



Report of the Public Defender of Georgia

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

2022

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Introduction

The present report of the Public Defender of Georgia has been prepared in accordance with 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 Regulations of the Parliament of Georgia.

The report presents the challenges and progress in the protection of human rights guaranteed by the Constitution in 2022, and also reviews the state of implementation of the recommendations/proposals issued by the Public Defender. The reporting period covers the year 2022, however in certain occasions it also analyzes the problems that occurred before that and continued during the reporting period.

The Office of the Public Defender of Georgia received 5277 statements about the facts of human rights violations in the reporting period. Among them, only 4,895 applications fell within the scope of the Public Defender's mandate, while 382 applications were declared inadmissible. There is a hotline operating in the Public Defender's Office that allows citizens to receive information 24 hours a day or report a violation of their rights. During 2022, 12104 calls were received on the hotline.

In order to address the violations of rights identified in this report, the Office of the Public Defender made 74 recommendations/suggestions to the state agencies. In 2022, the Public Defender's Office prepared 24 special reports and 3 alternative reports to be submitted to international bodies, 21 constitutional claims, 20 Amicus Curiae, 1 amicus curiae for the European Court of Human Rights, and 5 communications for the Committee of Ministers of the Council of Europe. In order to identify and monitor rights violations and challenges, the Office of the Public Defender made a number of visits to various institutions, reports provide a detailed overview of these visits.

In the introduction of the Public Defender's 2022 parliamentary report, we will present a brief overview of the key findings of the report regarding the noteworthy trends in the protection of human rights in the country, which required appropriate and timely response from the government.

In 2022, the situation of human rights protection did not improve significantly, moreover, a significant deterioration was observed in a number of directions.

In the introduction of the Public Defender's 2022 parliamentary report, we will briefly present the key findings of the report regarding the outstanding tendencies in the protection of human rights in the country, which required appropriate and timely response from the state authorities.

In 2022, the situation of human rights protection did not improve essentially, moreover, a considerable deterioration was observed in a number of directions.

Firstly, it is noteworthy that in the reporting period - starting from March 1, 2022, the State Inspector Service was abolished, and two independent institutions were created - Special Investigation and Personal Data Protection Services. The main challenge of this service currently is that there are no institutional

guarantees for the smooth and efficient functioning of these services. The state can initiate the "reform" of these independent bodies and consequently reorganize them at any moment. For years, the Public Defender pointed to the importance of creating an independent investigative mechanism mandated with the investigation and criminal prosecution. In order to achieve the mentioned goal, it is essential to secure important guarantees aimed at the institutional strengthening of the existing Special Investigation Service. Among them, it is important that the investigative mandate of the service is extended to the crimes committed by the General Prosecutor, the Minister of Internal Affairs, and the head of the Security Service. In addition, it is necessary to review the list of crimes under the jurisdiction of the Special Investigation Service, maintaining only the authority to investigate crimes corresponding to the main mandate of the service. It is also important for the Special Investigation Service to have the authority to enter temporary detention facilities, with no obstacles, no restrictions and without special permission, etc. Several positive legislative changes in the legal framework of the Special Investigative Service are worth mentioning here. This includes: the right for the investigator of the Service to enter the penitentiary establishment without hindrance; the possibility of applying to the prosecutor with a proposal to effectively exercise special measures of protection, etc.

It is notable that all state bodies in Georgia have a constitutional obligation to take all measures to ensure Georgia's full integration into the European Union and the North Atlantic Treaty Organization. Against this background, it is worth to underline the fact that on June 17, 2022, the highest number of preconditions received from the European Union to obtain the candidate status by Georgia concerned the judicial authorities. Nevertheless, the Parliament of Georgia, when implementing the so-called 12-point plan, did not take into consideration important issues such as: fundamental reform of the High Council of Justice; improvement of the case distribution system and full elimination of influences in this process; ensuring compliance of the legislation with the recommendations of the Venice Commission and the OSCE/ODIHR; decision-making in the High Council of Justice based on so-called double majority principle; election of the chairs of the court (collegium, chamber) by the judges of the same court; revoking the amendments to the Organic Law "On General Courts" that threatened the individual independence of judges.

It is worth mentioning in this part also, particularly disturbing announcement of the idea of the draft law of Georgia "On the transparency of foreign influence" in 2022 and its initiation in 2023. A number of international organizations and strategic partners of the country criticized the draft law, along with the Public Defender of Georgia and human rights defenders, as the latter would threaten Georgia's integration into European and Euro-Atlantic structures.

Speaking of independent institutions, it is unfortunate to note that recent decisions made by the Constitutional Court of Georgia have raised concerns regarding the court's independence and impartiality. Of particular concern is the decision regarding the abolition of the State Inspector's service, where the Constitutional Court recognized the provisions for its abolition to be in accordance with the Constitution of Georgia. This decision undermines the constitutional guarantees of human rights protection as it allows for the possibility to the legislature to revoke the independent agency, which investigates cases of ill-treatment and violations of the right to life by the state, at its own discretion and

without providing any justification, considering revoking of the independent investigation mechanism as merely a legislative editorial change.

According to the assessment of OSCE/ODIR on the latter, disregarding international standards, the dissolution of the State Inspector's service was a hurried, threatening and dangerous precedent infringing the rule of law and the effective functioning of independent institutions, which may affect the quality of human rights protection in the country, the investigation of cases of ill-treatment and deaths of detained persons.

The Prosecution Office is one of the key determinants of the criminal justice policy in the country. Unfortunately, establishment of the politically neutral prosecution system remains a major challenge. According to the assessment of the public defender, significant flaws were revealed in the numerous case investigation processes conducted by the prosecutor's office, which do not comply with the effective investigation criteria or violation of the right to a fair trial is observed. An illustration of this is the case of Nika Gvaramia, where the administration of justice is characterized by a political nature. Unfortunately, the mentioned case is not the first occasion, it is similar to the so-called the cartographers' case, where the initiation and course of the investigation were clearly influenced by political motives, in violation of Article 18 of the European Convention on Human Rights. The Public Defender consistently emphasizes the need for reform within the Prosecutor's Office. This has been highlighted in the past years as well as present 2021 parliamentary report.

The Public Defender, in the 2022 report, like previous years, calls on the Parliament to initiate the reform of the Prosecutor's Office aiming to improve the institutional set up and accountability mechanism within prosecution.

In recent years, there has been a tendency to restrict freedom of expression in the country. Regrettably, in 2022, media professionals continued to work in a dangerous environment. The Office of the Public Defender documented several cases in 2022 involving alleged criminal acts against media representatives, including illegal interference in their professional activities, property damage, physical assault, harassment, threats, and violation of privacy. It is noteworthy that, during the reporting period, an audio recording was also circulated in the media, revealing discussions related to the planning of the "Post Factum" program on the "Mtavari Arkhi" (Main Channel) and disclosing information about the journalists' confidential source. Unfortunately, this was not the first occasion where allegations of illegal surveillance of media representatives became known.

Last year, amendments to the Law of Georgia on "Broadcasting" fundamentally altered the model of media regulation and posed a potential threat to freedom of expression. Additionally, the increased number of lawsuits filed against media organizations and their representatives, raised concerns that some of these on the face of it legitimate claims might be excessive or lacking sufficient grounds.

It is also noteworthy that the protection of freedom of expression is closely linked to the unrestricted exercise of the right to assembly. During the reporting period, the practice of administrative detention of participants in assemblies on charges of petty hooliganism and failure to comply with the lawful request

of a law enforcement officer remained problematic. This practice is based on the Code of Administrative Offenses adopted in 1984, which is incompatible with the current constitutional framework. For years, the Public Defender has been advocating for the need to revise the Code of Administrative Offenses, which was adopted during the Soviet era, and to develop a new code. As the current Code does not comply with the minimum standards of human rights and fundamental freedoms. Unfortunately, no legislative changes have been implemented in this regard until now.

During the reporting period, the deficiencies in the investigation of violent acts against LGBTQ+ individuals and journalists that occurred on July 5, 2021, at various locations were of particular concern. Studying the case revealed that the conducted investigation fails to meet the standards of an effective investigation in terms of thoroughness and timeliness. It is also noteworthy that regrettably the prosecutor's office, did not accept the proposal of the public defender and did not charge a specific individual with organizing and leading group violence, which ultimately served as grounds for the acquittal of all persons accused of participating in group violence by the court. Furthermore, regarding the court decision, it is worth mentioning that the first instance court violated the principle of sentence individualization, as it did not take into consideration the crimes committed in the past and personal characteristics of the specific individuals when determining the sentence.

In the context of the ineffective investigation of the violent incidents that occurred on July 5, 2021, it is important to refer to the decision of the European Court of Human Rights dated December 16, 2021, concerning the attacks on the LGBTQ+ community and their supporters on May 17, 2013, in Tbilisi. In the aforementioned decision, the court observed that the severity of the violence on May 17, 2013, was influenced by the state's failure to conduct a timely and objective investigation of the previous facts of attack on the LGBTQ+ community.

Against the background of the shrinking democratic space in the country, the amendments made to the Criminal Procedure Code of Georgia on September 6, 2022 (so called wiretapping law), allowing investigative agencies to conduct covert investigative actions for a longer duration and in a wider range of crime investigations, have raised particular concerns. These legislative amendments are especially problematic given the existing pressing problems related with the protection of privacy in the country, with numerous cases of illegal surveillance remaining not investigated. In 2021, there was an unprecedented leak of materials depicting covert surveillance, and the Public Defender of Georgia's lawsuit challenging the legality of covert surveillance legislation is still pending before the Constitutional Court without a decision being reached. Therefore, the adoption of such legislation raises doubts on the state's intentions to address the existing challenges and align the legislation with human rights standards. Instead, it appears to grant more powers to law enforcement agencies, which without adequate oversight, increases the risks of arbitrary actions and unjustified interference in private life.

The decline in the level of protection of political rights in the country is also reflected in the exercise of electoral rights. Although 2022 was not an election year in Georgia, it is important to emphasize that investigations of criminal actions detected during the 2021 local government elections are still ongoing, with no tangible results achieved thus far.

During the reporting period, securing the right to live in a safe environment for residents in the village of Itkhvisi, Chiaturi Municipality, posed a significant challenge. It is necessary for the Government of Georgia to develop comprehensive and effective measures to address the threats in the village and to serve the interests of the population in a fair and dignified manner. Information concerning these efforts should be provided to the concerned public.

Furthermore, there is still a lack of systematic and effective framework governing the field of companion animals in the country. To ensure a safe environment, the state needs to address the current challenges related to companion animals by adopting humane principles and methods, and by creating appropriate legal remedies.

Like the previous year, during the reporting period, the protection of World Cultural Heritage Monument - the Gelati monastery complex was in serious challenge. It is essential to emphasize that the state bears the responsibility for safeguarding cultural heritage. However, the decision to hand over the rehabilitation works to the Patriarchate of Georgia is not in line with the existing legal framework.

Throughout the years, one of the most significant challenges has been the situation within penitentiary establishments. Regrettably, the focus of the penitentiary system has been silencing prisoners through various means. A key issue in this regard is informal governance, an issue that the Public Defender has been addressing for years. Despite advocacy efforts, the problem remains unresolved. Informal governance aims to silence prisoners, preventing them from discussing problems and maintaining a superficial sense of order within the establishments.

Notably, in May 2021, the European Committee for the Prevention of Torture conducted a special *ad hoc* visit to Georgia to assess the situation in semi-open institutions. In a report published in 2022 following the inspection, the European Committee for the Prevention of Torture emphasized the existence of a kind of agreement between the management of penitentiary institutions and prisoners representing the hierarchy. According to this agreement, any conflicts among prisoners should initially be resolved informally, without formally informing the administration. Given the aforementioned circumstances, it is particularly regrettable that the recommendation made by the Public Defender to develop a strategy for overcoming the existing criminal subculture in penitentiary establishment has not been implemented thus far.

Within the penitentiary system, the harmful practice of long-term placement of prisoners in de-escalation rooms and solitary (secure) cells as a form of punishment with no legitimate grounds, which the Public Defender deems as improper treatment, continues to be a significant challenge even in 2022. Additionally, the unavailability or limited access to somatic and psychiatric health services for inmates within the context of the penitentiary system is also problematic. In certain occasions, the latter may result in the death of prisoners and consequently violate their right to life.

Unfortunately, the issues related to the early release mechanism of prisoners, which has been advocated by the Public Defender to be addressed for years, remain unresolved. Specifically, local councils responsible for deciding on early release often make inconsistent decisions in cases with identical

circumstances. The motivation provided in the decisions is often standard, formal, and lacks proper justification. It remains unclear why one prisoner is granted release while another receives a negative decision in similar cases. The positive change that affected early release of prisoners during the reporting period is worth mentioning. In particular, the President of Georgia took into consideration the Public Defender's proposal and introduced amendments to the November 26, 2019, Decree "On the Approval of the Pardoning Rule." The term for granting pardons to individuals sentenced to life imprisonment was reduced from 20 years to 15 years.

Concerning the Ministry of Internal Affairs system - it is noteworthy that the absence of a requirement to use side cameras and produce audio and video recordings remains a challenge. Regrettably, police facilities where detainees are held still lack complete coverage through video surveillance systems. It is even more disappointing that the number of cameras in the police station visited by the National Prevention Mechanism in 2022 has drastically decreased instead of increasing. This trend of reducing cameras is deeply concerning and represents a significant regression in terms of preventing ill treatment.

The process of deinstitutionalization of large-scale closed institutions has been an unresolved issue for years. This problem is particularly obvious in psychiatric institutions and large institutions for children and institutions for persons with disabilities. Specifically, the prolonged hospitalization of patients in psychiatric institutions remains a challenge. Patients who do not require active treatment are unable to leave the institution due to the lack of community services and the absence of suitable alternative accommodations. It is necessary to increase the number of community services and the geographical coverage area.

In this regard, it is noteworthy that the deinstitutionalization process of psychiatric institutions and large residential facilities for children was launched in the country, which has been a longstanding recommendation of the Public Defender. In the case of the village Feria, the deinstitutionalization process at the boarding house of the Foundation named after the Apostle Matata began as an outcome of the Public Defender's recommendation in 2021 and subsequent monitoring. Children residing there were allocated into alternative forms of care.

In 2022, the successful completion of the deinstitutionalization process of the Tbilisi Infant House was a positive development. Also, the approval of the 2022-2030 independent living and deinstitutionalization strategy for individuals with disabilities, along with the corresponding action plan for 2023-2025, were positive developments.

In relation to large institutions, it is important to highlight the case of the Ninotsminda boarding school, which involves the systematic violation of children's rights, as well as the degrading, inhumane, and treatment equal to torture of minors over the course of several years. Regrettably, the examination of the case materials revealed significant and fundamental shortcomings in the investigation process. Despite the initiation of number of criminal investigations in 2016, the investigation process is still ongoing, and no one has been held liable. Furthermore, as of December 2022, there were still 10 children enrolled in the Ninotsminda boarding school. Unfortunately, despite certain positive steps taken last year, there have

been delays in determining alternative forms of care for the children in the boarding school. The transfer of the children to an alternative, family-like care service has not been accomplished thus far.

The challenges posed by gender-based killings of women (femicide) have persisted throughout the years. Trends in the decline in the number of murders and attempted murders of women is still not observed. Unfortunately, in comparison to 2021, the number of murders and attempted murders of women increased in 2022. Specifically, 25 women were killed and 37 cases of attempted murder of women were recorded in 2022. Significant legislative changes have been implemented in the area of gender equality. Notably, the duration of gender quota measures has been extended until 2032. Furthermore, a positive development was the introduction of regulations determining and providing compensation to victims of violence against women and/or domestic violence, although further refinement is needed.

One of the major challenges, particularly affecting rural women, is the limited access to sexual and reproductive health services. Clinics practically do not provide access to sexual and reproductive health services for women with disabilities. The legislation of Georgia still does not fully comply with the standards outlined in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. One example of this is the problematic definition of rape in the Criminal Code. The "National referral procedures for the identification, protection, assistance, and rehabilitation of victims of violence against women and/or domestic violence" have not yet been approved. As a result, coordinated work of the agencies as well as effective response addressing violence against women and domestic violence remains problematic.

It should be noted that the country's severe socio-economic situation has a detrimental effect on the right situation and status of people. Poverty remains one of the major challenges in Georgia. According to data of the National Statistics Service of Georgia, as of 2021, 17.5% of the population (approximately 652 thousand persons) are living below the absolute poverty line. During years, the Public Defender has been stressing the issue of child poverty, which is one of the most significant problems in the country. Compared to 2021, there has been a 40% increase in the number of children registered in the "Unified Database of Socially Vulnerable Families." As of December 2022, the number of minors receiving existence minimum allowance was 330,148. Unfortunately, despite the ongoing increase in child poverty year after year, the state has yet not developed an effective mechanism to alleviate it.

A number of problems still remain in Georgia in the area of protecting the rights of persons with disabilities. The quality and continuity of inclusive education remains a challenge. Awareness of school staff and parents on issues related to inclusive education remains problematic. Persons with disabilities still face difficulties in terms of employment. Stigmatizing the attitude of employers, which is often the result of their lack of information, is an obstacle.

In the reporting period, the national accessibility plan and standard for ensuring the access of persons with disabilities to information, means of communication, websites, and mobile applications were not approved. The essential participation of persons with disabilities and their organizations in the decision-making process at various levels is a problem. Including the activities of local councils working on the

issues of persons with disabilities.

Unfortunately, as in previous years, there is still no comprehensive legal definition of a homeless person and the necessary legal framework for the realization of the right to adequate housing. Until now, there is no unified database of homeless persons in the country, and in certain municipalities - local databases. Each municipality has a different standard and approach to homeless people. The latter is especially noteworthy as according to the current legislation, unfortunately, persons living in improper conditions, who live in housing without legal guarantees and are at risk of eviction, are completely excluded from the right to inadequate housing. Persons temporarily sheltered with relatives, as well as persons waiting to be released from the institutions, including persons in penitentiary institutions, medical institutions and orphanages, are also excluded from the right to inadequate housing.

Unfortunately, the elderly population in Georgia remains one of the most marginalized and vulnerable groups. The percentage of elderly people in the overall population is increasing annually, with 36% of them being registered in the unified database of socially vulnerable families, thus being vulnerable. In light of these circumstances, it is particularly disappointing that despite the recommendations of the Public Defender, "2017-2018 National Action Plan of the State Concept on Population Aging in Georgia" have not yet been thoroughly discussed or taken into consideration.

In the context of the legal status of internally displaced persons (IDPs), it is worth mentioning that the special rules for the resettlement of IDPs living in dilapidated buildings still have not been elaborated. As of the end of 2022, 716 families are residing in 35 facilities that pose an increased threat to their life and health. During the reporting period, the number of families resettled from the so-called collapsing buildings have been significantly decreased.

Unfortunately, the practice of illegal detention and ill-treatment of citizens persists in the occupied territories. According to official data, in 2022, 42 individuals were arrested along the occupation line towards the Tskhinvali region, and 13 people were arrested in the direction of occupied Abkhazia. Furthermore, the unlawful process of "borderization" continues, significantly undermining the secure environment and complicating the daily lives of the local population. Regrettably, in 2022, there were 69 recorded cases of illegal "borderization." The issue of access to education in native language remains a significant challenge, leading to a decline in the number of students each year in both regions. To ensure their children's education in the Georgian language, parents have to relocate from their permanent residences and transfer their children to schools on the territories controlled by Georgia.

Unfortunately, access to the right to education for representatives of national minorities and their proportional and equal involvement in decision-making processes within state agencies continue to be challenging.

In terms of combating discrimination, the Public Defender of Georgia has been urging the state for years to create a comprehensive policy document that would promote achieving equality. However, besides not adopting such comprehensive document, the national human rights strategy for 2022-2030 approved by the Parliament of Georgia, alongside other social groups, does not mention LGBT+ people.

In addition to the issues mentioned above, the 2022 parliamentary report of the Public Defender also addresses challenges related to the right to health. One significant aspect is the importance of having a robust and sustainable primary healthcare system, which serves as a key factor in protecting the population's right to health. Challenges within the primary healthcare system in Georgia include a shortage of nurses, outdated infrastructure, inadequate coordination between rural doctors and other specialists, and a complex and fragmented system of financing primary healthcare institutions.

It is also worth noting here that through the activities of the Office of the Public Defender, it was discovered that the "State Dialysis and Kidney Transplantation Program" was not being implemented in the highland regions, causing significant difficulties for program beneficiaries in those areas. However, it is important to highlight the positive outcome achieved as a result of the office of the Public Defender's activities. Starting from May 2, 2022, the program was launched in highland municipal hospitals across the country, ensuring that beneficiaries in those regions receive proper services.

Finally, it is worth noting that the Public Defender values the implementation status of the recommendations given by them to state agencies in the previous year. In the 2021 parliamentary report, the Public Defender of Georgia addressed 334 recommendations to state agencies and local self-government bodies, and 56 suggestions to the Parliament and the President of Georgia. The proposal made by the Public Defender to the President of Georgia was fulfilled. However, when it comes to the proposals issued to the Parliament of Georgia, 3 out of 55 proposals became irrelevant, and only 3 of the remaining 52 proposals were implemented. As for the recommendations, their implementation status remains unsatisfactory, similar to last year. State agencies have fully implemented only 12% of the recommendations, partially implemented 23.6%, while more than half - 54.7% - remained unfulfilled.

1. Right to Life

1.1. Introduction

The protection of the right to life remains one of the main challenges faced by the state. According to the assessment of the Public Defender, in 2022, similar to previous years, the state often failed to conduct proper investigations into cases of violations of the right to life, thereby violating its positive obligation related to the right to life. It is important to note that the European Court of Human Rights also established violation of the right to life found the violation of obligations arising from the right to life in the cases of "Edzveradze v. Georgia," "A and B v. Georgia," and "Machalikashvili and others v. Georgia."

These circumstances underscore the urgent need to expand the mandate of the Public Defender. For years, the Public Defender has been urging the Parliament of Georgia¹ to grant the permission to review investigation materials concerning cases of ill-treatment and/or violation of the right to life until the investigation is closed. This measure is necessary to effectively carry out oversight on the protection of fundamental rights.

This chapter offers an overview of ineffective investigations of violations of the right to life, the investigation of the alleged misuse of power in the process of presidential pardons in 2019, the ongoing official audit on the Khorava case, the investigation on the cases of the deaths resulting from a fire in Penitentiary establishment No. 17, the treatment of somatic health issues in psychiatric institutions, the protection of the right to life in the occupied territories, and the response to cases of femicide.

1.2. Femicide – gender motivated murder cases of women

According to data from the General Prosecutor's Office of Georgia, out of the 25 female murder cases identified in 2022², 15 have domestic violence dimension, 11 – non-domestic.³ Regarding the 37 cases of attempted murder of women⁴ 28 - were committed as domestic violence crime and 9 as non-domestic crimes.

Study of the cases, by the public defender, as part of femicide monitoring, shows that there is still a problem in the prosecutor's office to correctly differentiate between the crime of attempted murder and the crime of intentional grave bodily injury⁵ as well as qualifying it as the gender-based crime,⁶ which later results a light sentence imposed. Similarly to previous years, there are still challenges in some cases where the courts fail to recognize a crime committed against a woman out of jealousy as a gender-based

¹ The 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 32-33; The 202- Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 43; The 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, 48; The 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, 38.

² Including facts of domestic violence crimes of incitement of 2 ladies to suicide and one fact of intentional infliction of serious harm to health that resulted in death.

³ One female killed by two persons, with the signs of domestic violence and non-domestic violence.

⁴ Including 17 facts of the incitement to attempt suicide based on domestic violence motive, and 2 facts of incitement to attempt suicide not based on domestic violence motive

⁵ Poti City Court. Case # 1/236-2021 and Gurjaani District Court, case # 1/47-21.

⁶ Tbilisi City Court case # 1b/q790-21, Tbilisi City Court. Case #1/4041-21, Mtskheta District Court, case #1/254-21.

crime,⁷ sign a plea agreement in cases of attempted femicide⁸ and applies conditional sentences without establishing sufficient guarantees to prevent the recurrence of attempted femicide.⁹ Also, as a result of monitoring of the cases, it is revealed that the courts do not properly assess risks.¹⁰ Unfortunately, again in 2022, despite the awareness of the Ministry of Internal Affairs of Georgia about the violence committed against women, the murder/attempted murder of women could not be avoided.¹¹

The European Court found a substantial violation of the right to life, as the state failed to prevent the woman from experiencing gender-based violence, which ultimately led to her murder. The case also revealed a procedural violation of the right to life due to the inadequate response of law enforcement officers to gender violence and the subsequent improper investigation.

In relation to femicide, it is noteworthy to mention the 2022 decision of the European Court of Human Rights in the case of "A and B v. Georgia". The applicants in this case were family members of a deceased woman who was killed by her partner, a police officer at the time.¹² The European Court found a substantial violation of the right to life, as the state failed to prevent the woman from experiencing gender-based violence, which ultimately led to her murder¹³ The case also revealed a procedural violation of the right to life due to the inadequate response of law enforcement officers to gender violence and the subsequent improper investigation.¹⁴

1.3. Ineffective investigation of violations of the right to life

Examination of cases by the Office of the Public Defender uncovered several violations of the obligation to conduct effective investigations concerning the right to life. To present them, we will overview several studied cases.

During the case review process, the fact of unreasonable delayed forensic expertise was revealed, certain factual circumstances remained unidentified, and the investigative agency failed to address or take all necessary investigative measures to fully investigate the cases. The Public Defender's recommendation to carry out separate investigative actions and hold individuals accountable for the negligent performance of official duties has not been implemented.

1.3.1. Case of Temirlan Machalikhshvili

On January 19, 2023, the European Court of Human Rights found a violation of Article 2 of the European Convention (right to life) in the case of Temirlan Machalikhshvili, because the investigation conducted by the state was not effective.

According to the European Court, the Prosecutor's Office was limited in its assessment of the planning

⁷ Tbilisi City Court case # 1/1251-22 Tbilisi City Court case # 1/3595-21.

⁸ Poti City Court. Case # 1/236-2021.

⁹ Gurjaani District Court, case # 1/47-21.

¹⁰ Tbilisi City Court case # 1/4189-21, Court applied more lenient preventive measure than arrest, this enabled the defendant to commit more serious crime - attempt of murder against the victim.

¹¹ Case #4023/22; 5174/22; 507/22; 2583-22; 8384/22; 9246/22; 9266/22; 11531/22; 11912/22.

¹² Decision of the European Court of Human Rights dated February 10, 2022, on case "A and B v Georgia. Para 5 – 17.

¹³ Ibid. Para. 49.

¹⁴ Ibid. Para. 43-46.

and control phase of the special operation, because the State Security Service (hereinafter SSA) did not submit to the Prosecutor's Office any official reports on the preparation and/or implementation of the operation, nor any documents by the Special Operations Department of the SSA during the operation, before the operation and about the procedures used after that.¹⁵

The European Court noted that the even though the Prosecutor's Office initiated the investigation of the special operation circumstances on the same day, it relied on the results of investigative actions carried out by an investigator from the State Security Service. The initial investigative actions, such as the search of Temirlan Machalikashvili's bedroom and the removal of a hand grenade, were conducted by an investigator from the State Security Service, which cannot be considered an independent body, in relation with the State Security Service officers, who conducted the arrest operation and the fatal shot to Machalikashvili's head. This Department is also subordinate to State Security Service.¹⁶

After the search, the original state of the place was not preserved, which had a specific (negative) impact on the investigation.¹⁷ For example, the location of Temirlan Machalikashvili's mobile phone at the time of the shooting, traces of blood allegedly found on it, and accusations regarding headphones could not be properly established and confirmed. A State Security Service officer moved the hand grenade from the bed to the floor so that medical assistance could be provided. The court also points out that the need to provide first aid to a seriously injured person should be given priority over the requirement to avoid changing the place of the incident.

The European Court indicated that the nearly 5-week delay in questioning the officers of the State Security Service (SSS) Special Tasks Department posed a risk of pre-arrangement or agreement among the officers, and could have affected their ability to accurately recall the details of the special operation.¹⁸ Furthermore, the investigation materials did not include the operation report(s) submitted by members of the said department shortly after the operation.¹⁹

According to the European Court, the state's refusal to grant victim (procedural) status to the first applicant (Machalikashvili's family member) deprived the applicants of the opportunity to appeal the termination of the investigation by the prosecutor's office.²⁰ The Public Defender pointed out in 2019 that no member of Machalikashvili's family had been granted the status of successor of the victim, which was necessary for the transparency and accountability of the investigation.²¹

According to the decision of the European Court, the state is obliged to conduct a new and effective investigation into the violation of the right to life for Machalikashvili. Back in 2020, the Public Defender assessed the investigation as ineffective and addressed the Prosecutor General with a proposal to renew

¹⁵ Decision of the European Court of Human Rights dated January 19, 2023, on case "Machalikashvili and others v. Georgia. Para. 90.

¹⁶ Ibid, Para. 91.

¹⁷ Ibidem, Para. 91.

¹⁸ Ibid. Para. 92.

¹⁹ Ibidem. Para. 92.

²⁰ Ibid. Para. 95-96.

²¹ The 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, 33.

the investigation on Machalikashvili's case,²² which, unfortunately, was not shared by the Prosecutor General's Office.²³ We hope that the renewed investigation to enforce the decision of the European Court will take into account the suggestions of the Public Defender and will be conducted in accordance with the relevant standards of human rights.

1.3.2. Case of T.M.

The Office of the Public Defender examined the case of T. M.'s death on July 6, 2018,²⁴ in which only one person was found guilty of violating traffic safety or operating rules, resulting in the loss of M.'s life.²⁵

Through the study of the case materials, several shortcomings in the investigation were identified. For instance, the condition of the road at the accident scene was not documented or described, relevant examinations were not conducted, and various circumstances were not established by the investigation etc.²⁶ In order to conduct number of investigative actions and establish the precise circumstances of M.'s injuries, Public Defender submitted a proposal to the General Prosecutor, but unfortunately, the prosecutor's office did not accept this proposal.²⁷

1.3.3. Case of Sh. M.

In January 2020, during the monitoring of the case of Sh. M.'s death in the civil hospital, significant obstacle was identified for the investigation. It was the fact that as of December 9, 2022,²⁸ the investigation had not received the report of the medical commission examination appointed on April 19, 2021. This report was crucial in determining the cause-and-effect relationship between the treatment given to Sh. M. and his subsequent death. Another medical commission examination regarding the cause-and-effect relationship was scheduled for September 29, 2021. Unfortunately, the Office of the Public Defender did not receive a response from the National Bureau of Forensic Examination named after SSP Levan Samkharauli regarding the reasons for not completing medical commission examination.²⁹

1.4. Ongoing investigation regarding the pardoning carried out by the President of Georgia

In 2019, the Public Defender assessed as a violation of the right to life pardoning, carried out by the current President, of convicts who were serving sentences for intentional murders and left the penitentiary institutions without serving a significant part of their sentences. Unfortunately, the criminal investigation started on September 20, 2019, regarding the issue of pardon is still ongoing without tangible results.³⁰

²² The 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, 47; Proposal of the Public Defender of Georgia dated 2020 March 27; #15-5/3581.

²³ The 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 37; Letter of the Public Defender to the Prosecutor General dated April 10, 2020. Letter # 13/21165.

²⁴ Criminal Justice Department of the Public Defender's Office 2022 activity report.

²⁵ Criminal Case # 011060718001.

²⁶ Criminal Justice Department of the Public Defender's Office 2022 activity report

²⁷ Ibid; Proposal of the Public Defender of Georgia dated December 5, 2022. #15-2/12147.

