleksandre Lashkarava

On July 11, 2021, Aleksandre Lashkarava, TV Pirveli operator, passed away. He was beaten severely by the members of violent groups while he was discharging his official duties at the organization Sirtskhvilia (“It’s a shame”) office, and required medical aid.

On the day of his death, the Ministry of Internal Affairs disseminated video recordings showing the movement of Aleksandre Lashkarava. At the same time, the MIA representative called on the public against making premature conclusions as to the reasons of his death, while this was the very purpose of the dissemination of the recording. According to the Public Defender, the form of the dissemination of recordings about Aleksandre Lashkarava by the Ministry of Interior was not aimed at the objective investigation of the crime and inform the public; rather, the purpose of the information disseminated selectively was to discredit the beaten and deceased operator.²⁸⁶

The State Inspector’s Service has also examined the afore-mentioned events.²⁸⁷ According to the Inspector, the dissemination of the recordings represented the breach of the data processing principle envisaged by the Law of Georgia on the Protection of Personal Data was breached.²⁸⁸ The Inspector has also established that the disseminated recording was obtained by the Ministry of Internal Affairs in breach of the legislation; in particular, audio-video recording was issued from the medical establishment in response to a written request from the Ministry. The Ministry of Internal Affairs had not drawn up a procedural document about an investigative activity when the audio-video recording (July 12, 00:21, 00:24, 00:28 and 00:52) was accessed and copied from a computer of the medical establishment.

5.4.2. The case of Mikheil Saakashvili

On November 11, 2021, the Ministry of Justice disseminated a video footage of the placement of Mikheil Saakashvili against his will, with the use of force, into the N 18 Medical establishment. The video recordings did not show full and uninterrupted episode related to the case, while several frames in the compilation showed the inmate in half-naked, humiliating condition. According to the Minister of Justice, the dissemination of video recordings was aimed at refuting of the claims of the defense lawyer with respect to alleged ill-treatment of Mikheil Saakashvili.

The Public Defender believes that by pointing to an abstract legitimate purpose and disseminating the footage of prisoner Mikheil Saakashvili in a completely disproportionate and insulting manner, his right to honor, dignity and privacy was violated. For the purpose of refuting the position of the lawyer, in addition to fully providing the mentioned video materials to the investigation, it was possible to select other means that would have been less restrictive of the right.²⁸⁹ The State Inspector’s Service has also

²⁸⁶ Available at < <https://bit.ly/3CBkyHd> > [Last viewed 11.03.2021].

²⁸⁷ The State Inspector’s September 24, 2021 Statement, available at < <https://bit.ly/3r746cp> > [last viewed 03.01.2022].

²⁸⁸ The Law of Georgia on the Protection of Personal Data, Article 4(b).

²⁸⁹ The Public Defender’s November 11, 2021 Statement, available at < <https://bit.ly/3JUtN8s> > [last viewed 04.01.2022].

assessed the case as the violation of the requirements of the Law of Georgia on the Protection of Personal Data.²⁹⁰

5.4.3. Ana Dolidze's case

In March, 2021, in the air of one of the TV companies, a former staff of the law enforcement agency stated that secret wiretapping was led in the apartments of Ana Dolidze and other politically active individuals and that they had installed surveillance devices for this purpose.²⁹¹ It is worth noting that Ana Dolidze confirmed the authenticity of the details reported in the footage.

From March to the end of 2021 the PDO addressed the Prosecutor General's Office of Georgia four times concerning this case.²⁹² The response letters from the Prosecutor's Office²⁹³ show that the Prosecutor General's Office of Georgia is conducting investigation on the facts of alleged violation of the secrecy of private communication and the abuse of power.²⁹⁴ It can be established based on the information provided from the Prosecutor General's Office that as part of the ongoing investigation that has been underway since Spring, 2021, witnesses were interviewee, information significant for the case was solicited, yet no one has declared as a victim and an accused up to this date.

5.4.4. Alleged blackmailing with the personal life materials

On June 2, 2021, the Public Defender's Office found out²⁹⁵ that a stranger had threatened one of the participants of a protest rally in Chiatura Municipality Village Shukruti. Specifically, on May 24, 2021, the person was contacted by a stranger; he demanded stopping the protest rally, and threatened that otherwise he would publish video recordings showing personal life of the person's daughter in law. According to the individual, on the same day he submitted an audio recording of the conversation to the Chiatura District Department.

The PDO approached the Ministry of Internal Affairs several times to obtain information about the investigation on the fact.²⁹⁶ As of January 18, 2022, summary decision on the case was still pending and the investigation was still underway.

²⁹⁰ The State Inspector's December 7, 2021 Decision, available at <<https://bit.ly/333Vmwv>> [last viewed 04.01.2022]. On January 11, 2022, The Tbilisi City Court overturned a decision of the State Inspector – on the publishing of personal data of Mikheil Saakashvili, the third President of Georgia, by the Ministry of Justice of Georgia. Notably, court proceedings were conducted in a faster pace than regular, while the hearings coincided with the process of the abolition of the State Inspector's Service.

²⁹¹ Available on the website <<https://bit.ly/3hsO3Bb>> [last viewed 25.03.2021].

²⁹² The Public Defender of Georgia March 26, 2021 Letter №15-10/2933, May 14, 2021 Letter №15-10/4608, September 13, 2021 Letter №15-10/8807, December 12, 2021 Letter №15-10/11438.

²⁹³ The Prosecutor General's Office of Georgia March 30, 2021 Letter №3408/21, May 25, 2021 Letter №5509/21, September 24, 2021 Letter №10255/21, December 16, 2021 Letter №13552/21.

²⁹⁴ With the elements of the offences envisaged under Article 158(4)(b) and Article 333(1) of the Criminal Code of Georgia.

²⁹⁵ Available on website <<https://bit.ly/3ltL1IT>> [last viewed 28.02.2022.]

²⁹⁶ The PDO June 7, 2021 Letter №15-13/5352, August 5, 2021 Letter №15-13/7684 and December 31, 2021 Letter №15-13/12762.

5.5. The contact with the outside world at penitentiary institutions

In 2021, numerous violations of the right to privacy of the accused and convicts were detected within the Penitentiary system.

Throughout the year, due to the pandemic, special conditions were in effect within the penitentiary system; although, at the same time, the imposed restrictions were being lifted gradually. Specifically, inmates were allowed to have short-term visitations from February 1, 2021²⁹⁷, and long-term visitations were restored from September 29, 2021.²⁹⁸ Family visitations remain restricted. Despite gradual lifting of restrictions, according to the inmates, overall, their contact with the outside world was deteriorated in 2021 as well, as a result of the pandemic.

The inmates confined in various institutions noted that it had been over a year since their family member had not visited them and they only had telephone communication. The inmates indicated that this is due to various factors, of those, the public transport problem is the most common. Unfortunately, no compensatory measures for the restrictions were implemented in 2021. According to inmates, in 2021 they received 15-minute free telephone conversation time only once, in conjunction with the Day of the Virgin Mary. It was ascertained during the visits to N 8 and N 6 institutions that not all inmates were able to use this free conversation time, and some of them did not even get the respective amount transferred to their balance.

It is worthy of particular mention that the accused's telephone card is produced 10-15 days after the entry into an institution, hence, during the intervening period they are unable to contact family and are also unable to buy items in a store.

At special risk penitentiary institutions inmates are still unable to use video visitations. It is also important to note that at all institutions where legislation stipulates the possibility of video visitation, respective infrastructure is not organized.²⁹⁹ Furthermore, the method of a video visitation has still not been modified and family members have to go to different territorial offices of the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation.³⁰⁰ It is also important to offer more short-term and long-term visitations to life convicts; this will contribute to maintain strong connection to family members and rehabilitation.

²⁹⁷ The Ministry of Justice of Georgia Special Penitentiary Service General Director's January 27, 2021 Order N 760 on the Introduction of Special Conditions within the Penitentiary Institutions; on Amendments to the Order N 4109 dated March 5, 2020 of the General Director of the Special Penitentiary Service.

²⁹⁸ The Ministry of Justice of Georgia Special Penitentiary Service General Director's September 29, 2021 Order №14581 on the Introduction of Special Conditions within Penitentiary Institutions; on the Amendment to the March 5, 2020 Order N 4109 of the General Director of the Special Penitentiary Service.

²⁹⁹ Institutions №2, №10, №12 and №18.

³⁰⁰ The Imprisonment Code Article 17¹(3) and the Minister of Penitentiary, Probation and Legal Aid of Georgia April 5, 2011 Order N 55 on the Approval of the Rule for the Use of Video Visitation with Convicts.

The goal of telephone conversation in confidential environment remains unattained. The inmates note that it is practically impossible to have confidential telephone conversations within institutions. They indicate that the staff listen to them during conversations, and the facilities are set up in a way that a telephone is either in a duty room or in a booth that does not ensure sound proofing.

At penitentiary institutions, imposition of a disciplinary sanction is one of the means for the restriction of the contact with the outside world. Pursuant to the Imprisonment Code of Georgia,³⁰¹ the restriction of specific forms of contact with the outside world is determined as the types of disciplinary sanction. For years, the Public Defender has been stating that this is contrary to the goal of resocialization of inmates and that the result attained with such sanction is considerably inferior to the interest of the contact with the outside world.³⁰² The European Committee for the Prevention of Torture states the same.³⁰³

During the reporting period, the cases of the violation of the right to send correspondence to convicts and confidentiality of correspondence have also been identified. In several cases, based on the PDO application, the Special Penitentiary Service Monitoring Department also confirmed violation. The PDO has established the breach of the right to personal correspondence on one of the cases, where N 6 Institution social worker did not register two applications handed over by a convict; hence, they could not be sent to addressees. The PDO has also established the breach of the right to correspondence of a convict at N 8 Institution as well.³⁰⁴ It is important to note that respective individuals were disciplined in both cases.³⁰⁵

Although the restriction of short-term visitation for a defendant based on a prosecutor's or investigator's decision is first and foremost related to legitimate interests of investigation and justice, it entails considerable risks. In particular, the absence of a judicial control mechanism for this restrictive measure increases the risk of arbitrariness. And in the conditions where a defendant is effectively in the process of adaptation to new environment, arbitrary restriction of the possibility to establish contact with the outside world may be significantly detrimental to their statutory rights.

On a positive note, during the visits made in 2021, foreign prisoners were not referring the problems of the placement in cellar as much. Most of the foreign prisoners said that their preferences were taken into accounting when allocating them to cells and the majority of the inmates in the cells speak their language. Unfortunately, the difficulty with contacting their families abroad remains an outstanding issue for them. There are still 2 days a week allocated for the calls abroad and if a telephone call day determined for a cell does not coincide with an international call day, an inmate is unable to contact family members abroad at all. The cost of a call is often an unsurmountable barrier for inmates, majority of them are

³⁰¹ The Imprisonment Code of Georgia, Article 82(1)(h)(l)(i) and (l).

³⁰² The Report of the Public Defender on the Status of the Protection of the Human Rights and Freedoms in Georgia, 2020, 156.

³⁰³ The Report of the CPT on the Visit to Georgia (CPT/Inf (2019) 16), Para. 100, September 10-21, 2018 visit, available in English at: <<http://bit.ly/2J9leHP>> [last viewed: 05.01.2022].

³⁰⁴ The Criminal Justice Department 2021 Activity Report.

³⁰⁵ Special Penitentiary Service Monitoring Department January 8, 2021 Letter №3465/01. Special Penitentiary Service Monitoring Department January 24, 2021 Letter №19656/01.

unable to afford it. While a one-off free call time gift in conjunction with the pandemic does not apply to international calls. In case of some countries, sending written correspondence involves inadequately high costs, hence, it is important that the Government develops a measure in this direction to enable the prisoners to maintain contact with their families abroad.

It is worth noting that, for the improvement of the contact of inmates with the outside world, throughout 2021 the Public Defender filed numerous complaints with the Constitutional Court and appealed the non-conformity of the provisions of the Imprisonment Code and the Regulations of institutions with the Constitution of Georgia such as the blanket prohibition of the right to video visitation for convicts at special risk penitentiary institutions,³⁰⁶ imperative restriction of long-term and video visitation for defendants,³⁰⁷ as well as the restriction of inmate's contact with the outside world through a disciplinary sanction³⁰⁸ and the restriction of short-term visitation of a defendant placed in custody under a prosecutor's or an investigation's resolution.³⁰⁹

5.6. The contact with the outside world at psychiatric institutions

The situation at mental health institutions in the part of the respect of the right for private and family life is effectively not different from the context described in 2020 Parliamentary Report.³¹⁰

The Law of Georgia On Psychiatric Care³¹¹ authorizes a doctor, when mandated by necessity on the ground, to issue a written decision restricting an array of rights to a patient such as the right to receive and send a letter, the use of communication devices, receive a visitor without the presence of a third person and the right to a short-term furlough from a mental health institution.³¹² The Public Defender believes that the restriction of patients' rights in breach of the Constitutional principle of proportionality is contrary to the inviolable rights to private and family life, personal space and communication guaranteed by the Constitution of Georgia.³¹³ The Public Defender applied to the Constitutional Court and demanded to declare the disputed acts unconstitutional.

In 2021, like 2020, meetings of visitors and patients were suspended at psychiatric institutions, to prevent the spread of COVID-19. Respectively, patients were unable to meet family members. As a result of

³⁰⁶ The Public Defender of Georgia July 22, 2021 Constitutional Complaint №1602 Available at: <<https://bit.ly/3JjMCKZ>> [last viewed: 13.02.2022].

³⁰⁷ The Public Defender of Georgia May 20, 2021 Constitutional Complaint №1603 available at: <<https://bit.ly/3hWBpdZ>> [last viewed: 13.02.2022].

³⁰⁸ The Public Defender of Georgia July 22, 2021 Constitutional Complaint №1633 available at: <<https://bit.ly/3t1XhLl>> [last viewed: 13.02.2022].

³⁰⁹ The Public Defender of Georgia July 22, 2021 Constitutional Complaint №1632 available at <<https://bit.ly/3MHKPlj>> [last viewed: 13.02.2022].

³¹⁰ The Public Defender of Georgia 2020 Parliamentary Report, 118-119.

³¹¹ The Law of Georgia on Mental Health, Article 15(3).

³¹² Ibid. Article 15(2)(a)-(d).

³¹³ The Constitution of Georgia, Article 15.

monitoring of psychiatric institutions by the PDO during the reporting period,³¹⁴ the Tbilisi Mental Health Center was the only exception where in 2021 patients were able to meet visitors.

Surami Psychiatric Clinic operated under a different regime; there, supposedly for the prevention of the spread of COVID-19, patients were able to meet visitors only outside the institution and to pick up parcels.

Patients at psychiatric institutions are also unable to use phones. The right to use a telephone by patients at psychiatric institutions is dependent on a physician's verbal permission. Upon the entry into an institution patients' mobile phones are taken away without any justification. N 5 Clinical Hospital should be noted as a positive example where majority of the patients had their mobile telephones and smartphones with them, although at this institution too, some of the patients's right to use telephone was restricted arbitrarily. No written document on a physician's justified decision in relation to these patients was available.

Furthermore, the use with the institution's telephones is also complicated. During the monitoring cases were identified when the patients were asking the National Prevention Mechanism members for help with calling their family members. In this direction situation is particularly hard in a psychiatric unit of Terjolamedi. Where a patient has to obtain a doctor's permission for every call.

The Public Defender deems that it is important to return their phones to patients, and if they do not have phones, to enable them to make at least 1 call from an Institution's telephone. A patient should not be dependent on good will of personnel to lend their phone, especially considering the pandemic related restriction when patients have their contact with family members even more restricted.

Proposals

To the Parliament of Georgia:

- Amend the Imprisonment Code Articles 77 and 79 and based on the interests of investigation, restrict a defendant's contact with outside world only based on judicial ruling;
- Amend the Imprisonment Code Article 17(11) and (12) and enable substituting a short-term visitation with a video visitation;
- Amend the Imprisonment Code Article 17² (9) and enable the substitution of long-term visitation with a telephone call, short-term visitation and video visitation;
- Amend the Imprisonment Code Article 17³ and enable the substitution of family visitation with a telephone call, short-term visitation and video visitation;
- Amend the Imprisonment Code and increase the number of visitations and telephone calls for the inmates of special risk and closed institutions;

³¹⁴ Monitoring was performed in the following institutions: N^o5 Clinical Hospital Psychiatric Unit, LLC Acad. B. Naneishvili Mental Health National Center (hereinafter the National Center for Mental health), LLC Imermedi – Imereti Regional Medical Center (Terjolamedi) Psychiatric Unit (hereinafter – Terjolamedi), LLC Batumi Medical Center Psychiatric Unit, East Georgia Mental Health Center Surami Psychiatric Hospital (Surami Psychiatric Clinic), Iv. Bokeria Referral Hospital Psychiatric Unit (hereinafter also Evex hospitals, Tbilisi Mental Health Center.

- Amend the Imprisonment Code and enable inmates of special risk institutions to use video visitation;
- Amend the Imprisonment Code and cancel the restriction of the contact with outside world as a disciplinary sanction except for the cases when such contact is related to crime;
- Amend the Imprisonment Code and allow video visitation for those convicts whose family members are unable to use short- and long-term visitations due to living abroad;
- By means of amendments to the Imprisonment Code, increase the number of short- and long-term visitations for life convicts.

Recommendations

To the Minister of Justice:

- Ensure that foreign prisoners, stateless persons, as well as those citizens of Georgia whose family lives outside Georgia are able to make international calls at reduced and more affordable cost;
- Ensure that foreign prisoners, stateless individuals, as well as those citizens of Georgia whose family lives abroad are provided monthly free call time for making international calls;
- All foreign-speaking prisoners, as necessary, should be provided interpreter's service. Including, they should receive information about services and regulations at an institution in a language they understand;
- Abolish days allocated for international calls and ensure that international calls can be made every day, at the frequency and duration prescribed by legislation;
- Amend the current rule on video visitations in 2022 so that a member of a prisoner's family no longer has to visit the any territorial unit of the National Agency for Crime Prevention, Execution of Non-custodial Sentences and Probation and start working on designing a safe application that will streamline video visitations;
- In 2022, prioritize N 2, N 3, N6, N10, N12 and N18 penitentiary institutions to equip with the infrastructure necessary for video visitations;
- In 2022, while special conditions related to the pandemic are in effect, introduce additional measures to compensate for the restriction of inmates' contact with the outside world;
- The Special Penitentiary Service to examine the issues related to the full-fledged use of the right to telephone call by defendant/convict and provide to the Public Defender information about implemented activities;
- During the period of the application of security measures ensure maintaining contact of prisoners with the outside world and respectively amend the regulations of institutions;
- The Special Penitentiary Service to carry out all measures to ensure that defendants' telephone cards are produced within shortest timeframes;

- The Special Penitentiary Service Monitoring Department, via systemic examination, to identify the facts of the breach of the right to correspondence of prisoners, keep statistics of identified breaches and respectively discipline those responsible for violation;
- Set up at every penitentiary institution such telephone booths (with sound proofing) where confidential telephone conversation will be possible. For this purpose, develop a timetable of infrastructure works that will contain the details of the specific works that will be implemented at respective institutions throughout 2022;
- Carry out all measures to ensure that when a social worker receives/hands over an open letter a document is drawn up in two copies that will be verified with a seal and in which the following information will be entered in the presence of a prisoner: a) name and last name of the author of a letter; b) name and last name of a social worker receiving a letter; c) date of serving a letter; d) addressee of a letter; e) the number of pages. A prisoner and a social worker shall sign on both pages, a filled out one page shall be provided to a prisoner, and another one will be kept by a social worker.

To the Minister of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia:

- Pursuant to the Law of Georgia on Psychiatric Care, ensure the realization of the right to freely use telephones and other communication devices by patients;
- Pursuant to the Law of Georgia on Psychiatric Care, ensure the realization of the right of a patient under voluntary treatment to leave an institution for a brief period, unless there is a physician's decision on the restriction of this right due to extreme necessity;
- Ensure that a patient and a visitor are able to meet at psychiatric institutions in compliance with the rules related to the epidemic.

To the Prosecutor General of Georgia:

- Periodically, once every 6 months, inform the public about the status of investigations on the cases of the breach of the right to the respect for personal life.

6. Right to Equality

6.1. Introduction

In 2021, the situation was still critical in terms of protection of equality. Unfortunately, legal status of women, people with disabilities, representatives of the LGBT + community, of non-dominant religious and ethnic groups has not improved substantially this year either.³¹⁵

Apart from the fact that recommendations of Public Defender of Georgia calling on establishing a state policy on equality or issuing statements in support of equality were not shared by the relevant agencies during this reporting period, decision-makers were distinctive with even more sharp statements encouraging discrimination.

Particularly alarming were the events during Tbilisi Pride Week, leaders and other members of far-right groups directly and publicly inciting violent acts against members of the LGBT + community and their supporters. On July 5, the day of the March of Dignity, law enforcement bodies failed to prevent a large-scale attack on journalists and human rights activists by these violent groups, resulting in a number of people being seriously injured.

In the first half of this year, conflicts were escalated in the regions, presumably on religious and ethnic grounds. In the village of Buknari, Chokhatauri region, confrontation allegedly based on religious grounds between the local Christian and Muslim communities took place. And on the presumed ethnic grounds a conflict took place between the Georgian-speaking and Azerbaijani-speaking populations living in Dmanisi. The response of the law enforcement agencies to these incidents was not effective - the persons involved in the conflict physically assaulted each other in the presence of the police, who were unable to respond in a timely manner and defuse the situation.

In addition, dozens of cases related to restriction of labor rights of the local government employees, public schools and kindergartens during the pre-election period were extremely problematic due to supposed political views. These rights violations were mostly manifested in the refusal to extend the contract on discriminatory grounds, early termination of the contract, the request to voluntarily resign and dismissal.

In total, during 2021, the Public Defender examined 161 cases of alleged discrimination, most of which - 17% - were related to cases of alleged discrimination on the basis of political views. The facts of alleged discrimination on the grounds of sex, including sexual harassment, were still relevant this year, 16% of the applications. Different opinion and disability were found in 11-11% of cases. 7% of applicants argued on the grounds of sexual orientation and / or gender identity.³¹⁶

6.2. Compliance of the new coronavirus regulations with the principle of equality

The new coronavirus pandemic has identified additional challenges in 2021 in parallel with the problems revealed in 2020 in terms of equality rights. During the current reporting period, it appeared that the policy of entering the territory of Georgia was not fully compatible with the right to equality. More

³¹⁵ The Special Report of the Public Defender of Georgia for 2021 on fight against discrimination, its prevention and the state of equality is available at: <<https://bit.ly/3tGtWoO>> [last viewed: 30.03.2022].

³¹⁶ *ibid*

specifically, some persons with permanent residence permit in Georgia were restricted from entering the country, which is contradicting to Georgian anti-discrimination legislation.

The issue of impact of vaccination against the new coronavirus on human rights was particularly important in the reporting year. Among community some questions were arisen regarding obligation to present a vaccination certificate, whether it was discriminatory in employment, services, health, education or other areas. In response, the Public Defender of Georgia clarified that the imposition of restrictive or incentive measures on vaccinated and non-vaccinated persons, if there was a relevant justification, did not constitute discrimination.³¹⁷

6.3. Equality of women

In terms of women's equality status, the facts of sexual harassment, especially those in the workplace, were a challenge this year as well. As the practice of the Public Defender shows, the awareness on the legislation prohibiting sexual harassment and the relevant mechanisms has increased, which is reflected in the number of applications from women employed in various fields.

In addition, this year the Public Defender was addressed for the first time by professional women football players, which made it possible to discuss the compliance of their legal status with the principle of equality.

As a result of the investigation, the Public Defender of Georgia considered as a discrimination that the regulations of the Football Federation do not provide regulations tailored to the special needs of women in the field of reproductive health. In particular, in compulsory training programs for physicians of licensed teams are not integrated issues of the sexual and reproductive health of female players; no guidance document / standards for female players during pregnancy and subsequent physical activity have been developed; the right of female players, as employees, to protect their motherhood right is also inadequately protected.

In addition, in order to study the impact of amendments to labor legislation made in 2020 related to right to equality, during this reporting period, the Public Defender analyzed the issue of exercising the right for parental leave by men. According to the LEPL Social Service Agency based on Unified Accounting Database of State Payments, from January to November 2021, in total 381 employees benefited from paid childcare leave, 333 women and 48 men among them. Out of these 48 men, in 46 cases they took 57 days of childcare leave (30 days in one case and 19 days in one case) and the amount reimbursed to them (except for 7 cases) was 1000 GEL, in total 45,310 GEL was paid off to 48 people.³¹⁸

As for the facts related to replacing of unused days of maternity leave by the father: it was used in 3 cases (in two cases 126 days and in one case - 115 days) and the amount of compensation for each of them was 1000 GEL.³¹⁹ In addition, the Public Defender's Office received information from several private companies, according to their answers, no man has benefited from child care leave this year. One of them noted

³¹⁷ *ibid*

³¹⁸ Letter of the Social Service Agency #404/11476, 22 November, 2021.

³¹⁹ Letter of the Social Service Agency #404/11476, 22 November, 2021.

meanwhile that based on the amendments to the Labor Code, their statute had separately established the right to take parental leave for fathers.³²⁰

6.4. Equality of persons with disabilities

The Public Defender has been outlining for many years that existing medical model on granting of the disability status has a negative impact on the legal status of people with disabilities, which in practice prevents people with different disabilities from receiving benefits tailored to their individual needs. This problem is particularly evident in the areas of health and social security.

Physical or other types of accessibility are still challenging, that represents a significant obstacle for independent living for people with disabilities. In 2021, this issue was identified in the context of the rights of pregnant women with disabilities. As the practice of the Public Defender has shown, they face obstacles in receiving health care services. In particular, both physical adaptation problems in antenatal care facilities and challenges while accessing health information were identified.

The issue of adapting the educational environment to the needs of children with disabilities remains a challenge, which, this year, has been identified as a problem in the process of receiving informal education.³²¹

6.5. Rights of representatives of non-dominant religious and ethnic groups

In terms of the equality of Muslims, measures have to be taken by the Special Penitentiary Service to ensure the proper realization of freedom of religion under conditions of deprivation of liberty. Problems were related to access to appropriate food on religious holidays and the praying spaces.

Among the problems faced by non-dominant ethnic groups, challenges to access public spaces should be underlined and accompanying problems: language barriers, insufficient number of personnel with language knowledge among service providers, lack of information, existing situation while dealing with applications made in non-state language and translation of appropriate resources; financial barrier; problems facing 1 + 4 program beneficiaries are also noteworthy. In addition, the challenges facing the Meskhetian community are worth to mention, on the basis of which the need for appropriate stable legal guarantees is obvious.³²²

6.6. Right to equality of the LGB+ community

In terms of protection of the LGBT + community rights, the actions of the violent groups against the March of Dignity on July 5 were dramatic, in response to which the inability of law enforcers could not resist any criticism.

Full realization of social, economic and health rights for community members was problematic this year as well. Challenges were related to labor rights, barriers to access to household or health services, education, access to economic resources, and etc.

³²⁰ See in details: Special Report of Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available: <<https://bit.ly/3tGtWoO>> [last viewed 30.03.2022].

³²¹ ibid

³²² See details in Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available at: <<https://bit.ly/3tGtWoO>> [last viewed: 30.03.2022].

Also noteworthy is the unavailability of medical services, including the fact that certain medications or hormonal treatments are not funded under the universal health care program, nor any other special program that would be tailored to the specific needs of transgender people exists. There are challenges in terms of the right to education, both in terms of access to professional and higher education.

On July 1, 2021, "Pride Week" was opened in Tbilisi with cultural events, in particular, a documentary film screening and a queer music festival were organized. Despite attempts by far-right groups to disrupt Pride Week cultural events, law enforcement has been able to ensure security these days and give the LGBT + community the opportunity to enjoy freedom of assembly. The week was supposed to end with a "March of Dignity" on July 5, but the "March of Dignity" was not held due to the lack of security guarantees from the authorities and the inadequate response to the violence that took place on July 5.

On July 5, 2021, violent groups gathered on Rustaveli Avenue in the morning to disrupt the "March of Dignity". Violent acts took place on their part, which, during the day, were significantly encouraged by the inaction of the investigative agencies. On July 5, 2021, employees of various media outlets, human rights activists and other citizens were injured as a result of the attacks of the opponents of "Tbilisi Pride".

The events of July 5 were preceded by public incitements to violence by leaders and other members of violent groups and the mobilization of certain groups with the aim of violence. Numerous calls for violence were heard on July 5 as well. Despite of providing by the Public Defender of Georgia a reasoned position³²³ that publicly available evidence reached the standard of initiating prosecution against at least two persons to the Prosecutor's Office of Georgia, no investigation was launched on the facts of public incitement to violence.

6.7. Inequality in the social protection system

Inequality in the social protection system manifests itself in a number of directions. During this reporting period, the service rate of so-called social loans, turned out to become problematic, the Public Defender applied to the relevant agencies with the request to reduce the rate.³²⁴ As the case study revealed, the rates of social loans are not determined considering the different socio-economic status of consumers, which puts individuals in an unjustifiably unfavorable position.

In addition, practice prohibiting the receipt of more than one social benefit from the state (except of a few exceptions), regardless of their purpose, has been assessed as inconsistent with the principle of equality.³²⁵

6.8. Inequality in labor relations and while performing work

Local self-government elections were held in Georgia in 2021, which once again highlighted the alarming trend of dismissals and other possible violations of labor rights due to political views during the pre-election period. The applicants mainly cited goof, friendly or relationship relations with members of the

³²³ The proposals of the Public Defender of September 3, 2021 to the Prosecutor's Office of Georgia are available at: <<https://rb.gy/d6pywf>> [last viewed on 30.03.2022].

³²⁴ General proposal of the Public Defender of Georgia of December 27, 2021 to the Chairman of the Interagency Commission for Determining the Terms of Banking Services, the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs, the Acting Director of the LEPL Social Service Agency and the President of the National Bank of Georgia: available at: bit.ly/3HxjGV8 [Last viewed: 30.03.2022].

³²⁵ See in detail: Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available: <<https://bit.ly/3tGtWoO>> [last viewed 30.03.2022].

party of former Prime Minister Giorgi Gakharia as a reason for the unequal treatment. Among them, some are related to the posting / sharing of posts or comments expressing support or sympathy for the party leader on social networks. It is noteworthy that the Public Defender has started investigating number of cases related to assumed violation of labor rights on political grounds.

It is also noteworthy that the Public Defender first found discrimination against platform workers, in particular Bolt couriers, who were permanently banned from accessing Bolt's application and company terminated labor contracts with them, due to protests and the formation of a labor unions. The fact of dismissal was also problematic when an employed miner protested against the improper labor safety rules, especially in the light of the conclusion of the labor inspection, which confirmed the existence of the problems named by the applicant.

This year, the Public Defender also focused on the legal status of critical media representatives whose professional activity was interfered.³²⁶

6.9. Incitement of discrimination

In terms of encouraging of discrimination, unfortunately, this reporting period was no exception. The Public Defender has repeatedly recalled government agencies for creation of unified vision and policy aiming to prevent discrimination and to protect right to equality, as well as to make public statements in support of equality. However, the variety of statements encouraging discrimination against various vulnerable groups by political officials from year to year shows that the state has so far not taken effective steps to reduce stereotypes and ensure equality between different groups. Encouraging environment of discrimination is more noticeable towards women, ethnic and religious minorities and the LGBT + community.³²⁷

6.10. Challenges of investigation of hate motivated crimes

According to the Public Defender's practice, like last year's reporting period, ineffective investigations on all alleged hate motivated crimes remains challenging. Complaints about alleged hate crimes are typically consistently high from Jehovah's Witnesses and LGBT + people.

It should be noted that part of the crimes committed on the grounds of alleged hatred against LGBT + people are usually related to physical and verbal abuse, beatings, assaults and death threats. The applicants also point out that, in a number of cases, law enforcement officials called to the scene used abusive terminology themselves and expressed aggression towards them on homophobic grounds instead of defusing the conflict. The cases in the proceedings of the Public Defender also reveal the facts of violation of right to life and health on transphobic grounds.³²⁸

³²⁶ See in details: Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available at: < <https://bit.ly/3tGtWoO> > [last viewed: 30.03.2022].

³²⁷ See in detail: Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available: < <https://bit.ly/3tGtWoO> > [last viewed 30.03.2022].

³²⁸ See in detail: Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and equality, available: < <https://bit.ly/3tGtWoO> > [last viewed 30.03.2022].

Recommendations

To the Government of Georgia:

- Develop a uniform standard for the payment of maternity and childcare leave through legislative initiative in a way that does not worsen the legal status of any of the target groups;
- The medical model for granting disability status should be completely replaced by the social model. Prior to this change, while planning of health care programs the inequalities caused by the operation of the medical model and the individual needs of persons with disabilities should be taken into account;
- Amend the general rule for issuing social packages, which, with few exceptions, prohibits the receipt of more than one social benefit from the state.

To the Minister of Internal Affairs of Georgia:

- Ensure immediate and effective investigation of all alleged crimes occurred on July 5-6.

To the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs:

- By 2022, systematically analyze the needs of pregnant women with disabilities in terms of access to reproductive health services, and develop an action plan to meet the identified needs.

7. Gender Equality

7.1. Introduction

Achieving gender equality and protecting women's rights remains a significant challenge, especially during pandemic. Covid Pandemic has had a disproportionate impact on women's employment, access to education, and economic empowerment opportunities. In addition, it hindered the detection and effective response to domestic and violence against women, which further exacerbated the risks of femicide.

Despite strengthening of National Gender Equality Mechanism in Georgia over the years and implementation of numerous important projects at the agencies level, no national action plans have been developed in 2021 and no goals or objectives have been set that would have a positive impact on the situation of women in Georgia.

Compliance of Georgian legislation with international standards remains a challenge in terms of elimination violence against women and domestic violence. Also, working on changing violent behavior is problematic. Elimination of harmful practices of marriage and engagement at an early age is again linked to a lack of coordinated work between government agencies. Also, the legal status of LGBT + people is still critical and does not guarantee equal rights in various fields of life.

7.2. Women political involvement and gender mainstreaming

Gender inequality in Georgian politics remains one of the major problems. The political environment is equally contradictive for both women involved in politics and those who want to enter it. Women face many visible or invisible barriers in the form of gender stereotypes, equal access to resources, sexual harassment, sexism, threats and intimidation.

According to the 2021 Global Gender Gap Index,³²⁹ Georgia has risen from 94th to 60th place out of 156 countries in terms of women's political participation, presumably due to the introduction of a gender quota mechanism. According to the Inter-Parliamentary Union,³³⁰ Georgia is ranked as 121st out of 186 countries.³³¹ It should be mentioned that the final version of the mandatory gender quota mechanism, which deals with the selection of a candidate in local self-government,³³² was suddenly changed³³³ and instead of every second, every third candidate of the opposite sex was written down in it. The Public Defender considers such a change as a step backwards, especially in conditions when the issue has not been discussed with stakeholders and the general public.

³²⁹ The data reflects the participation of women in the Cabinet of Ministers, Parliament and decision-making positions in the country; Available at: < <https://cutt.ly/zlRs2E4> > [Last viewed: 19.01.2022].

³³⁰ The data reflects the participation rate of women in parliament. According to the data of 2020, Georgia was in the 109th place among 188 countries, with 31 women in the parliament. Available at: < <https://cutt.ly/zlRf21L> > [Last viewed: 14.03.2022].

³³¹ The data is reflected as of November 2021.

³³² In the original version, the mechanism of gender quotas in local self-governments had foreseen the presence of every second candidate of the opposite sex on the list.

³³³ The Organic Law of Georgia, the Election Code of Georgia, has been amended, Organic Law of June 28, 2021 №703; Available at: < <https://cutt.ly/ZO73Edd> > [Last viewed: 11.02.2022].

The role of institutional mechanisms for gender equality in the country³³⁴ is largely reflected in administrative support and advisory functions and, consequently, fails to influence policy-making and improve the rights of women. The lack of a state vision on gender mainstreaming, including a lack of readiness and coordination, remains a challenge. As for agencies, despite the steps taken,³³⁵ gender mainstreaming tools are chaotic and unsystematic.³³⁶

Effective work of gender equality mechanisms at the local self-government level is still challenging.³³⁷ In addition, City Hall representatives lack the knowledge, sensitivity and competence of protection and assistance mechanisms existing in the country, which has a major impact on the legal status of local and rural women. Lack of cooperation and communication between social workers, police, self-governing bodies and various thematic NGOs was also revealed.³³⁸

7.3. Economic involvement of women and labor rights

According to the 2021 Global Gender Gap Index,³³⁹ Georgia has moved from 61st place to 64th out of 156 countries in terms of women's economic participation and opportunities. The average income rate³⁴⁰ between the sexes has slightly improved, according to which Georgia is at 115th place.³⁴¹ According to the same source, with equal pay for equal work, Georgia has progressed from 73rd to 30th place. It should be noted that the issue of equal pay is integrated in the legislation of Georgia and in the national action plans, however, this obligation covers only the public service and fails to ensure the protection of labor rights of employees in the private sector.³⁴²

In 2021, the Organic Law of Georgia, the Labor Code, underwent significant changes,³⁴³ which is a step forward in achieving gender equality. However, it should also be noted that it is both are still a challenging – taking of childcare leave in public sector by fathers and enjoying this right for women employed in the private sector.³⁴⁴

It should be noted that the pandemic has significantly worsened the legal status of women employed in the health sector. There is a shortage of nurses in the country and while in Europe there are an average

³³⁴ Available at: < <https://cutt.ly/PO75wUO> > [Last viewed: 11.02.2022].

³³⁵ There is a permanent national mechanism for ensuring gender equality at the governmental level in Georgia, which is responsible for developing and implementing the National Action Plan for Gender Equality. It is also welcomed that the Permanent Council for Gender Equality of the Parliament of Georgia became more active in terms of strengthening thematic research and coordination mechanism.

³³⁶ The state vision on gender mainstreaming is not based on a unified approach, which also indicates that gender equality issues are still not a priority for agencies.

³³⁷ Knowledge and competence of gender equality councils and financial services on gender budgeting issues are still problematic.

³³⁸ Thematic meetings with the population held by the Public Defender's Office during the reporting period.

³³⁹ Available at: < <https://cutt.ly/8lRgGbP> > [Last viewed: 19.01.2022].

³⁴⁰ According to the same source, a man's estimated annual income is twice that of a woman and constitutes \$ 19.2 (thousand), while women earn an average of \$ 9.7 (thousand).

³⁴¹ According to 2020 data, Georgia is at 118th place among the average income of sexes. .

³⁴² Analysis of the Gender Pay Gap and Gender in the Georgian Labor Market, UN Women, 2020, 53; Available at: < <https://cutt.ly/NPu2xf7> > [Last viewed 14.02.2022].

³⁴³ Under the new rule, maternity leave and child care leave are divided into two parts: maternity leave and child care leave.

³⁴⁴ The Organic Law of Georgia, the Labor Code of Georgia, has been amended to address the issue of legal regulation of leave due to pregnancy and childbirth, child care and adoption of a newborn. Letter of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia №01 / 12197; 07.10.2020.

of 2 to 5 nurses per doctor, in Georgia this figure equals to 0.6. Consequently, in the face of unequal gender distribution of care burden and increased work schedule, the workload of women working in the health sector has doubled, both at home and in the workplace.³⁴⁵

Women's economic empowerment is significantly influenced by free movement and its gender aspects.³⁴⁶ In all regions of Georgia, including the capital, the challenge is the proper functioning of municipal transport and in some cases, even its absence. This problem makes access to education,³⁴⁷ employment and other basic services even worse, especially for rural women. It hinders the development of appropriate skills and habits for women and their subsequent professional development, which has a direct impact on women's economic independence and, more generally, on the legal status of women in the country. In addition, the mobility of women directly depends on the amount of their income.³⁴⁸

It is welcomed that out of 689 projects³⁴⁹ funded under the Grant Program "Produce in Georgia"³⁵⁰ in 2021, 341 (48.7%) beneficiaries are women, which is characterized by an upward trend³⁵¹ compared to previous years. As for the equal participation of women in the fields of innovation and technology, achieving this remains a challenge.³⁵² This is confirmed by the data of the Global Gender Gap Index,³⁵³ according to which the participation rate of girls in STEM programs is twice as low (girls - 15.58%, boys - 29.47%).

In 2021, 696 people were granted the status of single parents³⁵⁴ in Georgia, of which all were single mothers. As for parents with many children, the status was set for 1286 mothers and 714 fathers. It is noteworthy that in 2021 there was only one case of an adoptive father.

7.4. Women, peace and security

The Government of Georgia has joined the agenda of women, peace and security issues since 2011. Unfortunately, the issue of peace and security in the country is still relevant today and continues in the form of so-called "borderization", which poses a threat to civilians, especially women and girls. Added to this, regulations designed to prevent the Covid pandemic have significantly worsened the situation of women affected by the conflict.³⁵⁵

Unfortunately, in 2021, the next (fourth) National Action Plan for the implementation of UN Security Council resolutions was not developed and approved in a timely manner, which negatively affects the legal status of women affected by the conflict. The monitoring of the National Action Plan by the Public

³⁴⁵ Available at: < <https://cutt.ly/SPdFCoY> > [Last viewed 16.02.2022].

³⁴⁶ Research "Women and Mobility - Gender Aspects of Women's Daily Movement"; Available at: < <https://cutt.ly/eIVQXuY> > [Last viewed 19.01.2022]

³⁴⁷ According to the study, women's mobility for education is alarmingly low in all regions.

³⁴⁸ 38.4% of low-income women rarely or never leave home. Also, women's mobility has an important age dimension and half of women over the age of 61 rarely or never leave home.

³⁴⁹ Within the consulting component of the program, training in entrepreneurship and business plan development was conducted for 4124 applicants, of which 2074 are women entrepreneurs.

³⁵⁰ Letter №EG-3.1 / 92, of Legal Entity of Public Law, "Produce in Georgia"; 27.01.2022

³⁵¹ The share of women entrepreneurs was 32% of the projects funded in 2015, in 2018 this figure reached 45%. By 2020, this figure has risen to 48.5%.

³⁵² Letter of the Ministry of Economy and Sustainable Development of Georgia №08 / 561; 04.02.2022; The involvement of girls in the training programs of the Innovation and Technology Agency is 35%.

³⁵³ Available at: < <https://cutt.ly/NPdDfEP> > [Last viewed 16.02.2022].

³⁵⁴ Letter from the Ministry of Justice: №N 01/11734; [Last viewed 18.01.2022].

³⁵⁵ Study on the Impact of the COVID-19 Pandemic on Conflict-Affected Women and Girls; Available at: < <https://cutt.ly/nPiPwJG> > [Last viewed 11.02.2022].

Defender of Georgia shows that despite the improvement in the quality of fulfillment of the commitments made under the plan, women's representation in peace and security processes is still minimal, which is a crucial aspect of the UN resolutions agenda. In addition, the measures taken by the agencies did not significantly reflect the needs of IDP women and girls and of those affected by the conflict.

Unfortunately, women in Georgia are still disproportionately represented in decision-making positions in the defense and security sectors. The number of women employed in senior positions in the Ministry of Internal Affairs of Georgia is 6%, while the representation of women in senior positions in the civil office³⁵⁶ of the Ministry of Defense of Georgia is 20%.³⁵⁷ ³⁵⁸Equal participation of women in peace and reconciliation processes remains a challenge.³⁵⁹

Meetings with stakeholders, NGOs and women affected by the conflict are welcome, including taking into account recommendations made by women's NGOs.³⁶⁰ Nevertheless, the coordination mechanism between the executive and local governments is weak, and municipalities do not adequately study and address the needs of IDPs and conflict-affected women and girls in policy-making processes.

The Public Defender of Georgia positively assesses the increased funding of study expenses for IDPs students and students affected by the conflict, financial support under the social program and the provision of funds for student transportation.³⁶¹ It should be noted that 1,527 persons (761 women) with IDP status were enrolled in the qualified professional education programs; and 483 persons (265 women) with IDP status were enrolled to professional training and retraining programs.³⁶²

7.5. Sexual and reproductive health and rights of women

Despite numerous recommendations from the Public Defender of Georgia, the integration of the postpartum medical care and psychological support component into the state maternal health program remains a challenge. This negatively affects the somatic and psycho-emotional state of women, both during pregnancy and childbirth, as well as in the postpartum stage. In addition, the full integration of family planning services into the primary health care sector remains a challenge, which significantly hinders access to information on family planning services and contraceptives, especially for women from vulnerable groups.

³⁵⁶ This figure was 33% in 2020.

³⁵⁷ Letter from the Ministry of Defense of Georgia MOD 5 22 00078796; [25.01.2022]; Letter from the Ministry of Internal Affairs of Georgia MIA 1 22 00141682; [Last viewed 18.01.2022].

³⁵⁸ MIA - In 2021, 15867 men and 3456 women were employed. This information does not include the data of the legal entities of public law operating in the field of governance of the Ministry and the employees of the state sub-institutions within the sphere of governance of the Ministry. 54% of the employees in the civil office of the Ministry of Defense of Georgia are women and 46% are men.

³⁵⁹ In 2021, four rounds of talks were held involving 32 men and 10 women. Among the 5 representatives of the Ministry of Foreign Affairs in the Geneva International Talks, 2 were women.

³⁶⁰ The Office of the state minister raises issues raised by women at meetings of all formats, and more than 70% of the recommendations of women's NGOs are taken into account. Letter from the Office of the State Minister of Georgia for Reconciliation and Civil Equality №84; 20.01.2022.

³⁶¹ In the first semester of the 2020-2021 academic year, 1990 students (1054 females) were funded in the second semester - 2198 students (1213 females) within the framework of the student funding program for the affected students in the villages adjacent to the demarcation line. 1608 students (865 women) were funded in the first semester of the 2018-2019 academic year, 1626 students (883 women) in the second semester.

³⁶² Letter from the Ministry of Education and Science of Georgia MES 4 22 0000038013; [18.01.2022].

The full integration of the component of human sexuality related education remains a problem,³⁶³ as the Ministry of Education and Science of Georgia³⁶⁴ is guided by a narrow understanding of complex education on human sexuality and deals only with the medical aspects of reproductive health.³⁶⁵ Such kind an approach cannot prevent underage girls from marrying at an early age and getting pregnant.³⁶⁶ In addition, the knowledge and competence of teachers themselves on reproductive health issues remains a challenge.³⁶⁷ Public school students also have little information about such an important physiological process as menstruation. Lack of information on this issue deepens the stigma associated with menstruation and negatively affects many aspects of girls' lives.

The expansion of the age group of vaccination against papilloma virus (HPV) for the prevention of uterine cancer should be positively assessed.³⁶⁸ It is an effective means of protection against cervical cancer caused by this papillomavirus. However, the rate of its use in the practice for preventing uterine cancer in the country is low.³⁶⁹

A study conducted by the Public Defender of Georgia in 2021, "The state of sexual and reproductive health and rights of women and girls from non-dominant ethnic groups in Georgia," showed that the practice of conducting unnecessary and harmful procedures³⁷⁰ for women is still common in maternity hospitals, which are recognized as abusive for woman's dignity and harmful. Unfortunately, there is no definition of so-called "gynecological violence" in Georgia, which makes it impossible to detect such kind of action and, consequently, to take effective steps for its elimination. It should also be noted that according to research, a woman's individual needs are often neglected during pregnancy and childbirth.³⁷¹ There are frequent cases when in the decision-making process instead of women are involved their partners and other family members.³⁷²

³⁶³ Including the training of teachers in the relevant subject and the creation of school curricula and textbooks.

³⁶⁴ Letter from the Ministry of Education and Science of Georgia №MES 8 21 0001061859; [08.10.2021].

³⁶⁵ Female reproductive system, male reproductive system, pregnancy, importance of proper protection of genital hygiene, fertilization and fetal development, overcoming infertility, information about sexually transmitted diseases and ways to protect against them, etc.

³⁶⁶ Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia №01 / 530 [12.01.2022]. In 2021, there were 518 cases of underage pregnancies, which were characterized by a decreasing trend compared to previous years. In 2020, 578 juvenile pregnancies were registered, and in 2019 - 664.

³⁶⁷ Available at: <<https://bit.ly/3F06VRd>> [04.01.2022].

³⁶⁸ Initially the target group was limited to 10–12-year-old girls. However, the age group has expanded and according to the Government of Georgia Resolution #4 of January 12, 2022 "On the Approval of State Health Care Programs for 2022", it now includes girls aged 13-18. Letter of the National Center for Disease Control and Public Health P06 / 695; 25.02.2022.

³⁶⁹ In 2020, 23% of the target group was vaccinated against papilloma virus (HPV). And in 2021 24% of the target group. Letter of the National Center for Disease Control and Public Health P06 / 750; 02.03.2022.

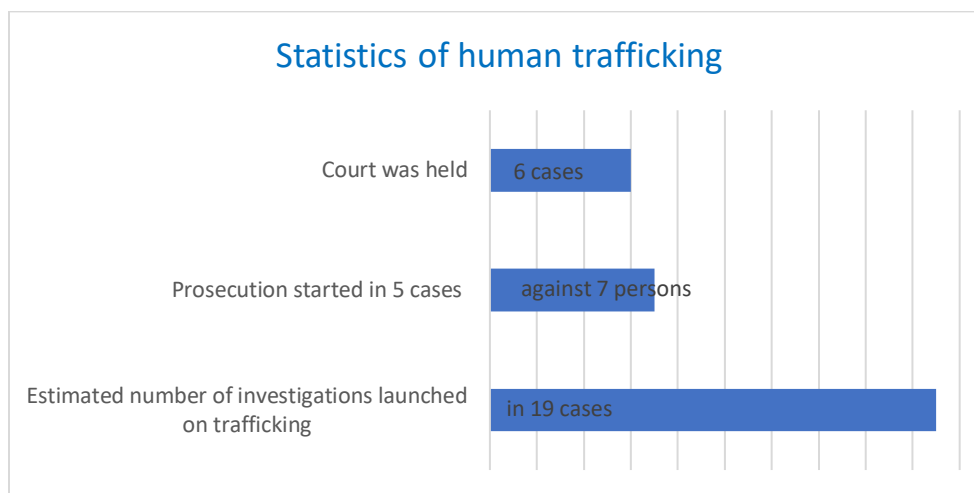
³⁷⁰ Pressure on the base, bowel cleansing procedures in the prenatal period, episiotomy, shaving of the pelvis, sometimes - the use of physical force, etc.

³⁷¹ Including the lack of professional translators in medical institutions. Which excludes the possibility of receiving confidential services by the patient.

³⁷² Special Report of the Public Defender of Georgia, The Situation of Sexual and Reproductive Health and Rights of Women and Girls from Non-Dominant Ethnic Groups in Georgia

7.6. Human trafficking

According to the report of the United States Department of State of 2021,³⁷³ Georgia, like the previous year, meets the minimum standards in fight against trafficking and is still in the first basket. Nevertheless, the report notes that, unlike the previous year, in 2021 the rate of investigations and arrest of accused persons were decreased.



The state has also not worked on a work permit system that would give migrants employment opportunities. Additional efforts are needed to train law enforcers and approaches to identify victims of trafficking. Despite the fact that Interagency Council against Trafficking has been established at the government level and the National Action Plan for 2021-2022 has been developed, the low level of awareness of both the public and potential victims of trafficking on protection and assistance measures in the country remains a challenge.³⁷⁴

7.7. Violence against women and domestic violence

In terms of violence against women and domestic violence, the state has made significant progress in developing policies and responding to cases by law enforcement bodies. Nevertheless, compliance of Georgian legislation with international standards and effective protection against secondary victimization, along with protection of victims from repetitive domestic violence and violence against women are still problematic.

Adoption by Parliament of Georgia of the law in a rush, according to which the rule³⁷⁵ of compensation for victims of violence against women and/or domestic violence should be adopted was postponed for 1 year,³⁷⁶ need to be assessed negatively. Besides, a document on referral procedures against women and

³⁷³ Report of the State Department of the US of 2021 related to Georgia; Available at: <<https://cutt.ly/aVUVSb>> [Last viewed 19.01.2022].

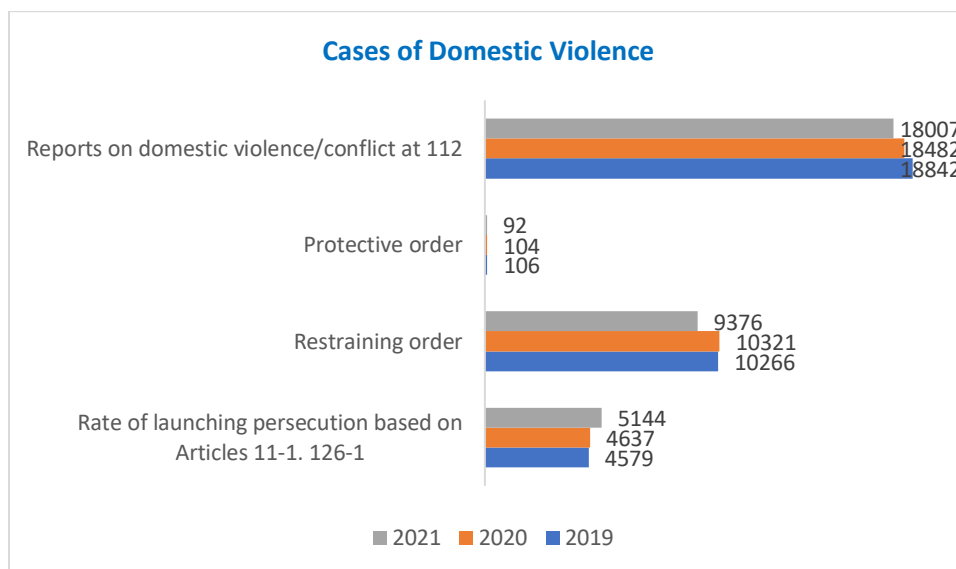
³⁷⁴ A large-scale information campaign on human trafficking is planned for 2022; Letter from the Ministry of Justice №717; 20.01.2022

³⁷⁵ In accordance with its obligation under Article 30 of the Council of Europe Convention on the Prevention and Suppression of Violence against Women and Domestic Violence.

³⁷⁶ The law is available at the link: <<https://bit.ly/36yxB0x>> [Last viewed 30.03.2022].

domestic violence has not yet been approved. The critically low and formal nature of the involvement of social workers in cases of domestic violence and violence against women remains a challenge.³⁷⁷

Georgian law still does not meet the requirements of the Istanbul Convention and does not provide for the free and voluntary consent of the victim as part of the definition of sexual violence crimes. Georgian law also does not provide the possibility of remote interrogation of the victim or temporarily removal the accused person from the courtroom.



It is still problematic for law enforcement agencies to identify and systematize cases of violence against women and domestic violence as a single crime. Law enforcement responses to such cases are fragmented and fail to protect potential victims from repeated violence.³⁷⁸ In addition, law enforcement agencies need to make additional efforts to properly assess risks facing women and possible domestic violence cases, as despite launching of investigations in specific cases,³⁷⁹ it was not possible to avoid repeated violence.

Despite the fact that an electronic surveillance system has been introduced for potential perpetrators, there are few cases where law enforcement officers use electronic bracelets against potential abuser in addition to issuing of a restraining order.³⁸⁰ According to 2021 data, there is also a small number of abusers who undergo a course on violent addiction and behavior change, which is due to the voluntary

³⁷⁷ In the case of violence against women and domestic violence, social workers are mainly involved only when the possible victim is a minor, or the fact of possible violence was witnessed by a minor, or if the victim of violence is a person with a disability. In the case of violence against an adult woman, social workers are often not involved.

³⁷⁸ E.g., see case №2916/21; 12722/21; 13807/21; 2868/21.

³⁷⁹ E.g., see case №13441/21; 9789/21.

³⁸⁰ In 2021, 9,376 restraining orders were issued for domestic violence and 744 restraining orders for violence against women. Electronic surveillance was imposed on only 14 persons on the facts of domestic violence, and on 1 person on the facts of violence against women. Letter from the Ministry of Internal Affairs of Georgia MIA 5 22 00444842; 20.02.2022

nature of the course.³⁸¹ No program has yet been developed for abusers against whom a protection order has been issued.³⁸²

It should be welcomed that in 2021 the Ministry of Internal Affairs of Georgia has started the specialization of investigators on sexual violence issues. It is noteworthy, however, that summary judgment on sexual violence cases was identified as a problem during the reporting period.³⁸³ In addition, the challenge is to identify and respond to economic violence by failing to regulate economic violence as a form of domestic violence at the legislative level.

Monitoring conducted³⁸⁴ by the Public Defender of Georgia in 2021 revealed that judges do not provide and/or provide incomplete information to women victims of violence about their rights and responsibilities and support mechanisms.³⁸⁵ It should be noted that the risk of secondary victimization of women victims during court interrogation is high and their adequate protection is not ensured. In addition to the above mentioned, the monitoring and case studies carried out by the Public Defender show that the involvement of the witness and victim coordinator in cases of domestic violence and its effective work is problematic.³⁸⁶

It should be noted that the state has not investigated the risks and needs of violence against women with disabilities and psychosocial needs.³⁸⁷ Practice shows that there are a number of important barriers while accessing to the justice by women and girls with disabilities. These include access to the physical environment and the stereotypical attitude of law enforcement officials towards the facts of possible violence against women and girls with disabilities,³⁸⁸ which, in turn, is explained by the lack of knowledge of law enforcement officials.³⁸⁹

³⁸¹ In 2021, 97 probationers passed these programs. And training in the penitentiary system within the course 2020-2021 has been suspended to prevent the spread of the pandemic caused by Covid-19 in the penitentiary system. During this period, a behavior correction program was introduced in penitentiary institutions and staff was trained. Letters of the Ministry of Justice of Georgia № 2/2148; №68747 / 01; 12.01.2022 11.03.2022

³⁸² According to the Georgian government administration, work is underway on these programs. Letter from the Administration of the Government of Georgia GOV 7 22 00004931; 16.02.2022.

³⁸³ E.g., see №2916/21; №13414/20; 3875/21.

³⁸⁴ Monitoring the interrogation of women victims of domestic violence in court (special report); 2021 year.

³⁸⁵ Information on protection and support mechanisms against secondary victimization, service facilities for victims of violence.

³⁸⁶ One of the reasons for this is the small number of witness and victim coordinators employed by the Ministry of Internal Affairs of Georgia and the Prosecutor's Office of Georgia. The Prosecutor's Office of Georgia employs 18 witness and victim coordinators, who were involved in 119 cases of violence against women and 1706 cases of domestic violence in 2021. Letters of the Prosecutor's Office of Georgia №13 / 8086; 13/3242; 24.01.2022 14.02.2022. The Ministry of Internal Affairs of Georgia employs 14 coordinators of witnesses and victims, who were involved in 1682 criminal cases of domestic crimes and 108 cases of violence against women. Letters from the Ministry of Internal Affairs of Georgia MIA 6 22 00397990; MIA 6 22 00092772; 13.01.2022 14.02.2022 Also, e.g., Case №10635 / 21.

³⁸⁷ According to the Government of Georgia, in 2019, a thematic research group was set up on access to health services for women with disabilities, with the aim of examining the involvement of women and girls with disabilities in health and social programs funded by the government and local government and available medical services. Letter of the Government of Georgia of December 7, 2020 (GOV 8 20 00050825).

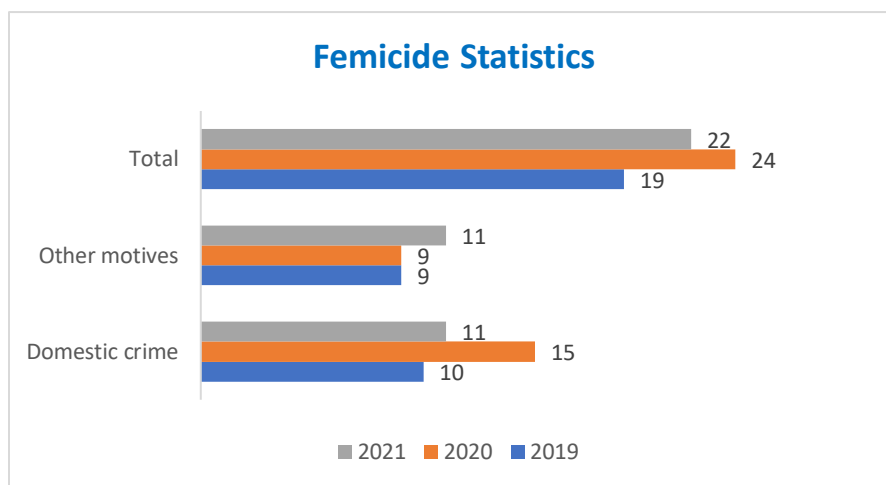
³⁸⁸ For example, investigators often question the credibility of a testimony given to an investigation by a woman with a mental health problem and / or intellectual disability. For women with disabilities, such a stereotypical attitude often becomes a reason of refusal to protect their rights. The special report of the Public Defender of Georgia, "Assessment of the needs and protection of women and girls with disabilities in Georgia", is available: < <https://bit.ly/3wTLlNs> > [last viewed on 30.03.2022].

³⁸⁹ According to the representative of the Ministry of Internal Affairs, the part of collecting evidence is difficult because the investigators do not know how to obtain evidence, how to establish communication with a woman with disabilities. It is

During the pandemic, both the employment of beneficiaries of domestic violence and their awareness of available services were turned out³⁹⁰ to be particularly challenging.³⁹¹ Cases of multiple use of shelters by women victims of violence have also been identified, due to the lack of programs to empower victims of violence in the country. It is noteworthy that the lack of basic necessities³⁹² was mentioned as a serious problem in almost all the shelters, which may be humiliating to the beneficiaries.

7.8. Gender motivated killings of women (femicide)

According to the General Prosecutor's Office of Georgia, in 2021, 22 women were murdered,³⁹³ of which 11 cases were committed by a family member, and in 11 cases other motives for committing crimes were revealed. Also, the fact of attempted murder of 31 women³⁹⁴ was revealed, out of which 16 were committed on the grounds of domestic crime, and 15 cases - on other motives.



According to statistics, as in previous years, there is no tendency of femicide/femicide attempts to decrease. Compared to previous years, the number of cases leading to female suicide and suicide attempt has increased.³⁹⁵ Also, the facts of attempted murder of a woman have increased

particularly difficult to obtain evidence from women with disabilities who have communication difficulties, and at the same time, the investigator is unprepared to manage such cases effectively. Research link.

³⁹⁰ Monitoring was conducted in 2021 in the shelters and crisis centers for victims of violence in Georgia.

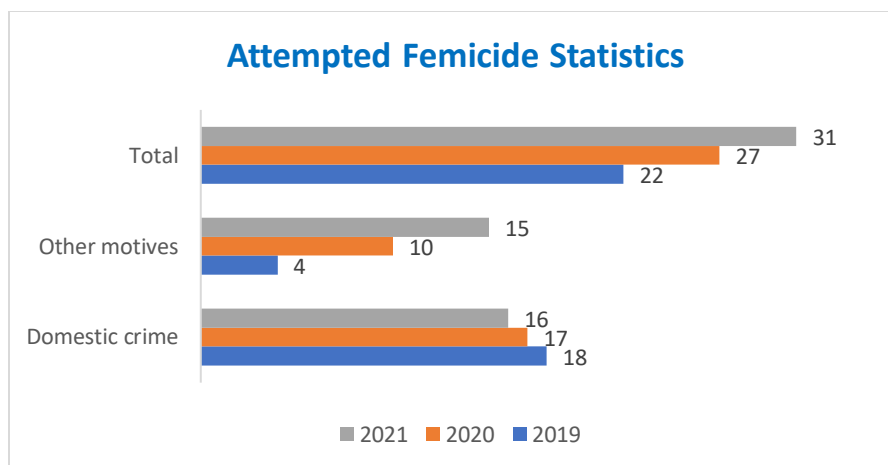
³⁹¹ Visit to the doctor, training courses, legal services, etc.

³⁹² Some of the surveyed beneficiaries did not have personal underwear, slippers, combs, etc.

³⁹³ Including 2 cases of suicide by a family member and 2 cases of health damage that resulted in the death of the victim.

³⁹⁴ Among them, 10 cases of leading to attempt of suicide by family member and 3 other cases of leading of woman to attempt suicide.

³⁹⁵ In 2019, 2 out of 19 cases of femicide were related to suicide. And 6 out of 22 attempted murders lead to suicide attempts. In 2020, none of the 15 cases of femicide led to suicide. And 7 from 27 attempted murders of women, were of fact leading to suicide attempts. As for 2021, 2 of 22 murders were suicides, and 13 from 31 attempted murders were suicide attempts.



It should be welcomed that in accordance with the recommendations issued by the Public Defender of Georgia within the framework of the Femicide Monitoring Mechanism, court practice is established and the judgments made by the court discuss the murders or murder attempts committed on the basis of gender. However, the number of cases where the crime was identified on the ground of gender is still low and, consequently, the punishment has been aggravated. It is also problematic for the Prosecutor's Office of Georgia to establish a gender motive for a femicide attempt, to identify an action against a family member and identification of committing it on the ground of gender, and to qualify it according to a special norm.³⁹⁶ Especially worrying are the cases identified identified in 2020, when the use of too short and lenient punishment for the perpetrator of violence against women and / or domestic violence became one of the causes of femicide and attempted femicide and, consequently, could not be avoided.³⁹⁷

It is noteworthy that in the courts of first instance there is no unified vision of the definition of a crime committed on the ground of gender and the "gender sign" is narrowly defined.³⁹⁸ There is also a diverse practice regarding definition of the term "unregistered marriage."

7.9. Child and early marriage

The vicious practice of marrying at an early age remains one of the major challenges to gender equality. As in previous years, it is problematic to work in a coordinated manner between state agencies, to ensure that the referral procedure is functioning properly³⁹⁹ and to take preventive measures.

With the harmful practice of early marriage, the engagement of underage girls remains a challenge. A study of the cases shows that most of the agencies are unable to identify the alleged coercion of

³⁹⁶ It should be noted that with the amendments made on September 20, 2019, Article 117, Part 3 of the Criminal Code was supplemented with sub-paragraph "e", which provides for criminal liability for intentional grievous bodily harm to a family member.

³⁹⁷ The monitoring revealed cases where defendants were convicted in domestic crimes before committing femicide and femicide attempts and committed more serious crimes within a short period of time after their release from the penitentiary.

³⁹⁸ For example, there is a difference of opinion in the courts as to whether murder on the grounds of jealousy towards a woman is a crime committed on the ground of gender.

³⁹⁹ Case №5494 / 21, we have conflicting information from the LEPL Social Service Agency and the law enforcement agency.

marriage.⁴⁰⁰ It is noteworthy that there is still a risk of leaving the school due to the fear of kidnapping a minor girl.⁴⁰¹

Delayed and ineffective responses to the crimes of forced marriage are often triggered by pre-established attitudes and stereotypes about ethnic minorities.⁴⁰² The results of the research conducted by the Public Defender of Georgia⁴⁰³ revealed that state agencies and community members have fundamentally different views on marriage at an early age. Community members cite the lack of a future perspective, a severe social circumstances and gender inequality as the main reasons for early marriage and child marriage.

LEPL State Agency for Care and Assistance to Victims of Trafficking studied 129 cases of early marriage in 2021.⁴⁰⁴ The Ministry of Internal Affairs of Georgia has launched an investigation into 101 alleged crimes, the motive of which was marriage to a child.⁴⁰⁵ At the Ministry of Education, 36 juveniles left school due to marriage. In 2020, 132 cases of alleged crime were investigated, the Ministry of Education recorded 20 cases of school dropouts due to marriage, while the LEPL State Agency for Care and Assistance to Victims of Trafficking investigated 115 cases of early marriage in 2020.

7.10. Legal status of the LGBT+ persons

The legal status of LGBT + people is still critical in various spheres of life and there is no state policy that would have positive impact on the lives of LGBT + people.

The Public Defender of Georgia assessed the fulfillment of Georgia's obligations in 2021,⁴⁰⁶ according to which the state policy towards LGBT + persons is inconsistent and their real needs are not taken into account in policy planning. The state often takes legislative or policy measures that do not affect the real lives of LGBT + people and do not improve their quality of life. The study also revealed that LGBT + individuals face significant challenges in exercising their rights of assembly and expression, education, employment, health, and adequate housing.

Restrictions on the new coronavirus have once again highlighted the obstacles that LGBT + individuals face in exercising these rights. Restrictions imposed in the country had particularly negative impact on exercising labor rights of LGBT + individuals.⁴⁰⁷

⁴⁰⁰ Case №11898/21; №12222/21.