²⁸ Office of the Public Defender of Georgia, reviewed ongoing criminal case files on the fact of the death of SH.M. # 002240120008 as an exception, on December 9, 2022, in the Special Investigative Service.

²⁹ Letter of the Public Defender of Georgia January 3, 2003, # 15-2/16; Criminal Justice Department of the Public Defender's Office 2022 activity report

³⁰ Letter # 13/475 from the General Prosecutor's Office of Georgia, dated January 10, 2023. Investigation into the possible abuse of

In light of the fact that the General Prosecutor's Office did not give the Office of the Public Defender an exceptional opportunity to review the case,³¹ it is unknown how effectively, timely and thoroughly the relevant investigative/procedural actions are conducted. The investigative agency provided the office with only general information about the progress of the investigation and informed that the President of Georgia was interviewed within the framework of the investigation.³²

1.5. Ongoing Official Audit on so called Khorava case

Official inspection on the so-called Khorava case carried out by the General Inspectorate of the Prosecutor's Office of Georgia, like in previous years,³³ continued without producing any results in 2022. The prosecutor's office continues to respond dryly to the application of the public defender, stating that the official inspection has not been concluded.³⁴ Unfortunately, the office of the public defender has been reiterating for years that no progress has been made by the prosecutor's office. It is worth noting that in 2020, the General Inspection of the General Prosecutor's Office conducted only 24 official inspections³⁵ and in 2021 - only 22.³⁶ Therefore, theoretically, the argument that the General Inspection is unable to carry out the ongoing investigation of the Khorava case cannot be accepted.

1.6. Fire in the Penitentiary Institution # 17

In 2022, the Office of the Public Defender continued to monitor the case of two inmates who died in a fire that occurred at penitentiary establishment No. 17 on October 14, 2021. This investigation is still ongoing under the Special Investigation Service.

The Office of the Public Defender obtained access to the materials of the criminal case through the rules of exception.³⁷ Upon review, it was discovered that the individual employed as the Civil and Fire Defense Inspector at Penitentiary No. 17 lacked specialized knowledge in the field of fire safety norms and had not received any training in this area.³⁸

Furthermore, the head of the Infrastructure Development Division of the Economic Department of the Special Penitentiary Service, whose responsibility was to oversee fire safety norms in penitentiary institutions, also lacked the necessary expertise and failed to conduct thorough supervision.³⁹ The investigation practically proved that before the fire, both in the 17th and in other penitentiary institutions,

official authority during the pardon process is currently underway, involving elements of the crime outlined in the first part of Article 332 of the Criminal Code of Georgia

³¹ Letter of the Prosecutor General of Georgia dated September 14, 2020, # 13/53054.

³² Letters of the General Prosecutor's Office of Georgia # 13/78621 dated December 28, 2021 and # 13/475 dated January 10, 2023.

³³ Criminal Justice Department of the Public Defender's Office 2021 activity report pg. 21.

³⁴ Letter of the Prosecutor General of Georgia dated 11 January, 2023. # 13/751.

³⁵ Activity Annual Report 2020 of the Prosecutor's Office of Georgia. Pg 96, < <https://bit.ly/3kXyCq1> > last viewed: 09.03.2023].

³⁶ Activity Annual Report 2020 of the Prosecutor's Office of Georgia. Pg 102, < <https://bit.ly/3ZRvz1d> > last viewed 09.03.2023].

³⁷ Criminal Case # 199141021002.

³⁸ Criminal Justice Department of the Public Defender's Office 2022 activity report

³⁹ Ibid.

a systematic check was not conducted to ensure the compliance with fire safety norms.

The Public Defender appreciates the development and implementation of security evacuation plans for penitentiary institutions and other units of the Special Penitentiary Service in 2022. The Office of the Public Defender continues to monitor the execution of this plan as well as the progress of the criminal case investigation.

1.7. Treatment of somatic (physical) health problems in psychiatric institutions

Patients receiving long-term antipsychotic medication should undergo regular physical health check-ups.⁴⁰ In contrast, in 2022, visits by the National Prevention Mechanism revealed that the management of medication side effects was still problematic in psychiatric facilities.⁴¹ In addition, therapist services in the facilities visited included only counseling and symptomatic treatment.⁴² As for therapeutic drugs, only emergency drugs were available in psychiatric institutions, patients had to purchase other prescribed drugs themselves after consultation.⁴³

In 2022, patients placed in a psychiatric hospital and with no financial resources could not benefit from planned medical services determined by the universal health insurance program, because the services were supposed to be co-financed.⁴⁴ In addition, in 2022, the mental health program did not finance the somatic health care of patients.⁴⁵ Consequently, the patients had to pay for additional treatment, which they could not afford due to lack of financial resources.⁴⁶ In addition, the state mental health program provided only emergency therapeutic and surgical dental services, and in other cases the patient had to pay for the services.⁴⁷

It should be positively evaluated that provision of the medical services was added to the psychiatric inpatient service component in the 2023 state health care program. According to the information received from the representative of the Ministry, it is planned to develop a standard of medical services, where the volume of services will be described in detail. The public defender hopes that the document will be developed and implemented in the near future.

As in previous years,⁴⁸ in 2022, the production of consistent statistics on deceased patients remained problematic. Psychiatric institutions failed to document the deaths of patients who were transferred to other hospitals due to deteriorating health conditions.⁴⁹ Even in cases where patients passed away within

⁴⁰ Treatment and Management of Schizophrenia among Adults. National Clinical Practice Recommendation (Guideline), Chapter 4.2.

⁴¹ 2022 Annual Report of the National Prevention Mechanism of the public Defender's Office of Georgia

⁴² Ibidem.

⁴³ Ibidem.

⁴⁴ Ibidem.

⁴⁵ Ibidem.

⁴⁶ Ibidem.

⁴⁷ Ibidem.

⁴⁸ The 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 30. The 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021,34.

⁴⁹ 2022 Annual Report of the National Prevention Mechanism of the public Defender's Office of Georgia.

the psychiatric institutions, unified statistics were not generated.⁵⁰

1.8. The situation in terms of protection of the right to life in the occupied territories

In the context of the violation of the right to life, one of the significant challenges in the territories occupied by the Russian Federation is the establishment of artificial barriers to movement, as reviewed in thoroughly also in previous reports of the Public Defender.⁵¹ The transportation of patients from occupied Akhagori to the demarcation line remains problematic. The de facto regime continues to impose unlawful and discriminatory restrictions on movement permits. The artificial barriers imposed at the checkpoints directly impact the right to health and the right to life of residents in the occupied territory. This problem is demonstrated by the tragic death of Elsa Kudukhovia, a one-and-a-half-year-old child from Akhagori, in 2023 due to a lack of timely medical assistance.⁵² Regrettably, inadequate access to medical services has resulted in the loss of many lives in previous years as well.⁵³

Proposal

To the Parliament of Georgia

- Amendments should be introduced to the Organic Law "On the Public Defender of Georgia" to enable the Public Defender to review the investigation files on the fact of ill-treatment and/or violation of the right to life, until the conclusion of the investigation.

Recommendations

To Prosecutor General of Georgia:

- To ensure periodic public updates on the investigative and procedural measures conducted during the official inspection, as well as to disclose the outcomes of the inspection process, considering the deficiencies identified in the investigation of the murder of minors on Khorava Street. Additionally, to provide the Office of the Public Defender with access to the inspection materials. Based on the results of the official inspection, to discuss the relevance of initiating investigations on negligence or misuse of power.
- Within the framework of the activity report submitted in accordance with Article 172 of the Regulation of the Parliament of Georgia, to provide information on the effectiveness of investigations on the violations of the right to life.

To the Ministry of Internal Affairs and to the Prosecutor General of Georgia:

⁵⁰ Idem.

⁵¹ Special report of the Public Defender of Georgia "2019-2020 so-called The impact of the closure of checkpoints on the legal situation of the population living in the occupied territories", see: < <https://bit.ly/3YkXBBi> > [last reviewed: 10.03.2023]; 2021 Parliamentary Report of the Public Defender of Georgia, p. 328.

⁵² A one and a half year old child from Akhagori died. His parents brought him to a doctor in Tbilisi, see: < <https://bit.ly/3IQ3e4x> > [last reviewed: 10.03.2023].

⁵³ The 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 43. The 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, 405

- When distinguishing between the crime of attempted murder and intentional infliction of serious harm to health, the Ministry of Internal Affairs and the Prosecutor's Office should thoroughly examine the specific circumstances of the case, adhering to the criteria established by the decision of the Supreme Court of Georgia No. 680AP dated May 17, 2018.

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

- The relevant unit of the Ministry should create a register and produce comprehensive statistics about persons who died in psychiatric institutions of Georgia, indicating the cause and place of death.
- To thoroughly study the instances of all deceased patients who were transferred to and from psychiatric institutions, in order to ascertain the cause of death and assess the timeliness of their placement in the appropriate institution. Based on the findings, take all necessary measures addressed at preventing deaths of the patients.
- To instruct the State Agency for the Regulation of Medical and Pharmaceutical Activities to conduct a study on the management practices related to the use of antipsychotic drugs in psychiatric institutions, as well as the management of the associated 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 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Public Defender of Georgia serves as the National Prevention Mechanism in Georgia. Additionally, the Public Defender of Georgia also handles complaints from individuals who are placed in closed institutions.

In 2022, based on citizens' applications as well as proactively, to respond to information disseminated in the public domain, the representatives of the Public Defender visited a total of 1,540 individuals who were either arrested or imprisoned. These visits were conducted through 598 visits. As part of the national prevention mechanism's mandate⁵⁴ 148 regular and ad hoc visits were made to 118 institutions.

In this chapter, we will examine cases of ill-treatment, identify relevant risk factors and legislative shortcomings revealed in the penitentiary institutions, the Ministry of Internal Affairs system, psychiatric institutions, mental health shelters and residences. Detailed information on the implementation of recommendations issued by the Public Defender in 2021 regarding the combatting and prevention of ill-treatment, as well as a comprehensive analysis of the issues discussed in this chapter, can be found in the 2022 report of the National Prevention Mechanism and the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

This chapter consists of three subchapters: 1) Practices that amount to or may amount to ill-treatment, 2) Safeguards against ill-treatment/risk factors causing ill-treatment, and 3) Investigation of alleged ill-treatment cases.

In order to effectively fight against ill-treatment, it is vital that the independent monitoring body has the freedom to carry out its activities. Unfortunately, while carrying out the visits during the reporting period, representatives of the Public Defender encountered obstacles in the VII Division of the Main Division of Old Tbilisi and the Main Division of Isani-Samgori. Furthermore, the investigation into the targeted and allegedly organized illegal actions by a small group of prisoners against the representatives of the Public Defender in penitentiary institutions in 2020 and early 2021 has not yet been concluded. The Prosecutor's Office launched an investigation on these cases in February, 2021.⁵⁵ The reasons for the delay in reaching

⁵⁴ Penitentiary institutions, departments/divisions of the Ministry of Internal Affairs, temporary placement isolators, migration centers, temporary placement isolator of the State Security Service, psychiatric institutions, housing, shelter, military units, departments of the Department of Security of the Ministry of Internal Affairs, Division I of the Department of Special Tasks of the Ministry of Internal Affairs, Special Penitentiary Service Penitentiary Department Units of external security of the main division of external security and information technical security, monitoring of court waiting cells, monitoring of the joint return operation, psychiatric examination department of the LEPL Levan Samkharauli National Bureau of State Expertise

⁵⁵ Criminal Justice Department of the Public Defender's Office 2021 activity report. 13-14.

a summary decision in the investigation remain unclear.⁵⁶

Like previous years, in 2022, the penitentiary system continued to face significant challenges such as overcrowding of institutions and the use of informal methods of governance, aiming to silence prisoners, prohibiting them from discussing problems and maintaining a superficial order within the institution. Throughout the reporting period, the bad practice of transferring prisoners to de-escalation rooms in closed institutions remained, which is deemed ill-treatment by the Public Defender. Additionally, the identification and documentation of facts of ill-treatment, provision of adequate medical services to prisoners, and ensuring suitable physical environments within penitentiary institutions remained problematic.

Regarding the legal status of individuals detained within the internal affairs system, in 2022, detainees continued to report cases of excessive use of force, physical and psychological violence committed by law enforcement officials. It remains problematic to ensure detainees receive information on their rights, to secure timely access to defense attorney, informing their families, and maintaining a comprehensive register of detained persons, which are effective measures for preventing ill-treatment. The lack of mandatory use of body cameras and the production of audio and video recordings remain significant challenges. Unfortunately, police facilities where detainees are held still lack comprehensive video surveillance systems. Furthermore, it is deeply concerning that the number of cameras in most of the police institutions visited by the National Prevention Mechanism in 2022 has decreased significantly, rather than increased. This trend of decreased number of cameras is an alarming and regressive step backward in terms of preventing ill-treatment.

Year after year, there is a lack of substantial improvement in psychiatric institutions, where patients continue to suffer from violence, and their legal protection is neglected. Despite legislation clearly defining their rights, patients with voluntary status are unable to leave the hospital freely. The existing infrastructure in psychiatric institutions does not meet international and national requirements.

An essential element of combating ill-treatment is an effective response to cases of such acts. However, during the reporting period, several shortcomings were identified in this regard. Furthermore, the country has yet to develop a comprehensive state policy for the protection and rehabilitation of victims of torture and inhuman treatment.⁵⁷

⁵⁶ Letter of the Public Defender's Office dated 2022 20 September#15-9/9496 and response of the Prosecutor's Office, dated October 7, 2022 # 13/63673.

⁵⁷ It is commendable that the draft of the National Strategy for the Protection of Human Rights of Georgia for the years 2022-2030 defines as one of the tasks the establishment of an effective mechanism for the protection and rehabilitation of the rights of victims of torture and ill-treatment.

2.2. The practice amounting to ill-treatment

In this sub-chapter, we review cases of ill-treatment revealed in closed institutions. We also evaluate the environmental conditions and practices within these systems that frequently contribute to such treatment.

Violence committed by employees of establishments / law-enforcement officers

In 2022, the Office of the Public Defender received numerous applications and complaints from prisoners in penitentiary institutions, alleging physical and psychological violence from the side of employees of the special penitentiary service. Additionally, during the visits to the institutions in 2022, the National Prevention Mechanism also obtained information ⁵⁸ about several alleged cases of physical and psychological violence against prisoners by penitentiary institution staff. A trend of ill-treatment of prisoners in de-escalation rooms was identified.

Regrettably, like prisoners, patients in psychiatric institutions are not safeguarded against violence, inhumane and degrading treatment. Patients reported instances of staff members shouting at them, talking aggressively and threatening with physical restraint or isolation. Patients also spoke about incidents of physical assault, verbal abuse, and the use of excessive force during chemical restraint.

During their visits, members of the National Prevention Mechanism were informed by patients about various forms of violence, including instances where an employee of a psychiatric facility extinguished a lit cigarette on a patient's shoulder, locking a patient in an isolated room without access to water and toilet facilities for three days, instances of denying access to toilets, and allegations of systematic psychological and physical violence by a security guard against a patient, etc.

Regarding the Ministry of Internal Affairs system, the Office of the Public Defender received several reports regarding alleged incidents of the use of disproportionate and clearly excessive force by police officers during arrests, as well as alleged cases of ill-treatment after the arrest.

Similar to previous years (2019, 2020, and 2021), the methods of physical violence commonly observed in 2022 tight were handcuffing and beatings with hands and feet. Unlike 2021 but similar to 2020, during the reporting period, arrested individual reported ill-treatment by police officers inside police vehicles. Additionally, in two cases, despite detainees requesting medical assistance, police officers refused to call for medical personnel.

During the reporting period, the National Prevention Mechanism of the Public Defender identified 419 suspicious cases while studying the personal files of detainees in temporary detention centers. ⁵⁹ These

⁵⁸ see Subchapter of the 2022 report of the National Prevention Mechanism of the Office of the Public Defender of Georgia, "Violence by Employees of the Institution".

⁵⁹ Members of the National Prevention Mechanism review the personal files of all detainees held up until the day of their visit. The

cases include both administrative and criminal detentions. According to the data, in 113 (27%) of the 419 cases, individuals detained under the administrative procedure received injuries during and/or after their arrest. Looking at the trends over the years, in 2016, individuals detained under the administrative procedure experienced bodily injuries during or after arrest in 12.8% of the suspicious cases studied by the special preventive group. In 2017, the same indicator was 26.4%, followed by 26.8% in 2018, 31.8% in 2019, 34.4% in 2020, and the statistical indicator for 2021 (26%) does not significantly differ from the data of 2022 (27%).

The Public Defender believes that in terms of the treatment of individuals detained by the police, the situation in 2022 has not undergone significant changes compared to previous years. Additionally, since 2017, there has been a noticeable deterioration in the treatment of individuals detained under administrative procedures.

Inter-prisoner/patient violence

In 2022, cases of violence among prisoners and patients remained problematic. A comprehensive analysis of the situation reveals that both penitentiary institutions and psychiatric facilities fail to effectively address problems in this regard.

The conflicts between prisoners are predominantly rooted in domestic matters, such as unauthorized use of another prisoner's phone card or disputes over cigarettes, etc. Regrettably, similar to previous years, physical and verbal confrontations between cellmates continue to occur frequently within closed penitentiary institutions No. 2 and No. 8.

It is important to highlight that physical and psychological violence among prisoners in penitentiary institutions is frequently linked to overcrowding and the prevalence of informal power dynamics. Regrettably, over the years, there has been an ongoing failure to separate defendants from convicts, which often leads to conflicts between them. Informal governance within the institutions is characterized by instances of physical and severe psychological violence among prisoners. Victims of violence often refrain from discussing the true causes of their injuries with the institution's administration and medical staff due to fears of anticipated retribution.

In psychiatric institutions, conflicts between patients primarily arise from incidents of theft or unauthorized possession of personal belongings. When physical confrontations occur between patients, the staff often fails to intervene in a timely manner, resulting in injuries to the patients. In response to patient conflicts, psychiatric staff frequently resort to administering injections as part of both voluntary and involuntary treatment.

Restrictions in penitentiary establishments, psychiatric institutions, and in shelters for persons with mental

specific details of detention, location, number, and nature of injuries led the monitoring team to suspect that these individuals may have been subjected to ill-treatment. Inspections were conducted in territorial police facilities and temporary detention centers located in the Tbilisi, Kakheti, Imereti, Ajara, Guria, and Kvemo Kartli regions

disorders

Individuals placed in penitentiary institutions, as well as psychiatric institutions, are subjected to various restrictions. However, the application of certain restrictions, considering their nature, can amount to ill - treatment.

In particular, the current practice of imposing restrictions on the rights of prisoners placed in high-risk and closed-type institutions, without providing interventions tailored to their needs, adversely affects their physical and mental well-being. This, in turn, increases the risk,⁶⁰ of violence against prisoners, contradicting international standards⁶¹ and can amount to cruel, inhuman, and degrading treatment.

Prisoners in these institutions are confined to their cells for 23 hours a day, with only 1 hour allocated for outdoor activities in poorly equipped yards that do not provide adequate relaxation and recreation for the prisoners.

Furthermore, regrettably, as observed in previous years, there is a prevailing practice of subjecting prisoners in closed and high-risk institutions to long-term isolation. For instance, during a visit to Penitentiary No. 6, it was discovered that, like previous years, over half of the prisoners were held in solitary confinement. Notably, at the time of the visit, there were 178 prisoners in the facility, with 120 of them being isolated in solitary confinement.

through the Public Defender's constitutional lawsuit, the Constitutional Court of Georgia, by its decision of December 21, 2022, acknowledged these issues.

Unfortunately, the regulations governing special risk penitentiary institutions still grant directors the authority to place prisoners in single cells for extended periods and limit their contact with other inmates without providing a justified decision.⁶² These regulations also lack provisions for the mandatory periodic review of such decisions and fail to grant convicted individuals an effective right of appeal. It is noteworthy that, by its decision dated December 21, 2022,⁶³ the Constitutional Court of Georgia granted the constitutional lawsuit of the Public Defender submitted to advocate for the solution of this problem. As per the court's decision, the Ministry of Justice is required to establish procedures and grounds for placing prisoners in single cells by May 1, 2023, in accordance with the constitutional requirements of Georgia.

Regarding the restrictions imposed in penitentiary institutions, it is important to highlight the practice of placing prisoners in de-escalation rooms and solitary (secure) cells. Throughout the reporting period, the

⁶⁰ see Public Defender's Report "Impact of Prison Conditions on Prisoners' Health", 2018, 118-124, available at < <https://bit.ly/3qYPlcz> >, [last viewed 08.03.2023].

⁶¹ 1st General Report of the European Committee for the Prevention of Torture (CPT), CPT/info(2011) 28, Strasbourg, Council of Europe, 2011, para 52, available at: < <https://bit.ly/3icl98K> > [last viewed: 08.03.2023].

⁶² According to the first paragraph of Article 14 of the Regulation of the Penitentiary Institution # 3, approved by the Order # 108 of August 27, 2015, of the Minister of Penitentiary and Probation of Georgia, and according to the first paragraph of Article 15 of the Regulation of Penitentiary Institution # 6 approved by Order # 109, the convict is usually placed in a single or double cell.

⁶³ Decision of the Constitutional Court of Georgia dated December 21, 2022, in the case # 1/10/1676, "Public Defender of Georgia against the Minister of Justice of Georgia".

Office of the Public Defender received numerous reports indicating ungrounded and punitive use of the de-escalation room for prisoners⁶⁴ The Public Defender emphasizes that the long-term, ungrounded, and punitive placement of prisoners in de-escalation rooms and solitary (secure) cells amounts to cruel, inhuman, and degrading treatment. In most cases, prisoners are transferred to these de-escalation rooms and solitary (secure) cells for the maximum allowed duration, where they are effectively kept continuously for days and weeks, with only short intervals of minutes or hours. Additionally, it is concerning that in certain instances, prisoners are placed in de-escalation rooms or solitary (secure) cells without a legal basis, even when there is no risk to their life or health. Disturbingly, during the reporting period, a juvenile was subjected to placement in a solitary cell in institution No. 8, and the penitentiary administration engaged in illegal punishment and intimidation against him / her.⁶⁵ Additionally, it should be noted that the practice of placing patients with mental health problems in the de-escalation room is still actively used in closed institutions.

For years, the Public Defender has consistently advocated for a reduction in the duration of placement in de-escalation rooms to 24 hours. However, in accordance with the provisions of penitentiary institutions, the transfer of the defendants/convicts to de-escalation rooms is still determined as a 72-hour period. It is noteworthy that the European Committee for the Prevention of Torture, in its report following the visit to Georgia, classified the frequent use of de-escalation rooms for a period of 72 hours as de facto punishment.⁶⁶

Regarding psychiatric facilities, similar to previous years, mechanical restraint and rapid tranquilization, which essentially amounts to chemical restraint, continue to be actively employed to manage the behavior of agitated or aggressive patients.⁶⁷

It is critical to note that mechanical and/or manual restraints is often accompanied by the use of chemical restraint of patients. This issue is particularly pressing in larger psychiatric institutions.

Regrettably, the management policy of the institutions does not prioritize the minimization of escalation risks. The Public Defender's assessment considers this practice of using restraint methods amounting to ill-treatment. Unfortunately, in comparison to previous years, there has been no meaningful change in the use of restraint methods for patients in 2022, and no observable efforts have been made to eliminate their use. None of the recommendations made by the Public Defender in this regard have been implemented.⁶⁸

⁶⁴ A detailed overview is presented in the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

⁶⁵ According to the explanation of the administration of the penitentiary institution # 8, it was decided to transfer the minor to a solitary cell because he did not observe hygiene norms and "Change of environment" for several hours would motivate him to maintain hygiene.

⁶⁶ Report on the visit of the European Committee for the Prevention of Torture to Georgia (CPT/Inf (2019) 16), para. 101, visit 10-21 September 2018, available in English at: <<https://rm.coe.int/1680945eca>> [last viewed: 02.02.2023].

⁶⁷ European Committee for the Prevention of Torture Standards on Methods of Restraining Adults in Psychiatric Institutions, available at <<https://bit.ly/3texFLj>> [last reviewed: 19.02.2023].

⁶⁸ No amendments have been introduced in the legal framework and no practical measures have been made to protect patients

Furthermore, it is worth noting that at the "B. Naneishvili National Mental Health Center and the Batumi Medical Center, there is a practice of applying security measures such as prolonged separation of patients from one another. This long-term isolation of patients indicates a deficiency in dynamic safety measures and inadequate patient supervision within the institutional unit.

Additionally, it is worth noting the situation in shelters for persons with mental disorders, particularly at the "B Naneishvili National Mental Health Center" shelter for male patients. In this shelter, injections are administered to control the behavior of beneficiaries, beyond prescriptions. Moreover, according to the "Restraint Journal," processed in the female shelter, as of September 13, 2022, there were 46 instances of manual and chemical restraint, where the necessity of such measures was not properly justified. Notably, according to the Law of Georgia "On Mental Health," the use of restraint methods is only permitted for inpatients.

Practice of full search of prisoners

During the reporting period, while conducting visits to penitentiary institutions # 2, # 6, # 8, # 10, and # 16, the members of the National Prevention Mechanism received information that the practice of fully undressing prisoners and making them squat was still maintained during their initial accommodation, as well as during their removal and return to the institutions. Unfortunately, the visits conducted in 2022 revealed that such practices were also applied to juveniles in penitentiary institutions # 2 and # 8.

The European Committee for the Prevention of Torture emphasizes that during a full search, individuals should not be required to undress various parts of their bodies simultaneously.⁶⁹ However, contrary to this standard, the regulations of penitentiary institutions permit complete undressing. Regarding the practice of making squats there are no provisions in the regulations of penitentiary institutions allowing this. According to the Public Defender, such practices constitute humiliating and degrading treatment of prisoners.

It is noteworthy that, in the parliamentary report of 2021, the Public Defender of Georgia addressed the Minister of Justice of Georgia and recommended to introduce changes to the provisions of penitentiary institutions, specifically prohibiting the requirement to simultaneously undress different parts of the inmate's body during full examinations and eliminating the practice of "making squat." Unfortunately, these recommendations made by the Public Defender were not implemented.

from the arbitrary actions of the institutions.

⁶⁹ Council of Europe, European Committee for the Prevention of Torture, Report on the visit to the Czech Republic (1-10 April 2014, para. 85), available at: <<https://bit.ly/35cCmvq>> [last reviewed: 08.03.2023].

Medical service in penitentiary and psychiatric institutions

For years, the Public Defender has been raising the challenges associated with providing timely and quality somatic (physical) healthcare services and mental healthcare to prisoners in penitentiary institutions. In certain cases, the latter amounts to ill-treatment. Unfortunately, in 2022, issues related to the availability of medical services, protection of medical confidentiality⁷⁰ timely implementation of medical referrals, as well as the overall state of mental health and preventive healthcare, continue to persist. Throughout the reporting period, the Office of the Public Defender examined numerous cases where the provision of untimely or inadequate medical services to specific prisoners was confirmed.⁷¹

An illustrative example of the delay in providing appropriate medical services is the case of a convict who was registered in the electronic referral program for operative treatment on July 28, 2021, but did not receive the required medical services even after a period of 17 months. Additionally, the case of a nearly one-year delay in operative treatment is of significant concern. For instance, there is the case of a convict who was registered in the electronic referral program for a consultation with a periodontist on November 5, 2020, and the planned consultation took place on May 16, 2022, only after the Office of the Public Defender intervened. Unfortunately, similar to previous years, access to primary care remains problematic in closed institutions. In the context of penitentiary healthcare, it is crucial to develop a comprehensive plan for the full integration of penitentiary healthcare into the civilian healthcare system.

To ensure the provision of timely and adequate medical services, it is crucial to have prompt referrals to specialist doctors. An examination of specialist medical records revealed that in certain cases, prisoners had to wait for a month or even longer to be consulted by specialist doctors. It is essential that the waiting period for a scheduled consultation with a specialist does not exceed two weeks. Unfortunately, during the reporting period, it was revealed that both scheduled outpatient and inpatient service terms were violated.

Analysis of the cases examined by the Office of the Public Defender indicates that the period from the appointment of a psychiatric examination to its actual execution spans approximately 4-5 months. Furthermore, it takes approximately 1 month to receive the examination conclusion after it has been conducted.

Ensuring timely referral of prisoners to a psychiatrist remains a challenge within penitentiary institutions. The periodic mental health screening is still not taking place. Delayed placement of prisoners in psychiatric hospitals is observed in many cases, which is directly linked to delays in conducting examinations.⁷²

⁷⁰ During the visits made, the prisoners again pointed to the problem of the presence of a non-medical employee of the institution during the meeting with the doctor.

⁷¹ Detailed information is presented in the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

⁷² Due to the workload of the National Bureau of Expertise, the defendant may be in a penitentiary for months, while he/she needs

Analysis of the cases examined by the Office of the Public Defender indicates that the period from the appointment of a psychiatric examination to its actual execution spans approximately 4-5 months. Furthermore, it takes approximately 1 month to receive the examination conclusion after it has been conducted.

In this regard, it is noteworthy that during the reporting period, the National Prevention Mechanism conducted a visit to the psychiatric examination department of the Levan Samkharauli National Bureau of Forensic Examination. As a result of this visit and the analysis of relevant regulations, it became apparent that several critical issues concerning the psychiatric examination of the defendants were either incompletely regulated or not regulated at all. Specifically, key issues such as the rights of individuals undergoing examination, somatic healthcare, crisis management, and others, lack proper organization and guidance.

Furthermore, it is important to highlight that the Department of Psychiatric Examination faces a shortage of human resources, which directly impacts the timely transfer of the defendants from penitentiary institutions for examination, considering the substantial workload. Additionally, it is crucial to establish close collaboration among the Special Penitentiary Service, the National Bureau of Expertise, and the Department of Psychiatric Examination. This collaboration should include the exchange of information regarding the physical health of the individuals to be examined, with their consent, and the provision of prescribed medications. This will ensure that individuals receive continuous and necessary treatment during their stay in the Department of Psychiatric Examination.

Moreover, it is noteworthy that psychiatric care in penitentiary institutions, similar to previous years, still falls short of the modern biopsychosocial approach and remains limited to psychiatrist consultations and medical treatments, lacking multidisciplinary interventions.

Regarding psychiatric institutions, it is worth mentioning that the 2023 state health protection program has introduced the obligation to provide medical services and monitor the side effects of medications within the psychiatric inpatient service component. The Public Defender welcomes the inclusion of this component and the allocation of financial resources. The Public Defender hopes that the necessary analyses and examinations will be conducted with appropriate frequency and that treatment will be provided when needed.

Furthermore, it is crucial to ensure the early detection of diseases and implement screening examinations as part of the screening program for patients within the appropriate age group residing in psychiatric institutions.

[Coercive treatment of patients in psychiatric institutions](#)

It is crucial for the state to ensure that a person is admitted to an inpatient facility without their consent only in exceptional cases stipulated by national legislation, subject to judicial oversight, and with adequate

treatment in a psychiatric hospital.

safeguards for legal protection.

Transferring a person to a hospital against their will, involving emergency medical aid and patrol crews, represents the initial stage of restricting an individual's freedom through involuntary hospitalization.⁷³ At this stage, it is crucial to clearly explain to the person the basis and rights underlying the restriction of their freedom in a manner that they can understand.

Regrettably, after a person is involuntarily transferred to a hospital, the necessary legal procedures for involuntary hospital care are not followed. Institutions sometimes resort to methods that circumvent or challenge the validity of the patient's free will in order to avoid the procedures required for involuntary inpatient psychiatric care. For instance, during the reporting period, there were cases where patients were subjected to psychological pressure or deception in order to persuade them to sign informed consent forms for inpatient admission and treatment.

Unfortunately, in 2022, the Parliament of Georgia did not incorporate the proposal made by the Public Defender, resulting in the absence of clear provisions in the Georgian law "On Mental Health" regarding the necessary measures to be taken by institutions in case of using restraint methods on patients undergoing voluntary treatment, as well as the procedures for reviewing the legal status of such patients.

Furthermore, it is regrettable that the obligation to obtain separate informed consents for hospitalization and treatment is still not defined at the normative level. Consequently, the autonomy and will of patients are disregarded when it comes to the selection of treatment methods. Obtaining informed written consent from the patient is crucial both at the initiation and continuation of treatment, as well as during any modifications to the treatment scheme.⁷⁴ Treating a patient without their consent may even amount to the violation of their rights, including the risk of torture or ill-treatment.⁷⁵

Unfortunately, during the visits to psychiatric facilities in 2022, similar to previous years, it was observed that the majority of patients lacked knowledge about the medications/injections they were receiving. They were unaware of the associated side effects and the importance of taking these medications. Additionally, many patients stated that they were unaware of their own diagnosis. Furthermore, the concerning practice of not documenting the reasoning for using injection beyond prescriptions persists in psychiatric institutions. This increases the risk of arbitrary actions by staff members.

As in previous years, the issue of long-term hospitalization of patients remains an unresolved problem. Patients who do not require active treatment are unable to leave the institution due to the lack of community services and the absence of suitable alternatives. It is worth noting that some former patients of psychiatric institutions are placed in asylums and residences for people with mental disorders simply because they have nowhere else to go. Interviews with beneficiaries reveal that although most of them

⁷³ Paragraph 3 of Article 18 of the Law of Georgia "On Mental Health".

⁷⁴ 8th General Report of the European Committee for the Prevention of Torture "Involuntary Placement in Psychiatric Institutions", para. 41.

⁷⁵ Interim Report of the Rapporteur to the General Assembly, A/63/175, 28 July 2008, para. 63, available at: < <https://bit.ly/3uecqqF> > [last reviewed: 08.03.2023].

are aware of their diagnosis, they often struggle to fully identify the prescribed medications, their administration methods, and have limited knowledge about the main and side effects of the medicines. Furthermore, it is important to acknowledge that transferring beneficiaries to 24-bed housing is not in line with deinstitutionalization policies. Instead, it is important to focus on transitioning beneficiaries to smaller family-type housing.

Extradition

The state is obliged not to expel, return, or extradite a person to another state if there are substantial grounds to believe that the person would be subjected to torture there.⁷⁶ Cases that contradict this principle were given special attention by the Public Defender during the reporting period.

First and foremost, it is noteworthy that during the reporting period, the Office of the Public Defender continued to monitor the extradition of I.S. from Georgia to the Russian Federation in 2019.⁷⁷ The monitoring of I.S.'s case proves that the Russian Federation fully disregarded numerous rights of the prisoner, despite providing legal assurances to the State of Georgia prior to I.S.'s extradition, guaranteeing that his rights would not be violated and that he would not be subjected to ill-treatment in Russian penitentiary institutions.⁷⁸

Also significant is the case concerning the extradition of a Ukrainian citizen to the Russian Federation, who had been involved in various activities against the Russian Federation during the Russia-Ukraine armed conflict.⁷⁹

Considering the reasonable assumption of torture and/or other forms of ill-treatment that the person might face if extradited to the Russian Federation, on August 3, 2020, the Public Defender submitted a proposal to the General Prosecutor expressing the inadvisability of extraditing V.A. Unfortunately, the prosecutor's office until now has not made a definitive decision to exclude the possibility of handing over the Ukrainian citizen to the Russian Federation.⁸⁰

It is also significant to note the case of the extradition of convict N.M., to the Republic of Azerbaijan. Convicted person raised concerns that his extradition, due to his past political activities and due to belonging to the LGBTQ+ community, would pose a significant threat to his right to be protected from torture and other inhuman treatment. Unfortunately, despite the well-founded position of the Public Defender, N.M. was extradited to the Republic of Azerbaijan.⁸¹

⁷⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(1).

⁷⁷ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 48.

⁷⁸ Detailed information is presented in the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

⁷⁹ 2021 Activity Report of the Criminal Justice Department of the Public Defender's Office of Georgia, 36-38.76

⁸⁰ Letter # 13/1916 of the General Prosecutor's Office of Georgia dated January 16, 2023.

⁸¹ The Office of the Public Defender of Georgia, through communication with the Ombudsman of Azerbaijan, continues N. Monitoring the legal status of N.M.

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

In order to prevent ill-treatment, it is crucial to establish and enforce in practice minimum guarantees of legal protection for individuals deprived of their liberty or placed under restrictions. These safeguards, both at the legislative level and in practice, help mitigate the risks of ill-treatment by enabling the detection and response to illegal actions. Additionally, this chapter highlights the circumstances and conditions that pose a risk of ill-treatment or often contribute to such treatment.

Deficiencies in revealing and documenting ill-treatment

In order to prevent ill-treatment, it is crucial to secure seamless process for detecting and documenting such cases. Unfortunately, in 2022, similar to previous years, this issue remained problematic in the Penitentiary and Ministry of Internal Affairs systems, as well as in psychiatric institutions.

In the context of penitentiary institutions, it is worth noting once again, as in previous years, despite legislative amendments,⁸² the detection and documentation of alleged ill-treatment remain problematic, especially when the prisoner refuses medical examination.

The current legal framework provides that without the prisoner's informed consent doctors cannot fill out a special injury registration form. Consequently, according to the existing legal framework, in similar cases, doctors are not required to send a notification to the special investigation service. As a result, there may be instances where ill-treatment goes undetected, undocumented, and unreported if the prisoner refuses medical examination during admission or upon leaving the institution, although he/she may have subject of ill-treatment.

It is worth noting that the European Committee for the Prevention of Torture, in its report on the ad hoc visit to Georgia in 2021, highlighted the change in the legal regulations and emphasized that doctors should be obliged to record the injuries and submit report to the investigation service, regardless of whether the alleged victim consents to documentation and submission.⁸³

Furthermore, it is important to mention that in the documentation produced in penitentiary institutions, physical injuries sustained by prisoners are often described as regular injuries. However, the nature, location, and information provided about the origin of these injuries raise reasonable doubts that they were likely caused by violent actions.

It is noteworthy that according to the information provided by the Medical Department of the Special Penitentiary Service, from January 1, 2022, to October 31, 2022, a total of 2,047 prisoners in the penitentiary institution received physical injuries. Out of these, 384 injuries were identified as being caused

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

⁸³ Report on the visit to Georgia of the European Committee for the Prevention of Torture on May 17-24, 2022 (CPT/Inf (2022) 11), para. 26, available in English at: < <https://rm.coe.int/1680a6eabd> > [last reviewed: 02.02.2023].

by another person,⁸⁴ while in 37 cases, the origin of the injury was not specified by the prisoner. Based on this data, it can be determined that injuries on the bodies of 1,626 prisoners were registered as self-inflicted or regular injuries.

The effectiveness of the mechanism for documenting cases of violence in penitentiary institutions is hindered by the influence of the criminal subculture, the practice of non-confidential meetings between prisoners and doctors, improper documentation of violence by doctors, the limited independence of medical staff, and the lack of trust between prisoners and medical staff as well as the requirement to obtain the consent of prisoners for medical examinations.

To address this issue, the Office of the Public Defender has submitted an application to the Constitutional Court challenging the existing regulation, which considers obtaining the prisoner's consent for a medical examination as a prerequisite for notifying the Special Investigation Service in case of a doctor's suspicion of violence against a prisoner.⁸⁵

Herewith, it is also noteworthy that, unfortunately, during the visit to the Psychiatric Examination Department of the Levan Samkharauli National Forensic Bureau,⁸⁶ it was evident that the institution does not fully document the injuries on the defendant's body. Upon examining the nurse's records, it was observed that in some cases, the doctor described the injury upon admission to the institution, however the method of describing the injury according to the "Istanbul Protocol" is not applied. This protocol includes indicating the origin of the injury, determining the correlation between the injury and the method of its occurrence, and in case of suspicion of alleged ill-treatment, would send a notification to the Special Investigation Service.

With regard to the system of the Ministry of Internal Affairs, it should be noted that unfortunately, inaccuracies still persist in the documentation of detained persons in the territorial police bodies. During the visits to 16 out of 51 institutions conducted by the special preventive group of the National Prevention Mechanism, significant deficiencies were identified in filling out the journals.

Similarly to previous years, the trend continues where in 20% (82 cases) of the 419 cases studied and examined by members of the National Prevention Mechanism (2021 - 29.1%, 2020 - 26.3%, 2019 - 30.7%, 2018 - 27.6%, 2017 - 30.1%, 2016 - 31.3%), the arrest report fails to mention the injuries documented in the medical records at the detention isolators. Obviously, in these cases, there is a strong presumption that the detained person may have been subjected to physical violence while under police control.

It is commendable that a column describing injuries was added to the protocols of administrative

⁸⁴ In 2021, 2,172 prisoners in the penitentiary received bodily injury, of which 310 were identified as injuries caused by another person, and in 93 cases the prisoner did not indicate the source of the injury. < <https://rm.coe.int/1680a6eabd> > [last accessed: 02.02.2023].

⁸⁵ See Constitutional lawsuit # 1748 of November 17, 2022 "The Public Defender of Georgia against the Parliament of Georgia and the Minister of Justice of Georgia", is available at < <https://www.constcourt.ge/ka/judicial-acts?legal=14773> > [last reviewed: 21.02.2023].

⁸⁶ The main task of the department is to conduct a forensic-psychiatric, forensic-psychological, complex (forensic-psychiatric-psychological) examination in criminal, civil or administrative law cases by the court, prosecutor, investigator, party participating in the case or an authorized person and issuance of a conclusion or of an act on impossibility to issue such conclusion.

detention from July 1, 2022. However, during the review of the detention protocols, the special prevention group still encountered instances where the column was left unfilled or only partially filled, despite the presence of injuries documented by the isolator's doctor. It is important to note that there have been improvements in the documentation of injuries by the doctors in the temporary detention isolators.

However, even in 2022, there is a high proportion of cases where the circumstances of the injury are either incompletely described or not described at all. Among the 419 cases studied in 2022, which were deemed suspicious by the National Prevention Mechanism, the circumstances were fully described by the doctors in the temporary detention isolators in 57.3% of the cases, incompletely described in 19.5% of the cases, and not described at all in 23.3% of the cases.

In addition to the information mentioned above, statistics concerning the documentation of injuries through photographs is also critical. According to the records processed by the special prevention team, photographs were taken in line with the "Istanbul Protocol" in 18 (5.8%) out of the 311 documented cases. However, none of the photos reviewed by members of the National Preventive Mechanism were of satisfactory quality, as they were either blurry or taken under or overexposed lighting conditions. Furthermore, there is still a lack of standardized guidelines for the storage of photographs taken in accordance with the "Istanbul Protocol" in detention isolators.

It is also noteworthy that, similar to previous years, there are still cases where a report was not sent to the Special Investigation Service despite the detainee having injuries. Out of the 419 cases processed in 2022, a notification was sent to the Special Investigation Service in 306 (73%) cases, while in 110 (26.2%) cases, no report was sent. Among the cases where reports were not sent are those where the detainee had injuries to their face and eye socket, with the quality and appearance of the injuries indicating recent harm probably caused by violence. It should be emphasized that compared to 2021, the percentage of suspicious cases that were not reported to the investigative body has increased.⁸⁷ This may be attributed to recent instruction from the Medical Department of the Ministry of Internal Affairs, which states that only cases where the detainee themselves point out alleged ill-treatment or where the doctor has strong presumption on this should be forwarded to the Special Investigation Service.

Similarly, to the penitentiary system, the effectiveness of the mechanism for documenting cases of violence within the Ministry of Internal Affairs is hindered by the established practice of conducting meetings between the detainee and the doctor in a non-confidential environment.

Additionally, there are difficulties in obtaining a sample from the body of the detainee by the doctors of the detention center.⁸⁸ The participation of a doctor in taking a blood sample without the consent of the arrested person damages the patient-doctor relationship⁸⁹ undermines trust, and ultimately has a negative impact on the identification of alleged cases of ill-treatment.

⁸⁷ The number of cases raising questions that were not reported to the State Inspectorate was 11% of cases studied in 2021.

⁸⁸ UN General Assembly Resolution 37/194 of December 18, 1982 "Ethical principles for medical personnel to protect against torture and other cruel, inhuman or degrading treatment", Art. 3.

⁸⁹ Report of the European Committee for the Prevention of Torture following a visit to Slovenia in 2006. Available: Para. 99, <<https://rm.coe.int/1680697db1>> [last reviewed: 19.02.2023].

Significant challenges were revealed in detecting and documenting ill-treatment in the temporary placement center of the Migration Department of the Ministry of Internal Affairs. Doctors of the center do not have technical means (camera) to photograph the injuries. In addition, there are no technical instruction for photography and the rules for storing photographic material. Doctors were not trained in photography. It is also noteworthy that during the visit of the National Prevention Mechanism, it was found that in 2022, only 1 initial medical examination form was sent to the investigative service.⁹⁰ The Public Defender believes that the information about alleged ill-treatment by doctors, revealed by doctors, should be sent directly and immediately to the special investigative service.

In this part, it is also important to mention the situation in the temporary detention center of the State Security Service. It is important to mention that the practice of doctors sending messages to the Special Investigation Service/State Inspector Service has not been observed in 2022 or in previous years. Furthermore, although doctors in the center have a camera, there has been no occasion to take photographs since 2017. Unfortunately, there are no defined rules for storing the photographed material either. Additionally, it is worth noting that during interviews with doctors conducted by members of the National Prevention Mechanism, it was revealed that they have not received training on the method of injury registration since they were separated from the isolation system of the Ministry of Internal Affairs in 2017. In addition, the effectiveness of the mechanism for documenting cases of violence is hindered by the established practice of conducting meetings between the detainee and the doctor in a non-confidential environment, even in the case of temporary placement isolators of the State Security Service. In the context of the Ministry of Internal Affairs, it is also worth noting that in 2022, the National Prevention Mechanism monitored the return flights of migrants from European countries. During this monitoring, deficiencies in documenting cases of ill-treatment were identified.

As for psychiatric institutions, one of the risk factors for conflicts and violence between patients is the practice of placing individuals with varying degrees of mental health problems and different needs together, without adequate care and supervision, in chaotic environments. Unfortunately, no psychiatric facility has introduced sufficient measures to protect patients from ill-treatment.⁹¹ The absence of a strategy to prevent conflicts between patients in these institutions is one of the contributing factors to the occurrence of violence. Consequently, due to the lack of an effective system for assessing and mitigating risks from patients, staff members are unable to identify potential threats.

Psychiatric institutions have not introduced legal mechanisms for documenting potential acts of violence committed against patients and reporting them to investigative agencies. As a result, conflicts that have occurred within these institutions are often un-responded, as they have no obligation to record incidents of violence in a special register or take appropriate measures. Unfortunately, the documentation of injuries

⁹⁰ According to the staff of the center, in line with the established practice, when sending a notification, the medical service writes a report addressed to the director of the temporary placement center, who informs the monitoring service of the migration center, and the latter sends the notification to the special investigative service.

⁹¹ An exception is the National Mental Health Center, where all incoming patients undergo a risk assessment to determine the risk of suicide and violence.

in psychiatric institutions is disorganized or nonexistent. Furthermore, it is concerning that the State Medical and Pharmaceutical Activity Regulation Agency, the sole agency responsible for monitoring psychiatric institutions, did not conduct visits to these facilities in 2022 to identify cases of violence or violations of patient rights and take appropriate action.

Furthermore, it is problematic that psychiatric institutions lack a standardized approach to documenting the methods of restraint used on patients. There is no uniform method of recording chemical restraints across institutions. The practice of rapid sedation, often accompanied by manual restraint of the patient, is only documented in a separate journal in certain departments of the Naneishvili National Mental Health Center.

Inadequate qualifications and insufficient number of medical staff

In 2022, similar to previous years, both the penitentiary system and psychiatric institutions faced the challenge of insufficiently qualified and insufficient numbers of personnel, which increases the risk of ill-treatment in these institutions.

Regrettably, during the reporting period, the shortage of medical personnel in penitentiary institutions remained a significant issue.⁹² The recommendation made by the Public Defender to fill the vacancies promptly and double the number of nurses was not implemented. It is noteworthy that Penitentiary No. 18 has the necessary medical equipment for surgical and intensive care units, but due to the lack of medical personnel, these units remain inactive. Additionally, it is worth mentioning that both penitentiary staff and medical personnel lack the necessary skills for psychiatric crisis management.

The insufficient number of staff in psychiatric institutions has a negative impact on the quality of psychiatric care provided and the effectiveness of response in case of conflicts between patients. Additionally, there are challenges related to the qualifications of personnel, poor performance, lack of motivation, low wages, and unfavorable working conditions. It is important to note that unqualified staff, without appropriate specialized training, contribute to an increased risk of harm to patients, particularly when using restraint methods.

Regarding the Ministry of Internal Affairs, the monitoring results indicate that detainees received timely medical services while under police control. However, it is noteworthy that in 2022, the number of isolators equipped with a medical station and a doctor regularly on duty did not increase. As of 2022, there were medical posts functioning in 21 isolators,⁹³ but only 10 isolators had medical personnel permanently on duty. There has been no progress in attracting and employing medical personnel to address this issue.

Request/complaint – shortcomings of complaint mechanism

⁹² According to the response # 21431/01 of January 26, 2023, received from the Special Penitentiary Service, by December 26, 2022, 376 of the 396 positions of medical personnel in penitentiary institutions were filled. As for the number of nurses, compared to 2021, the total number of nurses in 2022 increased by 6.

⁹³ Letter dated December 30, 2022, from the Department of Temporary Placement of the Ministry of Internal Affairs of Georgia. MIA 5 22 03718575

The existence of an effective appeals mechanism is crucial in preventing ill-treatment. However, in 2022, similar to previous years, the effectiveness of the appeal mechanism in penitentiary institutions, psychiatric institutions, residences, and shelters for people with mental disorders remained a challenge.

During the monitoring conducted in penitentiary institutions in 2022, it was once again revealed that the right to appeal for prisoners, along with criminal subculture, is hindered by the administration of the institutions, particularly due to the practice of censoring complaints and retaliating against those who file complaints. Unfortunately, year after year, the number of appeals and statements received by the Public Defender's Office from semi-open institutions has been decreasing, as inmates refrain from submitting complaints under the influence of the criminal subculture. This is especially concerning considering that approximately half of the prisoners serve their sentences in semi-open penitentiary institutions.⁹⁴ In 2022, only 1.9% of the statements received by the Public Defender's Office were from prisoners placed in semi-open institutions.

Additionally, it is important to highlight the systemic flaws encountered when prisoners connect to the hotline of the Public Defender's Office from correctional facilities. These flaws make it practically impossible to understand the content of the prisoners' conversations in some cases. Specifically, in several penitentiary institutions,⁹⁵ there was a systematic voice defect, including interruptions, delayed transmission of voice, background noise, and other issues. As a result, it was practically impossible to detect the speaker's words, comprehend their message, and fully understand the content of the conversation. This problem was particularly pronounced and frequent when calling from penitentiary institution No. 3.⁹⁶

Additionally, it is regrettable that, similar to previous years, the use of complaint boxes still poses risks of inmate identification through surveillance cameras, and the receipt of confidential complaint envelopes remains dependent on institution staff. It is crucial to emphasize that even though the content of the complaint remains unknown to the institutions, the mere act of submitting a complaint can still create problems for a prisoner. As a result, prisoners may be deterred from requesting and submitting confidential complaint envelopes.

Furthermore, it is crucial to ensure proper information provision to prisoners regarding the effective utilization of appeal mechanisms. This includes the provision of interpreter services for foreign-speaking prisoners when needed, as well as the dissemination of information in a language that they understand regarding the services and regulations within the institutions.

Similar to penitentiary institutions, the appeal mechanism in psychiatric institutions also has its flaws. While the legislation guarantees the patient's right to file complaints and statements with the court and other state institutions,⁹⁷ the procedures for utilizing these mechanisms by the patients are not clearly defined

⁹⁴ #14, #15 and #17 Penitentiary Institutions.

⁹⁵ #2, #3, #5, #6, #10, #15, #17, #18 Penitentiary Institutions.

⁹⁶ Detailed information is presented in the 2022 activity report of the Criminal Justice Department of the Public Defender of Georgia.

⁹⁷ Paragraph 1 "g" of Article 5 of the Law of Georgia "On Mental Health".

at the normative level.

Due to various issues such as phone-related problems,⁹⁸ non-confidential environment, and lack of awareness, the number of incoming calls and statements from psychiatric institutions is very low, both in the public defender's office and in non-governmental organizations working on patient's rights. Unfortunately, the hotline number of the public defender is not displayed in psychiatric institutions.⁹⁹ It should be noted that, as in previous years, patients do not have access to legal advice.

Regarding the situation in shelters and residences, it is unfortunate that effective internal and external appeal mechanisms are not provided. Similar to psychiatric institutions, the hotline number of the public defender is not displayed in shelters and residences for people with mental disorders. Furthermore, there is a significant problem in informing the beneficiaries about the available appeal mechanisms.

Informal governance of penitentiary establishments

In terms of protection against violence in prisons, using the informal methods of management of penitentiary institutions remains a significant challenge. Unfortunately, as in previous years, during the monitoring conducted in both closed and semi-open penitentiary institutions in 2022, the National Prevention Mechanism received information about the presence of privileged prisoners,¹⁰⁰ which poses a serious threat of abuse and often leads to violence and oppression among prisoners.

Additionally, during the reporting period, the Office of the Public Defender obtained additional evidence of the existence of a criminal subculture and its influence in Georgian prisons. Specifically, representatives of the public defender reviewed the investigation materials of a case involving the death of a convict as a result of confrontation between prisoners at Penitentiary Institution No. 17. The investigation revealed that the prisoners referred to the so-called "informal controller" in Institution No. 17 and described circumstances where failure of the cell to pay cigarettes or money for products in certain time, would involve the "informal controller." According to testimonies, on July 26, 2022, "informal controller" was released and a new "zone controller" was chosen. Moreover, certain privileges and opportunities to purchase various products (such as fried chicken, khachapuri, barbecue, etc.) were mentioned in exchange for cigarettes or deposits into a specific account.

Considering the aforementioned, it is particularly regrettable that the Public Defender's recommendation regarding the development of a strategy to address the criminal subculture and informal governance in penitentiary institutions has not yet been implemented. It is noteworthy that in May 2021, the European Committee for the Prevention of Torture conducted an ad hoc visit to Georgia to assess the situation in

⁹⁸ See the chapter on inviolability of personal life of the 2022 parliamentary report of the Public Defender of Georgia.

⁹⁹ Public Defender's hotline number was placed on the wall only "Acad. b. Naneishvili National Center for Mental Health" in the children's department. As for the notifications, the public defender is mainly contacted by convicts undergoing forced treatment or involuntary treatment, who have information about the hotline from the lawyer.

¹⁰⁰ For instance, according to the information received, in penitentiary institutions # 2 and # 15 there are still convicts close to the administration, who have certain influence on other prisoners, and if necessary, the administration uses them to "resolve relations" with the prisoners.

semi-open institutions. In its report published in 2022, the Committee specifically highlighted the different living conditions for prisoners based on their hierarchy, the practice of collecting "wallet" and silencing of prisoners, as well as the existence of an illusionary order.¹⁰¹ The committee also noted the presence of an agreement between the management of penitentiary institutions and prisoners representing the hierarchy, wherein any conflicts between prisoners should have been initially resolved informally without formal notification to the administration.¹⁰²

It is even more alarming that according to the information received in the Office of the Public Defender, the so-called "Controllers" were placed in specific cells. Who committed other illegal actions, with the support of the administration of the institution. In order to study and verify the issue, the Office of the Public Defender applied to the main security division of the Special Penitentiary Service five times during 2022 and asked to archive and provide/acquaint them with video recordings obtained as a result of electronic surveillance located in individual cells and corridors of penitentiary institutions # 2. However, unfortunately, according to the instructions of the division, due to a technical error in the video surveillance system, the video recordings requested by the Public Defender's Office could not be archived. Unfortunately, the problem is still unsolved, they have not purchased new, up-to-date equipment.¹⁰³

Overcrowding of penitentiary institutions

Overcrowding in penitentiary institutions remained problematic during the reporting period, representing one of the major challenges in Georgia's penitentiary system. This is demonstrated by the Council of Europe statistics, which ranks Georgia second¹⁰⁴ among its member states in terms of the number of prisoners.¹⁰⁵

In 2022, the situation has not changed in prisons and detention facility No. 2¹⁰⁶ and No. 8,¹⁰⁷ where the defendants and convicts are still placed together. International standards¹⁰⁸ and the requirement defined in the Imprisonment Code regarding the separation of the defendants from the convicts are still violated.¹⁰⁹ Due to overcrowding, in these institutions, the personal qualities, habits, behavior and risks of

¹⁰¹ Report on the ad hoc visit of the European Committee for the Prevention of Torture to Georgia on May 17-21, 2021 (CPT/Inf (2022) 11), para. 12, available in English at: <<https://rm.coe.int/1680a6eabd>> [last viewed: 01.02.2023].

¹⁰² Ibid. para. 20.

¹⁰³ Letter # 371346/01 dated December 21, 2022, of the Department of Electronic Surveillance of the Main Security Department of the Special Penitentiary Service.

¹⁰⁴ As of December 2022, there were 9,542 prisoners in Georgia, which means that there were 261 prisoners per 1,000,000 inhabitants. (Information about the prison population of Georgia and other states is available at: <<http://bit.ly/3JZEKrw>> [last reviewed: 23.03.2023].

¹⁰⁵ It should be noted that according to the data of December 2022, compared to the data of December 2021, the number of prisoners increased from 9223 to 9542.

¹⁰⁶ It is noteworthy that the limit of placement of prisoners in penitentiary institution # 2 is 1068, and as of 2022, 1072 prisoners were housed in this institution.

¹⁰⁷ It is noteworthy that the limit for the placement of prisoners in Penitentiary # 8 is 2426, and as of 2022, 2658 prisoners were housed in this institution.

¹⁰⁸ Under the UN Standard Minimum Rules for the Treatment of Prisoners adopted by UN General Assembly Resolution 70/175 (Nelson Mandela Rules), defendants and convicts must be housed separately (Rule # 11(b)).

¹⁰⁹ Article 9 (2) of the Imprisonment Code of Georgia.

the prisoners are still neglected during their allocation to cells. As a result, prisoners of various categories and viewpoints have to live together in one cell, which often becomes the cause of disagreements between prisoners in the closed space. The Public Defender believes that in order to solve these problems, it is important to transform large penitentiary institutions into small and balanced infrastructure institutions.

Arbitrary restriction of the rights of patients in psychiatric establishments

According to the legislation of Georgia,¹¹⁰ doctors have discretion to restrict certain rights of patients in extreme necessity for the purpose of ensuring their safety.¹¹¹ However, the specific meaning of "limiting the right for the purpose of security" and the basis on which doctors can exercise this authority are unclear. To avoid arbitrary decision, there is a need for clear regulations on the procedure for limiting patients' rights, including the establishment of maximum time limits for each right, criteria for imposing restrictions, and appeal procedures, both at the legislative and practical levels.¹¹² To address this issue, the Public Defender filed a constitutional lawsuit against the Parliament of Georgia in 2022, advocating for its resolution.¹¹³

Physical environment

In 2022, the physical conditions in detention centers, penitentiary institutions, psychiatric institutions, and shelters for individuals with mental disorders remained problematic.

Regrettably, the presence of semi-isolated sanitary units in cells¹¹⁴ with two or more persons in temporary detention isolators is still problematic. When multiple detainees are placed in these cells, they have to satisfy their natural needs in front of one another. Furthermore, the toilet facilities in the isolation cells lack flushing mechanisms and instead rely on a water pipe positioned several centimeters above an open sewage hole in the cell toilet.

Subjecting a detainee to such conditions for an extended period of time may amount to the humiliating treatment of the individuals in detention.¹¹⁵

Unfortunately, the physical conditions in psychiatric institutions remain problematic. The Naneishvili National Center for Mental Health and the Center for Mental Health and Drug Addiction Prevention continue to face a pressing issue of overcrowding. Patients are not provided with the standard living area

¹¹⁰ Paragraph 3 of Article 15 of the Law of Georgia "On Mental Health".

¹¹¹ In particular, the doctor has the right to restrict the patient's right to use the telephone; the right to leave the hospital for a short time; the right to receive letters, parcels and visitors; the right to own personal items; The right to receive audio-visual information, as well as the right to receive understandable information and medical documentation regarding one's health condition.

¹¹² National Prevention Mechanism 2020 Report, 166-170.

¹¹³ "The Public Defender of Georgia against the Parliament of Georgia", February 7, 2022, Constitutional Lawsuit # 1679.

¹¹⁴ There are 114 semi-isolated sanitary units in temporary detention centers of Marneuli, Kutaisi, Zestafoni, Samtredia, Chiatura, Batumi, Kobuleti, Lanchkhuti and Ozurgeti.

¹¹⁵ Decision of the European Court of Human Rights dated April 20, 2015, on the case "Vasilescu v. Belgium" (Vasilescu v. Belgique), application # 64682/12, para. 105.

¹¹⁶ of 8 square meters; instead, they are living in cramped spaces of around 4-5 square meters on average.¹¹⁷ The issue of overcrowded rooms persists at the Batumi Medical Center as well. Furthermore, the lack of necessary infrastructure and conditions for therapeutic activities in psychiatric institutions poses a significant problem. It is crucial for the state to take all necessary measures to ensure the compliance of psychiatric institutions with the standards set forth in the regulations governing the issuance of medical activity licenses and permits for inpatient facilities through systematic monitoring.

Moreover, it is crucial to address the physical environment in shelters and residences. The monitoring conducted by the National Prevention Mechanism during the reporting period revealed that the living conditions in residences are significantly better than those in shelters. The living conditions in the "Eastern Georgia Mental Health Center" are alarming, posing a threat to the well-being and safety of its beneficiaries. In particular, among other problems, the building lacks a functioning fire protection system, with noticeable damage to the ceilings and walls.¹¹⁸ Unfortunately, the institution also suffers from critical sanitary and hygienic issues. Poor condition of infrastructure makes it impossible to properly maintain hygiene norms.

From the point of view of the physical environment, penitentiary institution # 17 is still problematic. The so-called dormitories of "barracks" type still have not been eliminated and it is impossible to maintain sanitary and hygienic conditions.

In this context, it is noteworthy that in 2022, the National Prevention Mechanism conducted a study on the conditions of temporary detention cells in the general courts of Georgia. The inspection revealed problems related with the absence or malfunctioning of the artificial ventilation system in the Marneuli Magistrate's Court, as well as in the district courts of Gurjaani, Signaghi, and Telavi. Additionally, it is crucial to carry out repair work and ensure the maintenance of sanitary and hygienic conditions in the waiting cells of Signaghi and Telavi district courts.