⁴⁰¹ Case 221222/21 - According to the social agency, an agreement was reached between the parents and the school that the parents would arrange for the juvenile to come to school with them and return home from there to prevent the kidnapping of the juvenile, which is quite common in the Azerbaijani community. Letter № 07/1692.

⁴⁰² Government officials consider early marriage to be an ethnic minority tradition, and it makes no sense to deal with it.

⁴⁰³ Special Report of the Office of the Public Defender of Georgia "Early Age and Existing Practices of Child Marriage in Kvemo Kartli: A Survey of Attitudes", 2021 year.

⁴⁰⁴ Letter of the LEPL State Agency for Care and Assistance to victims of trafficking (№07 / 1986) 15.03.2022.

⁴⁰⁵ Letter from the Ministry of Internal Affairs of Georgia MIA 8 22 00390755; 15.02.2022.

⁴⁰⁶ Special Report of the Public Defender of Georgia "Overview of International Standards for the Protection of the Rights of LGBT + Persons and Commitments Committed by Georgia".

⁴⁰⁷ A survey of a support group for women initiatives also found that during the quarantine period, 12.8% of LGBT + respondents were left without income at all. It is also noteworthy that if before the pandemic the median income of the LGBT + group (study participants) was 900 GEL, during the quarantine this figure was reduced three times (300 GEL). Currently, the median monthly income of respondents is 45% lower than the pre-pandemic rate of GEL 500. Unpublished

In addition, homophobic attitudes persist in society, which are further exacerbated by the use of hate speeches by politicians and the state's stimulation of discrimination against LGBT + persons. It is noteworthy that in order to solve the problem, the state does not analyze public attitudes towards the LGBT + group and does not investigate the main causes of discrimination.⁴⁰⁸

Unfortunately, as in previous years, despite the recommendation of the Public Defender of Georgia, a working group has not yet been set up to regulate the procedure for changing the gender record in civil acts. This creates a significant barrier for trans individuals while performing their rights.

Proposals

To the Parliament of Georgia:

- Develop a legislative package to bring sexual violence legislation in line with international standards;
- Regulate/criminalize economic violence at the legislative level as one of the forms of violence against women and domestic violence.

Recommendations

To the Government of Georgia:

- Develop and approve timely, adequate and effective compensation rules for victims of violence against women and domestic violence within the timeframe established by law;
- Approve the National Referral Procedures for Identifying, Protecting, Assisting and Rehabilitating Victims of Violence Against Women and/or Domestic Violence (National Referral Mechanism);
- Develop programs for the correction of violent behavior of abusers against whom a protection order has been issued, and make it mandatory for convicts;
- Plan awareness-raising campaigns to raise public awareness and proactively address trafficking cases;
- The procedure for gender reassignment in civil acts should be regulated in accordance with international human rights standards, and a working group should be considered for this purpose;
- Plan awareness-raising campaigns that will help eliminate negative attitudes, stigma and prejudices towards LGBT+ people in the society;
- The needs of LGBT+ individuals should be taken into account in human rights strategies and action plans;
- Awareness-raising campaigns should be conducted systematically to prevent early marriage and related crimes.

To the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs of Georgia:

study: Agdgomelashvili et al., Assessing the Impact of Anti-Pandemic Restrictions and Anti-Crisis Measures in the LGBTQI Community as a Result of the New Coronavirus, WISG, 2021.

⁴⁰⁸ Special Report of the Public Defender of Georgia "Assessment of the Legal Status of the LGBT + Group in Georgia".

- Integrate postpartum care and psychological support services into the state maternal health program;
- Fully integrate family planning services into the primary health care system to eliminate barriers to geographical and financial access to it;
- Develop definition of so-called “gynecological violence”, write down and approve a list of specific humiliating practices and raise the awareness of service providers about such harmful practices.

To the Minister of Internal Affairs of Georgia:

- Develop and make publicly available a report on the effectiveness of the work of witness and victim coordinators employed at the Ministry of Internal Affairs of Georgia;
- Systematically train those involved in the investigation of violence against women and girls with disabilities and all other crimes to address the needs of women and girls with disabilities and the standards of communication with them;
- Non-fulfillment of the obligation provided by law in case of detection of marriage / engagement at an early age by an entity involved in child protection referral procedures, should lead to an appropriate response and imposition of a sanction;
- MIA staff should be trained on an early age and child marriage / unlawful deprivation of liberty/ forced marriage, and a further evaluation document should be developed.

To the Prosecutor General of Georgia:

- Develop and make publicly available a report on the effectiveness of the work of witness and victim coordinators employed by the General Prosecutor’s Office.

To the Minister of Education and Science of Georgia:

- Human sexuality education should be fully integrated into formal and non-formal education systems.

To Supreme Court of Georgia:

- Create a guideline document and train judges of common courts in Georgia to effectively protect victims of domestic crime from secondary victimization during questioning.

To the LEPL State Agency for Protection and Assistance of victims of Human trafficking:

- Strengthen and improve beneficiary support programs in violence service facilities for victims;
- Review and update the rules and listing of primary items in shelters for victims of violence to meet existing needs.

To local self-government bodies:

- Ensure the expansion of knowledge and competence of City Hall representatives on gender equality issues;
- Introduce gender-sensitive budgeting practices and allocate adequate financial resources to meet the goals and objectives of the Gender Equality Action Plans.

8. Freedom of Belief and Religion

8.1. Introduction

This chapter provides an overview of key challenges to freedom of religion and belief in 2021, including the dissemination of the alleged classified material illegally obtained by the State Security Service, discriminatory tax and state property legislation in relation to non-dominant religious organizations, religious needs of convicts with non-dominant religions, alleged hate crimes and the ineffectiveness of the investigation around them.

Unfortunately, as in previous years, the vast majority of the recommendations made by the Public Defender on Freedom of Religion and Belief in the 2020 Parliamentary Report are still unfulfilled. Consequently, from year to year we have to repeat the recommendations to the addressee state agencies. So far, no changes have been made to the Decree № 117 of January 27, 2014, of the Government of Georgia, "On the Rules for Implementing Some Measures for Partial Compensation for Damage to Religious Associations in Georgia during the Soviet Totalitarian Regime". Also, discriminatory norms on taxation, state property⁴⁰⁹ and labor legislation⁴¹⁰ of Georgia remain unchanged. In addition, there is still the problematic practice of funding religious associations; the shortcomings in the activities and mandate of the State Agency for Religious Affairs remain unchanged. The issue of returning to the historical owners of religious buildings confiscated during the Soviet period also remains a challenge.

The problem related to the construction of a new mosque in Batumi is still unresolved. It should be noted that the decision made by the Batumi City Court in 2019, which considered the refusal of the Batumi City Hall to build a new mosque in Batumi discriminatory and illegal, was upheld by the Kutaisi Court of Appeal in 2021, which was appealed by the Batumi City Hall to the Supreme Court of Georgia. Non-governmental organizations working on religious issues considered such a move by the City Hall as part of a strategy to delay the fulfillment of its obligations, which violates the rights of the Muslim community and hinders their full realization.⁴¹¹

8.2. Alleged dissemination of covert materials illegally obtained by SSS

During the reporting period, a database was spread by the media, which was allegedly the so-called congregations produced by the State Security Service. Much of the covert surveillance material, allegedly obtained illegally by the State Security Service and uploaded to public platforms on September 13 this year, indicates the total, comprehensive, and large-scale nature of the control and illegal surveillance of religious communities, allegedly to collect and disseminate discrediting information about clergy and human rights defenders. All this must be assessed as gross interference with both the right to privacy and the freedom of religion.⁴¹²

⁴⁰⁹ Parliamentary Report of the Public Defender of Georgia for 2020, 212-215.

⁴¹⁰ Ibid, 220-221.

⁴¹¹ See e.g.: < <https://bit.ly/35EVfYL> > [last visited on 06.03.2022], < <https://bit.ly/3CvMKLB> > [last visited on 06.03.2022]

⁴¹² Statement of the Public Defender on the occasion of the International Human Rights Day, available at: < <https://bit.ly/364uc94> > [last visited on 06.03.2022].

The Tolerance Center operating under the Public Defender and religious associations, members of the Council of Religions, responded to this fact. The organizations that signed the statement demanded that all those responsible for conducting illegal interceptions and surveillance be punished.⁴¹³

According to a statement issued by the General Prosecutor's Office of Georgia on September 18, 2021, the investigation was launched on the grounds of a crime under the first, second and fourth paragraphs of Article 158 of the Criminal Code (violation of secrecy of private communication).⁴¹⁴ The Public Defender addressed the General Prosecutor of Georgia and requested to get acquainted with the materials of the investigation as an exception.⁴¹⁵ Unfortunately, the prosecution refused the request. Additionally, due to high public interest, the Public Defender's Office requested information about the ongoing investigation. The General Prosecutor's Office provided only general information, according to which no specific person has been identified as an accused or a victim in the investigation.⁴¹⁶ The Public Defender calls on the relevant state agencies to conduct an objective and impartial investigation, to provide the public with information about the ongoing investigation, and to identify and prosecute the perpetrators in a timely manner.

In addition, it should be noted that the facts about the possible control of religious associations by the state have occurred several times in the past. In this regard, the case of Vagif Akperov, a former sheikh of the Administration of All Muslims of Georgia, who was allegedly forced to resign as a sheikh, can be noted.⁴¹⁷ In addition, the State Agency for Religious Issues, established in 2014 and considered to be the main agency responsible for religious freedom in the government system, is considered by the Public Defender⁴¹⁸ and non-governmental organisations⁴¹⁹ working on the topic as a source of increased threat of interference and control of the internal affairs of religious associations by the state. At the same time, it should be noted that the dissatisfaction expressed by the Muslim community regarding the interference by the state in the autonomy of the religious community is mentioned in the report of the US Department of State on Freedom of Religion about Georgia.⁴²⁰

The Public Defender considers that the alleged interference by the state in the activities of religious associations and any attempt to control them significantly damages the democratic and secular structure of the Georgian state, which should be considered a gross violation of the Constitution of Georgia.

⁴¹³ Statement of the Tolerance Centre and member Religious Associations of the Council of Religions under the auspices of the Public Defender of Georgia on disclosed secret materials, available at: <<https://bit.ly/3HB2POP>> [last visited on 06.03.2022].

⁴¹⁴ Available at: <<https://bit.ly/3lfEpNx>> [last visited on 01.12.2021].

⁴¹⁵ Letters №15-2/9225 and №15-2/10536 of the Public Defender of Georgia dated September 27 and November 4, 2021, respectively.

⁴¹⁶ Letter №13/78738 of the General Prosecutor's Office of Georgia of December 28, 2021.

⁴¹⁷ Tolerance and Diversity Institute (TDI), Report on Freedom of Religion and Belief in Georgia During Pandemic and Beyond 2020-2021" (May), 2021, 32-33. Available at: <<https://bit.ly/364NsmY>> [last visited on 06.03.2022].

⁴¹⁸ 2020 Parliamentary Report of the Public Defender of Georgia, 219-220.

⁴¹⁹ See e.g. Center for Human Rights Education and Monitoring (EMC), Religion, Politics, and Social Contexts - A Collection of Studies, Reports, and Articles, Tbilisi, 2020, 87. Available at: <<https://bit.ly/3tpOPo6>> [last visited on 06.03.2022].

⁴²⁰ US Department of State, 2020 Report on International Religious Freedom: Georgia, 2021. Available at: <<https://bit.ly/3ILZpMz>> [last visited on 06.03.2022].

8.3. Legislation of Georgia

The Public Defender and the Council of Religions under its umbrella have been pointing to discriminatory norms of the country's tax and state property legislation for several years now, which impose unequal treatment of non-dominant religious associations. Unfortunately, this issue remained a challenge in 2021 as well.

8.3.1. Tax legislation

In the 2020 report, the Public Defender of Georgia addressed the Parliament with a proposal to amend the discriminatory norms in the tax legislation,⁴²¹ however, as of today, the disputed norms have not been changed.

It should be noted that on June 11, 2021, the Constitutional Court of Georgia admitted⁴²² for the consideration on the merits, the constitutional claim of nine religious associations in the part in which the plaintiffs request the recognition of Article 159 (Para. 1 "c") and Article 195 of the Tax Code of Georgia as unconstitutional, against Article 11 (1) of the Constitution of Georgia. The impugned norms oblige all religious associations, except the Orthodox Church, to pay import and value-added tax (VAT) when importing religious items from foreign countries. According to the plaintiffs, the disputed norms contradict the right to equality guaranteed by Article 11 of the Constitution of Georgia.

8.3.2. Legislation on state property

The legislation on state property is still facing shortcomings, which has been indicated by the Public Defender for several years.⁴²³ The recommendations/proposals issued to the state in the 2020 Parliamentary Report of the Public Defender on this issue are still unfulfilled.⁴²⁴

Among other issues, in the 2020 parliamentary report, the Public Defender referred to the discriminatory norms of Article 3 of the Law of Georgia on State Property,⁴²⁵ which puts limitations on religious associations other than the Orthodox Church to purchase and exchange state property. Also, only the Orthodox Church was allowed to take ownership of the 20 hectares of forest around the churches.⁴²⁶ In this regard, a proposal was made to the Parliament to amend Article 3 (first, second and fifth paragraphs) of the Law of Georgia on State Property to ensure the possibility of acquisition and exchange of state property by other religious associations, like the Georgian Orthodox Church.⁴²⁷ In addition, in 2021, the Public Defender addressed the Constitutional Court and appealed the above-mentioned provision of the

⁴²¹ Parliamentary Report of the Public Defender of Georgia for 2020, 223-224.

⁴²² Recording Notice №1/8/1593 of the case of the Constitutional Court of Georgia of June 11, 2021, LEPL "Church of the Georgian Gospel Faith", "Union of Georgian Muslims", LEPL "Apostolic Administration of the Latin Catholics of the Caucasus", "Georgian Church of the Word of Life", LEPL "The Supreme Theological Division of All Muslims in Georgia", LEPL "Georgian Evangelical Baptist Church", "Georgian Jewish Union", LEPL " Society of Religious Friends (Quakers)", LEPL "The Church of the Opened Christians in Georgia" against the Parliament of Georgia.

⁴²³ Parliamentary Report of the Public Defender of Georgia for 2020, Tbilisi, 2021, 214-215.

⁴²⁴ Ibid, 224.

⁴²⁵ Article 3 (Para 1, 2, 5 and 6) of the Law of Georgia on State Property.

⁴²⁶ Parliamentary Report of the Public Defender of Georgia for 2020, Tbilisi, 2021, 214.

⁴²⁷ Parliamentary Report of the Public Defender of Georgia for 2020, Tbilisi, 2021, 224.

Law on State Property (Article 3 (6)), which gives only the Orthodox Church the right to own a 20-hectare forest around churches.⁴²⁸

In this regard, the letter of the Deputy Minister of Economy and Sustainable Development of Georgia dated April 16, 2021,⁴²⁹ states: "... In 2020, an amendment was made to the Law of Georgia on State Property, according to which state property is transferred free of charge only to internally displaced persons from occupied territories of Georgia". However, the current version of Article 3 (2) of the Law still mentions the Apostolic Autocephalous Orthodox Church of Georgia among the recipients of free state-owned agricultural land, together with IDPs from the occupied territories of Georgia.

In summary, the problematic provisions of the legislation, which the Public Defender pointed out in the 2020 parliamentary report, remain beyond the attention of the state, contributing to the unequal status of non-dominant religious associations.

8.4. Religious needs of convicts with non-dominant religious beliefs

As in the previous year,⁴³⁰ the problems related to the consideration of religious needs have not lost their urgency in 2021 either. During the reporting period, this challenge was raised before the Office of the Public Defender in relation to convicts of non-dominant religious denominations. In particular, questions were raised about the lack of places of worship in penitentiaries and the lack of information about food permitted during religious holidays. In addition, to date, the Public Defender's recommendation to take into account the needs of members of various religious denominations in the preparation of food has not been implemented.⁴³¹

Both international⁴³² and national⁴³³ legal standards guarantee that convicts are able, to the extent possible, to fully exercise their right to express their religion or belief in conditions of imprisonment, including participation in religious rituals and related practices (including places of worship), celebrating holidays and adhering to an appropriate food ration.⁴³⁴ However, the practice of the Public Defender's Office shows that their implementation is problematic. Over the years, many convicts have made applications about problems in receiving food related to religious holidays, as well as the inability to properly perform prayers.

⁴²⁸ №1627 Constitutional Complaint of the Public Defender of Georgia of July 22, 2021. Available at: < <https://bit.ly/3MGZPWO> > [last visited on 11.03.2022].

⁴²⁹ Letter №04/2482 of the Deputy Minister of Economy and Sustainable Development of Georgia dated April 16, 2021.

⁴³⁰ Special Report of the Public Defender on Combating Discrimination, its Prevention and Equality for 2020, 26-27.

⁴³¹ 2020 Parliamentary Report of the Public Defender of Georgia, 86.

⁴³² Standard Minimum Rules for the Treatment of Prisoners, UN General Assembly, Resolution 70/175, Rules 6, 42; Recommendation of the Committee of Ministers of the Council of Europe Rec(2006)2 to the Member States concerning the European Prison Rules, p. 29.1-29.2, 22.1.

⁴³³ № 187 Order of the Minister of Corrections and Legal Assistance of Georgia of December 30, 2010 "On the right of accused/convicts to participate in religious rituals and to exercise the right to meet with clergymen", Art. 4; Code of Detention, Art. 23 (6).

⁴³⁴ № 22 General Comment of the UN Human Rights Committee: Article 18 (Freedom of Thought, Conscience and Religion), 1993, CCPR/C/21/Rev.1/Add.4, para. 4, 8.

In 2021, the case-management was based on a phone call from one of the inmates, who said that despite his numerous requests, a list of permitted Kurban-Bayram food items has not been posted in the penitentiary while such a practice was introduced in connection with Christian holidays. In response to a request for information from the Public Defender's Office, the Special Penitentiary Service clarified that information on permitted food products would be posted in a visible place on the territory of penitentiary institutions.⁴³⁵ According to the agency, information is provided to the public through the official website of the service (sps.gov.ge) regarding both Orthodox and non-dominant religious holidays.⁴³⁶ However, announcements posted on the service's website indicate that the public is being informed about the receipt of parcels in connection with holidays such as Christmas, Easter, St. Mary's Day, St. George's Day and the New Year.⁴³⁷ Similar announcements are published through social networks too.⁴³⁸ However, similar information is not sought in connection with the holidays of non-dominant religious denominations. Relevant links are not provided in the information requested from the Special Penitentiary Service.

As for the chapels, there is an Orthodox chapel in all penitentiaries, while for convicts of other religions, chapels are allocated in only two (№3 and №5) penitentiaries. In other institutions, convicts perform religious rituals in cells.⁴³⁹

In view of the above, it is important that the Special Penitentiary Service studies in depth the infrastructure resources available at penitentiary institutions and, taking into account the religious needs of convicts, takes tangible steps to provide praying spaces for prisoners of non-dominant religious denominations. In addition, more effective measures need to be taken to inform convicts about food products permitted during religious holidays and to address the needs of representatives of different religious denominations in preparing food.

8.5. Allegedly, hate-motivated crimes

During the reporting period, the public focused on the events in the village of Buknari, Chokhatauri Municipality.⁴⁴⁰ The opening of the chapel by the Muslim population of the village was followed by the dissatisfaction of the Christian population, which, in January 2021, escalated into a verbal and physical confrontation. It should be noted that the state's response to the developments was more or less timely, which was reflected in the mobilization of the police at the scene of the confrontation and the mediation

⁴³⁵ Letter №292813/01 of the Special Penitentiary Service of December 6, 2021.

⁴³⁶ Ibid.

⁴³⁷ Available at: < <https://rb.gy/vr0uqx> > [last visited on 06.03.2022].

⁴³⁸ See e.g.: < <https://rb.gy/l4qarg> > ; < <https://rb.gy/uzmiri> > ; < <https://rb.gy/30zru0> > [last visited on 06.03.2022].

⁴³⁹ Letter №292813/01 of the Special Penitentiary Service of December 6, 2021; It should be noted that in the application received during the reporting period, the applicant requested the allocation of a small amount of space, because, according to the applicant, the prayer could not be performed due to insufficient space in the cell. In addition, there is a toilet in the cell, and praying in such a space violates the relevant religious rules.

⁴⁴⁰ Statement of the Public Defender regarding the events in the village of Buknari, Chokhatauri Municipality, Available at: < <https://bit.ly/3w1OfgQ> > [last visited on 06.03.2022].

process between the parties.⁴⁴¹ Shortly after the incident, one person was arrested on charges of violence.⁴⁴² According to the information provided by the General Prosecutor's Office of Georgia,⁴⁴³ 5 people were recognized as victims due to various episodes of violence in Buknari; A diversion protocol was signed with the two persons and the criminal investigation was terminated; One person was charged under Article 120 (2, "a" and "c") of the Criminal Code of Georgia (intentional less grave bodily injury).

In the light of the developments in Buknari, it has once again been highlighted that the policy of the government in relation to similar types of cases is less focused on their systemic prevention and is mainly limited to one-time approaches to solving individual cases.⁴⁴⁴

In addition, the events in Buknari were not the first cases of attempts to violate religious freedom in Georgia. In recent years, alleged human rights abuses against members of the Muslim community have taken place in Samtatskaro,⁴⁴⁵ Nigvziani,⁴⁴⁶ Tsintsikaro,⁴⁴⁷ Kobuleti,⁴⁴⁸ and the village of Mokhe in Adigeni.⁴⁴⁹

The criminal investigation into the above-mentioned incidents in the Tsintsikaro and Nigvziani cases was terminated in 2020 due to the lack of criminal signs.⁴⁵⁰ As for the other cases, according to the information provided by the Prosecutor's Office, the news is only in the criminal case under investigation by the Samtskhe-Javakheti District Prosecutor's Office - in connection with the incidents in the village of Mokhe. In particular, one person was recognized as a victim and two people were charged with an act of intolerance on the grounds of religion under Article 333 (3, "b") of the Criminal Code of Georgia. Currently, the case is being considered by the Akhaltsikhe District Court.⁴⁵¹ It is noteworthy that the European Court of Human Rights, in its judgment of 16 November 2021, found a substantial violation of Article 3 of the European Convention (prohibition of torture, inhuman or degrading treatment) in relation to a person recognized as a victim.⁴⁵² The investigation into the other two cases is ongoing, although no specific person has been identified as a victim or accused in 2021, similarly to previous years.⁴⁵³

During the reporting period, the number of crimes motivated by religious hatred against Jehovah's Witnesses decreased, which is probably due to the fact that since the outbreak of the pandemic, Jehovah's

⁴⁴¹ Social Justice Center, Buknari - Another Place of Conflict with a Religious Context, 2021, 7-8. Available at < <https://bit.ly/3MckCRR> > [last visited on 06.03.2022].

⁴⁴² Available at: < <https://bit.ly/3szw6qR> > [last visited on 06.03.2022].

⁴⁴³ Letter №13/14062 of the General Prosecutor's Office of Georgia of March 11, 2022.

⁴⁴⁴ Social Justice Center, Buknari - Another Place of Conflict with a Religious Context, 2021, 14-15. Available at: < <https://bit.ly/3MckCRR> > [last visited on 06.03.2022].

⁴⁴⁵ Parliamentary Report of the Public Defender for 2013, Tbilisi, 2014, 295.

⁴⁴⁶ Parliamentary Report of the Public Defender for 2012, Tbilisi, 2013, 520.

⁴⁴⁷ Ibid.

⁴⁴⁸ Parliamentary Report of the Public Defender for 2014, Tbilisi, 2015, 432.

⁴⁴⁹ Parliamentary Report of the Public Defender for 2015, Tbilisi, 487.

⁴⁵⁰ Parliamentary Report of the Public Defender for 2020, 217.

⁴⁵¹ Letter №13/14062 of the General Prosecutor's Office of Georgia of March 11, 2022.

⁴⁵² Judgment of the European Court of Human Rights of 16 November 2021, Mikeladze and others v. Georgia, (Application no. 54217/16).

⁴⁵³ Ibid.

Witnesses have stopped serving in public and house by house. Nevertheless, this year, some cases of damage to the property of Jehovah's Witnesses have been revealed.⁴⁵⁴

As to the investigation of alleged hate crimes, in particular, while discussing the crimes of religious intolerance and shortcomings in their investigation, special attention should be paid to the judgment of the European Court of Human Rights of 16 November 2021 in the case of Mikeladze and others v. Georgia.⁴⁵⁵ The case concerns the ill-treatment⁴⁵⁶ of local Muslims by police in the village of Mokhe in Adigeni Municipality in 2014 on the grounds of religious intolerance and the ineffectiveness of the investigation. The court found that the state had violated Articles 3 and 14 of the European Convention, which in conjunction with the prohibition of discrimination, implies prohibition of torture, inhumane and degrading treatment. The Court drew attention to the shortcomings of the ongoing investigation into the incident and noted that significant investigative actions had been taken by those who could not meet the criterion of independence,⁴⁵⁷ at the same time pointing to the delay in the investigation process⁴⁵⁸ and the ineffectiveness of the investigation in identifying the motive of religious intolerance in the actions of the police.⁴⁵⁹

According to the Public Defender, there is an improved tendency to identify hate motives, however, the issue of conducting effective investigations by the relevant agencies into these types of alleged crimes remains a challenge.⁴⁶⁰ In particular, the timely investigation of crimes committed, as well as the granting of victim status remain problematic.⁴⁶¹ The state must take all necessary steps to address the systemic problems that have been highlighted in the above-mentioned decision of the European Court of Human Rights.

8.6. Religious holidays

As in 2020, differentiated treatment was maintained in 2021 as well. The government continued to grant exclusive privileges to the Orthodox Church and to maintain discriminatory policies toward other religious groups. In particular, exceptions to restrictions on freedom of movement applied only to Orthodox religious holidays (the night of January 6 - Christmas, and the night of May 2 - the Orthodox holiday of

⁴⁵⁴ Special Report of the Public Defender for 2021 on the fight against discrimination, its prevention and the state of equality, 62-64.

⁴⁵⁵ Judgment of the European Court of Human Rights of 16 November 2021, Mikeladze and others v. Georgia, (Application no. 54217/16).

⁴⁵⁶ Parliamentary Report of the Public Defender of Georgia for 2014, 434-438.

⁴⁵⁷ Judgment of the European Court of Human Rights of 16 November 2021, Mikeladze and others v. Georgia, §65.

⁴⁵⁸ Ibid, §68.

⁴⁵⁹ Ibid, §67.

⁴⁶⁰ Special Report of the Public Defender for 2021 on the fight against discrimination, its prevention and the state of equality, 62-64, Available at: <<https://bit.ly/3MvxGSM>> [last visited on 07.03.2022].

⁴⁶¹ Recommendations of the Council of Religions under the auspices of the Public Defender of Georgia, Tbilisi, 2020, 22, Available at: <<https://bit.ly/3ux6lRr>> [last visited on 06.03.2022]. Special Report of the Public Defender for 2021 on the fight against discrimination, its prevention and the state of equality, 62-64, Available at: <<https://bit.ly/3MvxGSM>> [last visited on 07.03.2022].

Easter⁴⁶²). As for the Easter holiday celebrated by non-dominant Christian associations,⁴⁶³ on April 4, with the state refraining from introducing an exception to the rule, religious associations had to hold Easter services during daylight hours.⁴⁶⁴ All this should be considered as a manifestation of the discriminatory policy by the state.

Proposals

To the Parliament of Georgia:

- To introduce amendments to Article 170 (1 "r") of the Tax Code of Georgia and exempt other religious associations from VAT payment, like the Georgian Patriarchate, when delivering a cross, candle, icon, book, calendar and other liturgical items (used only for religious purposes);
- To introduce amendments to Article 99 (1, "d") of the Tax Code of Georgia and exempt other religious associations from the profit tax, like the Georgian Patriarchate, on the profit from the sale of crosses, candles, icons, books and calendars used for religious purposes;
- To amend the Tax Code of Georgia in order to exempt other religious associations, like the Georgian Orthodox Church, from property (land) tax used for non-economic purposes;
- To amend Article 3 (Para. 1, 2, 5 and 6) of the Law of Georgia on State Property to ensure the possibility of acquisition and exchange of state property by other religious associations, like the Georgian Orthodox Church;
- To amend Article 4 (Para. 1 "l") of the Law of Georgia on State Property to make it possible for religious associations to privatize state-owned religious buildings, their ruins, as well as the land on which they are located;
- To enshrine alternative legislative reservation in the Labor Code of Georgia, which will allow the non-Orthodox population to have a guaranteed rest during their religious holiday, if they wish;
- To develop a Law on Restitution with the participation of the Council of Religions under the Public Defender and non-governmental organizations, which defines the rules, criteria, responsible agencies and deadlines for the return of property confiscated from religious associations during the Soviet times.

⁴⁶² Tolerance and Diversity Institute (TDI), Report on Freedom of Religion and Belief in Georgia During Pandemic and Beyond 2020-2021" (May), 2021, 14-15, Available at: <<https://bit.ly/364Nsmy>> [last visited on 06.03.2022]

⁴⁶³ The Armenian Catholic, Evangelical, Evangelical-Lutheran, and some Protestant churches celebrated Easter on April 4, 2021.

⁴⁶⁴ Tolerance and Diversity Institute (TDI), Report on Freedom of Religion and Belief in Georgia During Pandemic and Beyond 2020-2021" (May), 2021, 14-15, Available at: <<https://bit.ly/364Nsmy>> [last visited on 06.03.2022].

Recommendations

To the Government of Georgia:

- To record the amount of damage and property confiscated by the Soviet regime to religious associations in Georgia;
- To amend the Resolution №117 of the Government of Georgia of 27 January 2014 on the Rules for Implementing Some Measures Related to Partial Compensation for Damage to Religious Associations in Georgia during the Soviet Totalitarian Regime, and provide compensation to other religious associations in addition to the four religious associations;
- To amend the practice of funding religious associations. In consultation with the Council of Religions under the Public Defender and non-governmental organizations, develop a tax system for funding religious associations, which will meet the requirements of equality and state neutrality;
- In consultation with the Council of Religions under the Public Defender and non-governmental organizations, to discuss the need for changes in the activities and mandate of the State Agency for Religious Issues.

To the Ministry of Justice of Georgia:

- During 2022, to study in-depth the existing infrastructure resources at penitentiary institutions and, taking into account the religious needs of convicts, ensure the allocation of places of worship for prisoners of non-dominant religious denominations;
- To inform the public in the form of a public announcement about the start of the process of receiving parcels in penitentiary institutions during the main holidays of religious minorities, similarly to Orthodox holidays;
- To consider needs of representatives of different religious denominations should when preparing food at penitentiary institutions.

9. Freedom of Expression

9.1. Introduction

During 2021, the threatening and hostile environment created in the country towards media representatives became alarming. In this regard, the number of criminal acts committed against journalists and other media actors is noteworthy, as well as the cases of other types of interferences into their activities, which have been identified, including by government officials. Unfortunately, the lack of comprehensive statistics on crimes against journalists remains a challenge, which makes it difficult to grasp the full scale of the problem and to assess the effectiveness of responses towards them.

The threat of establishing a dangerous precedent in terms of protecting the confidentiality of the journalist's source was engendered by the court decision issued to conduct the measure of seizure at TV Pirveli. Public Defender of Georgia assessed this ruling as unsubstantiated, which contravened Georgian legislation and European human rights law.⁴⁶⁵ Eventually, its execution and, therefore, the practical realization of the threat did not take place.

In addition, during the reporting period, discussions on legislative initiatives aimed at unjustified control over the content of broadcaster programs and restricting freedom of expression continued.

9.2. Protecting media representatives and exercising their freedom of expression

In 2021, the Office of the Public Defender of Georgia recorded dozens of cases of alleged criminal acts or offenses committed against media actors, including unlawful interference with the journalist's professional activities and assault,⁴⁶⁶ preparation of premeditated murder,⁴⁶⁷ threats and/or damage to property,⁴⁶⁸ abuse of official powers⁴⁶⁹ and verbal assault.⁴⁷⁰ In some cases, the Public Defender responded to such facts with a statement and called on the investigative authorities to conduct a timely and effective investigation.⁴⁷¹

⁴⁶⁵ Statement of the Public Defender of Georgia, available at: < <https://bit.ly/3uLoiny> > [Last visited on 12.02.2022].

⁴⁶⁶ Information on alleged cases of unlawful interference into professional activities and/or assault is available at: < <https://bit.ly/32WRexn> >; < <https://bit.ly/34xL8nF> >; < <https://bit.ly/34bjexZ> >; < <https://bit.ly/3LcezMA> >; < <https://bit.ly/3uq6gXy> >; < <https://bit.ly/34xxAbM> >; < <https://bit.ly/3roWcw6> >; < <https://bit.ly/3uqhWJW> >; < <https://bit.ly/3J2DslN> >; < <https://bit.ly/3AYFBm1> >; < <https://bit.ly/3gkRcT9> >; < <https://bit.ly/3unsHNh> >; < <https://bit.ly/3L9ltRD> >; < <https://bit.ly/3AX85g0> >; < <https://bit.ly/3uq2QEh> >; < <https://bit.ly/34c0gr0> > [Last visited on 12.02.2022].

⁴⁶⁷ Information on alleged premeditated murder is available at: < <https://bit.ly/3uowaLr> > [Last visited on 12.02.2022].

⁴⁶⁸ Information on alleged threats and/or damage to the item is available at: < <https://bit.ly/3sg5euD> >; < <https://bit.ly/34Au7ZJ> >; < <https://bit.ly/34bjexZ> >; < <https://bit.ly/35Opb4i> >; < <https://bit.ly/3uvAWqJ> >; < <https://bit.ly/3sfC5zv> >; < <https://bit.ly/3sgFApF> >; < <https://bit.ly/3AXO6xM> >; < <https://bit.ly/3L5jXRX> >; < <https://bit.ly/3ITGqPU> >; < <https://bit.ly/3J8BneF> > [Last visited on 12.02.2022].

⁴⁶⁹ Information on alleged cases of abuse of office is available: < <https://bit.ly/3gsnoni> > [Last visited on 12.02.2022].

⁴⁷⁰ Information on alleged cases of verbal abuse is available at: < <https://bit.ly/3sd9jzW> >; < <https://bit.ly/34xSaJ5> > [Last visited on 12.02.2022].

⁴⁷¹ Statements of the Public Defender of Georgia are available on the website: < <https://bit.ly/3CDI58Z> >; < <https://bit.ly/3AAGtMN> >; < <https://bit.ly/3LqiWG> >; < <https://bit.ly/3CAWtik> >; < <https://bit.ly/2W3lIOX> >; < <https://bit.ly/3sn3H6i> >; < <https://bit.ly/3GEsyaR> >; < <https://bit.ly/3AVug6a> > [Last visited on 12.02.2022].

Subsequently, investigation was launched into 19 cases⁴⁷² and persecution on 7 cases⁴⁷³, respectively. In addition, an administrative penalty was imposed on 1 person for violating public order against media representatives.⁴⁷⁴ According to the Ministry of Internal Affairs of Georgia and the General Prosecutor's Office of Georgia,⁴⁷⁵ due to the absence of signs of crime, failure to receive the relevant notification or refusal to be questioned by the victim, investigation and/or administrative proceedings were not initiated in 12 cases of alleged illegal actions identified by the Office of the Public Defender of Georgia.⁴⁷⁶ Among them, due to the lack of relevant sign under the Criminal Code,⁴⁷⁷ the investigation did not respond to the fact that the Minister of Culture, Sports and Youth Affairs of Georgia confiscated a microphone from a journalist of the Mtavari Channel while conducting professional activities.⁴⁷⁸ As a result of examining publicly released footage depicting the incident, the Public Defender of Georgia considered that the Minister's actions showed signs of a crime⁴⁷⁹ and addressed to the Prosecutor General of Georgia to

⁴⁷² An investigation was launched into the attack on Vakho Sanaia; unlawful interference into the professional activities of the crew of the media holding Kvira in one of the villages of Chiatura Municipality; alleged preparation for the premeditated murder of Nodar Meladze and Maka Chikhladze; Threatening Nodar Meladze's family member; 2 cases of unlawful interference with the professional activities of the representatives of TV Pirveli; unlawful interference into professional activities, violence and damage to property of a representative of TV Pirveli; threatening Mtavari Channel journalist Emma Gogokhia and damaging her car; violence against the film crew of the Mtavari Channel; negligent damage to the health of the representative of the Mtavari Channel; threatening a journalist of the Mtavari Channel; violence against an employee of Formula TV; damage to the car of an employee of the Formula TV; abuse of office against journalist Sergo Chivadze; threat of physical abuse against journalist Sergo Chivadze; violence against members of the Public Broadcaster; unlawful interference into professional activities of Imedi TV journalists; Violence against co-founder of Media Holding Georgian Times and unlawful interference with professional activities of a journalist N.M.

⁴⁷³ Prosecution began against the attack on Vakho Sanaia; unlawful interference into professional activities of the crew of Media Holding Kvira; unlawful interference into professional activities of the representatives of TV Pirveli; threats against journalist Sergo Chivadze; violence against the co-founder of the media holding Georgian Times; unlawful interference into professional activities, violence and damage of property of the representative of TV Pirveli, and unlawful interference into professional activities of the journalist N.M.

⁴⁷⁴ One person was found liable under Article 166 (1) of the Administrative Code of Georgia for violating public order against journalist Emma Gogokhia and other employees of the Mtavari Channel, and was imposed a fine in the amount of GEL 500.

⁴⁷⁵ Letters of the Ministry of Internal Affairs dated on 28 May 2021 - №1340223, 14 June 2021 - №1507876, 9 June 2021 - №1469679, 3 June 2021 - №1406379, 4 August 2021 - №2044985, 29 September 2021 №2572428, 19 November 2021 - №3042252 and 24 January 2022 - №189415; №13/48945 Letter of the General Prosecutor's Office of Georgia of 12 August 2021.

⁴⁷⁶ Investigation and/or administrative proceedings have not been initiated on 2 cases of threats against POSTV representatives, unlawful interference with professional activities and / or assault; On the alleged case of unlawful interference into professional activities of the editor-in-chief of the media on.ge; On the case of a alleged illegal act committed by a clergyman against a journalist of the Mtavari Channel; In case of alleged threat against a journalist of Factcheck.ge; On the case of seizing a microphone from a journalist of the Mtavari Channel; On the case of alleged threats against an Azerbaijani journalist living in Tbilisi; On alleged interference with the filming and physical abuse of a TV Pirveli reporter; On cases of alleged physical and verbal abuse of journalists by participants of the rally organized by the Georgian Dream; On case of alleged damage to the microphone of TV Pirveli; On case of alleged threats against a journalist of the Mtavari Channel in the village of Urta; And on 1 case of alleged threat against a journalist of the Mtavari Channel.

⁴⁷⁷ №13/48945 Letter of the General Prosecutor's Office of Georgia of 12 August 2021.

⁴⁷⁸ Information available at: < <https://bit.ly/3sFE0ht> > [Last visited on 12.02.2022].

⁴⁷⁹ According to the Public Defender of Georgia, the actions of the Minister revealed at least signs of a crime under Article 154 of the Criminal Code of Georgia. Additionally, there may have been a crime under Articles 178 or 360 of the Criminal Code.

launch an investigation into the incident.⁴⁸⁰ However, the General Prosecutor's Office did not consider the Public Defender's proposal.⁴⁸¹

In addition, numerous alleged cases of interference with the professional activities of media representatives, assault, damage to property, threats⁴⁸² and verbal abuse⁴⁸³ were revealed during the first and second rounds of local elections. Investigations were launched into at least 7 criminal cases,⁴⁸⁴ criminal prosecution started on 1 criminal case,⁴⁸⁵ and administrative proceedings were initiated in 5 cases.⁴⁸⁶

The violent events on July 5, 2021 on Rustaveli Avenue are also noteworthy, during which more than 40 media actors were injured and which patently brought to the fore the severity of the problem under consideration.⁴⁸⁷ It shall be outlined that among the affected media representatives was the operator of TV Pirveli, Alexander Lashkarava, who passed away a few days later.⁴⁸⁸ Later, UNESCO included him in the list of killed journalists.⁴⁸⁹ Nevertheless, according to the report of the Levan Samkharauli National Forensics Bureau, the cause of Lashkarava's death was acute cardiovascular and respiratory failure due to drug intoxication.⁴⁹⁰

⁴⁸⁰ №15-4/10817 proposal of the Public Defender of Georgia of November 15, 2021; For more information, see the Chapter on Right to Property.

⁴⁸¹ №13/74495 Letter of the General Prosecutor's Office of Georgia of December 9, 2021.

⁴⁸² Information on alleged cases of unlawful interference with professional activities, damage to property, assault and/or threats during the elections is available: <<https://bit.ly/3AUDyzu>>; <<https://bit.ly/35OPIU3>>; <<https://bit.ly/3gkg5ON>>; <<https://bit.ly/35EEzA0>>; <<https://bit.ly/330F9Hw>>; <<https://bit.ly/3sjM2Mr>>; <<https://bit.ly/3Gu1LOd>>; <<https://bit.ly/3oow5DR>>; <<https://bit.ly/3HvjO7V>>; <<https://bit.ly/3sdKWCc>>; <<https://bit.ly/3rqPohC>>; <<https://bit.ly/3gki9Gx>>; <<https://bit.ly/3urinUr>>; <<https://bit.ly/3L8vks8>>; <<https://bit.ly/3AVGAn0>>; <<https://bit.ly/3rpZNDi>>; <<https://bit.ly/3LbSpKm>>; <<https://bit.ly/3uuNT3R>>; <<https://bit.ly/3HuSnLE>> (see recording at 58:27); <<https://bit.ly/3J0H5PB>>; <<https://bit.ly/3rnqpf8>> <<https://bit.ly/3GsMuNq>>; <<https://bit.ly/3rtpDxi>> [Last visited on 12.02.2022].

⁴⁸³ Information about cases of verbal abuse during the elections is available on the following websites: <<https://bit.ly/3glqF82>>; <<https://bit.ly/3AVWPQW>>; <<https://bit.ly/3rsTlCg>>; <<https://bit.ly/3HtDp8C>>; <<https://bit.ly/3AVGSKC>>; <<https://bit.ly/3HA3V0g>>; <<https://bit.ly/3onXpBY>> [Last visited on 12.02.2022].

⁴⁸⁴ The investigation was launched on the case of threatening journalist S.C.; on interference in his/her professional activities and verbal abuse of a TV Pirveli journalist; Physical abuse and threats against a journalist; unlawful interference with professional activities of a journalist S.N.; damage to the vehicle of the Formula cameraman; violence against journalist E.G.; And interference in the professional activities of a journalist and acts of violence at a polling station, at the location of an election commission, or in its vicinity.

⁴⁸⁵ Criminal proceedings have been launched on unlawful interference with professional activities of a journalist and on threats of violence or violence at the location of an election commission or in the vicinity, at a polling station.

⁴⁸⁶ Administrative proceedings were initiated at the №29 polling station in Zemo Ponichala, Tbilisi; Incidents against Formula journalist N.C. at №31 and №2 polling stations in Martvili; incident against the journalist of TV Pirveli at polling station №14 at Gogebashvili №17 in Kutaisi; incident at polling station №9 for verbally abusing the film crew of Formula TV and for physically and verbally abusing journalist T. F.

⁴⁸⁷ See the chapter on freedom of assembly of this report.

⁴⁸⁸ See. Statement of the Public Defender of Georgia regarding the death of the cameraman is available on the website: <<https://bit.ly/3uHZoFs>> [Last visited on 12.02.2022].

⁴⁸⁹ Information available at: <<https://bit.ly/3suWmRX>> [Last visited on 12.02.2022].

⁴⁹⁰ Information available at: <<https://bit.ly/36anjCS>> [Last visited on 11.03.2022].

The above facts pose a significant threat to the degree of media freedom in the country, contain a dangerous message that media actors may face retaliation due to their professional activities and thus have a chilling effect on the realization of freedom of expression by them.

The increased rate of criminal acts committed against journalists and other media representatives is directly linked to the inappropriate responses of investigative agencies in a number of cases, which contribute to impunity in the country. In particular, based on an analysis of data from 2015-2020, the Public Defender, in her 2020 parliamentary report, noted that there had been a number of investigations into crimes committed against journalists, in which investigative agencies had not detected and raised issue of responsibility of perpetrators.⁴⁹¹ It is noteworthy that the statistics only comprised cases of unlawful interference with the professional activities of a journalist⁴⁹² and did not reflect information on other crimes committed against media representatives, such as violence,⁴⁹³ threats,⁴⁹⁴ persecution,⁴⁹⁵ and others. Thus, the data did not provide an opportunity to thoroughly assess the scale of attacks on journalists and the effectiveness of the responses of investigative authorities.

The Office of the Public Defender of Georgia took an interest in the ongoing investigations into certain crimes committed against media outlets, journalists or persons related to them during 2020.⁴⁹⁶ In particular, according to the information requested in the 6 criminal cases outlined in the 2020 Parliamentary Report,⁴⁹⁷ at this stage, the responsibility of specific individuals has not been established in any of them.⁴⁹⁸ The investigation into the disappearance of an Azerbaijani journalist, Afghan Mukhtarli, which started in 2017, shall be paid special attention.⁴⁹⁹ notwithstanding that the qualification of the crime has been aggravated⁵⁰⁰ and the journalist has been granted the victim status, the investigation has not yet reached a concrete result.⁵⁰¹ The mentioned cases once again point to the problem of effective and timely investigation of crimes committed against media representatives.

In addition, during the reporting year, the tendency of not allowing and/or not inviting critical media representatives to briefings held by ministries was revealed on number of instances.⁵⁰² The Mayor of

⁴⁹¹ Parliamentary Report of the Public Defender of Georgia for 2020, 233-238.

⁴⁹² Article 154 of the Criminal Code of Georgia.

⁴⁹³ Article 126 of the Criminal Code of Georgia.

⁴⁹⁴ Article 151 of the Criminal Code of Georgia.

⁴⁹⁵ Article 156 of the Criminal Code of Georgia.

⁴⁹⁶ The Office requested information on the ongoing investigations into the interference of the professional activities of the Mtavari Channel and the journalists and cameramen of the Public Broadcaster; into the interference of the professional activities of the journalist of the Media outlet "Samkhretis Karibche", unauthorized access to the computer system of Ajara Television; on the facts of stealing equipment for the film crew of the Mtavari Channel and into the interference of the professional activities of the journalists of Imedi, as well as on the fact of threatening the father of the founder of TV Pirveli Avtandil Tsereteli by strangers.

⁴⁹⁷ Parliamentary Report of the Public Defender of Georgia for 2020, 236-237.

⁴⁹⁸ №13/10329 Letter of the General Prosecutor's Office of Georgia of 23 February 2022.

⁴⁹⁹ Parliamentary Report of the Public Defender of Georgia for 2017, 165-167.

⁵⁰⁰ The investigation, which was ongoing under Article 143 (1) of the Criminal Code of Georgia (unlawful deprivation of liberty), continued under Article 143 (3,"a") of the Criminal Code of Georgia (unlawful deprivation of liberty, committed by a group with prior agreement)/

⁵⁰¹ №13/10329 Letter of the General Prosecutor's Office of Georgia of 23 February 2022.

⁵⁰² Information available at: < <https://bit.ly/33g0SLI> > ; < <https://bit.ly/3dCjTJU> > ; < <https://bit.ly/3pGDspR> > [Last visited on 12.02.2022].

Tbilisi Municipality also hinted at the possible establishment of a similar practice, explaining that the media outlets did not cover certain information about the City Hall's activities.⁵⁰³

The Public Defender of Georgia emphasizes the special function of the media to disseminate information in the field of public interest and to facilitate informed public debates on such issues, which represent a necessary precondition for the proper involvement of each of its members in public life. In turn, creating a threat to the right of access to information significantly undermines the quality of democracy and the rule of law in the country.

Thus, it is important for government officials to ensure the creation of a safe and enabling environment for journalists. To this end, it is necessary, on the one hand, to investigate the crimes committed against them in a timely and effective manner, and, on the other hand, to ensure their unhindered access to all public information held by the authorities, including through providing them with access to media briefings and the possibility to pose questions.

9.3. Control of the content of broadcaster programs

In early 2021, the National Communications Commission enacted the ban on the placement of obscene programs to monitor the content of the broadcaster's programs, and by recognizing Mtavari Channel as an administrative offender, established a precedent in the exercise of its corresponding oversight function. The Public Defender this to be a result of improper interpretation of the legislation, which had a chilling effect on the realization of freedom of expression by broadcasters.⁵⁰⁴

In terms of content control of broadcasters' programs, the National Communications Commission's administrative violation protocol⁵⁰⁵ on the illegal distribution of political/pre-election advertisements⁵⁰⁶ against the Mtavari Channel during the pre-election period and the different interpretations of the first and second instances in this case are noteworthy.⁵⁰⁷ The court initially ruled that the disputed content did not fall into the category of pre-election advertising,⁵⁰⁸ However, the Tbilisi Court of Appeal later overturned the ruling of the Tbilisi City Court and remanded the case to the same court for reconsideration.⁵⁰⁹ This led to changing initial ruling and in imposing administrative penalty on Mtavari

⁵⁰³ Information available at: < <https://bit.ly/3GskwSt> > [Last visited on 12.02.2022].

⁵⁰⁴ Parliamentary Report of the Public Defender of Georgia for 2020, 229-233.

⁵⁰⁵ According to the protocol, during the pre-election period of the 2021 municipal elections, the Mtavari Channel violated Article 186 (19, 20) of the Election Code of Georgia. In particular, at the initiative of the broadcaster, political videos were posted on the air of the broadcaster that did not meet the formal criteria set forth in Article 186 (19) of this Code and exceeded the length of paid or free airtime purchased by the election subject/ or provided to it in accordance with the law.

⁵⁰⁶ Pursuant to Article 2 (z⁶) of the Election Code of Georgia, political/pre-election advertising is defined as media advertising aimed at facilitating/hindering the election of an election subject, in which the election subject and/or his number for participating in the elections is shown and which contains signs of pre-election campaign, or a call for or against a referendum/plebiscite.

⁵⁰⁷ The administrative proceedings concerned 2 products prepared by the Mtavari Channel with the hashtags - "#FreedomtoMisha", "#ForFreedom". The video contained footage of Mikheil Saakashvili, the Rose Revolution and his presidency. At the end of one of the videos, the TV station called on viewers to join the October 14 rally.

⁵⁰⁸ Resolution №4/6707-21 of Tbilisi City Court of 29 October 2021.

⁵⁰⁹ Resolution №4s/755-21 of Tbilisi Court of Appeals of 6 December 2021.

Channel.⁵¹⁰ It is noteworthy that, unlike the previous case, this time the court gave a different interpretation to the legislative definition of political/pre-election advertising and considered that to qualify it as such, it was not necessary to reflect the data of the electoral subject in the advertisement. Mtavari Channel also appealed this decision.

The mentioned case well illustrates the contrastic approaches to the definition of pre-election advertising, which indicates the problem of formulating its definition with insufficient clarity. Thus, it is essential that timely consultations are launched to improve the norm in this regard with the participation of all stakeholders, including the National Communications Commission, media outlets, NGOs and other human rights activists.

In addition, as in previous years, the Georgian National Communications Commission (GNCC) has again imposed liability on broadcasters in the non-election period for placing political advertisements, including under the Georgian Law on Advertising, which does not apply to political advertisements.⁵¹¹ The Public Defender reiterates that Georgian law does not contain rules governing non-election advertising and, therefore, does not directly prohibit the placement of political advertising during the non-election period. Thus, the prohibition applied by the Commission and its justification does not meet the requirements for the justification of the interference in freedom of expression defined by national and international standards.⁵¹²

The above-mentioned examples indicate that it is problematic in the country to interpret norms governing freedom of expression, including widely formulated legal norms, which, in some cases, ends in unjustified restriction of the right. The same problem is well illustrated by the judgment of the European Court of Human Rights of 22 July 2021 in the case of Gachechiladze v. Georgia, in which the interference⁵¹³ into the freedom of expression of the applicant for the placement of unethical advertisements was considered unjustified in the absence of relevant justification by the national courts.

It is noteworthy that certain norms of the Georgian Law on Broadcasting, which are used by the National Communications Commission to control the content of broadcasters' programs and to sanction broadcasters, are currently appealed in the Constitutional Court of Georgia.⁵¹⁴ The plaintiffs, among others, point out that the disputed norms are vague and unpredictable. The National Communications Commission itself acknowledges the problem of imposing liability for breaches of certain content requirements under the law and considers it inconsistent with European best practice as well as the best

⁵¹⁰ Resolution №4/8024-21 of the Tbilisi City Court of December 29, 2021.

⁵¹¹ Decision available on the website: < <https://bit.ly/3ISDWki> > [12.02.2022].

⁵¹² See. The Parliamentary Report of the Public Defender of Georgia for 2019, 232-233 and the Parliamentary Report of the Public Defender of Georgia for 2020, 232.

⁵¹³ For more information, see Parliamentary Report of the Public Defender of Georgia for 2018, 157-158.

⁵¹⁴ See. №1/2/1537 Minutes of the Constitutional Court of Georgia of June 11, 2021 and the №1589 constitutional claim of Mtavari Channe of 13 April 2021.

interests of the broadcasting.⁵¹⁵ At the same time, the Commission indicates that a legislative proposal is being prepared to eliminate the shortcoming.⁵¹⁶

Hence, in order to avoid censorship or self-censorship as a result of flawed legislation, it is important for the National Communications Commission to take special care in dealing with such cases against broadcasters before the ongoing litigations at the Constitutional Court are finalized and/or the relevant legislative changes are made. In addition, the Public Defender calls on the Commission to ensure the effective involvement of all stakeholders (including broadcasters, the non-governmental sector and the Office of the Public Defender) in the process of preparing proposals to address the shortcomings in the Georgian Law on Broadcasting.

9.4. Legislative initiatives regulating freedom of expression

The unfortunate trend of discussing legislative initiatives aimed at restricting freedom of expression at the national level continued in the reporting year.⁵¹⁷

In particular, on October 13, 2021, the legislative package initiated by the Parliament of Georgia envisaged amendments to the Election Code of Georgia and the Law of Georgia on Broadcasting.⁵¹⁸ The proposed amendments also prohibit the dissemination of those campaign material in public, which is intended to create a negative attitude towards the electoral subject/candidate, as well as the placement of pre-election advertisements with a similar purpose.

Considering the broad wording of the content of the prohibited expression, criticism of politicians and government officials is severely curtailed. In turn, such an approach is inconsistent with the standards of freedom of expression, which states that expressions that are of political nature⁵¹⁹ or address politicians⁵²⁰ shall be strictly protected, as the limits of their permissible criticism are wide.

It is noteworthy that the Election Code of Georgia links pre-election campaign not only to such actions and calls, which have the character of supporting an electoral subject or a candidate and facilitate his/her election, but also those that are directed against them and/or aim at hindering their election.⁵²¹ Thus, the Code considers the criticism of an electoral subject/candidate and the dissemination of a narrative against him/her as natural, accompanying part of the election process. Against this background, the unjustified nature of the proposed changes becomes even clearer.

⁵¹⁵ №g-22-03/187 Letter of the Georgian National Communications Commission of January 31, 2022, available at: < <https://bit.ly/3gECHJR> > [Last visited on 12.02.2022].

⁵¹⁶ Ibid.

⁵¹⁷ Parliamentary Report of the Public Defender of Georgia for 2019, 225.

⁵¹⁸ Information available on the website: < <https://bit.ly/3uLlrKe> > [Last visited on 12.02.2022].

⁵¹⁹ See. For example, the decision of the European Court of Human Rights of July 22, 2021 in the case of *Gachechiladze v. Georgia*, para. 51; Judgment of the European Court of Human Rights of 23 June 2016 in the case of *Baka v. Hungary*, para. 159; Judgment of the European Court of Human Rights of 8 July 1999 in *Ceylan v. Turkey*, para. 34.

⁵²⁰ See. For example, the judgment of the European Court of Human Rights of 2 February 2021 in the case of *Dickinson v. Turkey*, para.55; Judgment of the European Court of Human Rights of 17 April 2014 in the case of *Mladina D.D. Ljubljana v. Slovenia*, para.40; Judgment of the European Court of Human Rights of 21 February 2012 in the case of *Tuşalp v. Turkey*, para. 45; Judgment of the European Court of Human Rights of 1 July 1997 in *Oberschlick v. Austria*, para. 29.

⁵²¹ Election Code of Georgia, Article 2, Subparagraph "z¹".

Particular attention should be paid to the fact that the OSCE Office for Democratic Institutions and Human Rights believes that media outlets should not be held responsible for the content of political advertisements that they air unless it was previously ruled unlawful by a court or contains statements that constitute direct incitement to violence.⁵²² Consequently, the proposed changes will place an additional unnecessary and unjustified burden on broadcasters.

Proposal

To the Parliament of Georgia:

- Do not support the legislative package initiated on October 13, 2021, which envisages amendments to the Election Code of Georgia and the Law of Georgia on Broadcasting.

Recommendation

To the Minister of Internal Affairs of Georgia:

- To produce special statistics that reflect not only the crime of unlawful interference with the journalist's professional activities, but also all the criminal acts committed against journalists due to their professional activities.

⁵²² The final report of the OSCE / ODIHR International Election Observation Mission on the Presidential Election of Georgia (October 28, 28 and November 28, 2018), 18, available at: <<https://bit.ly/3BeOwA5>> [Last visited on 12.02.2022].

10. Freedom of Assembly

10.1. Introduction

As in previous years, during the reporting period, in the country mainly were held political assemblies of various scales. Their progress highlighted, on the one hand, the problem of improper fulfillment of the obligations imposed on law enforcement authorities in order to ensure the full realization of freedom of assembly, and, on the other hand, the need for timely refinement of the legal framework.

Furthermore, the events of July 5, 2021, clearly demonstrated that in terms of enjoying freedom of assembly by LGBTQ + community and their supporters has significantly worsened. These violent incidents once again emphasized the importance of the protection of media representatives working on the ground and covering ongoing situation.

In the first half of the reporting year, the exercise of freedom of expression was affected by restrictions imposed in response to the pandemic.⁵²³ In particular, banning of movement during the night period and imposing fines on the participants of rallies for its violation, repeatedly led to interference with the right to peaceful assembly.⁵²⁴ Although movement restrictions were lifted in June 2021⁵²⁵ and amnesty was issued⁵²⁶ for persons fined or prosecuted due to violation of pandemic regulations, the measures reaffirmed the unjustified character of restricting citizens' freedom of assembly based on the blanket bans.

The state of freedom of assembly in 2021 confirms that the key challenges related to the right are still relevant, as assessed in the 2020 Special Report on Freedom of Peaceful Assembly (Area Protected by the Right and Assembly Management Standard).⁵²⁷ The recommendations provided in the report aim at eliminating the gaps identified in the legislation and practice over the years and require timely response from the state.

10.2. The events of July 5

As in previous years, the situation related to the realization of freedom of assembly by LGBTQ + community is still critical.⁵²⁸ In this regard, violent events of July 5, 2021, in Tbilisi clearly confirmed that the situation has not improved, and furthermore has deteriorated significantly.

The Public Defender already in 2019 recalled the Minister of Internal Affairs and the Prime Minister of Georgia to comprehend the individual facts of restriction of freedom of expression and assembly of LGBTQI+ representatives in recent years at the state policy level and plan joint preventive and reactive measures in this regard.⁵²⁹ At the same time, it indicated that the rate of strengthening of the far-right

⁵²³ For more information, see Parliamentary Report of the Public Defender of Georgia for 2020, 241-244.

⁵²⁴ For example, according to the Office, persons were sanctioned for violating the rule banning the movement in Tbilisi on January 24, 2021 and February 6, 2021; in Batumi on February 6, 2021; and in the village of Gumati on April 3, 2021.

⁵²⁵ Resolution №294 of the Government of Georgia of June 22, 2021 "On Approval of the Rules of Isolation and Quarantine" on Amendments to the Resolution № 322 of the Government of Georgia of May 23, 2020, Art. 1, Phar. 1 and Art. 2.

⁵²⁶ Law of 9 September 2021 (924-VIms-X mp) on Amnesty and Law of September 7, 2021 (923-VIms-X mp) on Exemption from Administrative fines.

⁵²⁷ The report is available on the website: <<https://bit.ly/3HT75v3>> [Last viewed 07.03.2022].

⁵²⁸ 2019 Parliamentary Report of the Public Defender of Georgia, 246-247.

⁵²⁹ See. The general proposal of the Public Defender of Georgia for November 4, 2019, is available on the website: <<https://cutt.ly/UTG7Dma>> [Last viewed: 28.02.2022].

groups was alarming and it was important that the statements of the leaders of these groups be followed by an appropriate and prompt legal response.⁵³⁰ Taking into account existing challenges, before the Pride March in 2021, the Public Defender called on respective authorities and officials, based on the experience of previous years, to take appropriate measures that would actually protect the safety of the assembly participants and their rights.⁵³¹

However, on July 5, 2021, due to the lack of security guarantees from the government and improper response to the conducted violence, Tbilisi Pride refused to hold the Pride March.⁵³² At the same time, the violent groups occupied the protest space themselves, and as a result⁵³³ of their attacks, more than 40 media representatives covering the events were injured⁵³⁴ and the offices of human rights defenders were damaged.⁵³⁵ Although the above-mentioned events were preceded by the public statements of leaders or other members of the group opposing the Pride March aiming at encouraging violence and mobilizing the society to this end, which were also heard on July 5, the law enforcement authorities did not take effective preventive and reactive measures. Besides, the appropriate number of relevant law enforcement units was not mobilized on Rustaveli Avenue.⁵³⁶

The Public Defender of Georgia once again emphasizes the obligation imposed on the state to ensure peaceful assembly and protect its participants not only through mobilizing the necessary police resources, but also encouraging the reduction of homophobic attitudes in the society.⁵³⁷ The same is evidenced by the judgement made by the European Court of Human Rights during the reporting period in the case of "Women's Initiatives Supporting Group and Others v. Georgia". In that judgment, the court found that despite availability of full information on the risks associated with the May 17, 2013 gathering, the authorities were still unable to protect the LGBTQ + community and their supporters through appropriate actions. In this regard, in the event of large-scale disorder and violence, the deployment of unarmed and unprotected police patrol officers on the ground to protect the participants of the gathering was assessed as insufficient response. At the same time, the European Court of Human Rights could not exclude the possibility that the unprecedented scale of the violence was conditioned, at least in part, by the lack of a timely and objective investigation of the incidents of the May 17, 2012, regarding which the Court found a violation in its decision on the case of "Identity and Others v. Georgia."

It is noteworthy that, according to the Public Defender, the publicly available evidence of the events of July 5, 2021 reached the standard of indictment and the General Prosecutor's Office of Georgia was approached with the proposal to initiate criminal prosecution against two persons for organizing acts of

⁵³⁰ For more information, see Special Report of the Public Defender of Georgia on the Fight against Discrimination, its Prevention and Equality, 2019, 23 <<https://cutt.ly/DTP57nT>> [last viewed 28.02.2022].

⁵³¹ The statement of the Public Defender of Georgia is available: <<https://bit.ly/3IJdM1>> [Last viewed 28.02.2022].

⁵³² Information is available on the website: <<https://bit.ly/3pteueh>> [Last viewed 28.02.2022].

⁵³³ For more information on the situation that took place, see The 2021 Special Report of the Public Defender of Georgia on Combating Discrimination, Its Prevention and Equality, 40-44, is available at: <<https://bit.ly/35koGyX>> [last viewed 28.02.2022].

⁵³⁴ Information is available on the website: <<https://cutt.ly/7Yj6oXO>>; <<https://cutt.ly/YYj6lAy>> [Last viewed 28.02.2022].

⁵³⁵ Information is available on the website: <<https://bit.ly/3huNo2e>>; <<https://bit.ly/3hsCFFy>>; <<https://bit.ly/3MmNJC6>> [Last viewed 28.02.2022].

⁵³⁶ Judgment of the European Court of Human Rights of 12 May 2015 in the case "Identity and Others v. Georgia", para. 99.

⁵³⁷ Judgment of the European Court of Human Rights of 16 December 2021 in the case of "Support Initiative for Women and Others v. Georgia".

violence and public incitement to violence.⁵³⁸ Unfortunately, the addressed Agency did not share the proposal.⁵³⁹ In addition, the office was informed that only three people were charged for organizing group violence due to the fact of invading and damaging the Tbilisi Pride office.⁵⁴⁰

As to the individual cases of criminal prosecution against perpetrators under various articles of the Criminal Code of Georgia,⁵⁴¹ they cannot be considered as a sufficient form of response, in given difficult situation in terms of realization of freedom of assembly and expression by LGBTQ + community. On the contrary, it is important for the state to take a strict approach against organizers of such violence, as well as to take other effective and timely preventive measures to prevent violence.

It is noteworthy that facts of injuries of media representatives during the use of force by law enforcement officers against participants of an assembly were also revealed on June 20-21, 2019 and November 8, 2020,⁵⁴² although the issue of responsibility of the perpetrators of the crime was not raised.⁵⁴³ In response to such challenges, the Public Defender of Georgia has repeatedly pointed out in the past the shortcomings of Georgian legislation in terms of protection of media representatives and the need to improve it.⁵⁴⁴

10.3. Restrictions related to the location of the assembly

During the reporting year, the authorities repeatedly failed to fulfill their obligation to facilitate peaceful assembly in the desired location.

In this regard, it is noteworthy the protest that took place in Namakhvani on April 3, 2021, when police blocked the access roads⁵⁴⁵ to the protest place, making it impossible for other supporters to join the protest.⁵⁴⁶ The Ministry of Internal Affairs of Georgia explained this by the facts of verbal abuses of the persons involved in the preparatory works for the construction of the hydropower plant and damaging of the company's property by the particular participants of the protest.⁵⁴⁷ The ombudsman emphasizes that the right to peaceful assembly is exercised by all persons individually, and that acts of verbal or physical aggression or violence by individuals or small groups of individuals, especially in isolated cases,

⁵³⁸ The proposal of the Public Defender of Georgia is available on the website: <<https://bit.ly/3K4Gb51>> [Last viewed 28.02.2022].

⁵³⁹ Letter of the General Prosecutor's Office of Georgia dated December 9, 2021 №13 / 74440.

⁵⁴⁰ ibid

⁵⁴¹ Special Report of the Public Defender of Georgia for 2021 on the fight against discrimination, its prevention and the state of equality, 42-43.

⁵⁴² 2020 Parliamentary Report of the Public Defender of Georgia, 245-246.

⁵⁴³ According to the letter №13 / 10290 of the General Prosecutor's Office of Georgia of February 23, 2022, on June 20-21, 2019, as part of the ongoing investigation on exceeding of power by law enforcement officers, 11 journalists were identified as victims, and on November 9, 2020, in the investigation of fact of possible exceed of power by employees of Ministry of Internal Affairs against participants of gathering at the Office of the Central Election Commission no specific person has been identified as a victim.

⁵⁴⁴ Special Report of the Public Defender of Georgia for 2020 - "Freedom of Peaceful Assembly (Protected Area and Assembly Management Standard), p. 32-34, available at: <<https://bit.ly/3ly5JJ7>> [last viewed 28.02.2022]; See. See also 2019 Parliamentary Report of the Public Defender of Georgia, pp. 239, 249.

⁵⁴⁵ Information available: <<https://bit.ly/3HNYiQV>> [Last viewed 13.02.2022].

⁵⁴⁶ Information available: <<https://bit.ly/3GGuJKZ>> [Last viewed 13.02.2022].

⁵⁴⁷ Letter of the Ministry of Internal Affairs of Georgia of May 21, 2021 №1279949.

should not affect the right to assemble of those who remain peaceful.⁵⁴⁸ In such cases, any kind of intervention should aim to respond proportionately to the violent or other actions of particular individuals rather than imposing restrictions on the entire assembly.⁵⁴⁹

Later, on April 11, 2021, the Ministry of Internal Affairs restricted the rights of the assembled persons by removing of tents located in the village of Namakhvani,⁵⁵⁰ the act was explained by the official hydrological data of the National Environment Agency.⁵⁵¹ According to the Public Defender of Georgia, in this case, in order to ensure the continuation of the assembly, the Ministry should have allocated an alternative place close to the desired one, which would not lose the essence of the purpose of citizens' gathering.⁵⁵² Nevertheless, those interested were given the opportunity to continue their protests only in the village of Gumati. It is important to refer to the obligation of the State to facilitate and ensure the holding of any kind of peaceful assembly in such a way that it is possible to deliver a message to the target audience unless there is a compelling reason to impose a specific restriction.⁵⁵³ The problem related to the proportionality of the interference to the right was further illustrated by the length of the restrictions of movement to the Namakhvani direction.