Furthermore, it is noteworthy that in 2022, the National Prevention Mechanism, also examined the condition of transport vehicles used for prisoners for the first time, following the methodology of the European Committee for the Prevention of Torture.¹¹⁹

Safeguards against ill-treatment of an arrested person

Informing detainees – similar to previous years, informing a detainee about his / her rights by the police continued to be problematic in 2022. Through interviews conducted by the special prevention group, it was determined that in the majority of cases, the rights of arrested individuals were either not defined at

¹¹⁶ Approved by the Resolution of the Government of Georgia # 385 on December 17, 2010 "Conditions for the permit of an inpatient institution.

¹¹⁷ 3 – 4 Patients were placed in the cells of about 15-16 sq.m. in both institutions.

¹¹⁸ In terms of infrastructure, the situation is better in "Acad. b. "Naneishvili National Mental Health Center" shelter. However, this facility is also overcrowded and not all beneficiaries have enough personal space or household equipment.

¹¹⁹ Detailed information is presented in the 2022 report of the National Prevention Mechanism of the Office of the Public Defender of Georgia.

all or only partial information was provided, both during the arrest and prior to the interrogation. It is important to note that in the Ozurgeti temporary detention isolator, two detainees went on a hunger strike because they were not fully informed about the grounds for their detention and their rights.¹²⁰

Availability of a lawyer - according to the data processed by the special preventive group using the statistical program, the rate of lawyer involvement in cases within the first 24 hours improved in 2022.¹²¹ This data in 2022 was 34.9 %, whereas in 2021 it was 17.4%, in 2020 – 45%.¹²² However, compared to 2021, there has been a decline in the rate of lawyer involvement within the first 48 hours, dropping from 37.6% to 18.8%. It is worth noting that the average period of being under police control is 4 hours, based on the data processed by the special preventive group.

Involving a lawyer within the first 4 hours is only 7% of the 451 cases. Out of all the detainees interviewed by the Special Prevention Team in 2022, only one detainee had the opportunity to meet with a lawyer at a police facility. It is noteworthy that the persons arrested under the criminal proceedings directly spoke about the problem of the police officers preventing contact with a lawyer and ignoring the lawyer's request.¹²³

Unfortunately, recording the request of lawyer by a detainee and time when a detained person requests remains problematic. Ensuring confidential meetings with detainees in police facilities also continues to pose a challenge. Additionally, it is noteworthy that there are still many cases where the lawyer could not determine the location of the detainee.

Informing a family - according to the data processed by the special preventive group, in 2022, in 82.7% of processed criminal cases, 124 families were contacted within the legally established 3-hour period.¹²⁴ compared to the previous year, the situation in this regard has worsened¹²⁵ It is important to note that there is no available statistical data regarding the issue of informing families in the case of persons detained administratively. Whether or not the person indicated by the detained person will be informed about the detention depends on the detained person's desire, and there is no recorded information regarding such requests. Therefore, it is difficult to determine the extent to which this right is ensured. Consequently, the Public Defender, as in previous years,¹²⁶ believes that the Ministry of Internal Affairs should develop a specific mechanism to verify the implementation of the right to contact family members, relatives, or a lawyer and to provide information about the detention in practice.

¹²⁰ Letter # 120 dated December 30, 2022, from the Department of Temporary Placement of the Ministry of Internal Affairs of Georgia MIA 5 22 03718575.

¹²¹ Even through the rate of involvement of a lawyer in the first 24 hours improved in 2022, this is not directly related to the exercise of the right to a lawyer by police officers and may indicate a timely response by employees of temporary detention centers.

¹²² Statistics by year regarding the involvement of a lawyer in the first 24 hours in a criminal case: 2017 - 15%, 2018 - 11.9%; 2019 - 24.6%; 2020 - 45%.

¹²³ In order to ensure the procedure and safeguards against ill treatment, the Public Defender has been recommending, for years, to register the requirement of contacting a lawyer.

¹²⁴ Part 1 of Article 177 of the Criminal Procedure Code of Georgia.

¹²⁵ The dynamics according to the years are as follows: in 2017 - 71%, in 2018 - 86.8%. In 2019 - 94.4%, in 2020 - 84%, in 2021 - 94%.

¹²⁶ 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 57; 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, 89; 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, 61.

Processing of audio-video recordings - the Public Defender has been consistently issuing recommendations regarding video recordings for several years. These recommendations cover various aspects, including the requirement to record videos using body cameras and in police vehicles, and the need to store the recorded material for a reasonable period of time. The recommendations also emphasize the importance of equipping police facilities with video infrastructure to ensure comprehensive coverage of the movement of detained individuals.¹²⁷

There have been no legal framework changes to address these recommendations in 2022. Specifically, patrol inspectors and employees of the Central Criminal Police Department and territorial bodies are not obliged to video record their interactions with citizens. Furthermore, there are no explicit rules or deadlines specified for the storage of video material, except for patrol inspectors.¹²⁸

To address this issue, the Public Defender of Georgia submitted a constitutional lawsuit to the Constitutional Court of Georgia in 2022. The lawsuit claims that it is unconstitutional to grant patrol police officers the authority to refrain from using their right-hand video camera during interactions with citizens while exercising their mandate.

Additionally, in terms of percentage data, among the 25 police facilities where renovations were not carried out in 2021 or 2022, the number of cameras on the inner perimeter decreased by 62%, while the total number on the outer perimeter remained unchanged. The Public Defender is concerned over this trend of reducing cameras, as it poses a significant setback in preventing ill-treatment and is seen as a significant regression.

Audio-video recording of the interrogation process of detained persons is still not being implemented in police facilities.¹²⁹ The video surveillance in police facilities does not cover all areas where detainees may be present. Furthermore, it is especially discouraging to note that instead of increasing, the number of cameras in most police facilities visited by the National Prevention Mechanism in 2022 has significantly decreased.¹³⁰ According to the data processed by the National Prevention Mechanism in three regions (Adjara-Guria, Imereti, Racha-Lechkhumi, and Kvemo Svaneti, Kakheti), there has been a reduction in the number of cameras within the internal perimeter of 28 police facilities and within the external perimeter of six facilities. Additionally, in terms of percentage data, among the 25 police facilities where renovations were not carried out in 2021 or 2022, the number of cameras on the inner perimeter decreased by 62%, while the total number on the outer perimeter remained unchanged. The Public Defender is concerned over this trend of reducing cameras, as it poses a significant setback in preventing ill-treatment and is seen as a significant regression.

¹²⁷ A detailed analysis of the current legislation on video cameras can be found in the 2020 report of the National Preventive Mechanism. 131-136. Available at <<https://bit.ly/3I592XB>> [last reviewed: 16.02.2023].

¹²⁸ Available at <<https://bit.ly/3I592XB>> [last reviewed: 16.02.2023].

¹²⁸ Order # 1310 of the Minister of Internal Affairs of December 15, 2005, on the approval of the instruction "On the rules for patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia", Article 12¹.

¹²⁹ In accordance with Article 287 of the Criminal Procedure Code of Georgia, video and audio recording is allowed during investigative actions.

¹³⁰ Detailed statistical information is available in the 2022 report of the National Prevention Mechanism.

In addition to the aforementioned issues, it is noteworthy that none of the 51 police institutions visited by the special preventive team had ongoing audio-video surveillance in the offices of the department heads and deputy heads. These offices are frequently used for interviewing detainees or individuals with a different status within the institution.

During the reporting period, the Office of the Public Defender studied several cases involving allegations of ill-treatment of citizens by employees of the Ministry of Internal Affairs. In a number of cases, the Public Defender's Office itself requested the Ministry of Internal Affairs to archive and review relevant video recordings. However, according to the response requested information was not stored on the hard disk of the recording device, and the police officers were not equipped with body cameras. In one particular case, the Office of the Public Defender made efforts to determine the reasons (such as device damage, record deletion, or destruction) for the unavailability of the video recordings. To this end, the Office repeatedly contacted the Ministry of Internal Affairs for an explanation. However, as of now, the Office has not received a response. This issue pertains not only to the video surveillance cameras within police administrative buildings (both internal and external perimeter), but also police body cameras and the video recorders used in official vehicles.¹³¹

Furthermore, the study of cases has uncovered instances where it is impossible to obtain video records from the surveillance cameras installed within/on the administrative buildings of police stations, as the records on the hard disks cannot be found.¹³² These findings affirm the gravity of the problem highlighted by the former state inspector and public defender in their legislative proposals. Specifically, the existing legal framework does not provide sufficient guarantees to ensure the timely and smooth collection, protection, and storage of evidence.

The issue concerning video surveillance cameras and the archiving of video recordings has also been revealed in the penitentiary institutions. A notable case in this regard is the former deputy head of the State Security Service of Georgia, Ioseb Gogashvili. He claimed that during his time in Penitentiary Institution # 12, he was taken out of his cell several times to the bathroom, where he had telephone conversation with the Minister of Internal Affairs of Georgia using a mobile phone. Gogashvili alleged that the minister threatened him and demanded specific testimony. According to the spread information the administration of Penitentiary Institution # 12 was involved in organizing these actions.¹³³

The Public Defender requested the Electronic Surveillance Department of the Special Penitentiary Service to review the video recordings from the surveillance cameras. However, this was not possible as the recording devices in Penitentiary # 12¹³⁴ were reported to be out of order.¹³⁵ The Public Defender's

¹³¹ Detailed information is presented in the 2022 activity report of the Criminal Justice Department of the Public Defender of Georgia.

¹³² In certain cases, the problem of obtaining recordings, due to their deletion, also occurs in connection with video recordings of private objects.

¹³³ See. < <https://bit.ly/3PMfioM> > [last reviewed: 10.02.2023].

¹³⁴ Letter No. 248035/01 dated August 23, 2022, of the Department of Electronic Surveillance of the Special Penitentiary Service.

¹³⁵ It was confirmed to the Office of the Public Defender that as of September 2022, the problem in Penitentiary # 12 has been resolved and the video surveillance system is functioning smoothly (letter # 263281/01 dated September 7, 2022, of the Department of Electronic

Office requested review of recordings from several dozen video cameras, and it is questionable that all of them were out of order precisely at the time when an alleged illegal action took place in the institution. Furthermore, during the reporting period, storing video recordings in Penitentiary Institution No. 3 remained problematic.

It is worth noting that current legislation stipulates a storage period of at least 30 days for material obtained through electronic surveillance in penitentiary institutions.¹³⁶ This rule was expected to come into effect on August 1, 2022, for Penitentiary Institution # 3.¹³⁷ However, according to the explanation provided by the Special Penitentiary Service, the video recordings in Penitentiary No. 3 are only kept for 120 hours, despite the fact that the normative act regulating this matter has not been published, nor has it been presented to the Office of the Public Defender by the penitentiary service.

Role of a judge - the Criminal Procedure Code of Georgia stipulates that if a judge suspects the commission of torture, humiliating, and/or inhumane treatment against a defendant/convicted person at any stage of criminal proceedings, or if the defendant/convicted person reports such treatment to the court, the judge shall refer the matter to the relevant investigative body.¹³⁸

The Public Defender of Georgia has consistently highlighted the need for changes in the Code of Administrative Offenses of Georgia, granting individuals under administrative responsibility the same opportunity.¹³⁹ It is commendable that the Parliament has taken the proposal of the Public Defender into account and incorporated the necessary changes in the Code.¹⁴⁰ Notably, according to information provided by the Supreme Court of Georgia, in 2022, judges of district (city) courts in Georgia made 106 referrals to the relevant investigative body due to suspicions of torture, inhumane, or humiliating treatment of detainees or based on reports received from detainees themselves.¹⁴¹

2.4. Investigation of alleged ill-treatment incidents

Effective investigation of ill-treatment is one of the crucial safeguards to prevent this crime. Unfortunately, several challenges emerged in this regard during 2022.

Surveillance of the Special Penitentiary Service).

¹³⁶ According to the amendment to the Order # 35 of May 19, 2015 of the Minister of Penitentiary and Probation of Georgia "On determining the procedure for visual and/or electronic surveillance and control, record keeping, erasure and destruction", the storage period of the material captured during electronic surveillance was defined as not less than 30 days (Article 1 of Order # 403 of the Minister of Justice of Georgia dated May 13, 2019).

¹³⁷ Order of the Minister of Justice of Georgia No. 751 of July 30, 2021, Article 1, Subsection "f" on "Making changes to Order No. 35 of May 19, 2015 of the Minister of Penitentiary and Probation of Georgia, regarding the implementation of surveillance and control by visual and/or electronic means, and determining the rules for keeping, erasing, and destroying records" and amending Order # 403 of May 13, 2019.

¹³⁸ Article 191 of the Criminal Procedure Code of Georgia.

¹³⁹ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 58; 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 74.

¹⁴⁰ Law of Georgia "On Amendments to the Code of Administrative Offenses of Georgia", according to which Article 2381 was added to the Code of Administrative Offenses of Georgia.

¹⁴¹ Letter of the Supreme Court of Georgia of February 8, 2023 # P-85-23.

It is noteworthy that on December 30, 2021, a package of legislative amendments was rapidly adopted, leading to the abolition of the State Inspector Service from March 1, 2022. As a result, two independent institutions were created: the Special Investigative Service and the Personal Data Protection Service.

It should be noted that during the reporting period, the Constitutional Court of Georgia deliberated on the issue of abolishing the state inspector. Unfortunately, the Constitutional Court considered the norms by which the service of the state inspector was abolished to be in accordance with the Constitution of Georgia.¹⁴² Abolishment of the independent investigative mechanism by the legislative body was narrowly considered by the Constitutional Court, only in terms of leaving its head without compensation.

Accordingly, allowing the possibility of the state to abolish the independent agency at any time by the legislative body at its own discretion and without any justification, while considering the abolition of the independent investigative mechanism by the Constitutional Court as only a legislative editorial change, cannot ensure the constitutional safeguards of human rights protection. According to the definition of the Constitutional Court, the institutional guarantees required for an independent investigative body are not applied in Georgia at this stage.

The Public Defender has emphasized the importance of establishing an independent investigative mechanism responsible for investigation and criminal prosecution for several years. During the legislative changes concerning the Special Investigation Service in May and November 2022, the Public Defender presented proposals to the Parliament.¹⁴³ While some positive changes were implemented,¹⁴⁴ the Parliament of Georgia did not incorporate crucial guarantees aimed at strengthening the institution, despite the necessity of such measures highlighted in the evaluation document by OSCE/ODIR.¹⁴⁵

It is crucial to extend the investigative mandate of the service to cover crimes committed by the General Prosecutor, the Minister of Internal Affairs, and the head of the Security Service. Furthermore, the jurisdiction of the Service has been expanded to investigate numerous additional crimes,¹⁴⁶ that could potentially reduce the effectiveness of investigations and/or divert attention away from serious crimes.

It is important to note here that despite the expanded mandate, additional resources have not been allocated. The lack of sufficient budgetary resources remains a significant challenge for the service. Furthermore, the legislative amendments did not provide adequate safeguards for conducting effective investigations, as highlighted in the proposal put forth by the former state inspector's service that public

¹⁴² The Constitutional Court of Georgia has deemed unconstitutional solely the normative content of the law that entails the removal of the state inspector and her deputies without offering an equitable position or providing just compensation. This decision was reached in the case "Londa Toloraya and the Public Defender of Georgia against the Parliament of Georgia," as outlined in the Decision of the Constitutional Court dated November 17, 2022 (Decision # 1/9/1673, 1681).

¹⁴³ Proposals of the Public Defender of Georgia # 15/4736 of May 4, 2022, and # 15/11047 of November 3, 2022.

¹⁴⁴ The right for the investigator of the service to enter the penitentiary institution without obstacles, the possibility of applying to the prosecutor with a proposal for the effective use of special protection measures, etc.

¹⁴⁵ OSCE Office for Democratic Institutions and Human Rights, Opinion on the Legislative Amendments on the State Inspector's Service of Georgia, GEN-GEO/436/2022, 18 February 2022, available at <<https://bit.ly/3Z2RSON>> [last reviewed: 22.03.2023].

¹⁴⁶ Freedom of speech, violation of privacy, election related crimes.

defender¹⁴⁷ supported.¹⁴⁸ Specifically, the Special Investigative Service still lacks the authority to enter temporary detention isolators without hindrance, with no restriction and without special permission, etc.

It is worth noting that the quality of cooperation between the Office of the Public Defender and the Special Investigation Service has remained unchanged. Since March 1, 2022, the Office has received detailed information regarding the process of investigations in numerous criminal cases. Additionally, the Office has had the opportunity to review numerous suspended criminal cases and, via exceptional rules, reviewed case files of numerous investigations.

During 2022, the Office of the Public Defender reported 35 facts of alleged ill-treatment to the Special Investigation Service. Out of these cases, investigations were initiated in only 24 instances, or the information was attached to the investigation materials of another episode of alleged ill-treatment against the same individual. In 11 cases, investigations were not initiated because interviews conducted with the alleged victims, upon information provided by the Office of the Public Defender, resulted in all alleged victims denying / not confirming occurrence of the ill-treatment.

During the reporting period, the Office of the Public Defender examined 31 criminal cases in which the Special Investigation Service had concluded the investigation. In these cases, after March 1, 2022, the investigation was terminated based on the prosecutor's decision, without prosecuting a specific person.¹⁴⁹ Additionally, the Office of the Public Defender through rule of exceptions¹⁵⁰ studied 10 ongoing criminal cases. The thorough examination of these cases revealed that the investigations conducted by the Special Investigation Service generally adhere to the standards of effective investigation. However, the Office of the Public Defender did identify certain problems that require attention.

The study of terminated criminal cases revealed that in certain instances, interviewing of the police officers or other officials implicated in alleged criminal activities were delayed and conducted between 8 months and over 1 year after the start of the investigation. Consequently, some witnesses reported difficulties in recalling specific details related to the incidents due to the passage of long time. Furthermore, while the relevant video recordings are requested and obtained during the initial stage of the investigation, the process of signing the protocol for viewing them is delayed in certain cases.¹⁵¹

In addition to the aforementioned issues, the case of a transgender female prisoner, and alleged inhumane treatment against her in Penitentiary No. 8, demonstrates a failure to meet the standards of effective investigation. The investigation was originally initiated by the State Inspectorate in July 2020 and is currently being handled by the Special Investigation Service. In 2020, investigative activities were

¹⁴⁷ Proposal # 15/4736 of May 4, 2022, of the Public Defender of Georgia.

¹⁴⁸ A detailed overview is presented in the 2022 activity report of the Criminal Justice Department of the Public Defender of Georgia.

¹⁴⁹ It is noteworthy that a total of 40 such cases existed. However, only those criminal cases were examined in which investigations were initiated due to alleged crimes committed by officials while exercising their official authority.

¹⁵⁰ According to subsection "e" of Article 18 of the Law of Georgia "On the Public Defender of Georgia", the public defender does not have access to the materials of the ongoing criminal case.

¹⁵¹ Specifically, it has been between 8 months and 1 year and 6 months since the removal or request of the video recordings and registering of the inspection reports.

actively pursued, and most of the necessary investigative steps were taken by that time. However, after 2021, the required investigative actions were not conducted, despite the need to interrogate the victim's cellmates, medical staff, numerous staff of the institution, etc.

Another significant case is that of the defendant, G.N. Representatives of the Office of the Public Defender met this person on September 22, 2022, at the Kutaisi temporary detention isolator. G.N. had multiple injuries on his face. In light of this, the Office of the Public Defender deemed it necessary to independently investigate the fact of possible ill-treatment towards the defendant. The Office of the Public Defender reported the alleged ill-treatment to the Special Investigation Service. However, since according to G.N., he did not have any complaints against the police officers, the Special Investigation Service did not initiate an investigation into the matter. Given the severity of the multiple injuries on G.N.'s body, despite his lack of consent, the public defender believes that it was important to initiate an investigation to address all the issues raised in relation with G.N. case through an effective official investigation. This includes examining the circumstances surrounding G.N.'s arrest and assessing the proportionality of force used during the arrest.

In addition, it is noteworthy that during the reporting period, the Public Defender through studying the data in the temporary detention isolators, examined the timely appearance of the Special Investigation Service investigators and duration of the interview with detainees and conditions in the temporary detention isolator. Through the analysis of 419 cases processed by the National Prevention Mechanism, it was revealed that out of the 306 cases referred to the Special Investigation Service, the investigator from the Special Investigation Service met with the detainee in the temporary detention isolator in 145 cases (47.4%). This indicator shows a significant decrease compared to the previous year.¹⁵²

Regrettably, meetings with investigators from the Special Investigation Service in temporary detention isolators, during the reporting period, were predominantly conducted remotely. However, due to the fact that detainees are not left alone in a dedicated room, during remote meetings, a confidential environment cannot be ensured. This affects the detainee's ability to have frank discussions with the investigator from the Special Investigation Service.

In addition, it is important to highlight specific indicators regarding the initiation of investigations and criminal prosecutions by the General Prosecutor's Office of Georgia and the Special Investigation Service against law enforcement representatives. From January 1, 2022, to December 31, 2022, the General Prosecutor's Office of Georgia initiated investigations into alleged cases of physical and/or psychological violence committed by Ministry of Internal Affairs employees in 8 criminal cases; criminal prosecutions were initiated against 7 individuals¹⁵³ As for the Special Investigation Service, from the day of its operations March 1, 2022, to December 31, 2022, the service initiated investigations into alleged cases of physical and/or psychological violence committed by the employees of the Ministry of Internal Affairs in

¹⁵² As a result of the analysis of 495 cases processed in 2021, it turns out that out of 441 cases sent to the State Inspector's Office, the State Inspector's investigator met the detainee in a temporary detention center in 350 (70%) cases.

¹⁵³ Letter # 13/11162 of the General Prosecutor's Office of Georgia dated February 20, 2023.

176 criminal cases. The General Prosecutor's Office of Georgia initiated criminal prosecution on 2 of these cases, in 2 cases, 2 individuals were recognized as victims (including the victim's successor), and in 8 criminal cases, the investigations were terminated.¹⁵⁴

Additionally, it is noteworthy that from January 1, 2022, to December 31, 2022, the General Prosecutor's Office of Georgia initiated investigations into 3 criminal cases involving alleged physical and/or psychological violence committed by employees of penitentiary institutions against prisoners. Criminal prosecutions were initiated against 4 employees of the penitentiary institution in relation to these cases.¹⁵⁵ Regarding the Special Investigation Service, from March 1, 2022, to December 31, 2022, investigations were initiated in 22 criminal cases. Out of these, the General Prosecutor's Office of Georgia initiated criminal prosecution in 2 cases, 5 individuals were recognized as victims in 2 cases, and the investigation was terminated in 1 criminal case.¹⁵⁶

As a notable trend, it is worth mentioning that both the Prosecutor's Office,¹⁵⁷ and the Special Investigation Service primarily initiate investigations on the alleged crimes committed by police and penitentiary institution employees based on Article 333 of the Criminal Code of Georgia, which envisages exceeding official power. Notably, only on 2 cases¹⁵⁸ prosecution started investigations based on Article 144¹ (torture)¹⁵⁹ while the Special Investigation Service did not initiate any.¹⁶⁰ In terms of investigations initiated based on Article 144³ (ill-treatment), only in one case¹⁶¹ prosecutor's office started investigation based on this article,¹⁶² whereas the Special Investigation Service initiated investigations under this article in - 10¹⁶³ cases.¹⁶⁴

In this context, it has to be mentioned, that the Public Defender of Georgia, as in previous years¹⁶⁵ calls on the Parliament to initiate reforms within the General Prosecutor's Office. This initiative aims to enhance the institutional structure and accountability mechanisms of the Prosecutor's Office, which is particularly essential given the vital role of the General Prosecutor's Office of Georgia in restoring and safeguarding violated rights.¹⁶⁶

¹⁵⁴ February 3, 2023 letter of the Special Investigation Service SIS 9 23 00001653.

¹⁵⁵ Letter # 13/1162 of the General Prosecutor's Office of Georgia dated February 20, 2023.

¹⁵⁶ Letter of the Special Investigation Service of February 3, 2023 # SIS 9 23 00001653.

¹⁵⁷ It is noteworthy that the Prosecutor's Office of Georgia investigates a crime committed by a representative of a law enforcement agency, as well as an official or a person equal to him/her, in accordance with Articles 144-144 of the Criminal Code of Georgia, Article 332, Part 3, Sub-paragraphs "b" and "c", in case the crime was committed Until November 1, 2019.

¹⁵⁸ 1 case related to the fact of alleged torture and ill-treatment of a prisoner committed by an employee of a penitentiary institution, and 1 case - of alleged torture and ill-treatment of a detainee by a police officer.

¹⁵⁹ Letter # 13/1162 of the General Prosecutor's Office of Georgia dated February 20, 2023.

¹⁶⁰ Letter of the Special Investigation Service of February 3, 2023 # SIS 9 23 00001653.

¹⁶¹ All four cases related to the alleged torture and ill-treatment of the prisoner by the employee of the penitentiary institutions.

¹⁶² Letter # 13/1162 of the General Prosecutor's Office of Georgia dated February 20, 2023.

¹⁶³ 5 cases were related to the fact of alleged torture and ill-treatment of the prisoner by the employee of the penitentiary institution, and 5 cases - to the fact of alleged torture and ill-treatment of the detainee by the police officer.

¹⁶⁴ Letter of the Special Investigation Service of February 3, 2023 #SIS 9 23 00001653.

¹⁶⁵ 2020 Parliamentary Report of the Public Defender of Georgia, 79; 2021 Parliamentary Report of the Public Defender of Georgia, 61.

¹⁶⁶ The Public Defender addressed the Parliament of Georgia with a proposal to initiate the reform of the General Prosecutor's Office.

General Inspections

The operation of a unit within the law enforcement structures responsible for monitoring of the officials' performance of the official duties is of utmost importance. These units are mandated to proactively monitor as well as promptly address citizens' complaints regarding potential unlawful actions committed by their employees. Regrettably, providing an effective response to citizens' complaints concerning possible unlawful actions by law enforcement officers remains a challenge in 2022. Failure to fulfill the duties, unjustified termination of inspections, and inadequate communication with citizens diminishes public trust in these institutions and damages their reputation.

During the reporting period, the Office of the Public Defender studied the files of certain official inspections conducted by the General Inspection of the Ministry of Internal Affairs and the Monitoring Department of the Special Penitentiary Service.¹⁶⁷

The analysis revealed significant shortcomings, the situation remained unchanged throughout the reporting period.¹⁶⁸ Specifically, it was observed that these agencies failed to make efforts to obtain relevant evidence that would help establish the objective truth during the course of their official inspections. They also did not interview neutral persons, including neighbors residing at the detention site. Furthermore, they did not retrieve and analyze video recordings from external surveillance cameras installed at the detention place, nor did they archive such recordings, etc.

Consequently, in 2022, the Public Defender submitted three proposals to the Minister of Internal Affairs and one proposal to the Minister of Justice. These proposals called for the initiation of disciplinary proceedings against a staff member of the General Inspections due to their conduct of an official inspection inadequately.

We now provide a concise overview of the cases of alleged ill-treatment investigations, studied by the Public Defender's Office during the reporting period, which attracted significant public interest:

Case of Mikheil Saakashvili¹⁶⁹ - The case of Mikheil Saakashvili - it is noteworthy that Mikheil Saakashvili, with worsened health condition, was placed in the Civil Profile Clinic "Vivamedi" on May 12, 2022, where he still remains. The transfer of Mikheil Saakashvili to "Vivamedi" was preceded by the report of the experts invited by the public defender, according to which the patient's condition was assessed to have significantly worsened.¹⁷⁰

In the report dated April 27, 2022, experts invited by the Public Defender highlighted that there had been

However, like 2019-2021, this proposal was not considered in the reporting period either.

¹⁶⁷ 2022 Activity Report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

¹⁶⁸ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 62.

¹⁶⁹ 2022 activity report of the Department of Criminal Justice of Georgia.

¹⁷⁰ Conclusion of the group of specialists/experts created by the Public Defender No. 6 on the results of the monitoring of Mikheil Saakashvili's medical condition, 27.04.2022, available at: < <http://bit.ly/3J0vp0T> > [last reviewed: 08.03.2023].

no significant improvement dynamics observed of Mikheil Saakashvili's condition (neurological status). The expert group explicitly stated that the recommendations put forward by the Public Defender's expert team in December-January regarding psychotherapy and physical rehabilitation were not implemented or could not be implemented. Despite providing medical treatment subsequent to this period, the patient's condition did not show any improvement, and in fact, it deteriorated.

Furthermore, it is critical to note that the expert group issued a conclusion on December 6, 2022, stating that Mikheil Saakashvili's condition has been episodically deteriorating significantly for over a year (14 months). In recent months, his condition has sharply worsened and is now classified as severe.¹⁷¹ It's not possible to ensure proactive management of the patient proactive, and treatment approaches are limited to responding to various complications. Despite numerous examinations being conducted to the patient, there appears to be no coherent strategy for managing the illness. In order to prevent anticipated irreversible deterioration of his health, timely and fundamental measures need to be taken.

Based on the aforementioned medical assessments, the Public Defender submitted an amicus curiae to the Tbilisi City Court, raising the motion for the postponement / release of Mikheil Saakashvili from his sentence. In the amicus curiae, the Public Defender emphasized that Mikheil Saakashvili's health condition met the minimum criteria for postponing the execution of the sentence, as he is suffering from a severe illness that hinders serving the sentence. The Public Defender's opinion was grounded by national and international human rights standards and the caselaw of the European Court of Human Rights.¹⁷² Despite this, in the decision dated February 6, 2023, the Court rejected the request to release or postpone Mikheil Saakashvili's sentence. The Court placed primary responsibility for the deterioration of his health condition on the prisoner and stated that Court was not convinced that the medical care provided to the prisoner was inadequate. This decision was upheld by the Tbilisi Court of Appeal in its ruling on March 2, 2023.

Regrettably, the progressive deterioration of Mikheil Saakashvili's health, the prolonged duration of his aggravated condition, the findings and prospects of the Public Defender's expert group, the non-adherence to expert recommendations, and the high risks of further deterioration leading to a potentially fatal outcome bring this case within the purview of Article 3 of the European Convention on Human Rights. Specifically, the continued imprisonment of Mikheil Saakashvili can be regarded as constituting inhumane treatment.¹⁷³

Furthermore, on November 9, 2021, the State Inspector's Office (which transitioned into the Special Investigation Service on March 1, 2022) initiated an investigation into the alleged inhumane and degrading treatment of Mikheil Saakashvili, based on a notification from the Public Defender's Office and information disseminated by the media. Upon reviewing the case materials, the Public Defender's Office did not reveal facts of conducting investigation inefficiently. However, the examination of the case materials revealed a deliberate and possibly premeditated scheme orchestrated by the Special

¹⁷¹ Conclusion of the group of specialists/experts created by the Public Defender # 7 on the results of monitoring the medical condition of Mikheil Saakashvili, 06.12.2022, available at: < <http://bit.ly/425IVcr> > [last viewed: 08.03.2023].

¹⁷² Detailed reasoning is presented in the 2022 activity report of the Criminal Justice Department of the Public Defender of Georgia.

¹⁷³ 2022 Activity Report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

Penitentiary Service, with the primary objective of placing Mikheil Saakashvili in the Gldani prison space and subjecting him to humiliating treatment.