Restrictions on the right to choose the place of assembly were also, in several cases, exposed during political gatherings, when participants tried to block roads or entrances of administrative buildings in different municipalities.⁵⁵⁴ Such cases were accompanied by mass administrative detentions of persons. Although the Law of Georgia on Assemblies and Demonstrations imposes certain restrictions on blocking administrative buildings⁵⁵⁵ and arbitrarily blocking the roads,⁵⁵⁶ the violation of the law does not deprive the assembly of a peaceful character,⁵⁵⁷ which imposes the obligation on the state to show a certain degree of tolerance towards such gatherings.⁵⁵⁸ The Public Defender of Georgia discussed the issue comprehensively in the special report on "Freedom of Peaceful Assembly" (Area Protected by Right and

⁵⁴⁸ OSCE / ODIHR, Human Rights Handbook on Law Enforcement by the Police during assemblies, 2016, 18, available at: <<https://bit.ly/3uNAvrN>> [last viewed 13.02.2022].

⁵⁴⁹ OSCE / ODIHR (OSCE / ODIHR) and the European Commission for Democracy through Law (Venice Commission); Guiding Principles on Freedom of Assembly, Second Edition, 2010, para. 164, available at: <<https://bit.ly/3uNAHY3>> [last viewed 13.02.2022]. For more information on this issue, see. Special Report of the Public Defender of Georgia - "Freedom of Peaceful Assembly" (protected area and standard of assembly management), 14-20, available at: <<https://bit.ly/3GO1V3d>> [last viewed 13.02.2022].

⁵⁵⁰ The application of the Ministry of Internal Affairs of Georgia is available on the website: <<https://bit.ly/34WQKYN>> [Last viewed 13.02.2022].

⁵⁵¹ Letter of the Ministry of Internal Affairs of Georgia of May 21, 2021 №1279949.

⁵⁵² The statement of the Public Defender of Georgia is available: <<https://bit.ly/3Bk9aPl>> [Last viewed 13.02.2022].

⁵⁵³ OSCE / ODIHR (OSCE / ODIHR) and the European Commission for Democracy through Law (Venice Commission); Guiding Principles on Freedom of Assembly, Second Edition, 2010, para. 3.5 and para. 2.2; See. See also UN Human Rights Committee, №37 General Comment on Freedom of Peaceful Assembly (Article 21), 17 September 2020, para. 22, available at: <<https://bit.ly/34lo7hY>> [Last viewed 13.02.2022].

⁵⁵⁴ Similar cases were detected, including November 10, November 12, and November 29, 2021. Information is available at: <<https://bit.ly/364YQil>>; <<https://bit.ly/3Jmkltu>>; <<https://bit.ly/34Bmt1L>> [Last viewed 14.02.2022].

⁵⁵⁵ Law of Georgia on Assemblies and Manifestations, Art. 9.

⁵⁵⁶ Law of Georgia on Assemblies and Manifestations, Art. 11¹

⁵⁵⁷ UN Human Rights Committee, General Comment on Freedom of Peaceful Assembly №37 (Art. 21), 17 September 2020, para. 16; OSCE / ODIHR (Police / OSCE / ODIHR) Human Rights Guidelines on law enforcement by police during the assemblies, 2016, 14-15.

⁵⁵⁸ Judgment of the European Court of Human Rights of 5 December 2006 in the case of Oya Ataman v. Turkey, Fri. 39-42

Standard of Assembly Management),⁵⁵⁹ in which she also recommended the lifting of blanket bans on assembly venues and, in return, empowering responsible agencies to resolve the issue individually, in accordance with international and constitutional standards of imposing restrictions.⁵⁶⁰

10.4. Restriction on placement a tent during assembly

As in previous years⁵⁶¹, during the reporting period, the restriction of the possibility for the participants of assemblies to erect tents in the territories adjacent to the Parliament of Georgia and the Administration of the Government of Georgia became a systemic problem.⁵⁶² In some cases, similar incidents escalated the situation on the ground and led to the arrest of those gathered.

The Public Defender of Georgia has repeatedly responded to the restrictions on tent placement in the past, explaining that the use of such non-permanent constructions is protected by the freedom of assembly, and deprivation of this opportunity is unjustified unless the tents block entrances of the buildings or the traffic.⁵⁶³ Despite the fact that, during the reporting year, the Ministry of Internal Affairs of Georgia indicated the aims of security and avoiding obstructions of unhindered movement of persons for restricting the ownership of tents by participants of assemblies, they did not provide adequate arguments corroborating the need to protect such interests in any of the cases⁵⁶⁴. The reference to abstract dangers does not create a legitimate basis for interference in the right.

10.5. The practice of administrative detention of assembly participants

As evidenced by other examples identified in this chapter and in 2021, law enforcement officials still actively retain the practice of administrative detention of participants for petty hooliganism⁵⁶⁵ and disobedience to a law enforcement officer's legal order.⁵⁶⁶ Similar facts have been assessed by the Public Defender in the past as a harmful practice, which for the most part fails to meet the requirement of necessity and takes the form of unjustified interference with the right to peaceful assembly.⁵⁶⁷

According to the OSCE Office for Democratic Institutions and Human Rights, the detention of assembly participants for administrative or criminal offenses should meet a high threshold, given the right to liberty

⁵⁵⁹ Special Report of the Public Defender of Georgia 2020 - Freedom of Peaceful Assembly "(Sphere of Rights and the Standard of Assembly Management), 23-27, 29-30.

⁵⁶⁰ Ibid., 63-64.

⁵⁶¹ Parliamentary Report of the Public Defender of Georgia, of 2018, 159-160; Parliamentary Report of the Public Defender of Georgia, of 2017, 171-172.

⁵⁶² Information is available on the website: <<https://bit.ly/3gM6110>>; <<https://bit.ly/34FN3Xp>>; <<https://bit.ly/3gJWFD3>>; <<https://bit.ly/3sXN2qf>> [Last viewed 30.03.2022].

⁵⁶³ See statements of the Public Defender, available on the websites: <<https://bit.ly/3qEvQ6s>>; <<https://bit.ly/3ptyoml>>; <<https://bit.ly/3qA8orf>>; <<https://bit.ly/3qzv5fa>> [Last viewed 13.02.2022]; See also Public Defender's Parliamentary Report, of 2018 159-160.

⁵⁶⁴ Letters of the Ministry of Internal Affairs of Georgia 151850997 of July 15, 2021 and 791979244 of July 28.

⁵⁶⁵ Article 166 of the Code of Administrative Offenses of Georgia.

⁵⁶⁶ Article 173 of the Code of Administrative Offenses of Georgia.

⁵⁶⁷ Parliamentary Report of the Public Defender of Georgia 2020, 240.

and security and that any interference with freedom of assembly is time sensitive.⁵⁶⁸ Thus, arrest should be used only in the most urgent cases, when failure to detain would result in the commission of serious criminal offenses.⁵⁶⁹ At the same time, mass arrest of persons prior to, during or following an assembly is considered by the UN Human Rights Committee as an arbitrary, and thus, illegal practice.⁵⁷⁰

For the above-mentioned reasons, it is important that the Ministry of Internal Affairs of Georgia develops a relevant protocol, which will reflect the specific and clear rules for the lawful detention and search of assembly participants.⁵⁷¹ Such protocols should be based on national and international human rights standards and include guidelines as to when such measures are appropriate, how they should be conducted in practice, and how individuals are to be dealt with after their arrest.⁵⁷²

It should be noted that the Code of Administrative Offenses does not provide for a specific evidentiary standard and distribution of the burden of proof, that's why the Code allows a person to be declared an offender only on the basis of the protocol and the explanation of the person compiling it. As a result, most court decisions are unsubstantiated and of blanket nature. Since the Code does not impose the burden of proof on an administrative body, it is common to use the presumption of innocence against a person and person is required from the side of judge to prove his innocence. Different articles of the Code intersect each other's dispositions, thus making the responsibility for one action artificially aggravated. Court rulings on the application of a penalty are also unjustified - in the absence of a standard of justification in the Code, the decisions do not indicate the reason and grounds for the application of the penalty.⁵⁷³

Proposals

To the Parliament of Georgia:

- Ensure that relevant amendments and additions are made to the Law of Georgia on Assemblies and Demonstrations in accordance with the recommendations set out in the Special Report of the Public Defender of Georgia on Freedom of Peaceful Assembly (Area protected by the right and standard of assembly management). In particular:
 - Explain the concept of different types of assemblies (including spontaneous and simultaneous assemblies) and regulate issues related to the rules of their holding;

⁵⁶⁸ OSCE / ODIHR (OSCE / ODIHR) on Police Order during Human Rights Guidelines, 2016, 109-110; OSCE / ODIHR (OSCE / ODIHR) and the European Commission for Democracy through Law (Venice Commission); Guiding Principles on Freedom of Assembly, Second Edition, 2010, para. 108.

⁵⁶⁹ *ibid*

⁵⁷⁰ UN Human Rights Committee, N^o37 General Comment on Freedom of Peaceful Assembly (Art. 21), 17 September 2020, para. 82.

⁵⁷¹ OSCE / ODIHR (OSCE / ODIHR) and the European Commission for Democracy through Law (Venice Commission); Guiding Principles on Freedom of Assembly, Second Edition, 2010, para. 161.

⁵⁷² *ibid*

⁵⁷³ See Report of Public Defender of Georgia of 2020, 145-146; Report of 2019 , 157-159; For details, see: Report of Public Defender of 2015, 463-468.

- Eliminate blanket bans related to the venue of the assembly and allow the authorized agency to resolve the issue individually, in accordance with international and constitutional standards of restricting freedom of assembly;
- Establish a standard of action for law enforcement officers in cases of violence during an assembly. Including, regulate in detail the rule of prior warning of the participants of the assembly about the expected use of force;
- Introduce a mechanism for dialogue and negotiation with the participants of the assembly at the legislative level in order to avoid escalation of the situation and interference with the right;
- Separate and define in detail the competencies of local self-government bodies and law enforcement agencies in the process of managing the assembly.

Recommendations

To the Minister of Internal Affairs of Georgia:

- In accordance with national and international human rights standards, develop an appropriate protocol, which will set out the rules for the stop and search of assembly participants, as well as their detention.

11. Freedom of Information

The right of access to public information is guaranteed by the Constitution of Georgia and is a precondition for the openness of the activities of state bodies and the exercise of proper public control over them. The realization of this right helps to increase the accountability of the agencies, as well as to improve the efficiency of their activities.⁵⁷⁴ The Public Defender of Georgia actively monitored the challenges in terms of exercising this right during the reporting period.

According to the Public Defender, the legislation related to freedom of information in the country is flawed and needs fundamental reforms in order to meet international standards.⁵⁷⁵ In the 2020 parliamentary report, Public Defender overviewed in details the problems related to exercising of the right of access to public information.⁵⁷⁶

During the reporting period, the refusal of a private entity exercising the public authority to provide access to public information on the pretext that it did not constitute public institution acknowledged by the national legislation regulating freedom of information, remained a challenge.

In this regard, noteworthy was the case brought before the common courts on the refusal of non-commercial organization Media Academy to provide public information on the grounds that it was not an administrative agency. It should be mentioned that the Tbilisi City Court⁵⁷⁷ ruled in favor of the applicant and instructed Media Academy to provide the disputed information. The court pointed out that the mentioned legal entity, based on the authority delegated by the Georgian National Communications Commission, was established to exercise public authority⁵⁷⁸ - to develop media literacy in the society, and, accordingly, functioned as an administrative agency. After the dispute continued in the court of appeals, the Public Defender decided to present an *amicus curiae* brief before the court and provided additional information regarding the notion of an administrative agency and the significance of its proper definition for the realization of the right to public information.⁵⁷⁹ In the document, the Public Defender referred to the standard set by the Supreme Court of Georgia, according to which, regardless of the organizational-legal form of the institution, it can be considered an administrative agency while performing of public functions.⁵⁸⁰ According to the information obtained by the Office, the Court of Appeals did not satisfy the request of the Media Academy and the decision is currently being appealed in the Supreme Court of Georgia.

In addition, within the framework of one of the cases reviewed by the Public Defender of Georgia, the problem of excessively broad interpretation of the concept of intra-agency documentation⁵⁸¹ was

⁵⁷⁴ Judgment of the Constitutional Court of Georgia 271/4/757 of 27 March 2017, case of Giorgi Kraveishvili, a citizen of Georgia v. The Government of Georgia, II, p.5.

⁵⁷⁵ Parliamentary Report of the Public Defender of Georgia for 2017, 174; Parliamentary Report of the Public Defender of Georgia for 2020, 250.

⁵⁷⁶ Parliamentary Report of the Public Defender of Georgia for 2020, 250-252.

⁵⁷⁷ Judgment of the Administrative Cases Panel of the Tbilisi City Court of 25 February 2021 №3 / 2660-20.

⁵⁷⁸ See the Law of Georgia on Broadcasting, Article 141, Paragraph 3.

⁵⁷⁹ Opinion of the Public Defender of Georgia 604-5 / 7722 as of the Court's Friend (*Amicus Curiae*) on August 6, 2021.

⁵⁸⁰ Judgment of the Supreme Court of Georgia 18bs-674-670 (2k-17) of January 18, 2018.

⁵⁸¹ General Administrative Code of Georgia, Article 99, Part 1.

identified. The case related to Levan Samkharauli National Forensics Bureau refusing to transfer one of the documents used in its report - "Quality and Procedures Manual" - to the applicant. The agency explained its decision, among other things, by the fact that the disputed information was of internal nature and the obligation to issue such information has not been provided by law. The Public Defender considered such explanation irrelevant and issued recommendation to the agency.⁵⁸²

The Public Defender underlines once more that the above-mentioned shortcomings identified from year to year indicate the need for prompt implementation of the legislative reform related to freedom of information and the establishment of an appropriate oversight body.⁵⁸³ The problem is especially exacerbated by the disbalance between the right of access to public information and the mechanisms for protecting the right to privacy. While, on the one hand, a special law provides an effective supervision for the protection of personal data, and, on the other hand, there is no such effective system for ensuring access to public information, public institutions often take advantage of this legislative environment and avoid disclosing information.

Recommendations

To the Government of Georgia:

- Finalize amending the draft law regulating the freedom of information and the accompanying legislative changes and initiate them in the Parliament of Georgia;
- Submit for ratification to the Parliament the Council of Europe Convention on Access to Official Documents of 18 June 2009.

⁵⁸² Recommendation of the Public Defender of Georgia of November 11, 2021 №04-5 / 10729.

⁵⁸³ Parliamentary Report of the Public Defender of Georgia for 2020, 252.

12. Human Rights Defenders

Considering the special role of human rights defenders in a democratic society, the ombudsman continues to identify the challenges they face.

In 2021, statements of high political officials aiming to discredit organizations working on issues crucial to democratic development⁵⁸⁴ mainly through linking them with the opposition political party, were still relevant. An initiative to further regulate the activities of non-governmental organizations was also expressed⁵⁸⁵ and offensive expressions were made in relation to activists.⁵⁸⁶ In the past, the Public Defender has responded to similar facts and assessed them as unacceptable practices that run counter to the guarantees created at the international level to ensure the protection of human rights defenders.⁵⁸⁷

During the reporting period, a threatening and hostile environment was created towards media representatives as one of the groups of human rights defenders, which was clearly demonstrated by the violent events of July 5, 2021.⁵⁸⁸ In this regard, noteworthy is not only the increased number of crimes committed against them, but also the cynical attitude of politicians towards journalists, especially those representing critical media, discrediting or insulting statements against them,⁵⁸⁹ as well as the unfortunate trend of not allowing and/or not inviting representatives of critical media to briefings held by ministries.⁵⁹⁰

According to Public Defender the media has a special function to provide information to the population on human rights issues in the country and thus, help to prevent violations, as well as to raise the issue of appropriate responsibility in case of their detection. Its role is even more evident during the election period, to ensure free and fair election process in line with the election legislation. While undertaking such activities, journalists enjoy the status of human rights defenders and all the guarantees of proper protection.

In addition, the violent events of July 5, 2021 were a direct confirmation that the grave situation in the country in terms of the realization of freedom of assembly by members of the LGBTQ + community and their supporters has further deteriorated.⁵⁹¹ It is noteworthy that within the scope of investigations⁵⁹² into threats against women and LGBTQ + defenders in 2017-2019, as well as the investigation on the theft of the flag from the Tbilisi Pride office in 2020, the issue of responsibility of specific individuals has not been

⁵⁸⁴ Information available: <<https://bit.ly/3IU83hl>>; <<https://bit.ly/3EL8Ud9>>; <<https://bit.ly/3IPBemi>>; <<https://bit.ly/3IK0dbh>>; <<https://bit.ly/3dqJNzU>> [Last viewed 15.02.2022].

⁵⁸⁵ Information available: <<https://bit.ly/3IC4lvh>> [Last viewed 15.02.2022].

⁵⁸⁶ Information available: <<https://bit.ly/34XhJn5>> [Last viewed 15.02.2022].

⁵⁸⁷ Parliamentary Report of the Public Defender of Georgia for 2018, 167-168, Parliamentary Report of the Public Defender of Georgia for 2019, 250-251; Parliamentary Report of the Public Defender of Georgia for 2020, 257; See also the statements of the Public Defender of Georgia available on the website: <<https://bit.ly/3LtqtBY>>; <<https://bit.ly/3sEx9EJ>>; <<https://bit.ly/3LDy8h2>>; <<https://bit.ly/3uRAIQm>>; <<https://bit.ly/3Bu9JGb>> [Last viewed 15.02.2022].

⁵⁸⁸ For more information, see Freedom of Assembly chapter of this report.

⁵⁸⁹ Information is available on the website: <<https://bit.ly/3yajvM8>>; <<https://bit.ly/3EwXSHX>>; <<https://bit.ly/3lCyQzZ>>; <<https://netgazeti.ge/news/555767/>>; <<https://bit.ly/3oy0qQw>> [Last viewed 15.02.2022].

⁵⁹⁰ For more information, see Chapters on Freedom of Expression and Right of Assembly in this Report.

⁵⁹¹ For more information, see Freedom of Assembly chapter of this report.

⁵⁹² Parliamentary Report of the Public Defender of Georgia for 2020, 257-258.

raised yet.⁵⁹³ This proves that despite positive responses in some cases, the measures taken to ensure the protection of human rights defenders at the national level remain insufficient.⁵⁹⁴

According to the information received from the General Prosecutor's Office of Georgia, in 2021, criminal proceedings were launched against 4 persons for crimes committed against human rights defenders (except media representatives).⁵⁹⁵ It should be noted that the Ministry of Internal Affairs of Georgia still does not record statistical data on investigations launched as a result of criminal acts committed directly against human rights defenders, which hinders the planning and implementation of appropriate measures to address systemic challenges. For years, the Ministry has been linking this problem to the lack of a legislative concept of human rights defenders,⁵⁹⁶ however, at this stage, the agency is working on defining the concept of human rights defenders based on the manual⁵⁹⁷ of the Public Defender of Georgia.⁵⁹⁸

It is noteworthy that in 2021, the report of the OSCE Office for Democratic Institutions and Human Rights on the state of human rights defenders in particular countries was published.⁵⁹⁹ As a result of assessing the situation including in Georgia, the report outlines the recommendations, implementation of which will strengthen the protection of human rights defenders in the Member States. Among them, the OSCE's Democratic Institutions and Human Rights Office calls on states to promptly, impartially, independently and effectively investigate crimes committed against human rights defenders; Publicly condemn threats, attacks and other forms of abuses against human rights defenders and focus on their positive role in society; Ensure that no undue political influence or other form of pressure is exerted on the media, including public broadcasters; Ensure that administrative and other sanctions envisaged for misconduct by protesters during assemblies are applied in strict conformity with relevant laws and, where relevant, abolish imprisonment and excessive fines as possible punishment in the context of peaceful assemblies; Also, adopt a comprehensive and effective whistleblower protection framework. The Public Defender will assist and monitor the implementation of these and other recommendations by Georgia.

Recommendation

To public officials:

- Adhere to internationally recognized standards of human rights defenders when exercising the powers conferred by law. Including refraining from engaging in a campaign to discredit human rights defenders and promoting their activities.

⁵⁹³ Letter №13 / 11449 of February 28, 2022 of the General Prosecutor's Office of Georgia.

⁵⁹⁴ Parliamentary Report of the Public Defender of Georgia for 2020, 258.

⁵⁹⁵ Letter №13 / 11449 of February 28, 2022 of the General Prosecutor's Office of Georgia.

⁵⁹⁶ 2020 Parliamentary Report of the Public Defender of Georgia, 258-259.

⁵⁹⁷ The Guide to Work on Human Rights Defenders submitted by the Public Defender of Georgia in 2020 is available at: < <https://bit.ly/371Wlby> > [last viewed on 15.02.2022].

⁵⁹⁸ Letter of the Ministry of Internal Affairs of Georgia, March 15, 2022 №667697.

⁵⁹⁹ Report available: < <https://bit.ly/3CjvLMc> > [Last viewed 07.03.2022].

13. Right to a Healthy Environment

13.1. Introduction

2021 was a particularly important year in terms of environmental issues, as the UN Human Rights Council recognized last year that a clean, healthy and sustainable environment is a fundamental human right.⁶⁰⁰ This is a logical continuation of the dynamic changes in approaches to environmental issues with the development of mankind.

As part of its monitoring of environmental rights, similarly as in last year, the Public Defender identified a number of challenges, including shortcomings in the environmental impact assessment system and its execution problems, neglecting human rights approaches in infrastructure projects or overlooking environmental interests in spatial arrangements, and environmental pollution issues.

The implementation of large-scale infrastructure projects has become one of the most pressing issues for the public in Georgia in recent decades.⁶⁰¹ The main questions of the society, considering the scale and complexity of the issue, are mostly related to energy projects, on which the Public Defender published a special report⁶⁰² in the reporting year. A clear example of systemic problems in terms of policy, legislation and enforcement in the fields of environment and energy is the developments around Namakhvani Hydropower Plant, which, like the previous reporting year, were relevant this time.

In a previous parliamentary report,⁶⁰³ the Public Defender spoke in detail about the environmental problems caused by entrepreneurial activities, including: in Zestaponi municipality, in Kaspi, in Poti and in Khelvachauri municipality. According to our information,⁶⁰⁴ in accordance with the recommendation of the Public Defender, the Department of Environmental Supervision inspected a number of enterprises in 2021 and revealed various facts of violation of environmental legislation. The Public Defender considers it important for the state to continue and strengthen the inspection of problematic enterprises in these municipalities, as well as to strengthen the levers of supervision, since, as it turns out, the violations have been continuous and systematic for years and require effective and result-oriented measures from the state. It is also important to inform local community about the activities planned and implemented, which is their constitutional right.

13.2. Environmental impact assessment system – policy, legislation and enforcement challenges

According to the Public Defender, in addition to economic growth and the achievement of the goal of energy independence, equal importance should be given to effective environmental governance based on human rights. All this, in turn, should be reflected in the development of relevant policies and legislation by the state.

⁶⁰⁰ Follow the link: < <https://bit.ly/3iMrEiQ> > [last visited on 30.03.2022].

⁶⁰¹ Such as, for example, a hydropower plant, a transmission line, various multifunctional complexes, a cargo terminal, a landfill or a motorway.

⁶⁰² Special Report "Environmental Impact Assessment System - Policy, Legislation and Enforcement Challenges", follow the link: <https://bit.ly/3h19ldY> [last visited on 30.03.2022].

⁶⁰³ Parliamentary Report of the Public Defender, 2020, 272.

⁶⁰⁴ DES 3 22 00012196 Letter of Department of Environmental Supervision, 1/03/2022.

The analysis showed that despite the existence of policy documents related to a particular energy sector, the country has not complied with the requirements of the Georgian Law on Energy and Water Supply and has not developed a comprehensive, long-term, unified energy policy document that will be a foundation for Georgia's energy sector development strategy. As a result, the lack of a document outlining the country's energy challenges, long-term visions and priorities as a whole has, for many years, led to a number of acute problems. These include citizens' resistance to infrastructure projects, lack of control, transparency and reporting problems, lack of understanding of strategic visions, or the country's energy situation, risks and opportunities.

The Office of the Public Defender is aware that in 2021 the Ministry of Economy and Sustainable Development of Georgia has developed a concept of national energy policy, and work is underway on energy policy.⁶⁰⁵ The energy policy document will be submitted to the relevant agencies as soon as the draft is prepared,⁶⁰⁶ and a strategic environmental assessment report will be prepared based on the scoping report. Also, as we have been informed, the Ministry of Economy and Sustainable Development of Georgia, in cooperation with the Secretariat of the Energy Union, held meetings with representatives of universities and other stakeholders last reporting year. The Public Defender hopes that the national energy policy documents will be developed and approved in a timely manner and in full compliance with the requirements of national and international legislation, and will subsequently be reflected in legislation and practice.

As for the environmental impact assessment system itself, the study revealed that there are significant challenges both at the legislative level and in terms of enforcing existing regulation. Such problems are both individual and systemic, including challenges to raising public awareness and taking into account the interests of the local population, the quality of the studies conducted within the framework of the environmental impact assessment and the distrust towards them, as well as the need to revise the list of activities subject to environmental impact assessment.

13.2.1. Public awareness and participation

Despite the high legal guarantees, practice has shown that in order to enforce regulations effectively, more efforts are needed to ensure that the proceedings not only meet the required standards, but they also fulfill the legislator's key will - the general public to have information about planned activities at an early stage of decision-making and the engagement of citizens in processes is realistic and result-oriented.

When selecting a venue for a public hearing, it is important to consider distance and transportation issues. Also, the second and most important issue is the process of conducting public hearings themselves. Under current regulation,⁶⁰⁷ a public hearing will be deemed to have taken place regardless of whether it is attended by a representative of public. A record like this obscures the main purpose of the public hearing

⁶⁰⁵ 04/1047 Letter from the Ministry of Economy and Sustainable Development of Georgia 23/02/2022.

⁶⁰⁶ Ministry of Environmental Protection and Agriculture of Georgia and Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

⁶⁰⁷ Rule of Public Hearing, Article 9, Paragraph 13.

procedure - to provide information to the public orally and to receive opinions and comments. Thus, a hearing in which no representative is present should not be considered as a public hearing.

The Public Defender also considers it important to provide the most comprehensive and in-depth answers to the questions raised among the citizens during the public hearings. For the purposes of public hearings, it is important that the opinions and comments received have a real impact on the decision-making process, as required by national and international standards; The socio-economic needs and legitimate interests of local population should be taken into account as much as possible.

13.2.2. Screening procedure

According to the Environmental Assessment Code, the screening procedure determines the need to conduct an Environmental Impact Assessment (EIA). Currently, the Code sets out general criteria, but does not set out specific criteria and rules for the review and decision-making of screening applications by the Ministry, including there is no obligation defined to verify the information submitted.

According to Directive 2011/92/EU, the decision on screening must be made on the basis of individual (case-by-case) examination or criteria established by the State.⁶⁰⁸ The state can apply both procedures. But regardless of which choice it makes, the state must take into account the list of criteria set out in the directive,⁶⁰⁹ which, in addition to the established characteristics, are determined taking into account the specifics of the state. Thus, it would be appropriate to specify the screening criteria taking into account the specifics of Georgia. Moreover, according to the directive, states are not required to test the project beyond the established criteria.

Given the fact that the screening procedure is the most important stage of the EIA system and is the basis for further legal action, it is essential that the screening decision-making process is not formal in nature. Clearly, screening does not imply the degree of research and assessment provided for the EIA, although it is vital that the screening procedure is fully focused on in-depth and substantiated study of the research issue, including through verification of information provided by the operator. Thus, in order to meet the high standards of environmental impact assessment of the project to be implemented, it is necessary to create and introduce additional legal safeguards.

13.2.3. Activities subject to environmental impact assessment

Among other issues, the Public Defender of Georgia has repeatedly stated that he positively assesses making activities subject to environmental impact assessment compliant with international standards by the adoption of the Environmental Assessment Code. Practice, however, has shown that the list of activities subject to environmental impact assessment needs to be revised. Despite the proposal made by the Public Defender of Georgia in the previous parliamentary report, no changes in this direction were made in the Code in the reporting year.⁶¹⁰ The criteria for the activities defined in the Annexes to the

⁶⁰⁸ Article 4, Part 2. Follow the link: < <https://bit.ly/3IWzbpQ> > [last visited on 30.03.2022].

⁶⁰⁹ For example, the characteristics of the activity, the place of implementation of the planned activity and its compatibility; The nature of the possible impact of the activity. It is noteworthy that the directive relates the location of the planned activity and the criteria for its compatibility to sensitive geographical areas.

⁶¹⁰ 2020 Parliamentary Report of the Public Defender, 275.

Code require, in some cases, changes, taking into account the peculiarities and reality of Georgia.⁶¹¹ It is important to avoid, as much as possible, that the activities that could potentially lead to environmental rights violations stay out of the regulation.

Thus, all activities that require additional legislative changes should be identified through the transparent process and the participation of competent groups with appropriate expertise.

13.3. Namakhvani hydropower plant cascade project

Like last year, during the reporting period, the developments around the Namakhvani hydropower plant project were one of the most pressing issues. The Public Defender has repeatedly stated that this project is one of the systemic challenges facing the state in terms of planning and implementing energy projects, including proper public awareness and their real engagement.⁶¹²

Citizens' protest against the project continued during the reporting year. The Public Defender herself visited Gumati settlement, where she met with the opponents of the project. Based on legitimate questions from protesters, the Public Defender again called on the authorities to immediately offer a transparent, result-oriented dialogue and discussion format to citizens, explaining that the police force only exacerbated the problem.⁶¹³

As it is known, the Namakhvani hydropower plant cascade project⁶¹⁴ was considered by the Georgian government as a public-private partnership project.⁶¹⁵ The Ministry of Economy and Sustainable Development of Georgia⁶¹⁶ informed us that by the decree of the Government of Georgia,⁶¹⁷ a contract has been approved, at the same time, the Namakhvani hydropower plant project has been defined as a project under preparation.

Taking into account the explanation of the Ministry, among other procedures, at the stage of preparation, it was necessary for the Ministry of Finance of Georgia to develop a relevant report on the fiscal risks of the project. It is noteworthy that most of the questions around this project are addressed to this issue.⁶¹⁸

The Office of the Public Defender of Georgia has not received a response from the Ministry of Finance of Georgia as to whether there was a conclusion on the Namakhvani project as provided for in the Law on Public-Private Partnership.⁶¹⁹ However, after it was publicly reported that the investor was terminating the contract with the government, the media⁶²⁰ received a written explanation from the Ministry about the

⁶¹¹ For example, according to Annex II of the Environmental Assessment Code, an urban development project with an area of more than 10 hectares is subject to a screening decision. Setting this threshold has serious consequences in practice.

⁶¹² See details in the 2020 Parliamentary Report of the Public Defender, from p 266.

⁶¹³ Available at: < <https://bit.ly/38j0tdH> > [last visited on 30.03.2022].

⁶¹⁴ Paragraph 5 of the Preamble to the Corrected Agreement with the Government of Georgia and the Investor.

⁶¹⁵ Based on Article 36 of the Law of Georgia on Public-Private Partnership.

⁶¹⁶ GOV 3 21 00023559 Letter from the Government of Georgia 06/07/2021; N^o23/4430 Letter of the Ministry of Economy and Sustainable Development of Georgia 13.07/2021.

⁶¹⁷ N^o905 Decree of the Government of Georgia of April 23, 2019.

⁶¹⁸ Law of Georgia on Public-Private Partnership, Articles 10, 13.

⁶¹⁹ N^o04-11/5319 Letter of the Office of the Public Defender of Georgia, 4/06/2021.

⁶²⁰ Available at: <https://bit.ly/3hKVXpE> [last visited on 30.03.2022].

absence of such a conclusion. It is noteworthy that civil society and the media have been trying for several months to obtain this conclusion or to confirm the information that such a conclusion has not been developed. In addition to the fact that the lack of the above-mentioned conclusion defined by law is problematic, this once again confirms the neglect to publicise information and to raise awareness of population about the project in question, which contradicts the national and international obligations of the state regarding energy projects.

The public and political crisis surrounding the project last year led to the start of a mediation process involving the Energy Union, which was to lead to negotiations between the government and the public, as well as the preparation of independent evaluations of the project.⁶²¹

However, following information⁶²² that Namakhvani's construction company, Enka, had initiated to terminate the contract with the Georgian government,⁶²³ the Energy Union's summary report revealed that the preparation of independent assessments had been suspended. It is noteworthy that according to the Ministry of Economy and Sustainable Development of Georgia⁶²⁴, negotiations are underway with the company from October 2021, the parties are waiting for the completion of the negotiation process, after which the future framework of the project will be decided.

13.4. Highway projects

The Office of the Public Defender of Georgia, as in previous years, was approached⁶²⁵ by citizens in the reporting year regarding the realization of their property rights as well as the right to live in a safe and healthy environment within the framework of highway projects.

Freight and passenger transportation in Georgia is almost entirely carried out on highways. In order to increase the country's competitiveness, it was considered necessary to improve and develop the network of roads of international and domestic importance, including the rehabilitation of the road surface and the construction of new bridges and tunnels.⁶²⁶

Thus, in recent years, several road infrastructure projects have been actively implemented, which, given their scale and specificity, are in line with the rights of the residents of the nearby settlement.⁶²⁷

The applicants applied to us individually or collectively in each case. Their main concern is the risks of damage to their homes, geological hazards, the expected negative impact on their fruit and other agricultural activities, expected noise, air pollution and thus, the deterioration of the living environment and the right to live in a safe environment as a result of constructions. Here, too, the fulfillment of the obligation of proper awareness and involvement of citizens is problematic, in some cases the right to

⁶²¹ At the beginning of the mediation, a representative of the Public Defender also attended the meeting as an observer.

⁶²² Available at: < <https://bit.ly/3DrO0zy> > [last visited on 30.03.2022].

⁶²³ Agreement on construction, ownership and operation of Namakhvani HPP cascade, signed on April 25, 2019.

⁶²⁴ №23/1040 Letter of the Ministry of Economy and Sustainable Development of Georgia, 23/02/2022.

⁶²⁵ A. B., M, P, №12385/21, M. P. №10369/21, J. M., M. G. №5649/21, N. M. 5778/21, N. C. №6704/21.

⁶²⁶ Georgia Regional Development Program 2018-2021, from p 88, <https://bit.ly/3vOC4Gn> [last visited on 30.03.2022].

⁶²⁷ Khevi-Ubi-Shorapani-Argveta Highway Project of International Importance (E-60); Grigoleti-Kobuleti bypass road project of international importance (E70); The North-South Corridor, Kvesheti-Kobi section project.

protection of cultural heritage becomes relevant. Citizens' complaints often relate to the fact that despite the expected negative impact, their property is not subject to compensation, or they do not agree with the compensation offered, or they believe that their families have not been fairly accommodated; As in the case of energy projects, there is a high level of distrust in the various findings and measures outlined in the EIA documents.

As a rule, government agencies rely on the approaches and policies of the individual project-financing international financial organizations regarding compensation/resettlement issues; As for other types of impacts, the state relies on various measures envisaged in the EIA documents, including prevention/mitigation of air pollution or excessive noise.

The Office of the Public Defender, given the powers conferred by law, cannot individually assess the degree of expected impact on property or the environment as a whole in the absence of an alternative assessment – therefore it becomes more difficult to find that a particular right has been violated. However, the complaints of the citizens show the need for timely elimination of various systemic problems reflected in the special report, as well as the need for more efforts by the state within each such project. This is necessary in order, on the one hand, citizens have information about the planned projects, expected risks and scale of impact at an early stage, and on the other hand, their socio-economic needs are taken into account as much as possible, including by planning a fair accommodation policy.

13.5. Spatial arrangement and environmental protection

The Public Defender has been talking about the serious challenges in the field of construction for many years. The construction sector is one of the areas that requires human rights-oriented approaches. According to the Public Defender, the purpose of any initiative or planned change should be to overcome the existing challenges in this direction and to correct the situation, and not vice versa, to aggravate it. Also, given the high public interest and the specifics of the field, it is important that all fundamental changes are developed and adopted through the involvement of relevant professional circles and through substantive consultations with them.

At the end of the reporting year, it became known to the public⁶²⁸ that significant changes were made in the Code of Spatial Planning, Architectural and Construction Activities of Georgia; they were approved by the Government. The Bureau of the Parliament of Georgia supported to discuss these changes through the expedited procedure.

Among numerous other changes, the concept of investment project has been clarified in the law according to the proposed draft. The project will be considered as such, if it envisages the development of the area with non-residential function and creates employment opportunities for the local population or is characterized by a special purpose. It was planned to determine the minimum cost of such a project by law and to give an opportunity to the interested person to develop the area even on the construction

⁶²⁸ Available at: < <https://bit.ly/38feDwg> > ; < <https://bit.ly/3LqjPf0> > [last visited on 30.03.2022].

site.⁶²⁹ According to the amendments, such projects will no longer be subject to the regulations provided for in Articles 67 and 68 of the Code, which require to comply with the existing environment and neighborhood interests when issuing construction permits, based on the requirements of the existing space planning for the construction of the building due to the function of the relevant area, the urban development plan (if any) and the basic provisions, if this is not against the public interest.

The proposed change already means that any similar project might be implemented against these interests. According to the Public Defender, neglect of public interests and other named circumstances is inadmissible. In a situation where the issue of chaotic and problematic constructions is already acute, it is not advisable to completely remove the requirements of the Code for large projects, which in their essence will have a great impact on the environment and other related aspects. The interest in the implementation of investment projects and the development of the potential of such areas can not be considered as a counterbalance to this. First and foremost, need to strike the right balance between the environment, safe living conditions, property and human rights prospects, and economic well-being is at stake with regard to such large projects. In addition, it is important that the criteria for the concept of a large investment project be more specific and predictable, so that in individual cases the neglect of environmental interests and the occurrence of irreversible damage are not only dependent on the assessment of the administrative body.

In view of all the above, according to the Public Defender, the presented draft of legislative changes requires additional study from a human rights perspective, in-depth analysis of the mentioned issues and the involvement of professional circles.

13.6. Right to the clean air

Despite a number of important measures taken and planned to improve air quality, air pollution remains one of the serious challenges in the country.

Ambient air quality monitoring system⁶³⁰ is still flawed, which does not provide a complete picture of pollution across the country.⁶³¹ Nevertheless, within the framework of the activities already implemented and planned by the Ministry of Environmental Protection and Agriculture of Georgia, a significant expansion of the monitoring network is expected.⁶³²

⁶²⁹ According to the explanatory note, this will encourage businesses to implement valuable and long-term investment projects in unused areas, which, in turn, will ensure the effective utilization of the potential of such an area and contribute to the economic / social well-being of the region.

⁶³⁰ As in the previous reporting year, ambient air quality monitoring is still carried out by 8 automatic and 1 non-automatic stations.

⁶³¹ For more information see 2020 Parliamentary Report of the Office of the Public Defender of Georgia, 262-263.

⁶³² In accordance with the №1748/01 letter of the Ministry of Environmental Protection and Agriculture of Georgia of February 23, 2022, the Agency purchased a new mobile automatic station in 2021 (delivery date is April 2022) and under a grant agreement between the Ministry and the Swedish International Development Cooperation Agency (Sida), LEPL National Environmental Agency will purchase 8 new automatic and one mobile stations to improve the air quality monitoring network.

In terms of gradual transition to the European standard of ambient air quality monitoring and management,⁶³³ a step forward is to divide the territory of Georgia into 5 zones⁶³⁴ and 1 agglomeration⁶³⁵ in the reporting year.⁶³⁶ This will enable air quality to be assessed and effectively managed according to the challenges in each unit.⁶³⁷

Given that the industrial sector is one of the main sources of air pollution, the increase of fines⁶³⁸ imposed by industrial facilities for individual violations in the field of ambient air protection and the introduction of a continuous automatic self-monitoring system and a reporting obligation⁶³⁹ shall be considered as an important measure. Nevertheless, these changes do not create a comprehensive legal framework for the regulation of pollution from the industrial sector. For years, the Public Defender of Georgia has been pointing out that in order to reduce such emissions and move to European standards to control them, it is necessary to initiate a draft law on industrial emissions in the Parliament of Georgia, which was originally planned in 2019 but has not yet been implemented.⁶⁴⁰

Another major source of pollution nationally is road transport. This was well demonstrated during the period of the ban on movement in response to the pandemic, when the concentration of harmful substances in the ambient air decreased and particularly the nitrogen dioxide content decreased.⁶⁴¹ Unfortunately, at this stage, the ongoing work to identify and implement an effective mechanism for detecting concentrations of harmful substances in vehicle emissions and an effective response mechanism to this type of offense has not yet been completed.⁶⁴² According to the Ministry of Environmental Protection and Agriculture of Georgia, work on this issue is underway within the framework of the working

⁶³³ For more information see 2020 Parliamentary Report of the Office of the Public Defender of Georgia, 262.

⁶³⁴ Black Sea Zone, West Zone, Central Zone, East Zone, and Highland Zone.

⁶³⁵ Tbilisi agglomeration.

⁶³⁶ "Ambient Air Quality Monitoring and Management Zones and Agglomerations" approved by the Order №2-1293 of the Minister of Environmental Protection and Agriculture of Georgia of August 30, 2021.

⁶³⁷ Law of Georgia on Protection of Ambient Air, Article 67¹; Resolution №563 of the Government of Georgia of December 1, 2021 on the approval of the technical regulation on the minimum standard number of monitoring points/stations, location and operation rules to monitor level of pollution by air pollutants, as well as the list of standard methods for measuring the level of pollution.

In accordance with the №1748/01 letter of the Ministry of Environmental Protection and Agriculture of Georgia of February 23, 2022, development of air quality management plans for the Tbilisi agglomeration and the Black Sea zone is planned within the framework of the EU Technical Assistance Project in 2022. Development of air quality management plans for other zones is planned within the framework of other donor-funded projects.

⁶³⁸ №249-IVMS-XMP Law of Georgia of March 2, 2021 on Amendments to the Code of Administrative Offenses of Georgia.

⁶³⁹ №246-IVMS-XMP Law of Georgia On Amendments to the Law of Georgia on Ambient Air Protection of March 2, 2021.

⁶⁴⁰ See. 2019 Parliamentary Report of the Public Defender of Georgia, p 256 and 2020 Parliamentary Report of the Public Defender of Georgia, p 264. According to the №1748/01 letter of the Ministry of Environmental Protection and Agriculture of Georgia of February 23, 2022, the initiation of the draft Law of Georgia on Industrial Emissions and the draft laws deriving from it is planned in the Parliament of Georgia within the spring session.

⁶⁴¹ According to the №1748/01 letter of the Ministry of Environmental Protection and Agriculture of Georgia of February 23, 2022, "For example, if according to the data of April 2019, the average annual concentration of nitrogen dioxide was 60 mcg/m³ on Tsereteli Avenue in Tbilisi, which was 1.5 times higher than the maximum limit (40 mcg/m³), in April 2020 this figure was only 26 mcg/m³ and was within the limit. Also in 2019, 35 mcg/m³ was recorded on Kazbegi Avenue in Tbilisi, in April 2020, the average annual concentration was 19 mcg/m³ and its value did not exceed the norm. According to the data of April 2019, the average annual concentration of nitrogen dioxide in Batumi was 62 mcg/m³, which was 1.6 times higher than the norm, and in April 2020, the average annual concentration within the norm was 37 mcg/m³.

⁶⁴² 2020 Parliamentary Report of the Public Defender of Georgia, 264-265.

group established by the Committee on Environment and Natural Resources of the Parliament of Georgia that studies issues on "Promoting Vehicle Emissions and Introducing Eco-Transport".⁶⁴³

Recommendations

To the Government of Georgia:

- Ensure transparency of information and data related to ongoing and planned projects in the field of energy at all stages of activity planning.

To the Minister of Environmental Protection and Agriculture of Georgia:

- Develop additional levers, including, if necessary, initiate legislative changes to ensure that the research issue is thoroughly explored and a reasoned decision is made when making a screening decision;
- Plan and ensure the development of thematic guidance documents, for example, on hydroelectric projects, power lines, highways, and take the necessary measures to enforce these documents;
- By amending the №2-94 Order of the Minister of Environment Protection and Agriculture of Georgia on February 22, 2018 on Approving the Rules of Public Hearing, a public hearing, which will not be attended by any representative, shall not be considered as held;
- Take into account all relevant criteria, including territoriality and transportation, to ensure accessibility for citizens when selecting a place for public hearing.

To the Minister of Economy and Sustainable Development of Georgia:

- Develop in a timely manner the energy policy of the state in accordance with Article 7 of the Law of Georgia on Energy and Water Supply, for a period of at least 10 years, and ensure proper and timely conduct of all procedures provided for in the Code of Environmental Assessment of Georgia.

⁶⁴³ №1748/01 Letter of the Ministry of Environmental Protection and Agriculture of Georgia of February 23, 2022.

14. Right to Work

14.1. Introduction

The past reporting year has been marked by challenges in terms of protection of labor rights. Although the right to work is protected by the Constitution of Georgia⁶⁴⁴ and international acts,⁶⁴⁵ in the pre-election period there was a tendency to violate labor rights on the basis of political views. The Public Defender became aware of 69 cases of allegedly discriminatory dismissal or harassment at work for, politically motivated views. The Public Defender informed the law enforcement agencies about 44 such cases. As a result, both the Ministry of Internal Affairs and the General Prosecutor's Office launched an investigation into various violations of labor law by various public institutions, including against employees of the Ministry of Internal Affairs of Georgia. In addition, the Public Defender's Office has established the fact of violation of labor rights or political discrimination against 9 persons at this stage and has addressed the relevant agencies with recommendations. Public Defender also submitted two amicus curie briefs in the context of the ongoing labor dispute in the common courts.⁶⁴⁶

During the pandemic, the human rights situation of women in the health sector has deteriorated significantly. Hard working conditions and low wages further aggravate the situation in the Georgian hospital sector. The number of nurses in the country is alarmingly low. Consequently, due to unequal distribution of burden of care among genders and increased work schedule, the workload of women working in the health sector has doubled, both at home and in the workplace.⁶⁴⁷

Adherence to occupational safety and health norms in the workplace remains problematic. Although deaths at work have decreased in recent years, the number of deaths and injuries at work is still high.

It should be noted that during the reporting period - from January 1, 2021 - the LEPL Labor Inspection Service was authorized to conduct inspections without the consent of the employer to reveal violations of the provisions of the Labor Code and the Civil Service Law of Georgia and to apply relevant sanctions.⁶⁴⁸ Both the above-mentioned powers and the high rate of violations revealed as a result of inspections conducted on the basis of the Organic Law of Georgia on Occupational Safety indicate the difficult situation in the country and the need to work to raise the awareness of employers and systematic inspections. Consequently, despite the fact that the number of inspected facilities increased during the reporting year compared to the previous year, it is important that this process is carried out with even greater intensity in the future.

14.2. Activities of the LEPL Labor Inspection Service

During 2021 the activities of the Labor Inspection included inspecting the implementation of labor safety norms, as well as checking the compliance with the requirements of the Organic Law of Georgia - the Labor Code of Georgia. As in 2020, in 2021 the Labor Inspection Service was not staffed with relevant

⁶⁴⁴ Constitution of Georgia, Article 26.

⁶⁴⁵ European Social Charter, International Covenant on Economic, Social and Cultural Rights and others.

⁶⁴⁶ See the chapter on elections in this report.

⁶⁴⁷ See chapters on gender equality and health rights of this report.

⁶⁴⁸ Organic Law of Georgia on Amendments to the Organic Law of Georgia - Labor Code of Georgia, available at: <<https://bit.ly/3fs8JJJ>> [last visited on 30.03.2022].

individuals (31 places out of 109 are still vacant),⁶⁴⁹ which is a problem in terms of full implementation of the functions and powers defined by the legislation for the Service.

14.2.1. Activities of the Labor Inspection related to compliance with labor safety norms

According to the LEPL Labor Inspection Service,⁶⁵⁰ in 2021 the agency conducted 1074 inspections of 446 objects (before and after the elimination of violations) on the basis of the Organic Law of Georgia on Occupational Safety. The data is significantly improved compared to the previous year,⁶⁵¹ however, it is less compared to the data in 2019.⁶⁵² According to the information provided, 4538 violations were detected during the inspection process, and warnings were issued to all facilities to eliminate the detected violations, which, due to the severity of the violation, implies giving a reasonable period of time to the employer. In addition, during the reporting period, 12 administrative protocols drawn up on the basis of violating the requirements of the Organic Law of Georgia on Occupational Safety were appealed in the common courts of Georgia. By the time the information was provided, the proceedings had not been completed.

As it turns out, employers, in most cases, do not try to identify the danger in the workplace, do not conduct appropriate training, employees at these facilities do not use personal protective equipment. There are also frequent cases of violation of the requirements of the "Technical Regulation on Safety Requirements for Work at Heights" approved by the №477 Resolution of the Government of Georgia of October 27, 2017.

In the reporting period, 34 men died at work and 253 people were injured (37 women and 216 men, respectively). Out of all occupational accidents, one has a mass character, 58 – are severe and 195 – moderate injuries. Out of these cases, a significant proportion of deaths and injuries are in the mining and quarrying industries and in the construction of residential/non-residential buildings, as in 2020.⁶⁵³ It should be noted that although the death rate in the workplace is still high in 2021, it is decreased by 13% compared to 2020, by 24% compared to 2019, and by 42% compared to 2018.⁶⁵⁴

Based on the data of identified violations, it can be concluded that the use of appropriate preventive measures by employers to properly protect occupation safety remains a problem. Therefore, it is important to carry out intensive inspections in this direction.

14.2.2. Activities of the LEPL Labor Inspection Service in relation to the protection of labor rights

As a result of the monitoring carried out by the LEPL Labor Inspection Service in accordance with the Organic Law of Georgia - the Labor Code of Georgia, it was revealed that the most common violation in

⁶⁴⁹ Letter №09/499 of the Labor Inspection Service of February 12, 2022.

⁶⁵⁰ Letter №09/499 of the Labor Inspection Service of February 12, 2022.

⁶⁵¹ Inspections were conducted at 169 facilities. See 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 280.

⁶⁵² In 2019, inspections were conducted at 558 facilities. See. 2019 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 275.

⁶⁵³ See 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 281.

⁶⁵⁴ Letter №09/499 of the Labor Inspection Service of February 12, 2022.

2021 was failure to provide remuneration for overtime work. Cases of violation of the form, time and amount of remuneration for work were also identified.

Within the scope of its authority granted from January 1, 2021, the LEPL Labor Inspection Service conducted 327 inspections / re-inspections at 249 facilities throughout Georgia during the reporting year. Out of this number, 73 were planned inspections, 36 were based on complaints, and 140 on the own initiative of the Service. As a result of the inspection, 195 protocols were issued. Warning was applied as a sanction against 192 inspected facilities, and 3 objects were fined. Also, as a result of the monitoring carried out in accordance with the Organic Law of Georgia - the Labor Code of Georgia, a total of 1766 instructions were issued, most of which addressed violations related to the duration of employment and the term and substantive conditions of the employment contract. The high rate of violations revealed as a result of inspections indicates to the need to work to raise awareness of employers, as well as the importance of active and intensive inspections.

Despite the large number of violations found, according to the LEPL Labor Inspection Service,⁶⁵⁵ it received only 36 complaints related to violation of labor rights in 2021, which is not significantly different from the 2020 data (32 complaints).⁶⁵⁶ The lack of complaints in recent years was mainly related to the weakness of the mandate of the Labor Inspection Service and the non-binding nature of the recommendations issued. However, with the amendments to the Labor Code of Georgia on September 29, 2020,⁶⁵⁷ after the extension of the mandate of the Service and granting the power to apply sanctions, the lack of complaints shall be linked to the low level of awareness of employees about inspection powers. Therefore, it is necessary to work actively in this direction.

Recommendations

To the LEPL Labor Inspection Service:

- To complete in a timely manner, staffing of the LEPL Labor Inspection Service, including its territorial bodies;
- To carry out an effective information campaign for the protection of labor rights, in order to raise awareness of employees about the mandate granted from January 1, 2021.

⁶⁵⁵ Letter №09/499 of the Labor Inspection Service of February 12, 2022.

⁶⁵⁶ See 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 283.

⁶⁵⁷ Organic Law of Georgia on Amendments to the Organic Law of Georgia - Labor Code of Georgia, available at: < <https://bit.ly/3fs8JJJ> < [last visited on 30.03.2022].

15. Right to Healthcare

15.1. Introduction

For the second year in a row, a pandemic caused by the spread of the new coronavirus (SARS-CoV-2) in the world continues. Georgia's 2 years of experience in managing the health care system during the pandemic has reaffirmed the importance of a strong, sustainable primary health care system and proper government decisions strengthened with scientific arguments rather than managing a political agenda. At the same time, it has become a great challenge to maintain proper and effective communication with the population, which has had a negative impact on the vaccination process in the country and made it impossible to vaccinate the planned number of target groups.

Administrative and financial provision of access to quality medical services and the establishment of appropriate control mechanisms is the most important obligation of the state and a precondition for the realization and effective protection of the right to health care.

In the current reporting period, restoration of the patients' violated rights, in a timely manner and providing quality medical services to vulnerable patients with special needs, as well as access to medicines, remains a challenge.

15.2. Management of the Pandemic

During 2021 pandemic showed how the weakness of health systems can have a significant impact on health, economic progress, trust, and social relationships.⁶⁵⁸ In the absence of specific medications to treat the new coronavirus, the common goal of pandemic management models in different countries is to stop the transmission of the infection. A separate model of management assumes a significant restriction on public mobility, while other models stop the infection through mass testing, detection and isolation of the infected ones. Restriction of mobility and contacts at this time is considered only as an assisting tool. Strict restrictions in Georgia in the spring of 2020 had results. According to the number of infected and dead, Georgia remained a "green zone", but since the fall of 2021, as a result of the lifting of restrictions and the disruption of control over the implementation of other preventive measures, the number of cases has increased rapidly.⁶⁵⁹ The UNDP report⁶⁶⁰ states that Lockdown is often the only solution for countries where public health systems are unable to stop and manage the infection in any other way: *not enough capacity to perform the required number of tests, not enough intensive care beds, equipment and specialists for isolating and treating a large number of patients in a short period of time.*

15.3. National plan on vaccination against new Corona virus

Vaccination is of particular importance for reducing the potential harm caused by the COVID-19 pandemic. The vaccination process in Georgia is carried out in accordance with the COVID-19 National Vaccination Implementation Plan. One of the goals of the plan is to vaccinate 60% of the population over

⁶⁵⁸ This policy tracker summarizes the key economic responses governments are taking to limit the human and economic impact of the COVID-19 pandemic. Information available: <<https://bit.ly/3s4fOEZ>> [Last viewed 22.03.2022].

⁶⁵⁹ National Center for Disease Control and Public Health. Statistical data. Information available: <<https://bit.ly/342LNgr>> [Last viewed 22.03.2022]

⁶⁶⁰ Sachs, J., Schmidt-Traub, G., Kroll, C., Lafortune, G., Fuller, G., Woelm, F. 2020. The Sustainable Development Goals and COVID-19. Sustainable Development Report 2020. Information available: <<https://bit.ly/3rpyx1y>> [Last viewed 22.03.2022].

the age of 18 by the end of 2021.⁶⁶¹ However, as a result of ineffective informational campaign, delayed financial, incentive or other measures carried out by the executive government, as of January 2022, this figure did not exceed 47%.⁶⁶² Georgia lags far behind the level set by the national plan, as well as the average of the countries included in the same economic group.⁶⁶³

It should be noted that the National Vaccination Plan does not discuss compulsory vaccination as one of the most effective ways to stop pandemics⁶⁶⁴. The ombudsman clarified last year that, under international practice, the obligation to vaccinate would indeed lead to interference with the rights of individuals, although such interference is justified when it serves a legitimate purpose - public health, and thus - the protection of human life. Considering the current situation, vaccination should be interpreted not only as an individual right, but also as a collective responsibility necessary to protect public health and save the lives of the population.⁶⁶⁵ At the end of 2021, the concept of "Green Passport" was introduced, which means checking the current status of a person when entering certain spaces and events, in accordance with the regulations in force in Georgia.⁶⁶⁶ A national survey⁶⁶⁷ found that the introduction of the certificate has both positive (expansion of vaccination coverage, mitigation of prohibitive regulations) as well as negative (certificate falsification, protests) sides. In contrast to the European experience⁶⁶⁸, different regulations have been imposed on infected persons in Georgia, and recovery certificates have also been issued to those who had the coronavirus more than 6 months ago. In the situation of the rapid spread of the Omicron strain and the sharp increase in the number of infected people, the decision of the Georgian government to abolish the obligation to require a "green passport" should be assessed even more negatively.⁶⁶⁹

According to the Public Defender, the abolition of the obligation to apply for green status, as well as one of the conditions of this status – recovery from coronavirus infection without time limits - does not correspond to current scientific evidence on the duration of natural immunity and is against the main goals of establishing of "green passport" – to increase business and cultural activities without risk of infection transmission and assist vaccination process.

⁶⁶¹ Decree of the Government of Georgia of January 21, 2021 №67 "On Approval of the National Plan for the Introduction of the COVID-19 Vaccine in Georgia".

⁶⁶² National Center for Disease Control and Public Health. Statistics, information available: <<https://bit.ly/3Lo5Cze>> [Last viewed 22.03.2022]

⁶⁶³ Coronavirus (COVID-19) vaccinations Information available: <<https://bit.ly/3LsS7y6>> [Last viewed 22.03.2022].

⁶⁶⁴ Mandatory (compulsory) vaccination is defined as a compulsory vaccination established / defined by a normative act in a professional activity, without which the commencement or continuation of activities is restricted and / or sanctioned.

⁶⁶⁵ Statement of the Public Defender, information available: <<https://bit.ly/3ufNiD3>> [Last viewed 22.03.2022].

⁶⁶⁶ Order 101-93 / N of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia of November 20, 2021 on the procedure, form and requisites for issuing a document related to vaccination, testing and / or recovery of New Coronavirus (COVID-19).

⁶⁶⁷ Curatio Foundation. Mandatory Vaccination and Green Pass - An Overview of International Experience. 2021 Information available: <<https://bit.ly/3lWBxp0>> [Last viewed 22.03.2022].

⁶⁶⁸ EU Digital COVID Certificate Information available: <<https://bit.ly/3ufywfz>> [Last viewed 22.03.2022].

⁶⁶⁹ Information available: <<https://bit.ly/3uiz6t8>> [Last viewed 30.03.2022].

15.4. Challenges of primary healthcare during pandemic

Primary health care is an approach tailored to public health that aims to ensure the best possible state of health and well-being and the equitable distribution of health resources. As a result, every person should receive the help they need in the environment desirable for them⁶⁷⁰. In the conditions of the pandemic, the challenge of the primary health care system in Georgia is considered to be the shortage of doctors and nurses in rural areas, old infrastructure, weak connections between rural doctors and other specialists, as well as the complicated and fragmented system of financing primary health care institutions.⁶⁷¹

In the summer of 2021, the government launched a primary health care reform that includes a variety of activities to fundamentally and comprehensively improve the system.⁶⁷² In the opinion of the Public Defender, in order to improve the health condition of the population and protect it from health risks, it is necessary to expand the primary health care network, improve the service package and strengthen the motivation and professional skills of the medical staff employed there. The services provided by the primary health care system must be of quality, efficient (both clinically and in terms of cost) timely and equally accessible. These issues need to be addressed as part of important reform.

15.5. High qualified auxiliary medical staff

Auxiliary health care workers are an integral part of the global response to COVID-19. In hospitals, clinics, healthcare professionals, often work without proper conditions to provide needed care for everyone, facing significant personal risk. The current crisis demonstrates the essential, innovative and very often invaluable role of healthcare workers in ensuring strong and sustainable healthcare systems. Health workers make up 3.8% of new coronavirus patients, while 32.3% of this figure is nurses / auxiliary staff.⁶⁷³

A study conducted in 2021 shows that difficult working conditions and low salaries further aggravate the situation in Georgia's hospital sector. The number of nurses in the country is alarmingly low. Another problem is that there is no tangible and effective standard in the country that would set the limit for creating a decent salary system for both healthcare and other workers.⁶⁷⁴

In order to develop nursing human resources and improve education, a "National Council for the Development of Nursing" was established along with the Ministry of Health, and a strategy⁶⁷⁵ for the development of nursing was approved, although neither in 2020 nor in 2021 will any significant activity of the council was implemented.

⁶⁷⁰ World Health Organization & United Nations Children Fund (UNICEF). (2018). A vision for primary health care in the 21st century: towards universal health coverage and the Sustainable Development Goals. World Health Organization. Information available: <<https://bit.ly/3uh9iNW>> [Last viewed 22.03.2022].

⁶⁷¹ WHO Regional office for Europe. Rethinking primary health care financing in Georgia (2021) Information available: <<https://bit.ly/34EtXAY>> [Last viewed 30.03.2022].

⁶⁷² Summary report of the 3-year activity of the Ministry 2021, information is available: <<https://bit.ly/3rcAmMb>> [Last viewed: 22.03.2022].

⁶⁷³ COVID-19 in Georgia, National Center for Disease Control and Public Health Report 2020-2021, 8th revision, information available: <<https://bit.ly/3HpSW9B>> [last viewed 30.03.2022].

⁶⁷⁴ Solidarity Network's Coronavirus Pandemic Survey and Nurses' Labor Costs 2021 Information available: <<https://bit.ly/34vfSW3>> [Last viewed 30.03.2022].

⁶⁷⁵ Resolution of the Government of Georgia N9334 "On Approval of the Nursing Development Strategy."

In the opinion of the Public Defender, in order to strengthen the sustainability of the healthcare system, it is important to maintain a system of continuous professional development of auxiliary medical staff; activation of the National Council for Nursing Development, it is also necessary to develop standards for functional and labor activities of nurses in a timely manner; establishing a sustainable system of their continuous professional development and professional regulation.⁶⁷⁶

15.6. Access to medicines

One of the most important components of the right to health is access to medicines, without which it is impossible to maintain health or overcome illness. The ombudsman indicated in previous years' reports that it was important for the state to increase access to medicines and to provide regular oversight of physical access to medicines.⁶⁷⁷ Based on this recommendation, the LEPL Competition Agency was briefed to develop an annual action plan for detecting and monitoring illegal competition in the pharmaceutical market.⁶⁷⁸ According to the report submitted by the Agency, the pharmaceutical market in Georgia is highly concentrated and the sale of generic medicines⁶⁷⁹ is characterized by much higher price tag rate while realization, compared to branded medicines. In particular, the price increase for generic medicines in some cases reaches 200%, and for medicines that are available under trade names - in the range of 20-30%. Prescription policies fail to provide a competitive environment in the market and do not suit the best interests of the patient. To improve the competitive environment in the pharmaceutical market, to define new rules of the game, the National Competition Agency has developed important recommendations.⁶⁸⁰ The executive government has made a number of changes in the regulatory legislation⁶⁸¹ to import quality and cheap medicines from abroad (Republic of Turkey) to Georgia, but at the same time, it is important to establish an additional mechanism to check the quality of imported medicines.

According to the Public Defender, the state should continue to harmonize the legal framework regulating the pharmaceutical sector with EU legislation, to intensify measures for the development of medicines, standardization, quality, safety and efficacy, and to expand access to essential medicines. It is important to refine existing quality control mechanisms and take effective measures to regulate the price of medicines.

15.7. Right of patients

Effective, fair and fast review of patient complaints / applications is of great importance for health care. In November 2008, the Ombudsman of English Parliament and healthcare published the "Good Principles of dealing with complaints"⁶⁸². The report states:

⁶⁷⁶ Public Defender's 2019 Parliamentary Report, 282.

⁶⁷⁷ 2017 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 217.

⁶⁷⁸ Resolution of the Parliament of Georgia №3148-RS "On the Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia in 2017"

⁶⁷⁹ Chemical medicine - active pharmaceutical substance, identical to the patented by the company, the original manufacturer of the drug. It is produced and sold after the patent expires and, consequently, the price is lower.

⁶⁸⁰ Pharmaceutical Market Report, Tbilisi 2021, information available: <<https://bit.ly/3uaB7HP>> [Last viewed 30.03.2022].

⁶⁸¹ Resolution of the Government of Georgia №13 Amending the Resolution №188 of the Government of Georgia of October 22, 2009 on Determining the List of State Bodies Regulating Other Countries or Interstate Pharmaceutical Products

⁶⁸² Patients Association Good practice standards for NHS Complaints Handling 2013, available: <<https://bit.ly/3AC1hUY>> [Last viewed 22.03.2022]

"..Good work on complaints should be managed from above ... should be results-oriented. Be fair, proportionate and sensitive to the needs of the applicants. The process should be clear and concise, easy to understand, easily accessible to the complainant, and well managed to review decisions quickly and improve service in the future. "⁶⁸³

Despite the existence of legislative regulation in Georgia, it remains a problem to inform patients about their rights, and medical staff - about their responsibilities. The quality of medical activities of all medical institutions is controlled by the Ministry of Labor, Health and Social Affairs of Georgia in accordance with the rules established by law. A Professional Development Council⁶⁸⁴ is established under it, which reviews applications-complaints related to the activities of medical staff and, based on the materials studied, makes a decision on professional responsibility. The cases studied by the Office of the Public Defender of Georgia in 2017-2021 confirm that the dealing with citizens' applications in the above-mentioned council has been delayed for years. Also, citizens are not fully involved in the process of reviewing of the application, they are not fully informed about the current stages of the review, they are only allowed to attend the meeting when the decision is made by the council.⁶⁸⁵

As in 2020, also in 2021, the Agency for Regulation of Medical and Pharmaceutical Activities purchased a review service from Tbilisi State Medical University. The implementation of the contract was supervised by the inspection team.⁶⁸⁶ Under the 2021 agreement, the facts of delays in submitting the review report were revealed. According to the university, this was caused by the difficult epidemiological situation in the country. The review of medical records was hampered for objective reasons, as all of them are practicing physicians and they have to provide service for both general patients as well as covid patients⁶⁸⁷.

It should be noted that deadlines are crucial in the process of exercising the right to a fair dealing with complaint. Ensuring efficient, objective and fair proceedings is also in the public interest. For the full realization of this right, it is necessary for the Board to consider the complaints within a reasonable time, and for the Regulatory Agency to provide the applicant with information on each stage of the proceedings. This will help not only to protect the rights of the parties in administrative proceedings, but also to make more qualified and correct decisions, as in such a case the administrative body will be better informed of the applicant's views on all the circumstances of the case. It is imperative that the Agency for the Regulation of Medical and Pharmaceutical Activities develop uniform legal regulations for the enforcement of patients' rights in practice, as well as uniform standards for communication with applicants.

⁶⁸³ Good practice standards for NHS Complaints Handling, available: <<https://bit.ly/3407tu3>> [Last viewed 22.03.2022]

⁶⁸⁴ Order of the Minister of Labor, Health and Social Affairs of Georgia of May 16, 2008 №122 / n.

⁶⁸⁵ Law of Georgia on Medical Practice Art. 87.

⁶⁸⁶ Public Procurement Agreement №2021-32 / b, 22 February 2021.

⁶⁸⁷ Agency for Regulation of Medical and Pharmaceutical Activities s letter № 02/1134 27.01.2022.

15.8. Rights of oncological patients

Oncological diseases are a challenge of global importance for health. Despite uniquely improved access to public health interventions and medical services, high cancer morbidity and mortality remain a significant challenge.

According to the National Statistics Office of Georgia, the rate of new cases of cancer and death has increased in the last three years. For example, until 2015, up to 7,000 new cases of cancer were reported each year, and by 2021, that number was already approaching 10,000.⁶⁸⁸ According to international experts, the number of new cancer cases in Georgia will increase by 6% in the period 2018-2030. In the same period, a 14% increase in new cases is predicted for Europe.⁶⁸⁹

Efforts by the state to provide financial services and medicines for oncology patients should be positively assessed.⁶⁹⁰ But despite these changes, it is unfortunate that the issue of side effects management and funding for psychological services,⁶⁹¹ as well as the ability to work on prevention,⁶⁹² remains beyond these separate programs. In recent years, the Public Defender of Georgia has also addressed the government with a recommendation to develop a unified state program for oncological diseases, which, unfortunately, was not shared. The unified program would substantially improve the treatment of oncology patients (regardless of special status) and their access to medicines.

15.9. Drug related policy

For the years ombudsman has been pointing⁶⁹³ to the need for a replacing of strict and punitive approach of drug related policy to the care and treatment approach, but the issue remains a challenge. Unfortunately, the Parliament has not yet implemented the proposals presented in the Public Defender's 2020 Parliamentary Report, which are aimed at correcting problematic practices.⁶⁹⁴

It is to be welcomed that on January 11, 2021, the Parliament of Georgia adopted the Law on Amnesty,⁶⁹⁵ which was extended to certain norms provided in Chapter XXXIII (Drug Crime) of the Criminal Code of

⁶⁸⁸ Georgian National Statistics Agency - Health, available: <<https://bit.ly/3HbMJhh>> [Last viewed 22.03.2022]

⁶⁸⁹ Malignant cancer in Georgia, available: <<https://bit.ly/3ucrrMO>> [Last viewed 30.03.2022].

⁶⁹⁰ Resolution № 520 of the Government of Georgia of August 21, 2020 "On Amendments to the Resolution № 36 of the Government of Georgia of February 21, 2013" On some measures to be taken for the transition to universal health care ". According to the change, the annual funds for the treatment of oncological diseases (chemotherapy, hormones and radiation therapy) has increased by 8000 GEL. Also, instead of 15 000 GEL for the beneficiaries of the basic packages, the amount defined by the program was defined as 23 000 GEL.

⁶⁹¹ Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia of 2018, 196.

⁶⁹² Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia of 2019, 283.

⁶⁹³ Parliamentary Report of the Public Defender of Georgia 2018, 199-201; Parliamentary Report of the Public Defender of Georgia for 2019, 285-286; Parliamentary Report of the Public Defender of Georgia for 2020, 295-299.

⁶⁹⁴ Parliamentary Report of the Public Defender of Georgia for 2020, 298.

⁶⁹⁵ Available: <<https://bit.ly/3lyb8NH>> [Last viewed: 21.03.2022].

Georgia.⁶⁹⁶ In addition, at the end of 2021, another amnesty draft law was initiated,⁶⁹⁷ which also addresses a certain category of perpetrators of drug crimes.⁶⁹⁸ On March 16, 2022, Parliament approved the draft law in the first reading. The Public Defender of Georgia welcomes this initiative and hopes that the Parliament will consider and approve the amnesty law as soon as possible, which will include as many prisoners in the penitentiary system as possible, and will be in line with basic principles of criminal justice and the rule of law.⁶⁹⁹

The challenges in managing of prevention syndrome⁷⁰⁰ for persons detained in temporary detention facilities of the Ministry of Internal Affairs of Georgia are noteworthy. It should be noted that Article 16 of the Medical Instruction⁷⁰¹ for Persons Placed in Temporary Detention Isolators of the Ministry of Internal Affairs provides access to replacement therapy. In 2021, while being in isolators, detainees involved in a methadone substitution program were provided with these services. It is also noteworthy that in 2020, prior to the expiration of the days of pre-taken bounty during placement in a temporary placement isolator, persons receiving methadone replacement therapy who had previously taken a 5-day bounty were not taken to the methadone dispensing cabinet.⁷⁰² On the positive side, in 2021 this approach was changed and the methadone replacement program was extended to individuals who had previously taken out a few days of methadone-owned favors.

According to the information received from the Ministry of Internal Affairs⁷⁰³, the medical staff provides symptomatic treatment of the person with restraint syndrome in the isolator and, taking into account the condition of patient, if necessary, refer to the relevant medical facility for consultation with a specialist and further treatment. It is welcome to have on-site access to symptomatic medications. However, there are cases when the medication has an effect for a short time and the doctor has to do painkillers and sedatives several times a day,⁷⁰⁴ which makes the patient suffer, although he is not taken to the hospital.

⁶⁹⁶ In particular, under the amnesty law, a person who has committed a crime under the following articles of the Criminal Code shall be released from criminal liability and punishment: 260 (1-2), 261 (1-2 (except for illicit sale of a psychotropic substance, its analogue or potent substance)); 265 (1), 271 (1), 273, 2731 (1-7);

The sentence will be halved for a non-convicted person who has committed an offense under the following articles of the Criminal Code: 260 (3), 261 (3 - (except for illicit sale of a psychotropic substance, its analogue or potent substance));

Reduce the prescribed sentence by one quarter: 260 (6-a), 261 (4-a) - except for the illicit substance of a psychotropic substance, its analogue or potent substance), as well as 265 (2-3).

⁶⁹⁷ Available: <<https://bit.ly/3tukMww>> [Last viewed: 21.03.2022].

⁶⁹⁸ In particular, the first paragraph of Article 5 of the draft law stipulates that "a person who has committed a crime under the Criminal Code of Georgia before January 1, 2004 be released from criminal liability and punishment (except for life imprisonment)."

⁶⁹⁹ See. Statement of the Public Defender of December 31, 2021. Available: <<https://bit.ly/3wpN799>> [Last viewed: 21.03.2022].

⁷⁰⁰ A group of symptoms of varying severity that occur when discontinuing or reducing the use of a psychoactive substance that is normally consumed over a long period of time and / or in large doses. The syndrome can be accompanied by physiological disorders. Available: <<https://bit.ly/3aGshWM>> [Last viewed: 21.03.2022].

⁷⁰¹ Approved by the order of the Minister of Internal Affairs of Georgia № 691 of December 8, 2016.

⁷⁰² National Prevention Mechanism 2020 Report, 145. Available: <<https://bit.ly/3ufFlfv>> [Last viewed: 21.03.2022].

⁷⁰³ Answer of Ministry of Internal Affairs of Georgia December 29, 2021 MIA4210349972

⁷⁰⁴ For example, in one case, a patient who, despite using a methadone replacement program, had a withdrawal syndrome, had general weakness, muscle pain, shivering, and anxiety, was given daily medication to alleviate these complaints. The detainee was in a temporary detention facility for 7 days, according to medical records, the patient went on a hunger strike

In order to get rid of the withdrawal syndrome in time, it is necessary to transfer the patient to the appropriate institution within a short period of time. Therefore, it is important to develop a unified guide to managing the detention syndrome in a temporary detention facility, which will include the amount of assistance provided in the temporary detention isolator and clearly state in which case the detainee should be transferred to a hospital. In this regard, the Public Defender issued a recommendation⁷⁰⁵ in 2020, which has not been implemented so far.

Proposals

To the Parliament of Georgia:

- Amend the Law of Georgia on Drugs, Psychotropic Substances, Precursors and Narcotic Aids and establish a definition of small amounts of drugs not in the case of a single dose for an episodic use, but based on the daily dose of a regular use;
- To initiate draft law to reform the fundamental changes in drug policy, which will be based on customer care and will be focused on the development of medical services.

Recommendations

To the Government of Georgia:

- Ensure the implementation of the measures specified in the National Vaccination Plan and provide a report on this issue to the public every 6 months;
- Develop a unified state program / add relevant elements to existing programs to ensure timely detection of new cases of cancer, reduce the spread of cancer, and make treatment available to cancer patients.

To the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs:

- In order to raise public awareness on primary health care services, develop an effective communication strategy to strengthen communication with family physician beneficiaries, to define goals, mechanisms for achieving them and specific evaluation indicators, as well as to verify the results obtained;
- Develop a clear and timely plan for the effective and delivery of high-quality primary care services (prevention, screening, treatment, management) focused on patient needs in a pandemic;
- Develop a clear and timely plan for the effective and delivery of high-quality primary care services (prevention, screening, treatment, management) focused on patient needs in a pandemic;

for 1 day requesting to be transferred to a medical facility, according to the same records, he needed medication 3-4 times a day but was not taken to the clinic.

⁷⁰⁵ National Prevention Mechanism 2020 Report, 145. Available: <<https://bit.ly/36zOwzc>> [Last viewed: 21.03.2022].

- Develop a rapid and effective action plan that ensures the development of medical / nursing human resources, strengthens the motivation and professional skills of the medical staff;
- Develop a clear and results-oriented policy document that sets standards for the functional and labor performance of auxiliary staff;
- To develop referral services for cancer patients and to effectively manage diseases, develop a mechanism that ensures that patients receive full services, monitoring treatment and receiving services.

To the Agency for Regulation of Medical and Pharmaceutical Activities:

- Develop new norms / standards defining the case management procedure, which define the obligation to submit timely and complete review documents prepared for the evaluation of the quality of medical services to the Professional Council for consideration.

To the Minister of Internal Affairs of Georgia:

- Develop a unified guideline for medical staff in the management of detention syndrome in a temporary detention facility, which will include the amount of assistance provided in a temporary detention facility and clearly state the cases in which a detainee should be transferred to an inpatient facility;
- Ensure timely referral of persons depended on drugs to a medical facility.

16. Right to Social Protection

16.1. Introduction

Social protection is a human right and is defined as a set of policies and programs designed to reduce and prevent poverty and vulnerability throughout life. Social protection includes benefits for children and families, while childbirth, unemployment, employment injuries, illness, ageing, disability, as well as health care.⁷⁰⁶

The Public Defender of Georgia has been talking about the various challenges⁷⁰⁷ facing the social protection system for years and points out that in order to provide fair, targeted and effective assistance to the population, it is necessary to periodically evaluate the effectiveness of the "targeted social program" based on household surveys and take relevant measures based on results. It should be noted that the main problems of targeted social assistance⁷⁰⁸ that the Public Defender has been talking about during the years, including ineffective procedures⁷⁰⁹ for administering the targeted social assistance program had not been sharply revealed during the reporting year, as during the period families registered⁷¹⁰ in the database received subsistence allowance all the time, based on the decree of the Government.⁷¹¹ Access to adequate food for vulnerable families remains problematic in the country.

16.2. Targeted social support

The social package is one of the types of social assistance that aims to create an appropriate social protection system to provide targeted and effective assistance to the population.⁷¹² Most of the existing social programs until 2022 were designed in a way to meet only the minimum needs instantly and not oriented to long-term solution of existing problems. In 2022, significant changes⁷¹³ were made in TSA program which will be assessed by Public Defender during the next reporting period.

As of December 2021, up to 1.7 million people are registered in the targeted social assistance database (approximately 27.4% of the population), of whom 532,242 (52%) receive subsistence benefits. Targeted

⁷⁰⁶ Report of the Special Rapporteur on Extreme Poverty and Human Rights – "Social Protection", available at: <<https://bit.ly/3iMv4lw>> [last viewed on 21.02.2022].

⁷⁰⁷ Report of the Public Defender on the State of Human Rights and Freedoms in Georgia, 2020, 300; Report of the Public Defender on the State of Human Rights and Freedoms in Georgia, 2019, 288.

⁷⁰⁸ For years, the effectiveness of the program has not been evaluated, the effectiveness of the formula for calculating the consumer index and the needs of households have not been studied; Rewards / amounts received by a child as a result of intellectual play, competition, or similar intellectual labor are reflected in the relevant column of the Family Declaration as personal income received by a particular family member, which negatively affects the motivation of vulnerable children to acquire and disclose knowledge. Will stand under; The issue of calculating the status index of the main place of residence of families living in Tbilisi; Invariability of the value of the consumer basket in the methodology of assessing the socio-economic status of households.

⁷⁰⁹ Parliamentary Report of the Public Defender of Georgia, 2017, 230, Report of the Public Defender of Georgia, 2019. 290, Report of the Public Defender of Georgia, 2020, 302.

⁷¹⁰ For families with a rating score of less than 100,001

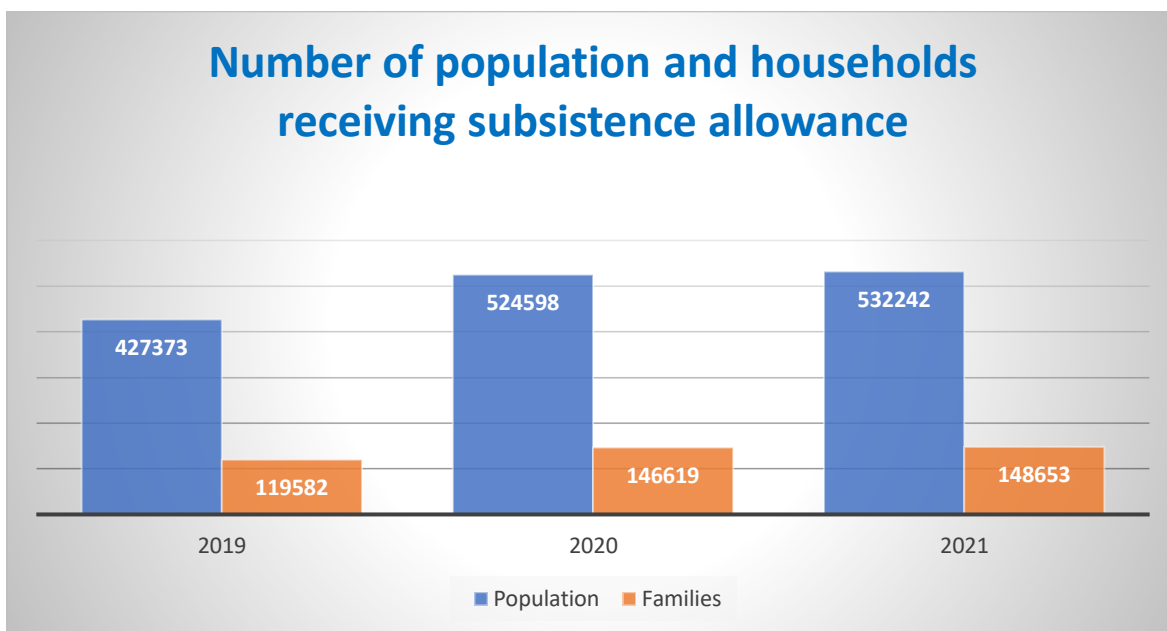
⁷¹¹ Report on Measures Taken by the Government of Georgia against COVID-19, 45.

⁷¹² Social Protection and Disability, Center for Social Justice, 2014.

⁷¹³ Resolution №80 of the Government of Georgia of February 17, 2022: In case [...] a family member receiving a subsistence allowance with marginal rating score participates in the "Employment Promotion Sub-Program for Public Works", a social contract will be concluded under this sub-program and a social grant will be assigned. And he/she will be employed on a job vacancy in the labor market or will formalize employment, the family will maintain a subsistence allowance for 4 years continuously under the conditions provided for in this article.

social assistance covers about 14.3% of the population.⁷¹⁴ For the last three years, this data has been growing, however, despite the number of people wishing to enter the system, the program is not able to fully meet the demand and the provision of population depends on the resources allocated to the program from the budget.

The table shows the number of households and population receiving subsistence benefits in 2019, 2020 and 2021.



16.3. Right to proper food/ access to free canteens

Usually, persons registered in the territory of the municipalities, who meet the criteria defined by the social program enjoy opportunity to use the free canteen. The demand for free canteen services is high among citizens considering dire social situations across the country, however, this service is provided differently in different municipalities, while in the same municipalities, not everyone has equal access to this service.

The study of Public Defender's Office on the situation of free canteens in a number of municipalities across the country reveals that free canteens are usually located in administrative centers and in some cases, beneficiaries living in villages have to travel a long distance to receive these services. For example, a beneficiary living in a village in the most remote part of municipality of Baghdati has to walk about 30 km daily to enjoy free canteen service.⁷¹⁵ And in Municipality of Chkhorotsku – they need to move 15 km. distance.⁷¹⁶

For years, the problem has been that in addition to the main lists of beneficiaries enjoying free canteens, some municipalities do not have additional lists.⁷¹⁷ Accordingly, the municipality is explaining to the

⁷¹⁴ Information available: <<https://bit.ly/3qKwoKo>> [Last viewed 30.03.2022].

⁷¹⁵ Letter of Municipality of Baghdati №7708, 26/01/2022.

⁷¹⁶ Letter of Municipality of Chkhorotsku №5322, 21/01/2022.

⁷¹⁷ For example, i municipality of Ozurgeti.

person being in the waiting list, that the service will be available only if the person from the existing list dies or is excluded for other reasons. The existence of additional lists would facilitate such immobility, and like in other municipalities, after the hours of issuance provided to the beneficiaries from the main lists, they too would benefit from the food service.

Part of the municipalities that have free canteen service⁷¹⁸ cannot provide food to all the beneficiaries living in the municipality. In the areas where population and / or administrative units receiving the subsistence allowance are high, the demand for free food is also high, although only a small proportion of such population is provided due to limited budget funding⁷¹⁹. The lists⁷²⁰ of service recipients also depend on the amount allocated.

In addition, in some municipalities, where free canteen service is available, there is no food-delivery service for single older people or for people with disabilities, and these people do not actually have access to a free canteen.⁷²¹ Only some of the municipalities provide home delivery services to beneficiaries in need.⁷²²

Recommendations

To the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs:

- Make changes in the timing needed to issue subsistence allowance in the targeted social assistance program.

To local municipalities:

- Make research the needs of their municipalities in terms of access to food, including territorial access / coverage, and collect statistics.
- Increase the budget of the municipality to ensure the availability of food as needed, raise additional funds, as well as ensure the delivery of food to the beneficiaries in need.
- When compiling the lists of beneficiaries of food, instead of the date of registration of the beneficiaries, they should be guided by the needs of their families and make changes in the relevant legal acts to ensure this.

⁷¹⁸ For example, free canteens do not function in Adigeni, Gardabani, Oni, Martvili, Lentekhi, Mestia, Marneuli.

⁷¹⁹ For example, municipality of Ozurgeti.

⁷²⁰ Basic and additional lists. Hence, the number of persons registered in the additional list should not exceed 10% of the number of the main list.

⁷²¹ For example, i Municipality of Zestafoni (letter №5602, 27/01/2022), Municipality of Chkhorotsku (letter №5602, 27/01/2022).

⁷²² For example, a free canteen in Kutaisi provides food to 34 families. Also, a free canteen in Municipality of Tskaltubo.

17. Right to Adequate Housing

17.1. Introduction

In terms of the realization of the right to adequate housing, the situation in the country is still problematic, therefore it leads to neglecting the needs of the homeless and lack of access to decent living conditions. As in previous years, there is no fully-fledged legislative definition of a homeless person and the necessary legislative framework for the realization of the right to adequate housing, the state does not have a government strategy for the homeless and its subsequent action plan. In 2020, based on the conclusion⁷²³ of the Thematic Inquiry of the Regional Policy and Self-Government Committee of the Parliament of Georgia on the Protection of the Right to Adequate Housing, no measures were taken by the legislative or executive authorities to improve the human rights situation of homeless persons. Nor has the interagency commission,⁷²⁴ set up in 2019 to develop a policy document and action plan to tackle the problem of homelessness in the country, been able to carry out its functions and responsibilities, and its obligations under the 2018-2019 action plan for open governance⁷²⁵ have remained unfulfilled.

The state does not process information to study the causes of homelessness in the country and its extent, as a result, the government does not have the necessary policy to prevent homelessness based on the results of the research. There is still no unified data on homeless persons in the country, and in some municipalities – nor even the local databases; budgetary and infrastructural resources for the homeless are limited, no support programs for people in shelters and social housing are in place, and programmes in individual municipalities are not effective and fail to provide any improvements to social-economic state of beneficiaries.

Given the current situation, the recommendations of the Public Defender of Georgia, which were issued in the previous year's parliamentary report to address the above challenges, remain in force.⁷²⁶

17.2. Human rights situation of homeless people in the regions

17.2.1. General situation and problems

In recent years, in response to the housing challenges in the regions, the municipality has developed rules for the registration of homeless persons and the provision of housing services to them. For example, such regulations were approved in Tbilisi in 2015, in Kutaisi in 2017, and in Rustavi in 2018, respectively. At the same time, social housing was put into operation.

⁷²³ Available at: < <https://bit.ly/3557Bcb> > [last visited on: 24.02.2022].

⁷²⁴ №190 Resolution of the Government of Georgia of 12 April 2019 on the Establishment of the Government Commission for the Development of the Housing Policy Document and its Action Plan and the approval of the statute.

⁷²⁵ №537 Resolution of the Government of Georgia of 12 November 2018 on the Approval of the Open Government Action Plan of Georgia for 2018-2019, Commitment №14.

⁷²⁶ 2020 Parliamentary Report of the Public Defender of Georgia, Chapter: "Right to Adequate Housing".

In its 2020 parliamentary report, the Public Defender pointed to systemic shortcomings in the municipal criteria for considering a person as homeless.⁷²⁷ It is noteworthy that the concept of homelessness, as defined by municipalities, does not reflect all forms of homelessness in reality, and the rule of registration of homeless persons adopted by the municipalities leaves the most vulnerable layer of the society - a large part of the homeless - without the right of access to adequate housing. In such a situation, the Public Defender of Georgia applied to the Constitutional Court of Georgia on the issue of constitutionality of 12 municipal criteria for considering individuals as homeless.⁷²⁸ It should be especially noted that the problem is mainly caused by the lack of a full and uniform legislative interpretation of the homeless person, which the Public Defender has been focusing on in parliamentary reports for years.

Among other problems, the lack of municipal socio-economic-educational support programs for housing beneficiaries (professional skills development/training, supporting employment, etc.) is also a serious challenge. As a result, beneficiaries are unable to integrate into society and leave the residents of social housing in a state of dependence on state support indefinitely.

17.2.2. Conditions at housing

To study the human rights situation of the homeless in social housing, the representatives of the Office of the Public Defender visited the municipal housing in Tbilisi, Kutaisi, Rustavi, Ozurgeti, Batumi and Zugdidi.

At the time of preparation of the Parliamentary Report (March 2022) there were about 260 individuals at Orkhevi residence in Tbilisi Municipality; 52 families - in Ozurgeti social housing, 21 families in Batumi (7 families in each of the 2 two-storey buildings); 70 families and 11 homeless individuals in Kutaisi, and 52 families were accommodated in Rustavi.

The main problem in social housing is the size of the living space, which precludes the existence of sufficient living space for a multi-member household. For example, in Rustavi, due to the small size of the living space (26 sq.m.), large families are forced to raise their minor children with relatives or in foster care. In fact, all social housing has large families or families of two or more generations, and available space there does not provide decent living conditions, but because they have nowhere to go and alternative services are not offered by the municipalities, they are forced to stay in these conditions. The decision⁷²⁹ made by the Supreme Court of Georgia in 2021 regarding this problem is noteworthy. The case concerned the adequacy of 38.32 sq.m. living space for a family of 6 registered homeless individuals. While interpreting the right to adequate housing, the Supreme Court stated that the physical space provided to a citizen while providing housing must meet the minimum standards to allow a family to live

⁷²⁷ Ibid.

⁷²⁸ №1639 Constitutional claim of the Public Defender of Georgia of 29 July 2021, available at: < <https://bit.ly/3Lx7Kot> > [last visited on 30.03.2022].

⁷²⁹ Available at: <https://bit.ly/3KPvt2X> (last visited on: 10.03.2022).

in it with dignity, and allocating 6.4 square meters per person cannot provide such an opportunity.

The social housing building in Nikea settlement in Kutaisi is a former communication facility, which, according to the compliance audit report, does not meet the housing functions and the appropriate living conditions are not created for the population, despite the work undertaken for its renovation.⁷³⁰ In addition to the fact that the building is damaged, the facility does not have the necessary conditions for living, for example, the windows are not suitable for the living space, they are placed at a height of about 2 meters; The living space has no balconies, which means that the laundry is in the entrances, the kitchen is not separated from the bedroom, the rooms in the building are partitioned with gypsum-cardboard, which makes soundproof impossible and fails to ensure personal space. The water in the foundation of the building causes dampness and mold in the houses.

The main problem in the building located in Orkhevi settlement in Tbilisi is the issue of isolation, in particular, the arrangement of the inner walls and corridor system in such a way as to protect the residents from continuous household noise.⁷³¹ Like Kutaisi social housing, the rooms in the building are separated from each other by gypsum-cardboard material, which also makes sound isolation impossible and families do not have a private space. In addition 87 children live in the house; due to the lack of adequate recreational space, they spend most of their time in the corridor of the building, which causes noise and as a result - systematic conflicts between neighbors. Noise interferes with children - in schooling, families - in private life, the elderly and people with various physical or mental needs - in rest, which negatively affects their health. In case of Orkhevi social housing, a significant problem is its geographical location - the facility is not located in an urban environment, there are no infrastructure facilities for daily use, such as free municipal canteens, hospitals, day care centers, etc.

Ozurgeti Social Housing is located in the former maternity hospital building and the residents are distributed on three floors. The most acute problem of the residents of the social housing is the dampness in the building, the bulging walls and the ceiling, which is caused by the systematic damping of the water in the basement of the building. In this regard, families living on the first floor of the building are in extremely difficult living conditions, including infants and young children, as well as the elderly. Families have been living in these conditions for 7 years. As a result, residents explained, that the children developed various types of chronic diseases related to respiratory problems. Additionally, it is noteworthy that the building is located in the suburb of the city, in an urban under-developed environment, there are only demolished buildings around the facility, and there is no asphalt road by car or a recreation area for children, the elderly and the disabled.

As for the Batumi social housing, it were built in 2008 within the framework of a joint project with the Swiss Agency for Development and Cooperation - "Social housing in a friendly environment", and the

⁷³⁰ Compliance Audit Report of the State Audit Office of Georgia, Tbilisi, 2019.

⁷³¹ Open Society – Georgia Foundation 2020, available at: <https://bit.ly/3I3hYug> [last visited on: 10.03.2022].

families were resettled in 2009. The condition of one of the buildings is alarming there, presumably as a result of the landslide, cracks have appeared on the walls of the building, from where water flows into the basement of the building during rainfall. The basement was flooded with water all around. According to the residents, because of this, the rooms smell of damp, in summer the basement is filled with mosquitoes and reptiles, and unsanitary conditions prevail. Living in such conditions endangers their life and health. According to the information obtained from the residents, it is additionally clear that the Batumi City Hall periodically helps to pump water out of the basement, however, the building has not been rehabilitated so far to prevent annual flooding in the basement.

The presented examples prove that the lack of minimum standards for the arrangement of social housing poses risks of violation of the rights of adequate housing of the beneficiaries involved in the service and unjustifiably gives municipalities wide discretion in the provision of services. In particular, in the absence of a uniform standard of adequate housing, municipalities are given the opportunity to use unfit housing for homeless individuals and families, which not only affects the quality of life of beneficiaries, but may also endanger their lives and health.

Proposals

To the Parliament of Georgia:

- Oversee the implementation of the recommendations foreseen in the report of the Thematic Inquiry of the Committee on Regional Policy and Self-Government of the Parliament of Georgia on the Protection of the Right to Adequate Housing;
- Define the concept of a homeless person in accordance with international standards and best practices.

Recommendations

To the Government of Georgia:

- Develop minimum standards for social housing in accordance with international best practices.

To City Halls of Tbilisi, Batumi, Kutaisi and Ozurgeti Municipalities:

- Assess the adequacy and suitability of social housing in 2022, and in case of a negative conclusion, provide individuals living there with adequate and safe alternative housing immediately.

18. Right to Property

18.1. Introduction

The right to property is enshrined in the Constitution of Georgia⁷³² and national legislation, and its protection is especially important in any democratic state.⁷³³ In 2021, as a result of the review of applications by the Public Defender's Office, problems with the protection of the right to property were revealed, in particular, delays in the registration of the right to property on land plots in lawful possession, which was caused by non-provision of information within the established time frame by the National Agency of State Property at the request of the Registry.

Last year, the suspension of eviction of debtors and persons living together with them from the real property indicated in the enforcement document significantly complicated the full exercise of the right to property.⁷³⁴ Owners of real estate were deprived of the opportunity to make full use of the property for a long period. Although the above restriction was introduced due to the pandemic and to some extent it protected the interests of the illegal possessors, it did not take into account the interests of the lawful owners. In addition, no exceptions were specified, which would have allowed to enforce such a decision (e.g. when the lawful owner has no other living space or property, while the intruder has another property, etc.). It is welcomed that this restriction was lifted on the basis of Order No. 812 of the Minister of Justice of Georgia of March 1, 2022.

18.2. Difficulties in tackling the obstruction of the exercise of the right to property

In the reporting period, several problematic issues were identified in terms of tackling the obstruction of the exercise of the right to property. In this regard, the complicated and delayed procedures for eviction, as well as the enforcement of decisions, are worth noting.

18.2.1. Difficulties in tackling the obstruction of the enjoyment of real property

On the basis of the legislative package adopted by the Parliament of Georgia on December 11, 2015, the so-called police eviction institution was abolished. The relevant amendments were made to the Laws of Georgia on Police and Enforcement Proceedings, as well as the Civil Code and the Civil Procedure Code. In particular, according to the amendments made to the Civil Procedure Code of Georgia on December 11, 2015, the time frame for hearing eviction cases in courts were reduced to a month, and the total time frame for accepting a cassation appeal and making a decision was set at 2 months.⁷³⁵ It has also become possible to subject the court ruling on the reclaim of immovable property from unlawful possession to immediate enforcement, while the non-payment of a state duty is no longer considered an obstacle to the consideration of such cases.

⁷³² Constitution of Georgia, Art. 19.

⁷³³ Judgment No. 291/1/543 of the Constitutional Court of Georgia of January 29, 2014 in the case of Metalinvest Ltd v. Parliament of Georgia, II, para. 1.

⁷³⁴ Order No. 582 of the Minister of Justice of Georgia of July 15, 2020, Article 4, para. 2.

⁷³⁵ Civil Procedure Code of Georgia, Article 391, part 6.

Despite this change, cases considered by the Public Defender's Office and statistics of the common courts of Georgia make it clear⁷³⁶ that courts are largely unable to meet the short deadlines set for the consideration of the eviction cases. Consequently, citizens have to be involved in rather long disputes in common courts relating to the obstruction of the exercise of their right to property.

In addition to the possibility of applying to the court, there are also the Rules for Eviction/Removal of an Unlawful Possessor and a Person/Persons Living with Him/Her from a House/Apartment and/or Another Property approved by Order No. 75 of the Minister of Internal Affairs of Georgia of March 1, 2016, which establishes the rules and procedures for the removal of an unlawful possessor, in case of the relevant request of the lawful owner only if there is a reasoned suspicion of a crime provided for in Article 160⁷³⁷ of the Criminal Code. Forced evictions of intruders occur in very rare cases under this rule. According to the Ministry of Internal Affairs of Georgia,⁷³⁸ 26 applications requesting the eviction of intruders and persons living with them were filed in the reporting period, but *only 3 of them resulted in eviction*.

According to the information provided by the Ministry of Internal Affairs of Georgia,⁷³⁹ it was established that one of the persons re-occupied the property from which he was evicted by the Enforcement Police. The owner demanded the eviction of the intruder. An investigation was launched into a crime provided for in Article 160 (3) (a) of the Criminal Code of Georgia on March 4, 2020. The investigation was completed and the case was sent to Tbilisi City Court for the consideration on its merits on October 11, 2021. However, as of February 15, 2022, the intruder was still not evicted.

This information proves that the mechanism provided for in the above-mentioned order cannot be considered an effective means of tackling the obstruction of the enjoyment of the right to property, and in order to protect the interests of owners, it is necessary, at least, to bring practice in line with the requirements of legislation.

18.3. Delays in the exercise of authority by the LEPL National Agency of State Property

Examination of citizens' applications revealed that during the registration proceedings ongoing in the LEPL National Agency of Public Registry, the LEPL National Agency of State Property did not reply to the letters sent from the National Agency of Public Registry within the time frame established by law. In the letters, the LEPL National Agency of Public Registry requested the position of the LEPL National Agency of State Property on the correction of state-owned land plots, as the land plot documents submitted by the applicants showed overlap with state-owned land plots. The examination of the relevant documents uploaded to the website of the LEPL National Agency of Public Registry revealed that in many cases, the

⁷³⁶ Letter No. 211/c of Rustavi City Court of 11 February 2022.

Letter No. 1867-1 of Kutaisi City Court of February 18, 2022.

Letter No. 92 of Poti City Court of February 18, 2022.

⁷³⁷ Violation of the ownership of an apartment or another property.

⁷³⁸ Letter No. MIA62103044692 of the Ministry of Internal Affairs of Georgia of November 19, 2021.

⁷³⁹ Letter No. MIA52200394668 of the Ministry of Internal Affairs of Georgia of February 15, 2022.

LEPL National Agency of State Property expressed its position on issues under its competence only after the Public Defender's Office showed interest in the case on the basis of citizens' applications.

According to the LEPL National Agency of State Property,⁷⁴⁰ 2,449 applications were sent to the Agency relating to the abolition of the overlap with state-owned real estate detected by the LEPL National Agency of Public Registry during the registration of private property rights in the reporting period. The Agency made positive decisions only in 1,006 applications. Analysis of the presented statistical information makes it clear that the LEPL National Agency of State Property responded to the requests of the National Agency of Public Registry, in most cases, in several months, or sometimes even after years. The above is also proved by the citizens' applications received by the Public Defender's Office.⁷⁴¹

Long delays in the exercise of powers by the mentioned agency during the registration proceedings have a negative impact on the full realization of the right to property, as in certain cases, without the position of the National Agency of State Property, the National Agency of Public Registry is unable to complete the registration proceedings and make a decision on the registration of the right to property.

18.4. Property rights in criminal cases

The cases examined by the Public Defender's Office in the reporting period again included cases of the restriction of property rights in criminal cases. Some problems related to this issue have been repeatedly addressed by the Public Defender in the annual parliamentary reports.⁷⁴² This chapter is devoted to the analysis of the proposals issued and cases examined by the Public Defender in 2021.

The problematic practice of unreasonable restriction of property rights during investigations was revealed in the reporting period. In one of the cases examined by the Office,⁷⁴³ a vehicle had been towed away for more than 3 years for an examination, which resulted in unreasonable costs for the owner and disproportionate restriction of the right to use property. Another case⁷⁴⁴ involved the seizure of computers and cell phones from one of the companies within the framework of the investigation, which are still kept by the investigation after almost two years, due to the failure to complete the examination, due to which the company is still halted. Regardless of the number and volume of items to be examined, it is impossible to justify such a prolonged restriction on property rights. Such a practice should be considered a disproportionate restriction of the right of the owner to use his/her property.

The footage released on July 22, 2021 showed how Tea Tsulukiani, Minister of Culture, Sports and Youth, grabbed a microphone from a journalist of the Main Channel TV while she was performing her journalistic duties and asking a question to the Minister. Tea Tsulukiani returned the item to the TV station only 3

⁷⁴⁰ Letter No. 17/10614 of the LEPL National Agency of State Property of February 25, 2022.

⁷⁴¹ N.K.'s application No. 4077/21 of April 16, 2021; I.A.'s application No. 446444/21 of June 17, 2021; S.M.'s application No. 10191/21 of September 22, 2021; A.A.'s application No. 11476/21 of 27 October 2021.

⁷⁴² See the 2013 Parliamentary Report of the Public Defender of Georgia, 397-403; 2014 Parliamentary Report, 513-519; 2018 Parliamentary Report, 214-216.

⁷⁴³ The case of A.M.

⁷⁴⁴ The case of A.B and Sh.B.

months later.⁷⁴⁵ In this regard, on November 15, 2021, the Public Defender addressed the Prosecutor General's Office of Georgia with a proposal to launch an investigation.⁷⁴⁶ The Public Defender pointed out that the Minister's actions might contain elements of crimes provided for in Article 154 of the Criminal Code of Georgia (Unlawful interference with the journalist's professional activities⁷⁴⁷) and Article 360 (Arbitrariness) or Article 178 (Robbery).⁷⁴⁸

In the proposal, the Public Defender referred to the positive obligation of the State under international treaties to launch and conduct an effective investigation into the violation of freedom of expression and right to property. The Public Defender was notified by a letter from the Prosecutor General's Office that, in their estimation, the Minister's actions did not contain any element of a crime, which is why the investigation was not launched.⁷⁴⁹ The letter reads that no criminal elements of illegal interference with the journalist's professional activities could be detected, as the journalist was able to smoothly continue her activities (asking questions) during and after the seizure of the microphone, while robbery was ruled out due to the fact that the Minister later repeatedly expressed her readiness to return the microphone. Unfortunately, it is impossible to agree with such a position, as (1) the continuation of the activities by the journalist despite the incident does not mean that her activities were not disrupted by the seizure of the microphone (as indicated by the Supreme Court practice) and (2) the readiness to return the item several weeks after its illegal seizure does not refute the criminal act.

In another case examined by the Office,⁷⁵⁰ a cell phone was seized by the police during the administrative detention of a person. It should be noted that seizure is an investigative action that shall be carried out in the course of an investigation on the basis of a court order or in case of emergency.⁷⁵¹ Seizure of an item within the framework of an administrative case is not provided for by law at all. Only tools of an offence may be seized during a person's personal search.⁷⁵² Items that are not unlawful, including a cell phone, shall be seized from a person detained for an administrative offence during his/her check in a temporary detention facility.⁷⁵³ Thus, the police officers violated the law. In this regard, the Public Defender submitted a proposal to the Ministry of Internal Affairs to launch disciplinary proceedings.⁷⁵⁴

⁷⁴⁵ Available at: < <https://bit.ly/2XUJTvB> > [last accessed: 22.03.2022].

⁷⁴⁶ Proposal No. 1515-4/10817 of the Public Defender of Georgia of November 15, 2021.

⁷⁴⁷ Since at the time of the incident, the journalist was performing her professional activities and the Minister interfered with her activities by seizing the microphone.

⁷⁴⁸ In the proposal, the Public Defender reviewed the practice of the Supreme Court of Georgia, which, in fact, has classified cases with identical factual circumstances under articles of arbitrariness or robbery.

⁷⁴⁹ Letter No. 13/74495 of the Prosecutor General's Office of Georgia of December 9, 2021.

⁷⁵⁰ B.Sh.'s case.

⁷⁵¹ Article 112 of the Criminal Procedure Code of Georgia.

⁷⁵² Article 249 (1) of the Administrative Offences Code of Georgia.

⁷⁵³ Paragraphs 1 and 3 of Article 5 of Annex No. 2 to Order No. 423 of the Minister of Internal Affairs of Georgia, 02.08.2016; Annex No. 1 to the Statute of Temporary Detention Isolators of the Ministry of Internal Affairs of Georgia.

⁷⁵⁴ Proposal No. 15-5/7355 of the Public Defender of Georgia of July 27, 2021.

Recommendations

To the LEPL National Agency of State Property:

- Ensure timely response to the correspondence received from the LEPL National Agency of Public Registry within the framework of registration proceedings.

To the common courts of Georgia:

- Give priority to the consideration of cases belonging to the category of reclaim of real property from unlawful possession within the time frame established by the Civil Procedure Code.

19. Right to Vote

19.1. Introduction

The Public Defender of Georgia, within the scope of the authority established by law, actively monitored processes around the local self-government elections.

The local self-government elections held on October 2, 2021 were preceded by a long political crisis.⁷⁵⁵ The pre-election period and the election days (I and II rounds) took place in a tense environment full of negative rhetoric. The Public Defender's Office learnt about a number of alleged human rights violations through various sources. As of March 1, 2022, according to the information provided to the Office, no specific person has been identified as a victim or a defendant within the framework of investigations ongoing into alleged coercion of candidates of the For Georgia party to withdraw their candidacies, or alleged cases of vote buying.

The elections were preceded by the electoral reform, which was carried out amidst the crisis created after the 2020 parliamentary elections. An electoral reform working group started to work in the Parliament, but due to the boycott, opposition parties did not participate in it. As a result of the international mediation and the consensus reached, opposition parties got involved in the reform process later. Despite some positive changes achieved within the framework of the reform,⁷⁵⁶ according to the assessments made by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR),⁷⁵⁷ it was important to ensure the stability of the electoral law, which is crucial to credibility of the electoral process. Thus, it is important to plan an electoral reform that is not fragmented but focused on long-term goals, fully in line with international standards and best practices.

19.2. Pre-election period

Considering the highly polarized and violent parliamentary, presidential and local elections of recent years, the Public Defender of Georgia made a public statement⁷⁵⁸ at the beginning of the election campaign and called on the relevant institutions to prevent human rights violations.

Unfortunately, dozens of human rights violations revealed during the election period and election day again damaged democratic electoral processes in the country. Sadly, there were cases of illegal, discriminatory dismissals for political reasons, as well as alleged harassment of opposition party

⁷⁵⁵ On April 19, as a result of long negotiations facilitated by international community, an agreement was reached relating to electoral and judicial reforms. One of the points of the agreement provided for early parliamentary elections in 2022 if the ruling party would fail to get 43% of the proportional vote in the upcoming local elections.

⁷⁵⁶ For example, the electoral reform introduced an electronic complaints platform and simplified the process of filing complaints, improved the procedure of electing a representative body of the municipality and introduced the obligation to recount polling stations chosen by random sampling.

⁷⁵⁷ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR), 30 April 2021, ELE-GEO/408/2021, available at: <<https://bit.ly/3NvFZyi>> [last accessed: 30.03.2022].

⁷⁵⁸ Public Defender's statement regarding the launch of the election campaign is available at: <<https://bit.ly/3lR9Yhw>> [last accessed: 30.03.2022].

candidates, political pressure on kindergarten/public school staff, and illegal processing of personal data. There was also a tendency to create a hostile environment for the media and local observers.⁷⁵⁹

Instead of discussing the needs of voters and the ways of addressing their concerns during the pre-election period, the campaign was full of political controversies with a significant focus on national issues, which overshadowed local issues. In addition, national observer organizations⁷⁶⁰ indicated the launch of various socio-economic programmes and projects motivated by the elections and active participation of the staff of state organizations in the campaign of the ruling party. This, in turn, prevented the formation of a healthy competition and an equal electoral environment.

In the pre-election period, disturbing reports were spread by the media about alleged illegal processing of personal data of the employees of kindergartens and public schools by the State Security Service.⁷⁶¹ Illegal collection of personal data is inadmissible, which is most likely used for political harassment. Such an assumption is supported by the previous practice as well. In particular, one of the cases studied by the Public Defender's Office in the past concerned the dismissal of kindergarten and school directors on political grounds during the election period.⁷⁶² In another case, the Public Defender found discrimination after establishing that the applicant was refused to be reappointed as public school director due to the political activities of her family members.⁷⁶³

19.3. Election days (I and II rounds)

As for the election days, according to the observation missions, both rounds were largely well-administered and the voting was conducted in accordance with law, despite some procedural shortcomings.

However, according to the same missions,⁷⁶⁴ as well as information disseminated by the Public Defender's Office of Georgia through public sources, one of the main challenges on the election day was the suspicious gatherings near polling stations, transportation of voters to the polling stations and tracking of voters. The latter took place both inside and outside polling stations, especially during the second round.

In general, the situation in the polling stations did not create a healthy election environment. The Public Defender agrees with the assessment of the observer organizations that similar facts and the intimidating

⁷⁵⁹ Public statement of the Public Defender, available at: <https://bit.ly/3pIVTLt> [last accessed: 03.2022].

⁷⁶⁰ Statement/Report of the International Society for Fair Elections and Democracy, see links: <<https://bit.ly/34iUOCy>>; <<https://bit.ly/3tHHct5>> 6; Transparency International Georgia, Interim Report: <<https://bit.ly/3sLop10>> [last accessed: 30.03.2022].

⁷⁶¹ TV Pirveli story, available at: <https://bit.ly/3ChQ2lk> [last accessed: 30.03.2022].

⁷⁶² 2018 Parliamentary Report of the Public Defender of Georgia, 230-231.

⁷⁶³ The Public Defender assessed the refusal to reappoint the school director as discrimination on political grounds, see: <https://bit.ly/3tDOL44> [last accessed: 03.2022].

⁷⁶⁴ Statement by the International Society for Fair Elections and Democracy, available at: <https://bit.ly/34izlto> [last accessed: 30.03.2022]; Statement of the Georgian Young Lawyers Association, available at: <https://bit.ly/31tehFT> [last accessed: 30.03.2022].

environment hinder the expression of the free will of voters. This is even more disturbing given the fact that the above might have an impact on the overall results in some municipalities with small differences.⁷⁶⁵

Freedom of will is one of the fundamental principles of the right to vote. Thus, it is unfortunate that despite the legislative changes⁷⁶⁶ that banned gatherings within 100 meters of the polling station, this issue remains problematic in practice. The international election observation mission⁷⁶⁷ noted the presence, at times intimidating, of groups of individuals in the immediate surroundings of 29% of the polling stations visited. Tracking of voters was observed in some 9% of polling stations visited. According to the national observation organization, in 14 similar cases, observers considered it necessary to call the patrol police. In 2 cases, the police did not arrive at all, while in some cases, the police did not respond despite the mobilization of many citizens in the vicinity of polling stations.⁷⁶⁸

Interestingly, according to the Ministry of Internal Affairs,⁷⁶⁹ administrative proceedings were launched in connection with the gathering of citizens within 100 meters of polling stations only in 3 cases.⁷⁷⁰ According to the Public Defender, on the one hand, the cases detected by the monitoring organizations, and on the other hand, the data of the Ministry, show that the measures taken by the law enforcement agencies were ineffective.

The Public Defender's attention was drawn by the fact that according to the observation organizations,⁷⁷¹ the partisan observation activities carried out under the auspices of NGOs were alarming and large-scale. In particular, observers in favour of the ruling party often disrupted the election process, interfered with the work of commissions, obstructed impartial observers, tracked voters and controlled their will.

On the election day, the media actively reported tensions in polling stations, which were mainly manifested either in confrontations among party supporters or aggression/attacks against representatives of the media.⁷⁷²

Clearly, the above circumstances, overall, fully damaged the electoral process, including public confidence. The Public Defender reiterates that the enforcement of the rule of law is crucial in certain

⁷⁶⁵ The final monitoring report on the municipal elections, International Society for Fair Elections and Democracy, 4, available at: <<https://bit.ly/3tUvoW1>> [last accessed: 30.03.2022].

⁷⁶⁶ Article 45 (12) of the Election Code of Georgia.

⁷⁶⁷ International Election Observation Mission, second round, Report on Preliminary Findings and Conclusions, 20, available at: <<https://bit.ly/3NBta5o>> [last accessed: 30.03.2022].

⁷⁶⁸ Statement by the Georgian Young Lawyers Association, available at: <<https://bit.ly/3JTLViz>> [last accessed: 30.03.2022].

⁷⁶⁹ Letter MIA 5 22 00144520 of the Ministry of Internal Affairs of Georgia.

⁷⁷⁰ At polling station No. 90 of precinct No. 59 in Kutaisi; At polling station No. 30 of precinct No. 83 of the Khelvachauri municipality; We were also informed that on the basis of the notification received from the territorial bodies of the Ministry and the Patrol Police Departments, one administrative offence document was drawn up in the Telavi District Division of the Kakheti Police Department of the Ministry in connection with alleged violations on the day of the self-government elections.

⁷⁷¹ The final monitoring report on the elections of municipal bodies, ISFED, > 7, 62, available at: <<https://bit.ly/3tUvoW1>> [last accessed: 30.03.2022].

⁷⁷² See the chapter on freedom of expression in this report.

cases in order to prevent illegal actions in the future, which has remained one of the main and unchanged challenges of the electoral process for years.

19.4. Violation of workers' rights on political grounds

As for the election days, according to the observation missions, both rounds were largely well-administered and the voting was conducted in accordance with law, despite some procedural shortcomings.

However, according to the same missions,⁷⁷³ as well as information disseminated by the Public Defender's Office of Georgia through public sources, one of the main challenges on the election day was the suspicious gatherings near polling stations, transportation of voters to the polling stations and tracking of voters. The latter took place both inside and outside polling stations, especially during the second round.

In general, the situation in the polling stations did not create a healthy election environment. The Public Defender agrees with the assessment of the observer organizations that similar facts and the intimidating environment hinder the expression of the free will of voters. This is even more disturbing given the fact that the above might have an impact on the overall results in some municipalities with small differences.⁷⁷⁴

Freedom of will is one of the fundamental principles of the right to vote. Thus, it is unfortunate that despite the legislative changes⁷⁷⁵ that banned gatherings within 100 meters of the polling station, this issue remains problematic in practice. The international election observation mission⁷⁷⁶ noted the presence, at times intimidating, of groups of individuals in the immediate surroundings of 29% of the polling stations visited. Tracking of voters was observed in some 9% of polling stations visited. According to the national observation organization, in 14 similar cases, observers considered it necessary to call the patrol police. In 2 cases, the police did not arrive at all, while in some cases, the police did not respond despite the mobilization of many citizens in the vicinity of polling stations.⁷⁷⁷

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⁷⁷³ Statement by the International Society for Fair Elections and Democracy, available at: <https://bit.ly/34izlto> [last accessed: 30.03.2022]; Statement of the Georgian Young Lawyers Association, available at: <https://bit.ly/3l1ehFT> [last accessed: 30.03.2022].

⁷⁷⁴ The final monitoring report on the municipal elections, International Society for Fair Elections and Democracy, 4, available at: <<https://bit.ly/3tUvoW1>> [last accessed: 30.03.2022].

⁷⁷⁵ Article 45 (12) of the Election Code of Georgia.

⁷⁷⁶ International Election Observation Mission, second round, Report on Preliminary Findings and Conclusions, 20, available at: <<https://bit.ly/3NBta5o>> [last accessed: 30.03.2022].

⁷⁷⁷ Statement by the Georgian Young Lawyers Association, available at: <<https://bit.ly/3JTLViz>> [last accessed: 30.03.2022].

⁷⁷⁸ Letter MIA 5 22 00144520 of the Ministry of Internal Affairs of Georgia.

⁷⁷⁹ At polling station No. 90 of precinct No. 59 in Kutaisi; At polling station No. 30 of precinct No. 83 of the Khelvachauri municipality; We were also informed that on the basis of the notification received from the territorial bodies of the Ministry and the Patrol Police Departments, one administrative offence document was drawn up in the Telavi District Division of the Kakheti Police Department of the Ministry in connection with alleged violations on the day of the self-government elections.

other hand, the data of the Ministry, show that the measures taken by the law enforcement agencies were ineffective.

The Public Defender's attention was drawn by the fact that according to the observation organizations,⁷⁸⁰ the partisan observation activities carried out under the auspices of NGOs were alarming and large-scale. In particular, observers in favour of the ruling party often disrupted the election process, interfered with the work of commissions, obstructed impartial observers, tracked voters and controlled their will.

On the election day, the media actively reported tensions in polling stations, which were mainly manifested either in confrontations among party supporters or aggression/attacks against representatives of the media.⁷⁸¹

Clearly, the above circumstances, overall, fully damaged the electoral process, including public confidence. The Public Defender reiterates that the enforcement of the rule of law is crucial in certain cases in order to prevent illegal actions in the future, which has remained one of the main and unchanged challenges of the electoral process for years.

19.5. Alleged cases of pressure-threats/vote buying and violent and other incidents

One of the most common trends of the pre-election environment was the abundance of incidents of pressure. It is noteworthy that like the cases of discrimination of employees on political grounds, most of these cases were directed against supporters of former Prime Minister Giorgi Gakharia's political party. The Public Defender of Georgia applied to the law enforcement agencies with regard to about 60 alleged cases of pressure-threats.⁷⁸²

According to the parties who had nominated candidates, alleged threats were mostly coming from representatives of the State Security Service, the election headquarters of the ruling team and individuals with criminal authority. According to the parties, their candidates were threatened with physical abuse, property damage and obstruction of entrepreneurial activities (in some cases, state agencies started inspecting the candidates' companies). They were also threatened that the safety of their family members and relatives would be endangered or that they would be dismissed, or deprived of social assistance, or that the criminal cases against them would have an undesirable ending. Others were promised to get jobs or health care for their family members in case of withdrawal of their candidacies.

The fact that almost all of the candidates were reluctant to talk about the incident either in public or with the Public Defender's representatives suggests that the former candidates expected that the threats would be actually carried out against them.

⁷⁸⁰ The final monitoring report on the elections of municipal bodies, ISFED, > 7, 62, available at: <<https://bit.ly/3tUvoW1>> [last accessed: 30.03.2022].

⁷⁸¹ See the chapter on freedom of expression in this report.

⁷⁸² Letter No. 04-11/8857, 04-11/9729 of the Public Defender of Georgia.

The Ministry of Internal Affairs of Georgia⁷⁸³ could not reveal any illegal actions in part of the above-mentioned cases, while in some of cases, investigations are pending. Among them, an investigation is pending into alleged coercion of the candidates of the For Georgia party to withdraw their candidacies.⁷⁸⁴ No specific person has been identified as a victim or a defendant at this stage.⁷⁸⁵

As mentioned above, during the pre-election period and elections days, reports were spread about alleged vote buying. The Public Defender's Office applied to the Prosecutor General's Office of Georgia in relation to 32 alleged cases of vote buying⁷⁸⁶ during the election period, however, the agency⁷⁸⁷ launched investigations into a total of 7 criminal cases. In 2 of them, the investigation was terminated, while in 5 cases, the investigation is pending.⁷⁸⁸ No specific person has been identified as a victim or a defendant in any of the cases.⁷⁸⁹

In addition, the Public Defender of Georgia, as a result of processing the reports of national observation organizations and public sources, applied to the law enforcement agencies in relation to about 40 cases containing elements of various illegal actions.⁷⁹⁰ 13 of these cases are currently being investigated.⁷⁹¹ Out of them, 3 persons were identified as victims in 3 criminal cases⁷⁹² and criminal prosecution was launched in 1 case.⁷⁹³ In other cases, no specific person has been identified as a victim or a defendant. Regarding other incidents, we were informed that no elements of a crime/offence could be detected, or that administrative proceedings had been launched.

⁷⁸³ Letter No. MIA 2 21 02530699.

⁷⁸⁴ Article 150 (1) of the Criminal Code of Georgia. Case No. 90090220921001.

⁷⁸⁵ Letter No. 13/10411 23/02/2022 of the Prosecutor General's Office of Georgia.

⁷⁸⁶ Letters Nos. 04-11/8858, 04-11/10215 and 04-11/10538 of the Public Defender of Georgia.

⁷⁸⁷ Letters Nos. 13/57997, 13/68455 and 13/72731 of the Prosecutor General's Office of Georgia.

⁷⁸⁸ No specific persons have been identified as victims or defendants on the basis of the elements of crime provided for in the first part of Article 164¹ of the Criminal Code of Georgia.

⁷⁸⁹ Letter No. 13/12003, 1/03/2022 of the Prosecutor General's Office of Georgia.

⁷⁹⁰ Letters Nos. 04-11/8854, 04-11/10216, 04-11/10539 of the Public Defender of Georgia.

⁷⁹¹ Letters MIA 5 21 02532690, MIA 1 22 00099293, MIA 3 22 00150332 of the Ministry of Internal Affairs of Georgia.

Under Article 126 (1) (Beating or another type of violence): No. 038300721003, No. 056010920002, No. 004021021014, No. 038270921002, No. 014220921001, No. 012210921001; No. 38038300721003; No. 5056140921005.

Under Article 162 (1) (Obstruction of the expression of the will of voters in the elections, referendum or plebiscite): No. 031031021001; No. 6068021021001.

No. 173270821005 under Article 177 (1) (Theft), No. 031021021003 under Article 117 (1) (Intentional infliction of grave injury), No. 171291021006 under Article 151 (Threat).

⁷⁹² These cases are: No. 014220921001 A.S. No. 12012210921001 I.G; No. 031021021003 E.M; Letter No. 13/12004, 1/03/2022 of the Prosecutor General's Office.

⁷⁹³ No. 3031021021003, charges were brought against G.R. under Article 120 (1) of the Criminal Code of Georgia.

Recommendations

To the heads of central and local self-government bodies and other public institutions:

- Do not allow harassment, discrimination or dismissal of employees, including those employed in the general education system and kindergartens, due to their political *opinions*.

To the Prosecutor General of Georgia and the Minister of Internal Affairs of Georgia:

- Investigate in a timely manner the allegations of pressure, threats, violation of labour law, vote buying, violent incidents and other alleged illegal cases indicated in public sources and letters sent by the Public Defender regarding the 2021 election period, provide information to the general public and the Public Defender's Office about the progress of investigation into any alleged crime.

To the Prosecutor General of Georgia:

- Present reasoning/argumentation in the annual parliamentary report on the Prosecutor's Office, in accordance with Article 68 of the Organic Law of Georgia and Article 172 of the Rules of Procedure of the Parliament, on investigations ongoing into all alleged acts of violence and vote buying detected during the 2021 election period.

To the Minister of Internal Affairs of Georgia:

- Take all effective measures in each case to enforce the restriction provided for by Article 45 (12) of the Election Code of Georgia on prohibition of gatherings within 100 meters of the polling station.

20. Right to the Protection of Cultural Heritage

20.1. Introduction

Like other rights, the Public Defender of Georgia, oversees the protection of the right to cultural heritage, which is enshrined in the Constitution of Georgia.

It is true that the number of applications sent to the Public Defender's Office regarding the protection of cultural heritage is not high, but systemic problems identified as a result of the examination of individual cases and proactive activities of the Office have been annually mentioned in the Public Defender's parliamentary reports for many years. Most of the challenges require the planning and implementation of active, result-oriented measures from the State.

This primarily concerns the legislative regulations that require fundamental changes for proper and effective protection of cultural heritage. As it is known, the drafting of the Code on Cultural and Natural Heritage⁷⁹⁴ has been ongoing for years, but the document has not yet been submitted to the Parliament. Inter alia, it is important for the new regulations to make it possible to prevent and tackle illegal actions against cultural heritage, to create perfect leverage necessary for the protection of monuments during rehabilitation, and to develop necessary guarantees for the protection of cultural heritage in private ownership.⁷⁹⁵

The processes related to the rehabilitation of Gelati, an immovable world heritage site, were relevant in the reporting year like the previous year; The issues related to the building of the Shalva Amiranashvili Museum of Art and the collections preserved in it were also particularly important in 2021. The Public Defender believes that both of these cases, along with their individual problems, share one important circumstance - the processes are not transparent and lack public involvement.

A document on the management of the spatial development of the Batumi municipality, which should have addressed a number of issues related to cultural heritage, was not approved last year either. The Public Defender hopes that the document will be approved in 2022,⁷⁹⁶ which is of particular importance in view of the toughest challenges in terms of the development and protection of the cultural heritage of Batumi.

Unfortunately, no substantially new circumstances could be revealed by the investigation in the criminal cases relating to the damage inflicted on the archeological sites and the ancient Sakdrisi-Kachaghiani gold mine during the Ruisi-Rikoti highway construction.⁷⁹⁷

20.2. Conservation-rehabilitation and publicity of processes

During the last two reporting years, the study of two important developments in terms of the protection of cultural heritage, relating to the Gelati monument and Shalva Amiranashvili Georgian Museum of Art,

⁷⁹⁴ Letter No. 00005136, 23/02/2022 of the Ministry of Culture, Sports and Youth of Georgia.

⁷⁹⁵ See details in the 2020 Report of the Public Defender of Georgia, 330.

⁷⁹⁶ Letter No. 14-1422053696, 22/02/2022 of Batumi City Hall.

⁷⁹⁷ Letter No. 13/11742 of the Prosecutor General's Office, 1/03/2022.

revealed that it is problematic, on the one hand, to plan and take measures for the protection of monuments, and on the other hand, to make these processes public.

In addition to the constitutional obligations, a number of international treaties⁷⁹⁸ ratified by Georgia provide for the obligations of the protection of cultural heritage. Among them is the Venice Charter for the Conservation and Restoration of Monuments and Sites,⁷⁹⁹ which forms the basis for the conservation policies around the world. According to the Charter, in all works of preservation or restoration, there should always be precise documentation in the form of analytical and critical reports, illustrated with drawings and photographs. Every stage of the work of clearing, consolidation, rearrangement and integration, as well as technical and formal features identified during the course of the work, should be included. This record should be placed in the archives of a public institution and made available to research workers. It is recommended that the report should be published.⁸⁰⁰ The *convention relating to the protection of the world cultural and natural heritage* is also worth noting relating to the immovable world heritage site (Gelati).⁸⁰¹

In addition, the Public Defender pays special attention to public awareness and involvement in the management of cultural heritage, which is the main foundation of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (the so-called Faro Convention).⁸⁰² The Faro Convention obliges member States to recognize the rights of both individuals and the public to be involved in the protection and development of heritage. Therefore, openness of the cultural heritage protection system and access to information/documentation are essential to achieving the goal of public participation/involvement. Approaches based on public participation, as a modern vision of cultural heritage management, have been discussed in numerous international publications.⁸⁰³

20.2.1. The case of Shalva Amiranashvili Museum of Art

As already mentioned, the events developed around the Shalva Amiranashvili Museum of Art of Georgia were in the spotlight during the reporting year. The developments, on the one hand, are directly related to the public interest in the protection of cultural heritage, and on the other hand, to the rights of people employed in the museum.

⁷⁹⁸ European Cultural Convention, Paris, 1954, Convention for the Protection of the Architectural Heritage of Europe, 1982, Convention for the Protection of the Architectural Heritage of Europe, 1992, European Charter of Local Self-Government, 1982, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, Framework Convention on the Value of Cultural Heritage for Society (Faro Convention) 2005, etc.

⁷⁹⁹ Ratified by Georgia in 2000, see: <<https://bit.ly/3JVQOaz>> [Last accessed 30. 03.2022].

⁸⁰⁰ Click the link: <<https://bit.ly/3wX25nk>> [last accessed: 30.03.2022], para. 16.

⁸⁰¹ Ratified by Georgia in 1992. Management Guidelines for World Cultural Heritage Sites, [Bernard M. Feilden, Jukka Jokilehto](#), ICCROM, 2007, see: <<https://bit.ly/3IMnbr7>> [last accessed: 30.03.2022].

⁸⁰² The Convention was ratified by Georgia in 2011.

⁸⁰³ For example, see *People-Centered Approaches to the Conservation of Cultural Heritage: Living Heritage*, International Center for the Study of the Preservation and Restoration of Cultural Property (ICCROM), 2015, available at: <<https://bit.ly/3qMaGp2>> [last accessed: 30.03.2022], *Community Involvement in Heritage Management*, 2017, available at: <<https://bit.ly/3qOkjnm>> [last accessed: 30.03.2022].

As it is known, the Shalva Amiranashvili Museum of Art has been facing challenges relating to the sustainability of the building for years. The building is an immovable cultural heritage site of national importance of the 19th century that combines the most important treasures of the country's movable cultural heritage, which makes it important to properly protect both the building and its unique collections and to preserve their cultural value.

According to media reports,⁸⁰⁴ an expert report has been issued on the building of the Shalva Amiranashvili Museum of Art, according to which, it is possible to fortify and strengthen part of the building, but the above is associated with significant technical difficulties and costs and this work may not be worthwhile. Dissemination of this information raised fears in the public about the demolition of the building. Later, an oral explanation was made that the building would retain the function of the museum and would be restored, while the collections would be temporarily moved to the nearby space.⁸⁰⁵ Professional groups request written confirmation that the building with the status of the monument of cultural heritage of national importance will retain the function of the museum and its cultural significance, authenticity and integrity will be protected. They also refer to the specific activities that need to be planned in this regard.⁸⁰⁶

It should be noted that a rehabilitation plan⁸⁰⁷ developed in accordance with the vision of the Georgian National Museum and modern international standards was published in March 2021. However, the public has not been informed of the official position of the relevant agencies, whether it was planned to carry out works according to the rehabilitation plan. In addition, according to the reports, an evacuation plan was also developed, which provided for the temporary relocation of exhibits from the building to another space and the implementation of this and other works in the period from August 5, 2021 to February 5, 2022, which has already been assessed by the authoritative organizations working in this field as unrealistically short time to perform works of similar volume.⁸⁰⁸

Unfortunately, information on this issue is scarce in the society, which obviously raises legitimate questions.⁸⁰⁹ At the same time, unfortunately, despite the efforts of the Public Defender's Office, many questions remain unanswered.⁸¹⁰

⁸⁰⁴ Available at: < <https://bit.ly/3uD3XPz> > [last accessed: 30.03.2022].

⁸⁰⁵ Available at: < <https://bit.ly/3tRruNz> > [last accessed: 30.03.2022].

⁸⁰⁶ Several public groups also held protests in front of the museum. See also Georgia's joint appeal to the following international organizations: ICOMOS, ICOM, Blue Shield International, Europa Nostra and World Monuments Fund: 10.09.2021, on the need for full involvement in the processes of cultural heritage protection, available at: <<https://bit.ly/36KXEBo> > [last accessed: 30.03.2022].

⁸⁰⁷ In collaboration with international donor and partner organizations/specialists, based on multi-sectoral research and in full compliance with modern international standards, a detailed plan was prepared for the temporary relocation of the collections of the Museum of Art; The concept of the architectural rehabilitation project of the historic building of the Museum of Art; Detailed project for the establishment of the National Center for Restoration-Conservation in the building of the Museum built in the 1980s. Information is available at: <<https://bit.ly/36WGtN5>> [last accessed: 09.08.2021].

⁸⁰⁸ Information is available at: < <https://bit.ly/371Wiby> > [last accessed: 09.08.2021]

⁸⁰⁹ Letter No. 01-03/22 of the Georgian National Committee of the Blue Shield to the Public Defender, 20.01.2022.

⁸¹⁰ Letter No. 04-9/7786,09/08/2021 of the Public Defender's Office to the LEPL National Agency for Cultural Heritage Preservation. The Office has not received a reply letter so far.

Thus, the Public Defender considers it important that the State make every effort to fulfill its obligation to protect cultural heritage, as well as to ensure the involvement of professionals and stakeholders, the publicity of information and the transparent management of the process, which represents an obligation that requires unconditional fulfilment by the State.

20.2.2. The Gelati case

The Public Defender spoke in detail about the systemic legislative shortcomings identified as a result of the examination of the Gelati case and the challenges related to its conservation-rehabilitation in her previous Parliamentary Report.⁸¹¹ In addition, according to the Public Defender, it was necessary to establish the exact causes of the damage done to the temple and to take all the necessary measures to avoid similar incidents in the future and to remedy the consequences.

The developments around Gelati remained in the spotlight during the reporting year. In particular, regarding the restoration of the monument, public sources made several reports available - the report of Italian experts,⁸¹² the report of British experts⁸¹³ and the report of the UNESCO advisory body, ICOMOS,⁸¹⁴ on the evaluation of the report issued by the Italian experts. The State shared the report of the Italian experts and started an urgent conservation process in Gelati. Various professional groups in Georgia are concerned about the closed conduct of this process and decision-making without proper reasoning.

Thus, according to the Public Defender, the events developed around the Gelati monastery complex and the response of the Ministry were not in line with the high standard of publicity.

Recommendations

To the Minister of Culture, Sports and Youth of Georgia:

- Ensure the transparency of the drafting of the Code of Cultural and Natural Heritage and involvement of professionals, timely complete the ongoing works and submit the draft law;
- Ensure the publicity and accessibility of any information/documentation related to the Shalva Amiranashvili Museum of Art for the general public; in addition, involve qualified experts and stakeholders in the planning of specific measures and making decisions;
- Ensure the publicity of processes related to the Gelati monastery complex, as well as access of the general public to any related information/documentation.

⁸¹¹ In the 2020 Parliamentary Report of the Public Defender of Georgia, from p. 331.

⁸¹² Report on the State of Conservation of the Gelati Monastery World Heritage Property, Georgia.

Mission of 22 – 28 June 2021 Conservation specialists of wall paintings: Mario Pulieri (Italy) – Vincenzo Centanni (Italy).

⁸¹³ Comments on the Gelaty Monastery Wall Painting Report, RICKERBY & SHEKEDE wall painting conservation. ⁸¹⁵

⁸¹⁴ ICOMOS Technical Review Property, Mission report on the state of conservation of the mural paintings of Gelati Monastery, February 2022.

21. Human Rights Education

21.1. Introduction

The UN Special Rapporteur on the right to education, in the annual reports to the General Assembly, regularly reviews a number of empirical researches conducted around the world, highlighting the special importance of human rights education in preventing human rights violations, violence and oppression.⁸¹⁵ The role of human rights education as an effective protection mechanism against violence, racism, extremism, xenophobia, discrimination and intolerance, is steadily growing in Georgia. Amidst the increased rates of violence, numerous studies confirm the need to improve the situation of human rights education in Georgia.⁸¹⁶ The need for human rights education and awareness raising was also indicated by the results of a nationwide survey conducted in 2021, according to which, unfortunately, only 10-12% of the youth segment believe that the protection of human rights should be a priority for the country.⁸¹⁷

In order to effectively implement the Public Defender's educational mandate, the Office regularly conducts non-formal educational activities aimed at imparting information about the universal principles of rights to various target groups, forming attitudes and behaviors to enable them to contribute to the protection of human rights in society. To this end, during the reporting period, despite the difficulties caused by the Covid-19 pandemic, the structural units of the Office conducted 1,509 information meetings, 31 trainings, and 280 lectures/seminars on a range of human rights issues throughout the country.