This conclusion is drawn from the following circumstances: the leadership of the Penitentiary Service was aware of Mikheil Saakashvili's and his lawyers' written statements expressing concerns about the risks posing to his security and his refusal to receive medical treatment in Institution No. 18. Additionally, the institution was aware of these risks through public statements made by the Public Defender. Despite this, on November 8, 2021, Mikheil Saakashvili was transferred to Penitentiary Institution No. 18 without providing prior notification to him. It is noteworthy that on the day of transferring Mikheil Saakashvili to the Penitentiary Institution No. 18, the State Council recommended his immediate transfer to a medical facility. However, this recommendation was primarily based on the alleged refusal of the patient to meet with the council of doctors. In reality, this was not true, Mikheil Saakashvili did not refuse to meet with the doctors, and therefore, the State Council was provided with inaccurate information. Despite this, the Penitentiary Service proceeded with the transfer of Mikheil Saakashvili to Institution No. 18, even though this facility did not meet the medical standards established by the State Council, a fact that neither the chief doctor nor the head of the medical department deny, as per the investigation materials. Importantly, it is evident including from the public statements made by the Public Defender that the Penitentiary Service was aware of the non-compliance of Institution No. 18 with the State Council's recommendations. Nevertheless, Mikheil Saakashvili was still transferred to this institution, where his health deteriorated and the institution failed to provide proper medical services.

Institution No. 18 is located within the compound of Institution No. 8, in close proximity (26 and 40 meters) and directly facing it. Institution No. 8 accommodates the highest number of prisoners (up to 3,000). The directors of Institutions No. 8 and No. 18 did not receive any notification from the security department regarding the transfer of Mikheil Saakashvili, to implement special security measures. It is important to consider that Institution No. 8 already faced challenges in terms of human resources, which, from a security standpoint, should have been a noteworthy factor. Furthermore, during Mikheil Saakashvili's presidency, the law "On Organized Crime and Racketeering" was enacted, criminalizing "membership of the world of thieves" and "being thief in law" under the Criminal Code. Therefore, it was simple to predict that aggression could be anticipated from prisoners associated with the criminal subculture, particularly following statements made by the Public Defender and the lawyer. It is worth mentioning that the Public Defender made public statement and reminded the authorities of the previous incident that occurred in the Gldani prison, specifically in 2015, involving one of the former law-enforcement representatives.¹⁷⁴

According to the assessment of the Public Defender, verbal abuse and swearing by hundreds of inmates, taking into consideration its duration, intensively, the severity of Mikheil Saakashvili's health condition, on the background of his 40-day hunger strike, and the forceful physical transfer from the ambulance car to the prison, the way he was brought into the building and placed in the cell, followed by the public dissemination of footage capturing these events, the provocative actions and remarks made by senior

¹⁷⁴ See <<http://bit.ly/3TORJEz>> [last reviewed: 27.03.2023].

officials of the penitentiary service, instead of providing reassurance to the prisoner, caused mental and emotional suffering. These circumstances, when considered together, may constitute the threshold of torture established by Article 3 of the European Convention on Human Rights and can be considered as constituting degrading treatment.

[Case of Ninotsminda boarding house](#)- Significant and essential flaws were revealed in the investigation process of the alleged crimes committed against children in the Ninotsminda boarding house, which were highlighted by the Public Defender in the parliamentary report of 2021.¹⁷⁵ Unfortunately, despite the Public Defender's appeal and the proposal submitted to the General Prosecutor's Office,¹⁷⁶ there have been no changes made to the qualification of the cases. Only one person was recognized as a victim, and no specific individuals have faced criminal prosecution.¹⁷⁷

It is important to conduct a comprehensive investigation into the alleged crimes at the boarding house in accordance with Article 144³ of the Criminal Code of Georgia, (degrading or inhumane treatment) as upon reviewing the case files, indications of inhumane and degrading treatment of children have been identified. Article 126 of the Criminal Code does not adequately encompass the severity of the alleged crimes. However, the investigation is still ongoing under Article 126, Part 1¹, (violence) on which the statute of limitation has expired.

[Case of Temur Abazov accusation](#)¹⁷⁸ - In the 2020 parliamentary report, the Public Defender examined the case of Temur Abazov.¹⁷⁹ The former mayor of Marneuli was charged with inhuman and degrading treatment of a person and organizing the public dissemination of footage depicting this action. However, during the final stage of the trial, the Prosecutor's Office, without proper reasoning, dropped one of the two serious charges related to the organization of the dissemination of the footage, thereby preventing the court from deliberating on the remaining crime. This action effectively contributed to the acquittal of all charges.

The court's acquittal decision was appealed in relation to the charges of inhumane and degrading treatment, and violence.¹⁸⁰ On January 27, 2022, the Tbilisi Court of Appeal dismissed the appeal brought by the prosecutor's office and completely acquitted all individuals involved, including Temur Abazov. Moreover, on July 1, 2022, the Supreme Court of Georgia found the prosecution's cassation appeal inadmissible, effectively closing the door to any possibility of justice being restored at the national level in this particular case.

[Investigation of acts of violence on July 5](#)¹⁸¹ - In 2021, the Public Defender focused on the shortcomings

¹⁷⁵ Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 66.

¹⁷⁶ Proposal of the Public Defender of Georgia 07.12.2021 Proposal # 15-5/11525.

¹⁷⁷ Letter # 13/84256 of the General Prosecutor's Office of Georgia dated December 28, 2022.

¹⁷⁸ 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

¹⁷⁹ 2020 Parliamentary Report of the Public Defender on the State of Protection of Human Rights and Freedoms in Georgia, 83.

¹⁸⁰ Other individuals were investigated for violence against the victim. However, the charges against them were also dropped in the case involving the acquisition and dissemination of private life secrets.

¹⁸¹ 2022 Activity Report of the Criminal Justice Department of the Criminal Justice Department of the Public Defender's Office of

of the investigation of violent acts committed by organized groups on July 5, 2021, against LGBTQ+ persons and journalists in various locations, and the need to file charges of organizing group violence against specific individuals.

It is important to consider that on April 4, 2022, the Tbilisi City Court issued judgments on three cases. According to the court's decision, 20 persons were found guilty of committing crimes under various articles of the Criminal Code of Georgia, of which, among other articles, only 6 persons were convicted for participating in organized group violence. However, the Criminal Chamber of the Tbilisi Court of Appeal reversed the first instance court decision in this part and acquitted these persons of participating in organized group violence.¹⁸²

Upon conducting a case study,¹⁸³ it was determined that the investigation conducted did not meet the standards¹⁸⁴ of an effective investigation in terms of thoroughness and timeliness. This was evident in the delays in conducting forensic examination and delays in obtaining evidence. The latter served as the main basis for the acquittal of several defendants. It is noteworthy that the prosecutor's office disregarded the suggestion put forth by the public defender and did not charge a specific individual for organizing and leading the group violence. This ultimately led to the acquittal of all individuals on charges of group violence. Furthermore, it is significant to highlight that when determining the sentence, the court violated the principle of individualization of the sentence by not taking into account the crimes committed in the past and personal characteristics of specific individuals.

The issue concerning the investigation into the events of June 20-21, 2019,¹⁸⁵ remains significant. It should be noted that the Public Defender's assessment regarding this matter remains unchanged. Unfortunately, there are still several gaps in the investigation. Updated information during the reporting period reveals that completion and submission of the appointed forensic expertise conclusions continue to impede the investigation.

As of 2022, 34 participants in the protests and journalists are recognized as victims in this case, whereas forensic medical examinations have been appointed for 330 individuals as part of the investigation. Throughout 2022, no charges were filed against specific employees of the Ministry of Internal Affairs of Georgia, and the investigation remains ongoing.¹⁸⁶

Proposals

Georgia.

¹⁸² Judgment of January 16, 2023 of the Criminal Chamber of the Tbilisi Court of Appeal, case # 1b/935-22.

¹⁸³ During the reporting period, the Office of the Public Defender studied the Tbilisi City Court judgments of April 4, 2022, and the materials of one case against 7 persons were reviewed in the Tbilisi Court of Appeal.

¹⁸⁴ It is noteworthy that in the decision dated December 16, 2021, pertaining to the case "Women's Initiative Support Group and Others v. Georgia," the European Court of Human Rights highlighted that the extent of the violence perpetrated on May 17, 2013, was influenced by the authorities' lack of action, and that the state had failed to conduct a prompt and impartial investigation. This pertains to the historical incidents targeting the LGBTQ+ community. The European Court of Human Rights directed its attention to the case "Identity and Others v. Georgia," where the Court established a breach of the Convention in 2015.

¹⁸⁵ 2022 activity report of the Department of Criminal Justice of Georgia.

¹⁸⁶ Letter # 13/84288 of the General Prosecutor's Office of Georgia dated December 28, 2022.¹⁸⁶

To the Parliament of Georgia:

- Initiate the reform of the General Prosecutor's Office of Georgia, taking into account the involvement of the Prosecutor's Council in determining the jurisdiction and separation of competences among its units. Additionally, in the process of formulating guidelines based on criminal justice policy and adopting normative acts that address systemic matters within the prosecutor's office.
- Through legislative amendments expand the jurisdiction of the Special Investigation Service to include crimes committed by the General Prosecutor, the Minister of Internal Affairs, and the head of the Security Service.
- Through legislative amendments extend the jurisdiction of the Special Investigation Service to cover a range of offenses committed by prosecutors. This includes the following Articles of the Criminal Code: 108, 109, 111, 113, 118, 120-124, 126, 126¹, 137- 139, 143-144, 150-151¹.
- Provide legislative safeguards to grant the Special Investigation Service unrestricted, unhindered and without special permission access to temporary detention isolators.
- Additionally, review and revise the list of crimes falling under the jurisdiction of the Special Investigation Service, ensuring that it includes only offenses relevant to the service's primary mandate. Specifically, crimes outlined in Articles 153-159, 162-163, and 164 of the Criminal Code should be removed from the list.
- In 2023, the Imprisonment Code should include a provision securing an obligation to provide minimum living area of 4 square meters for defendants.
- In 2023, an amendment should be made to Article 14, part 1, subparagraph "G" of the Imprisonment Code, stipulating that the defendant/convict has the right to spend a minimum of 2 hours outdoors every day.
- Amend the Criminal Procedure Code to remove the provision allowing investigative bodies, other than the independent investigative mechanism, to obtain medical documentation produced by doctors in temporary detention isolators without the consent of the detained individual.
- Amendments should be made to the Law of Georgia "On Mental Health" to ensure that the requirements and guarantees outlined in Article 16 of the Law, (the use of restraints on patients), are applicable to the forced rapid tranquilization of patients.
- The Law of Georgia "On Mental Health" should determine the obligation of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, 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 minimize risks of escalating situations into crises and avoid the use of measures of the last resort in psychiatric establishments;
- The Law of Georgia "On Mental Health" should clearly define the measures that institutions must undertake and the procedures for reviewing the legal status of patients when using restraint methods on patients undergoing voluntary treatment. Additionally, appropriate sanctions should be established in cases where patients are vulnerable.
- Through amending the Law of Georgia "On Mental Health," it is essential to establish a clear procedure allowing doctors to limit patients' rights when necessary for safety reasons in the absence of guaranteed legal protection. (This should include defining the criteria and conditions

for limiting each right, specifying the permissible duration of each limitation, and outlining the process for appealing such decisions).

- Amendments should be introduced to the Law of Georgia "On Mental Health" to clearly differentiate between informed consent for hospitalization and informed consent for treatment.

Recommendations to the Government of Georgia:

- The Government of Georgia should develop an action plan aimed at reducing the number of prisoners while taking into account the recommendations of the Council of Europe Committee of Ministers No. R (99) 22 regarding Prison Overcrowding and Prison Population growth, as well as those prepared by the Council of Europe Directorate General for Human Rights and the Rule of Law PC-CP (2015) 6 rev 7 document on Prison Overcrowding;
- By increasing the budget of the Department of Psychiatric Examination of the Levan Samkharauli National Bureau of Forensic Expertise, ensure the increase of salaries and the number of employees, as well as allocate financial resources to ensure continuous education and the opportunity to share international experiences for the employees of the department.

Recommendations to the Minister of Justice of Georgia:

- By amending the regulations of penitentiary institutions, prohibit requirement of the simultaneous undressing of various parts of a prisoner's body during a full inspection.
- The Monitoring Department of the Special Penitentiary Service, through systematic inspections, should reveal and eliminate the practice of so called "doing the squats" and appropriate response measures should be implemented accordingly.
- Amendments need to be made to the regulations of penitentiary institutions to stipulate that the placement of a prisoner in a de-escalation room and a solitary (secure) cell should be considered as a measure of last resort. When applying this measure, relevant reasoning should be provided for having no alternative rather than placing the prisoner in a de-escalation room or a solitary (secure) cell as an alternative measure. Additionally, the regulations should stipulate that before resorting to the use of de-escalation rooms or solitary (secure) cells, staff members should first utilize other, relatively less restrictive means such as direct supervision by staff or electronic surveillance.
- Collaborative and multidisciplinary efforts of professionals such as psychologists, psychiatrists, social workers, doctors, and other relevant personnel from the institution should be secured when a prisoner is placed in a de-escalation room or a solitary (secure) cell. This approach aims to reduce/ eliminate risks.
- A safe environment should be created in de-escalation rooms and solitary (secure) cells, including

through lining the walls and floor with soft materials.

- To ensure a safe environment in de-escalation rooms and solitary (secure) cells, it is necessary to line the walls and floor with soft materials.
- The maximum duration of placement in the de-escalation room should be determined and limited to 24 hours. If the reasons for placement in the de-escalation room or solitary (secure) cell persist beyond the 24-hour period, the prisoner should be promptly transferred to the psychiatric section of Medical Facility in the institution # 18 or another appropriate civilian psychiatric institution to enable them to receive the necessary and adequate psychiatric assistance.
- The Monitoring Department of the Special Penitentiary Service should conduct official inspections to:
 - Study and ensure response to the practice of prolonged placement of prisoners with mental health problems in de-escalation rooms and solitary (secure) cells, the use of handcuffs, and failure to provide psychiatric assistance, to prevent ill-treatment of prisoners.
 - Study and ensure response to the practice of transferring prisoners to de-escalation rooms and solitary (secure) cells in penitentiary institutions without a legal basis for the purpose of punishment, to prevent ill-treatment of prisoners.
- Consider increasing the number of regime staff assigned to the residential sections of prisoners when preparing the plan to overcome the problem of overcrowding in penitentiary institutions. It should be secured that there is at least one staff member responsible for maintaining order and security for every 15 prisoners.
- Develop a strategy to combat the criminal subculture within the penitentiary system. This strategy should be shared with the Office of the Public Defender of Georgia, allowing to provide feedback.
- Develop a strategy for addressing and overcoming the criminal subculture within penitentiary institutions and ensure that this strategy is shared with the Office of the Public Defender of Georgia to provide an opportunity for them to offer their opinions and input.
- Ensure that the responsibilities of doctors in penitentiary institutions are defined in the respective subordinate normative act:
 - In all the cases where a prisoner sustains bodily injuries, doctors should assess the consistency of the injury with the information provided by the prisoner regarding its cause. They should document in writing whether there is any suspicion of possible violence associated with the injury.
 - If there is suspicion of possible violence against the prisoner during the assessment of the injury, doctors should promptly report this to the investigative body.
- According to the "Procedure for Recording Injuries to Defendant/Convicts as a Result of Possible Torture and Other Cruel, Inhuman, or Degrading Treatment in Penitentiary Institutions," approved

by Order No. 633 of the Minister of Justice of Georgia on November 30, 2020, it is necessary to ensure that all doctors responsible for conducting medical examinations receive appropriate training on fully documenting and photographing prisoners' injuries;

- Amendments should be introduced to the rules approved by the Minister of Justice Order #633 (November 30, 2020) on the "Procedure for Recording Injuries to Defendant/Convicts as a Result of Possible Torture and Other Cruel, Inhuman, or Degrading Treatment in Penitentiary Institutions," not requiring consent of a prisoner on medical examination, as a precondition to refer a case to special investigative service, in case doctor has doubts on possible violence, upon transfer, return and admission of a defendant/ convict to the penitentiary institution.
- Amendments should be introduced to the rules approved by the Minister of Justice Order #633 (November 30, 2020) on the "Procedure for Recording Injuries to Defendant/Convicts as a Result of Possible Torture and Other Cruel, Inhuman, or Degrading Treatment in Penitentiary Institutions," to oblige a doctor to offer a 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 defendant or a convict did not consent to the medical examination upon admission to the penitentiary establishment or upon the transfer from and return to the establishment and there are no visible bodily injuries;
- Amendments should be introduced to the regulations of penitentiary institutions stipulating that the presence of a third person during meetings between medical staff and prisoners is only allowed in special cases, when a doctor, based on the real and immediate risks to the safety of the doctor or the patient, considers presence of an institution's staff necessary. This decision must be justified in writing (detailed description of anticipated threats should be documented). In such exceptional cases medical service should be provided through refraining non-medical staff from listening to the conversation maintaining a reasonable distance.
- The number of nurses employed in penitentiary institutions should be increased by at least twice by the end of the calendar year. Ensure the timely implementation of planned medical referrals within the specified time limits, as determined by the Order No. 381 of the Minister of Justice of Georgia dated February 15, 2019.
- Ensure provision of professional training and education programs to at least 20% of the medical staff of penitentiary institutions in 2023.
- To ensure systematization of the information about the health of the defendants/convicts:
 - Introduce an electronic records (EHR) system in the penitentiary system.
 - Stipulate in the relevant regulations of the penitentiary system obligation of the medical staff to reflect information about health of the patients in the electronic health record (EHR) system.
- To ensure increase of support staff in the Medical Facility # 18 for defendants and convicts at least by two times.

- Develop and implement a tool for periodic screening of mental health among the staff of penitentiary institutions.
- A minimum of 50% of the staff in penitentiary institutions should receive training in psychiatric crisis case management in 2023.
- Taking into account the specific nature of penitentiary institutions, it is necessary that legal framework determines the composition of the psychiatric multidisciplinary team, the roles and responsibilities of each team member, and the procedure for organizing and providing psychiatric assistance; Normative act should stipulate obligation of the psychiatric multidisciplinary team to:
 - Assess the needs of patients with mental health problems who do not require inpatient treatment.
 - Based on the assessment, develop an individual plan of biopsychosocial assistance and provide appropriate assistance accordingly.
- Ensure clinical-laboratory dynamic assessment of agranulocytosis¹⁸⁷ metabolic processes and especially, the risk of developing hyperglycemia¹⁸⁸ as well as control of leukocytes¹⁸⁹ to manage side effects of medications.
- In 2023, measures should be taken to enable the confidential submission of complaints within penitentiary institutions. This includes implementing a system where confidential complaint envelopes can be deposited without the involvement of institution staff, ensuring the anonymity of the prisoner who submits the complaint. Furthermore, prisoners should have access to necessary materials and resources, such as paper, pens, and envelopes, free of charge. They should also be provided with a specific number of envelopes to keep in their cells.
- In 2023, complaint boxes should be positioned outside the range of video surveillance to safeguard the anonymity of the complainant.
- Additionally, in 2023, the General Inspection of the Ministry of Justice should investigate and respond to cases that reveal violations of the rules regarding the confidentiality of complaint submission in Penitentiary # 6. Alleged instances of retaliation against prisoners for filing complaints should be thoroughly addressed, and those responsible should be duly punished.
- Taking into account the current situation and available resources, develop a strategy for dividing the system into relatively smaller institutions and creating a well-balanced infrastructure. This strategy and prepared document should be shared with the Office of the Public Defender.
- In Institution # 17, the "barrack" type dwellings should be abolished.
- Ensure that each prisoner is provided with a minimum of 4 square meters of living area in all penitentiary institutions.
- Review the deficiencies identified regarding the physical environment of penitentiary institutions in the 2022 Report of the National Prevention Mechanism chapter on prison conditions and take

¹⁸⁷ A decrease in the number of leukocytes (white blood cells) in the blood.

¹⁸⁸ High blood sugar.

¹⁸⁹ White blood cells.

appropriate actions to address them.

- In 2023, ensure the separation of defendants from convicts in Institutions # 2 and # 8, at minimum in the National Prevention Mechanism the cells.
- The General Inspection of the Ministry of Justice should conduct systematic inspections to identify and eliminate the practice of requiring minors to undress multiple body parts simultaneously during full inspections and requiring doing so called “squats” in Penitentiary Institutions # 8 and # 11. Necessary actions should be taken to address these issues.
- The General Inspection of the Ministry of Justice should conduct systemic inspection to investigate the practice of informal governance in the juvenile section of Institution # 8. Based on the findings, appropriate measures should be taken to eliminate this practice and prevent similar occurrences in the future.
- All measures should be taken to replace secure cells with specially designed calming rooms. These rooms should only be used as a measure of last resort with maximum duration of couple hours. During this time, juveniles should be provided with adequate human contact and multidisciplinary interventions to help calm them down, assess risks and needs, as well as to plan necessary activities for behavior correction.
- Ensure that all foreign-speaking prisoners receive interpreter services when necessary. This includes providing information in a language they understand about the services and regulations in the penitentiary institutions.
- Ensure introduction of Georgian language courses in all penitentiary institutions for prisoners who do not speak the state language.
- In 2023, increase the number of social workers and psychologists by at least two times.
- The obligations of social workers should be defined at the normative level, including the following responsibilities:
 - Ensuring that juveniles are informed about their rights, duties, and the appeal mechanism in a simple language they can understand.
 - Providing information to juveniles about their rights, duties, and the appeal mechanism through the distribution of brochures in simple language. Additionally, this information should be displayed in accessible areas for juveniles.
- Ensure that vehicles used for the transportation of prisoners are equipped with safety belts.
- Organize designated walking courtyard for juveniles placed in Penitentiary Institution No. 8, to provide them with an opportunity to spend time outdoors during the day.
- Collaborate with the State Welfare Agency and consider the information received from them when developing an individual plan for juveniles.

To the Minister of Internal Affairs:

- Implement a pilot program in several police facilities to record the process of providing information about the definition of rights to the arrested person by the police using audio-video equipment.

- Establish proper documentation of requests made by the detained person on the family or lawyer through the creation of relevant registers in police facilities.
- To ensure the confidentiality of meetings between the detained person and their lawyer in the police facility, if necessary, provide an appropriate space for these meetings.
- In 2023, increase the number of isolation rooms where the medical center operates.
- Develop and approve instructions, by the Order of the Minister of Internal Affairs, for the process of photographing injuries on the body of the arrested person by the doctor and storing the collected material.
- Doctors employed in temporary detention isolators should receive training in photographing the injuries on the bodies of detained individuals and on storing the photographs. In 2023, employees of territorial bodies and criminal police should gradually be equipped with body cameras, and the obligation to videotape interactions with citizens, as well as the procedures and timeline for storing the recorded video material, should be defined in a subordinate normative act.
- The requirement should be envisaged for video recording of interactions between patrol inspectors of the Ministry of Internal Affairs of Georgia and citizens in the Order # 1310 of the Minister of Internal Affairs dated December 15, 2005, which approves the instruction "On the rules of patrolling by the patrol police service of the Ministry of Internal Affairs of Georgia." The obligation for video recording should apply in the following occasions: identification of a person; surface inspection and search; special inspection and search; restriction of movement of a person or vehicle or actual possession of an item; and arrest of a person.
- Police vehicles should be gradually equipped with a video surveillance system that covers both the internal and external perimeter of the vehicle.
- The subordinate normative act should stipulate the obligation of continuous video recording during the presence of a detained person in a police vehicle through the use of external and internal perimeter video cameras in the vehicle. In cases where such cameras are not available, body cameras should be used.
- The number of video cameras in police departments, divisions, and units should be increased. These cameras should be installed in all areas where interactions take place with arrested individuals and individuals voluntarily invited for interviews.
- The practice of meeting arrested individuals in the offices of police chiefs and deputy chiefs should be eliminated. Instead, meetings should take place in spaces equipped with video surveillance.
- A pilot should be carried out that will provide continuous audio-video recording of the interrogation process of detained individuals in several police facilities.
- Amendments should be introduced to the Order No. 625 of the Minister of Internal Affairs of Georgia, dated August 15, 2014, to include additional columns in the form of the administrative detention protocol (Appendix No. 9). These additional columns should capture information such

as the time of protocol preparation and the circumstances under which the arrest was made; whether there was resistance; whether coercive measures were used and in what form; Ensure the recording of all individuals brought to police departments, divisions, and units through the use of a register, indicating their status, time of entry, and exit from the building.

- Ensure proper administration of recording journals of the detainees and the persons to be transferred to the temporary detention isolators before introducing standardized electronic file system.
- Ensure holding of meetings (including remote meetings) between the person detained in temporary detention isolators and the investigator of the independent investigative body in a confidential environment.
- Ensure that the doctors employed in the temporary detention isolators are equipped with a photo camera.
- Develop and approve the technical instructions for doctors working in the temporary detention isolators on taking photographs describing in detail procedures for taking good quality photographs.
- Develop a unified and systematized rule for the storage of photographs taken by doctors employed in temporary detention isolators.
- Provide training to doctors employed in temporary detention isolators on the proper instructions for photographing the injuries on the bodies of individuals in the isolator, as well as the rules for storing the photographed material.
- Take appropriate measures to eliminate the problems identified in the chapter on physical conditions in temporary detention isolators as outlined in the 2022 report of the National Prevention Mechanism and inform the Public Defender about the actions taken.
- Introduce relevant amendments to the legal framework ensuring that information on the alleged facts of ill-treatment identified by doctors of the temporary detention isolators is immediately and directly sent to the Independent Investigative Body;
- Develop and approve a standardized injury documentation form that will be completed by the doctor of the Georgian escort during migrant return operations. The form should be filled out by an escort doctor and should include specific sections for documenting claims of torture and ill-treatment made by the person to be returned or if the doctor has such doubt. The procedure for the doctor to inform the appropriate investigative body should also be clearly defined.

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

- The Ministry should develop and implement a strategy to prevent and address conflicts between patients, also envisaging the obligation to provide appropriate psychological assistance to patients who have experienced violence.
- The Ministry should conduct monitoring in psychiatric institutions to identify and prevent instances of staff violence on patients, including the unauthorized use of injections and

medications against patients' will, and report such incidents to the investigative body.

- The Ministry should develop and implement comprehensive guidelines for the staff's interactions with patients in psychiatric institutions. These guidelines should encompass standards for safeguarding patient rights and delivering high-quality psychiatric care.
- The Ministry should provide training to the staff of psychiatric institutions, as minimum, focusing on key areas such as multidisciplinary collaboration, de-escalation techniques, patient rights and ethical standards, the restorative approaches, modern psychiatry. Special emphasis should be placed on cultivating a deep understanding among the staff regarding the importance of the biopsychosocial model of psychiatric care and equipping them with the necessary skills to effectively apply it in their day-to-day practice.
- Investigate and eliminate the practice of long-term isolation of patients from other patients at "Naneishvili National Mental Health Center" and "Batumi Medical Center LLC".
- Develop and implement internal guidelines on the prevention and management of crisis cases in psychiatric institutions. This document should aim to minimize the risks of escalating situations, ultimately reducing the need to take extreme measures.
- The Ministry should assess the legitimacy and justification of using restraint methods in psychiatric institutions through monitoring. Additionally, the status of patients undergoing formal voluntary treatment should be reviewed after the use of restraint methods in psychiatric institutions.
- Update the instruction on the rules and procedures for the use of physical restraint methods, in consultation with the Office of the Public Defender.
- Develop specific guidelines for processing documents in psychiatric institutions, which should include protocols for documenting injuries on patients' bodies and reporting them to the investigative body when necessary.
- Conduct a thorough investigation into cases of hospitalization against the expressed will of patients receiving formal voluntary psychiatric care. Take immediate action to discharge these patients from the hospital if there is no legal basis for using the procedure of involuntary psychiatric care.
- Develop comprehensive guidelines for emergency medical aid crews dispatched to respond to reports of psychiatric cases received from the Public Safety Management Center of the Ministry of Internal Affairs (112). These guidelines should include detailed instructions on persuading the patient to seek psychiatric care, assessing the need for involuntary placement in a psychiatric hospital, and providing clear explanations of the patient's rights.
- Develop and approve, by order of the Minister, a standardized form of informed consent for placement in a psychiatric hospital. This form should provide complete, accurate, and detailed

information about the nature of psychiatric care and the rights of patients in a comprehensible manner. The order should also specify the obligation of the psychiatric facility to provide the patient with a copy of the informed consent, as well as information on whom to contact if the patient does not wish to remain in the hospital.

- Introduce amendments to the Ministerial Order,¹⁹⁰ to make it mandatory to fill out the form (No. IV-300-12/a) approved by Ministerial Order No. 108/N of the Minister of Labor, Health and Social Protection of Georgia at all stages of initiating, continuing, and changing the treatment regimen for the patient.
- Develop and approve, by order of the Minister, the obligation for psychiatric institutions to provide patients with understandable oral and written information about the hospital's regulations and the rights of the patient immediately upon admission and regularly afterwards.
- Develop and approve, by order of the Minister, mandatory, accessible, simple, and confidential procedures for submitting applications and complaints, both within the hospital and outside of it.
- In accordance with the Law of Georgia on Mental Health, ensure that patients have the opportunity to temporarily leave the hospital without being formally discharged, taking into account their mental condition.
- Take all necessary measures to systematically monitor and ensure compliance with the standards established by the regulation on the issuance of medical activity licenses and permits for inpatient institutions.
- Conduct an assessment to determine whether patients are regularly provided with information about their treatment in a language they understand.
- Provide training for employees of psychiatric institutions to enhance their ability to recognize the potential side effects of "clozapine", which may lead to a lethal outcome.
- Instruct the relevant unit to conduct regular checks of medical cards in psychiatric institutions to ensure that inpatient medical cards are produced in compliance with the country's requirements¹⁹¹.
- Develop the standard for the provision of medical services, including dental services, as soon as possible and ensure its implementation in psychiatric institutions. Provide information on monitoring results to the Office of the Public Defender.
- Ensure that patients placed in psychiatric institutions have access to screening examinations provided by the state healthcare program.
- Close the women's and men's shelters of the "Acad. b. Naneishvili National Mental Health Center and Bediani shelter of the "East Georgia Mental Health Center" and transfer the beneficiaries to small family-type housing.

¹⁹⁰ Order no. 87/N of the Minister of Labor, Health and Social Security of Georgia of 20 March 2007 on Approving the Procedure for Admission to Psychiatric In-Patient Facility

¹⁹¹ The procedure for production of inpatient medical documentation in medical institutions approved by Order No. 108/N. March 19, in 2009 by the Minister of Labor, Health and Social Protection of Georgia.

- Before the closure of shelters and complete deinstitutionalization, in shelters and residences:
 - Introduce legal framework and its implementation mechanism for detecting, documenting and sending a notification to the investigative agency of the facts of violation of the rights guaranteed by Articles 15 and 16 of the Convention on the Rights of Persons with Disabilities.
 - Develop a strategy for conflict prevention and response among beneficiaries.
 - Stipulate the obligation to provide appropriate psychological assistance to beneficiaries who are victims of violence through the legal framework.
- Conduct monitoring of all shelters and residences in order to reveal the facts of administration of injections against the will of beneficiaries and forceful delivery of medicines to the beneficiaries by the staff of the institution; The facts revealed as a result of monitoring should be followed by appropriate response and information about the measures taken should be provided to the Office of the Public Defender;
- An accessible, simple, and confidential procedure for submitting applications/complaints must be developed and approved by the Minister's order for shelters and housing.
- Ensure obligation to fill out the form approved by the order of the Minister of Labor, Health, and Social Protection of Georgia, dated August 15, 2011, No. 01-41/N: IV-200-8/a on outpatient medical documentation at all stages of initiating, continuing, and modifying the psychiatric treatment plan for beneficiaries. Institutions should provide information about treatment in a language understandable to the beneficiaries.
- Conduct assessment of the current living conditions in the shelters and take all necessary measures to provide beneficiaries with dignified and safe accommodations prior to their closure.
- Revise the existing model of financing somatic health services to ensure that beneficiaries in shelters have full and timely access to free medical services.
- Ensure that all beneficiaries in shelters receive screening examinations as provided by the state health program.
- Initiate changes in the 2023 mental health program, specifically addressing the management of medication side effects through appropriate examinations and consultations.
- Enhance the role of social workers employed in psychiatric institutions by assigning them the responsibility of actively seeking out community programs and introducing them to patients.

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

- Through mutual cooperation, develop a plan for the complete integration of penitentiary health care for IDPs from the occupied territories of Georgia into the system of the Ministry of Labor,

Health and Social Protection.

To the High Council of Justice:

- Ensure the installation and proper functioning of the ventilation system in the waiting rooms of the defendants/convicts at Telavi, Gurjaani, Sighnaghi District Courts, and Marneuli Magistrate Court.
- Conduct repair work and ensure maintenance of sanitary-hygienic conditions in the waiting rooms of defendants /convicts at Telavi and Sighnaghi District Courts.

To LEPL Levan Samkharauli National Forensics Bureau:

- Develop and approve a standardized injury documentation form to be completed by designated medical staff in cases where patients report torture and ill-treatment or when medical staff has doubt on such treatment; Additionally, the procedure for notifying the appropriate investigative body by the doctor should be clearly defined.

To the State Security Service:

- Deliver trainings to the doctors, employed in the temporary detention isolators, on accurately describing injuries on the bodies of individuals held in isolators, taking photographs, and properly storing the photographed material.
- Ensure proper documenting and maintaining registry of the detainee's request to notify the lawyer and the request to contact him / her in the temporary detention isolator of the State Security Service.
- Stipulate at the normative level that the meeting between the doctor and the person placed in the temporary detention isolator should be held confidentially, without the presence of a third person. The presence of an employee should only be allowed in exceptional cases, when the doctor deems it necessary for the immediate safety of the patient, and such presence must be adequately justified (with a detailed description of the anticipated risks in the documentation). In such exceptional cases, non-medical personnel should not be able to overhear the conversation during the medical examination, and they should maintain a reasonable distance.

To the Directors of Psychiatric Institutions:

- The "Acad. b. Naneishvili National Mental Health Center," Batumi Medical Center, and Mental Health and Drug Addiction Prevention Center should provide each patient with a minimum living area of 8 square meters.

- Eliminate the problems highlighted in the chapter on safe and therapeutic environment in the 2022 report of the National Mechanism of Prevention, and the Public Defender should be informed about the actions taken.

To the Ministry of Justice and LEPL Levan Samkharauli National Forensics Bureau

- Through cooperation and exchange of information, ensure the exchange of information regarding the state of health of the person transferred to the Department of Psychiatric Examination with his/her consent, in order to ensure the continuity of treatment prescribed for somatic (physical) health problems.

3. Right to Liberty and Security

3.1. Introduction

This chapter addresses the following challenges related to violations of the right to freedom and security during the reporting period: problem related with application and appeal of the preventive measures, deficiencies in mechanisms for releasing prisoners, as well as the problem of individuals being brought to the police as witnesses and later being arrested as defendants, etc.

Unfortunately, several recommendations previously issued by the Public Defender still have not been implemented. For instance, two recommendations shared with the Minister of Internal Affairs of Georgia to adopt the legal framework that would stipulate the mandatory use of body cameras by law enforcement officers during special operations and the rule of using these cameras during the special operations. The amendment did not affect the Administrative Offences Code of Georgia in terms of introducing the obligation to review the legality of administrative arrests by the court hearing the administrative case. In addition, in line with the proposal made by the Public Defender over the years, legislative amendments have not been introduced¹⁹² to prohibit the extension of extradition detention if a person has already spent nine months in detention under the ongoing criminal case after sufficient grounds for extradition proceedings have been established.¹⁹³

In addition to the above, it is also noteworthy that the recommendation shared with the Minister of Justice and the Minister of Internal Affairs of Georgia on cancelling confidentiality of the secret order, which regulates the summoning of ex-convicts to the district offices, remains unfulfilled.¹⁹⁴

The use of the so-called distancing and its legislative regulation remains problematic. The lack of clear regulations¹⁹⁵ regarding the use of this mechanism¹⁹⁶ at the normative level gives the police wide discretion in their actions.¹⁹⁷

Alongside the aforementioned problematic issues, an important positive change was introduced in 2022. The period for exercising the right to apply for pardon for individuals sentenced to life imprisonment has been reduced from 20 to 15 years.

¹⁹² In order to advocate for this issue, in 2022, the Public Defender submitted a constitutional lawsuit to the Constitutional Court of Georgia (Constitutional lawsuit No. 1758 "Public Defender of Georgia against the Parliament of Georgia", December 21, 2022)

¹⁹³ The 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 91.

¹⁹⁴ Ibid. 92.

¹⁹⁵ 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.

¹⁹⁶ 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.

¹⁹⁷ The 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 104; The 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 81.

3.2 Arrest made in violation of legislative requirements

During the reporting period, the Office of the Public Defender, as in previous years, once again revealed that the practice continues, wherein persons who are actually the target of planned charges are forcibly taken to the police building, investigative actions are carried out under the guise of witnesses, and only afterwards arrest is formalized. This occurs even when there is already sufficient evidence¹⁹⁸ to bring charges against these persons. Timely identification of a person as a defendant is crucial, as it grants them appropriate procedural rights and guarantees.¹⁹⁹

During the reporting period, the Office of the Public Defender studied several cases, within which the aforementioned problematic issue was identified. Among them, the case of a juvenile stands out, who was initially interviewed as a witness without a lawyer present, and later recognized as a defendant.²⁰⁰

It is noteworthy that the Constitutional Court of Georgia is currently reviewing the constitutional lawsuit submitted by the Public Defender aiming to advocate elimination of this problem.²⁰¹

3.3. Unjustified restriction of the right to freedom of movement

During the reporting period, the Office of the Public Defender studied 8 cases,²⁰² in which the right of Georgian citizens to cross the state border of Georgia and leave the territory of Georgia was unjustifiably restricted. In these cases, it is not clear on what legal basis the possibility of crossing the state border of Georgia was restricted for the applicants and who made the decision.²⁰³

In light of the above, the Office of the Public Defender sent proposals to the General Prosecutor's Office, requesting the initiation of an investigation regarding the alleged crime committed against 7 applicants.²⁰⁴ It should be noted that according to the Criminal Code of Georgia, it is a crime to use official status in order to illegally impede the exercise of the right of a person who is legally present in Georgia to freely leave Georgia.²⁰⁵ It is significant that the General Prosecutor's Office has initiated investigations in only two of the mentioned cases.

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

¹⁹⁸ Activity Report of the Criminal Justice Department of the Office of the Public Defender of Georgia for 2022.

¹⁹⁹ Among these, the most important ones might be the right to defense, safeguards foreseen for mandatory defense cases, the right to remain silent, and the right to a medical examination, etc.

²⁰⁰ For a comprehensive analysis of this case, please refer to the detailed discussion in the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

²⁰¹ Constitutional Lawsuit # 1542 filed by the Public Defender of Georgia on October 13, 2020.

²⁰² Note: One of the 8 applicants requested that the proceedings in the Public Defender's Office be terminated.

²⁰³ It is noteworthy that based on the responses received from the pertinent authorities, there existed no legal foundation for the applicants at the moment they crossed the state border of Georgia. Consequently, the imposition of restrictions on the applicants' freedom of movement was deemed justified. (Ministry of Internal Affairs MIA 5 22 02724975, MIA 2 22 00961034, MIA 4 22 00235744, MIA 02202071713, MIA 6 22 01843335, Ministry of Finance Investigation Service №294/15-04-03/1, Prosecutor's Office №13/29798, №13/10286 letters).

²⁰⁴ The proposals of the Public Defender of Georgia: №15-4/11654, №15-12/5499, №15-12/12154, №15-2/2829.

²⁰⁵ Article 152 of the Criminal Code of Georgia.

The Public Defender pointed out in the 2021 parliamentary report that the practice of appealing the decision on the application / change of preventive measure in the Appellate Court after the conclusion of the hearing together with the decision was problematic.²⁰⁶ In order to eliminate this problem, the Public Defender made a proposal to the Parliament of Georgia. Unfortunately, the Parliament did not consider this proposal from the Public Defender. In particular, amendments were not introduced to the Criminal Code of Georgia, that would foresee the obligation of the appellate court to immediately deliberate on the legality of the preventive measure in case a person appeals the decision on the application or change of the preventive measure at the stage of hearing a case on merits.

It is also noteworthy that the practice of applying preventive measures during the reporting period, compared to previous years, has not changed substantially. The analysis of statistical data reveals that detention and bail are the key preventive measures applied against defendants. Other preventive measures, as in previous years, are typically rarely used.

According to the statistics provided by the Supreme Court of Georgia, in 2022, preventive measures were applied to a total of 12,551 persons. The ratio of pretrial detention is 38.5% - 4,833 cases.²⁰⁷ It is important to highlight that in recent years the ratio of pretrial detention in relation to the used preventive measures is decreasing, however the total number of pretrial detentions of this year exceeds the same data from the previous year.

In 2020, preventive measures were applied in a total of 9,419 cases, of which the ratio of detention was 47.1% - 4,471 cases.²⁰⁸ The ratio in 2019 was similar to 2020 - preventive measures were used in a total of 11,031 cases, of which the rate of detention was 47.2% - 5,205 cases.²⁰⁹ However, in 2021, compared to 2020, as well as in 2022, compared to 2021, there is a decrease in the percentage of the use of pretrial detention. In particular, in 2021, preventive measures were used against a total of 11,389 persons, of which the percentage of detention was 41.51% - 4,723 cases.²¹⁰

Regarding the use of non-custodial preventive measures, it is significant that in 2022, non-custodial preventive measures were applied against 7,718 persons, out of which 7,562 persons were granted bail as a non-custodial measure²¹¹ Accordingly, the ratio of the use of bail in relation to non-custodial measures used in 2022 was 98%. The trend over the years remains practically unchanged; however, it is significant that the percentage share slightly increases from year to year. For example, in 2021, the share of bail

²⁰⁶ See 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 83.

²⁰⁷ Letter of the Supreme Court of Georgia dated January 27, 2023 # P-47-23.

²⁰⁸ Statistical information posted on the website of the Supreme Court of Georgia, available at: < <https://bit.ly/3WXv1VU> > last reviewed 02.02.2023].

²⁰⁹ Ibid.

²¹⁰ Statistical information posted on the website of the Supreme Court of Georgia, available at: < <https://bit.ly/3HnW07f> > last reviewed 02.02.2023].

²¹¹ Letter of the Supreme Court of Georgia dated January 27, 2023 # P-47-23.

amounted to 97.2% of non-custodial measures,²¹² in 2020 - 96.7%,²¹³ and in 2019 - 96.3%.²¹⁴

In this context, the decision of the Constitutional Court of Georgia, dated June 24, in 2022 is also noteworthy. This decision of the Constitutional Court recognized as unconstitutional the provision²¹⁵ of the Criminal Procedure Code, stating that the application of bail as a preventive measure against an arrested person in all cases led to the detention of the defendant before the provision of bail.²¹⁶ It is commendable that the Constitutional Court shared the position of the Tetrtskaro District Court and deliberated that the judge's decision on the need to keep a person in custody in order to ensure the immediate payment of bail should be based on the individual circumstances of the case, taking into account the existing threats.²¹⁷

3.1. Administrative detentions

During the reporting period, the harmful practice of administrative detention of citizens at protest assemblies and unjustified interference in freedom of expression remains an acute problem.²¹⁸

In the reports of the Public Defender of Georgia²¹⁹ for the past years, attention was repeatedly drawn to the fact that the absence of a specific evidentiary standard and burden of proof in the Code of Administrative Offenses of Georgia determines the recognition of a person as an offender based on the protocol of the offense and the oral explanation of the police officer who compiled the same protocol. For this reason, the majority of the court's decisions are unsubstantiated, as decisions are based only on the data of the records of offenses and arrests and the explanation of the law enforcement officer who drew up the minutes at the court hearing. All evidence is obtained by one body/person, and the body of evidence exists only formally.²²⁰

It is also important to note that the Code of Administrative Offenses of Georgia does not reflect the fundamental guarantees of a fair trial guaranteed by the Constitution. For this reason, the court should be guided not only by the norms of the Code of Administrative Offenses, but also by the standards established by the Constitution of Georgia and the European Convention on Human Rights when considering the administrative offense case.

3.6. Mechanisms for the release of prisoners

²¹² Statistical information posted on the website of the Supreme Court of Georgia, available at: < <https://bit.ly/3HnW07f> > [last reviewed 02.02.2023].

²¹³ Ibid.

²¹⁴ Statistical information posted on the website of the Supreme Court of Georgia, available at: < <https://bit.ly/3WXv1VU> > last reviewed 02.02.2023].

²¹⁵ The first sentence of Article 200, Part 6 of the Criminal Procedure Code of Georgia.

²¹⁶ Decision of the Constitutional Court of Georgia of June 24, 2022, on the case, "Constitutional submissions of Tetrtskaro District Court regarding the constitutionality of the first sentence of Article 200, Part 6 of the Criminal Code of Georgia", # 3/5/1341, 1660, para. 6.

²¹⁷ Ibid., para. 35.

²¹⁸ For details, see the 2022 parliamentary report of the Public Defender of Georgia in the chapter on freedom of expression and freedom of assembly.

²¹⁹ See 2020 Report of the Public Defender of Georgia, 145-146; 2019 report, 157-159; 2018.

²²⁰ Ibid.

During 2022, as in previous years, the practice of early release and replacement of the unserved part of the sentence with a lighter sentence, and the legal framework regulating this issue, were still problematic. The current practice and legal framework do not establish uniform, foreseeable and clear grounds for determining who is entitled to exercise the benefit of the law. First of all, it is worth noting that the incomplete list of criteria for evaluating a convicted person is problematic.²²¹ The Public Defender believes that it is necessary to improve the legal framework and to include more criteria in the process of early conditional release or changing the unserved part of the sentence to a lighter one. This should include aspects related to the future plans, perspectives, capabilities, and other relevant issues of the convicted person. In this regard, it is significant that the Parliament of Georgia, in the resolution of October 18, 2022, based on the recommendation of the Public Defender, tasked the Ministry of Justice of Georgia to discuss the addition of new criteria.²²² Additionally, it was proposed that the involvement of prisoners in various rehabilitation measures should be considered as one of the circumstances when deciding on the issue of early conditional release or replacing the unserved part of the sentence with a lighter type of sentence.²²³

In relation to the shortcomings of the legal framework, it is worth noting the article of the Imprisonment Code, which entails that oral hearing should be conducted if the council deems it necessary to receive additional information from the convict when deciding on the issue of conditional release from serving the sentence.²²⁴ However, the legislation does not define the preconditions for when and in what cases it is appropriate to obtain additional information from a prisoner, which creates the possibility for the Council to make subjective or arbitrary decisions.²²⁵ It is important that legislative amendments determine the mandatory criteria that the local council will rely on when conducting oral hearings. The Office of the Public Defender studied 897 decisions made by the local councils during the reporting period,²²⁶ based on which, along with positive changes, negative flaws characteristic of previous years' practices was also identified.

Local Councils, mandated to decide on early conditional release issues, often make inconsistent decisions in identical situations. The motivational part of the decisions is written using a template, are formal, and do not contain proper justification. As a result, there is no clarity on why one prisoner was released, while another prisoner in similar circumstances was ruled against.

Also, in the practice of local councils, as in previous years, there are still cases where the convicted person

²²¹ Decree # 320 issued on August 7, 2018m by the Ministry of Justice on the endorsement of the procedure for reviewing and reaching a decision on the early conditional release from serving a sentence by the local councils of the special penitentiary service—under the Ministry of Justice of Georgia—referenced in Article 13, Part 1, defines 5 following criterion: nature of the committed crime, behavior exhibited by the convict while serving the sentence, facts about previous crimes committed by a convict, court records, family conditions, personal characteristics of the convict.

²²² Resolution of the Parliament of Georgia dated October 18, 2022, No. 1910-IXms-Xmp "On the State of Protection of Human Rights and Freedoms in Georgia in 2021" Regarding the Report of the Public Defender of Georgia, task H11.

²²³ Ibid

²²⁴ Section 5 of Article 42 of the Prison Code of Georgia.

²²⁵ special report of the Public Defender of Georgia "The practice of early conditional release and replacing the unpaid part of the sentence with a lighter sentence in Georgia", Tbilisi, 2019, 54.

²²⁶ Detailed reasoning is presented in the 2022 activity report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

is positively characterized, however the justification of a negative decision is based on the nature and gravity of the crime. The council does not offer additional reasoning as to why this particular criterion prevails over other positive characteristics. Obviously, the local council is entitled to consider the gravity and nature of the crime committed as a decisive factor, and this will not cause unlawfulness of the decision, however, this criterion remains constant and will be present in the consideration of each subsequent petition, not changing over time. Therefore, the Office of the Public Defender believes that when referring to the nature and gravity of the crime, the council's decision should clearly indicate the prospect of a possible positive outcome and the council's expectation that the convicted person will achieve this goal.

Similar to previous years, the problem of lack of justification in positive decisions regarding early release and replacing the unserved part of the sentence with a lighter one remains critical. Specifically, local councils fail to provide proper justification for their positive decisions, and they do not indicate the criteria or specific circumstances that led to a particular decision. There is no discussion or explanation offered regarding the factors that convinced the council that the convicted person has successfully undergone resocialization, achieved the goals of the sentence, and no longer required further imprisonment.

Regarding the positive changes, which show a trend, it is noteworthy that, in contrast to previous years, the local councils now provide significantly diverse justifications for negative decisions in cases where several negative criteria concerning convicts are present. The councils' thorough discussions and explanations present negative criteria, they believe are decisive and should prevail at that particular moment.

In addition, it is unfortunate to note that, similar to previous years, the statistics of conditional release of convicts from serving their sentences have worsened during the reporting period. In 2019, 1,279 convicts were subject of early conditional release, while in 2020, the number decreased to 830,²²⁷ and in 2021, only - 829.²²⁸ As for 2022, the situation took a significant downturn in 2022, with only 635 prisoners being released through early conditional release mechanism.²²⁹

Furthermore, the trend of backsliding is also evident in the statistics of replacing the unserved part of the sentence with a lighter one. In 2019, the sentence was changed for 236 convicts, and in 2020, the number increased to 545. However, in 2021, there was regression, and only 440 convicts benefited from this provision. Unfortunately, this trend persisted in 2022 as well, with the sentence being changed for only 388 convicts.²³⁰

Furthermore, the effective functioning of the sentence review mechanism is particularly crucial for life sentences. It is commendable that the period of using the power of pardon for individuals deprived of liberty for life has been reduced from 20 years to 15 years. The change was made by the President of Georgia, considering the proposal of the Public Defender, as reflected in the decree of November 26,

²²⁷ 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 108.

²²⁸ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 88.

²²⁹ Letter # 381189/01 dated December 30, 2022, of the Department of logistical Support to the Local Councils of the Special Penitentiary Service; February 16, 2023. Letter # 43214/01.

²³⁰ Activity Report of the Criminal Justice Department of the Office of the Public Defender of Georgia.

2019, titled "On approval of the pardoning rule."²³¹

However, it is regrettable that the Public Defender's proposal regarding the reduction of the time frame for a convict with life time sentence to appeal to the court to reduce the sentence by several years remains unfulfilled. For those sentenced to life imprisonment, along with the hope of reintegration into society, the development of a release plan is of utmost importance. Such a plan should be determined upon sentencing and reviewed regularly thereafter.²³² Regrettably, the regime adapted to individual needs for life-term convicts is still not implemented.

Additionally, it is worth noting that lifetime prisoners should be provided with more opportunities for short and long appointments with their family members, as this can help maintain a strong connection and support their rehabilitation.²³³ Unfortunately, based on the example of penitentiary institution No. 8, it can be observed that life-term prisoners are mostly isolated in cells. Even those convicts involved in the release program can only communicate with each other during the course, once or twice a week for an hour each, which cannot be considered a proper opportunity for human interaction.

Regarding rehabilitation, granting the right to higher education can play a significant role for individuals deprived of their freedom for life. It is regrettable that the Ministry of Justice, while working on the draft of the new Imprisonment Code, did not take into account the recommendation of the Public Defender that high-risk convicts should also have the right to receive higher education.

Proposals

To the Parliament of Georgia:

- Amendments should be made to the Code of Administrative Offenses of Georgia, which would determine the obligation of the court reviewing the administrative case to check the legality of administrative detention.
- Amendments should be introduced to the Criminal Law Code of Georgia and the Criminal Procedure Code of Georgia, foreseeing to reduce the time limit for a convicted person sentenced to life imprisonment to apply for conditional release by several years.
- Paragraph 121 should be added to Article 30 of the Law of Georgia "On International Cooperation in the Field of Criminal Law", which would prohibit the use and/or continuation of extradition detention if, after revealing of sufficient grounds for extradition proceedings against a person, he/she has spent a total of 9 months in detention within the framework of any criminal case committed against him / her, including in the territory of Georgia.
- Amendments should be introduced to the Criminal Procedure Code of Georgia, whereby in the case of an appeal against the decision to apply or change a preventive measure at the stage of reviewing a case on merits, the appellate court shall have a clear obligation to immediately consider the legality of the preventive measure.

²³¹ Decree of the President of Georgia of October 5, 2022 "On Approving the Rule of Pardon" on Amendments to the Decree of the President of Georgia # 556 dated November 26, 2019".

²³² European Prison Rules, Rule 103.8.

²³³ Visit of the European Committee for the Prevention of Torture to Georgia, (2015) available at:

<<https://www.coe.int/en/web/cpt/home>> [last reviewed: 03.02.2023].

- Amendments should be introduced to the Imprisonment Code to define the mandatory criteria for conducting oral hearings by the local council. While retaining the authority of the local council, if necessary, to conduct oral hearings.
- In the draft of the Penitentiary Code, the number of short and long appointments should be clearly defined, and the quantity of short and long appointments should be increased for convicts deprived of liberty for life.
- The recommendation of the Public Defender to allow high-risk convicts the right to receive higher education should be taken into account and relevant amendments be introduced to the Imprisonment Code.

Recommendation

To the Minister of Internal Affairs:

- In 2023, define legal framework that will oblige law enforcement officers participating in a special operation to use a body camera, along with setting clear rules for its proper usage during such operations.
- Equip all law enforcement officers involved in special operations with body cameras.
- Declassify and make public the joint secret of the Minister of Penitentiary, Probation, and Legal Aid of Georgia dated July 1, 2009, with reference number No. 02C – N01

To the Minister of Justice:

- "Approval of the Procedure for the Consideration and Decision-Making of Conditional Release from Serving the Sentence by the Local Councils of the Special Penitentiary Service, under the Ministry of Justice of Georgia," Order No. 320, dated August 7, 2018, approved by the Minister of Justice, should include the additional evaluation criteria addressing future plans, prospects, opportunities, and other relevant issues.
- Ensure delivery of Georgian language courses in all penitentiary institutions for prisoners who do not speak the state language.
- To motivate convicts to participate in various rehabilitation activities, a mechanism should be created and implemented, directly affecting the reduction of the remaining sentence term or the possibility of changing the type of sentence.
- In 2023, introduce new and diverse rehabilitation activities in all penitentiary institutions, aiming to increase the number of resocialization measures and involve at least 50% more convicts in these programs.

4. Right to a Fair Trial

4.1. Introduction

The existence of a fair trial is a central prerequisite for the protection of human rights. "The right to a fair trial is instrumental; its purpose is to ensure the possibility of effective protection of human rights and legal interests through the court."²³⁴ Consequently, by ensuring a fair trial, the state will create a solid foundation through addressing the problems outlined in this report. Unfortunately, no tangible steps were taken during the reporting period to realize the right to a fair trial. Gaps persist in the judicial system, both at the legislative and institutional levels. Despite numerous attempts to reform the court in the history of independent Georgia, the existence of an institutionally flawed judiciary remains an unsolved problem, posing a significant obstacle to the path of European integration.

All state bodies in Georgia have a constitutional obligation²³⁵ to take all measures to ensure Georgia's full integration into the European Union and the North Atlantic Treaty Organization. Against this background, it is worth noting that on June 17, 2022, the highest number of preconditions for receiving the candidate status from the European Union that Georgia received was in relation to the judicial authorities.²³⁶ However, during the implementation of the 12-point plan, Georgian Parliament did not address important issues of judiciary such as the fundamental reform of the High Council of Justice, improvement of the system of the case distribution to ensure full elimination of interference in this process; ensuring full compliance of the legislation with the recommendations of the Venice Commission and the OSCE/ODIHR, decision-making in the High Council of Justice to be based on the principle of double majority; the election of chairpersons of the courts (collegiums, chambers) by the judges of the same court. Revoke amendments to the Organic Law "On Common Courts" introduced in December 2021 and other relevant measures.²³⁷

In addition to rejecting specific legislative changes, the Parliament disregarded several recommendations we presented and did not incorporate them into the judicial reform strategy and action plan. These recommendations include the need: to ensure oversight on the implementation of already carried out judicial reforms; strengthen enforcement of the existing legal framework on judges' property declarations, introduce changes in the electronic case distribution rules to ensure random selection of all three panel members in common courts, safeguard equal and proportional workload for judges, consider some of the recommendations issued by the OSCE/ODIHR in August 2021 within the judicial reform strategy and action plan, establish detailed rules and criteria for selecting an independent inspector.²³⁸

²³⁴ Decision # 2/1/1481 of the Constitutional Court of Georgia dated February 3, 2023, in the case "Gia Folidishvili vs. Parliament of Georgia", II-1.

²³⁵ Article 78 of the Constitution of Georgia.

²³⁶ European Commission, Opinion on Georgia's application to join the European Union, 2022. [Available: < <https://bit.ly/3knG9y0> > last reviewed: 23.02.2023].

²³⁷ The Public Defender of Georgia calls on the Parliament of Georgia to share recommendations regarding judicial reform, Public Defender's statement, 2022. Available at: < <http://bit.ly/3SqRlBh> > [last viewed: 23.02.2023].

²³⁸ Ibid.

In last year's report, the Public Defender strongly criticized the expedited changes made to the Organic Law "On General Courts" at the end of 2021, which significantly weakened the safeguards of judicial independence²³⁹ Venice Commission opinion was published in the reporting period. The opinion fully shared assessment of the civil society and the public defender deeming the work of the Parliament inconsistent with democratic principles as the amendments were rushed and conducted without transparency and public involvement.²⁴⁰ According to the Commission's opinion, these amendments granted increased powers to the High Council of Justice, which, in the Georgian context, had a detrimental impact on judges' freedom of expression and diminished the guarantees of individual judicial independence.²⁴¹ During the reporting period, not only the Public Defender²⁴² and the parliamentary opposition²⁴³ but also acting judges²⁴⁴ resorted to appealing to the Constitutional Court—an unprecedented move that further highlights the detrimental effects of these legislative changes on the judiciary.

In last year's report, the Public Defender put forward 15 proposals and 5 recommendations aimed at ensuring the right to a fair trial. However, as in previous years, the rate of implementation of these recommendations and proposals by state agencies remains unsatisfactory²⁴⁵ with only 2 being implemented.

The Public Defender welcomes the initiation of the selection procedure for the members of the High Council of Justice by the Parliament of Georgia. However, it is regrettable that there was not enough room for political consensus in the legislative body, allowing parties to reach an agreement on specific candidates.²⁴⁶ Furthermore, the Soviet-era Code of Administrative Offenses that does not comply with human rights standards remains unresolved. Furthermore, amendments introduced to the "Law on General Courts" is still enforced and the amendments to determine the so called two two-thirds quorum for the assignment of judges was rejected again. Additionally, no changes have been made to the Criminal Procedure Code to address the substitution of a minor's representative in the event of an interest in questioning the representative in court.

The present chapter will review the institutional problems within the court system, including indications of internal corporatism and problems concerning the rules of setting the composition and activities of the High Council of Justice. As in previous years, there were still challenges in ensuring timely justice delivery.

²³⁹ 2021 Report of the Public Defender of Georgia, p. 97.

²⁴⁰ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) GEORGIA OPINION ON THE DECEMBER 2021 AMENDMENTS TO THE ORGANIC LAW ON COMMON COURTS, CDL-AD(2022)010, Para 78-79. 2022. [available at: < <http://bit.ly/3XUk3AL> > last viewed: 23.02.2023].

²⁴¹ Ibid. Para. 80.

²⁴² Constitutional lawsuit # 1700 of the Public Defender of Georgia of May 6, 2022, available at: < <https://bit.ly/3Ezk3iV> > [last viewed: 23.02.2023].

²⁴³ constitutional lawsuit # 1750 of December 2, 2022 of the members of the Parliament of Georgia - Ana Natsvlshvili, Ana Buchukuri, Mikheil Daushvili and others (42 MPs in total) [Available: < <https://bit.ly/3ZcEFp4> > last viewed: 23.02.2023].

²⁴⁴ Minutes of the case, "Eka Areshidze, Ketevan Meskhisvili, Madonna Maisuradze, Mamuka Tsiklauri and Tamar Khazhomia against the Parliament of Georgia", # 3/14/1693 available at: < <https://constcourt.ge/ka/judicial-acts?legal=14586> > [last viewed: 17.03.2023].

²⁴⁵ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 146-148.

²⁴⁶ Website of the Parliament of Georgia [available at: <https://info.parliament.ge/#law-drafting/25522> [last viewed: 23.02.2023].

During 2022, the European Court of Human Rights, in the context of the right to a fair trial, issued 6 decisions against Georgia,²⁴⁷ in which 5 cases were found to be in violation of Article 6 of the European Convention.

In 2022, the Public Defender of Georgia received a total of 2448 applications based on problems in the process of administration of justice. Among these applications, 103 were related to the length of the investigation of criminal cases.

4.2. Institutional Problems within Judiciary

4.2.1. Internal Corporatism in the Judiciary

The experience of different countries confirms that judicial authority is often the target of attacks by political authorities, as it provides a means to gain influence over all spheres of public life. When democratic institutions weaken, the country's leaders often rely on a court staffed by judges loyal to the government to serve their own political interests.

Despite the fact that Georgia's European integration process is significantly dependent on fundamental and large-scale reform of the judicial system, the events that unfolded during the reporting period further highlighted and confirmed that real judicial reform is not on the Parliament's agenda.

In this sub-chapter, we will review the key developments of 2022, which, in the opinion of the Public Defender, have made the challenges to the institutional independence of the judicial system even more apparent.

4.2.1.1. XXXI Conference of Judges

The XXXI Conference of Judges served as a clear example of the lack of transparency in the judiciary and the existence of a narrow influence group within the court. The agenda for the meeting was published on October 14, 2022, and among the discussed issues was the election of the judicial member/members of the Council.²⁴⁸

At that time, the council was fully staffed with judge members, leaving no vacancies. This arose reasonable doubts that within the following days, more than one judge member vacancy would suddenly appear in the Council. Just six days before the Conference, on October 17, one of the judge members of the Council,

²⁴⁷ Cases admitted by the European Court of Human Rights are: 1. January 13, 2022 decision on the case "Pertaia v. Georgia", application # 44888/16; 2. Decision of April 7, 2022 in the case "Gloveli v. Georgia", application # 18952/18; 3. Decision of June 30, 2022 in the case "Rusishvili v. Georgia", application # 15269/13; 4. The decision of September 1, 2022 on the case, "Makarashvili and Others v. Georgia", application #. 23158/20, # 31365/20, # 3525/20; 5. Decision of September 22, 2022, on the case, "Chakvetadze v. Georgia" application # 55949/10; 6. Decision of November 3, 2022 in the case "Mamaladze v. Georgia", application # 9487/19. The Court did not find violation only in the decision of June 30, 2022, in the case "Rusishvili v. Georgia", application # 15269/13.