The Public Defender also facilitates the integration of issues relating to rights into formal education. SDG 4.7/Human Rights Education Monitoring Tool remains the main focus for structuring this direction.⁸¹⁸ In addition, the activities carried out by the State for promoting education for democratic citizenship and human rights education (EDC/HR) are monitored in accordance with the principles of the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education.⁸¹⁹

A step taken towards the continuity of human rights education should be considered a significant achievement in the reporting period. It is noteworthy that the Ministry of Education and Science implemented the Public Defender's recommendation reflected in the 2019 and 2020 Parliamentary Reports to ensure effective human rights education in high schools. According to the amendments

⁸¹⁵ Annual report of the UN Special Rapporteur on the right to education presented at the 27th Session of the UN General Assembly, July 29, 2019, 10, available at: <<https://bit.ly/3HTU8Bj>> [last accessed: 02.03.2022].

⁸¹⁶ Inter alia, Study on Human Rights Education and Educational Environment in General Education Space, Special Report of the Public Defender, 2018, available at: <<https://bit.ly/3vw6UUe>> [last accessed: 30.03.2022].

⁸¹⁷ Age category of 18-34 years; Public Attitudes in Georgia, 2021, NDI, CRRC, 51-54, available at: <<https://bit.ly/3nkj4JY>> [last accessed: 30.03.2022].

⁸¹⁸ Available at: <<https://bit.ly/3bQTgAR>> [last accessed: 02.03.2022].

⁸¹⁹ Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education adopted within the framework of Recommendation Cm/Rec(2010)7 of the Committee of Ministers, available at: <<https://bit.ly/3HtYDm0>> [last accessed: 2.03.2022].

made to the national curriculum on December 17, 2021, from September of the next year, the compulsory subject 'Citizenship' will cover grades XI and XII as well.⁸²⁰

21.2. State policy for formal human rights education

The measures taken by the State to establish a human rights culture and the policy documents developed by it should address the existing challenges. In this context, it is important to review the initial version of the Unified National Strategy for Education and Science of Georgia (2022-2032). The strategy says virtually nothing about the importance of promoting education for democratic citizenship and human rights education (EDC/HR). As for the action plans - neither preschool nor general education action plan activities (therefore nor indicator) include a record about EDC/HR. Only one activity of professional education action plan (1.3.3.4) is aimed at promoting the development of citizenship education.⁸²¹ The higher education action plan mentions only related issues, namely the preparation of students for active citizenship,⁸²² but none of the outcome indicators is related to active citizenship or human rights awareness, values or skills.

Despite the submission of comments and recommendations by the Public Defender in writing, the Ministry's strategy and action plan updated on February 15, 2022 does not reflect any recommendation relating to integration of EDC/HR.⁸²³ This issue is even more important due to the fact that the recommendation issued by the Public Defender in 2020 relating to the development of a unified human rights education strategy and action plan has not been implemented by the relevant agency.⁸²⁴

Recommendations on policies promoting non-formal human rights education or national strategy for human rights have not been implemented either. According to the letter received from the Administration of the Government of Georgia, efforts are being made to develop the document.⁸²⁵

An effective mechanism for promoting human rights education is the reference to the requirement of knowledge about human rights in the normative framework regulating the qualifications of specialists employed in formal education. After the adoption of the normative acts provided for in the Law of Georgia on Early and Preschool Education by one (Lanchkhuti) municipality in the reporting period, there remain 6 local self-government bodies⁸²⁶ that have not yet approved the mentioned normative acts.

⁸²⁰ Subparagraph e) of Article 1 of Order No. 100/n of the Minister of Education and Science of Georgia of 17 December 2021 on Amending Order No. 40/n of the Minister of Education and Science of Georgia of 18 May 2016 on the Approval of National Curriculum.

⁸²¹ Activity indicator: The new module is being implemented within the framework of 5 programmes; The capabilities of all citizenship education teachers have been enhanced.

⁸²² Objective 1.4.1 of the Higher Education Action Plan.

⁸²³ Letter No. 17-1/1204 of the Public Defender's Office of February 1, 2022 to the Ministry of Education and Science of Georgia, Annex to Letter No. MES 4 22 0000147229 of February 15, 2022.

⁸²⁴ Letter GOV 1 21 00015745 of the Administration of the Government of Georgia of May 7, 2021.

⁸²⁵ Letter GOV 4 21 00039940 of the Administration of the Government of Georgia of November 17, 2021.

⁸²⁶ Normative acts have not been developed by the mayors or municipal councils of Dedoplistskaro, Zestaponi, Sighnaghi, Tkibuli, Chiatura and Khoni municipalities.

21.3. Promoting human rights education in formal education

21.3.1. Reviewing general education textbooks

The cooperation established between the Public Defender's Office and the Ministry of Education and Science in the process of approving school textbooks in 2018 continued in 2021 as well.⁸²⁷ The "other specialists" nominated by the Public Defender in the subject groups created for the review of the content of the models submitted for approval did important job in terms of avoiding discriminatory, stereotypical texts, protecting equality and religious neutrality, as well as integrating human rights principles in the textbooks.

Importantly, as a result of implementing the Public Defender's recommendations, the organizational aspects of the approval process have been largely addressed, although challenges relating to the substance of the process remain problematic. In particular, a significant challenge is the lack of access to human rights training for reviewers. During the reporting period, reviewers were provided with only one, non-mandatory training on human rights issues.⁸²⁸ In this regard, the Public Defender addressed the Ministry with a recommendation to develop mandatory programmes and conduct trainings for reviewers.⁸²⁹ In response, the Ministry indicated its readiness to facilitate the conduct of such training-programmes by other organizations, but it did not show its willingness to make such training-programmes mandatory.⁸³⁰ Thus, it is clear that, like 2020, the Ministry did not have a systemic approach to raising reviewers' knowledge of human rights in the reporting period either. This is particularly problematic because "[...] all members of the reviewers' subject group, [...] are substantially involved in the formation of compulsory learning content for students and in the dissemination/promotion of core human rights values."⁸³¹

A public review system of models submitted for content review has been introduced since 2021,⁸³² which makes any stakeholder able to express his/her opinion on the compliance of anonymous copies of the material, including legal and ethical norms, in a specific period.⁸³³ The subject group of reviewers is obliged to get acquainted with these opinions.⁸³⁴ Given the scale of the spread of gender and other stereotypes in Georgia and the low sensitivity of reviewers to these issues, this model will potentially

⁸²⁷ Letter MES 7 20 0001217063 of the Ministry of Education and Science of Georgia of December 21, 2020.

⁸²⁸ Letter MES 8 21 0000987637 of the Ministry of Education and Science of Georgia, September 27, 2021.

⁸²⁹ Ibid.

⁸³⁰ Ibid.

⁸³¹ Proposal 17-1/10213 of the Public Defender of Georgia of October 27, 2021 on Improving the Process of Reviewing Textbooks/Series Models of General Education Institutions, 7-8.

⁸³² Article 9³ of Annex approved by Article 1 of Order 28/n of the Minister of Education and Science of February 16, 2017 on the Rules for Approval of Textbook/Series of General Education Institutions.

⁸³³ Article 10 (3) (c) of Annex approved by paragraph 1 of Order MES 6 20 0001239194 of the Minister of Education, Science, Culture and Sports on Amending Order No. 247 of the Minister of Education, Science, Culture and Sports on the Approval of Rules for Reviewing Textbooks/Series Model of Basic and Secondary Education Institutions of General Education of March 5, 2019.

⁸³⁴ Ibid., Article 10 (5).

prevent the implementation of a human rights-based approach in the general education system.⁸³⁵ Thus, based on international practice, it is advisable to introduce a model of parental involvement in subject groups.⁸³⁶ According to the Ministry, this model had already been introduced in Georgia, but parents did not show much interest in the process.⁸³⁷ The Public Defender notes that the lack of parental interest cannot be considered an argument for the above change, as the existing mechanism poses rights-related risks.

In the reporting period, the practice of staffing the Appeals Commission, which, at the discretion of the Minister,⁸³⁸ shall be set up to review applicants' appeals, was still problematic in the textbook review process. As part of the review of appeals, the Commission is empowered to issue a new recommendation in the context of an appealed criterion, to change the content of the recommendations issued by the reviewers, or to leave them unchanged.⁸³⁹ It is true that the regulatory framework of the Appeals Commission provides for the obligation to substantiate its conclusions, but the Commission was staffed with only those holding various administrative positions in the Ministry and school directors.⁸⁴⁰ It is noteworthy that in the textbook approval competition, compulsory teaching materials was to be selected in completely different school subjects.⁸⁴¹ Therefore, it is clear that the logic of staffing the Appeals Commission should be based on the diversity of qualifications of its members. In the reporting period, the Commission did not invite an independent specialist or the reviewer involved in the initial assessment, when evaluating the material appealed in the context of rights. It is noteworthy that even in the event of making an opposite decision, none of the said persons has the right to vote in the decision-making and their opinions are not binding on the Commission.⁸⁴² Accordingly, the mandatory summoning of a human rights expert by the Appeals Commission, with decision-making authority, depending on the subject or topic under consideration, would be an effective mechanism to ensure that the content of the model is compatible with fundamental rights.

21.3.2. Conflict-sensitive education

As a result of studying the content criteria of reviewing the basic/secondary education textbooks/series models, as well as the professional standard of teachers, the Public Defender prepared a proposal in the

⁸³⁵ Proposal 17-1/10213 of the Public Defender of Georgia of October 27, 2021 on Improving the Review Process of Textbooks/Series Models of General Education Institutions, 8.

⁸³⁶ *Ibid.*, 8-9.

⁸³⁷ Letter MES 8 21 0001251632 of the Ministry of Education and Science of Georgia of November 22, 2021.

⁸³⁸ Article 10 (2) and subparagraph k) of Article 2 of the Rule approved by Article 1 of Order No. 28/n of the Minister of Education and Science of February 16, 2017 on the Rules of Approval of General Education Textbooks/Series.

⁸³⁹ Subparagraphs b.a) and b.c) of paragraph 2 of Article 7 of Annex approved by paragraph 1 of Order MES 7 21 0000320130 of the Minister Education, Science, Culture and Sports of April 2, 2021 on Amending Order No. 582 of the Minister Education, Science, Culture and Sports of May 10, 2019 on the Approval of the Rules and Deadlines for the Submission of Complaints by Applicants, Review and Decision-Making during Approving Textbooks/Series of General Education Institutions.

⁸⁴⁰ *Ibid.*, Article 7 (2) (b).

⁸⁴¹ Options approved by Article 1 (a) of Order MES 1 20 0001013153 of the Minister of Education and Science of October 20, 2020 on the Announcement and Conditions of Approval of Textbooks/Series of Certain Subjects of the Primary Level of General Education, Certain Subjects of 7th and 8th Grades of the Basic Level and 9th Grade.

⁸⁴² Paragraph 3 of Article 10 of Annex approved by paragraph 1 of Order No. 28/n of the Minister of Education and Science of February 16, 2017 on the Rules of Approval of General Education Textbooks/Series.

reporting period.⁸⁴³ The analysis revealed that the normative acts did not adequately reflect the provisions promoting the peaceful transformation of conflicts or the culture of peace, which is very important for Georgia as a country with long-standing territorial conflicts. It should be noted that Abkhazians and Ossetians are mostly portrayed as separatists in school textbooks, which undermines the process of conflict transformation.⁸⁴⁴ At the same time, the subject of history is full of militaristic approaches.⁸⁴⁵ Accordingly, it is important to add the element of peaceful policy of conflict resolution to the evaluation criteria of textbooks, including the concept of avoiding strife and building positive peace, as well as cultivating peace ideas in conflict regions and positively representing those regions and peoples in textbooks.

21.3.3. Cases of proselytism and indoctrination in the school space

Cases of religious indoctrination in public schools were still problematic during the reporting period. In particular, the Georgian Patriarchate and the Chokhosani Society introduced the lesson cycle of Homeland Studies.⁸⁴⁶ The study of the issue made it clear that these lessons were delivered, including through online platforms, to a number of public school students.⁸⁴⁷ The lessons were characterized by sharply confessional content, discriminatory attitudes towards women on the ground of gender, and denial of Georgia's ethnic diversity.⁸⁴⁸ It should also be noted that public school directors were in some cases involved in organizing this lesson cycle and mobilizing students.⁸⁴⁹

The Public Defender, on the basis of international standards and comprehensive assessment of the issue, found a violation of the legislative principle of religious neutrality of the public school.⁸⁵⁰ Particular attention was paid in this context, inter alia, to the mobilization of students by the school administration to attend lessons and the authority of the directors for students in the process.⁸⁵¹ Unfortunately, the Office has not been informed by the Ministry about the results of the consideration of the recommendation issued as a result of the study of this issue.

It is noteworthy that within the framework of the study of the issue, one of the educational resource centers of Kvemo Kartli confirmed that in two public schools in its area, Homeland Studies⁸⁵² had been taught in the form of a free optional lesson, by using their own financial resources. As a legal basis, the

⁸⁴³ Public Defender's proposal on proper reflection of conflict sensitive education and peace education in the general education regulations, June 29, 2021, available at: <<https://bit.ly/3KezVYn>>.

⁸⁴⁴ Jishkariani D., "What do we know about conflicts and how do we learn them?" Tbilisi, 2017, 10, available at: <<https://bit.ly/3jycMpQ>> [last accessed: 06.03.2022].

⁸⁴⁵ Conflict Transformation and Conflict-Sensitive Education: Challenges in the Georgian Education System, Center for Peace and Civic Development, 2021, 6.

⁸⁴⁶ Public Defender's proposal of April 12, 2021 on the involvement of public school directors in organizing the Homeland Studies lessons, 1-2., Is available at: <<https://bit.ly/3vIGdvG>>. [last accessed: 30.03.2022].

⁸⁴⁷ Ibid.

⁸⁴⁸ Ibid., 3.

⁸⁴⁹ Ibid., 2.

⁸⁵⁰ Ibid., 11.

⁸⁵¹ Ibid., 12.

⁸⁵² Public Defender's Proposal of April 12, 2021 on the involvement of public school directors in organizing the Homeland Studies lessons, 5.

agency referred to Article 22 of the national curriculum⁸⁵³ approved by Order No. 40 of the Minister of Education, Science, Culture and Sports of May 18, 2016. According to this norm, schools have the right to offer students educational services not provided for in the national curriculum, although it "[...] should contribute to the achievement of the national goals of general education [...]".⁸⁵⁴ In addition, students "[...] choose/attend the optional lessons according to their wishes".⁸⁵⁵ In the same context, it should be noted that the Law of Georgia on General Education guarantees the right of public school students to "[...] study religion voluntarily during their free time [...]".⁸⁵⁶ The relevant school administrations ignored the main requirement of this norm - voluntariness.

It is noteworthy that in relation to Homeland Studies, the Internal Audit and Inspection Department of the Ministry also referred to the above-mentioned legal basis and did not assess the compatibility of the content of the service with the national goals of general education or the degree of influence of school administrations on the will of students.⁸⁵⁷

21.3.4. Integration of digital citizenship education into general education system

In the context of the ongoing pandemic of Covid-19, the Public Defender talked in detail about the incomplete integration of digital citizenship education in the general education system in 2020.⁸⁵⁸ The Ministry of Education and Science of Georgia informed us in this regard that a new subject - Computer Technologies was being prepared, which would be intended for students from 2nd to 6th grades.⁸⁵⁹ This subject was to replace the only compulsory discipline in the subject group of technologies - Information and Communication Technologies.

The standard of the mentioned subject was adopted during the reporting period, however, its content indicates that it is directly intended for students of 5-6th grades.⁸⁶⁰ Since a number of schools used the distance learning method in 2021, the challenges identified by the Public Defender in the field of digital citizenship education remain still relevant.⁸⁶¹

⁸⁵³ Paragraphs 2 and 5 of Article 22 of the National Curriculum approved by Article 1 of Order No. 40/n of the Minister of Education, Science, Culture and Sports of May 18, 2016.

⁸⁵⁴ Paragraphs 1 and 2 of Article 22 of the National Curriculum approved by Article 1 of Order No. 40/n of the Minister of Education, Science, Culture and Sports of May 18, 2016.

⁸⁵⁵ Ibid., Article 22 (5).

⁸⁵⁶ Article 18 (4) of the Law of Georgia on General Education.

⁸⁵⁷ Letter MES 5 21 0000304262 of the Internal Audit Department of the Ministry of Education and Science of Georgia of March 30, 2021.

⁸⁵⁸ 2020 Parliamentary Report of the Public Defender of Georgia, 343; Recommendation 17-1/5429 of the Public Defender of Georgia of June 3, 2020 on the Integration of Digital Citizenship Education in the General Education System of Georgia and Teaching It in the Conditions of Emergency.

⁸⁵⁹ 2020 Parliamentary Report of the Public Defender of Georgia, 343-344; Letter MES 7 20 0000494661 of the Ministry of Education, Science, Culture and Sports of Georgia of June 21, 2020.

⁸⁶⁰ Standard presented in Annex to letter MES 2 22 0000100589 of the Ministry of Education and Science of Georgia of February 15, 2022; Articles 75 and 76 of Annex approved by Article 1 of Order 40/n of the Minister of Education and Science of Georgia of May 18, 2016 on the Approval of National Curriculum.

⁸⁶¹ Annex No. 7 to letter MES 3 22 0000057264 of the Ministry of Education and Science of Georgia of January 24, 2022; Recommendation 17-1/5429 of the Public Defender of Georgia of June 3, 2020 on the Integration of Digital Citizenship Education in the Georgian General Education System and Teaching It in the Conditions of Emergency.

21.4. Human rights education in higher education institutions

In the reporting period, a study was conducted on undergraduate law courses of higher education institutions to assess the quality of human rights education.⁸⁶² As part of the study, the Office reviewed undergraduate law courses at 9 universities (5 public and 4 private) and assessed both the compulsory educational components and additional educational activities aimed at raising human rights awareness and developing relevant skills. The study was carried out by the financial and institutional support of USAID/PROLoG, while the Caucasus Research Resource Centers (CRRC) was involved in the development of the methodology.

The study showed that in most higher education institutions, human rights are taught only through one course, without a comparative perspective.⁸⁶³ In addition, the lack of updated Georgian-language textbooks and scarcity of human resources are problematic, especially in the higher education institutions located in regions.⁸⁶⁴ Considering these and other factors, the study revealed complex problems in terms of students' professional skills and practical teaching of law.⁸⁶⁵

Recommendations

To the Minister of Education and Science:

- Develop a unified human rights education strategy and action plan, taking into account the relevant international guidelines;
- Define tasks/activities aimed at promoting democratic citizenship and human rights education and the relevant measurable indicators in the unified national strategy (2022-2032) and action plans for education and science, for each level of formal education;
- Define the obligation of the Appeals Commission, established for the consideration of appeals within the framework of the textbook review process, to invite a human rights expert with the right to make decisions, during the approval of textbooks;
- Modify the existing method of public review of textbook models to ensure the public participation by involving schoolchildren's parents in the process;
- The Internal Audit Department should conduct proactive monitoring of public schools' participation in the organization of Homeland Studies lessons, as well as other cases of religious indoctrination and proselytism;
- Add a criterion of peaceful transformation of conflicts and peacebuilding to the content criteria of reviewing the models of textbooks/series of basic and secondary levels of general education;
- Introduce computer technology education at all levels of general education, through compulsory subjects, in such a way as to fully integrate digital citizenship education in line with the standard set by the Council of Europe and the Committee on the Rights of the Child.

⁸⁶² Special Report of the Public Defender of Georgia on Human Rights Law Education at Higher Education Level in Georgia, 2021, available at: <<https://bit.ly/3laxe9D>> [last accessed: 30.03.2022].

⁸⁶³ Ibid., 20.

⁸⁶⁴ Ibid., 23.

⁸⁶⁵ Ibid., 37-43.

To the local self-government bodies:

- Mayors and Municipal Councils of Dedoplistskaro, Zestaponi, Signaghi, Tkibuli, Chiatura and Khoni municipalities should develop and approve the normative acts provided for in Article 28 (4) (d) (e) of the Law of Georgia on Early and Preschool Education.

22. State of the Children's Rights

22.1. Introduction

In 2021, the coronavirus pandemic continued to have a severe impact on the realization of children's rights. The existing programmes failed to provide long-term support to the families living in poverty and to enhance their social function. At the same time, the educational loss of children and young persons in the field of preschool and general education had a negative impact on their right to education, as well as on their psycho-emotional state.

Given the increased risk of violence against children in the pandemic conditions, the introduced restrictions, especially social isolation and distance learning, had a negative impact on the rate of violence against children. Among the challenges of the child protection system, the prevention of violence against children, lack of proper rehabilitation services and shortage of specialists working in child support system are still alarming. It is noteworthy that the insufficient number of social workers in the guardianship and care authority further decreased by 11 in 2021 and currently a total of 257 social workers and 17 psychologists are working across the country.⁸⁶⁶

The shortcomings in the process of deinstitutionalization of large institutions were most acute in 2021, which in turn is associated with severe violations of children's rights.⁸⁶⁷ However, the State still has not approved unified state strategy or plan for deinstitutionalization.

22.2. Realization of the right to education

During the global pandemic, severe infrastructural problems in educational institutions and unequal conditions for children's involvement in the educational process led to significant educational losses, endangering their psycho-emotional well-being and realization of children's variety of rights. The challenges were particularly acute for vulnerable groups such as children living in large families, children living in poverty, children with disabilities and children with special educational needs.

22.2.1. General education

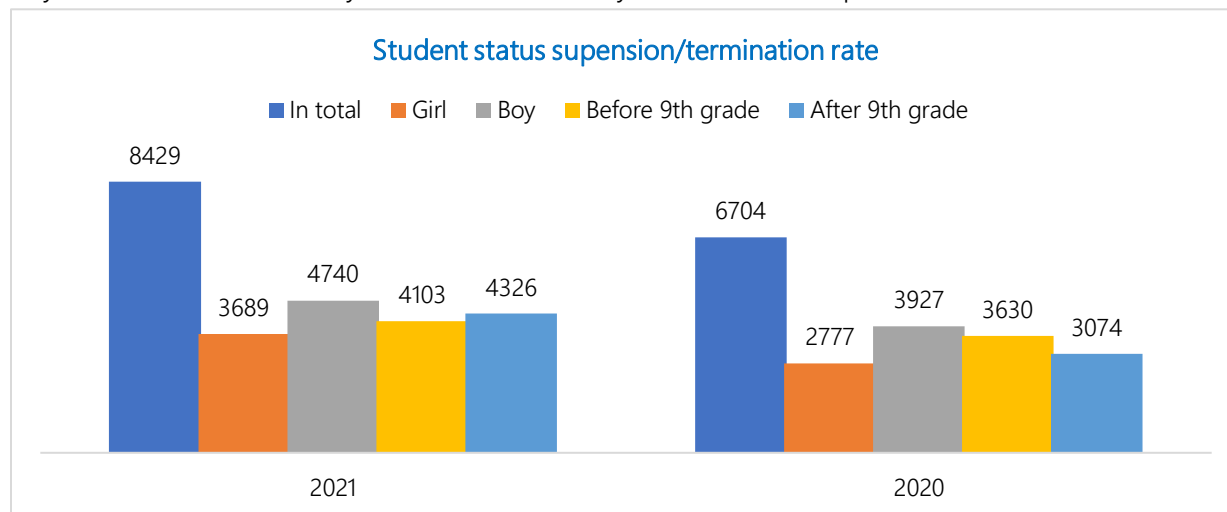
During the 2021-2022 academic year, 2,086 public schools are functioning in Georgia, 14 of which are providing boarding school services.⁸⁶⁸ The total number of students was 563,370 in the reporting period. Out of 10,404 identified children in 2020, who had never had the student status before, only 1,481 were

⁸⁶⁶ Correspondence No. 07/721 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 31/01/22.

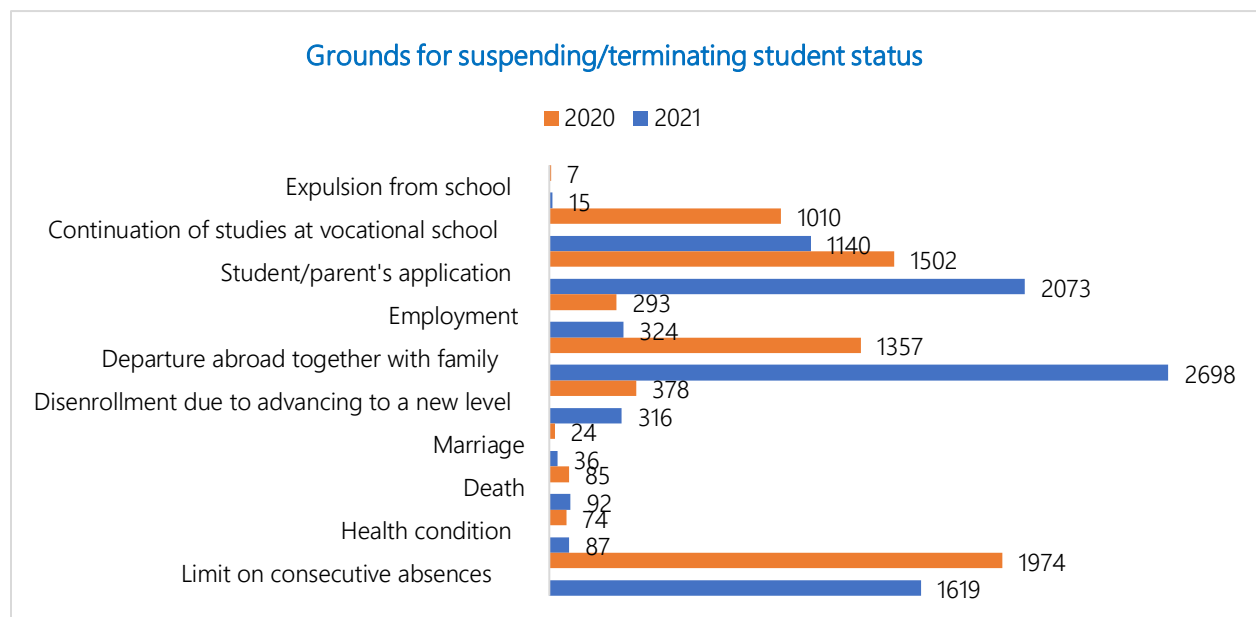
⁸⁶⁷ Special Report of the Public Defender on the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School, available at: <<https://bit.ly/3nVKlOx>> [last accessed: 24.01.2022].

⁸⁶⁸ Correspondence MES 3 22 0000057264 of the Ministry of Education, Science, Culture and Sports of Georgia, 24/01/22; As of September 2021, 2,785 students were enrolled in the boarding school; 8 boarding schools offer special educational programmes for children with disabilities and special educational needs.

enrolled in schools in 2021.⁸⁶⁹ During the reporting period, the suspension of student's status and children's dropout rates from school were still problematic, which were still the highest in Tbilisi (2,947/35%), Kvemo Kartli (1,970/23.4%) and Kakheti (714/8.5%). At the same time, in the gender context, boys are relatively more likely to drop out of school.⁸⁷⁰



The statistics on the grounds for suspension/termination of student status by educational institutions still need to be refined and clarified. In particular, the ambiguous grounds for suspending/terminating student status, such as the "parent's application" or the "limit on absences", do not provide accurate information about the real reason for the child's exclusion from the educational process.



⁸⁶⁹ Ibid.: In 2021, information on 5,973 children was processed by the municipality's child rights services, the data on the remaining 4,431 children are being processed at this stage.

⁸⁷⁰ Ibid.

Under the Covid pandemic, most of the schools were still switched to remote learning. 94% of the total number of public school students in the 2020-2021 school year and 93% in 2021-2022 were involved in remote learning. However, this format was still associated with problems such as children's access to the Internet and computers and equal access to quality education.

The changes made to the rules of students' enrollment in general education institutions and suspension of their status in 2021 are welcome. In particular, lowering the limit on absences to 45 days and for schools introducing the obligation of timely examination of the causes of absences and implementation of relevant measures in compliance with children's needs, including the involvement of a social worker in the case, should be welcomed.

The prevention of the spread of the Covid-19 virus in schools further increased the need to repair sanitary facilities in educational institutions, resolve infrastructural problems and supply hot water. In addition, given that the vaccination of teachers was not a priority, in particular, they were not recognized as "frontline workers", in total, only 73.6% of teachers and school administrators

22.2.2. Preschool education

According to 2021 data, there are 1,647 preschool education institutions in Georgia, in which 158,062 children are enrolled. The number of kindergartens increased by 26 in 2021,⁸⁷¹ but nevertheless, children's full access to preschool education remains one of the major challenges.

During the Covid-19 pandemic, the problems that have existed in kindergartens over the years became even more acute, namely geographical and physical accessibility,⁸⁷² overcrowding, inadequate heating, poor furniture, supply of toys, staff shortage and lack of training.⁸⁷³ Institutions fail to fully implement the recommendations⁸⁷⁴ developed to prevent the spread of Covid-19 and to provide a safe learning and upbringing environment for children. Challenges include observance of distance and sanitary-hygienic norms, wearing a mask and designation of isolation rooms.⁸⁷⁵

In parallel with the suspension of the functioning of kindergartens, the State failed to ensure the full implementation of distance learning mechanisms. In particular, only 207 employees of kindergartens were retrained within the framework of the distance learning training module developed in 2021. Up to 50 kindergartens and 2,581 children from only three regions of Georgia were involved in distance learning,

⁸⁷¹ Number of preschools by years - 2019/2020 - 1,621; 2020/2021 - 1,647; 2021/2022 - 1,648; Source: <https://tinyurl.com/2p863rbz> [last accessed: 24/01/2022].

⁸⁷² Physical accessibility of preschool institutions, which is a significant challenge, implies arrangement of the building of the institution according to the needs of persons with disabilities and making them accessible in this regard.

⁸⁷³ See the 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, source: <https://tinyurl.com/29wuvm3j> [last accessed: 24/01/2022].

⁸⁷⁴ See Order No. 01-227/o on the Approval of Recommendations to Prevent the Spread of the Novel Coronavirus (Covid-19) in the Workplace, Annex No. 39, Recommendations relating to the Infection (Covid-19) Caused by the Novel Coronavirus (SARS-CoV-2) for Preschools, 2021, source: <https://tinyurl.com/5cpez988> [last accessed: 24/01/2022].

⁸⁷⁵ During the reporting period, the Public Defender's Office monitored preschool educational institutions, held meetings with representatives of kindergarten associations, based on which, a number of challenges were identified, both in terms of institutions' infrastructure and physical arrangement, as well as compliance with the Covid regulations.

which is less than 2% of the total number of children enrolled in early and preschool educational system.⁸⁷⁶

In addition, despite the ongoing legislative discussions, the authorization of kindergartens has not yet begun or facilitated. At the same time, the Government did not approve technical regulations on buildings, infrastructure or material-technical base of the institutions in 2021 either.

22.3. Protection of children from violence

Challenges relating to the prevention and timely detection of violence against children, as well as coordinated and effective response to the incidents, remain unchanged in the country, especially in the context of the pandemic, periodically introducing back and forth restrictions, isolation and distance learning. In this regard, violence against children still predominated among the cases examined by the Public Defender, accounting for 34.5% of the total number of cases.

Children's mental health was harmed by distance learning and periodic closure of educational institutions. The above is indicated by the doubled number of those applying to the Psychosocial Center of the LEPL Office of Resource Officers of Educational Institutions, the number of which was 928 in 2020 and 1860 in 2021. It should be noted that the main grounds for applying to the Psychosocial Center in 2021 were circumstances related to the child's psycho-emotional state (1,479 cases), behavioral difficulties (1,101 cases) and academic challenges (524 cases), as well as violence against children (315 cases).⁸⁷⁷

It also became more difficult to assess the condition of children, to timely identify neglect, labour exploitation, physical, psychological and other forms of violence. The lack of coordinated action between agencies, which also indicates the ineffectiveness of the child protection policies of the State, was another problem.

In 2021, the number of applications relating to child abuse received by the Agency for State Care and Assistance for the (Statutory) Victims of Trafficking increased by 84 compared with the previous year and amounted to 1,904. However, shelters for victims of violence against women and domestic violence were used by 11, 406 beneficiaries, which is less by 11 compared to the previous year. 53 of them were children.⁸⁷⁸ The lack of child-centered rehabilitation and support services, shortage of relevant specialists and geographical accessibility remain problematic in the country. However, it is welcome that during the reporting period, active efforts were made in order to open a psychosocial center for child victims of violence in Tbilisi, which was implemented in 2022.

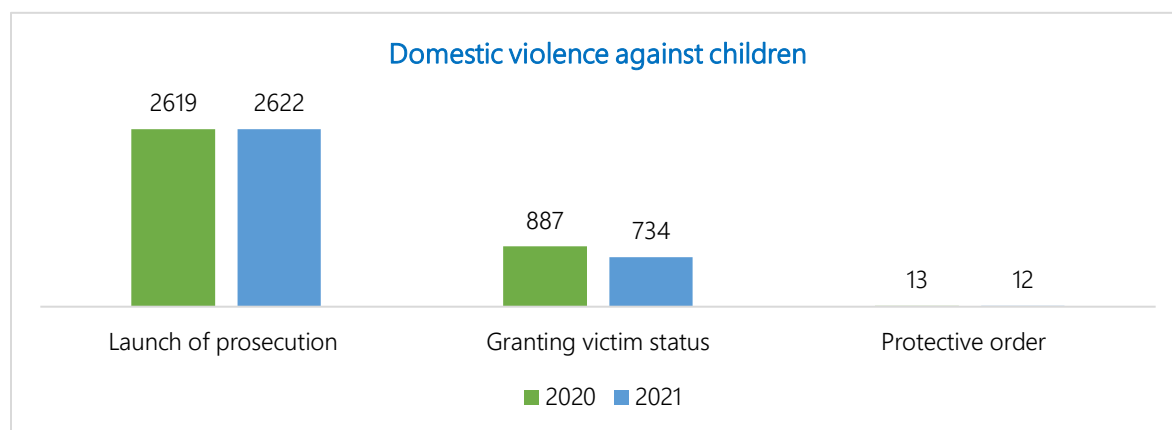
⁸⁷⁶ Correspondence MES 3 22 0000057264 of the Ministry of Education and Science of Georgia, 24/01/2022.

⁸⁷⁷ Correspondence MES 3 22 0000057264 of the Ministry of Education and Science of Georgia, 24/01/2022.

⁸⁷⁸ Correspondence No. 07/721 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 31/01/22.

22.3.1. Domestic violence

The risk of domestic violence against children was particularly high during the Covid-19 pandemic. At the same time, restrictions during this period had an even more negative impact on timely detection of cases and children’s access to protection mechanisms. As of December 2021, the Agency for State Care and Assistance for the (Statutory) Victims of Trafficking had applied to the court for a protective order on 12 cases, including 7 cases of domestic violence and 5 cases of domestic dispute.⁸⁷⁹ In addition, the rate of identification of children as victims on the basis of domestic violence decreased by 17%, to a total of 734.⁸⁸⁰ It is noteworthy that during the reporting period, a total of 187 cases of domestic violence against children were considered by common courts. In 145 cases, the courts delivered guilty verdicts.⁸⁸¹



In terms of the process of administering justice on crimes of violence against children, protecting the best interests of the child and introducing a child-friendly approach, it is welcomed that the Prosecutor General’s Office of Georgia trained its staff on juvenile justice. International standards, psychological and other aspects around the issue were widely discussed within the training.⁸⁸²

The study conducted by the Public Defender also revealed that the cases of psychological violence and manipulation against children by a parent/parents, other family members or other persons are frequent during court disputes and/or enforcement of judgements relating to the rules of parent-child relationship. However, no child protection or support measures are taken immediately or effectively in response and the opinion of the child or his/her best interests are also not properly considered.⁸⁸³

⁸⁷⁹ Ibid.

⁸⁸⁰ Correspondences Nos. 13/12360, 05/03/21, 13/2295, 18/01/22 of the Prosecutor General’s Office of Georgia. See also the Parliamentary Report, the Public Defender of Georgia, 2021, on The Situation in Human Rights and Freedoms in Georgia 2020, available at: <<https://bit.ly/3iwaAOp>> [last accessed: 24.01.2022].

⁸⁸¹ Correspondence No. p-02-22 of the Supreme Court of Georgia, 18/02/2022.

⁸⁸² Correspondence No. 13/2295 of the Prosecutor General’s Office of Georgia, 18/01/21.

⁸⁸³ This year, the Public Defender’s Office received 74 applications regarding obstacles to the realization of the right of the child to have relationship with his/her parent and/or another member of his/her family, including problems with the enforcement of the court decisions. Of these, 33 applications concerned child’s relationship with his/her mother, 34

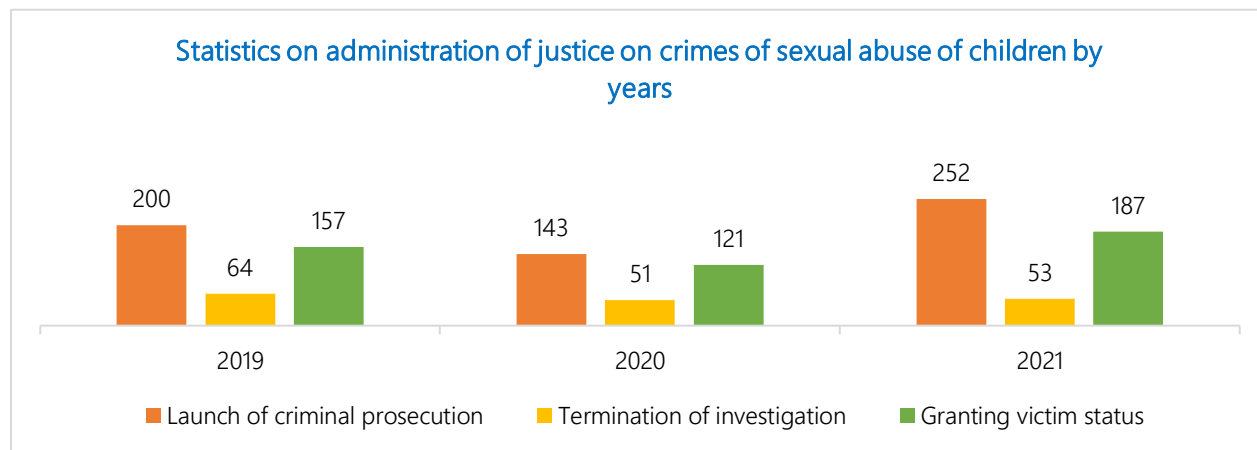
22.3.2. Sexual abuse of children

Challenges of detecting crimes of sexual violence against children, responding to them in a timely and effective, child-friendly manner, among other reasons, are caused by the lack of information on signs of sexual crimes and relevant protective mechanisms.

The lack of child support services and specialists in this area is also problematic. The geographical accessibility of medical-forensic services is also a challenge, which contradicts the principles of a child-friendly environment and a victim-centered approach.

It should be welcomed that the Public Defender's recommendation on producing full crime statistics was implemented by the Ministry of Internal Affairs of Georgia and it currently keeps a comprehensive record of reports of alleged sexual abuse of children, which will help assess the effectiveness of child protection mechanisms.⁸⁸⁴

It is noteworthy that in 2021, criminal prosecution was launched on 252 cases of sexual abuse and sexual exploitation of minors classified under Articles 137-141, 253-254 and 255-255² of the Criminal Code, investigation was terminated on 53 cases, and a total of 187 minors were granted a victim status.⁸⁸⁵ During the reporting period, 121 cases of sexual abuse of children were considered by common courts; guilty verdicts were delivered in 111 cases, 8 cases were terminated, 1 defendant was acquitted and 1 case was reclassified.⁸⁸⁶



Inadequate qualifications of professionals in the field of sexual abuse remains a challenge. In particular, as a result of the study of the issue by Public Defender, a number of circumstances were identified, which create the risk of secondary victimization of children during the investigation and hinder the effective

concerned child's relationship with his/her father and 5 of the applications concerned relationship with other family members.

⁸⁸⁴ Correspondence MIA 3 21 02245075 of the Ministry of Internal Affairs of Georgia, 5/08/2021.

⁸⁸⁵ Correspondence No. 13/13811 of the Prosecutor General's Office of Georgia, 10/03/2022.

⁸⁸⁶ Correspondence No. p-02-22 of the Supreme Court of Georgia, 18/02/2022.

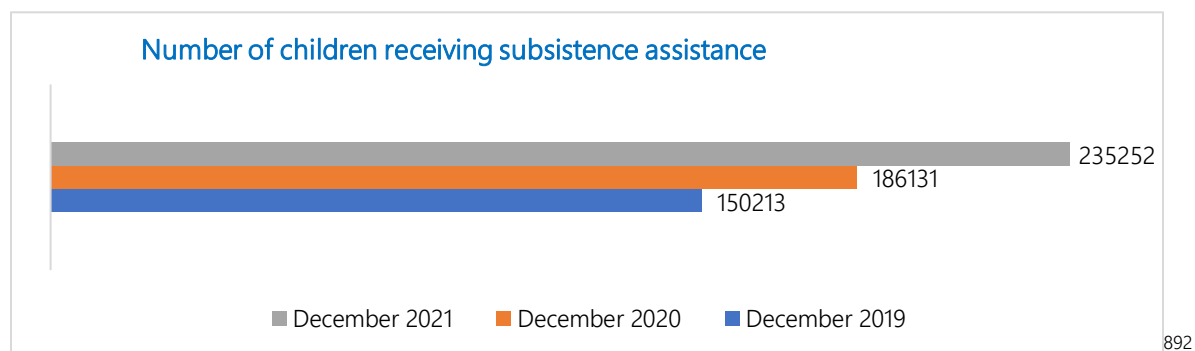
conduct of investigation.⁸⁸⁷ However, it is welcome that the relevant agencies implemented the recommendations issued by the Public Defender on this issue.⁸⁸⁸ In particular, the staff of the Ministry of Internal Affairs of Georgia, Prosecutor General's Office of Georgia and Levan Samkharauli National Forensics Bureau, as well as judges and employees of courts were trained on sexual abuse of children and child-centered approach.⁸⁸⁹

It should be noted that the Ministry of Internal Affairs of Georgia implemented the recommendation of the Public Defender on proactive involvement of child support specialists, including psychologists, in the investigation process. However, the issue of lack of staff and their low qualifications hinder the timely involvement of specialists and their effective participation in the process.

22.4. Poverty and inadequate living conditions

The situation of children living in poverty, satisfaction of their needs, insufficient and ineffective targeted state services remain to be significant challenge.

The rate of child poverty is still growing. The number of families, with at least one child, registered in the Unified Database of Socially Vulnerable Families, increased by 28% compared to the previous year. The number of children involved in the programme amounted to 235,252.⁸⁹⁰ As of June 2021, to relieve the damage caused by the pandemic, 31,809 socially vulnerable families with children received a compensation, of which 28,016 were large families.⁸⁹¹



⁸⁸⁷ Special Report of the Public Defender on the Rights Situation of Children of the Ninotsminda Orphanage, available at: <<https://bit.ly/3nVKIOx>> [last accessed: 24.01.2022].

⁸⁸⁸ Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation, Special Report of the Public Defender, <<https://bit.ly/3fyND4w>> [last accessed: 24.01.2022].

⁸⁸⁹ Correspondence MIA 3 21 02245075 of the Ministry of Internal Affairs of Georgia, 5/08/2021; Correspondence No. 13/2295 of the Prosecutor General's Office of Georgia, 18/01/2022; Correspondence No. 5005041221 of LEPL Levan Samkharauli National Forensics Bureau, 26/07/2021; Correspondence No. 02/2937 of the High School of Justice of Georgia, 26/01/2022; In addition, only specialized prosecutors and investigators of the Prosecutor's Office have been involved in the investigative and prosecutorial activities of this category of criminal cases from 2021.

⁸⁹⁰ Correspondence No. 04/12639 of the LEPL Social Service Agency, 31/12/21.

⁸⁹¹ Ibid.

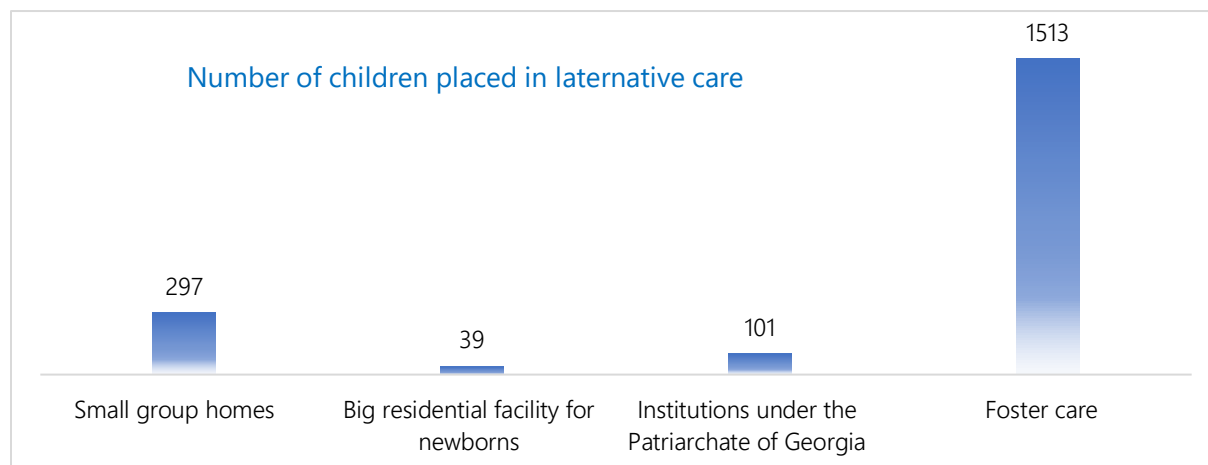
⁸⁹² LEPL Social Service Agency, available at: <<https://bit.ly/34Nq11a>> [last accessed: 18. 02.2022].

Despite the growing rate of child poverty from year to year, the State has not yet developed an effective mechanism for its reduction. In this regard, the obligation of municipalities to designate an appropriate structural unit to develop and implement targeted programmes for children and their families.⁸⁹³ However, at present, these units are not fully staffed in all municipalities with a minimum number of qualified staff, no priority areas are identified and the functions and responsibilities of specialists are not clearly separated from the responsibilities of other agencies.

22.5. Children in state care

The State provides alternative care in several forms, in particular through the state foster care sub-programme, small group homes and large residential institutions.

Currently, there are 42 small group homes throughout Georgia, three licensed institutions (including two large boarding schools) of the Georgian Patriarchate and one big residential facility for newborns of the Agency for the State Care. As of 2021, 1,497 are living under the state care in 739 foster families. In 2021, a total of 309 children were placed in state care, while 98 returned to biological families.⁸⁹⁴

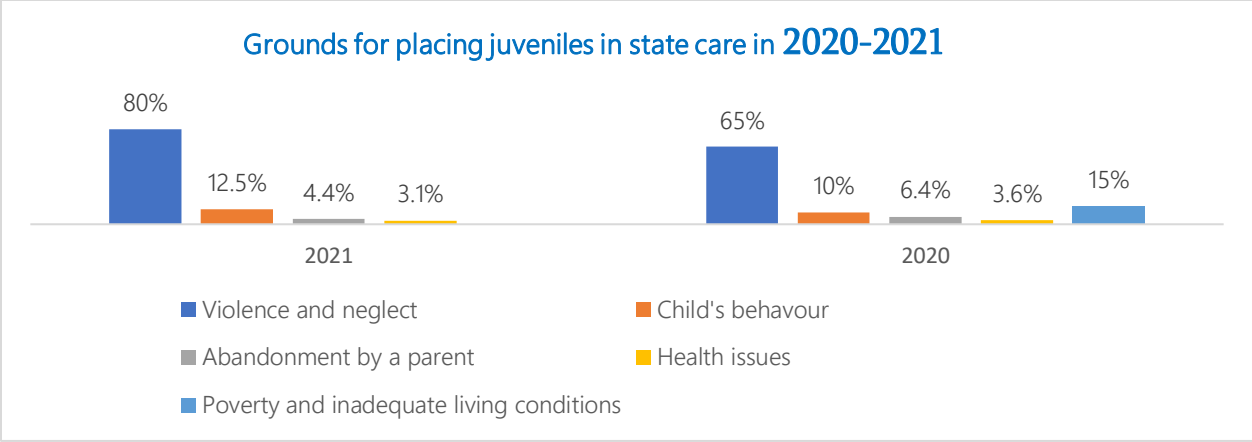


In 2021, the main reasons for the separation of 309 children from their biological families and their placement in state care were violence and neglect, like the previous year. In addition, the guardianship and care authority clarifies that poverty and inadequate standard of living are in no way the cause of separation of a child from the family and it is only considered in conjunction with other causes.⁸⁹⁵

⁸⁹³ Pursuant to Article 96 of the Code on the Rights of the Child, municipalities have been obliged from 1 September 2020 to designate a service for the protection of fundamental rights and freedoms of children, including for the management of the child poverty elimination and child support systems, which should develop child protection and support programmes and should ensure their implementation and monitoring within the framework of its authority or delegated authority.

⁸⁹⁴ Correspondences No. 07/11171, 30/12/2021 and No. 07/1734, 07/03/2022 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking.

⁸⁹⁵ Correspondence No. 07/1734, 07/03/2022 of the of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking.



The Public Defender considers that it remains problematic to protect children from violence, meet their individual needs, prepare them for independent living and strengthen their biological families for their reintegration when the above is in their best interests. It is also a challenge to support children after they leave the state care system.

22.5.1. Children living in large residential institutions

The implementation of state care by large residential institutions substantially contradicts the fundamental principles of the protection of the rights of the child, including the right to be raised in the family or in an environment most resembling, close to it. In this regard, it is welcome that in December 2021, the Kojori boarding house for Children with Disabilities was closed and 14 children were placed in alternative care. Nevertheless, 3 large residential institutions still remain in the country, 2 of which are licensed boarding houses operating under the auspices of the Patriarchate of the Orthodox Church of Georgia, which had a total of 140 enrolled children by the end of 2021.

The events developed in 2021 and the results of detailed monitoring of both of the large licensed boarding houses⁸⁹⁷ of the Patriarchate of the Orthodox Church of Georgia once again demonstrated the vicious nature of such big residential institutions, their closed environment, which has a devastating impact on children's psycho-emotional state, physical health and social development, hindering the socialization of children and their readiness to leave state care. In addition, it is especially problematic to detect cases of violence against children. Children find it difficult to distinguish between forms of violence and upbringing. The issue was exacerbated by the fact that social workers did not monitor any of the institutions in a timely manner, did not conduct individual interviews with children or assess their

⁸⁹⁶ Tbilisi boarding house for newborns, NNLE Javakheti Ninotsminda St. Nino Boarding School NNLE and NNLE Boarding School of St. Matthias the Apostle Foundation in the village of Peria, out of two which operate under the auspices of the Patriarchate of the Orthodox Church of Georgia. Correspondence No. 07/11171 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 30/12/2021.

⁸⁹⁷ Special Report of the Public Defender On the Rights of Children in NNLE Javakheti Ninotsminda St. Nino Boarding School, available at: <<https://bit.ly/3nVKIOx>> [last accessed: 24.01.2022].

condition. As a result, children did not trust social workers, nor did they have information about the protection mechanisms.

Monitoring of the Ninotsminda boarding house revealed that the facility not only neglected the basic needs and interests of children, but also directly harmed their health and development. The actions of the facility were traumatizing, often criminal in nature, and contrary to all childcare standards. However, the monitoring of the St. Matata assisted living facility revealed that even when the institution has a well-maintained living environment and the basic needs of children are met, the institutional nature and closed environment make children unhealthily attached to the institution, prevent them from socializing, developing skills for independent living or getting ready for leaving the state care.

Notwithstanding the above, the State has not yet approved a concrete action plan for the replacement of large residential institutions with foster care or family/community-based care services, nor can it prevent children placed in state care from being placed in similar institutions, which is a result of an ineffective policy of providing child-centered environment to those children in such need.

22.5.2. Rights situation of minors living in small group homes

As of 2021, there were 297 children enrolled in 46 small group homes.⁸⁹⁸ Monitoring by the Public Defender's Office revealed that the acute psycho-emotional state of children is a serious problem in small group homes, which in turn has been exacerbated by the measures taken to prevent the spread of Covid-19 pandemic. In addition, despite the obvious needs identified, caregivers have not undergone special training on the specifics of working with children with behavioral or emotional needs.

Other problems in small group homes are repeated violence among children and lack of friendly and trust-based relationship between children and caregivers, free from discriminatory and stereotypical attitudes. It is also noteworthy that caregivers are unable to use positive forms of behavior management effectively in practice. The institution does not have a pre-defined effective mechanism for timely response not only for managing an aggravated cases, but for thoroughly studying and preventing its causes.

Small group homes do not have specially designed activities focused on meeting the emotional, cognitive or social needs of children. Institutions also face challenges in terms of both infrastructural aspects and socialization of children.

22.5.3. Rights situation of beneficiaries of shelters for mothers and children

The Sub-Programme for the Provision of Shelter for Mothers and Children aims to support families with children, prevent child abandonment and separation from the family. There are 6 shelters for mothers

⁸⁹⁸ Of these, 4 are specialized small group homes for children with severe and profound disabilities or health problems.

and children in Georgia.⁸⁹⁹ In 2021, 480 beneficiaries used this service, including 190 mothers, 25 of whom were minor mothers, and 190 children.⁹⁰⁰

One of the main challenges for the implementation of the sub-programme is the scarcity of financial and administrative resources, which are sufficient only for food, medicines, remuneration of staff and beneficiaries' basic needs.

Beneficiaries are mostly placed in shelters due to traumatic experiences, violence, dysfunctional families, lack of housing, but the State does not have an effective support system for them; the services for developing social skills, counseling and rehabilitation, as well as preparation for independent living, are scarce. Due to staff shortages, with few exceptions, shelters fail to adequately provide childcare services for mothers involved in educational and employment areas.

After leaving the shelter, mothers need stable housing, however, similar special programmes for meeting these needs are less supported by the local self-governments. Consequently, the problems of mothers living in shelters get further exacerbated in the process of achieving economic independence and getting ready for the later stages of life.

22.6. Child labour

The measures taken by the State fail to prevent and eliminate extreme forms of child labour, seasonal labour or labour migration.

Involvement of minors in household or seasonal work is a common practice in the country. To overcome the poverty, children get involved in hard forms labour such as collecting scrap metal, working on trucks and farming. Temporary absences from classes due to being involved in labour are still problematic, which are not always recorded or responded. At the same time, the number of mobile groups involved with children living and working on the streets does not meet the needs in this regard.⁹⁰¹ Except for Tbilisi, Rustavi, Batumi and Kutaisi, this service does not operate in areas with similar challenges.

In the reporting period, until December 2021, 18 complaints were filed to the Agency for State Care relating to alleged child labour/labour exploitation.⁹⁰² Meanwhile, the Labour Inspection Service inspected 139 facilities, as a result of which, one case of child labour inconsistent with the Organic Law of Georgia on Safety at Work was found.⁹⁰³

⁸⁹⁹ Tbilisi (four shelters), Kutaisi (one shelter) and Khashuri (one shelter).

⁹⁰⁰ Correspondence No. 07/ 1172 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 30/12/2021.

⁹⁰¹ Special Report of the Public Defender on Child Labour during Novel Coronavirus Pandemic and Beyond, available at: < <https://bit.ly/3xR7x9r>> [last accessed: 09.03.2022].

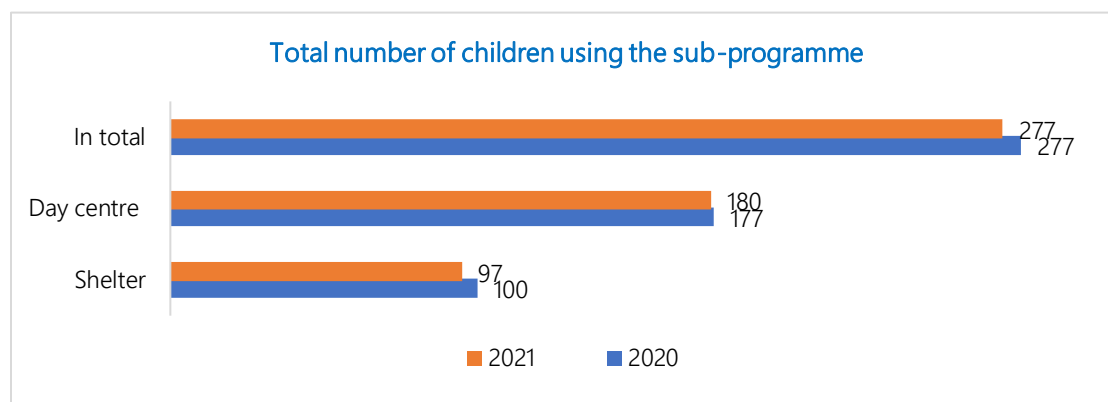
⁹⁰² Correspondence No. 07/721 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 30/01/2022.

⁹⁰³ Correspondence No. 09/24 of the LEPL Labour Inspection Service, 06/01/22. This implies the inspection carried out within the framework of Decree No. 112 of the Government of Georgia of March 7, 2016 on the Approval of the Rules of

22.7. Children living and/or working on the streets

Implementation of the social work service for children living and/or working on the streets and their families, as well as support services, including those oriented to meeting their basic needs, continues to be a significant challenge, especially in the context of the Covid-19 pandemic.

As of 2021,⁹⁰⁴ 104 beneficiaries were enrolled in 7 day centers and 6 shelters operating for 24 hours under the Homeless Child Support Sub-Programme,⁹⁰⁵ while 90 children were disenrolled. However, given the complexity of case detection and scarcity of services, this number does not reflect the full contingent of children with similar needs.



In 2021, 5 beneficiaries were transferred from the sub-programme services to state care, in particular, to a small group home, one beneficiary returned to the biological family, problems with documents of 15 children were solved and temporary identification documents were prepared for 7 children, while 12 children were enrolled in school.

The monitoring of all daycare centers and 24-hour shelters by the Public Defender's Office in 2021 showed that it is still urgent to strengthen children and their biological families, to find community resources in this regard and to address the stereotypical attitudes of the community, peers and older people, which can be noticed at schools or in the streets. There are also infrastructural problems in shelters, especially in the shelter located in Rustavi. However, it should be positively noted that a daycenter intended for children has been functioning in Batumi since 2021. Nevertheless, given the urgent need in the region, the issue of providing 24-hour shelter to children living and/or working on the streets on the territory of the Autonomous Republic of Adjara remains a challenge.

Carrying out State Supervision for Responding to and Prevention of Forced Labour and Labour Exploitation. Based on the violation identified, the LEPL Labour Inspection Service demanded from the company to remove the juvenile from the facility, as construction works are a particularly high-risk, heavy, harmful, and dangerous area. In addition, it was decided to suspend the operation of the company.

⁹⁰⁴ Correspondence No. 07/1987 of the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, 15/03/2022.

⁹⁰⁵ The sub-programme is being fully implemented in Tbilisi (4 daycare centers and 4 shelters), Rustavi (1 daycare center and 1 shelter), Kutaisi (1 daycare center and 1 shelter), 1 daycare center started functioning in Batumi in 2021.

In addition, with regard to children living and/or working on the streets, exchange of information about children and coordinated work between state agencies and territorial units of the law enforcement agencies remain problematic.

22.8. Stateless Children, Children under International Protection and Asylum Seekers

In terms of ensuring the rights of children under international protection, there are a number of challenges, including access to education, health care, assessment and provision of individual needs. See details about this topic in the following sub-chapter of the Parliamentary Report: "Human Rights Situation of Aliens in Georgia."

Recommendations

To the Government of Georgia:

- In relation to early and preschool institutions, approve the Technical Regulation on the Arrangement of Buildings of the Institutions, their Infrastructure and Material-Technical Base;
- With the involvement of responsible agencies, within the framework of the State Programme for Social Rehabilitation and Childcare, review the amount of funding for shelters for mothers and children and develop a plan for gradual strengthening of the shelter sub-programme in accordance with the goals of the service and the needs identified;
- Based on inter-agency cooperation, plan and conduct information campaigns to raise public awareness about children living and working on the streets and to eliminate stereotypes;
- Based on inter-agency cooperation, including with the Ministry of Economy and Sustainable Development of Georgia and local self-governments, identify ways to address the infrastructural challenges in shelters for homeless children, as a result of elaborating the relevant strategies and action plans;
- In cooperation with the Ministry of Education and Science, the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking and local authorities, separate the functions and duties of social workers employed in the municipalities, the Agency for State Care and educational system, and develop, inter alia, coordination guidelines.

To the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- Assess the compliance of the number of social workers employed by the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking with the existing needs on an annual basis and take appropriate measures to increase the number of social workers;
- Assess the compliance of the number of psychologists employed by the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking on an annual basis and take appropriate measures to increase the number of psychologists;

- Based on the needs identified in the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking, train social workers and psychologists on child abuse, including domestic violence, sexual violence, secondary victimization and victim-centered approaches;
- Initiate the development of a unified strategy and action plan to enhance the social functioning of the families with children living in poverty, through the involvement of responsible state agencies and local governments.

To the LEPL Agency for State Care and Assistance for the (Statutory) Victims of Trafficking:

- Facilitate the training of persons employed in small group homes, shelters for mothers and children and boarding houses on difficult behavior of children, prevention and management of emotional aggravation, as well as other specific issues identified in each home in relation to working with children;
- Based on inter-agency cooperation, including with the Ministry of Economy and Sustainable Development of Georgia and local self-government bodies, mobilize financial and administrative resources to open 24-hour services in the Adjara region within the framework of the Sub-Programme for children living and/or working in the streets;
- Assess the relevant needs and develop a specific plan for strengthening the Agency's territorial units with human and material resources, including for increasing the number of social workers and psychologists.

To the Ministry of Education and Science of Georgia:

- On the basis of the amendments made in the Order No. 04/n of the Minister of Education and Science of January 11, 2017 on the Approval of the Rules for Enrollment of Students in General Education Institutions and Suspension of Student Status, train each class teacher of educational institutions on the measures to be taken to prevent student dropout and on carrying out the new obligations in this regard;
- On the basis of the amendments made as regards to the school dropout legislation, keep a record of the reasons for high dropout rate at the regional level and, in cooperation with local municipalities, public schools and the guardianship and care authority, develop future strategies for reducing the school dropout risks, in accordance with the needs identified;
- Train public school teachers and conduct educational activities for children on child abuse, non-discrimination, and bullying.

To the Ministry of Internal Affairs of Georgia:

- In cooperation with the law enforcement agency, to develop detailed instructions, start developing guidelines on issues relating to children living and/or working on the streets, and train the staff of territorial units of the law enforcement agency on this issue.

To the local self-governments:

- Ensure the fulfillment of the obligation provided for by the Child's Rights Code in the municipalities where the relevant services responsible for children's issues are not fully staffed with the minimum number of qualified staff;
- In cooperation with the Ministry of Education and Science, train the staff of preschool and early education institutions on distance learning;
- If necessary, assess the challenges relating to distance learning as regards to preschool and early education and, based on this, develop a specific plan and take appropriate measures to facilitate the process.

23. Human Rights Situation of Persons with Disabilities

23.1. Introduction

Effective protection of the rights of persons with disabilities remained a challenge in 2021. As a result of the coronavirus pandemic, the socio-economic situation of these individuals and their employment prospects deteriorated. Some of them still remained beyond the State's anti-crisis economic plan developed in response to the pandemic.

In the reporting period, the Parliament of Georgia ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities,⁹⁰⁶ which is important for the provision of international mechanisms for the protection of the rights of these persons. The establishment of the Coordination Committee for the Implementation of the Convention on the Rights of Persons with Disabilities⁹⁰⁷ by the Government of Georgia should also be welcomed, which is expected to facilitate the proper protection of the rights of persons with disabilities in the country.

However, there has been no transition to a fair system of granting disability status, which, in addition to medical factors, focuses on the psychological and social factors of the person. The amount of the social package defined by the current model, in addition to not being tailored to the individual needs of persons with disabilities, fails to satisfy even their minimal needs.

The services provided by the State Programme for Social Rehabilitation and Childcare have not changed substantially. The geographical coverage of the services remains problematic. It is not possible to cover all children/persons with disabilities across the country, as the sub-programmes are still not based on statistical or research data.

Protecting the rights of people with mental health problems remains a challenge. So far, no strategy has been developed for the deinstitutionalization of the field. Significant gaps were identified in the direction of safe management of patients in psychiatric services in the context of the pandemic.⁹⁰⁸

During the reporting period, most of the state bodies/institutions developed annual action plans for the rights of persons with disabilities.⁹⁰⁹ However, participation of persons with disabilities/organizations of persons with disabilities was not adequately ensured in this process. In addition, according to the agencies, the implementation of certain measures by them was hindered by various factors.⁹¹⁰

⁹⁰⁶ Optional Protocol to the Convention on the Rights of Persons with Disabilities. The document is available on the website: <<https://bit.ly/3vj859x>> [last accessed: 20.02.2022]

⁹⁰⁷ Decree No. 551 of the Government of Georgia of November 29, 2021 on the Establishment of Interagency Coordination Committee for the Implementation of the Convention on the Rights of Persons with Disabilities and the Approval of the Statute. The document is available on the website: <<https://bit.ly/3BCNCO4>> [last accessed: 20.02.2022]

⁹⁰⁸ Special Report of the Public Defender of Georgia on Safe Delivery of Mental Health Services in the Conditions of Covid-19, 2021, available at: <<https://bit.ly/3tlqHNp>> [last accessed: 08.03.2022]

⁹⁰⁹ Within the framework of the obligation provided for in Article 37 (3) (a) of the Law of Georgia on the Rights of Persons with Disabilities. The named law is available at: <<https://bit.ly/3r0RHba>> [last accessed: 09.03.2022].

⁹¹⁰ The pandemic situation, lack of time, reduction of the budget by the donor, other problems.

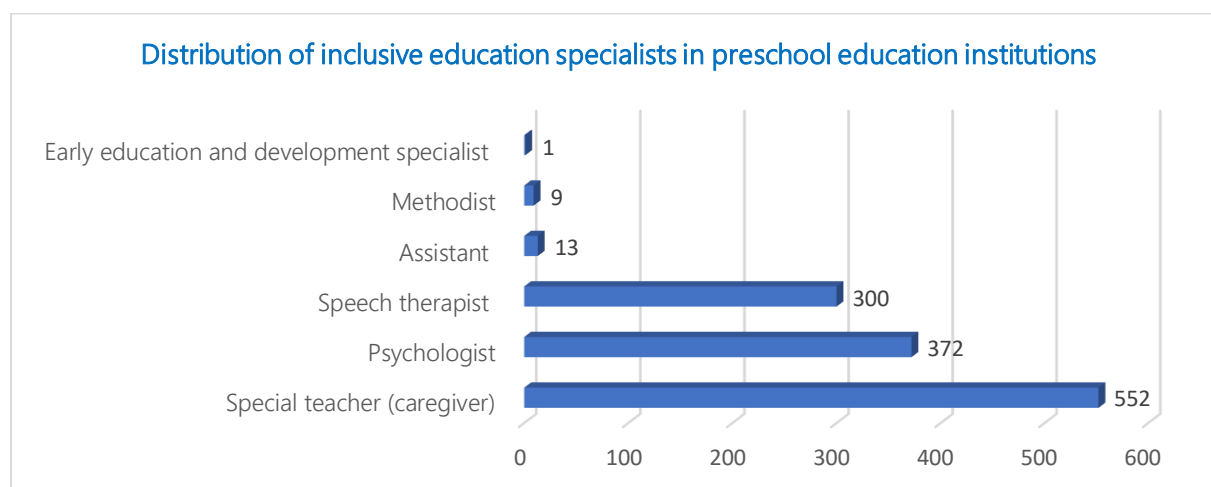
23.2. Inclusive education

Proper implementation of inclusive education has become particularly important during the pandemic. In the reporting period, it was a challenge at various levels to study the needs of students with disabilities, ensure access to infrastructure/materials and provide adequate human resources.

23.2.1. Early and preschool education

The Ministry of Education and Science of Georgia does not have full information about children with disabilities involved in preschool education. Data are available only on school-age children with disabilities (older than 6 years) (167 children) involved in preschool education at this stage.⁹¹¹ The fact that no in-depth research was conducted on the needs of children with disabilities in the municipalities during the reporting period should be assessed negatively.⁹¹² In addition, children, who have been left out of preschool education, cannot be identified.⁹¹³ It should be noted that the Consultative Council⁹¹⁴ provided for by law does not function in 6 municipalities.⁹¹⁵

Another problem is the lack of accessibility of the infrastructure of kindergartens, which is mostly limited to the installation of ramps. As for the staff, most of the kindergartens⁹¹⁶ are served by inclusive education specialists, such as psychologists, special teachers (special caregivers) and speech therapists. However, their regional distribution is not adequate, as most of them are concentrated in Tbilisi.



⁹¹¹ Correspondence MES 7 22 0000002600 of the Ministry of Education and Science of Georgia, 10. 01.2022.