²⁴⁸ Agenda of the XXXI Conference of Judges of Georgia, 2022, available at: <<https://bit.ly/3lr2dYW>> last viewed 16.03.2023].

Gocha Abuseridze, took a position that was incompatible with his membership in the Council according to the law.²⁴⁹ He was appointed as a member of the Disciplinary Chamber of the Supreme Court, and as a result, he resigned from the Council before even completing half of his term.²⁵⁰ During the conference held on October 23, it was revealed that another newly appointed member of the Council, Giorgi Goginashvili, had also refused the position. By that time, he had only completed a quarter of his term.²⁵¹ While the conference did not explore the motivation behind his resignation, he was elected by the judges as a judicial member of the disciplinary panel.²⁵²

It is worth noting that Giorgi Goginashvili's appointment to the Council followed an identical scenario to that of another member of the Council, Paata Silagadze. In the context of last year's report, the Public Defender negatively evaluated identical experience of appointing members to the Council through the Conference of Judges.²⁵³

Judge Levan Murusidze presented his candidacy at the XXXI Conference of Judges. Several judges nominated Dimitri Gvritishvili as the second candidate. Of the 279 judges present, 268 supported Murusidze's candidacy, and 267 - Gvritishvili's candidacy.²⁵⁴ It is worrying that the judges' conference unanimously supported the new members of the Council without any apparent interest or inquiry, leading to Abuseridze and Goginashvili resignations much earlier before their term expired. The conference showed no curiosity regarding the visions or plans of the new council members to improve the judicial system. It is also typical that within the framework of the XXXI conference, only as many candidates appeared as there were vacancies that were suddenly released.

According to the assessment of non-governmental organizations, "the process of electing new judge members by the Conference of Judges leaves the impression that two positions in the Council have been vacated for Dimitri Gvritishvili and Levan Murusidze."

The surnames of Murusidze and Gvritishvili are directly associated with informal influences and clan ruling in the judicial system".²⁵⁵ Indeed, on October 23, it was once again proven that the most important decisions in the judiciary are made by a few influential people, behind closed doors, without any accountability and real self-governance of the court.

Regarding the composition of the Council, it should be noted that at the end of December 2021, amendments were made to the organic law "On Common Courts" to remove the restriction on the

²⁴⁹ Paragraph 4 of Article 47 of the Organic Law of Georgia "On General Courts" establishes that a member elected by the Conference of Judges of Georgia cannot be a member of the Disciplinary Chamber.

²⁵⁰ Gocha Abuseridze was elected by the conference of judges on May 26, 2021.

²⁵¹ Giorgi Goginashvili was elected by the Conference of Judges on October 31, 2021.

²⁵² Up to 20% of judges did not attend the XXXI conference, see Link: < <http://bit.ly/3yPahWt> > [last reviewed: 16.03.2023].

²⁵³ 2021 Parliamentary Report of the Public Defender of Georgia, 2022, p. 96 and 100.

²⁵⁴ Murusidze and Gvritishvili were elected as members of the High Council of Justice, see link: < <http://bit.ly/408eXCE> > [last viewed: 16.03.2023].

²⁵⁵ Statement of the Coalition for an Independent and Transparent Justice, Coalition Responds to the XXXI Conference of Judges, 2022, [available at: < <http://bit.ly/3JkxrsY> > [last viewed: 16.03.2023].

members of the High Council of Justice to be re-elected to the Council.²⁵⁶ As a result, the influential group in the court, by promising them renewed support, was given additional leverage to influence the activities of the Council members. The Venice Commission, in its report published in 2022, evaluated these changes negatively. According to the Commission, the justification was not attached to the changes, and it was noted that allowing the re-election of a member of the Council interferes with the independence of judges. The commission considered it necessary to address and correct this issue.²⁵⁷

4.2.1.2. Possible pressure and illegal interference in the activities of judges

The statements of former judges are further evidence of institutional problems in the court. During the reporting period, several former judges came forward to publicly discuss the attempts of interference by judges belonging to the so-called influential group. The Public Defender finds this fact deeply concerning and observes that the consistency and alignment of these statements, both with each other and with the statements made by civil organizations over the years, reach an important standard of persuasiveness. As a result, it raises doubts about the independence of the judiciary as a separate branch of power.

On July 27, 2022, an interview with former judge Natia Kutateladze was aired.²⁵⁸

In the interview, the judge recounts a case where, under the instructions of an influential group within the court, her colleagues concealed information about the registration of a specific election dispute and deliberated the case with the involvement of another judge. According to Kutateladze this incident followed her act of writing a dissenting opinion on another election dispute and criticizing the interference of unauthorized individuals in handling this case.

On September 14, 2022, another interview with former judge Anna Ghelekva was published.²⁵⁹ In the interview, the judge stated that the High Council of Justice did not re-appoint her after the probation period just because she could not meet the main criteria for appointment, which was loyalty to the Council. According to Ghelekva, Levan Murusidze personally informed her of this. Ghelekva also recalls that the chairman of the Kutaisi court held weekly meetings with the judges to discuss the content of the cases being handled by the judges.

On September 16, 2022, the former judge of the Supreme Court, Besarion Alavidze, in an interview he gave to the media,²⁶⁰ he noted the Council in agreement with the authorities, has repeatedly called to make their desired decision on specific cases.²⁶¹ Due to his resistance, communication with the Council turned into a conflict, which he compared with "arguing based on street rules" - "[...] summoning to the offices, with very loud calls and direct orders that a specific result should be given to a certain case". This

²⁵⁶ Paragraph 12 of Article 47 of the Organic Law of Georgia "On Common Courts".

²⁵⁷ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), FOLLOW-UP OPINION TO FOUR PREVIOUS OPINIONS CONCERNING THE ORGANIC LAW ON COMMON COURTS, CDL-AD(2023)006, 2023, Para. 22.

²⁵⁸ Interview with a former judge: Natia Kutateladze's solution, see link: <<http://bit.ly/3lqtspf>> [last viewed: 16.03.2023].

²⁵⁹ Interview with former judge Anna Ghelekva - career sacrificed to choice, see link: <<http://bit.ly/3JkypW8>> [last viewed: 16.03.2023].

²⁶⁰ "The case was decided based on unwritten rules, often involving private meetings to influence specific outcomes." Scandalous statement of Rustavi 2 case judge. See the link: <<http://bit.ly/3ZOHAEM>> [last viewed: 16.03.2023].

²⁶¹ Besarion Alavidze spoke about the problems of the judicial system and the existence of a clan while he was still a judge of the Supreme Court in 2019.

content was confirmed by the former senior official of the State Security Service, Soso Gogashvili, who is currently imprisoned. According to Gogashvili, the pressure on Alavidze was ordered by Mikheil Chinchaladze, and it was related to the judge's refusal to provide the desired result to the authorities in the "Rustavi 2" case. Gogashvili further stated that in order to influence the judge, they had to offer a permanent job, monetary bonus, and immunity, and in case of refusal, he would face problems.²⁶²

On September 22, 2022, part of the civil society responded to the interviews mentioned above,²⁶³ pointing to additional three cases from the past when judges Lali Lazarashvili, Nunu Nemsitsveridze, and Tamaz Jaliashvili also spoke about the pressure they experienced.

In light of this, the civil sector urged the parliamentary opposition to establish an investigative commission to thoroughly examine systemic crimes and other violations within the judiciary.

The Public Defender of Georgia is urging responsible state agencies to conduct a thorough and effective investigation into the allegations of possible pressure on judges. To achieve this goal, these agencies should employ all available tools and formats at their disposal. Depending on the complexity of the issue, the establishment of a temporary investigative commission in the Parliament of Georgia could prove to be an effective measure.

4.2.1.3. Signs of Corruption in the Judiciary

One of the critical factors impeding the institutional independence of the judiciary is the presence of corruption risks. Corruption tempts judges to make decisions driven by personal political or commercial interests, rather than upholding human rights law. Even the mere theoretical existence of corruption risks can significantly harm the integrity of justice, as it affects the public's perception of the judiciary.²⁶⁴ During the reporting period, media reports raised doubts about corrupt activities within the influential group in the court.

During the reporting period, an investigative story was published,²⁶⁵ raising concerns about allegedly undocumented assets of influential judges within the judiciary. The journalistic investigation points to reasonable suspicions that some judges²⁶⁶ might be concealing their incomes and assets. The report suggests that certain judges utilize the tactic of transferring allegedly undocumented property to family members, relatives, or individuals who remain outside the purview of the law. Moreover, the investigation reveals that judges, despite their legal obligation, fail to declare the property of individuals permanently residing with them in their property declarations. Additionally, there are instances of incomplete information provided by judges regarding their expenses throughout the year. The story highlights the

²⁶² According to Gogashvili, Judge Alavidze was under pressure while considering the case of "Rustavi 2", see link: <<http://bit.ly/40ebpyE>> [last viewed: 16.03.2023].

²⁶³ The CSO sector requires the creation of an investigative commission to study the current situation in the judicial system, see <<http://bit.ly/3TKy0HC>> [last viewed: 16.03.2023].

²⁶⁴ According to the so-called Bangalore Principles on judicial conduct, principle 3.2. "Justice must not merely be done but must also be seen to be done. Principle Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge."

²⁶⁵ Hidden Wealth of Court Clan Leaders Available: <https://youtu.be/t5DusT_eL5Q> [last viewed: 07.03.2023].

²⁶⁶ Refers to judges: Levan Murusidze, Mikheil Chinchaladze, Irakli Bondarenko, Sergo Metofishvili.

case of Lela Chania, the head of the secretariat of the Tbilisi City Court collegium. Her property acquisitions in recent years seemingly exceed the scale of her salary. The report also suggests that Chania has been residing with Levan Murusidze in his house for many years. However, both parties involved deny this information.

A part of civil society believes that “the investigative report contains substantial factual information, which reveals signs of various crimes as defined by the Criminal Code of Georgia. They argue that this information serves as sufficient grounds for the initiation of a criminal investigation.”²⁶⁷

The Public Defender shares the opinion that “corruption represents the primary challenge to democracy and the rule of law. When corruption is prevalent, decisions are made that do not align with the interests of society, and political power becomes concentrated in the hands of individuals. Consequently, this leads to a loss of legitimacy and public trust in political leaders and institutions, posing a threat to effective governance”.²⁶⁸ At the same time, the public defender emphasizes that the court itself should be interested in disproving the spread of such information.

In addition, effective measures to address possible corruption in the judicial system have gained additional importance following Georgia's application for EU membership. On June 17, 2022, the European Commission noted in its opinion regarding Georgia's application that the procedures for filling out declarations by judges needed improvement.²⁶⁹

4.2.1.4. Replacement of the Candidacy of Nino Bakakuri in the European Commission for the Efficiency of Justice of the Council of Europe and the Consultative Council of European Judges

On July 27, 2022, the Minister of Justice of Georgia announced a competition to select a candidate for the membership of the Consultative Council of European Judges (CCJE).²⁷⁰ However, civil society viewed this announcement negatively, as by the time of announcing the competition, Supreme Court judge Nino Bakakuri was already representing Georgia in these bodies from 2016²⁷¹ as to at least 2024.

The Minister of Justice responded to the reasonable suspicions raised by civil society organizations on suppressing critical opinion within judiciary, by referring to them as “biased and against modern and democratic standards”. He presented the issue as if the civil society organizations were against the

²⁶⁷ State agencies should immediately respond to signs of systemic corruption in the judiciary, see link: <<http://bit.ly/3Jk7hGx>> [last viewed: 16.03.2023].

²⁶⁸ "Georgia: Guidelines on Open Local Government and Code of Ethics in Public Service", Council of Europe, 2021 (3rd edition), available at: <<https://rm.coe.int/0900001680a53ecb>> [last viewed: 29.03.2023].

²⁶⁹ European Commission, Opinion on Georgia's application to join the European Union, p. 7, 2022. [Available at: <<https://bit.ly/3knG9y0>> [last viewed: 23.02.2023].

²⁷⁰ In accordance with orders # 848 and # 850 of the Minister of Justice of Georgia dated July 27, 2022,

On August 2, the Ministry also announced the selection competition for candidates to be presented in the mentioned bodies, available at: <<http://bit.ly/3FXH3IY>> [last viewed: 29.03.2023].

²⁷¹ Bureau of the Consultative Council of European Judges (CCJE), Statement on the Announcement of the Selection Competition for CCJE Member in Georgia CCJE-BU(2022)3, available at: <<https://bit.ly/3Jq3Oyl>> [last viewed: 15.03.2023].

principle of competition for the nomination of the judge.²⁷² On August 10, the CCJE addressed the Ministry of Justice's announcement of the competition. While acknowledging the presenting state's right to change candidates, the CCJE expressed concerns about the extremely short deadline for the competition (the announcement was made on August 2, and the deadline for receiving documents was August 6). Despite this, the CCJE recognized Nino Bakakuri as a high-level, active professional and shared the concerns raised by the coalition of non-governmental organizations.²⁷³

4.2.2. Regulations on Staffing the High Council of Justice

In June 2021, the term of office of all non-judge members of the High Council of Justice expired.²⁷⁴ It has to be welcomed and assessed as a positive step that the parliamentary majority, in the fall session, following the call of the European Commission,²⁷⁵ launched the selection of non-judge members of the High Council of Justice on the basis of an open competition. Finally, a total of 32 candidates registered for the competition.

The Constitution sets a high quorum (at least three-fifths of the full membership) for the legislature to select a member of the Council, aiming to build a consensus on the integrity and competence of the candidate. However, the parliamentary session ended without appointing any members to the Council. It is regrettable that the political forces represented in Parliament could not come together in a way that would ensure representation of all branches of the government in the Council. Voting on the issue has been postponed until the spring session.

In addition to the shortcoming of the lack of members elected by the legislative body in the Council, which leads to the dominance of only the views of the judiciary, the activity of the Council with 10 members also presents practical problems. For instance, during the session of the Council on June 2, 2022, it was impossible to resolve the issue of lifetime appointment of judges appointed for a term of 3 years. The Council stated that one non-judge member is insufficient to evaluate the performance of specific judges, and before the reappointment of a judge, evaluation is a legal obligation of the Council. As a result, suspending the issue of reappointing judges practically extends the term of activity of judges²⁷⁶ According to the assessment of the non-governmental sector, "this violates both their rights and the right of court users to have the case heard by a competent and qualified judge." This may question the legality of their decisions."²⁷⁷

²⁷² The announcement of a competition for the position of judge Bakakuri in the CCJE raises questions for NGOs, see Link: < <http://bit.ly/3FvfwOZ> > [last viewed: 16.03.2023]

²⁷³ Resume of Nino Bakakuri, available at: < <https://bit.ly/3JoOt9i> > [last viewed: 16.03.2023]

²⁷⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL, Commission Opinion on Georgia's application for membership of the European Union, COM/2022/405 final

²⁷⁵ The European Commission stated in its opinion on Georgia's application on June 17, 2022 that it will recommend granting the country candidate status after Georgia, among others, is able to "implement a thorough reform of the High Council of Justice and appoint the remaining members of the High Council of Justice."

²⁷⁶ The crisis caused by the incomplete composition of the Supreme Council of Justice. see link: < <http://bit.ly/3yER75T> > [last viewed: 16.03.2023].

²⁷⁷ Association of Young Lawyers of Georgia, "Monitoring Report of the High Council of Justice No. 11", 2023, 17.

It should be noted that the non-election of members of the High Council of Justice by the legislative body, due to the lack of an appropriate quorum, has caused delays in the disciplinary proceedings. Currently, according to the regulations in force, a decision on a disciplinary issue is considered adopted if it is supported by the majority of the full membership of the Council during a secret vote.²⁷⁸ However, prior to the legislative amendments of December 30, 2021, a decision on a disciplinary issue was considered adopted if it was supported by at least 2/3 of the full membership of the Council (at least 10 members).²⁷⁹ Thus, the disciplinary proceedings of judges, with the 10-members in the Council, were unjustifiably delayed for a long time and remained unreviewed. This delay has become evident in several cases studied by the office of public defender.²⁸⁰

4.2.3. Decision Making at the High Council of Justice

One of the most significant reasons for the pressing problems and deep crisis in the judiciary is the High Council of Justice decision-making rules. The existing context within the Council allows it to bypass even the most difficult obstacle, even if it requires it to bypass the highest quorum established by law, such as the appointment and dismissal of judges, which requires at least 2/3 of the votes. In contrast, the vote of only one non-judge member of the Council is sufficient.

Given this reality, one of the key priorities of the "Charles Michel Agreement," signed on April 19, 2020, was the comprehensive reform of the Council. Additionally, the OSCE/ODIHR has also emphasized the necessity of reforming the High Council of Justice to enhance public confidence in its independence and impartiality.²⁸¹

The procedure of staffing is directly linked to the decision-making process of the Council.²⁸² According to the definition of the Constitutional Court, "The manner of decision-making by the High Council of Justice of Georgia is of utmost importance, as it is directly determined by the Constitution. Specifically, decisions, including the selection of candidates to hold the position of judge of the Supreme Court of Georgia, require a majority of not less than 2/3 of the full composition of the Council. This provision ensures that decisions are not made solely by judge or non-judge members of the Council and emphasizes the need for a broad consensus among members elected by different entities. Consequently, the requirement for a high quorum effectively mitigates any potential risks of arbitrariness in the exercise of authority during the process of selecting judges by the High Council of Justice."²⁸³

²⁷⁸ The third paragraph of Article 50 of the Organic Law of Georgia "On Common Courts".

²⁷⁹ The third paragraph of Article 50 of the Organic Law of Georgia "On Common Courts". (Version valid until changes on December 30, 2021).

²⁸⁰ See additionally 2022 Activity Report of the Criminal Justice Department of the Public Defender, p. 159-160.

²⁸¹ OSCE/ODIHR Report "Fourth Report on Nomination and Appointment of Supreme Court Judges in Georgia", August 23, 2021.

²⁸² According to the first paragraph of Article 64 of the Constitution of Georgia, more than half of the members of the Council are 8 members elected by the self-governing body of judges of general courts. In the composition of the Council, non-judge members are appointed: one by the President of Georgia and 5 members elected by the Parliament with a majority of not less than three-fifths of the full composition. Also, the 15th ex officio member of the Council is the Chair of the Supreme Court.

²⁸³ Decision # 3/1/1459,1491 of the Constitutional Court of Georgia dated July 30, 2020 on the case, "Public Defender of Georgia against the Parliament of Georgia", II-32.

The opinion of the Venice Commission aligns with the court's position, emphasizing that involving both judges and non-judges in the decision-making process is a constitutional principle. This principle can be effectively implemented by ensuring the active participation of both groups in decision-making. It is crucial to prevent the establishment of a quorum that would solely rely on the support of one group, as that would undermine the balance.²⁸⁴

Therefore, the Venice Commission recommends that the current decision-making model in the Council be modified by the legislator to achieve a better balance between judge and non-judge members²⁸⁵ The Venice Commission offers alternative methods to the Parliament of Georgia to address and resolve this matter effectively.

According to the assessment by the Public Defender, the effective involvement of non-judge members in the decision-making process cannot be guaranteed if only one non-judge member's vote is sufficient for the Council to reach a decision. To address this concern, the proposed solution is to introduce a "double two-thirds quorum" into legislation.²⁸⁶ However, despite representatives of the opposition registering bills in the Parliament in July and December 2021, which included the mentioned quorum refinement²⁸⁷ these bills have not been discussed in committee meetings.

It is important to note that, within the framework of the 12-point plan, a working group was established in the parliament to ensure implementation of recommendations addressing judiciary. This group presented a judicial reform strategy and action plan,²⁸⁸ and later proposed a package of legislative amendments.²⁸⁹ However, neither the strategy nor the legislative initiative included any provisions for changing the decision-making process or quorum of the Council of Justice.

4.2.4. Disciplinary Liability of Judges and Involuntary Transfer of Judges

In last year's report, the Public Defender assessed the amendments made to the Organic Law of Georgia "On Common Courts" in an accelerated manner without consultation with the interested parties as a step undermining judicial independence safeguards.

Amendments introduced a set of new regulations. Some of the key concerns include the quorum for decision-making by the Council on disciplinary matters. Additionally, the amendments introduced new grounds for disciplinary liability of a judge, particularly related to the expression of opinions that may

²⁸⁴ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), FOLLOW-UP OPINION TO FOUR PREVIOUS OPINIONS CONCERNING THE ORGANIC LAW ON COMMON COURTS, CDL-AD(2023)006, 2023, Para. 19. Available at: < <https://bit.ly/3FqBXoF> > [last viewed 15.03.2023].

²⁸⁵ Ibid. Para. 20.

²⁸⁶ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 98-99.

²⁸⁷ The initiators of the draft law of July 7, 2021, are the members of the Parliament of Georgia: Mikheil Daushvili, Giorgi Khojevanishvili, Beka Liluashvili, Ana Buchukuri; And the draft law of December 1, 2021 - members of the Parliament of Georgia: Davit Usupashvili, Giorgi Vashadze, Ana Natsvlishvili, Armaz Akhvediani, Salome Samadashvili, Teona Akubardia, Badri Japaridze.

²⁸⁸ Anri Okhanashvili held a briefing regarding the strategy and action plan of judicial reform, Parliament of Georgia, see Link < <https://bit.ly/3yJtv00> > , [last viewed: 16.03.2023].

²⁸⁹ Judicial reform working group submits legislative amendments to the organic law on general courts to the legal committee, Public Broadcaster, see link < <http://bit.ly/3YT0klu> > [last viewed: 16.03.2023]. In November, together with other draft laws, the Parliament sent the draft law to the Venice Commission and the OSCE for assessment.

violate the principles of political neutrality and involuntary transfer of judges.

In the reporting year, the concerns raised by the Public Defender and local non-governmental organizations were also echoed by the Venice Commission. The Commission strongly criticized not only the manner in which the legislative changes were adopted but also their content in several instances.²⁹⁰ According to the evaluation of the Venice Commission, the increased power granted to the Council is unjustified and disproportionate, representing a significant interference in the independence and activities of judges.²⁹¹ Furthermore, the Commission noted that amendments' problematic content is just one aspect of the issue, as the context in which these changes were made is particularly troubling.²⁹²

It should be noted that the package of amendments initiated on November 4, 2022, which was presented by the majority as part of the implementation of the 12-point plan, was developed after receiving an overly critical conclusion from the Venice Commission. This draft law indicates that the working group, established to implement the Commission's recommendations, worked for three months without making efforts to address the significant issues identified within this chapter. Consequently, in its new 2023 conclusion, the Venice Commission emphasized that the legislator failed to consider its previous recommendations on this matter, leading to the Commission's positions remaining unchanged.²⁹³

²⁹⁰ CDL-AD(2022)010, Opinion No. 1077/2022 "Amendments concerning disciplinary grounds and procedures as well as the irremovability of judges are very sensitive matters which merit thorough and inclusive considerations, as they relate directly to the independence of judges.... Sudden and rapid amendments to key components of the independence of judges through accelerated legislative procedures may undermine the public trust in the judiciary as being independent from the executive and legislative branches of government...Thirdly, sudden and rapid amendments to law affects legal certainty, which is an essential component of the rule of law."

²⁹¹ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) GEORGIA OPINION ON THE DECEMBER 2021 AMENDMENTS TO THE ORGANIC LAW ON COMMON COURTS, CDL-AD(2022)010, Para. 40. 2022. [available at: < <http://bit.ly/3XUk3AL> > [last viewed: 23.02.2023].

²⁹² Ibid. Para. 41.

²⁹³ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), FOLLOW-UP OPINION TO FOUR PREVIOUS OPINIONS CONCERNING THE ORGANIC LAW ON COMMON COURTS, CDL-AD(2023)006, 2023, Paragraphs. 43-44. Available at: < <https://bit.ly/3FqBXoF> > [last viewed: 15.03.2023].

4.2.5. Electronic Distribution of Cases

One of the primary objectives of the electronic program for case distribution in courts is to enhance public trust in the judicial system and eliminate internal manipulations. However, a study of the case distribution practice reveals that a substantial number of cases is assigned in violation of the principle of random allocation. Specifically, during the period of 2020-2021, a total of 537,929 cases were allocated, out of which 333,485 cases were allocated based on the random principle, constituting 62% of the total number of cases. The percentage of randomly allocated cases in the reporting periods of 2018-2019 was consistently 62-62% of the total amount.²⁹⁴

The High Council of Justice through introducing exceptions to the general rule of electronic case distribution has created a possibility that can lead to cases being allocated to judges who are favored by influential group of judges or, conversely, prevent cases from reaching judges who may not be preferred by these group.²⁹⁵

The problems with the electronic case distribution system are closely intertwined with problems of bureaucratic management within the court and the informal influence of court chairpersons. The civil sector has been addressing the latter for over a decade. For instance, court chairs have the authority to determine the composition of first instance courts' collegiums at their own discretion, without providing any justification. This discretionary power can be utilized as a means of influencing the distribution of cases. Furthermore, in higher instance courts, when cases are heard by collegiums, the electronic program only assigns the case to the chairs of the hearing or the reporting judge.²⁹⁶

The issue of selecting the other judges in the collegial composition is not clear. In response to this concern, the Public Defender, in 2020²⁹⁷ and 2021²⁹⁸ urged the High Council of Justice to modify the procedure for distributing cases in a manner that would ensure that all three members of the collegium are randomly selected. The reason behind this recommendation is that merely selecting one judge randomly in the collegium is insufficient to enhance public trust in the court.

²⁹⁴ Center for Social Justice, "Electronic Case Distribution System in Courts (2020-2021 Evaluation Report)", 2022, 13.

²⁹⁵ Paragraph 2 of 581 of the Organic Law of Georgia "On Common Courts", the Council approved the decision of the High Council of Justice of Georgia on May 1, 2017 # 1/56.

²⁹⁶ Decision # 1/56 of the High Council of Justice of Georgia dated May 1, 2017, Article 3, Clause 9.

²⁹⁷ 2020 Parliamentary Report of the Public Defender, Tbilisi, 2021, 129-130.

²⁹⁸ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 102-103.

4.3. Right to be heard in a reasonable timeframe

4.3.1. Case consideration timeframes in the court of general jurisdiction

In last year's report, the Public Defender conducted an extensive review of the procedural legislation that binds the general courts in considering civil, administrative, or criminal cases.²⁹⁹ However, similar to previous years, the problem of case consideration within the imperative norms envisaged in the legislation by the court system remains persistent and challenging to overcome.

The trend observed in previous years, where criminal case decisions were not delivered to parties for months or appeals were not sent to higher instance courts, continued to persist in the current reporting period.³⁰⁰ During this period, the office studied multiple cases and identified significant violations.

One particular case that exemplifies the issue was in the Telavi district court, where a reasoned decision was not provided to one convict upon 14 months after the verdict announcement, and 8 months to another convict. It should be noted that according to the law, this term is only 14 days. As a result, the convicts were restricted from effectively exercising their right to appeal. Public Defender made a proposal to the Independent Inspector of the High Council of Justice regarding the initiation of disciplinary proceedings against the judge.³⁰¹

Court proceedings against the former heads of the Batumi prison, who have been charged with inhumane treatment, have been ongoing since 2014,³⁰² and the case has not yet been completed. In both 2022 and 2021, only two court hearings were held for this case. Issues have been identified concerning the timely consideration of cases in the Court of Appeal. For instance, an appeal filed on November 18, 2021, in one of the cases before the Tbilisi Court of Appeal, was still not deliberated during the reporting period.

The activation of the Chamber of Criminal Cases of the Supreme Court in 2022 is a positive development, leading to a significant decrease in the number of cases that were considered in violation of the legally established deadlines. The reduction of such cases to just 1% is commendable. However, based on the information shared by the courts, despite this improvement, the problem of terms for criminal case consideration still persists in the Court of Appeal of Kutaisi.

Statistical data for the year 2022 reveals the following:

²⁹⁹ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022.

³⁰⁰ 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 146, 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 103.

³⁰¹ Proposal # 15-11/8266 of the Public Defender of Georgia dated August 12, 2022

³⁰² Batumi City Court dated February 1, 2022, No. 29-g/k.

	Total number of handled cases (2022 year)	The percentage of cases handled in violation of the deadline set by the legislation (2022 year)	The percentage of cases handled in violation of the deadline set by the legislation (2021 year),³⁰³
Tbilisi Court of Appeal³⁰⁴	1823	17,6%	31%
Kutaisi Court of Appeal³⁰⁵	933	16,8%	18,7%
Supreme Court³⁰⁶	1 342	1,04%	22.7%

The situation has worsened concerning the consideration of administrative and civil category cases. In the Kutaisi Court of Appeal, nearly every second case is now being considered in violation of deadlines, indicating a significant issue with delays. In the Supreme Court, the violation of deadlines has become the norm, with timely consideration being the exception. There is a positive trend observed in the Tbilisi Court of Appeal, where the terms of case consideration are being shortened:

³⁰³ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 104.

³⁰⁴ Tbilisi Court of Appeal letter # 2/1581 of March 13, 2023.

³⁰⁵ Kutaisi Court of Appeal letter of February 1, 2023, # 52-2/10.

³⁰⁶ Letter of the Supreme Court of Georgia dated February 9, 2023 # P-85-23.

	Total number of handled cases	The percentage of cases handled in violation of the deadline set by the legislation	The percentage of cases handled in violation of the deadline set by the legislation ³⁰⁷
Tbilisi Court of Appeal ³⁰⁸	2302	15,5%	56% ³⁰⁹
Kutaisi Court of Appeal ³¹⁰	711	51.6%	35% ³¹¹
Supreme Court ³¹²	1 855	95,6%	99,9%
Supreme Court (Admissibility stage) ³¹³	963	54,6%	77%

The Office of the Public Defender conducted a study on the activities of the Court of Appeal of Kutaisi regarding the adjudication of cases. The findings indicate that the process of considering civil cases is significantly prolonged compared to criminal and administrative cases. The analysis revealed that the average time taken to consider all types of civil claims (excluding arbitration) exceeds the deadlines prescribed by legislation. For instance, while the maximum time for considering a civil category private claim is set at 2 months, the average statistical data from court practice shows that it takes around 71 days for resolution. An even more challenging situation is observed concerning the consideration of appeals. According to legislation, the court has a maximum of 2 months to render a decision, with the possibility of exceptional cases taking up to 5 months.

However, the average statistical indicator shows a significant deviation from the legislation, with the average waiting period for the consideration of a case being 201 days.

During the current reporting period, a problem with interpreters was identified during the consideration

³⁰⁷ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 105.

³⁰⁸ Tbilisi Court of Appeal letter # 2/1581 of March 13, 2023.

³⁰⁹ Percentage is calculated from the data of the first 9 months of 2021.

³¹⁰ Kutaisi Court of Appeal letter of February 1, 2023, # 52-2/10.

³¹¹ percentage is calculated from the data of the first 9 months of 2021.

³¹² Letter of the Supreme Court of Georgia dated February 9, 2023 # P-85-23.

³¹³ Ibid.

of cases. It became evident from the studied cases that the postponement of hearings in criminal cases was often due to issues with the interpreter service. This situation created obstacles and hindered the defendants' right to have their case considered within the time limits set by the law.