⁹¹² Information received from 51 municipalities.

⁹¹³ Such facts were revealed only in 4 cases. In particular, 3 children with disabilities in the Aspindza municipality, 14 in Batumi, 1 in Chokhatauri and 4 in Tsageri.

⁹¹⁴ Consultative Council, provided for in Article 18 of the Law of Georgia on Early and Preschool Education.

⁹¹⁵ Akhalkalaki, Keda, Ninotsminda, Khoni, Shuakhevi and Lanchkhuti municipalities.

⁹¹⁶ 42 municipalities.

During the reporting period, trainings in the field of inclusive education were conducted in about 7% of self-governing entities.⁹¹⁷ It should be noted that inclusive preschool education is not monitored in 6 out of 51 municipalities.⁹¹⁸

23.2.2. General education policy and practice

There are 624.5 thousand students⁹¹⁹ in general education institutions, including 10,447 students with special educational needs. At the same time, 1,148 of them have disability status.⁹²⁰ Students with disabilities and special educational needs are enrolled in a total of 1,455 public schools.

It is noteworthy that so far the data has not been fully processed within the framework of the State Programme for Monitoring Out-of-School Children.⁹²¹ As of January 10, 2022, the number of children with disabilities that are out of school is 445. In addition, 21 children were identified, who did not have disability status. Of these, only 2 became schoolchildren so far.⁹²² During the reporting period, 117 children with disabilities dropped out of school before the 9th grade.⁹²³

Although important documents were developed in the field of inclusive education in 2021,⁹²⁴ access to the Internet and necessary equipment for children living in difficult economic conditions and rural areas, access to remote learning materials and gadgets,⁹²⁵ proper mobilization of human resources, communication with parents, development of audio-visual and adapted materials remained problematic. Access to school infrastructure⁹²⁶ and insufficient number of inclusive education specialists in the regions also remain problematic.

⁹¹⁷ Ambrolauri, Aspindza, Akhalkalaki, Batumi, Kharagauli, Tbilisi, Mestia, Mtskheta, Ozurgeti, Khashuri, Sachkhere, Senaki, Kobuleti, Chokhatauri and Khulo municipalities.

⁹¹⁸ Akhalkalaki, Borjomi, Keda, Kutaisi (only internal control is carried out by the staff), Kvareli and Chkhorotsku municipalities.

⁹¹⁹ In the 2020-2021 academic year. Data are taken from the official website of Geostat.

⁹²⁰ According to the data of December 2021. Correspondence MES 7 22 0000002600-10.01.2022 of the Ministry of Education and Science of Georgia.

⁹²¹ Initially, as a result of the exchange of information between the agencies involved in the programme, 1,098 children with disabilities aged 6-16 were identified, who were not engaged in general education. 431 of them are unable to get engaged in general education due to the heaviest and multiple disorders. Or an application was submitted to the Ministry's multidisciplinary team and the process is ongoing. The Ministry has not yet received feedback from the relevant municipalities regarding 302 children.

⁹²² Correspondence of the Ministry of Education and Science of Georgia MES 7 22 0000002600 - 10.01.2022.

⁹²³ 88 children with special educational needs, 2 children with disabilities, 27 children with disabilities and special educational needs. 43 girls, 74 boys.

⁹²⁴ Sensory curriculum for students with developmental delays and expanded core curriculum for students with visual impairments. Guidelines for teaching students with special educational needs were also prepared. Documents are available on the website: <bit.ly/379s7co> last accessed [07.03.2022].

⁹²⁵ Especially for students with sensor disabilities and behavioral difficulties.

⁹²⁶ In Tbilisi, 36 public school buildings are fully adapted and 117 schools are partially adapted, 20 schools are under construction/rehabilitation. The databases reflecting the state in 2021 are being processed in relation to regions. Correspondence MES 7 22 0000002600 -10.01.2022 of the Ministry of Education and Science of Georgia.

23.2.3. Vocational education

350 persons with disabilities are involved in vocational education. In 2021, students with special educational needs were enrolled in a total of 46 vocational institutions, however, the regional coverage of these institutions is unsatisfactory.⁹²⁷

It should be noted that out of the institutions implementing vocational programmes (90 in total),⁹²⁸ only 31 have specialists supporting students with disabilities and students with special educational needs.⁹²⁹ Access to infrastructure remains a challenge. Although there are 66 vocational education institutions/colleges in Georgia, only 4 of them are arranged in accordance with the universal design principles.

23.2.4. Higher education

In 2021, out of 483 high school graduates with disabilities/special educational needs, only 54 were enrolled in higher education institutions.⁹³⁰ Nevertheless, no research has been conducted to date on the factors preventing persons with disabilities from pursuing higher education. According to the information received from the Ministry of Education and Science of Georgia, 99 students with disabilities enjoy active status in 16 higher education institutions at various levels. In 2021, there were 3 cases of suspension of the status.⁹³¹ As for the support services at the higher education level, varied practices are observed at the university level. It should be noted that in most cases, inclusive education specialists are not involved in the satisfaction of the individual needs of students with disabilities.⁹³²

23.3. Accessibility

In 2021, the issue of complex accessibility was still on the agenda. Although the Technical Regulation - National Accessibility Standards⁹³³ came into force on March 1, 2021, its implementation was not effectively monitored. In addition, no active information campaign was conducted on the regulations and obligations provided for by the Technical Regulation. No national accessibility plan was developed either.

⁹²⁷ In Tbilisi - 21 (private and public). Adjara 7, Guria 1, Imereti 3, Kakheti 2, Mtskheta-Mtianeti 1, Racha-Lechkhumi and Kvemo Svaneti 1, Samegrelo-Zemo Svaneti 4, Samtskhe-Javakheti 1, Kvemo Kartli 1, Shida Kartli 4.

⁹²⁸ Of these, 66 are vocational education institutions/schools.

⁹²⁹ Among them: 39 inclusive education specialists, 7 teaching assistants, 17 sign language interpreters, 1 personal assistant, 1 mobility and orientation specialist, 1 sighted guide and 1 sound programme trainer.

⁹³⁰ As of 10.01.2022, all of them have active student status.

⁹³¹ Main grounds were the lack of academic registration and health status.

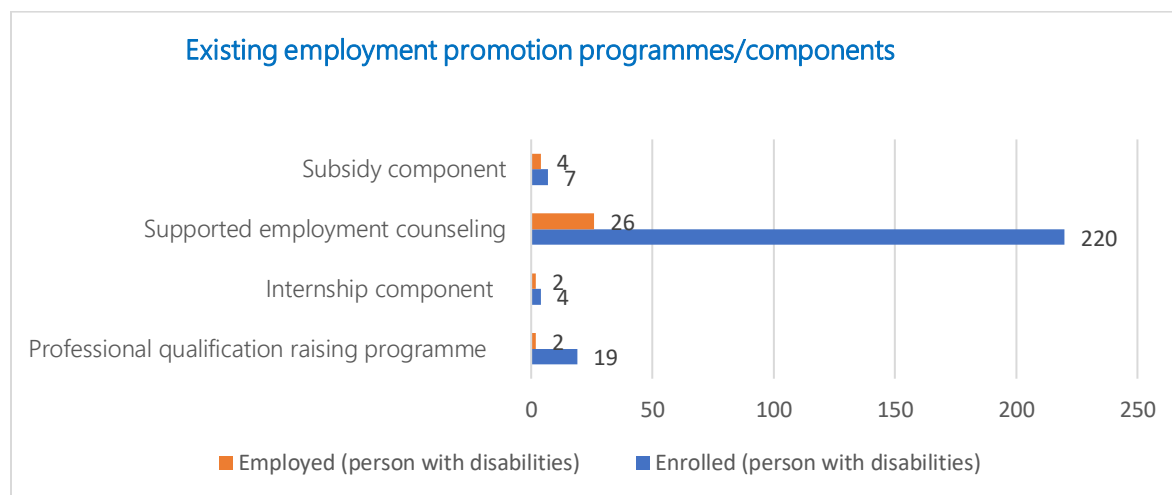
⁹³² The exception is Kutaisi International University, which employs 1 specialist; NNLE GIPA - Georgian Institute of Public Affairs, which has a position of inclusion coordinator; Georgian National University SEU Ltd, which employs 4 specialists. In addition, Caucasus International University Ltd employs contact persons.

⁹³³ Decree No. 732 of the Government of Georgia of December 4, 2020, available at: < <https://bit.ly/3rlkrTM> > [last accessed: 04.03.2022].

The country has not yet adopted the relevant legal or regulatory components in line with the EU approach, not all government agencies implemented the web accessibility standards (including WCAG, AA level)⁹³⁴ and no monitoring was carried out.⁹³⁵

23.4. Employment of persons with disabilities

Due to the lack of effective support mechanisms and appropriate conditions, in 2021 persons with disabilities again encountered obstacles in terms of employment, which was further exacerbated by the restrictions imposed due to the pandemic. The available data show that despite the employment promotion programmes available in the country, the number of job seekers is much higher than the actual number of employees. As of December 1, 2021, a total of 38 persons with disabilities were employed within the framework of the state employment promotion programmes and services.⁹³⁶



As for the public sector, a total of 128 people with disabilities are employed there. Of these, 65 are professional public servants, 15 are employed on managerial positions and 48 are contract employees.⁹³⁷

23.5. Mental health

In 2021, proper protection of mental health in the country lacked a specific strategy and action plan. Although the new strategy,⁹³⁸ approved in 2022, covers the main areas of development of the field, the indicators in the logical frame of the document are not comprehensive for any of the tasks. In addition, a number of issues were not fully covered by the strategic document.⁹³⁹ Some areas of mental health development are of a declarative nature and no clear ways are indicated for their implementation.⁹⁴⁰ It is

⁹³⁴ W3C WCAG is a web accessibility standard. For detailed information, see the publication: Web Accessibility for People with Disabilities in Georgia: State of Affairs and Global Best Practice. Morten Meyerhof Nielsen UNUEGOV, 2021, section 3.1., 18-19. The document is available on the website: < <https://bit.ly/3pJT64v> > [last accessed: 08.03.2022]

⁹³⁵ Ibid., 6.

⁹³⁶ Correspondence No. 01/21487-27 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, 12.2021.

⁹³⁷ Correspondence No. G2231-25.02.2022 of LEPL Civil Service Bureau.

⁹³⁸ Decree No. 23 of the Government of Georgia of January 18, 2022 on the Approval of the Mental Health Strategy of Georgia for 2022-2030. The document is available at: < <https://bit.ly/3rR67tq> > [last accessed: 26.01.2022].

⁹³⁹ Awareness raising, suicide prevention.

⁹⁴⁰ Deinstitutionalization, creation of community-based services.

noteworthy that we again find terminology containing stigma towards persons with disabilities in the strategy document.⁹⁴¹

The fact that, unlike the practice of previous years, the new mental health plan includes the components of mental health problem prevention should be positively assessed. In addition, a specific budget is indicated for most of the activities and an agency responsible for the implementation of the activity. However, in some cases the budget does not meet the scale of the activity.⁹⁴² No quantitative or qualitative indicators are given in many cases, which is necessary for the assessment of full implementation of a particular activity.⁹⁴³ The action plan does not clearly define the mental health process or deinstitutionalization of residential institutions, specific steps for the development of community health services, or ways to strengthen multi-profile hospitals.

The closure of inpatient and outpatient psychiatric units operating in multi-profile hospitals in 2021 should be assessed negatively.⁹⁴⁴ This hinders the transition to modern, community-based mental health services.

Significant deficiencies were identified in terms of safe management of patients in psychiatric services during the pandemic.⁹⁴⁵ Inter alia, poor infrastructure and overcrowding in most of the psychiatric facilities largely prevented the implementation of the Covid-19 preventive measures, improvement in epidemiological situation and safe management of patients. The awareness of most psychiatric care staff about the requirements of the Mental Health and Covid-19 Guidelines is extremely low.⁹⁴⁶

23.6. Persons with disabilities in the state care system

In order for Georgia to properly fulfill its obligations under the UN Convention on the Rights of Persons with Disabilities, it is particularly important to include the mechanisms needed to ensure equal opportunities for these persons in the state programmes. Nevertheless, no tangible changes have been made in this regard over the years. The existing services and programmes are characterized by certain shortcomings.

23.6.1. Deinstitutionalization

Activities aimed at deinstitutionalization of persons with disabilities were fragmented in 2021 and lacked a proper strategy and action plan. It is important for the State to complete the process of drafting and

⁹⁴¹ The term "invalidization".

⁹⁴² Activities: 1.12; 1.13, 1.15, 1.1.6; 1.3.2.

⁹⁴³ In the awareness raising section – no basic data or target improvement rate are given as indicators in activity No. 1.2.7.1. In Activity No. 1.2.4.1 - in addition to the quantitative indicator, it is important to add a qualitative indicator. In case of activity No. 1.3.1, the minimum number of primary care doctors, who should be trained in mental health issues, is not given as an indicator.

⁹⁴⁴ One inpatient and one outpatient mental health units were closed in multi-profile hospitals (JSC Evex Hospitals – Iv. Bokeria Center (inpatient) in Tbilisi) (JSC Evex Hospitals (Akhaltshikhe outpatient clinic).

⁹⁴⁵ Special Report of the Public Defender of Georgia on Safe Delivery of Mental Health Services in the Conditions of Covid-19, 2021, available at: <<https://bit.ly/3HPCmzc>> [last accessed: 07.03.2022].

⁹⁴⁶ Order No. 01-222/o of the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia of May 27, 2020, Annexes Nos. 1, 2, 3; available at: <<https://bit.ly/3LwxG3B>> ; < <https://bit.ly/3gLM8rk>> [last accessed: 30.03.2022].

approving the relevant documents in a timely manner, which should include mechanisms for the replacement of large institutions and community services with alternative care for persons/children with disabilities, as well as mechanisms for the prevention of institutionalization.⁹⁴⁷

At the same time, it is critically important for the State to ensure adequate protection of the rights of persons/children with disabilities in existing large institutions⁹⁴⁸ by taking effective steps to eliminate the identified shortcomings.⁹⁴⁹

23.6.2. Foster care

Although the foster care sub-programme has been implemented for several years, the services for children with disabilities are characterized by a number of challenges. Among them: lack of special foster carers, lack of services tailored to the individual needs of children with disabilities, quality of education of beneficiaries, scarcity of measures necessary to promote independent living, creation/provision of an accessible environment, etc.

As of December 2021, 1,405 minors were enrolled in the foster care programme, including 322 children with disabilities;⁹⁵⁰ as of November 2021, 19 children with disabilities were placed in kinship foster care and 2 children with disabilities were placed in emergency foster care.⁹⁵¹

23.6.3. Reintegration

Improving the social functioning of families, strengthening them and minimizing the risk of returning children to state care, as well as the amount (low) of the reintegration allowance⁹⁵² remain problematic in the reintegration sub-programme.

In 2021, 98 children were reintegrated,⁹⁵³ of which 18 were children with disabilities.⁹⁵⁴ In one case, the child returned to the foster parent.⁹⁵⁵

Continuous monitoring of the condition of the beneficiaries involved in the programme is important for the effectiveness of the programme.⁹⁵⁶

⁹⁴⁷ As of November, there are 40 children with disabilities in small group homes. 27 children with disabilities are placed in specialized small group home services for children with severe and profound disabilities or health problems; 39 children with disabilities or health problems are placed in the Tbilisi Orphanage. 3 children with disabilities are placed in 3 licensed educational institutions operating under the auspices of the Patriarchate.

⁹⁴⁸ Assisted living facilities for persons with disabilities in Dusheti, Dzevri and Martkopi, Tbilisi Orphanage, Kojori Orphanage for Persons with Disabilities.

⁹⁴⁹ Monitoring Report of the Public Defender of Georgia on Specialized Institutions for Children/Persons with Disabilities, 2021, available at: <<https://bit.ly/3uhKu8H>> [last accessed: 26.01.2022].

⁹⁵⁰ Letter No. 07/1786 of the Agency for State Care and Assistance for Victims of Trafficking of March 9, 2022.

⁹⁵¹ Letter No. 07/11043 of the Agency for State Care and Assistance for Victims of Trafficking of December 28, 2021.

⁹⁵² The reintegration allowance is GEL 100 per month for a child and GEL 160 for a child with different needs.

⁹⁵³ Letter No. 07/1786 of the Agency for State Care and Assistance for Victims of Trafficking, March 9, 2022.

⁹⁵⁴ November data, Letter No. 07/298 of the Agency for State Care and Assistance for Victims of Trafficking, 17.01.2022.

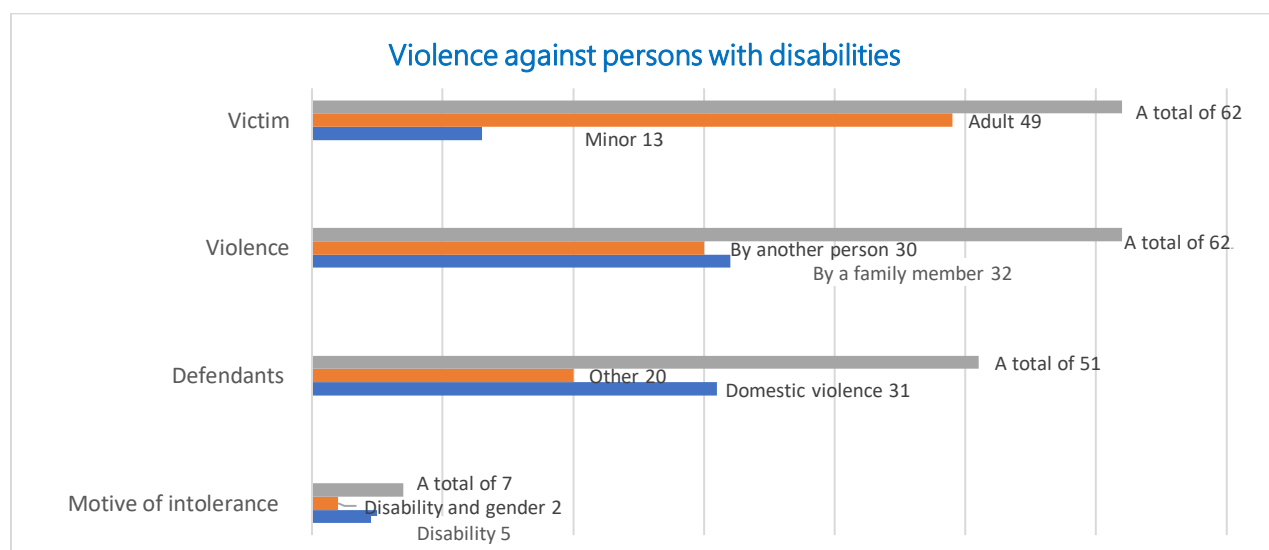
⁹⁵⁵ The reason for this is the inadequate care by the mother, which is caused by her state of health (she is a person with significant disabilities), lack of housing and income.

⁹⁵⁶ Monitoring conducted this year reveals that it is problematic to identify and prevent cases of violence by social workers in reintegrated families due to the shortage of social workers and complicated transportation. In addition, when children

23.7. Violence against persons with disabilities, domestic violence

The current situation of violence against persons with disabilities, including domestic violence, is characterized by a number of challenges, including: lack of information about rights, perception of violence by victims themselves, low reporting by victims, low awareness of law enforcement officials about issues of persons with disabilities, problems with identification of incidents of violence, as well as existence of the syndrome of impunity, often implying minimized identification and prosecution of culprits; less involvement of the Agency for State Care; problem with identification of persons with disabilities in criminal cases, during the judicial proceedings; timely and accurate identification of the type of disability and the relevant need; implementation of the principle of reasonable accommodation in practice.

The production of statistics on crimes committed on the grounds of disability remained a challenge in the reporting period.⁹⁵⁷ At the same time, the efforts of the agencies to cooperate in order to improve the data collection on crimes committed against persons with disabilities are welcome.⁹⁵⁸



Against the background of the given statistics,⁹⁵⁹ the LEPL Agency for State Care and Assistance for Victims of Trafficking studied only 10 cases of violence against persons with disabilities in 2021. During

live with their biological parents, social workers are less likely to see the need for constant monitoring. Special Report of the Public Defender of Georgia on the Monitoring of Childcare System - Effectiveness of Alternative Care, available at: <<https://bit.ly/3lOzEuT>> [last accessed: 20.01.2022].

⁹⁵⁷ The Ministry of Internal Affairs of Georgia keeps statistics according to the articles of the Criminal Code of Georgia, which does not consider the commission of a crime against persons with disabilities as a classifying circumstance. Correspondence NMIA 5 22 00075626 of the Ministry of Internal Affairs of Georgia, 11.01.2022.

⁹⁵⁸ Memorandum of Understanding on the Production of Statistics on Discrimination Crimes and Issuance of a Unified Report is available at: <<https://bit.ly/3o0As7T>> [last accessed: 17.01.2022].

⁹⁵⁹ The Public Defender's Office was provided with statistical data of 8 months of 2021 on crimes committed against persons with disabilities on the grounds of intolerance and violence by letter No. 13/764 from the Prosecutor's Office of Georgia (11.01.2022). As for the rest of the year, according to the information received, the data are being processed by the Prosecutor's Office in accordance with the above-mentioned memorandum.

the same period, the shelter services for victims of violence and crisis centers were used by 16 beneficiaries with disability status.⁹⁶⁰

23.8. Participation of persons with disabilities in political and public life

During the reporting period, there were still problems with the involvement of persons with disabilities in the political and public life. Significant challenges were identified in terms of the functioning of consultative councils in local self-governing entities.⁹⁶¹

As for the participation of persons with disabilities in elections, despite the measures taken by the Central Election Commission of Georgia,⁹⁶² some shortcomings were still detected in this direction.

As in previous years, accessibility of polling stations,⁹⁶³ as well as low level of awareness of the rights of persons with disabilities,⁹⁶⁴ remained problematic.

Recommendations

To the Government of Georgia:

- Develop a national accessibility plan in a timely manner with maximum involvement of persons with disabilities and organizations working on the rights of persons with disabilities;
- Develop relevant rules to ensure access to information, means of communication and other services for persons with disabilities. Government agencies should introduce web accessibility standards. Monitor the implementation of the above measures in practice.

To the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- Ensure modification, expansion of state employment programmes and development of new components based on the study of the needs of persons with disabilities and analysis of the implementation of the existing programmes;

⁹⁶⁰ Letter No. 07/11161 of the LEPL Agency for State Care and Assistance for Victims of Trafficking of December 30, 2021.

⁹⁶¹ Information was requested from 64 municipalities. As a result, it was found out that councils were still not formed in several municipalities (Dusheti, Tianeti, Kaspi, Kazbegi, Tsalka, Chiatura). During the reporting period, deliberative meetings were held only in 25 municipalities. The self-governments cited the pandemic as a reason for the above.

⁹⁶² Both in terms of facilitating the participation of persons with disabilities in the elections and training of members of the Precinct Election Commission.

⁹⁶³ Out of 3,664 polling stations across Georgia, 1,123 polling stations were accessible to voters with *physical disabilities (mobility issues)*. Out of 1,867 polling stations opened in the second round of elections, 648 polling stations were accessible to wheelchair users. As for the accessibility to the blind and deaf, as we were informed, the Central Election Commission does not have the relevant information.

⁹⁶⁴ In one of the polling stations in Batumi, persons with disabilities were subjected by members of the precinct commission to discrimination, stigma and insulting terms (case No. 11716/21 is being studied by the Department of the Rights of Persons with Disabilities). According to the letter (No. 01-02/1903 - 02.12.2021) received from the Central Election Commission on this issue, no complaint was filed with the Batumi Precinct Election Commission No. 79 about the mentioned fact and no superior election commission was informed of the fact. In accordance with legislation, the election administration was deprived of the opportunity to examine alleged misconduct by members of the Precinct Election Commission due to the termination of their powers.

- Develop guidelines/recommendations to help employers raise awareness of the rights of persons with disabilities, create an inclusive team, understand the universal design principles and provide reasonable accommodation in the workplace;
- Ensure the safe management of mental health problem patients in the conditions of Covid-19, through proper oversight;
- Develop a proper strategy for the organized management of deinstitutionalization of the mental health field. Develop community based services and the component of provision of housing for people with mental health problems;
- Take effective measures to prevent the closure of psychiatric units in multi-profile hospitals and encourage the replacement with relevant units in multi-profile clinics of specialized institutions, including by changing the funding system, if necessary;
- Ensure the timely development and approval of a deinstitutionalisation strategy with the involvement of persons with disabilities and organizations representing them, which should include, inter alia:
 - Launch of deinstitutionalization of the existing community services intended for 24 people;
 - Strengthening and preparation of the existing modern state alternative care services to meet the needs of persons/children with disabilities;
 - Provision of access to social rehabilitation and support services for people in state care;
 - Coverage of persons/children with mental health problems.
- Evaluate all stages of legal support system, develop a strategy for appropriate changes in line with the needs identified, in order to implement a systemic and coordinated policy in this direction;
- Develop effective mechanisms for finding/motivating foster carers;
- Substantially increase the amount of child reintegration allowance, provide support measures for families based on their individual needs.

To the Minister of Education and Science of Georgia:

- Conduct a research on general trends and needs of children with disabilities involved in preschool education, in cooperation with municipalities. Plan activities according to the problems identified;
- In active cooperation with the municipalities and with the involvement of the Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia, ensure in-depth processing of data within the framework of the State Programme for Monitoring Out-of-School Children, identify the needs of children with disabilities left beyond formal education and involve them in the relevant services, as well as, if necessary, strengthen the existing mechanisms;
- Conduct a research on the barriers that prevent persons with disabilities from pursuing higher education after school. Based on the results of the research, plan appropriate interventions;
- In cooperation with municipalities and relevant institutions, take appropriate measures to improve access to the infrastructure and educational materials of educational institutions for schoolchildren/university students with disabilities. Statistically process the measures taken.

- Conduct a research/evaluation of the quality of remote inclusive education at general and higher education levels;
- Assess the needs of students with disabilities involved in higher education and develop recommendations for higher education institutions based on the trends identified;
- Develop/strengthen support services for students with special educational needs (disabilities) with the involvement of the Ministry, the National Center for Educational Quality Enhancement and higher education institutions of Georgia. Inter alia, involve inclusive education specialists in the educational process.

To the Minister of Internal Affairs of Georgia:

- Produce statistics on the launch of investigations into crimes committed against persons with disabilities;
- Raise the qualifications of employees (including the staff of the 112 Service) for timely identification of persons with disabilities and their needs in criminal cases.

To the LEPL Agency for State Care and Assistance for Victims of Trafficking

- Provide training for foster carers. Before placing a child with disabilities in foster care, obtain information about accessible environment and assistive devices available in the foster family. And in case of absence of the above, provide them;
- Strengthen families of children with disabilities involved in the reintegration sub-programme in accordance with their needs, in order to prevent the return of children with disabilities to state care;
- Increase the number of social workers in order to effectively monitor the situation of children with disabilities involved in foster care and reintegration sub-programmes;
- Strengthen monitoring, develop and put into practice an effective methodology to prevent violence in specialized institutions for children/persons with disabilities;
- Strengthen cooperation with law enforcement agencies in investigating and responding to incidents of violence against persons with disabilities, including domestic violence.

To the Central Election Commission of Georgia:

- Ensure continuous training of central election administration staff on the rights and needs of voters with disabilities.

To the local self-government bodies:

- Ensure effective oversight of implementation of national accessibility standards by the relevant municipal services;
- Develop and implement programmes/services focused on promoting the employment of persons with disabilities;

- According to the needs of children, add inclusive education specialists to kindergartens, including psychologists, speech therapists, occupational therapists, assistants, mobility and orientation specialists, other specialists;
- Establish consultative councils provided for in Article 18 of the Law of Georgia on Early and Preschool Education and promote their effective functioning. Involve parents of children with disabilities in the mentioned councils;
- Conduct monitoring to improve inclusive preschool education and prepare relevant monitoring reports;
- Ensure that local councils working on issues of persons with disabilities work effectively, including in the context of the pandemic, by conducting online sessions.

24. Situation of Rights of Older Persons

24.1. Introduction

For years, the Public Defender has been talking about the rate of aging in the world, including the difficult socio-economic situation of older people in Georgia.⁹⁶⁵ The issues of realization of fundamental human rights by older people are becoming more and more relevant every year at the international level. Unfortunately, despite this, less attention is paid to the rights situation of older people in the country. For the last few years the Public Defender has been talking about the fact that there is no mechanism for the implementation of the main policy document relating to older people - State Policy Concept on Aging of Population in Georgia, as no action plan has been developed for the implementation of the concept after 2018. Consequently, the mechanism of assessing the exercise of all human rights by older people does not work in the country and the existing concept is an unenforced document.

It should be noted that in the reporting period, a positive step was taken in terms of the processing of data on domestic violence against older people. The Ministry of Internal Affairs of Georgia started producing statistics on violence against older people,⁹⁶⁶ which better reflects the exact data on violence committed against the older persons. The collection of statistics is important for further identification of circumstances provoking violence and development of appropriate prevention mechanisms.

In addition, in the reporting period, the Public Defender demanded⁹⁶⁷ a reduction in the interest rates of social (so-called "pension") loans.⁹⁶⁸ In particular, the Public Defender made a general proposal to the relevant agencies⁹⁶⁹ to study in depth the factors determining the interest rates of social loans and the reasons hampering the reduction, in active cooperation with JSC Liberty Bank, and in order to eliminate the reasons identified, to add special provisions to banking service conditions relating to the issuance of certain state benefits.

24.2. Social protection

The current social protection system for older persons mainly involves the appointment of a state pension after reaching the retirement age. The amount of the pension serves to address health issues, problems related to basic nutritional needs, purchase of medicines and satisfaction of minimal and essential needs. Meeting the essential needs alone is not enough for a dignified aging of older people.

⁹⁶⁵ See the Public Defender's 2020 Parliamentary Report, 398, as well as the Public Defender's 2019 Parliamentary Report, 370.

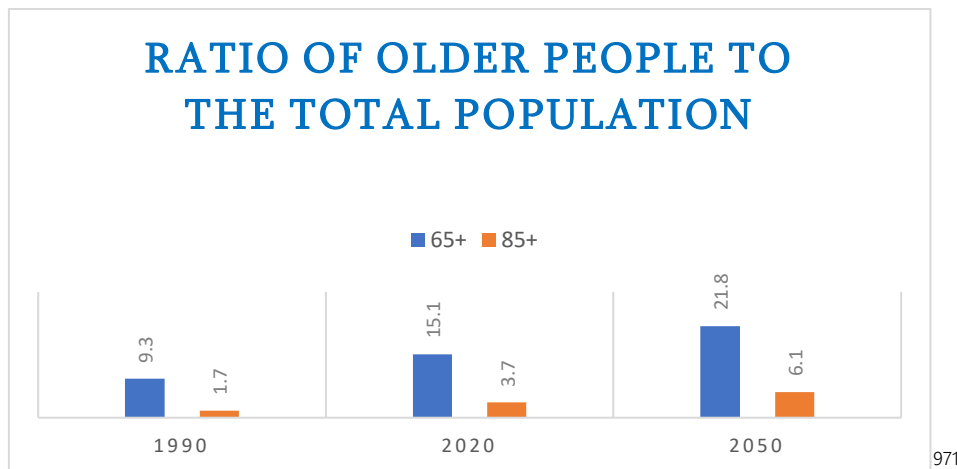
⁹⁶⁶ The Ministry had been producing statistics on violence against persons over 45 years of age.

⁹⁶⁷ See the electronic version of the general proposal: <<https://bit.ly/36JTPwI>> [last accessed: 30.03.2022].

⁹⁶⁸ Social Loan is a service of JSC Liberty Bank, the issuance of which relies on the social assistance of the client, as the source of its repayment is this very social assistance.

⁹⁶⁹ To the Chairman of the Interagency Commission for Determination of Terms of Banking Services, to the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs, to the Director of the LEPL Social Service Agency and to the President of the National Bank of Georgia.

It should be noted that a large number of older people are enrolled in the State Targeted Social Assistance Programme. In particular, 20% of the beneficiaries of the programme⁹⁷⁰ are aged 65 and over. The percentage of older people in the country is also increasing every year.



Unfortunately, neither local governments can offer the older persons appropriate programmes for their dignified life. The Public Defender constantly speaks about the fact that municipalities do not engage in social work on their territory, which should include active identification of older persons, assessment of their needs, identification of problems, implementation of appropriate programmes. Most of their budget programmes are designed to provide one-time assistance to the older persons and do not have a long-term vision to address the challenges facing older people.

24.3. Long-term care

Employees of the Public Defender's Office, together with members of Special Preventive Group (experts), in order to assess the rights situation and conditions of older people in 24-hour specialized institutions, visited institutions for older persons located in Western Georgia during the reporting period and prepared a monitoring report. In particular, visits were paid to: Geriatric Unit of the Batumi Medical Center Ltd, NNLE St. Martyr Ekaterine Charity House (Batumi), NNLE Young Pedagogues' Union - Home for the older persons (Anaseuli village), NNLE Charity House of Samtredia Municipality .

The visit made it clear that no monitoring is carried out in certain institutions. The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, in order to determine compliance with the norms set by the *Minimum Standards of Services for Persons with Disabilities and Older People in Specialized Day Care Institutions and the State Programme for Social Rehabilitation and Childcare*, periodically monitors only Kutaisi and Tbilisi homes and the so-called

⁹⁷⁰ As of December 2021, 1,020,375 people are registered in the socially vulnerable database, 194,536 of these are older persons.

⁹⁷¹ Information is available at: <<https://bit.ly/3qNgYFg>> [last accessed 30.03.2022], 16.

community organizations.⁹⁷² Three⁹⁷³ of the institutions inspected⁹⁷⁴ are not community organizations. They are registered as day care centers for older people, who are provided with state care services, although the situation and compliance of the institutions with the minimum standards are not monitored.

In addition, a significant challenge is the lack of information among the administration about the minimum standards of services for older people in the institutions. Consequently, they do not conduct the care process in accordance with the requirements of the standards.

In addition, there are significant problems in terms of health care. The rules of production of medical documentation are mainly disregarded, diagnoses are mainly identical and formal. In some cases, medical documentation is not produced at all. Such practices do not meet the real needs of older people, which is ultimately detrimental to their health. In addition, even when the beneficiary's psychosocial needs are identified, no legal procedures are launched to appoint a supporter.

Employees are not trained or informed in accordance with national legislation relating to violence or abuse. Older beneficiaries are not protected from violence or discrimination in accordance with the requirements of these standards.

Constant lockdown during the pandemic and problems with restrictions were significant challenges. In particular, beneficiaries specifically point out that due to the restrictions imposed, they are unable to leave the area, which has a particularly severe impact on their condition. Most of the beneficiaries spend most of the day in bed or in the corridor near the bed, the care service is limited to meeting their hygienic and physiological needs and they are not provided with individual psycho-physical-social rehabilitation.

Overcrowding is another problem.⁹⁷⁵ The area and equipment of some of the buildings do not correspond to the number of beneficiaries. As a result, there is not enough space and beneficiaries do not have the opportunity to arrange their personal space in accordance with their individual interests.

The compilation of beneficiaries' food menu was revealed as a significant violation. In most of the institutions, the menu is not made by a competent specialist and thus no appropriate intake of calories is taken into account.

The standards for the distribution of caregivers are also violated. In addition, caregivers do not have the opportunities for professional development.

24.4. Violence

Domestic violence against older people is mainly of an economic and psychological nature. Older people often cannot receive enough care or attention.

⁹⁷² Order No. 01-54/n of the Minister of Labour, Health and Social Affairs of Georgia on the Approval of Minimum Standards of Services for Persons with Disabilities and Older People in Specialized Day Care Institutions, 23/07/2014.

⁹⁷³ Geriatric Department of Batumi Medical Center Ltd, NNLE St. Martyr Ekaterine Charity House (Batumi), NNLE Charity House of Samtredia Municipality. NNLE Young Pedagogues' Union - Home for the older persons is a community organization for older people and, accordingly, the Agency conducts monitoring within the framework of the State Programme for Social Rehabilitation and Childcare.

⁹⁷⁴ Except for the NNLE Young Pedagogues' Union - Home for the older persons

⁹⁷⁵ The problem was identified in the geriatric department of Batumi Medical Center and St. Martyr Ekaterine Charity House.

As mentioned in the introduction, the Ministry of Internal Affairs of Georgia started producing statistics on domestic violence against older people from 2021. Over the years, the Public Defender had been noting that the production of statistics on violence against persons over 45 years of age did not reflect accurate data on violence against older people. Currently, statistics on domestic violence against older people aged 61+ are produced separately. 361 older men and 873 older women were identified as victims of violence in 2021, according to the restraining orders issued relating to domestic violence. In this direction, it is necessary to work with victims, study cases of violence, detect them in a timely manner and respond to them. It is also important to inform older people in detail about how to act in the event of violence against them.⁹⁷⁶

At the same time, the lack of psychosocial services and support programmes tailored to older victims of violence is problematic both at the central level and in local municipalities. It is important to have a comprehensive approach to the problem of domestic violence against older people, coordinate actions between state agencies and take specific steps.

Recommendations

To the Government of Georgia:

- Approve a new action plan for 2022-2023 based on the results of the review of the report on the implementation of the 2017-2018 Action Plan of the State Concept on Aging of Population in Georgia.

To the local self-governments:

- Collect statistics to assess the needs of older people living in their area (needs assessment document). Based on this information, develop targeted programmes for older people, reflect them in the budget, if necessary, increase budget and seek additional funds.

⁹⁷⁶ Report by the UN independent expert on the enjoyment of all human rights by older persons - Impact of the Coronavirus Disease (Covid-19) on the Enjoyment of All Human Rights by Older Persons, 21 July 2020, para. 56.

25. Protection and Civic Integration of National Minorities

25.1. Introduction

This chapter reviews a number of challenges relating to national minorities and civic integration, including the political integration of national minorities and participation in decision-making, access to education, inefficiency of the consultation mechanism, etc.

Unfortunately, significant part of the recommendations made by the Public Defender in the 2020 Parliamentary Report has not been implemented. In particular, no substantial steps were taken to promote the proportionate or equal participation of national minorities in the decision-making process in state agencies; No effective institutionalized consultation mechanisms, no employment programmes were created for the employment of representatives of national minorities in state agencies. The scarcity of measures taken specifically to promote the culture of national minorities is still problematic. It is also a challenge to promote and restore the activities of houses/centers of culture in the municipalities and villages of regions densely populated by national minorities.

25.2. Assessment of the 2021-2030 State Strategy for Civic Equality and Integration

On July 13, 2021, the 2021 - 2030 State Strategy and Action Plan for Civic Equality and Integration was approved on the basis of Decree No. 56 of the Government of Georgia. It is commendable that the Office of the State Minister for Reconciliation and Civic Equality held a number of meetings with representatives of national minorities during the reporting period relating to the draft strategy document.⁹⁷⁷ The Council of National Minorities of the Public Defender of Georgia was actively involved in this process. However, it is unfortunate that national minorities, despite their desire, were involved only in the development of the strategy, but were not given the opportunity to participate in the process of developing the action plan.

Before the approval of the state strategy, the Public Defender submitted recommendations and opinions to the State Minister for Reconciliation and Civic Equality. It should be noted that part of the submitted recommendations were reflected in the strategy. Some important opinions of the Public Defender, which were not reflected in the strategy, included the following issues: offering free Georgian language courses to members of the so-called mixed families and representatives of national minorities with permanent residence permits in Georgia, who are not citizens of Georgia and do not speak Georgian; Translating websites and social network pages of the self-government bodies of the regions densely populated by ethnic minorities into the native language of the local population, etc.⁹⁷⁸

It is to be welcomed that the strategy document includes the task of increasing the involvement of ethnic minorities in the state socio-economic programmes, and in order to fulfill the named task, the Action Plan for 2021-2022 provides for organization of information meetings. The Public Defender considers these measures important and hopes that the information meetings will not be fragmentary. It should also be noted that similar activities were carried out in 2017-2018 as well, although they did not yield real results.

⁹⁷⁷ Letter No. 2085 of the Office of the State Minister of Georgia for Reconciliation and Civic Equality of December 29, 2021.

⁹⁷⁸ Presentation of the recommendations was held on April 14, 2021, information is available at: <https://rb.gy/hiegxp> > [last accessed: 10.03.2022].

The strategy, as well as the action plan, does not contain records about activities to be carried out to increase the participation of national minorities in central or local executive bodies.

In summary, it can be said that achieving the goals set in the strategy through the activities defined in the action plan is impossible in many cases, as the activities are vague and of a formal nature.

25.3. Integration and participation in the decision-making process

Consultative mechanisms

As in 2020, the situation with regard to the consultation mechanisms available in the country remained unchanged in 2021.⁹⁷⁹ Consequently, no effective institutionalized consultative mechanisms were established for minorities at the executive level and no effective steps were taken to strengthen the existing mechanisms.

Although a Scientific Consultative Council of National Minorities⁹⁸⁰ was established in March 2021 within the framework of the Diaspora and Caucasus Issues Committee of the Parliament of Georgia, this fact cannot be considered as implementation of the recommendations of the Public Defender. Moreover, the establishment of the Consultative Council was criticized by the civil society. The Public Defender shares this criticism, arguing that the establishment of the Scientific Consultative Council of National Minorities within the framework of the Diaspora and Caucasus Issues Committee of the Parliament of Georgia implies the consideration of the above citizens, the groups living historically in our state, as diaspora, which strengthens the association of ethnic minorities with other states and hampers their integration.⁹⁸¹ It should be noted that according to the information provided by the Parliament of Georgia, the Scientific Consultative Council did not start its activities in 2021 and, consequently, it did not hold meetings with representatives of national minorities.⁹⁸² Unfortunately, the mandate, goals and objectives of the Consultative Council are still unclear.

Employment policy for national minorities

The Government of Georgia does not keep statistics on the number of representatives of national minorities employed in civil service. The importance of producing such statistics has been repeatedly pointed out by the Public Defender. The steps taken in 2021 in this regard should be welcomed. In particular, the Administration of the Government of Georgia informed us that since September 2021 the PMC Research Center has been conducting a study commissioned by UNDP for the Civil Service Bureau, within the framework of a programme supporting the public administration reform in Georgia. The study aims to assess whether civil service ensures representation of ethnic minorities. As part of the study,

⁹⁷⁹ 2020 Parliamentary Report of the Public Defender of Georgia, 319-320.

⁹⁸⁰ Open Society Foundation, NGOs Condemn Parliament's Decision to Consider Ethnic Minorities as Diaspora, available at: <<https://bit.ly/3AHFmdy>> [last accessed: 09.03.2022].

⁹⁸¹ Ibid.

⁹⁸² Letter No. 393/2-7/22 of the Parliament of Georgia of January 17, 2022.

relevant recommendations, including relating to the collection and processing of statistical data, will be developed for increasing the representation of ethnic minorities.⁹⁸³

National minorities are still very rarely represented and/or not represented at all in central government bodies (except for the Office of the State Minister for Civic Equality and Integration). As for the participation of national minorities in local self-governments in regions densely populated by national minorities, they are not proportionally represented at the local level either. For example, only 36% of the employees of the Marneuli Town Hall are representatives of national minorities, whereas 91.4% of the population of the Marneuli municipality are representatives of national minorities. In this regard, the situation is unfortunate in many other municipalities, including the Bolnisi municipality, where 69.1% of the population are members of national minorities, however, only 14% of those employed in the Town Hall represent national minorities.⁹⁸⁴

In terms of employment promotion policies for ethnic minorities, the Social Service Agency is carrying out employment support programmes in the country. There are also internships in civil service for the beneficiaries of the Georgian language programme (1+4 programme), although the latter is not considered a direct means of employment. It should be noted that the named programmes are not part of the consistent policy of the State, but more a fragmentary intervention to correct the problem. In addition, the State does not have accurate data on the number of representatives of national minorities benefitting from the programmes.⁹⁸⁵ According to the available information, 3 representatives of national minorities served internships at the Ninotsminda and Marneuli Regional Training Center of LEPL Zurab Zhvania School of Public Administration in 2021; 3 others served internships at the Ministry of Education and Science of Georgia, and 67 beneficiaries of the Georgian language programme (1+4 programme) were enrolled in the internship programme at the Office of the State Minister for Reconciliation and Civic Equality.⁹⁸⁶

25.4. Access to public services

It should be noted that ensuring universal access to public services is an essential part of inclusion,⁹⁸⁷ as the use of the relevant programmes and services plays an important role in creating equal socio-economic opportunities.⁹⁸⁸ Unfortunately, access to public services by national minorities in Georgia is hampered by language barriers, insufficient number of speakers of their native languages in the service provider institutions and financial problems. The main challenge is the language barrier. Properly

⁹⁸³ Letter No. GOV 5 22 00005019 of the Government of Georgia of February 17, 2022.

⁹⁸⁴ Social Justice Center, Critical Analysis of the State Strategy for Civic Equality and Integration, 2021, 6, available at: <<https://bit.ly/3tMZRUm>> [last accessed: 03.2022].

⁹⁸⁵ Ibid., 5.

⁹⁸⁶ Letter No. GOV 5 22 00005019 of the Administration of the Government of Georgia of 17 February 2022.

⁹⁸⁷ Opinion of the European Economic and Social Committee on Diversity Management in the EU Member States, para. 3.5, available at: << <https://rb.gy/30o5i8> > [last accessed: 07.03.2022].

⁹⁸⁸ Decree No. 356 of the Government of Georgia of July 13, 2021 on the Approval of State Strategy for Civic Equality and Integration for 2021-2030 and its Action Plan for 202-2022, Annex 1, 32-3.

informing ethnic minorities of the government programmes and public services in a language understandable to them represents the major challenge.⁹⁸⁹

Of the 6 municipalities most densely populated by national minorities, only the official website of the Akhalkalaki municipality is translated into a language understandable to national minorities.⁹⁹⁰

The Public Defender believes that translating the websites and social network pages of the self-governing bodies of the regions densely populated by ethnic minorities into the native language of the local population will enable representatives of national minorities to get timely and systematic access to information about relevant services and procedures.

25.5. Right to education

25.5.1. Early and preschool education

The Public Defender considers that the lack of a unified conceptual approach and vision, training of bilingual teachers, provision of institutions with appropriate training and methodological programmes, auxiliary textbooks and necessary material-technical resources remained problematic in 2021 like previous years.

The Public Defender has been pointing out for years that bilingual education is an essential basis for full civic integration of national minorities. It is welcomed that the Programme for the Introduction of State Standards in Preschools and Schools of National Minorities by January 2022 involves 25 non-Georgian language schools (12 Armenian and 13 Azerbaijani).⁹⁹¹ It is also welcome that the 8th grade certified textbooks were translated into Azerbaijani and Russian in 2021.⁹⁹²

Unfortunately, during the reporting period, like 2020, no effective measures were taken to develop and publish native language and literature textbooks for Armenian, Azerbaijani or Russian-language schools of Georgia and to ensure education with textbooks published in Georgia.⁹⁹³ It is true that working group meetings were held with representatives of Armenia and Azerbaijan during the reporting period, however, no detailed opinions were discussed on the development and publication of textbooks during the meetings.⁹⁹⁴

In the context of the Covid-19 pandemic, a particular challenge was the professional development of teachers for the effective management of the remote learning process. During the 2020-2021 academic year, about 150 teachers and school directors of Armenian and Azerbaijani schools were involved in the

⁹⁸⁹ Detailed information is available in the 2021 Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 27-34, available at: <<https://bit.ly/3MvxGSM>> [last accessed: 07.03.2022].

⁹⁹⁰ See: <<http://akhalkalaki.ge/>>; <<https://rb.gy/spwi6b>>; <<https://www.tsalka.gov.ge/>>; <<https://www.dmanisi.gov.ge/>>; <<https://bolnisi.gov.ge/>>; <<https://www.marneuli.gov.ge/>> [last accessed: 30.03.2022].

⁹⁹¹ Letter No. 5 21 00000068607 of the Ministry of Education, Science, Culture and Sports of Georgia, February 5, 2021.

⁹⁹² Ibid.

⁹⁹³ According to the information provided by the Ministry of Education and Science of Georgia, the books were granted humanitarian cargo status in 2021 and the Armenian side provided the Armenian language and literature books and teacher guides to Armenian public schools in Georgia (Letter No. 5 21 00000068607 from the Ministry of Education, Science, Culture and Sports, February 5, 2021).

⁹⁹⁴ Letter No. 5 21 000000686075 of the Ministry of Education, Science, Culture and Sports of Georgia, February 5, 2021.

training on the use of basic functions of the Microsoft Teams application; up to 60 assistant bilingual teachers were retrained.⁹⁹⁵ As of 2021,⁹⁹⁶ a total of 5,820 teachers are employed in Azerbaijani and Armenian schools.⁹⁹⁷ With this in mind, the number of teachers and school directors trained within the framework of the above-mentioned training is particularly low.

25.5.2. Teaching small ethnic group languages

The mother tongues of small national minorities has been taught since 2015. Development of language textbooks for small ethnic minorities (Ossetian, Chechen, Khundzuri/Avaric, Udi, Assyrian, and Kurdish/Kurmanji) and training of the relevant language teachers still remain to be systemic problems. It should be noted that according to the information provided by the Ministry of Education and Science, an initiative has been drafted relating to the training of teachers and it is planned to be discussed together with the National Center for Teacher Professional Development and the National Assessment and Examinations Center.⁹⁹⁸

25.5.3. Higher education

In 2021, a total of 1,340 students gained the right to pursue their studies according to the results of the Unified National Examinations, on the basis of Armenian, Azerbaijani, Russian and Ossetian language tests. 261 of them were admitted to higher education institutions on the basis of the Armenian language test, 1,072 – on the basis of the Azerbaijani language test and 7 – on the basis of the Ossetian language test.⁹⁹⁹ Out of the 1,340 persons, only 14.8% received state education grants. It is true that this figure increased in comparison with 2020, however, these statistics still show that a large proportion of students belonging to national minorities remain without funding. The Public Defender has been pointing out for years that it is important for the State to increase funding for students.¹⁰⁰⁰

The above-mentioned problem is exacerbated by the normative restriction, according to which, the beneficiaries of the Georgian language education programme are not covered by the programme directions, in which student's tuition fees are fully funded by the State.¹⁰⁰¹ In addition, the lack of Azerbaijani/Armenian language and literature subjects was revealed in higher education institutions during the reporting period, which does not allow students to specialize in this field.¹⁰⁰²

⁹⁹⁵ Ibid.

⁹⁹⁶ Ibid.

⁹⁹⁷ Teachers employed in Azerbaijani schools - 3,121, teachers employed in Armenian public schools – 2,699.

⁹⁹⁸ Ibid.

⁹⁹⁹ Letter No. 1220000036977 of the Ministry of Education, Science, Culture and Sports of Georgia, February 18, 2022.

¹⁰⁰⁰ 2020 Parliamentary Report of the Public Defender of Georgia, 412; 2019 Parliamentary Report of the Public Defender of Georgia, 382.

¹⁰⁰¹ Order No. 50/n of the Minister of Education and Science of Georgia of July 21, 2021 on the Approval of the Rules and Conditions for the Provision of Programme Funding for Higher Education Institutions by the Ministry of Education and Science of Georgia in the 2021-2022 Academic Year, Art. 6, para. 5.

¹⁰⁰² 2021 Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 25.

25.6. Media accessibility

It should be noted that, like 2020, in 2021, the Public Broadcaster provided four news programmes a day in the Azerbaijani¹⁰⁰³ and Armenian languages.¹⁰⁰⁴ The news programmes were transmitted through the relevant online platform, as well as through Kvemo Kartli and Samtskhe-Javakheti regional televisions.¹⁰⁰⁵ It should also be noted that the Broadcaster provides simultaneous interpretation of the main news programme into the Azerbaijani¹⁰⁰⁶ and Armenian languages,¹⁰⁰⁷ which is broadcast through regional televisions.

Despite the significant activities carried out by the Public Broadcaster, the practice of disseminating information in the languages of national minorities through the main online platform remains problematic, since residents of regions populated by national minorities have limited access to the Internet.¹⁰⁰⁸ A clear example of this is the online platforms statistics provided by the Public Broadcaster itself, according to which, in 2021, the simultaneously interpreted Moambe programme had only 500-1500 views daily.¹⁰⁰⁹ It is also noteworthy that in 2021, the Armenian-language edition of WhatsApp had 280 subscribers and the Azerbaijani-language edition had 300 subscribers.¹⁰¹⁰

It is important to ensure that the television broadcasting of news programmes is available in all regions populated by national minorities.

25.7. The Dmanisi conflict

The Dmanisi conflict that took place on May 16-17, 2021 during the reporting period, which began on the ground of an argument on everyday life issues and escalated into a two-day uncontrolled violent confrontation between ethnic Georgian and Azerbaijani citizens, is worth noting.¹⁰¹¹ By the correspondence received from the law enforcement agencies, the Public Defender was informed that 7 persons were charged with Article 126 (1¹) (b) (c) of the Criminal Code of Georgia (Beating or other violence, committed by a group, against 2 or more persons) and 6 people were identified as victims. The investigation did not reveal any motive of hatred on ethnic grounds.¹⁰¹²

It should be noted that hate crimes may have more than one motive.¹⁰¹³ Given the ethnic composition of the parties to the Dmanisi conflict and the fact that various sources point to the use of insulting phrases

¹⁰⁰³ Moambe in the Azerbaijani language at 12:00; Moambe in the Azerbaijani language at 15:00; Moambe in the Azerbaijani language at 18:00; Moambe in the Azerbaijani language at 20:00.

¹⁰⁰⁴ Moambe in the Armenian language at 12:00; Moambe in the Armenian language at 15:00; Moambe in the Armenian language at 18:00; Moambe in the Armenian language at 20:00.

¹⁰⁰⁵ Letter No. 67/07 of the Public Broadcaster, February 1, 2022.

¹⁰⁰⁶ Simultaneous interpretation, in addition to with set top boxes, is carried out in the relevant language section of the Public Broadcaster's website, via live broadcast or through the social network.

¹⁰⁰⁷ Simultaneous interpretation of the main news programme of the First Channel - Moambe at 21:00- into the Armenian and Azerbaijani languages.

¹⁰⁰⁸ 2020 Parliamentary Report of the Public Defender of Georgia, 323.

¹⁰⁰⁹ Letter No. 67/07 of the Public Broadcaster, February 1, 2022.

¹⁰¹⁰ Ibid.

¹⁰¹¹ Public statement of the Public Defender of Georgia of May 18, 2021, available at: <<https://rb.gy/cctjo3>> [last accessed: 10.02.2022].

¹⁰¹² Letter No. MIA 1 21 01340546 of the Ministry of Internal Affairs of Georgia of May 28, 2021; Letter No. MIA 8 21 02982973 of the Ministry of Internal Affairs of Georgia, November 12, 2021.

¹⁰¹³ Prosecuting Hate Crimes, A Practical Guide, OSCE, 63, available at: <<https://rb.gy/qx9hwh>> [last accessed: 10.02.2022].

on ethnic grounds during the confrontation,¹⁰¹⁴ the start of the violent incident on the ground of an everyday life issue does not rule out alleged ethnic motive, which could escalate the conflict into the scale we saw. Consequently, it remains necessary to strengthen civic integration policy in order to ensure correct legal assessment of the incident, in-depth understanding of all factors contributing to the conflict and prevention of similar cases in the future.¹⁰¹⁵

25.8. Challenges facing the Meskhetian community

The ratio of people deported from Georgia in 1944 (up to 20,000 families) to the Meskhetians who received Georgian citizenship after returning to Georgia (494 persons) indicates that the repatriation of Meskhetians cannot be considered complete. A similar assessment was reflected in the opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities.¹⁰¹⁶

Part of the Meskhetians are unable to get Georgian citizenship because they have already missed the deadline for the simplified procedure, while other available citizenship procedures create insurmountable barriers for them, including due to lack of language skills, citizenship of another country, or lack of permanent residence in Georgia.

Due to lack of citizenship, Meskhetians face legal and social problems. Integration and access to public services, including health care programmes, are problematic for them.¹⁰¹⁷ It should be noted that, in some cases, it is problematic for them to receive permanent residence permits. It is important for the State not to forget the historical ties of the Meskhetians with their homeland (Georgia) and to re-introduce simplified citizenship procedures for them.

25.9. Getting back historical last names

It should be noted that during the reporting period, the Azerbaijani community of Georgia launched a campaign "Give me back my last name". On July 26, 2021, on the initiative of the Salami platform, a draft law on the amendments to the Law of Georgia on Civil Acts was submitted to the Bureau of the Parliament of Georgia, which established a new rule for changing non-traditional/non-authentic last names by removing or changing the last name suffix.¹⁰¹⁸ The initiators of the draft law collected more than 25,000 signatures. The initiative was a significant experience of community self-organization for social changes.¹⁰¹⁹

¹⁰¹⁴ See for example: <<https://rb.gy/hykauu>> [last accessed: 10.02.2022]; Dmanisi Conflict - Ethnic Aspects of Controversy Started on Social Grounds, Social Justice Center, 2021, 8, available at: <<https://rb.gy/4pv4jb>> [last accessed: 10.02.2022].

¹⁰¹⁵ 2021 Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 36, available at: <<https://bit.ly/3MvxGSM>> [last accessed: on 08.03.2022].

¹⁰¹⁶ Opinion on Georgia of the Advisory Committee on the Framework Convention for the Protection of National Minorities, 2019, para. 43, available at: <<https://bit.ly/3HtSYwn>> [last accessed: 10.02.2022].

¹⁰¹⁷ Detailed information is available in the 2021 Special Report of the Public Defender of Georgia on the Situation of Equality and Combating and Preventing Discrimination, 34-36, available at: <<https://bit.ly/3MvxGSM>> [last accessed: on 08.03.2022].

¹⁰¹⁸ Social Justice Center, Dispute Launched on Behalf of the "Give Me Back My Last Name" Campaign Organizers, 07.12.2021, available at: <<https://bit.ly/3tfWrtb>> [last accessed: 11.03.2022].

¹⁰¹⁹ Ibid.

Several thousand signatures were considered invalid by the Parliament, which became the basis for making a negative decision on the bill. Later, Members of Parliament of Georgia submitted a new draft law on the same topic and representatives of national minorities had the opportunity to express their opinions about the document.

Recommendations

To the Government of Georgia:

- By 2022-2023 academic year, increase the amount of funding for the educational grants for students admitted to higher education institutions on the basis of only Azerbaijani-language and Armenian-language general skills tests;
- By 2022-2023 academic year, allocate finances to fund educational grants for students admitted to higher education institutions on the basis of only the Russian-language general skills test;
- By 2022-2023 academic year, increase funding for state educational grants for students admitted to higher education institutions on the basis of the Ossetian-language test;
- Develop new employment programmes to increase the employment of national minorities in state agencies;
- Establish effective institutionalized consultation mechanisms for minorities at the executive level;
- Promote state language learning among national minorities, including through the development of targeted programmes;
- Develop a long-term plan to prevent inter-ethnic conflicts in municipalities with conflict experiences and to strengthen inter-community dialogue.

To the State Minister for Reconciliation and Civic Equality:

- In 2022, develop and coordinate a plan offering free Georgian language courses oriented to the official language test to the Meskhetian community, including for the acquisition of Georgian citizenship;
- In 2022, develop and submit an initiative on updated mechanisms for granting citizenship to Meskhetians through the simplified procedure to the Government of Georgia.

To the Minister of Education and Science of Georgia:

- Introduce a multilingual education model in the schools of national minorities, develop textbooks required for multilingual education; train/retrain bilingual teachers;
- Translate textbooks issued in accordance with the national curriculum of Georgia into the languages of national minorities, publish and supply them to schools;
- Take effective measures to develop and publish native language and literature textbooks for Armenian, Azerbaijani and Russian-language schools of Georgia, and ensure the teaching of these subjects with textbooks published in Georgia;

- Ensure development and publication of language textbooks for small national minorities (Ossetian, Chechen, Khundzuri/Avaric, Udi, Assyrian and Kurdish/Kurmanji), as well as training of teachers;
- In order to promote multicultural programmes and specifically the culture of national minorities, promote cultural and educational activities; strengthen exchange programmes for university students and schoolchildren within the country;
- In cooperation with local self-governments, promote the restoration and operation of houses/centers of culture and implementation of educational programmes in the municipalities and villages of regions densely populated by national minorities.

To the Minister of Culture, Sports and Youth of Georgia:

- Make a detailed list of cultural heritage monuments related to national minorities and start conservation and/or restoration of these monuments.

To the Public Broadcaster:

- Ensure the television broadcasting of main news and analytical programmes in the languages of national minorities and facilitate access to and popularization of televised media products prepared in the languages of ethnic minorities in regions densely populated by national minorities.

To the Sagarejo, Lagodekhi, Telavi, Gardabani, Marneuli, Bolnisi, Dmanisi, Tsalka, Tetrtskaro, Akhaltsikhe, Akhalkalaki, Ninotsminda municipalities:

- Train teachers, including non-Georgian-speakers, create and provide educational resources, in order to improve the quality of education and effectiveness of activities in preschool institutions;
- Ensure that the materials posted on municipal websites and social network websites of the municipalities are translated into the mother tongues of non-dominant ethnic groups living in their territories;
- Ensure translation of normative acts of public interest adopted by them (including municipal social and health programmes) into the native languages of non-dominant ethnic groups living in their territories as soon as possible.

26. Human Rights in the Defence Field

26.1. Introduction

The purpose of the Public Defender of Georgia in the field of defence is to check the rights situation of conscripts and military servicemen of any rank through preventive visits. This chapter addresses the following issues: protection of military personnel from ill-treatment; their living and working conditions; epidemiological situation in the military units; as well as the economic, social, civil and political rights of the military personnel.

In 2021, within the framework of the monitoring, Public Defender's representatives visited 8 military units of the Ministry of Defence of Georgia,¹⁰²⁰ 3 militarized units of the Ministry of Internal Affairs of Georgia,¹⁰²¹ as well as 5 external protection units of the Main Division of External Protection and Information-Technical Security of the Penitentiary Department of the Special Penitentiary Service.¹⁰²² During monitoring, documentation and material conditions of the military units were checked, and individual interviews were conducted with the military servicemen.¹⁰²³

The Public Defender made 16 recommendations in the relevant chapter of the 2020 Parliamentary Report. Only small part of the recommendations was implemented. It should be noted positively that the recommendation¹⁰²⁴ repeatedly issued by the Public Defender relating to the provision of the translation service in the units of the Georgian Defence Forces was implemented in the reporting year. From November 2021, a quantitative quota of 6 non-staff translators' employment contracts was added to the units of the Georgian Defence Forces in order to provide translation services for military servicemen who do not speak Georgian.¹⁰²⁵ It is also welcome that the recommendations to raise the remuneration of the military servicemen serving in the penitentiary system and to provide full-fledged, three-course meal to each military serviceman when serving for 24 hours in the Facilities Protection Department of the Ministry of Internal Affairs were also implemented. Unfortunately, the recommendation issued to the Special Penitentiary Service to additionally pay the military servicemen enrolled in the external protection units of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service (except Unit 17) for food and transportation was not implemented.

¹⁰²⁰ Georgian Defence Forces: Special Operations Battalion "West" of Special Operations Forces; 10th Cadre Brigade of the National Guard; 2nd and 3rd Infantry Brigades of the Western Command; 6th Artillery Brigade of the Western Command; Central Command Point of the Aviation and Air Defence Command; Anti-Aircraft Missile Battalion of Air Defence Brigade; Field Camp "Paldo" of the 20th Cadet Brigade of the National Guard.

¹⁰²¹ Facilities Protection Department of the Ministry of Internal Affairs: 2nd subunit of the 2nd unit of the 3rd division; 1st subunit of the 1st unit of the 3rd division; 3rd subunit of the 1st unit of the 2nd division.

¹⁰²² External protection units 2, 3, 8, 14 and 17 of the Main Division of External Protection and Information-Technical Security of the Penitentiary Department of the Special Penitentiary Service.

¹⁰²³ In total, 85 people were interviewed in the Georgian Defence Forces, including 22 military servicemen, 11 female servicemen; 9 military servicemen were interviewed in the militarized subunits of the Facilities Protection Department of the Ministry of Internal Affairs, 11 military servicemen in the external protection units of the Special Penitentiary Service.

¹⁰²⁴ See, for example, 2020 Parliamentary Report of the Public Defender of Georgia, 429; 2019 Parliamentary Report of the Public Defender of Georgia, 394.

¹⁰²⁵ Letter No. MOD 22101211965 of the Ministry of Defence of Georgia, November 18, 2021.

The recommendation made to the Government of Georgia to increase the income tax benefit for veterans was not implemented either. In 2020, the Parliament of Georgia endorsed this recommendation and gave the relevant task to the Government, but since the task had not been implemented, we made a similar recommendation in 2021 as well. Later, the Parliament of Georgia reflected our recommendation in a different wording in the parliamentary resolution and instructed the Government to start working on a targeted state programme to support veterans. Unfortunately, this task has not yet been implemented either. According to the Administration of the Government of Georgia, a special inter-agency council is working to improve social programmes, benefits, employment and tax environment for veterans.¹⁰²⁶

26.2. Protection from ill-treatment

During the reporting period, like previous years, the practice of informal and collective punishment of military personnel was still a systemic problem.¹⁰²⁷ As a result of the visits paid to the military units, Public Defender's representatives have not received any information about violence against military servicemen by their superiors or other military servicemen in 2021, however, it turned out that the practice of informal and collective punishment of servicemen remains a systemic problem. In addition, similar practices were observed with regard to the military servicemen serving in the Facilities Protection Department of the Ministry of Internal Affairs and the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service.¹⁰²⁸

According to the information received, in case of committing disciplinary misconduct in certain battalions¹⁰²⁹ of the Georgian Defence Forces, military servicemen are forced to perform additional physical activities (running, push-ups, squatting) for punishment, without legal grounds,¹⁰³⁰ or are forced to stay in the military unit after working hours. In addition, it was found out that the latter is used as a method of informal punishment against contract military servicemen as well.¹⁰³¹

It should be noted that, as in previous years, the application of the principle of unlawful punishment of military servicemen - "All for one and one for all" remains a problem, which, in turn, implies that in the event of disciplinary misconduct by one military serviceman, informally, the whole platoon will be punished together with him. The Committee of Ministers of the Council of Europe specifically indicates that the practice of collective and informal punishment of military personnel, including unreasonable

¹⁰²⁶ Letter No. GOV 3 22 00007349 of the Government of Georgia of March 12, 2022, 34-35.

¹⁰²⁷ See the 2020 Parliamentary Report of the Public Defender of Georgia, 421.

¹⁰²⁸ See detailed information in the 2021 Report of the National Preventive Mechanism.

¹⁰²⁹ In the Special Operations Battalion "West" of Special Operations Forces; 10th Cadre Brigade of the National Guard; Central Command Point of the Aviation and Air Defence Command; Anti-Aircraft Missile Battalion of Air Defence Brigade.

¹⁰³⁰ Decree No. 124 of the Government of Georgia of March 17, 2016 on the Approval of Military Disciplinary Statute for the Military Servicemen of the Ministry of Defence of Georgia defines actions classified as disciplinary misconduct and the relevant disciplinary measures. The Statute does not provide for disciplinary sanctions such as making military servants perform additional physical activity or stay in the military unit against their will.

¹⁰³¹ In the 6th artillery, 2nd and 3rd infantry brigades of the Georgian Defence Forces.

restrictions on the right to leave the military unit during non-working hours and forced labour, is inadmissible.¹⁰³²

According to the Public Defender, illegal practices were observed in connection with the above-mentioned issues, which creates risks of ill-treatment, as in certain cases the use of such punishment, taking into account the health condition, physical ability and subjective perception of the military serviceman, and the complexity and form of physical activity, may cause more stress and suffering than it is associated with the military service and may reach a minimum level of inhuman and degrading treatment.¹⁰³³

During visits, when speaking to members of the Special Preventive Group, a number of military servicemen stated that they had been disciplined or informally punished by the above methods, although they did not use the grievance mechanism, mainly due to lack of information about such mechanisms or distrust towards them. According to the recommendation of the Committee of Ministers of the Council of Europe, in the event of disciplinary offences, disciplinary action should be taken against a military serviceman only as part of disciplinary proceedings and in the event the misconduct is proved, the person may be disciplined only in accordance with law. In addition, members of the armed forces charged with disciplinary offences should be informed promptly, in detail, of the nature of the accusations against them and should also be given the opportunity to appeal against the decision.¹⁰³⁴

The Public Defender believes that in order to remedy the harmful practices in defence forces, specific units of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service and the Facilities Protection Department of the Ministry of Internal Affairs, the agencies should inform military servicemen about legal forms of disciplinary sanctions and complaints mechanisms.¹⁰³⁵ In addition, the Military Police Department of Defence Forces of the Ministry of Defence, the General Inspection Department of the Ministry of Internal Affairs and the Ministry of Justice need to systematically control and eliminate the use of unlawful punishment and the practice of collective punishment against military servicemen.

With regard to the ill-treatment in the field of defence, the cases of inhuman treatment of military servicemen at the Iagluja military base by the officials of the Facilities Protection Department of the Ministry of Internal Affairs is worth noting. As a result of interviewing the victim and studying the case

¹⁰³² Recommendation CM/Rec (2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces, 24 February 2010, paragraphs 16 and 18, available at: <<https://bit.ly/3ImETRw>> [last accessed: 18.03.22].

¹⁰³³ Judgment of the European Court of Human Rights in the case of CHEMBER v. RUSSIA (7188/03), para. 49.

¹⁰³⁴ Recommendation CM/Rec (2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces, 24 February 2010, paragraphs 19 and 21, available at: <<https://bit.ly/3i11it7>> [last accessed: 18.03.22].

¹⁰³⁵ According to Article 20 of the Law of Georgia on the Status of Military Servicemen, military servicemen have the right to file proposals, applications and complaints with the bodies of state authorities and municipalities, as well as to their commanders or superiors, in accordance with the rules established by legislation of Georgia. In addition, they can appeal to the court against illegal actions of high officials. It is inadmissible to suspend the consideration of the submitted complaint or to punish or prosecute military servicemen for filing a complaint.

materials, Public Defender's representatives found out that the General Inspection Department of the Ministry of Internal Affairs had information about the above-mentioned criminal facts, however, they had not referred the case to the State Inspector's Office until the official request¹⁰³⁶ sent by the Public Defender's Office in writing.¹⁰³⁷

The Public Defender's Office reviewed the full materials of the investigation ongoing at the State Inspector's Office, which showed that several military servicemen serving at the Iagluja base at various times had been forced to clean floors, including in the bathrooms, while being kneeled, with toothbrush or shoe brush in their mouth, in order to be punished for a dispute with soldiers or other alleged misconduct.¹⁰³⁸ Several other similar cases of punishment and physical abuse were also identified. Given the gravity of the case, the investigation conducted by the State Inspector's Office, which was carried out thoroughly, timely and effectively, is to be welcomed. As a result, criminal proceedings were launched against two persons, who were found guilty by Tbilisi City Court. The investigation into the case is still ongoing, meaning that more similar vicious practices and responsible persons may be identified in the future. The Public Defender's Office will continue to follow the investigation.

26.3. Living and working conditions

26.3.1. Infrastructural problems

After the visits paid during the reporting period, before preparing the final monitoring report, the Public Defender wrote several letters to the Minister of Defence of Georgia, informing him about the infrastructural challenges identified in the military units during the visits, which required immediate response, and requested him to take appropriate measures.¹⁰³⁹ We were informed that efforts had begun to rectify some of the problems.¹⁰⁴⁰

During the reporting period, visits to military units of the Defence Forces and certain units of the Facilities Protection Department of the Ministry of Internal Affairs revealed that the provision of adequate housing and working conditions for military personnel remained a problem. In addition, there was a problem with bathrooms in virtually all military units, which is a significant challenge in terms of sanitation.

According to the Public Defender, the poor living conditions of military servicemen in the Special Operations Battalion "West" of Special Operations Forces, are particularly noteworthy, which clearly differ from the living conditions created for contract servicemen serving in the same battalion and are

¹⁰³⁶ Letter No. 14/7360 of the Public Defender's Office of July 27, 2020.

¹⁰³⁷ Public Defender's Office was informed by letter MIA 9 20 01750649 of July 30, 2020 of the Ministry of Internal Affairs of Georgia that the case was sent to the State Inspector's Service on July 29.

¹⁰³⁸ In one of the episodes, for the purpose of punishment, the military serviceman was forced to wear a helmet and a bulletproof vest (weighing about 11 kg in total), kneel and clean the territory of barracks with a toothbrush, for about 10-12 hours, so that everyone was watching.

¹⁰³⁹ Letter No.14-1/10223 of the Public Defender of Georgia of October 27, 2021; Letter No.14-1/10739 of November 11, 2021 and letter No. 303-7/247 of January 10, 2022.

¹⁰⁴⁰ Detailed information on the monitoring results is available in the annual report of the National Preventive Mechanism.

particularly grave. In addition, equal access to gyms and relaxation spaces is also problematic, which contradicts the obligation to create decent living conditions for the military personnel.¹⁰⁴¹

The monitoring also revealed the lack of assessment/survey of the needs of female servicemen or implementation of relevant measures. Most of the military units did not have separate toilets or showers for women, except for the newly renovated residential buildings,¹⁰⁴² where the military had not yet been housed. Women were not provided with any special hygiene items either.

Some shortcomings were also found in terms of compliance with the fire safety norms. Despite the presence of an emergency fire-rescue crew in the units, interviews with servicemen during the visits made it clear that most of them had no information about the fire safety rules.¹⁰⁴³ In addition, in some cases,¹⁰⁴⁴ the fire safety norms were not observed in residential buildings.¹⁰⁴⁵

26.3.2. Food and drinking water

The military servicemen in the Georgian Defence Forces are provided with three meals a day. Most of the servicemen surveyed during the monitoring said that they were satisfied with the variety, quality and amount of food and the possibility of receiving extra food. However, unfortunately, the issue of providing food for conscripts enrolled in the external protection units of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service remains a problem, which has been pointed out by the Public Defender for many years. The military personnel, who serve once every three days, are not supplied with food and they have to bring food from home during each shift.

It is welcome that all the military units visited by representatives of the Public Defender had continuous supply of drinking water. However, in some cases,¹⁰⁴⁶ insufficient number of water dispensers was identified as a problem, forcing military personnel to get drinking water from taps located in the yard or bathrooms. In this regard, we were informed by the Ministry of Defence¹⁰⁴⁷ that after the visit of Public Defender's representatives, additional water dispensers were installed in the residential units, as well as in the headquarters and guardhouse in order to eliminate the problem.

It should be noted that the problem with water dispensers was also identified in some of the of the Facilities Protection Department of the Ministry of Internal Affairs,¹⁰⁴⁸ where due to absence of water

¹⁰⁴¹ Article 4 of the Law of Georgia on the Status of Military Servicemen.

¹⁰⁴² 10th Cadre Brigade of the National Guard; 2nd Infantry Brigade of the Western Command; 3rd Infantry Brigade of the Western Command; 6th Artillery Brigade of the Western Command.

¹⁰⁴³ Decree No. 519 of the Government of Georgia of 21 August 2020 on the Approval of the Statute of the Internal Service of the Ministry of Defence of Georgia, Article 113.

¹⁰⁴⁴ For example, in the case of the 2nd and 3rd Infantry Brigades of the Western Command.

¹⁰⁴⁵ 2nd Infantry Brigade of the Georgian Defence Forces.

¹⁰⁴⁶ 10th Cadre Brigade of the National Guard.

¹⁰⁴⁷ Letter No. MOD22101279231 of the Minister of Defence of Georgia, 06.12.21.

¹⁰⁴⁸ Facilities Protection Department of the Ministry of Internal Affairs: the 2nd subunit of the 2nd unit of the 3rd division and 3rd subunit of the 1st unit of the 2nd division.

dispensers, military servicemen had to get drinking water from a tap located in the yard and keep them in disposable bottles.

26.4. Epidemiological situation

During visits, it was revealed that there were significant challenges in the military units in terms of controlling the coronavirus disease. In particular, there is no periodic testing of servicemen and it is conducted only in case of symptoms; servicemen are not supplied with personal protective equipment and they mostly do not wear masks. Deficiencies were also observed in the process of managing and recording the cases of alleged infection or contact with the infected. The visits also revealed shortcomings in the use and documentation of the use of the isolation rooms.¹⁰⁴⁹

The Public Defender considers that it is important for all military servicemen to be provided with personal protective equipment and, at the same time, to be constantly monitored in terms of wearing a mask. In addition, for safety reasons, periodic testing of military personnel is important.¹⁰⁵⁰ It is also necessary to properly inform the military about the coronavirus infection, both by holding information meetings and distributing-posting information materials. The information received from the Ministry of Defence, according to which, after the visits paid by the Public Defender's representatives, old information posters were updated in the military units, is welcomed.¹⁰⁵¹

26.5. Economic, social, civil and political rights

During monitoring, interviews with military servicemen made it clear that most of them (contract military servicemen) are not provided with housing, due to which some of the personnel are forced to stay at the base, whereas none of the above-mentioned military units are provided with entertainment or recreational opportunities. In addition, interviews with military servicemen revealed that they had not been able to enjoy any benefits in terms of paying rents or utility bills, nor were their transportation costs covered, even though the above is provided for in law.¹⁰⁵²

Unfortunately, the Public Defender's recommendation to increase the monthly salary of compulsory military servicemen enrolled in the Defence Forces has not been implemented and their salary is still GEL 50, which is not even enough to cover the cost of transportation from their residential place to the military unit for a month. In addition, the Public Defender welcomes the increase in the salaries of military servicemen enrolled in the external protection of the penitentiary system.¹⁰⁵³ However, it should be noted that the recommendation issued to the Special Penitentiary Service to additionally reimburse the military servicemen enrolled in the external protection units of the Main Division of External Protection and

¹⁰⁴⁹ In particular, according to the personnel of the 10th Cadre Brigade of the National Guard, the persons infected with Covid-19 were isolated in a specially designated place, although they could not provide any documentation, nor did they indicate which room was used for it.

¹⁰⁵⁰ At least, as it is introduced into the Penitentiary System. Penitentiary staff undergo PCR testing once a week and rapid antigen testing once every 72 hours.

¹⁰⁵¹ Reply No. MOD 2 21 01279231 received from the Ministry of Defence of Georgia, December 6, 2021.

¹⁰⁵² Article 19 of the Law of Georgia on the Status of Military Servicemen.

¹⁰⁵³ Before 2011, the monthly salary of the military servicemen enrolled in the compulsory military service in the system of the Special Penitentiary Service was GEL 5 and the monthly salary of military servicemen on duty every 3 days was GEL 52. From 2021, their salary has increased to GEL 70.

Information-Technical Security of the Special Penitentiary Service (except Unit 17) for the food and transportation costs has not been implemented so far.¹⁰⁵⁴

It is noteworthy that in the 2019 Parliamentary Report, the Public Defender issued a recommendation to the Ministry of Defence¹⁰⁵⁵ to amend the relevant order¹⁰⁵⁶ of the Minister of Defence in order to allow the military servicemen of any rank and civilian personnel to use cell phones during the working day, with some exceptions. The above-mentioned order has not been amended, however, as a result of the Public Defender's recommendation, the practice of using cell phones in the Defence Forces has changed. According to the military servicemen, they can use cell phones during non-working hours and breaks during training/exercises.

As a result of the monitoring conducted in the Facilities Protection Department of the Ministry of Internal Affairs, it was revealed that in some units,¹⁰⁵⁷ the personnel has access to neither TV nor other means of receiving information (radio, internet). In addition, according to the military servicemen, it is true that they are provided with military uniforms and military shoes, but the shoes are not season-appropriate, are of poor quality and thus they get damaged soon.

Recommendations

■ To the Government of Georgia:

Initiate changes and additions to the Tax Code and increase the income tax benefits for veterans to GEL 6,000 and for veterans with significant and severe disabilities - to GEL 9,000 from 2022.

To the Minister of Defence:

- Ensure that the Military Police Department of the Ministry of Defence systematically controls and eliminates the use of non-statutory punishment and practice of collective punishment of military servicemen, and provides the Public Defender's Office with information on the measures taken;
- Ensure that personnel of the Defence Forces are informed about their human rights, duties and complaints mechanisms; To this end, instruct a lawyer to hold individual and group meetings with the military at appropriate intervals; in addition, provide the above information to the military by a brochure written in an easily understandable language (without complicated legal terms and wording) and post information in places accessible to the military;
- Timely repair and make an inventory of the residential buildings of the Defence Forces, eliminate infrastructural problems and improve sanitary-hygienic conditions, fully equip the residential buildings with mosquito nets; Provide separate sanitary facilities for female military personnel in all military units;

¹⁰⁵⁴ 2020 Parliamentary Report of the Public Defender of Georgia, 430.

¹⁰⁵⁵ 2019 Parliamentary Report of the Public Defender of Georgia for, 394.

¹⁰⁵⁶ Order No. MOD 32000000115 of the Minister of Defence of Georgia of February 3, 2020.

¹⁰⁵⁷ 1st subunit of the 1st unit of the 3rd division of the Facilities Protection Department of the Ministry of Internal Affairs, the 3rd subunit of the 1st unit of the 2nd division and the 2nd subunit of the 2nd unit of the 3rd division.

- In all military units, allow compulsory military servicemen, on an equal basis with contract servicemen, to enjoy the gym and entertainment space;
- Instruct the commander of each sub-unit of the Defence Forces to ensure that the subordinates under his command study the fire safety and firefighting rules, in accordance with the requirements of the existing standard;¹⁰⁵⁸
- Provide all military servicemen with masks, post information on the rules of wearing a mask on the territory of military units and supervise the observance of the rules;
- Develop a rule for periodic testing of military personnel, ensure periodic testing of military personnel for Covid-19;
- Provide training for medical personnel on infection control in collaboration with the National Center for Disease Control and Public Health in order to increase the role and efforts of the medical personnel in preventing the spread of the virus, including by timely detection of suspected coronavirus cases, timely identification and isolation of contacts of confirmed cases, as well as proper documentation of the measures taken by the medical personnel;
- In order to prevent the spread of the virus, allocate isolation rooms in all military units, where persons with suspicious symptoms will be placed before receiving the test results;
- Provide each military serviceman enlisted in the Defence Forces with housing during the period of service - in compliance with the requirements of legislation,¹⁰⁵⁹ or consider rental assistance;
- Extend benefits provided for by legislation for transportation and utility costs¹⁰⁶⁰ to the personnel enlisted in the Defence Forces.

To the Minister of Internal Affairs:

- Ensure that the General Inspection Department of the Ministry of Internal Affairs systematically controls and eliminates the use of non-statutory punishment and practice of collective punishment of military servicemen, and provides the Public Defender's Office with information on the measures taken;
- Timely repair and make an inventory of the above-mentioned units of the Facilities Protection Department,¹⁰⁶¹ eliminate infrastructural problems and improve sanitary-hygienic conditions; fully equip the residential buildings with mosquito nets;
- Ensure the placement of a sufficient number of water dispensers in the units;
- Replace military uniforms with new, high-quality shoes, twice a year - during the winter and summer seasons;
- Provide the military servicemen enrolled in the Facilities Protection Department with access to the means of receiving information.

¹⁰⁵⁸ Decree No. 519 of the Government of Georgia of August 21, 2020 on the Approval of the Statute of the Internal Service of the Ministry of Defence of Georgia, Article 113.

¹⁰⁵⁹ Law of Georgia on the Status of Military Servicemen, Article 14.

¹⁰⁶⁰ Law of Georgia on the Status of Military Servicemen, Article 19.

¹⁰⁶¹ Facilities Protection Department of the Ministry of Internal Affairs: 2nd subunit of the 2nd unit of the 3rd division; 1st subunit of the 1st unit of the 3rd division; 3rd subunit of the 1st unit of the 2nd division.

To the Minister of Justice:

- Ensure that the General Inspection Department of the Ministry systematically controls and eliminates the use of non-statutory punishment and practice of collective punishment of military servicemen, and provides the Public Defender's Office with information on the measures taken;
- Reimburse military servicemen enrolled in the external protection units of the Main Division of External Protection and Information-Technical Security of the Special Penitentiary Service (except Unit 17) additionally for food and transportation costs.

27. Human Rights Situation of the Conflict-Affected Population

27.1. Introduction

Like previous years, 2021 was full of difficulties for the conflict-affected population. Representatives of the occupation regimes directly involved in the murders of Davit Basharuli in 2014, Giga Otkhozoria in 2016, Archil Tatumashvili in 2018 and Irakli Kvaratskhelia, a Georgian citizen killed at the Russian military base in the village of Nabakevi in the Gali district of occupied Abkhazia in 2019, are still unpunished. The most important challenge in the occupied regions remains access to education in the mother tongue, due to which the number of schoolchildren is decreasing every year in both regions. In order to continue studies in Georgian, parents have to leave their permanent residence and take their children to schools located in the Georgian-controlled territory. The situation is still alarming in terms of free movement. Apart from the closure of the so-called checkpoints, one of the major problems is the availability of the necessary documents to cross the dividing line. The dire situation and humanitarian crisis in the occupied Akhgori district since September 4, 2019, as a result of the arbitrary closure of the crossing point, is particularly noteworthy.

The resumption of illegal borderization¹⁰⁶² by the occupation forces in the villages of Jariasheni, Mejriskhevi and Khurvaleti in the Gori municipality, as well as in the villages of Atotsi and Takhtisdziri in the Kareli municipality and the village of Gremiskhevi in the Dusheti municipality, was an important challenge in the reporting period, harming the security situation on the ground and complicating the daily lives of the locals.

27.2. The pandemic and protection of the right to health in the occupied territories

Due to the dire humanitarian situation and artificial isolation, the population living in the occupied regions was in particular danger during the pandemic. From the very first days of the spread of the coronavirus, the Georgian authorities expressed their full readiness to help the people living in the occupied territories. According to the decision of the Government of Georgia, citizens living in the occupied regions were given the opportunity to get vaccinated against the Covid infection without registering on a special portal. However, both the de facto Abkhazia¹⁰⁶³ and Tskhinvali authorities¹⁰⁶⁴ rejected the Georgian Government's offer. The de facto authorities considered the issue of vaccination of the population only with the help of their ally and strategic partner, the Russian Federation.¹⁰⁶⁵ Moreover, the authorities of occupied Tskhinvali threatened to prosecute citizens living in the occupied territories if they would move to the territory controlled by the Georgian Government for treatment or vaccination.¹⁰⁶⁶

¹⁰⁶² Occupational trenches. Information is available at: <<https://bit.ly/3LzzCsS>> [last accessed: 30.03.2022].

¹⁰⁶³ The de facto authorities of Abkhazia consider vaccination only with the assistance of Russia. Information is available at: <<https://bit.ly/34Nu8tz>> [last accessed: 30.03.2022].

¹⁰⁶⁴ Tskhinvali also rejected Tbilisi's proposal to vaccinate population against Covid-19. Information is available at: <<https://bit.ly/3BfS19r>> [last accessed: 30.03.2022].

¹⁰⁶⁵ The de facto authorities of Abkhazia consider vaccination only with the assistance of Russia. Information is available at: <<https://bit.ly/3JITwWg>> [last accessed: 30.03.2022].

¹⁰⁶⁶ Information is available at: <<https://bit.ly/3HsRwdp>> [last accessed: 30.03.2022].

As of January 2022, there are 40,875 confirmed cases of Covid-19 in occupied Abkhazia, 35,413 people have recovered and 588 have died.¹⁰⁶⁷ As for occupied Tskhinvali, 11,276 cases of infection were reported, 10,362 people have recovered and 199 people have died.¹⁰⁶⁸

The categorical negative position of the occupied Tskhinvali regime with regard to the acceptance of assistance from the Georgian authorities and the complete closure of the checkpoint made it even more difficult to receive medical care on the ground. As a result, a number of people died in the occupied territories. Despite the difficult situation, the transfer of critically ill patients from Akhgori to Georgian-controlled territory remains a challenge. The de facto authorities continue to impose illegal and discriminatory restrictions on the issuance of movement permits.

According to the Public Defender, the faulty medical services and infrastructure in the occupied territories, unfavorable level of qualifications of the medical staff and high prices for services, as well as the complicated movement of patients at the dividing line, have a negative impact on the right to health. Given these circumstances, most of the population living in the occupied territories are trying to get medical care outside the occupied territories.

Despite the restrictions, in 2021, 1,026 patients were transferred from both occupied regions, including 571 from Abkhazia and 29 from the Tskhinvali region.¹⁰⁶⁹

Given the above situation, the state programmes for health and social protection available in the Georgian-controlled territories are also vital for people living in the occupied territories.

During 2021, 1,289 patients from the occupied territories were funded under the Referral Services. Of these, 1,069 were from occupied Abkhazia and 220 were from occupied Tskhinvali.¹⁰⁷⁰

27.3. Security

27.3.1. Illegal detentions

The vicious practice of detaining persons living in the Georgian-controlled territories and occupied regions continues on the occupation line, in the direction of both Abkhazia and South Ossetia. According to the official data, in 2021, 70 people (including 1 juvenile, 59 men and 10 women) were detained on the occupation line, in the direction of the Tskhinvali region, and 11 people were arrested in the direction of occupied Abkhazia (including 9 men and 2 women).¹⁰⁷¹

¹⁰⁶⁷ Covid Cases Spike in Occupied Abkhazia, 2022, 26 January, information available at: <<https://bit.ly/36B6CBt>> [last accessed: 30.03.2022].

¹⁰⁶⁸ Cases of coronavirus in occupied Tskhinvali, 2022, January 25, information available at: <<https://bit.ly/3uNDgcC>> [last accessed: 30.03.2022].

¹⁰⁶⁹ Letter No. 51 of the Office of the State Minister of Georgia for Reconciliation and Civic Equality of 14 January 2022.

¹⁰⁷⁰ Letter No. 01/5079 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, February 21, 2022.

¹⁰⁷¹ Letter No. SSG72200010807 of the State Security Service of Georgia of January 24, 2022.

Irakli Bebug, a Georgian citizen illegally detained by the occupation regime in the occupied Gali district, remains in illegal imprisonment, after he was sentenced by the de facto court to 9 years in prison.¹⁰⁷² According to the Public Defender, the occupation regime has further aggravated the illegal practice of detaining persons for the so-called illegal border crossing. In contrast to previous years, when the illegally detained persons were mainly released after the establishment of an administrative offence and imposition of a fine, the cases of long-term illegal imprisonment have recently become frequent. As of February 2022, 7 citizens remain in illegal imprisonment in the occupied territories of Georgia - Irakli Bebug in occupied Abkhazia and Vladimer Kaniashvili, Kakhaber Natadze, Mamuka Chkhikvadze, Zaza Megrelishvili, Tamaz Gogichashvili and Lasha Khetereli in occupied Tskhinvali.¹⁰⁷³

27.3.2. Ill-treatment

In addition to illegal detentions of citizens, the Public Defender¹⁰⁷⁴, in her annual reports, has been talking¹⁰⁷⁵ about the beating, ill-treatment¹⁰⁷⁵ and torture of prisoners in temporary isolators and prisons in the occupied territories for years.

Gennady Bestaev, a Georgian citizen, who was illegally detained by the occupation regime for crossing the so-called border and "drug smuggling" and illegally sentenced by the de facto court of occupied Tskhinvali to 3 years in prison, died in February 2022, after suffering a stroke in the de facto Tskhinvali prison.¹⁰⁷⁶

During the reporting period, information was spread about 24-year-old Anri Ateiba, who died of injuries received during his beating in the Gagra police pre-trial detention center.¹⁰⁷⁷

The illegal actions of the occupation regime grossly violate the rights and freedoms of the population of the occupied territories. It is true that the Public Defender of Georgia uses all international formats to provide the international community with as much information as possible about the dire human rights situation in the occupied territories,¹⁰⁷⁸ however, the Public Defender believes that it is important to allow international human rights missions to enter the occupied territories and assess the situation on the ground.

The whereabouts of 5 ethnic Ossetians, who went missing after the 2008 war, including the case of a minor, who went missing allegedly in Georgian-controlled territory in August-October 2008, are still being

¹⁰⁷² Statement of the State Security Service of October 1, 2020, available at: <<https://bit.ly/39qTMnx>> [last accessed: 30.03.2022].

¹⁰⁷³ Letter No. SSG12200027713 of the State Security of Georgia of February 22, 2022.

¹⁰⁷⁴ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹⁰⁷⁵ Public Defender's Statement of October 25, 2019 on Beating and Ill-Treatment of Prisoners in the Tskhinvali Temporary Placement Isolator, available at: <<https://bit.ly/37P3SNj>> [last accessed: 30.03.2022].

¹⁰⁷⁶ Gennady Bestaev died at the clinic after three months of treatment, available at: <<https://bit.ly/3tRBvZF>> [last accessed: 30.03.2022].

¹⁰⁷⁷ Putting 24-year-old Anri Ateiba in a situation that resulted in his suicide in a police station caused outrage in occupied Abkhazia, information available at: <<https://bit.ly/36hj9JG>> [last accessed: 30.03.2022].

¹⁰⁷⁸ Statement of the Public Defender of Georgia on October 25, 2019, available at: <<https://bit.ly/2W7hYEI>> [last accessed: 30.03.2022].

discussed in international formats.¹⁰⁷⁹ It is important that for the investigative bodies to conduct effective investigations into alleged crimes committed during and after the August 2008 hostilities, including cases of missing persons, in an effective and timely manner.

27.4. Freedom of movement and problems relating to documentation

One of the most important challenges is freedom of movement in the occupied territories. The formal regime established by the de facto authorities and the Russian border forces restricts the movement of local residents for artificial reasons. From time to time, the so-called checkpoints are fully closed. The situation in occupied Akhagori is alarming. From September 4, 2019, in the direction of occupied Akhagori, the de facto authorities completely closed¹⁰⁸⁰ the so-called checkpoint used by up to 400 people daily.¹⁰⁸¹ As a result, locals have been completely isolated and their situation has further deteriorated.

At this stage, the so-called checkpoint on the Enguri Bridge is open in both directions, though some restrictions are still in place. According to the decision of the de facto authorities, since 2022, people living in occupied Gali have been banned from travelling with the so-called form No. 9.¹⁰⁸²

The ban on the use of the form No. 9 by the de facto Abkhaz authorities serves to create an additional barrier for the local population. A large proportion of Gali residents are against getting a residence permit, which grants the status of a foreigner. The residence permit has strict criteria and is valid for 5 years, which may be used as an additional pressure mechanism against the residents of Gali. It does not give a person the right to own real property either, which is one of the most important factors.

The form No. 9 had been used by approximately 12,000 people before 2017. After 2017, the de facto administration further aggravated the situation by removing old Abkhazian passports and replacing the form No. 9 with a residence permit.¹⁰⁸³

At this stage, movement across the so-called Enguri checkpoint is allowed only with the following documents: 1) de facto (new) passport;¹⁰⁸⁴ 2) so-called residence certificate; 3) for persons under 14 - birth certificate; 4) Georgian passport for those who have a permit to enter the territory of Abkhazia (the so-called visa).

As for the de facto passports, since the residents of the Gali district are Georgian citizens, the de facto authorities of Abkhazia do not give the so-called passports to them, unless they renounce Georgian citizenship. Georgia and international community do not recognize Abkhazian citizenship. Therefore, a person with only an Abkhazian passport will be considered a stateless person. So, offering an Abkhazian

¹⁰⁷⁹ See details in the 2014 Parliamentary Report of the Public Defender of Georgia, 848.

¹⁰⁸⁰ The situation has been tense since the end of August 2019 after the occupation regime demanded from the Georgian authorities to remove the police checkpoint opened near the village of Chorchana in the Khashuri municipality.

¹⁰⁸¹ Letter No. SSG 6 20 of the State Security Service of Georgia of October 21, 2020.

¹⁰⁸² Up to 5,000 people living in Gali will have to get a new document. Information is available at: <<https://bit.ly/350Gqit>> [last accessed: 30.03.2022].

¹⁰⁸³ 2018 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹⁰⁸⁴ Old de facto passports were withdrawn in 2014.

passport in exchange for Georgian citizenship would in fact mean that these persons would become stateless persons.

As of 2021, 20,224 people have the so-called residence permits in the occupied Gali district and 1,065 people have de facto passports. As for occupied Akhagori, according to the representatives of the de facto passport service, about 80% of the population had the so-called passports at the end of 2020. In 2021, 43 de facto passports were issued.¹⁰⁸⁵

In the Akhagori district, as in 2020, persons need a "pass" issued by the de facto Tskhinvali security service to move across the so-called checkpoint. According to the procedure, a person submits an application, explaining the need for this "document". In fact, this so-called "pass" is issued on the basis of paying a certain amount of a bribe, which is requested from the locals by the so-called security officials.¹⁰⁸⁶

The Public Defender believes that the arbitrary restrictions imposed by the de facto authorities on freedom of movement have a negative impact on the exercise of various other rights by the local population, including the right to health, education, security, decent living standard, family life and freedom of religion.

27.5. Right to education

The issue of access to education in the mother tongue in the occupied district of Gali was further aggravated during the reporting period. By the decision of the de facto ministry of education, teaching in Georgian was completely banned,¹⁰⁸⁷ including in the 11th grade, and the mother tongue was transformed into a subject similar to foreign languages and literature.¹⁰⁸⁸ The Public Defender has been talking about the challenges relating to the realization of the right to education in detail in her annual reports for years.¹⁰⁸⁹

According to the data of the 2021-2022 academic year, there are 30 secondary schools, 9 preschools and 5 art schools in the occupied Gali district. As of January 2022, 3,797 students are enrolled in schools from 1st through 11th grade.¹⁰⁹⁰ Their number in the 2020-2021 academic year was 3,803.¹⁰⁹¹ 961 teachers and technical staff are employed in all 30 schools.¹⁰⁹² There are 509 children in kindergartens. In 2020-2021, that number was 557.¹⁰⁹³ As we can see, the number of children is decreasing from year to year.

¹⁰⁸⁵ Letter No. 333 of the Office of the State Minister for Reconciliation and Civic Equality of March 1, 2022.

¹⁰⁸⁶ Letter No. 1310 of the Office of the State Minister for Reconciliation and Civic Equality of October 27, 2020.

¹⁰⁸⁷ Until 2021, Georgian-language education had been allowed in the 11th grade. It is completely forbidden at this stage.

¹⁰⁸⁸ Complete ban on the Georgian language in Gali schools. Information is available at:

<<https://bit.ly/33jAPmH>> [last accessed: 30.03.2022].

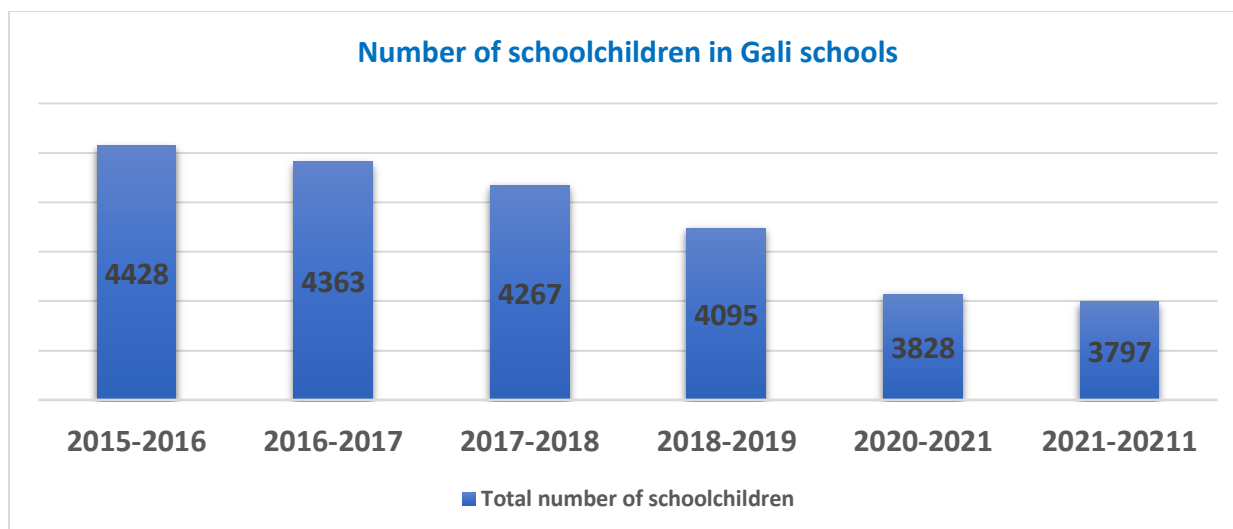
¹⁰⁸⁹ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia. Information is available at: <<https://bit.ly/3oFHLCf>> [last accessed: 30.03.2022].

¹⁰⁹⁰ Letter No. MES3220000062943 of the Ministry of Education and Culture of the Autonomous Republic of Abkhazia of 25 January 2022.

¹⁰⁹¹ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹⁰⁹² Letter No. MES3220000062943 of the Ministry of Education and Culture of the Autonomous Republic of Abkhazia of 25 January 2022.

¹⁰⁹³ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.



One of the major challenges in the occupied Gali district was online education during the pandemic. Out of 110 students enrolled in 2019, 47 students of higher education institutions were suspended from funding in 2020-2021 due to lack of mandatory credits. Most of them cited complicated access to the Internet and computers as the reason.¹⁰⁹⁴ Another important issue is the recognition of the general education received in the occupied territories.¹⁰⁹⁵ The Education Recognition Commission of the Ministry of Education and Culture of the Autonomous Republic of Abkhazia, after reviewing the school documents submitted, recognized the full education of 294 students in 2021.¹⁰⁹⁶ Professional training and development of teachers working in the occupied territories remain problematic, which was further exacerbated by the pandemic. Unfortunately, no trainings/activities were conducted in 2021.¹⁰⁹⁷ As for the occupied district of Akhagori, one Georgian school was closed (Akhmaji school) in 2021 due to lack of schoolchildren. 7 Georgian schools had been functioning until 2021. At this stage, only 6 Georgian schools are functioning. According to the data of the 2021 academic year, a total of 58 children are enrolled and 115 teachers are employed in the Georgian schools of Akhagori. In 2020, there were 63 children.¹⁰⁹⁸ 5 out of the 6 schools teach in Georgian, but only from the 9th to the 11th grade,¹⁰⁹⁹ while in 2020, teaching in Georgian was allowed from the 7th grade.¹¹⁰⁰ In other cases, only 5 hours are devoted to the Georgian language a week. From the 1st to the 6th grade, education is allowed only in Russian in all schools.¹¹⁰¹ All this indicates that the situation has worsened.

¹⁰⁹⁴ Letter No. MES3220000062943 of the Ministry of Education and Culture of the Autonomous Republic of Abkhazia of 25 January 2022.

¹⁰⁹⁵ Order No. 147 of the Minister of Education and Science of Georgia of March 19, 2009.

¹⁰⁹⁶ Letter No. MES3220000062943 of the Ministry of Education and Culture of the Autonomous Republic of Abkhazia of 25 January 2022.

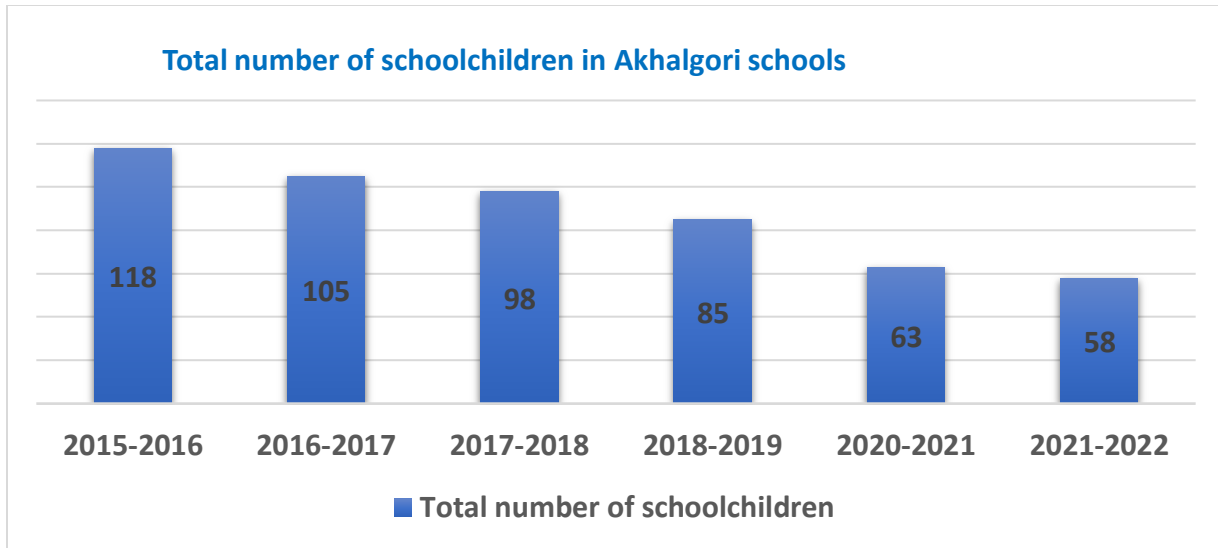
¹⁰⁹⁷ Letter No. MES3220000029733 of the LEPL National Center for Teacher Professional Development of January 17, 2022.

¹⁰⁹⁸ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹⁰⁹⁹ Information provided to the Public Defender by the education service of the South Ossetian administration, January 2022.

¹¹⁰⁰ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹¹⁰¹ Information provided to the Public Defender by the education service of the South Ossetian administration, February 2021.



The number of schoolchildren in Akhalgori schools is decreasing every year. In the 2021 academic year, out of 6 schools of Akhalgori, 2 did not have a 1st grader at all.

Name of school/number of schoolchildren by grades	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	In total
Georgian-language school of Akhalgori	4	0	2	4	2	2	6	2	5	3	5	34
Russian-language school of Akhalgori	8	7	11	5	8	7	6	6	6	3	6	73
Ikoti	1	1	1	1	3	1	1	2	1	1	1	14
Balaani	0	0	0	0	0	0	1	0	2	0	0	3
Korinta	1	0	0	0	0	0	1	0	0	1	0	3
Zemo bolo (basic)	0	1	0	0	0	1	0	1	1	0	0	4
In total	14	9	14	10	12	11	15	11	15	8	12	131

As in previous years, the de facto Tskhinvali security committee continues to use the practice of intimidation of teachers and children. The director of the Georgian school of Akhalgori was fired because she refused to expel students who had moved from the Tserovani IDP settlement to Akhalgori to study.¹¹⁰²

The above cases prove that the policy of pressure on ethnic Georgian population and their discrimination on ethnic grounds has been deliberately pursued in the occupied regions for years. This was manifested

¹¹⁰² The former director of the Georgian school in Akhalgori is fighting to protect his rights. The information is available at: <<https://bit.ly/3uNnXR4>> [last accessed: 30.03.2022].

primarily in the restriction of access to education in the mother tongue. The Public Defender has been pointing out the challenges relating to education in the occupied territories in her annual reports for years.¹¹⁰³

As for the higher education in the occupied territories, on the basis of the order of the Minister of Education of Georgia,¹¹⁰⁴ in 2021, 1,829 people from the occupied regions were enrolled in higher education programmes and 3 persons were enrolled in vocational education programmes without passing the unified national exams.¹¹⁰⁵

402 students enrolled in higher education institutions from occupied Abkhazia and the Tskhinvali region received state grants in 2021, according to their exam results. Online trainings were conducted for 46 teachers in the occupied Gali district, who prepared 420 students for national exams.¹¹⁰⁶

As for the recognition of the general education received in occupied Akhalkalaki, in 2021 the full education received by 17 students was recognized as a result of reviewing the school documents submitted.¹¹⁰⁷

The recognition of higher education diplomas issued in the Georgian-controlled territories remains a challenge in the occupied territories. The de facto authorities do not recognize them. Consequently, young people find it difficult to get employed in the occupied territories. With all this in mind, they are trying to stay in Tbilisi or other cities, which results in their artificial separation from their families.

27.6. Human rights situation of women and girls living in the occupied territories

The Public Defender of Georgia actively monitors the rights situation of persons living in the occupied territories of Georgia, especially the rights of women and girls.

Recent years have been quite difficult for conflict-affected women and girls. The social and economic impacts of the pandemic had a particularly negative impact on them. The regulations introduced to prevent the pandemic created additional barriers for them, restricting their access to the right to movement, housing and basic services.

The creation of a new institutionalized mechanism¹¹⁰⁸ by the Office of the State Minister with the aim to respond effectively to the needs of conflict-affected women in the occupied territories of Georgia and in the villages adjacent to the dividing lines should be welcomed. In addition, during the peace talks, special attention was paid to the challenges and needs of women living in the occupied territories of Georgia.¹¹⁰⁹

¹¹⁰³ 2020 Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia.

¹¹⁰⁴ By order No. 77 of July 7, the rules of funding and admission of persons living in the occupied region to higher education institutions without passing the Unified National Examinations were approved. According to the above-mentioned rules, persons residing in the occupied territories of Georgia, who have studied in general education institutions in the occupied territories for the last 2 years and have received a document certifying full general education, and whose full general education is recognized by the Ministry of Education, are eligible for the admission to higher education institutions without Unified National Examinations.

¹¹⁰⁵ Letter No. Mes 2220000207077 of the Ministry of Education and Science of Georgia, February 28, 2022.

¹¹⁰⁶ Letter No. Mes 2220000207077 of the Ministry of Education and Science of Georgia, February 28, 2022.

¹¹⁰⁷ Information provided to the Public Defender by the education service of the South Ossetian administration, January 2022.

¹¹⁰⁸ Consultation Platform for Enhancing Women's Effective Participation in the Peacebuilding Process.

¹¹⁰⁹ The dire humanitarian and rights situation in the occupied territories, the socio-economic conditions complicated by the pandemic, the need for unimpeded access to medical care and livelihoods, etc.

We hope that in response to the challenges named at the meetings, effective steps will be taken to improve the rights situation of conflict-affected women and girls.

Even though the country continues to provide access to small grants under the Peace Initiative aimed at improving the economic situation of conflict-affected women, the number of women living in the occupied territories benefiting from these programmes is low.¹¹¹⁰ It should also be noted that, unfortunately, similar projects¹¹¹¹ have been impossible to carry out in the occupied Tskhinvali region from 2019, after the long-term closure of the so-called checkpoints and complete isolation of the region.

The situation remains unchanged. Another challenge is women's sexual and reproductive health rights, namely women's complicated access to contraceptives and maternity hospitals, and the complete ban on the abortion services in Abkhazia.

It is still problematic to detect cases of domestic violence and violence against women in the occupied territories and to provide timely and adequate services to the victims of violence due to lack of sensitivity of the de facto law enforcement agencies towards this issue and lack of services.¹¹¹²

Recommendations

To the Government of Georgia and the Ministry of Foreign Affairs of Georgia:

- Conduct negotiations, by using all possible formats, to achieve that the occupation regimes protect freedom of movement of population by removing illegal restrictions on the entire perimeter of the occupation line and smooth operation of the so-called checkpoints;
- Conduct negotiations, by using all possible international formats, to achieve that the Government of the Russian Federation allows international monitors to have full and unrestricted access to the occupied territories of Georgia.

To the Minister of Education, Science, Culture and Sports of Georgia:

- Continue teaching the Georgian language to children and young people from the occupied territories in the summer camps and summer schools organized or funded by the central government; Offer Georgian language courses to students of higher educational institutions;
- Develop a scholarship and/or housing programme for students of higher education institutions from the occupied territories so that they can continue their studies at universities in case they pass exams successfully.

To the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs:

- Renew funding for outpatient diagnostics for the population living in the occupied regions, which had been funded before 2017;

¹¹¹⁰ Beneficiaries of the projects are residents of the Gali, Ochamchire and Gagra districts of Abkhazia (32 women and 59 men).

¹¹¹¹ Peace Fund for a Better Future.

¹¹¹² Report on the Impact of Covid-19 on Conflict-Affected Women and Girls, available at: <<https://bit.ly/3IQyQ8b>> [last accessed: 30.03.2022].

- Take appropriate measures to effectively provide emergency medical care to patients from the occupied territories. Review the time limits for decision-making by the referral commission and consider cases as soon as possible;
- Involve doctors working in the occupied territories in the training programmes provided for doctors working in the rest of Georgia, increase support for medical facilities and medical staff in the occupied territories.

28. Human Rights Situation of Internally Displaced Persons

28.1. Introduction

As of the end of 2021, 289,925 internally displaced persons and 91,627 internally displaced families are registered in Georgia. The State has resettled 45,724 families, while 45,903 families have filled out applications for housing and are awaiting resettlement. The number of families provided with housing during the reporting period was 3,130; 656 of them received administrative promises for the provision of long-term housing as soon as possible.¹¹¹³ In 2021, the rate of long-term resettlement was higher compared to previous years. In particular, 1977 families¹¹¹⁴ were resettled in 2020 and 2097 families - in 2019.¹¹¹⁵ In 2021, IDPs mainly applied to the Public Defender's Office of Georgia relating to the housing issues.

The main challenge in the reporting year remained the condition of families living in the buildings posing an increased threat to life or health (the so-called demolishing buildings). The situation has not improved in this respect. On the contrary, compared to 2020, far fewer IDPs were resettled from the so-called demolishing buildings in 2021. In addition, the so-called special rules for the resettlement of IDPs living in damaged buildings have not been developed so far and the sustainability of buildings in poor condition has not been checked proactively either. During the reporting period, there was a worsening tendency in terms of the rights situation of the families living in difficult living conditions. On the one hand, living in such an environment no longer serves as a basis for temporary resettlement – rental assistance, and, on the other hand, unjustified cancellation of pre-granted scores were identified in practice during consideration of the issue of long-term resettlement.

28.2. Amendments to legislation

The subordinate act regulating the resettlement of IDPs was changed in the reporting period.¹¹¹⁶ Under new regulations, during the resettlement process, additional scores will be granted to the IDPs who were directly affected by the persecution in the occupied territories.¹¹¹⁷ In addition, the limit on the amount of funding for the purchase of a house in the countryside according to the number of family members has been increased.¹¹¹⁸ These changes are positively assessed by the Public Defender, however, the changes that worsen the rights situation of IDPs need also to be mentioned.

¹¹¹³ Letter No. 03/3515 of the IDPs, Eco-Migrants and Livelihood Agency of February 16, 2022.

¹¹¹⁴ Letter No. 03/3334 of the IDPs, Eco-Migrants and Livelihood Agency of March 1, 2021.

¹¹¹⁵ Letter No. 03/2060 of the IDPs, Eco-Migrants and Livelihood Agency of January 31, 2020.

¹¹¹⁶ From April 8, the issues related to the resettlement of IDPs have been regulated by Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories of Georgia.

¹¹¹⁷ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, April 8, 2021, Annex No. 8.

¹¹¹⁸ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of April 8, 2021, Annex No. 1, Article 4, paragraph 2: GEL 22,000 for a family consisting of 1 member; GEL 25,000 - for a family consisting of 2 members; GEL 28,000 - for a family consisting of 3 members; GEL 31,000 - for a family consisting of 4 members; GEL 34,000 - for a family consisting of 5 members; GEL 37,000 - for a family consisting of 6 members; GEL 40,000 - for a family consisting of 7 members; GEL 3000 for each subsequent member.

The IDPs provided with long-term housing are prohibited from selling the property received from the State to the ownership of someone else for 3 years.¹¹¹⁹ Such a restriction may be a disproportionate interference with the property rights and may not serve the legitimate purpose - to protect the displaced family from being left homeless.

At the same time, according to the changes, living in difficult living conditions is no longer considered to be the basis for providing temporary housing – rental assistance.¹¹²⁰ Difficult living conditions are considered to be an environment where “an internally displaced family lives in a garage, stairwell, guard booth, makeshift wooden building, underground shed, basement or a type of building that cannot be rehabilitated and where it is impossible to provide proper living conditions”.¹¹²¹ When the purpose of rental assistance is to temporarily improve the living conditions of the most vulnerable families and when families living in difficult living conditions particularly need the above and there is no resource (apartment) where long-term resettlement of IDPs would be possible, the exclusion of persons from the list of those eligible for rental assistance will further worsen the rights situation of the families living in such an environment.

28.3. Long-term resettlement of IDPs

Long-term resettlement of IDPs is carried out through various programmes.¹¹²² According to the practice before the end of 2021, due to lack of adequate resources, part of the families received an administrative assurance for a positive decision on the resettlement in a newly built or rehabilitated building,¹¹²³ but the timely implementation of the above was a problem. Therefore, at the end of the reporting year, the IDPs, who had such a document, were given the opportunity to find living space by themselves, which would then be purchased by the State within the statutory limits.¹¹²⁴

During 2021, the long-term resettlement of IDPs in newly built or rehabilitated buildings was carried out in different regions of Georgia and a total of 1,383 families were resettled.¹¹²⁵ Observations of the resettlement process show that when planning the long-term resettlement of IDPs in newly constructed or rehabilitated buildings, the request for the resettlement in a particular administrative unit is not taken into account. Consequently, the resettlement programmes are inconsistent in nature and do not meet the needs of IDPs. It should also be noted that the number of applications received by the Office from

¹¹¹⁹ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of April 8, 2021, Annex No. 1, Article 3, paragraph 17.

¹¹²⁰ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of April 8, 2021, Annex No. 1, Article 7, paragraph 6.

¹¹²¹ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of April 8, 2021, Annex No. 7, subparagraph b).

¹¹²² Through the projects of resettlement in newly built or rehabilitated buildings, purchase of a private house - the so-called “countryside house”, resettlement of veteran IDPs, construction of houses on land plots owned by IDPs and legalization of land plots lawfully possessed by IDPs.

¹¹²³ According to Article 9 (1) of the General Administrative Code of Georgia, the assurance of an administrative body shall be a written document confirming that the given act will be performed.

¹¹²⁴ Order No. 01-30/n of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia of April 8, 2021, Annex No. 1, Article 3 (21).

¹¹²⁵ Letter No. 03/3515 of the IDPs, Eco-Migrants and Livelihood Agency of 16 February 2022.

the IDPs participating in the so-called rural housing programme is still high, however, despite the protraction of the process, they still do not have information about the final decision.

Unfortunately, lack of substantiation of negative decisions on housing continues to be a common practice, which is exacerbated by the illegal practice of cancelling the scores pre-granted due to living in "difficult living" conditions. Although the current legislation gives priority to the families living in such an environment,¹¹²⁶ some of the cases studied by the Public Defender's Office revealed unjustified cancellation of the relevant scores,¹¹²⁷ which had a negative impact on some of the families, as positive decisions were based on that very scores.

28.4. Resettlement of IDPs from the facilities posing an increased risk to life or health

At the end of 2021, there were 46 life-threatening and health-threatening facilities, where 1,410 internally displaced families lived.¹¹²⁸ The number of families resettled from such buildings decreased in the reporting period. In particular, 20 similar facilities were closed in 2021, from which 531 families were resettled,¹¹²⁹ which is less by 76 facilities and 180 families compared to the 2020 data.¹¹³⁰ Given the reduction in the number of resettled families, the Public Defender prioritizes the timely resettlement of IDPs from similar facilities in a safe place and mobilization of all possible resources in this direction.

In addition to the reduced number of resettled families, the situation is exacerbated by the fact that the Agency does not inspect the sustainability of buildings on its own initiative, which prevents the State, on the one hand, from having complete data on the number of dangerous facilities and effectively planning the resettlement of IDPs from such facilities, and on the other hand, the families living in similar facilities remain in a life-threatening environment.

Recommendations

To the LEPL IDPs, Eco-Migrants and Livelihood Agency:

- Register all the IDP facilities with no expert examination, the sustainability of which may be dangerous for its inhabitants, and proactively inspect such facilities through expert examination;
- In 2022, ensure the long-term resettlement of at least 550 internally displaced families from former collective facilities that pose an increased threat to life and health.

To the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- Amend Order No. 01-30/n of the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of April 8, 2021 and abolish the 3-year ban on the sell the ownership of property received by IDPs from the State.

¹¹²⁶ Awarding additional 2 points as a result of the evaluation of the application for housing.

¹¹²⁷ Recommendation No. 04-9/9836 of the Public Defender of Georgia of October 15, 2021.

¹¹²⁸ Letter No. 03/2238 of the IDPs, Eco-Migrants and Livelihood Agency of February 8, 2022.

¹¹²⁹ Letter No. 03/3114 of the IDPs, Eco-Migrants and Livelihood Agency of 11 February 2022.

¹¹³⁰ In 2020, 96 unsustainable facilities were closed, from which 711 families were resettled. 2020 Parliamentary Report of the Public Defender, 451.

29. Human Rights Situation of Eco-Migrants

29.1. Introduction

Increasing the limit on the funds for buying houses for eco-migrants and providing rental assistance for the families were positive developments in the reporting period, although the rights situation of eco-migrants has not improved significantly. At the end of 2021, the number of eco-migrant families registered in the database of the LEPL IDPs, Eco-Migrants and Livelihood Agency (hereinafter the Agency) increased to 7,866 families. 2,882 out of them were provided with housing by state agencies and international organizations.¹¹³¹ The low amount of funds allocated for the resettlement of eco-migrants and lack of preventive measures against the causes of eco-migration remain to be main challenges.

29.2. Resettlement of eco-migrants

During the reporting period, a positive decision was made on the resettlement of 386 families, although only 327 houses were purchased.¹¹³² It is unfortunate that the number of positive decisions declined in 2021.¹¹³³ As the number of eco-migrant families increases, it is crucially important to increase the number of resettled families as well.

The process of transferring houses to the private ownership of eco-migrants resettled in 2004-2012 was still not completed in 2021. Out of 1,062 families¹¹³⁴ resettled in different regions of Georgia during the mentioned period, only 812 families¹¹³⁵ have real estate in their ownership.

As for the families living in high-risk conditions, in 2021, the relevant agencies identified 715 families¹¹³⁶ living in dangerous conditions.¹¹³⁷ Given that 715 families in need of resettlement were identified in 2021 alone, as well as the fact that there are also families in need of emergency resettlement identified in previous years and the fact that the number of eco-migrant families is increasing each year, the resources allocated for the resettlement of eco-migrants are insufficient and the Public Defender believes that this amount should definitely be increased.

¹¹³¹ Letter No. 03/3114 of the IDPs, Eco-Migrants and Livelihood Agency of February 11, 2022.

¹¹³² According to the letter No. 03/3114 of the IDPs, Eco-Migrants and Livelihood Agency of February 11, 2022, 277 houses were purchased. According to letter No. 05/359 of the Ministry of Health and Social Affairs of the Autonomous Republic of Adjara of January 27, 2022, 50 houses were purchased.

¹¹³³ 482 positive decisions were made in 2020.

¹¹³⁴ 2013 Parliamentary Report of the Public Defender of Georgia, 620.

¹¹³⁵ 2020 Parliamentary Report of the Public Defender of Georgia, 456, and letter No. 03/3114 of the LEPL IDPs, Eco-Migrants and Livelihood Agency of February 11, 2022.

¹¹³⁶ According to letter No. 21/259 of the National Environment Agency of February 2, 2022, an evaluation report was issued in relation to 382 families, and according to letter No. 08/44 of the Division of Environment Protection and Natural Resources of the Autonomous Republic of Adjara of January 31, 2022, an evaluation report was issued in relation to 333 families.

¹¹³⁷ According to Article 3 (3) (a) of Annex No. 1 of Order No. 779 of the Minister of Internally Displaced Persons from the Occupied Territories of Georgia of 13 November 2013, living under increased risk shall be the basis for resettlement, regardless of the scoring system.

29.3. Prevention of eco-migration

Prevention of eco-migration has not improved either. Local governments do not have adequate information on eco-migration or prevention measures. Most of the municipalities do not care about the prevention of eco-migration and only respond in the aftermath of the damage. Measures taken in the aftermath of the damage are of elimination nature and not preventive.

The National Environment Agency and the Department of Environmental Protection and Natural Resources of the Autonomous Republic of Adjara listed measures needed to prevent geological processes in their reports. Despite this, some municipalities¹¹³⁸ do not have information on the difference between preventive measures and resettlement of families, most of the municipalities¹¹³⁹ do not have information on the expected costs of preventive measures, while the budgets of some of the municipalities do not provide funds for prevention at all.¹¹⁴⁰ Even the municipalities¹¹⁴¹ that, within the available financial resources, carry out certain preventive measures, do not provide the relevant information to the agencies that issued relevant recommendations. Moreover, a number of municipalities,¹¹⁴² in addition to not taking preventive measures, state that they will not provide information to the agencies that issued relevant recommendations even if they carry out the relevant works.

It is extremely important for the local governments to pay special attention to the prevention of eco-migration, including by determining the amount of financial need in this area and focusing not only on the elimination of consequences. By actively taking preventive measures, it is possible, on the one hand, to avoid the damage caused by eco-migration and, on the other hand, to save financial resources.

Recommendations

To the Minister of IDPs from the Occupied Territories of Georgia, Labour, Health and Social Affairs:

- Petition the Government of Georgia to increase the amount allocated for the resettlement of eco-migrants.

To the Minister of Health and Social Affairs of the Autonomous Republic of Adjara:

- Petition the Government of the Autonomous Republic of Adjara to increase the amount of funding allocated for the resettlement of eco-migrants.

To the LEPL IDPs, Eco-Migrants and Livelihood Agency:

- By analyzing the geological findings received from the LEPL National Environment Agency, identify families living high-risk conditions and spend at least 30% of the amount allocated for resettlement to resettle such families;

¹¹³⁸ Terjola and Sagarejo municipalities.

¹¹³⁹ Khulo, Baghdati, Zestaponi, Khobi, Borjomi, Kharagauli and Sagarejo municipalities.

¹¹⁴⁰ Municipalities of Samtredia, Lagodekhi, Tsalenjikha, Tskaltubo, Zugdidi, Lentekhi, Aspindza, Borjomi, Zestaponi, Senaki, Rustavi and Signaghi.

¹¹⁴¹ Vani, Khulo, Baghdati, Kobuleti, Zestaponi, Kharagauli and Oni municipalities.

¹¹⁴² Borjomi municipality.

- In 2022, complete the process of transferring houses to the ownership of eco-migrants resettled in 2004-2012.

To the Mayors of local municipalities:

- Provide information to the LEPL National Environment Agency on the preventive measures taken.

To the municipalities of Samtredia, Lagodekhi, Tsalenjikha, Tskaltubo, Zugdidi, Lentekhi, Aspindza, Borjomi, Zestaponi, Senaki, Rustavi and Signaghi:

- When defining the budget, request allocation of funding for preventive measures in the geologically active areas identified by the National Environment Agency.

30. Human Rights Situation of Aliens in Georgia

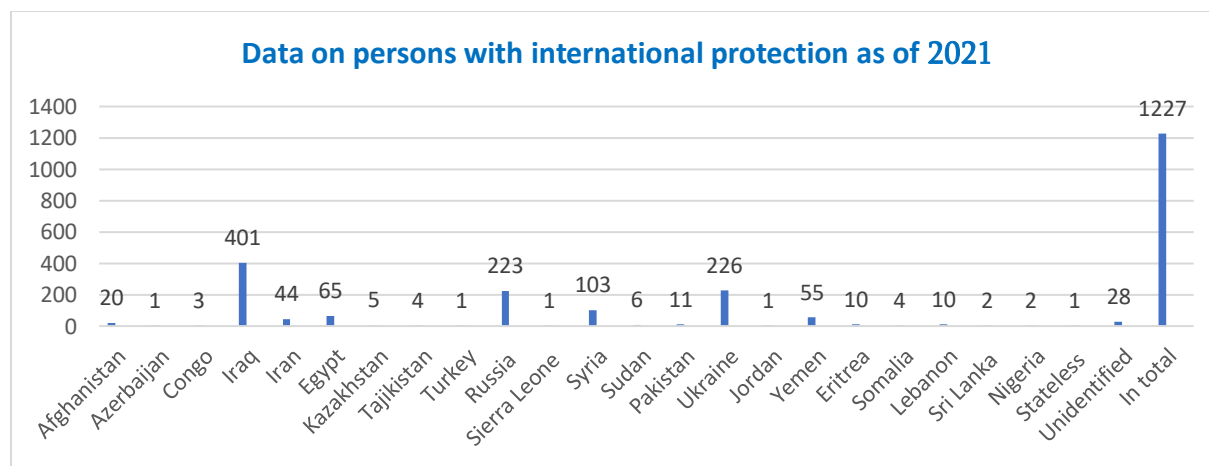
30.1. Introduction

The Public Defender's Office continued to work actively in 2021 to study the rights situation of migrants, asylum seekers and persons with international protection. During this period, shortcomings were revealed in the existing regulations, as well as in the implementation of the norms. In particular, in 2021 the Public Defender assessed the exemption of persons from criminal liability during illegal border crossing, the ban imposed on persons registered as asylum seekers to leave the territory of Georgia, as well as the effectiveness of integration projects of asylum seekers and persons with international protection and the protection of the rights of vulnerable groups.

30.2. Rights situation of asylum seekers and persons with international protection

30.2.1. Granting status

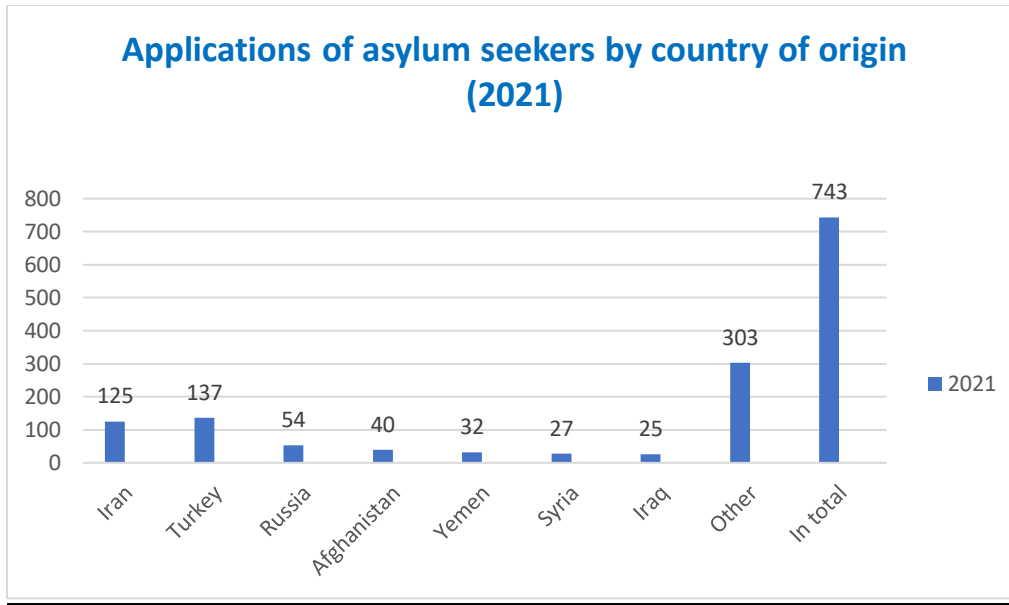
As of December 2021, 1,227 persons with international protection live in Georgia. 493 of them have refugee status and 734 have humanitarian¹¹⁴³ status.¹¹⁴⁴ As for the countries of origin of persons with international protection, the majority of them are citizens of the Russian Federation, Ukraine, Iraq and Syria.



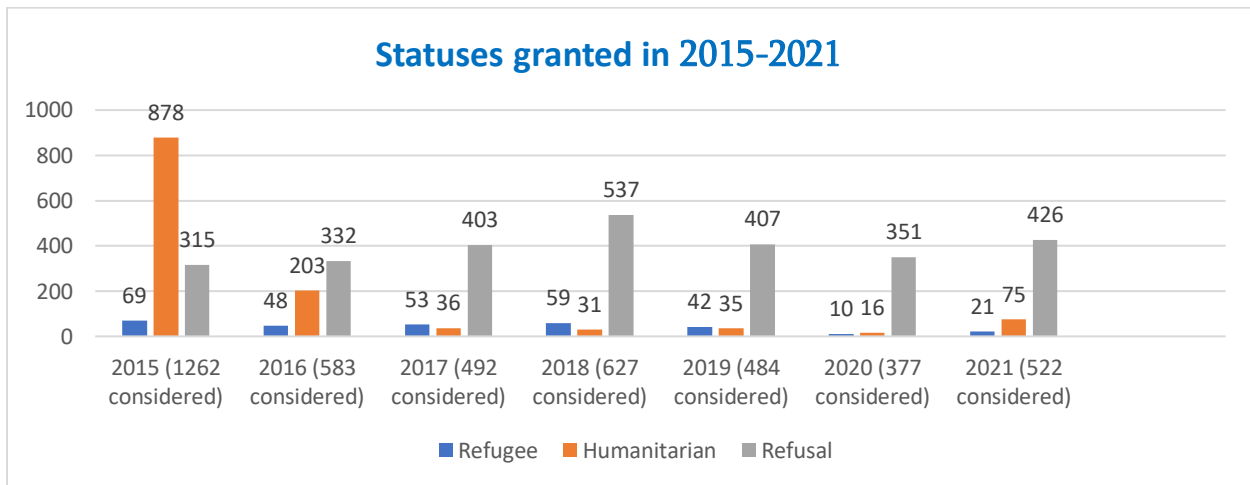
In 2021, 743 people applied for asylum. The countries of their origin are as follows:

¹¹⁴³ Humanitarian status shall be granted to an alien or a stateless person who does not comply with the criteria for receiving refugee status but there is a real risk that upon returning to the country of origin he/she will face a serious threat of damage (Article 19 of the Law of Georgia on International Protection).

¹¹⁴⁴ Letter No. MIA 3 22 00343734 of the Ministry of Internal Affairs of Georgia, 09.02.2022.



Decisions made in 2015-2021:



In 2021, the grounds for refusal was mainly the lack of reasons. Some cases were terminated on the basis of a person’s personal request or his/her failure to attend the procedure.

During the reporting period, there were still cases of refusal of citizens of the countries,¹¹⁴⁵ where human rights violations and hostilities were taking place, on the ground of state security. Substantiation of such decisions remains problematic, as according to the individual administrative-legal act issued by the Ministry, the sufficient grounds for the rejection may be the suspicion that the person threatens Georgia's

¹¹⁴⁵ 10 citizens of Syria, 7 citizens of Yemen, 2 citizens of Eritrea and 1 citizen of Turkey were rejected on the grounds of security.

state security, territorial integrity or public order, which in turn is based on the recommendation provided by the State Security Service. In the event of such decisions, the Ministry of Internal Affairs unconditionally takes into account the recommendations of the State Security Service, by ignoring the individual circumstances of the case.

30.2.2. Access to the asylum procedure on the border and exemption from criminal liability during legal border crossing

According to Article 7 of the Law of Georgia on International Protection, if a foreigner or stateless person immediately after illegally entering the territory of Georgia, submits appropriate explanations of the reasons for entering the country illegally and requests international protection, he/she shall be granted asylum status and a document certifying the fact that a person has applied for international protection and is legally staying in Georgia.¹¹⁴⁶ However, if the person is not granted status¹¹⁴⁷ after reviewing the application, he/she will face criminal liability for entering the territory of Georgia illegally.¹¹⁴⁸

The Public Defender of Georgia considers the above-mentioned legislative regulation to be unconstitutional. In this regard, a constitutional lawsuit was filed last year.¹¹⁴⁹ According to the Public Defender, the disputed norm of the law contradicts the constitutional norm establishing the right to asylum,¹¹⁵⁰ as well as the norm of the Convention relating to the Status of Refugees, which establishes the exemption of a refugee from criminal liability for illegal border crossing.¹¹⁵¹ At the same time, it is noteworthy that before applying to the court relating to the constitutionality of the mentioned norm, the Public Defender's Office had identified cases of violation of this norm in practice.¹¹⁵²

The Public Defender's Office continues to examine several similar cases in 2022, which address the issue of criminal liability for illegally crossing the border and access to the asylum procedure on the state borders of Georgia. The cases involve citizens of Afghanistan, Iran and Morocco, who say that despite the fact that they had requested asylum, they are still prosecuted for violating the law.

30.2.3. Prohibiting persons registered as asylum seekers to leave the territory of Georgia

The Public Defender considers that the norms, according to which, one of the preconditions for considering the application of an alien or a stateless person for international protection is the presence

¹¹⁴⁶ Article 3 (g) of the Law of Georgia on International Protection.

¹¹⁴⁷ Refugee status, humanitarian status or temporary protection.

¹¹⁴⁸ Article 7 (4) of the Law of Georgia on International Protection.

¹¹⁴⁹ Public Defender of Georgia v. Parliament of Georgia, constitutional lawsuit No. 628.

¹¹⁵⁰ Article 33 (3) of the Constitution of Georgia, according to which, "Georgia shall grant asylum to citizens of other states and stateless persons in compliance with universally recognized norms of international law and in accordance with the procedures established by law."

¹¹⁵¹ Article 31 (1) of the 1951 Convention relating to the Status of Refugees.

¹¹⁵² According to the interrogation scripts, two Turkish citizens, placed in a penitentiary institution on charges of illegally crossing the Georgian state border, were seeking asylum during their detention at the border. The border police were obliged to release the detainees as soon as they received information about their applications for international protection and to inform the Migration Department of their applications. However, according to the Ministry of Internal Affairs, the Turkish citizens failed to prove their registration as asylum seekers, which served as basis for their criminal prosecution.

of the applicant on the territory of Georgia before the final decision enters into force, is problematic.¹¹⁵³ This process may take up to two years, during which crossing of the border by the applicant, even for a short time, leads to the termination of a case and refusal of consideration of his/her request.¹¹⁵⁴ Due to this problem in legislation of Georgia, on July 22, 2021, the Public Defender of Georgia filed a constitutional lawsuit with the Constitutional Court of Georgia.¹¹⁵⁵

It is noteworthy that all asylum seekers are stripped of their travel documents and prohibited from crossing the state border of Georgia without assessing their conditions individually.¹¹⁵⁶ It is true that the law provides for the opportunity of applicants to leave Georgia, but this is related only to the "vital interests",¹¹⁵⁷ which mainly include the interests of health.¹¹⁵⁸ Due to the above regulations, applicants are unable to use a number of services during the period of consideration of their application for international protection status. For example, they do not have access to the banking services that are not available in Georgia and can be received only in the neighboring countries. In addition, during the period of consideration of the application for international protection status, applicants are not allowed to temporarily leave the territory of Georgia for short-term employment either, while most of them do not have sources of livelihood in Georgia.

The above-mentioned restriction may be considered as a means of achieving the legitimate aim, but it is not a necessary,¹¹⁵⁹ or the least restrictive¹¹⁶⁰ means of achieving the legitimate aim.¹¹⁶¹ During the application review period, it would have been possible to use the alternative means of communication, as well as a preliminary agreement with the Ministry on the date of departure from Georgia, without harming the application review procedure.¹¹⁶²

¹¹⁵³ Article 57 (b) of the Law of Georgia on International Protection; Article 57 (g) of the Law of Georgia on International Protection.

¹¹⁵⁴ Unless the crossing of the border is connected with the "vital interest" of the person, as provided for in Article 57 (b) of the Law of Georgia on International Protection.

¹¹⁵⁵ Public Defender of Georgia v. Parliament of Georgia, constitutional lawsuit No. 1629.

¹¹⁵⁶ Ibid.

¹¹⁵⁷ Article 57 (b) of the Law of Georgia on International Protection.

Public Defender of Georgia v. Parliament of Georgia, constitutional lawsuit No. 1629.

¹¹⁵⁸ Public Defender of Georgia v. Parliament of Georgia, constitutional lawsuit No. 1629.

¹¹⁵⁹ As for the practice of other countries, asylum seekers in Belgium are not obliged to submit a travel document unless the submission of the document is required for the identification of an asylum seeker, or if there are doubts relating to the authenticity of the document. Even so, documents are confiscated only for a certain period of time, until their identity/authenticity of the document is established. Similar regulations apply in Croatia, Malta and Slovenia (EMN Ad-hoc Query on Handing over of personal documents in the framework of the asylum and return procedure, European Migration Network (EMN), 2016).

¹¹⁶⁰ According to the Constitutional Court of Georgia, "In addition to usefulness, the restrictive measure should be a necessary and the least restrictive means of restriction. Judgment No. 3/4/550 of the Constitutional Court of Georgia of October 17, 2017, II-26.

¹¹⁶¹ Public Defender of Georgia v. Parliament of Georgia, constitutional lawsuit No. 1629.

¹¹⁶² Ibid.

30.2.4. Integration of asylum seekers and persons with international protection

The migration strategy for 2021-2030¹¹⁶³ more or less defines the vision of the State related to integration. However, no unified approach document on immigrant integration has been developed yet, which was planned to be developed in 2021.¹¹⁶⁴ Currently, the following integration services¹¹⁶⁵ are available: Georgian language courses, socio-cultural awareness raising, citizenship education awareness raising and consultation services.¹¹⁶⁶ Due to the restrictions introduced during the pandemic, training programmes were provided remotely. In 2021, 102 people were enrolled in the Georgian language course. The beneficiaries pointed to problems relating to the use of electronic platform and language teaching methods.¹¹⁶⁷ According to them, in some cases they had no information about the available opportunities for learning a language at all. Thus, it is important, on the one hand, to study the shortcomings in the teaching methods and, on the other hand, it is important for the Agency to actively conduct an information campaign regarding the language learning opportunities.

As for the health issues, under legislation,¹¹⁶⁸ asylum seekers, refugees or people with humanitarian status can enjoy funding for primary health services. However, service providers (clinics), in some cases, do not have information about this, therefore, persons with international protection face obstacles in using the services. It is important to note that in 2021, the Agency started to fund the medical aid and/or medicines for persons with international protection with obvious medical needs and stateless persons with status in Georgia, in a pilot mode.¹¹⁶⁹ It should also be noted that local municipalities (Tbilisi, Kutaisi, Batumi)¹¹⁷⁰ do not provide social benefits for persons with international protection. The exception is the municipality of Akhmeta, the budget of which provides funding for persons actually residing in the municipality in the event of a severe need for emergency treatment.¹¹⁷¹ The analysis of information examined by the Office makes it clear that the financial assistance to persons with international protection is mainly provided for health care services. Funding for other types of needs is not provided by national legislation.

¹¹⁶³ Decree No. 810 of the Government of Georgia of December 30, 2020 on the Approval of Migration Strategy of Georgia for 2021 - 2030.

¹¹⁶⁴ Letter No. 01/21385 of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of December 24, 2021.

¹¹⁶⁵ The Integration Service of the LEPL IDPs, Eco-Migrants and Livelihood Agency ensures implementation of the integration programme for internationally protected persons, foreigners legally residing in Georgia and stateless persons, as well as the functioning of the integration center.

¹¹⁶⁶ The Agency started the implementation of integration programmes on July 18, 2020, letter No. 03/10234 of the LEPL IDPs, Eco-Migrants and Livelihood Agency of June 17, 2021.

¹¹⁶⁷ Foreigners noted that attending 4-hour lectures daily were associated with difficulties.

¹¹⁶⁸ Decree No. 36 of the Government of Georgia of 21 February 2013 on Measures to be Taken for Transition to Universal Health Care.

¹¹⁶⁹ Letter No. 303/10234 of the LEPL IDPs, Eco-Migrants and Livelihood Agency of June 17, 2021.

¹¹⁷⁰ Letter No. 15-01213482927 of the Health and Social Service Municipal Service of Tbilisi City Hall of December 14, 2021, letter No. 04-1421344596 of the Education, Culture, Sports and Youth Service of Batumi City Hall, letter No. 44-4421355159 of Kutaisi City Hall of December 21, 2021.

¹¹⁷¹ Letter No. 86-862134972 of the Akhmeta municipality of December 15, 2021.

30.2.5. Vulnerable asylum seekers and persons with international protection

Rights situation of persons with disabilities

Due to the lack of statistical data, it becomes impossible to properly study the rights situation of persons with disabilities seeking asylum. The monitoring conducted during the reporting period revealed that the needs of persons with disabilities are invisible to the system at all stages of the international protection procedure. The current regulations make it possible to identify asylum seekers with disabilities and record the relevant data, however, unfortunately, this does not happen. In addition, at the stage of seeking international protection, the disability identification process is not structured according to the types of disability. Consequently, it does not serve to determine from the outset the measures necessary for each person in order to ensure reasonable accommodation. It is also noteworthy that there is a need to raise the awareness of both state and other services and institutions working with persons with disabilities seeking asylum or international protection.

It should be noted that the relevant statistical information is not processed by the Agency for State Care and Assistance for Victims of Trafficking or the LEPL IDPs, Eco-Migrants and Livelihood Agency. It is also problematic for the Ministry of Education to register students with disabilities seeking asylum or international protection status, which hinders the assessment of the rights situation of these individuals in the country.

Rights situation of women

In recent years, the Public Defender of Georgia has been actively talking about the rights situation of women asylum-seekers and under international protection, which is caused by their special needs.¹¹⁷² According to the information provided by female asylum seekers, their main challenges are related to the integration into society, language barriers and access to health and socio-economic support programmes.¹¹⁷³

Asylum-seeking or women under international protection may find themselves in a highly vulnerable position in terms of economic empowerment, due to lack of knowledge of the official language of the host country, lack of access to education, restrictions on employment in public service and other needs.

Despite the integration programmes of the LEPL IDPs, Eco-Migrants and Livelihood Agency,¹¹⁷⁴ according to the female beneficiaries of the asylum seekers reception center, due to the shortness of programmes, they do not have access to the Georgian language or other courses to get proper knowledge, which makes their employment impossible.

¹¹⁷² 2020 Parliamentary Report of the Public Defender of Georgia, available at: <<https://rb.gy/0avf7q>> [last accessed: 15.02.2022].

¹¹⁷³ Meeting with beneficiaries of the asylum seekers reception center, October 22, 2021. Meeting with asylum seekers, internationally protected and stateless women (Iranian), December 17, 2021.

¹¹⁷⁴ 34 out of 75 beneficiaries registered for Georgian language courses are women.

During monitoring, a number of meetings were held with women asylum-seekers or under international protection. However, despite the trust in the Public Defender's Office,¹¹⁷⁵ the cultural and traditional factors and stereotypes, low level of awareness about forms, manifestations and risks of violence, as well as distrust in the law enforcement agencies and lack of information about available protection and assistance programmes for victims of violence, they found it difficult to talk about violence, especially domestic violence.

According to them, they know who to appeal to in case of violence,¹¹⁷⁶ but it was clearly stated that they could not interfere in the "family affairs" and due to their traditions, they would not dare speak loudly about violence against them. The meeting highlighted the lack of information about shelters, as well as services available for victims of violence, such as the services of a free lawyer and a psychologist. Lack of information restricts their ability to escape from the violent environment and access services that are vital to them.

Rights situation of juveniles

Juveniles asylum-seekers or persons under international protection, given their needs, specifics and vulnerabilities, need effective, well-resourced protection and support mechanisms that respond to specific cases in a timely manner, have a child-friendly approach and are in their best interests.

According to the information received from the Ministry of Education and Science of Georgia,¹¹⁷⁷ the Ministry has been implementing the Sub-Programme for the Provision of Access to General Education for Internationally Protected Juveniles, Asylum Seeker Juveniles and Juveniles Placed in the Migration Department of the Ministry of Internal Affairs since 2015, which aims to support general education for the asylum-seeking or juveniles under international protection, who are between the ages of 6 and 18, as well as the juveniles placed in the temporary accommodation center of the Migration Department of the Ministry of Internal Affairs.

The Public Defender's interview with school teachers, persons with international protection and asylum seekers revealed that despite the measures taken by the State, asylum-seeking or juveniles under international protection face numerous obstacles in the education process. First of all, it should be noted that the language barrier makes it especially difficult for these children to actively participate in the learning process and prevents them from being properly and fully involved in the educational programme. According to the parents, the juveniles, despite being involved in a language course, have difficulties in understanding the curriculum, especially in natural science subjects.

Numerous challenges related to the language barrier have also been identified in terms of communication between school staff and parents.

¹¹⁷⁵ Which was expressed in sincere conversations with representatives of the Public Defender of Georgia on various problematic issues.

¹¹⁷⁶ They named only the police.

¹¹⁷⁷ Correspondence: MES 6 21 0001061686 - 08/10/2021.

As for the health care issues, interviews with asylum seekers revealed that, despite universal health care, access to juvenile medical services is associated with a number of challenges. According to parents, children have received all the necessary vaccinations according to their age, however, it is difficult for them to communicate with doctors, read prescriptions or purchase medications, due to the language barrier.

30.3. Restrictions on the use of a residence permit on the grounds of state security

Like previous years, in 2021, the Public Defender's Office examined a number of cases related to the restriction of the issuance of a residence permit by using legitimate grounds of state and/or public security. The analysis of the statistical data of the LEPL Public Service Development Agency is also noteworthy, according to which, negative decisions on the issuance of residence permits were mainly made on the above-mentioned grounds. Out of 20,716 applications for residence permits filed in 2021, 16,853 were decided positively and 1,126 negatively.¹¹⁷⁸ Out of 1,126 negative decisions, 1,070 were motivated by the circumstances provided for in Article 18 (10 (a) (c) of the Law of Georgia on Aliens and Stateless Persons.¹¹⁷⁹ In particular, a person may be refused a residence permit if, due to state and/or public security interests, it is not appropriate for him/her to live in Georgia or if he/she endangers the state and/or public order. The statistics on cases heard by common courts relating to residence permits in 2021 are particularly interesting. Last year, judgements were delivered and enacted in 207 such cases.¹¹⁸⁰ Of these, 164 decisions were returned to the Agency for repeated reconsideration, of which 163 cases were again rejected and 1 case was decided positively. In 43 cases, the Agency was directly instructed by the court to issue a residence permit in favor of an alien.¹¹⁸¹

Recommendations

To the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- Draft a legal act on unified approaches to the integration of immigrants;
- Provide primary health care providers with detailed information on the rights of internationally protected persons.

To the Minister of Internal Affairs of Georgia:

- Take awareness-raising measures for representatives of the relevant service relating to the protection of the principle of exemption of an asylum seeker from criminal liability during illegal border crossing;
- By amending Order No. 33 of the Minister of Internal Affairs of Georgia on the Approval of Asylum Procedure of April 6, 2020, ensure that the order covers standards and aspects of communication with persons with disabilities, including the provision of the sign language translation service;

¹¹⁷⁸ Letter No. 01/31652 of the Public Service Development Agency of Georgia of 11.02.2022.

¹¹⁷⁹ Ibid.

¹¹⁸⁰ Ibid.

¹¹⁸¹ Ibid.

- Maintain statistics on asylum seekers with disabilities and internationally protected persons with disabilities by the type of disability;
- Provide training for the staff of the asylum seekers reception center of the Migration Department of the Ministry on issues related to persons with disabilities, provide detailed information on various types of disability, proper communication with persons with disabilities and identification of their needs;
- Hold information meetings with asylum seekers and persons with international protection on violence against women and domestic violence;
- Timely agreement and formation of Georgian language courses with LEPL Zurab Zhvania School of Public Administration.

To the Minister of Education and Science of Georgia:

- Produce statistics on schoolchildren asylum-seekers and under international protection schoolchildren with disabilities and special educational needs involved in all stages of education.

To the LEPL Agency for State Care and Assistance for Victims of Trafficking:

- Produce statistics on persons with disabilities seeking or benefiting from state social programmes, who are asylum seekers or have international protection status, including while collecting statistics on violence.

To the LEPL IDPs, Eco-Migrants and Livelihood Agency:

- Analyze shortcomings of the Georgian language teaching methods and adapt them to the beneficiaries' needs;
- Disseminate information about integration programmes through social networks/websites;
- Create a unified database on beneficiaries, where in addition to personal data, their capabilities and needs will be indicated;
- Within the scope of competence, produce statistics of persons with disabilities holding statuses of asylum seeker or international protection.

31. Protection of the Rights of the Stateless Individuals

As in previous years, the Public Defender of Georgia makes separate assessments of the rights situation of stateless persons in her annual reports, which is caused by the special needs of these persons. Unfortunately, the problems identified and recommendations made by the Public Defender of Georgia in the parliamentary reports of recent years, remain largely unchanged.¹¹⁸² The lack of complex and targeted integration programmes for stateless persons at the Integration Center of the LEPL IDPs, Eco-Migrants and Livelihood Agency remains a significant challenge, which was highlighted in the 2020 Parliamentary Report as well.¹¹⁸³ Currently, 529 stateless persons are registered in Georgia.¹¹⁸⁴

In October 2019, at the meeting of the *UNHCR* Executive Committee, the Georgian Government presented a six-point voluntary commitments document on the reduction in the number of stateless persons and improvement in their rights situation. According to the document, the fee for establishing the stateless status should have been halved by the end of 2020, which was fulfilled in May 2021.¹¹⁸⁵ It is also noteworthy that by the end of 2021, the Government had to fulfill four obligations, but only one was fulfilled. In particular, persons seeking stateless status were involved in the emergency inpatient and outpatient services of the universal health care programme.¹¹⁸⁶ The other three obligations include the following areas: facilitating the acquisition of Georgian citizenship by stateless persons through naturalization and halving the 10-year term established by law for this purpose, providing free legal services in administrative bodies and common courts during the status determination process, implementation of the so-called door-to-door campaign to identify and document stateless persons. It is noteworthy that according to the Public Service Development Agency, work on each issue has been ongoing for years, although it could not be completed by the end of 2021. The Public Defender calls on the relevant state institutions to fulfill their international commitments in order to improve the rights situation of stateless persons.

¹¹⁸² 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, Chapter on the Rights Situation of Stateless Persons; 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, Chapter on the Rights Situation of Stateless Persons.

¹¹⁸³ 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, Chapter on the Rights Situation of Stateless Persons.

¹¹⁸⁴ Letter No. 01/31652 of the Public Service Development Agency of 11.02.2022.

¹¹⁸⁵ According to the amendment made by Government's Decree No. 2010 of 11 May 2021 to Article 2 (40) of Decree No. 508 of the Government of Georgia of December 29, 2011 on the Approval of Terms, Fees and Rules of Paying Fees for the Service Provided by the Consular Official within the Delegated Authority and the Authority of the Public Service Development Agency, a legal entity under public law operating under the jurisdiction of the Ministry of Justice, the amount of a fee for determining the status of a stateless person has been set at GEL 25 instead of GEL 50.

¹¹⁸⁶ According to the amendments made by Government's Decree No. 521 of 27 October 2021 to Article 2 (3⁸) of Annex No. 1 to Decree No. 36 of the Government of Georgia of February 21, 2013 on Measures to be Taken for Transition to Universal Health Care, persons seeking the status of a stateless person in Georgia have been defined as beneficiaries of emergency outpatient and emergency inpatient services.

Recommendations

To the Minister of Justice of Georgia:

- In order to reduce the number of stateless persons and improve their rights situation, ensure the fulfillment of commitments made to the UN High Commissioner for Refugees as soon as possible.

To the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia:

- Provide additional funding for the Integration Center of the LEPL IDPs, Eco-Migrants and Livelihood Agency and introduce integration programmes for the integration of stateless persons.

32. Implementation of Recommendations provided in the Parliamentary Report of 2020, of the Public Defender

32.1. Introduction

The Public Defender of Georgia makes recommendations and proposals to the state agencies in annual parliamentary reports in order to improve the situation of human rights and freedoms in the country. This chapter discusses the state of implementation of the Public Defender's recommendations/proposals by the highest state bodies during the reporting period.

The 2021 Parliamentary Report still contains a number of recommendations that have not been implemented for years. The Public Defender has repeatedly underlined the importance of implementation of recommendations in recent years. The above indicates the low quality of implementation of recommendations and proposals.

As in the previous reporting period, during the 2021 pandemic, highest state agencies and local governments had to work in a somewhat unusual manner, which hindered the implementation of some recommendations and proposals. Nevertheless, the identification of problems in our reports are aimed at protecting human rights and it is important to constantly keep them on the agenda.

In the 2020 Parliamentary Report, the Public Defender of Georgia issued 360 recommendations to the state agencies and local self-government bodies and 51 proposals to the Parliament and the President of Georgia.¹¹⁸⁷ Out of the 360 recommendations, 335 were made to the highest state bodies and 25 recommendations were made to the local self-government bodies.

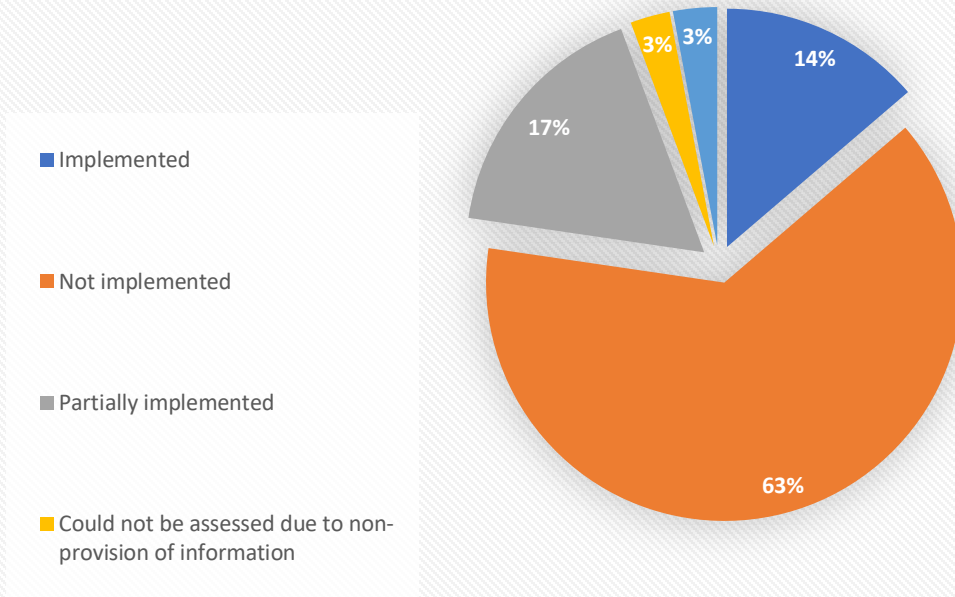
14% of the recommendations issued to the state bodies were fully implemented, 17% of the recommendations were partially implemented and 63% were not implemented. It should be noted that a small part of recommendations (3%) could not be implemented for objective reasons. The degree of cooperation of the state agencies with the Public Defender needs to be underlined additionally. 3% of the recommendations could not be evaluated due to the non-provision of information requested by the Public Defender from the agencies. The data are as follows:

- Implemented: 46 recommendations
- Partially implemented: 57 recommendations
- Not implemented: 213 Recommendations
- Implementation of 9 recommendations could not be assessed due to the non-provision of information by the agencies
- Implementation of 10 recommendations could not be assessed due to reasons beyond the control of the agencies.¹¹⁸⁸

¹¹⁸⁷ 50 proposals were issued to the Parliament of Georgia and 1 - to the President.

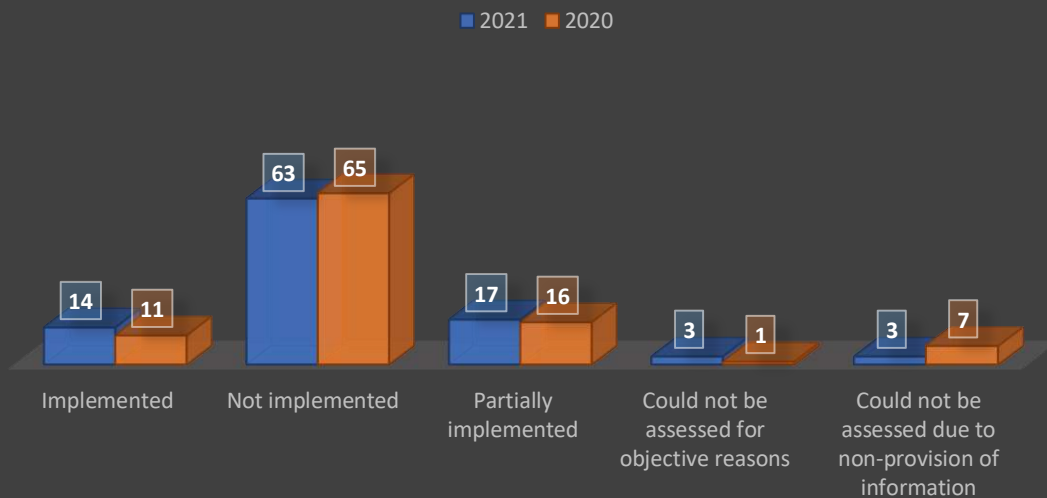
¹¹⁸⁸ Recommendations of this category could not be evaluated due to objective circumstances. This was in some cases caused by the pandemic, loss of the relevance of the recommendation or lack of relevant information in the Public Defender's Office.

Status of implementation of Public Defender's recommendations issued in 2020



Compared to the previous year, the percentage of implementation of Public Defender's recommendations slightly improved, which is welcomed by the Public Defender, although she notes that such a small increase does not indicate a substantial improvement in the implementation of recommendations by the government agencies.

PERCENTAGE OF IMPLEMENTATION OF RECOMMENDATIONS IN 2020-2021



As already mentioned, the Public Defender of Georgia addressed the Parliament and the President of Georgia with 51 proposals in the 2020 Parliamentary Report. Of these, the legislature implemented only one proposal.¹¹⁸⁹

The analysis of the above data shows¹¹⁹⁰ that the state agencies did not implement the main part of Public Defender's recommendations. Consequently, the quality of implementation of recommendations was unsatisfactory in 2021, as in previous years.

A brief overview of the state of implementation of Public Defender's substantial recommendations offered in the 2020 Parliamentary Report is provided below according to the categories of state institutions, rights and groups. Further information on these issues can be found in the relevant thematic chapters. The main trends in the implementation of recommendations by local self-government bodies are also discussed in a separate sub-chapter.

32.2. Implementation of recommendations by state agencies

32.2.1. Judicial system

In the 2020 Parliamentary Report, the Public Defender made 12 proposals to the Parliament of Georgia and 6 recommendations to the Government of Georgia, the Minister of Justice and the High Council of Justice, in order to ensure the right to a fair trial and institutional development of the judiciary.¹¹⁹¹ Unfortunately, the Parliament of Georgia did not fulfill any of the proposals of the Public Defender. As a result of the efforts made by the state agencies, only 3 recommendations can be assessed as partially implemented.

We positively assess the work done by the High Council of Justice during the reporting period, as a result of which, the Public Defender assesses the recommendations relating to the introduction of an electronic programme of disciplinary liabilities of judges and the provision of opportunity for confidential communication during remote trials as partially implemented.¹¹⁹²

Unfortunately, as in previous years, the Public Defender's proposal¹¹⁹³ to eliminate the influence of court chairpersons on the electronic case distribution system has still not been implemented. The recommendation relating to the training of psychologists in the juvenile justice process and to introduce the quality control system has not been implemented either.

¹¹⁸⁹ In March 2022, the Parliament's Human Rights and Civil Integration Committee set up a working group, the goal of which is to study the importance of endorsement of recommendations made to the Parliament in the 2020 Report of the Public Defender on the Situation of Human Rights and Freedoms in Georgia. The working group is currently working on this issue with the involvement of the Public Defender's Office.

¹¹⁹⁰ The state of implementation of recommendations is assessed on the basis of information available at the Public Defender's Office as of March 25, 2022.

¹¹⁹¹ 1 recommendation to the Government of Georgia, 1 to the Minister of Justice, 4 to the High Council of Justice.

¹¹⁹² Letter No. 2809/22 of the High Council of Justice of Georgia of March 7, 2022.

¹¹⁹³ Proposal to the Parliament: The Civil Procedure Code should stipulate that during the collegial hearing of cases in court, the composition of the collegium shall be determined by an electronic case distribution programme instead of the chairperson of the court.

32.2.2. System of the Prosecutor's Office

In the 2020 Parliamentary Report, the Public Defender of Georgia issued 14 recommendations to the Prosecutor's Office. Unfortunately, it should be noted that most of the recommendations have not been implemented. In particular, 6 recommendations were not implemented, 2 were partially implemented and only 3 recommendations were fully implemented. The implementation of 2 recommendations cannot be assessed due to objective circumstances. The implementation of one recommendation could not be assessed due to non-provision of relevant information by the agency.

Unfortunately, it should be noted that the Public Defender's recommendation relating to the murder case on Khorava Street is still not implemented. As in 2019 and 2020, the Prosecutor's Office did not make a summary decision on the actions of the law enforcement officials in 2021 either, and the General Inspection Department continues to conduct an official inquiry based on the shortcomings identified in the investigation of the murder of juveniles on Khorava Street.

The Public Defender welcomes the development of a training module on sexual abuse of children and retraining of prosecutors and witness/victim coordinators working with juveniles.

32.2.3. Penitentiary system

In order to improve the human rights situation in the penitentiary system, the Public Defender of Georgia issued 71 recommendations to state agencies and 8 proposals to the Parliament.

Unfortunately, none of the proposals made to the Parliament of Georgia has been fulfilled. Issues such as provision of minimum living space for defendants, as well as lack of sufficient legislative mechanisms for contact with the outside world, remain problematic.

Out of the recommendations issued to the state agencies, the Public Defender made 70 recommendations to the Minister of Justice of Georgia and 1 recommendation to the Government of Georgia. The recommendation issued to the Government has not been implemented. As for the recommendations made to the Minister of Justice, 50 of them were not implemented, 12 were fully implemented and 8 were partially implemented.

The Public Defender welcomes the periodic testing of prisoners for Covid-19 by the Ministry of Justice, as well as the vaccination of prisoners and prison staff. The Public Defender also positively assesses the visits paid by medical specialists to penitentiary institutions, as well as the resumption of planned medical referrals.

It should be noted that, as in previous years, informal governance of penitentiary institutions remained a serious challenge in 2021 in terms of protection of prisoners from violence, although, unfortunately, the agency does not implement the Public Defender's recommendation to develop a strategy for overcoming criminal subculture. Unfortunately, the Georgian Government did not take any tangible steps to develop a plan to ensure the implementation of the Istanbul Protocol guidelines during forensic medical examination and to ensure its timely conduct.

In addition, despite the recommendation of the Public Defender, the Ministry of Justice of Georgia still has not set a maximum period of 24 hours for placement of prisoners in the de-escalation room. The management of high-risk and closed institutions is based on the principles of static security, which implies the establishment of the strictest restrictions and prohibitions and is not focused on a positive change in the behavior of convicts. Unfortunately, barracks-type buildings have not been canceled yet in Establishment No. 17.

32.2.4. System of the Ministry of Internal Affairs

43 recommendations were made to the Ministry of Internal Affairs of Georgia in the 2020 Parliamentary Report of the Public Defender. The Ministry fully implemented 5 recommendations and partially implemented 10 recommendations. In 26 cases, the Ministry of Internal Affairs of Georgia did not implement Public Defender's recommendations. The Public Defender's Office was not able to assess the implementation of recommendations in 2 cases due to objective circumstances.

Systemic recommendations issued to the Ministry of Internal Affairs of Georgia in recent years, such as the continuous audio-video recording of interrogation of detainees in several police stations in a pilot mode, the obligation of patrol inspectors to videotape communication with citizens and several other recommendations remain unfulfilled.

Despite the recommendation of the Public Defender, the Ministry of Internal Affairs of Georgia has not started producing special statistics, which have would reflected not only crimes obstructing the professional activities of journalists, but also any crime committed against journalists relating to their professional activities.

At the same time, the Public Defender positively assesses the updated age gradation by the Ministry of Internal Affairs during production of statistics from 2021, which makes it possible to produce segregated statistics on cases of domestic violence against persons aged 45-60 and persons over 61.

32.2.5. ფსიქიატრიული დაწესებულებები

For the purpose of improving the situation in psychiatric institutions, the Public Defender of Georgia made 4 proposals to the Parliament and 27 recommendations to the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs in her 2020 Parliamentary Report. Unfortunately, it should be noted that the efforts of the State in this direction are unsatisfactory, as only one recommendation is considered partially implemented, while the rest were not implemented at all.

32.2.6. Rights situation of children

The Public Defender of Georgia made 27 recommendations relating to the rights of children in the 2020 Parliamentary Report, including 5 recommendations to the local self-government bodies. Out of the remaining 22 recommendations, state agencies did not implement 14 recommendations. Only 2 recommendations can be considered fully implemented. 5 recommendations were partially implemented, and in one case, due to non-provision of relevant information by the agency, it is impossible to evaluate the implementation of the recommendation.

It is unfortunate that the Public Defender's recommendation regarding the need to deinstitutionalize large institutions for children was not implemented in the reporting year. In particular, the Public Defender called on the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia to develop an action plan, with the involvement and participation of stakeholders, relating to the religious boarding schools. The plan should have laid down the steps to be taken by the State in the process of deinstitutionalizing large institutions and the measures to be taken to mitigate risks in case such institutions operate outside the control of the State.

32.2.7. შეზღუდული შესაძლებლობის მქონე პირთა უფლებები

The Public Defender made 21 recommendations relating to the rights of persons with disabilities in the 2020 Parliamentary Report. The addressees of 2 recommendations were local self-governments. Out of the remaining 19 recommendations, 2 recommendations were fully implemented and 7 recommendations were partially implemented as a result of the efforts of the state agencies. In 9 cases, Public Defender's recommendations were not implemented; information about the implementation of one recommendation was not provided to the Public Defender's Office.

As in previous years, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia did not carry out any tangible activities to develop or implement a deinstitutionalization plan for large residential institutions. The recommendation of the Public Defender, which called on the State to develop and implement a programme for the rehabilitation of adults with disabilities, was not implemented either. Attention should be paid to the fact that the Public Defender has been pointing out the need to implement this recommendation for years.

The Public Defender positively assesses the activities of the Government of Georgia, which made it possible to establish a national mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities during the reporting period. We also welcome the development of a new mental health development strategy and action plan with the extensive involvement of relevant experts.

32.2.8. Freedom of expression/assembly/information

The implementation of recommendations made in several chapters¹¹⁹⁴ of the 2020 Parliamentary Report of the Public Defender of Georgia will be assessed for the purposes of this sub-chapter. To promote the protection of freedom of expression, the Public Defender issued 11 recommendations to the state agencies in the 2020 Parliamentary Report and 1 proposal to the Parliament of Georgia. Only 2 of the recommendations were fully implemented. 7 recommendations were not implemented, while implementation of 2 recommendations could not be evaluated due to objective circumstances.

Unfortunately, the Parliament of Georgia did not endorse the proposal of the Public Defender, which concerned the implementation of recommendations offered in the Special Report of the Public Defender on Freedom of Peaceful Assembly (Sphere Protected by the Right and the Standard of Management of Assembly). The recommendation issued to the Government of Georgia, calling it to complete the drafting

¹¹⁹⁴ Freedom of expression, freedom of assembly, freedom of information.

of the bill on freedom of information and relating legislative changes and to submit the documents to the Parliament of Georgia, has not been implemented.

The Public Defender positively assesses the activities of the State Inspector, who implemented the Public Defender's recommendation and repeatedly informed the public about the investigative and procedural activities carried out during the investigation of alleged abuse of power by law enforcement officials during the dispersal of a rally on November 8-9, 2020.

32.2.9. Gender equality

In order to promote gender equality, the Public Defender of Georgia made 29 recommendations to the state bodies and 1 proposal to the Parliament of Georgia in last year's Parliamentary Report. Unfortunately, the Parliament of Georgia did not consider the proposal of the Public Defender, which aimed to improve legislation on crimes of sexual violence through making amendments to the Criminal Code. 2 of the recommendations issued by the Public Defender were made to the local self-government bodies. As for the recommendations issued to the highest state bodies, 4 of them can be considered implemented, while 6 recommendations can be evaluated as partially implemented. The other 17 recommendations have not been implemented.

Unfortunately, the Government of Georgia did not implement the Public Defender's recommendation, repeatedly issued over the years, concerning the issuance of a timely, adequate and effective compensation to victims of violence and domestic violence in compliance with the obligations laid down in Article 30 of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The State had to fulfil the above obligation before January 1, 2022. However, by amending the law, the fulfillment of the obligation under the Convention was postponed for one year.

The Public Defender welcomes the efforts of the Prosecutor's Office, as a result of which, the crimes relating to early marriage are already being analyzed in detail and the relevant statistics are segregated according to gender and age.

32.2.10. Rights situation of conflict-affected persons

In the 2020 Parliamentary Report, the Public Defender issued 11 recommendations aimed at improving the rights situation of conflict-affected persons. The state agencies fully implemented 4 recommendations of the Public Defender, but they did not implement the same number of other recommendations, while 2 recommendations were partially implemented. Implementation of 1 recommendation was objectively impossible to evaluate due to the epidemiological situation.

The Public Defender positively assesses the efforts of the Government of Georgia and the Ministry of Foreign Affairs in terms of the use of all possible formats of negotiations to ensure the freedom of movement of population across the occupation line and the cancellation of restrictions.

Unfortunately, like last year, the Public Defender's recommendation to cover the costs of outpatient diagnostics for people living in the occupied regions, as it had been done before 2017, has not been implemented.

32.2.11. Freedom of belief and religion

The Public Defender of Georgia made 7 recommendations to the Parliament of Georgia and 4 recommendations to the Government of Georgia relating to freedom of religion and belief in the 2020 Parliamentary Report. Unfortunately, it should be noted that the state agencies and the Parliament of Georgia did not implement the proposal/recommendations of the Public Defender.

For years, the Public Defender has been addressing the Parliament of Georgia regarding the need to change the discriminatory norms in the Tax Code and the Law of Georgia on State Property, however, no tangible efforts were made in this regard during the reporting period. The Public Defender of Georgia also called on the Parliament to draft a law on restitution, with the involvement of the Council of Religions of the Public Defender and non-governmental organizations, but this proposal has not been implemented either.

32.2.12. Protection of national minorities and civic integration

In order to address the issues related to national minorities, in the 2020 Parliamentary Report, the Public Defender of Georgia made 13 recommendations to the highest state bodies and 1 recommendation to the local self-governments and the Public Broadcaster. The state agencies did not implement 8 recommendations of the Public Defender, 4 were partially implemented and 1 was fully implemented. The recommendation issued to the Public Broadcaster is considered partially implemented.

Unfortunately, no effective, institutionalized consultation mechanism has been established for minorities at the executive level and no multilingual teaching model has been adequately implemented in national minority schools.

32.2.13. Social and economic rights

The implementation of recommendations made in several chapters¹¹⁹⁵ of the 2020 Parliamentary Report of the Public Defender of Georgia will be assessed for the purposes of this sub-chapter. In order to promote the protection of social and economic rights, the Public Defender of Georgia issued 24 recommendations to the state agencies¹¹⁹⁶ and 4 to the Parliament of Georgia.¹¹⁹⁷

The state agencies fully implemented only 5 recommendations of the Public Defender. 4 of the recommendations are assessed as partially implemented, while the remaining 13 have not been implemented.

Despite the recommendation of the Public Defender, no new norms/standards defining the case management procedure have been developed, which would have contributed to the effectiveness of the complaints mechanism relating to the quality of medical services.

¹¹⁹⁵ Right to social security, right to adequate housing, right to health care, right to work.

¹¹⁹⁶ 2 out of 24 recommendations were issued to local self-governing entities, therefore, information on their implementation will be presented in the form of a trend in the following sub-chapters.

¹¹⁹⁷ Right to social security - 3 recommendations; right to adequate housing - 9 recommendations and 2 proposals; right to health - 9 recommendations and 2 proposals; right to work - 2 recommendations.

Unfortunately, no legal act has been drafted so far to update the targeted social programme and study its effectiveness.

The obligations relating to the exercise of the right to adequate housing under the National Human Rights Strategy (2014-2020) have not been fulfilled to date. Therefore, neither housing strategy nor its action plan have been developed. In this regard, as an exception, the initiatives and activities carried out by Tbilisi City Hall need to be praised, within the framework of which, the recommendation issued by the Public Defender can be evaluated as implemented.

The activities of Batumi City Assembly and City Hall also deserve positive assessment, within the framework of which, necessary measures were taken to provide minimum standards in a temporary shelter. In addition, appropriate funding was allocated from the municipal budget for the rehabilitation of buildings and infrastructure of the temporary shelter.

32.2.14. Right of IDPs

For the purpose of improving the rights situation of IDPs, the Public Defender made 6 recommendations in the 2020 Parliamentary Report, 2 of which are considered implemented, while 3 were not implemented. The Public Defender's Office was unable to assess the implementation of one recommendation due to the non-provision of the relevant information.

It should be noted positively that in 2021, the LEPL IDPs, Eco-Migrants and Livelihood Agency implemented the Veteran IDPs Resettlement Programme.

Unfortunately, despite the recommendation of the Public Defender, no changes have been made in Order No. 320 of the Minister of Internally Displaced Persons from the Occupied Territories of Georgia, which should have described the relevant rules for the resettlement of IDPs from the facilities that pose a threat to life and health, as well as all the procedures needed for conducting monitoring and establishing that IDPs actually live in the building. Despite the recommendation of the Public Defender, the State has not registered all the IDP facilities that have not been assessed by experts but may be dangerous for their inhabitants.

32.2.15. Right to equality

In the 2020 Parliamentary Report, the Public Defender of Georgia made 13 recommendations and 1 parliamentary proposal relating to the realization of the right to equality. Unfortunately, the proposal and many of the recommendations have not been implemented. As a result of the efforts of the state agencies, only 2 recommendations were fully implemented. 1 recommendation is evaluated as partially implemented, while 9 recommendations have not been implemented.¹¹⁹⁸

Unfortunately, the State refuses to implement the Public Defender's recommendation to allow persons with disabilities to receive a disability social package and a pension simultaneously after reaching the retirement age. Social packages are intended to meet qualitatively different needs, therefore, the state approach, which prevents persons with disabilities to receive a disability social package and a pension simultaneously is discriminatory.

¹¹⁹⁸ Implementation of one recommendation could not be assessed due to objective circumstances.

Unfortunately, the Public Defender's recommendation to the Government to make the existing state social, economic and health programmes available to persons with permanent residence permits in Georgia on an equal basis with Georgian citizens has not been implemented either.

Despite the recommendation of the Public Defender to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, the latter did not draft amendments to be made to the Organic Law of Georgia, the Labour Code, to bring the amount of maternity, childcare and child adoption payments substantially closer to the standard set by the Law on Public Service, and at the same time, to define restrictions within which employers would be able to determine the preconditions for issuing maternity, childcare and child adoption payments.

32.3. Implementation of recommendations by the local self-governments

In order to improve the situation of human rights and freedoms in the local self-governing entities, the Public Defender of Georgia made 25 recommendations in the 2020 Parliamentary Report. To assess the state of implementation of the recommendations, the Public Defender's Office addressed 64 self-governing entities with a request to provide the relevant information. Unfortunately, 12 municipalities¹¹⁹⁹ did not respond to the request of the Public Defender's Office.

Information on the general state of implementation of the substantial recommendations issued by the Public Defender to all local self-governments is provided below.

The information received from the municipalities makes it clear that the activities of the municipalities need to be strengthened in social and economic directions. Regarding the measures to be taken relating to the availability of food, most of the municipalities indicate that they have a food supply programme, however, the component of data processing and systematization or in-depth research of needs is not systemically implemented. It is important to note that in the municipalities where "free canteens" are available, in most cases, beneficiaries can take food home, although the information received from the self-governments does not make it clear whether this was done in accordance with pre-established rules.

Unfortunately, the local self-governments do not study the needs of families with children living in poverty, or living and working on the streets, which is necessary for the provision of targeted services. Unfortunately, a large proportion of the municipalities denies the existence of children living and working on the streets in their areas, making additional social programmes for families with children living in poverty, or living and working on the streets virtually inaccessible in these municipalities.

Certain steps were taken to improve the rights of children living in villages located along the occupation line. Efforts are being made in the self-governing entities to provide children with transportation, as well as to rehabilitate the infrastructure of kindergartens and schools.

The educational activities of the self-governments were clearly unsatisfactory in 2021. For years, the Public Defender has been calling on the self-governments to adopt normative acts provided for in Article 28 (4)

¹¹⁹⁹ Akhalkalaki, Bolnisi, Dmanisi, Marneuli, Sagarejo, Kareli, Keda, Tsalenjikha, Tsalka, Chiatura, Kharagauli and Khoni municipalities (as of March 29).

(d) (e) of the Law of Georgia on Early and Preschool Education.¹²⁰⁰ Unfortunately, only the Lanchkhuti municipality complied with the recommendation of the Public Defender during the reporting period.

Teachers of preschool institutions were not trained on the needs of children with disabilities, child abuse or management of complex behavior. For the purpose of raising the quality of education and effectiveness of the activities of preschool institutions, no tangible steps were taken to train teachers, including non-Georgian-speakers in the municipalities indicated in the recommendations.¹²⁰¹ Only the activities of the Akhalkalaki and Ninotsminda municipalities can be positively assessed in this direction. In contrast, a relatively large proportion of teachers were trained relating to the remote learning methodology.

Unfortunately, no tangible efforts were made during the reporting period for the effective work of the councils of persons with disabilities in the self-governing entities. The councils hardly held meetings and discuss relevant issues. In the self-governing entities where councils have not yet started to work,¹²⁰² no measures have been taken to ensure their operation.

It is welcome that appropriate programmes are available for older persons in the municipalities, however, it should be noted that they are not based on needs research or statistics, therefore, it is important for the municipalities to use needs research while developing similar programmes, in order to increase their effectiveness.

Unfortunately, it should be noted that it is impossible to assess the state of implementation of certain recommendations on the basis of information received from the municipalities, because in many cases, the information is vague, and in some cases, specific questions are not answered.¹²⁰³

Based on the above data, it can be said that the implementation of recommendations made to the local self-governments in the 2020 Parliamentary Report of the Public Defender of Georgia is unsatisfactory. It is important for the local self-governments to make more efforts in the above-mentioned directions, while the Public Defender, in turn, expresses her full readiness, if necessary, to share her knowledge and experience with them in the field of human rights.

Annex No.1 – Visits paid by the Public Defender’s Office

As part of the function of the National Preventive Mechanism, which involves regular and ad hoc monitoring of places of detention, the Special Preventive Group made 13 visits to 11 bases of the Defence Forces, 1 visit to the Migration Center of the Ministry of Internal Affairs, 15 visits to 7 psychiatric facilities,

¹²⁰⁰ According to the 2020 Parliamentary Report, addressees of this recommendation were: Lanchkhuti, Dedoplistskaro, Zestaponi, Sighnaghi, Tkibuli, Chiatura and Khoni municipalities.

¹²⁰¹ Addressees of the recommendation were: Sagarejo, Lagodekhi, Telavi, Gardabani, Marneuli, Bolnisi, Dmanisi, Tsalka, Tetrtskaro, Akhaltsikhe, Akhalkalaki, Ninotsminda municipalities.

¹²⁰² Dusheti, Tianeti, Kaspi, Kazbegi, Tsalka, Chiatura municipalities.

¹²⁰³ This category mainly includes the following recommendations: 1. To provide information to the LEPL National Environment Agency on the measures taken in the field of prevention of eco-migration; 2. Calculate the estimated cost of the prevention measures of eco-migration. 3. Carry out appropriate legislative changes in the local municipalities where the budget provides for adequate housing programmes for the homeless, in order to ensure the inclusion of vulnerable migrant groups in the programmes. 4. When forming the budget, take into account the mobilization of the relevant funds for taking preventive measures in the geologically active areas identified by the National Environment Agency.

19 visits to 26 temporary placement isolators, 36 visits to 35 police divisions, 29 visits to 7 penitentiary institutions, 3 visits to 3 militarized units of the Ministry of Internal Affairs and 6 visits to 5 external protection units of the Special Penitentiary Service.

During the reporting period, the staff of the Criminal Justice Department made 364 visits to the penitentiary institutions, where they visited 1,395 detainees/prisoners. 17 visits were made to the National Center for Mental Health, where 31 patients were visited. Additional 15 visits were made to the temporary detention facilities, where 35 detainees were visited.

Within the framework of the implementation and monitoring of the UN Convention on the Rights of Persons with Disabilities, 29 information meetings were held for representatives of the regions of eastern and western Georgia, 12 training sessions were held for about 200 employees of the Architectural and Supervision Service of the Ministry of Economy and Sustainable Development and local self-governments; 265 notaries were trained on issues related to persons with disabilities, 4 trainings were conducted for trainers of the Teachers' House of the Ministry of Education, programme managers and consultant teachers of the Teach for Georgia programme.

18 planned visits were made to inpatient and outpatient mental health services. 1 ad hoc monitoring was conducted in Penitentiary Establishment No. 18 of the Special Penitentiary Department, 3 visits were made to small group homes (Khashuri, Bediani, Martkopi), 1 visit was made to the social housing located in the Orkhevi settlement in Tbilisi, 2 ad hoc monitoring visits were conducted in Barbare 21, a community organization for persons with disabilities. 34 visits were made within the framework of the monitoring of schools/boarding schools and state care institutions for children, 1 visit was paid to the psychiatric department of the Batumi Medical Center and 2 visits were made to public schools.

In order to study the rights situation of stateless persons, the procedure of determination of international protection status was monitored in the Migration Department of the Ministry of Internal Affairs - 10 monitoring visits; For the purpose of border monitoring, 10 flights were monitored at Tbilisi Shota Rustaveli International Airport; 1 flight was monitored at Batumi International Airport; in addition, 9 Migration and Border Control Divisions of the Ministry of Internal Affairs of Georgia and 4 divisions/sectors of the Border Police were monitored; 3 monitoring visits were paid to the asylum seekers reception center.

Meetings were held with 691 representatives of local self-governments and other public agencies, 282 representatives of religious, ethnic and sexual minorities, 114 teachers, 350 young people and 212 employees of private companies, within the scope of the authority defined by the Law of Georgia on the Elimination of All Forms of Discrimination. Meetings were held in 28 municipalities and 16 villages of 6 regions of Georgia (Guria, Imereti, Samegrelo, Samtskhe-Javakheti, Kvemo Kartli).

In order to assess the situation of children's rights, monitoring was carried out throughout Georgia in 3 early and preschool institutions, 26 schools, 11 boarding schools of the Ministry of Education, 7 of which are implementing programmes for children with disabilities, public boarding school No. 15 in Samtredia, 20 small group homes, Kojori Orphanage for Children with Disabilities, Muslim boarding school for girls,

two large residential institutions of the Orthodox Church and one small group home, 6 day care centers for orphans, 24-hour shelter for orphans, 5 shelters for victims of violence, 5 shelters for mothers and children, Martkopi asylum seekers center.

To raise awareness of gender equality, 271 information meetings/seminars were held in the regions with women, students, teachers, social workers, representatives of the Resource Center and law enforcement agencies, university students and gender council members, representatives of the media and non-governmental organizations, internally displaced and conflict-affected women. 3 trainings were conducted on gender equality and violence for representatives of teachers' houses and universities, students of higher education institutions. 5 shelters for victims of domestic violence, 5 crisis centers and 4 schools were monitored. 5 visits were made to the penitentiary institution and 2 visits were paid to shelters. 7 monitoring visits were paid to shelters for mothers and children. Monitoring was also conducted at the day center for asylum seekers and internationally protected persons.

Annex No. 2 – Constitutional litigation of the Public Defender

According to the Constitution of Georgia and the Organic Law of Georgia on the Constitutional Court of Georgia, the Public Defender is authorized to apply to the Constitutional Court in case normative acts contradict the rights protected by Chapter 2 of the Constitution of Georgia.¹²⁰⁴

Since 2000, the Public Defender of Georgia has filed a total of 86 constitutional lawsuits with the Constitutional Court, 37 of them after 2018.¹²⁰⁵ Some of these 37 lawsuits have already been accepted for consideration (11 decisions) or have been resolved (2 rulings on three lawsuits). Only 3 constitutional claims were not accepted for consideration on their merits.

In accordance with Article 17 (5) (a) of the Statute of the Public Defender of Georgia, approved by Order No. 459 of December 18, 2018 of the Public Defender of Georgia, one of the main tasks of the Strategic Litigation Division is to draw up and periodically update the strategic litigation plan. On the basis of this type of document, the Public Defender can apply to the Constitutional Court of Georgia based on the pre-planned methodology. The sources of the strategic litigation plan are the applications filed with the Public Defender's Office, studies prepared by the Office, analytical documents and reports. To address the systemic problems identified in 2020-2021, 30 constitutional lawsuits have been filed with the Constitutional Court since 2020.¹²⁰⁶

¹²⁰⁴ In addition, the Public Defender of Georgia has the right to apply to the Constitutional Court when his/her competence is violated or when the subject of the constitutional dispute is the constitutionality of the norms regulating referendums and elections, as well as the elections (referendums) held or to be held on the basis of these norms.

¹²⁰⁵ The special structural unit of the Public Defender's Office, which provides direct representation of the Public Defender in the Constitutional Court, including in terms of the preparation of lawsuits, was staffed in 2019 and has been fully operational since 2020.

¹²⁰⁶ 5 constitutional lawsuits were filed in 2020, 17 - in 2021 and 8 - in January-February 2022.

Information about the constitutional lawsuits filed by the Public Defender in 2021 concerning procedural rights, prisoners' rights in the penitentiary institutions, freedom of assembly, right to equality, right to private life, rights of the homeless and asylum seekers is provided below.

I. Violation of procedural rights (Article 31 of the Constitution)

1. In accordance with Article 29 (1) of the Organic Law of Georgia on Citizenship of Georgia, the decision of the President of Georgia regarding Georgian citizenship, except for the decision on terminating Georgian citizenship, may not be appealed to court. This rule prohibits, inter alia, appealing against the President's refusal to grant Georgian citizenship.

A decision to grant citizenship on the basis of objective and verifiable criteria defined by law should necessarily be subject to judicial review, in order to avoid arbitrary, biased and discriminatory decisions.

Accordingly, the Public Defender considers that the ban on appealing against President's decisions on the refusal of citizenship (except for the decisions granting citizenship under exceptional rules) contradicts Article 31 (1) of the Constitution of Georgia, according to which: "Everyone has the right to apply to a court to protect his/her rights."¹²⁰⁷

2. Article 7 (2) of the Law of Georgia on Operational-Search Activities defines forms of operational-search measures, such as test purchase and controlled delivery, but the law does not provide relevant guarantees to exclude provocation of crime during the implementation of these measures.

According to the Public Defender, legislation does not establish an effective mechanism of judicial control over the implementation of such measures (as established by the practice of the European Court of Human Rights), which, in turn, contradicts Article 31 (1) of the Constitution of Georgia.¹²⁰⁸

II. Alleged violation of the rights of persons placed in penitentiary institutions

1. The subject of dispute in the constitutional lawsuit is the provision of Article 17¹ (1) of the Imprisonment Code of Georgia, which blanketly prohibits convicts placed in a high-risk penitentiary institution from enjoying the right to make a video call. We consider that the above-mentioned restriction contradicts Article 11 (1) of the Constitution of Georgia (Right to equality) and Article 15 (1) (Inviolability of family life).¹²⁰⁹ The lawsuit has been accepted for consideration on its merits.¹²¹⁰

2. In the constitutional lawsuit, in relation to Article 11 (1) of the Constitution of Georgia (Right to equality) and Article 15 (1) (Inviolability of family life), we dispute the circumstance that a person in pre-trial detention has limited access to the rights to long-term meetings and video calls. In particular, we dispute the relevant normative content of part 10 of Article 17, parts 1-7 of Article 17¹, as well as the first sentence of part 1 of Article 17², second sentence of part 5 of Article 17², part 2 of Article 17², part 6 (a) (b) and part

¹²⁰⁷ The constitutional lawsuit is available at: < <https://bit.ly/3JUPrsY> > [last accessed: 31.03.2022].

¹²⁰⁸ The constitutional lawsuit is available at: < <https://bit.ly/3NzfLuj> [last accessed: 31.03.2022].

¹²⁰⁹ The constitutional lawsuit is available at: < <https://bit.ly/3IUNJq9> > [last accessed: 31.03.2022].

¹²¹⁰ The ruling is available at: < <https://bit.ly/3IYv50q> > [last accessed: 31.03.2022]

8 of Article 17² of the Imprisonment Code of Georgia.¹²¹¹ The lawsuit has been accepted for consideration on its merits.¹²¹²

3. In accordance with the first sentence of part 1 of Article 77 of the Imprisonment Code of Georgia, the accused shall enjoy no more than 4 short meetings in a month. Nevertheless, according to the second sentence of the same norm, this right may be restricted by the order of the investigator or prosecutor. The disputed norm gives the prosecutor/investigator a wide discretion to restrict the prisoner's right to a short meeting. It is particularly problematic that the law does not establish rules for limiting this discretion of the prosecutor/investigator, which creates risks of arbitrariness. Such a ban on communication significantly restricts the exercise of the right enshrined in Article 15 (1) of the Constitution (Inviolability of family life).¹²¹³

4. In the constitutional lawsuit, we dispute the constitutionality of Article 82 (1) (h) (i) (l) of the Imprisonment Code of Georgia in relation to Article 15 (1) of the Constitution of Georgia (Inviolability of family life).

Pursuant to Article 82 (1) (h) of the Imprisonment Code of Georgia, one of the types of disciplinary sanction shall be the restriction of the right to telephone conversation for no more than 3 months, while Article 82 (i) provides for the restriction of the right to receive or send personal correspondence for no more than 3 months. The disciplinary sanction provided for in Article 82 (l) is the prohibition of short meetings no more than 6 times a year. Article 15 (1) of the Constitution of Georgia ensures the inviolability of private and family life, the restriction of which may be allowed only in accordance with the law, in order to ensure the necessary state or public security or to protect the rights of others in a democratic society.¹²¹⁴

5. The subject of dispute in the constitutional lawsuit is the constitutionality of the rules and periods of placement of prisoners in the so-called de-escalation room, which is provided for in the regulations of the relevant penitentiary institutions, in relation to Article 9 (2) of the Constitution of Georgia (Prohibition of torture, inhuman or degrading treatment or punishment). According to the disputed rules, a prisoner can be placed in the de-escalation room only on the basis of the order of the director of the establishment, issued on the basis of a report of an authorized employee of the establishment. In addition, a prisoner may be placed in the de-escalation room for 72 hours and the number of placements is not limited.¹²¹⁵

III. Alleged violation of freedom of assembly (Article 21 of the Constitution)

¹²¹¹ The constitutional lawsuit is available at: < <https://bit.ly/3JVxASt> > [last accessed: 31.03.2022].

¹²¹² The ruling is available at: < <https://bit.ly/3iOCG7l> > [last accessed: 31.03.2022]

¹²¹³ The constitutional lawsuit is available at: < <https://bit.ly/3iRNEc4> [last accessed: 31.03.2022]

¹²¹⁴ The constitutional lawsuit is available at: < <https://bit.ly/3Nzhnoh> > [last accessed: 31.03.2022].

¹²¹⁵ The constitutional lawsuit is available at: < <https://bit.ly/3wgi1kB> [last accessed: 31.03.2022].

1. Article 2 (3) of the Law of Georgia on Assemblies and Demonstrations imposes restrictions and prohibits the right to assembly and demonstration for all persons who are members of the Defence Forces or a body responsible for the protection of state or public security. These persons are enlisted in Article 3 (i) of the same law and are divided according to state agencies. Apart from the Law of Georgia on Assemblies and Demonstrations, prohibitive norms of the same content are repeated in the special legislative acts regulating the activities of these agencies.

The above-mentioned legislative acts provide for an absolute ban on the right to peaceful assembly for a wide range of persons, including those who are not directly responsible for the protection of state or public security. It is important to distinguish between persons directly responsible for the protection of state and public security in these agencies and the civilian staff employed in the same agencies, and to restrict freedom of assembly in accordance with the above.

Accordingly, the Public Defender considers that the above restrictive norms restrict the freedom of assembly and expression for a wider circle of persons than it is established by the Constitution.¹²¹⁶ In particular, the restriction of freedom of expression of those employed in the state agencies on the basis of employment contracts, as well as persons who do not protect state or public security, is unconstitutional and contradicts Article 17 (1) and Article 21 (1) of the Constitution of Georgia, according to which, "Freedom of opinion and expression of opinion shall be protected. No one shall be persecuted because of his/her opinion or for expressing his/her opinion"; "Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission".¹²¹⁷

2. When expressing views and opinions on important events, timeliness is often crucial, which determines the effectiveness of the protest, while delays may make the reaction completely meaningless.¹²¹⁸ A similar possibility is a spontaneous gathering, which is an instant response to a certain case/incident, is not pre-planned in nature and, in many cases, may not have a particular organizer.

The Law of Georgia on Assemblies and Demonstrations stipulates the obligation to notify the executive body of the local self-government with regard to organization of an assembly 5 days earlier, if it is held on a roadway or obstructs traffic.¹²¹⁹ However, as the law does not define the concept of a spontaneous assembly, nor does it provide for any exceptions to the obligation of a prior notice, it is impossible to follow similar procedures when organizing a spontaneous rally, due to lack of time or other objective

¹²¹⁶ According to Article 21 (1) of the Constitution of Georgia, "Everyone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission."

¹²¹⁷ The constitutional lawsuit is available at: <<https://www.constcourt.ge/ka/judicial-acts?legal=10748> ;

¹²¹⁸ Judgment No. 1/5/1271 of the Constitutional Court of Georgia of 4 July 2019 in the case of Besik Katamadze, Davit Mzhavanadze and Iliia Malazonia v. Parliament of Georgia, II-32.

¹²¹⁹ Article 5 (1), Article 8 (1, 2) of the Law on Assemblies and Demonstrations.

circumstances.¹²²⁰ From the practical point of view, the above precludes the legal possibility of holding a spontaneous assembly on a roadway or when it obstructs traffic.¹²²¹

IV. Alleged violation of the right to equality (Article 11 of the Constitution of Georgia)

1. In accordance with Article 6 (4) and Article 12 (1) (b) of the Rules and Conditions for Issuing Social Package approved by Government's Decree No. 279 on Social Package of 23 July 2012, the right to receive a social package shall not arise and the already arisen right shall be terminated during the period of performance of public activities by persons with moderate or significant disabilities (except for significant visual impairment).

People with moderate or significant disabilities (except for significant visual impairment) are denied access to the social package only if they are engaged in public activities, as opposed to those having the same status and being employed in private companies. In addition, in case of performance of public activities, only persons with severe disabilities and significant visual impairments retain the right to receive the social package, as opposed to persons with moderate and significant disabilities (other than significant visual impairment).

The Public Defender believes that the named norms establish different legal regimes for substantially equal persons. In addition, the State is obliged to provide persons with disabilities with social guarantees, including when they are employed, which, according to the current legislation, is only provided for persons employed in the private sector. Accordingly, the restriction contradicts the right to equality enshrined in the first and fourth paragraphs of Article 11 of the Constitution of Georgia.¹²²² The constitutional lawsuit has been accepted for consideration on its merits.¹²²³

2. The subject matter of the disputed constitutional lawsuit is the restriction provided for in Article 35 (1) of the Law of Georgia on Special Penitentiary Service, according to which: "An employee with junior special rank may serve in the service until he turns 61." We consider that this restriction contradicts Article 11 (1) of the Constitution of Georgia (Right to equality).¹²²⁴ It should be noted that the constitutional lawsuit has already been considered on its merits and the respondent - the Parliament of Georgia - recognized the lawsuit.

3. The constitutional lawsuit disputes only the part of Article 4 (3) of the Regulation on Transfer of State-Owned Residential and Non-Residential Property Registered in the Name of the Ministry of Defence of Georgia, approved by Decree No. 445 of the Government of Georgia of July 17, 2020, which stipulates: "Ownership of space defined by this decree (together with the relevant land plot) may not be transferred

¹²²⁰ Articles 8 and 5 the Law on Assemblies and Demonstrations.

¹²²¹ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=12017> ;

¹²²² The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11335> ;

¹²²³ The ruling is available at: <https://www.constcourt.ge/ka/judicial-acts?legal=12941> ;

¹²²⁴ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11334> ;

to a person who does not have Georgian citizenship...". We consider that the imperative prohibition in the disputed norm, in particular, the words - "...a person who does not have Georgia citizenship..." - contradicts Article 11 (1) of the Constitution of Georgia.¹²²⁵

4. The constitutional lawsuit disputes the amendment made to the Law of Georgia on State Property on May 22, 2020, as a result of which, paragraph 6 was added to Article 3, which allows the acquirer of state property - the Apostolic Autocephalous Orthodox Church of Georgia - to receive into ownership the forest areas adjacent to Orthodox churches and monasteries before the enactment of this law - no more than 20 hectares in each case, as well as areas determined by the Forest Code. We believe that this norm violates the right to equality of other religious organizations, as it excludes them from a similar opportunity.¹²²⁶

V. Alleged violation of private life (Article 15 of the Constitution of Georgia)

Article 7 (2) (b) of the Law of Georgia on Operational-Search Activities provides for operational-search measures such as *information gathering and visual control*.

As these operational measures can be carried out without a court ruling, which is proved by the relevant case examined by the Public Defender's Office, they contradict Article 15 (2) of the Constitution of Georgia, according to which, personal private space and communication shall be inviolable.¹²²⁷

VI. Alleged violation of inviolability of human dignity of the homeless (Article 9 of the Constitution of Georgia)

The concept of a homeless person¹²²⁸ defined in Article 4 (p) of the Law of Georgia on Social Assistance is vague and does not reflect all forms of homelessness. The definition provided by the law allows municipalities to interpret the concept broadly, leaving the possibility for them to make varied decisions. The rules adopted by the municipalities for registration of homeless persons leave most of the homeless without access to the right to adequate housing.

Persons living in poor conditions, in various places that have no housing function, or in unstable buildings or unsuitable constructions, are completely excluded from the right to adequate housing, as well as persons living in the facilities without any legal guarantees, being at risk of being evicted. Persons living with relatives temporarily, those awaiting to leave institutions, including penitentiaries, medical facilities and orphanages, also remain behind the same rule.

¹²²⁵ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11331> ;

¹²²⁶ The constitutional lawsuit is available at: <https://www.constcourt.ge/ka/judicial-acts?legal=11963> ;

¹²²⁷ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11970>;

¹²²⁸ A person with no permanent, definite residence, who is registered by a local government body as a homeless person.

These individuals, who are in extremely difficult social conditions, do not have their own houses and actually need housing from the State, are not granted homeless status under the current norms and thus they are deprived of the opportunity to receive a shelter.

According to the Constitution of Georgia, the State shall care for the provision of decent housing, which is one of the principle of a social welfare state. The Public Defender considers that the disputed norms violate the right to dignity guaranteed by Article 9 (1) of the Constitution of Georgia.¹²²⁹

VII. Alleged violation of the rights of asylum seekers (Article 33 of the Constitution of Georgia)

The concept of a homeless person¹²³⁰ defined in Article 4 (p) of the Law of Georgia on Social Assistance is vague and does not reflect all forms of homelessness. The definition provided by the law allows municipalities to interpret the concept broadly, leaving the possibility for them to make varied decisions. The rules adopted by the municipalities for registration of homeless persons leave most of the homeless without access to the right to adequate housing.

Persons living in poor conditions, in various places that have no housing function, or in unstable buildings or unsuitable constructions, are completely excluded from the right to adequate housing, as well as persons living in the facilities without any legal guarantees, being at risk of being evicted. Persons living with relatives temporarily, those awaiting to leave institutions, including penitentiaries, medical facilities and orphanages, also remain behind the same rule.

These individuals, who are in extremely difficult social conditions, do not have their own houses and actually need housing from the State, are not granted homeless status under the current norms and thus they are deprived of the opportunity to receive a shelter.

According to the Constitution of Georgia, the State shall care for the provision of decent housing, which is one of the principle of a social welfare state. The Public Defender considers that the disputed norms violate the right to dignity guaranteed by Article 9 (1) of the Constitution of Georgia.¹²³¹

VII. Alleged violation of the rights of asylum seekers (Article 33 of the Constitution of Georgia)

1. Article 57 (b) (g) of the Law of Georgia on International Protection sets a precondition for the consideration of applications for international protection, according to which, an asylum seeker must be present on the territory of Georgia from the day of submission of the application until the enactment of the final decision.

The process may last for up to two years and the crossing of the Georgian border by the applicant during this period, even for a short period of time, will result in the termination of the international protection case and the refusal of consideration of his/her request. During this period, applicants cannot use a number of services in Georgia, cannot have access to certain banking services, nor can they go to the

¹²²⁹ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=12277> ;

¹²³⁰ A person with no permanent, definite residence, who is registered by a local government body as a homeless person.

¹²³¹ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=12277> ;

country where they can receive the necessary services or leave Georgia for short-term employment.

According to the Public Defender, this rule is strict, which only considers the "vital interest" that is mainly related to the health condition of a person, but it does not take into account other individual needs of status seekers and blanketly restricts the right to asylum guaranteed by Article 33 (3) of the Constitution.¹²³²

2. Like international law, the Georgian Constitution and legislation recognize that Georgia shall not punish refugees for entering or staying illegally on its territory. According to the Law of Georgia on International Protection, in case of illegal entry or presence on the territory of Georgia, foreigners or stateless persons must immediately apply to the relevant state agency for international protection. In such a case, they shall be released from criminal liability. However, Article 7 (4) of the Law of Georgia on International Protection extends criminal liability to asylum seekers, as an exception, if the final decision establishes that the person does not need international protection.

The Public Defender considers that imposition of liability on an asylum seeker for entering and staying illegally in the country contradicts the right to asylum enshrined in Article 33 (3) of the Constitution of Georgia and violates the principle of legality enshrined in Article 31 (9) of the Constitution of Georgia.¹²³³

¹²³² The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11958> ;

¹²³³ The constitutional lawsuit is available at: < <https://www.constcourt.ge/ka/judicial-acts?legal=11959> .