4.3.2. Problem of Court Chairs in the Courts of General Jurisdiction

Despite the overcrowding of the court,³¹⁴ certain judges continue to enjoy privileges. Specifically, the decision of the High Council of Justice resulted in a significant and disproportionate reduction in the workload of judges holding positions (court chairs) in the judicial system.³¹⁵

In 2022, the chairperson of the Supreme Court and of the Administrative Case Chamber, Nino Kadagidze, was assigned only one case during the span of 11 months. In contrast, the other eight judges of the same chamber received a total of 1394 cases, (averaging approximately 174 cases per judge) during the same period.³¹⁶ Similarly, Judge Ketevan Tsintsadze, another member of the Administrative Case Chamber, had an evidently low number of cases assigned during the 11-month period in 2022, with a total of only 31 cases.³¹⁷ In the Chamber of Criminal Cases, Chairman Shalva Tadumadze was assigned only 13 cases in total for 11 months. Conversely, the other five judges of the Chamber were allocated a total of 1291 cases, averaging around 258 cases per judge during the same period.³¹⁸ The Chair of the Civil Cases Chamber, Giorgi Mikautadze, was assigned only seven cases during the 11-month period in 2022. In contrast, the remaining twelve judges of the chamber received a total of 1693 cases, averaging about 141 cases per judge during the same period.³¹⁹

In the Kutaisi Court of Appeal, Chairman Irakli Bondarenko was assigned only three cases during the same 11-month period. On the other hand, the other five judges of the same chamber had a considerably higher caseload, receiving a total of 1109 cases, averaging approximately 222 cases each.

It is noteworthy that in 2022, chair of the Tbilisi Court of Appeals³²⁰ and chair of the investigative collegium of the same court, Mikheil Chinchaladze, was assigned a total of 27 cases 320 during the 11-month period. In contrast, the other five judges of the same collegium were assigned a total of 1840 cases, averaging approximately 368 cases each.³²¹

Chair of the Kutaisi Court of Appeal, Irakli Bondarenko³²² was assigned only three cases during the same 11-month period in 2022.³²³ On the other hand, the other five judges of the same chamber were allocated

³¹⁴ "Electronic case distribution system in Georgia", EMC, 2020, 39-41. Available at the link: < <https://bit.ly/3w8JiX> > [last viewed: 06.03.2023].

³¹⁵ See details 2021 Report of the Public Defender, p. 106.

³¹⁶ Letter of the Supreme Court of Georgia # P-1438-22; 23.12.2022.

³¹⁷ Ibid.

³¹⁸ Ibidem.

³¹⁹ Ibidem.

³²⁰ Letter of the Tbilisi Court of Appeal. 20.01.2023 letter #3/188

³²¹ Tbilisi Court of Appeal letter # 3/9505 of December 23, 2022.

³²² From March 2022, he served as the chairman of the Court of Appeal of Kutaisi, Since July 2022, he has been appointed as the chairman of the Kutaisi Court of Appeal.

³²³ Kutaisi Court of Appeal letter # 893-2/10 of December 22, 2022.

a total of 1109 cases, (averaging approximately 222 cases each).³²⁴

The Public Defender has been consistently highlighting the shortcomings of the Institute of Court Chairs for several years. According to the Public Defender's assessment, this institute serves as a mechanism for the High Council of Justice to exercise influence over ordinary judges.³²⁵ As per the Organic Law of Georgia "On Common Courts," the chairpersons of the first and second instance courts, along with their deputies, chairs of collegiums and chambers, are appointed by the High Council of Justice for a fixed term. Over the years, representatives of civil society organizations have been advocating for the introduction of a more democratic method of appointing court chairpersons. The proposed democratic approach would involve judges themselves selecting their chairpersons, rather than having them appointed by the Council. The Public Defender has actively emphasized the need of legislative amendments since 2017 to achieve a decentralization of decision-making on the election of court chairpersons.³²⁶

In addition to the problematic authority to distribute cases without defining specific discretionary scopes, court chairs also possess other powers not requiring justification (See details in the subchapter on electronic case distribution). They are entitled to draw / change the duty schedule of judges according to their own preferences, thereby ensuring allocation of cases to the judge they desire.³²⁷ This rule "[...]" poses risks of unilateral determination of the duty schedule and opens up the possibility of its misuse for inappropriate interests.³²⁸

During the reporting period, the flaws in the legislative process for electing court chairpersons were evident in the election of the chairperson of the Tbilisi Court of Appeal. At the session held on June 27, 2022, the council unanimously elected Judge Mikheil Chinchaladze as the chairperson. Non-governmental organizations expressed concerns that this decision by the Council further reinforced the existing corporate governance within the court.

The chairperson can ensure allocation of a case to a specific judge also through the mechanism of allocation/recusal/self-recusal,³²⁹ suspending the random allocation of a case and transferring of a case to another judge.³³⁰

During the reporting period, the legislative flaws in the election of court chairpersons were evident in the process of selecting the chairperson of the Tbilisi Court of Appeal. At the session held on June 27, 2022, the Council unanimously elected Judge Mikheil Chinchaladze as the chairperson in an untransparent manner. Non-governmental organizations expressed concerns that this decision by the Council further

³²⁴ Ibid.

³²⁵ See details: Institutional problems of the court.

³²⁶ 2017 Parliamentary Report of the Public Defender, pp. 103-104. Part of the propositions of the fair trial chapter of the Public Defender's 2021 report, p. 118.

³²⁷ Center for Social Justice, Electronic Case Distribution System in Court, p. 17, 2022. Available at: <https://bit.ly/3FAT9ro> [last reviewed: 20.03.2023].

³²⁸ Ibid, pg. 18.

³²⁹ Decision # 1/56 of May 1, 2017, of the High Council of Justice of Georgia, Article 4, Clause 11.

³³⁰ Decision # 01/56 of the High Council of Justice of Georgia dated May 1, 2017, Article 4.

strengthened the existing corporate governance within the court.³³¹

4.3.3. Timeframes of the review of cases at the Constitutional Court

Following the critical assessment expressed in the 2021 parliamentary report regarding the terms of consideration of cases in the Constitutional Court,³³² the Constitutional Court did not provide the requested information³³³ about the cases registered and reviewed in 2022 while working on the current parliamentary report.³³⁴ Instead of addressing the problems identified by the Office of the Public Defender, the court changed its established practice and attempted to conceal the issue by refusing to share information.³³⁵ Therefore, the information presented in this sub-chapter is based on the correspondence previously received from the court and posted on the website. In last year's report, the Public Defender reviewed the existing problems in the legislation and highlighted the issue of implementing constitutional justice within a reasonable time.³³⁶ Unfortunately, the problem of delays in considering cases in the Constitutional Court persisted during the reporting period.

During 2022, the Constitutional Court registered 86 constitutional lawsuits and 2 constitutional submissions. However, the court issued decisions on only 3 of these cases, while on 17 cases adopted a ruling, and 15 - recording notices.

Throughout the reporting period, the Constitutional Court made a total of 19 decisions. Although there was a slight increase in the number of decisions compared to previous periods, it remains inadequate to evaluate the court's activity as satisfactory. Furthermore, there are still a substantial number of cases that have been awaiting a decision for years, despite having completed their deliberation on merits. At this stage, the number of such cases stands as follows:

Lawsuit registration date	number of cases, where deliberation has been completed and is awaiting a decision as of 2023	Number of issued decisions in 2022, in comparison with 2021
2015	5	No change
2016	16	No change

³³¹ Statement of the Coalition for an Independent and Transparent Judiciary, the appointment of Mikheil Chinchaladze for a second term damages the European integration process, 2022, [available at: < <https://bit.ly/3ZN5HDT> > last viewed: 06.03.2023].

³³² 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 107-108.

³³³ Letter # 01/56 of the Constitutional Court of Georgia dated February 2, 2023.

³³⁴ Letter of the Office of the Public Defender of January 18, 2023, # 12-5/740.

³³⁵ The information requested last year was fully provided to us by the letter of the Constitutional Court dated March 25, 2022, # 01/50.

³³⁶ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 107-108.

2017	10	Decision is issued on 1 case
2018	12	No change
2019	14	Decision is made on 2 cases
2020	6	Decision is made on 3 cases

In addition, it should be noted that in the reporting period, the Public Defender filed applications to the Constitutional Court in connection with three cases, requesting the suspension of certain norms due to the irreparable consequences caused to the parties by their application.³³⁷

However, as of now, the court has not yet made a decision regarding the suspension of the norm in two of these cases.³³⁸

4.3.4. Nika Gvaramia's Case

The judgments issued by the City and Appellate Courts against Nika Gvaramia serve as clear examples and confirm serious flaws in the justice system. These judgments were delivered in violation of the fundamental principle of legality and appear to have a political motive or bias.

Back in 2019, the Public Defender applied to the Court with Amicus Curiae, wherein it was stated that the charges presented against Nika Gvaramia, particularly in the advertisement and car episodes, did not warrant criminal liability and even excluded corporate responsibility.³³⁹ Despite this, the city court found Nika Gvaramia guilty in the above mentioned parts and sentenced him to 3 years and 6 months of imprisonment, along with a fine of 50,000 GEL. The decision lacked proper substantiation and failed to address key issues. Similarly, the Appellate Court, like the first instance, also neglected to assess and review the circumstances under which a corporate-legal action (manager's decision) may become relevant for criminal justice and when and under what circumstances it should warrant criminal sanctions, in relation with charges on so called cars, as well as advertisement episodes. In addition to this, the sentence was aggravated without proper reasoning.³⁴⁰

³³⁷ For details, see Statement of the Public Defender on the suspension of the norms appealed to the Constitutional Court, 2022. Available at: < <https://bit.ly/3ZsgL9I> > [last viewed: 07.03.2023].

³³⁸ These cases are: constitutional lawsuit No. 1684 submitted on February 17, 2022, and constitutional lawsuit No. 1724 submitted on August 23, 2022

³³⁹ The Public Defender of Georgia Opinion of the Amicus Curiae to the Court dated 04.11.2019 No. 15-11/11857, available at: < <https://bit.ly/3mkTveW> > [last viewed: 06.03.2023].

³⁴⁰ 2022 report on the activities of the Criminal Justice Department of the Public Defender.

Political motive in Nika Gvaramia' s Case

The justice carried out against Nika Gvaramia is characterized by a political motive. This is determined by a number of circumstances: firstly, the imposition of criminal liability on the founder and media manager of a critical TV company for an issue related to corporate law. Also, the judgments passed against him were unjustified, both in terms of qualifying the act as a crime and in the severity of the sentencing, particularly the use of imprisonment. These circumstances strongly indicate that the process initiated against him was motivated not by the interest in justice, but by political motives.

The trial court avoided addressing all important legal questions in the case. There was no mention or consideration of fiduciary duties and corporate legal issues in the judgment. The court focused solely on the contract signed with the company, stating that the compensation provided was below market price. However, the court did not explore the corporate context of the contract. It remains unclear how the court could conclude that the contract was grossly detrimental to the company's interests based solely on the price difference. The identified issue pertained to the so-called "sale of advertisements" and the "car episode." In the "commercials episode," the judgment raised concerns about the predictability of the norm. As a result, what was essentially a regular entrepreneurial decision became a basis for criminal qualification.

Furthermore, the court's justification for the type and length of the sentence was insufficient. The court provided only one sentence to explain why Nika Gvaramia was sentenced to 3.5 years of imprisonment and did not elaborate on why a different punishment was not utilized, as permitted by Article 220 of the Criminal Code.³⁴¹ The Court of Appeal, instead of rigorously evaluating these legal issues, made an even more severe decision by imposing imprisonment as a punishment on Nika Gvaramia for an action that is civil in nature with no evidence that could be considered criminal case evidence.³⁴²

Based on the fact that the defense side appealed to Article 18 of the Convention, the Public Defender of Georgia also examined this issue in the case. The examination revealed that ongoing processes and statements made by individual high-ranking officials played a decisive role in indicating a political motive. Nika Gvaramia was charged shortly after discussing the plan to establish a new television channel. Throughout the entire period of court proceedings and even after the judgement, negative statements from high officials were directed towards Nika Gvaramia. Given these circumstances, it becomes evident that there is an interest in imprisoning Nika Gvaramia and removing him from the activities of the TV company "Mtavari Arkhi," which is known for its critical stance towards the government.

The significant flaws in the administration of justice in the case clearly indicate that the political motives have prevailed over the legitimate aim. This becomes even more evident understanding that the judgements issued in Nika Gvaramia's criminal case are not in line with the fundamental principles of criminal law and lack proper justification. The Public Defender's assessment is grounded on the principles

³⁴¹ The results of the public defender's analysis regarding the decision against of Nika Gvaramia, statement of the public defender, <<https://bit.ly/3LCqkib>> [last viewed: 20.03.2023].

³⁴² The Public Defender reacts to the decision of the Tbilisi Court of Appeal against Nika Gvaramia, Public Defender's statement, 2022, available at < <https://bit.ly/40DhuoP> > [last reviewed: 20.03.2023].

outlined in the European Convention on Human Rights and other international organizations' approaches.³⁴³

According to the Public Defender's evaluation, the mentioned circumstances strongly suggest that political justice was carried out against Nika Gvaramia, resulting in a violation of Article 18 of the European Convention on Human Rights, which pertains to the restriction of human rights (for non-conventional or political motives).³⁴⁴ This is not an isolated case, as the Public Defender previously established a violation of Article 18 in the so-called "cartographers" case, where political motives were also evident.³⁴⁵ In light of these findings, the Public Defender has called on the President of Georgia to consider using the amnesty mechanism for Nika Gvaramia.³⁴⁶

4.3.5. Legality of searches conducted without neutral evidence

In 2020, the Constitutional Court issued a landmark decision, invalidating the use of illegally obtained items seized during a search as evidence, when investigators conducting the search, could but did not take necessary measures to ensure credibility of search while obtaining neutral evidence.³⁴⁷ Despite this, practical implementation of the decision has encountered several problems.

Similar to the previous year,³⁴⁸ the Office examined several cases highlighting deficiencies in obtaining neutral evidence during the search and seizure process. Regrettably, this trend remains problematic in the reporting period.³⁴⁹ Law enforcement agencies, regardless of the given possibility, refuse to acquire objective evidence during searches, such as recording the investigative action with a mobile phone. These problems are identified during the searches conducted per urgent necessity and also in cases authorized by a judge.

In one case, despite the urgent need, it was evident that obtaining neutral evidence for the search was feasible, given the minimum 5-hour window between receiving operative information and conducting the search. However, the norm established by the Constitutional Court was violated. Moreover, the police didn't face any safety issues as the search was conducted in a peaceful manner. Yet they failed to provide evidence confirming the legality of the search. The Public Defender submitted an Amicus Curiae opinion to the court in this matter.³⁵⁰

³⁴³ According to the Public Defender's assessment, political motivation is confirmed in Nika Gvaramia's criminal case, Public Defender's statement, 2022, available at: <<https://bit.ly/42s4kN6>> last reviewed 20.03.20230].

³⁴⁴ The results of the Public Defender's review regarding the decision rendered by the Court of Appeal against Nika Gvaramia, p. 19. Available at: <<https://bit.ly/3FrzwSs>> [last viewed: 16.03.2023].

³⁴⁵ 2020 Parliamentary Report of the Public Defender, Tbilisi, 2021, 139.

³⁴⁶ According to the Public Defender's assessment, political motivation is confirmed in Nika Gvaramia's criminal case, Public Defender's statement, 2022. Available: <<https://bit.ly/42s4kN6>> [last viewed: 20.03.20230].

³⁴⁷ Decision # 2/2/1276 of the Constitutional Court of Georgia of December 25, 2020, on the case, Giorgi Keburia vs. Parliament of Georgia, II-104.

³⁴⁸ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 108-109.

³⁴⁹ Relevant cases are reviewed in the report of the Department of Criminal Justice.

³⁵⁰ Amicus Curiae opinion of the Public Defender of Georgia dated August 12, 2022, # 15-5/8264.

Similar facts were revealed in the cases of L. F.³⁵¹ and case of J.I.³⁵² The Public Defender submitted Amicus Curiae opinions to Kutaisi Court of Appeal and the Senaki District Court.

In another case, D. M. was found guilty of illegal purchase and possession of firearms. However, it was revealed that there was no neutral eyewitness present during the arrest and search, no video recordings were unsealed, and the charges relied solely on the police testimony, their search and arrest protocols. The expert's report also couldn't confirm that the weapon was in the possession of the convicted person. The Public Defender submitted Amicus Curiae³⁵³ opinion to the Tbilisi Court of Appeals, highlighting that the conviction without neutral evidence contradicted the standard established by the Constitutional Court of Georgia. Tbilisi Court of Appeal. Found D. M. not guilty.³⁵⁴

Similarly, in 2022, the Office of the Public Defender of Georgia examined another case involving I.G. In this case, the law enforcement representatives failed to fulfil the obligation of obtaining neutral evidence during the search of I.G.'s residence. It is evident from the case materials that the search was planned based on the court's judgment issued on July 15, 2022, and conducted by the law enforcement body on July 16, 2022.

Thus, the search was not conducted under urgent necessity, providing enough time to prepare and video record the process. Moreover, multiple law enforcement personnel were present in the house of I.G., providing an additional opportunity for video recording. Various important items, including firearms and ammunition, were seized during the search. The Public Defender addressed the court on October 25, 2022, with the Amicus Curiae opinion on this case.³⁵⁵

The Public Defender urges law enforcement agencies and judges of general courts to ensure that all necessary measures are taken to diligently uphold the standard established by the Constitutional Court in the process of searching and seizing neutral evidence.

³⁵¹ Amicus Curiae of the Public Defender of Georgia dated February 8, 2022. Opinion #15-14/1608.

³⁵² Amicus Curiae of the Public Defender of Georgia dated February 25, 2022. Opinion #15-14/2262.

³⁵³ Amicus Curiae of the Public Defender of Georgia dated July 27, 2022. Opinion # 15-11/7661.

³⁵⁴ Decision of the Tbilisi Appellate Court dated July 27, 2022.

³⁵⁵ Amicus Curiae of the Public Defender of Georgia dated October 25, 2022.

4.3.6.Principle of Legality

During the reporting period, the Office of the Public Defender studied the charges presented to the citizen of Georgia M.B. and citizens of Ukraine - I. Kh. and V.D. According to the judgment of the Batumi City Court, the mentioned persons were found guilty of illegally crossing the state border of Georgia and attempting to cross it, specifically, for the commission of the offense provided for in part 2 of Article 344, subsection "a" and subsection "b" of section 2 of Article 344 of the Criminal Code of Georgia.

The court did not accept the defense's argument and noted that the boat carrying the convicts should have compulsorily notified the law enforcement agencies of Georgia about their entry into the territorial waters through notifying appropriate international communication channels or by other means. This would enable the state to decide whether to allow the boat and its crew into the territorial waters of Georgia.³⁵⁶ Court also noted that advance notification is a mandatory provision for the state to make an informed decision based on its security concerns whether to allow the boat to enter territorial waters Georgia.³⁵⁷

After examining the relevant legal framework, it was revealed that there is no legal requirement for vessels to send a preliminary notification to state agencies before entering territorial waters. Similarly, there is no legal act to define clearly what constitutes a violation of the radio communication rule. Moreover, the evidence presented in court did not indicate any violations by the crew that could jeopardize peace, order, or state security, which would have justified denying the right to peaceful passage. Thus, the guilty verdict issued by the Batumi City Court contradicts the principle of legality.

The Public Defender submitted an Amicus Curiae opinion to Kutaisi Appellate Court,³⁵⁸ The court has not rendered decision so far.

³⁵⁶ Batumi City Court decision, dated July 14, 2021. Paragraph 19.

³⁵⁷ Ibid, Paragrph23.

³⁵⁸ Amicus Curiae of the Public Defender of Georgia. Dated February 18, 2022 . Opinion # 15 – 15/2021.

4.3.7.Right to Defense

It is essential for exercising a right to a fair trial that individuals have the possibility to confidentially meet and consult with their lawyers. During the reporting period, several issues emerged concerning prisoners' access to lawyers through confidential telephone calls and face-to-face communication.

Since years, the Public Defender has been highlighting the shortcoming of the Imprisonment Code, allowing prosecutors to restrict an inmate communication with the defense lawyer ³⁵⁹ It is commendable that the members of the Human Rights Committee of the Parliament acknowledged the essence of this matter and launched discussion of the relevant draft law. However, the legislative initiative was only supported in the first reading on May 24, 2022, and discussions in the Parliament were subsequently suspended.³⁶⁰ The Public Defender urges the Parliament of Georgia to promptly support the submitted amendments and ensure that defendants in custody can communicate with their lawyers via telephone.

In addition, we would like to point out that the problem of effective exercise of the right to defense still remains in the course of remote court proceedings. At this stage, the program still lacks the ability to provide space for a confidential session between the lawyer and the defendant.

Furthermore, it is important to highlight that during the pandemic, different institutions applied varying restrictions. For instance, institutions #2 and #8 allowed face-to-face meetings between lawyers and prisoners after the lawyer submitted a negative PCR test. However, institution #12 had particularly strict conditions. When the third president of Georgia, Mikheil Saakashvili, was transferred to institution #12 from the Gori military hospital, his meeting with lawyers took place in a fully partitioned room. This arrangement prevented the lawyers and the client from exchanging documents, establishing contact on certain issues in writing, or making notes on the documents and exchanging these documents.

The Public Defender recommended ³⁶¹ the Minister of Justice to establish uniform rules allowing defendants/convicts in all special penitentiary institutions to have confidential communication (both verbal and written) with their lawyers through face-to-face meetings and document transfers during the pandemic. This would ensure that the prisoners' right to have confidential communication with his lawyer are not violated.

The alleged fact of limiting the right to communicate with the lawyer was revealed during Mikheil Saakashvili's stay in Gori hospital. The Ministry of Defense did not carry out complete official inspection regarding the matter. In addition, wrong qualification was given to the alleged violation of the right to defense recognized by international and national legislation.

Consequently, the Public Defender proposed ³⁶² to the Minister of Defense to renew official inspection of the fact of restricting access to Mikheil Saakashvili's lawyer to Gori military hospital.

³⁵⁹ Code of Imprisonment. Article 79. 2¹

³⁶⁰ Website of the Parliament of Georgia. Available at: <<https://info.parliament.ge/#law-drafting/24063>> [Last viewed: 07.03.2023].

³⁶¹ Recommendation of the Public Defender of Georgia. Dated February 22, 2022; # 15-5/2133.

³⁶² Proposal of the Public Defender of Georgia dated December 30, 2022; # 15 – 5/13169.

4.3.8. Legal Status of the Victims in Criminal Cases

Regrettably, the practice of recognizing the victims in criminal cases remains inconsistent. In some instances, the victim is recognized promptly once their identity is clear, while in many cases, it occurs after expert opinions or even after the initiation of criminal proceedings against a specific individual. As a result, numerous citizens approach the Public Defender each year, claiming to be victims of criminal acts, yet face delays in obtaining official victim status.

Consequently, they lack information about investigations concerning the violation of their interests.³⁶³

The Public Defender recommends implementing a similar approach of recognizing individuals as victims in all criminal cases promptly and without unjustified delays. Encouragingly, positive steps have been taken during the reporting period, including:

- The Special Investigation Service adopted an order granting the alleged victim the right to access the materials of the ongoing criminal case even before being formally recognized as a victim.³⁶⁴
- General Prosecutor's Office established a council, responsible for considering victims' complaints regarding the effectiveness of investigations in homicide cases and preparing recommendation for the Prosecutor General's decision. The council will also aim to communicate extensively with victims and provide them with information.³⁶⁵

The Public Defender welcomes this positive development and encourages law enforcement agencies to ensure that each citizen exercises the right to be promptly and effectively recognized as victim under each investigation process.

4.3.9. The Adversarial Principle

The Office of the Public Defender studied one of the cases where the defense was not given the opportunity to question its witnesses under equal conditions with the prosecution, neither by the decision of the judge of the pre-trial session, nor by the judge hearing the case on merits.³⁶⁶

³⁶³ For instance, the Office of the Public Defender highlighted in the special report that, during the events of June 20-21, certain individuals were not granted victim status despite the clear identification of victims. In this particular case, the investigation primarily awaits reports of the expertise to confer victim status. Conversely, in the case of July 5, individuals were promptly accorded victim status upon providing their testimony. It is commendable that the investigation didn't delay action while awaiting a potentially delayed and prolonged medical examination report regarding the severity of specific physical injuries. For further details, please refer to the interim report on the investigation of the events of June 20-21 by the Public Defender of Georgia, pages 30-31.

³⁶⁴ The procedure for citizens' access to criminal case materials at the Special Investigation Service has become operational. (Special Investigation Service announcement, 2022) [Available at" < <https://bit.ly/3yixv7b> > [last viewed: 07.03.2023].

³⁶⁵ A presentation was held at the General Prosecutor's Office of Georgia, statement of the General Prosecutor's Office, 2022. [Available: < <https://bit.ly/3IY7qiU> > [last viewed: 07.03.2023].

³⁶⁶ The deliberation of the criminal case # 053170811801 involving R.A. and others was ongoing in 2021. However, the Office of the Public Defender of Georgia studied it in 2022, following the judgement and subsequent appeal in the Court of Appeal. No appeals were heard in the Court of Appeal in 2022. This fact referred to alleged unlawful detention and torture of an individual by police officers. (Reference: Opinion of the Public Defender of Georgia # 15-2/4307 dated April 26, 2022 - Amicus Curiae).

For the questioning of a witness presented by the defense, the pre-trial judge deemed the legally obtained interview protocol insufficient and requested additional evidence. For the testimony of the Public Defender's representative as a witness, the judge demanded prior consent from the Public Defender of Georgia. Both decisions represent a breach of procedural legislation. At the admissibility stage, the judge's role is to assess the relevance of the evidence, and requesting additional evidence to confirm the witness's statements is unjustified. As for the Public Defender's representative, the legislation does not specify the stage at which consent should be given. Therefore, it remains unclear why the judge decided to exclude the public defender's representative from the witness list when there was no refusal from the public defender to question him / her.

In the same case, during the hearing on merits, the judge refused to question a witness presented by the defense, claiming that a person with the same name and surname had already been questioned as a witness. However, according to procedural legislation, the evidence presented by the defense can only be found inadmissible based on the prosecution's motion at the pre-trial session stage. The court rejected the defense's position that the person listed as already questioned was a different individual. This decision by the judge contradicts the adversarial principle.

The Public Defender contributed at the appellate court hearing stage by submitting Amicus Curiae ³⁶⁷ opinion to ensure that court allow defense to review the evidence, the examination of which was limited during the pre-trial and substantive hearing stages.

Problems with the Compensation of the Idle Time

During the study of applications last year, the Office of Public Defender identified a problem related to the fulfillment of the obligation to compensate for the idle time in the process of execution of court decisions on labor disputes. In many similar cases, the National Bureau of Enforcement's position requires respondent employers to pay compensation only after the illegally dismissed person (creditor) will be restored to the position by the court. According to the Public Defender's assessment, this leaves employers with the opportunity to avoid restoring the illegally dismissed person, thereby evading heavy financial obligations. Instead, they may offer the illegally dismissed person favorable conditions to halt the enforcement process. This situation can be used as an effective means of influence to ensure compliance with a legally binding court decision and the reinstatement of the creditor to work, as the financial obligations to the creditor will increase over time if they fail to comply.

According to the assessment of the Public Defender of Georgia, this approach of the National Bureau of Enforcement was/is not justified. There is no factual and legal basis that limits the authority of the National Bureau of Enforcement to initiate enforcement proceedings for the recovery of idle time from the debtor during the period before the restoration of the illegally dismissed person. Moreover, this approach does not serve the purpose of the enforcement system defined by legislation. It is encouraging that in 2022, in connection with one of the cases³⁶⁸ reviewed by the Office, the Tbilisi Enforcement Bureau heeded the

³⁶⁷ Amicus Curiae of the Public Defender of Georgia, dated April 26. 2022. Opinion # 15 – 2/4307.

³⁶⁸ Case # 12284/22.

recommendation ³⁶⁹ of the Public Defender and initiated enforcement proceedings on the compensation of idle time for the benefit of the illegally dismissed person before their restoration. The Public Defender of Georgia believes that it is necessary for the National Bureau of Enforcement to systematically change this approach.

Proposals to the Parliament of Georgia:

- In the shortest possible timeframe, ensure election of non-judge member of the High Council of Justice with the engagement of board public and political representatives.
- Ensure the public review process with the engagement of broad public and politicians aiming facilitation of the fundamental judicial reform implementation.
- Amend the Organic Law "On Common Courts" to change the decision-making procedure of the High Council of Justice, requiring a 2/3 majority support from both judges (at least 5 judges) and non-judge members (at least 3) based on the double majority principle.
- Amend the Organic Law "On Common Courts" to specify that only judges of the Supreme Court shall be members of the Plenum of the Supreme Court.
- The Civil Procedure Code should be amended to establish that the composition of the collegium during the court's collegial consideration of cases is determined by an electronic program for case distribution, not by the court chair.
- The Organic Law of Georgia on the Constitutional Court should be amended to specify the timeframes for the consideration of cases in the Constitutional Court, thus determining the deadline for the court's final decision.
- Introduce legislative amendments to develop a judicial supervision mechanism for the legality of evidence in cases where there is a risk of crime provocation.
- Adopt a new code of administrative offenses in compliance with international and constitutional human rights standard.
- Amend the Criminal Procedure Code to obligate investigative agencies, except in cases of objective circumstances, to provide continuous video footage of the search and seizure process and/or the testimony of a neutral witness to confirm the legality of the investigative action.
- Revise the procedure for electing court chairpersons (collegium, chamber) and grant the judges of a specific court the authority to elect the chairpersons.
- Amendments should be made to the Organic Law of Georgia "On Common Courts" and the

³⁶⁹ Information is available on the website: < <https://rb.gy/fx4der> > [last viewed: 14.03.2023].

grounds for disciplinary liability stipulated in the Article 75¹, paragraph "A", sub-paragraph "B.V" should be abolished.

- Amendments should be made in Article 37¹ of the Organic Law of Georgia "On Common Courts" and the maximum period of judges' transfer without his / her consent should be set at maximum one year.
- Amendments should be made in Article 45 of the Organic Law of Georgia on Common Courts to determine that grounds for removing a judge from case consideration should again be charging him / her with criminal liability, or decision of a disciplinary collegium on his / her dismissal.
- Amendments should be introduced to the Imprisonment Code of Georgia and restrictions on the possibility of telephone communication with a lawyer should be abolished, both as a decision of the prosecutor and investigator, and as a disciplinary penalty.
- Introduce amendments to the Criminal Procedure Code of Georgia, which will allow the substitution of a juvenile representative in case the parties have an interest in questioning the representative in court.

To the President of Georgia:

- Use constitutional mandate and pardon Nika Gvaramia.

Recommendations

To the Minister of Justice:

- To enhance the technical infrastructure of penitentiary institutions, it is necessary to increase the number of special rooms equipped with appropriate computer facilities for conducting remote sessions.

To the High Council of Justice:

- To publish the conclusions prepared by the independent inspector of the High Council of Justice in compliance with personal data standards.
- Decision No. 1/56 of May 1, 2017 of the High Council of Justice of Georgia "On Approving the Rules for the Random, Electronic Allocation of Cases in the Common Courts of Georgia" should be amended to ensure that when considering a case in a collegial composition in the Appellate Courts and the Supreme Court, all three members of the collegium be selected randomly.
- To improve the technical and software infrastructure for remote court hearings, to ensure the confidentiality of communication between the client and the lawyer.

- Paragraphs 6, 7, and 8 of Article 5 of Decision No. 1/56 of May 1, 2017, of the High Council of Justice of Georgia "On approval of the rule of random and electronic distribution of cases in common courts of Georgia" should be abolished.

To LEPL National Bureau of Enforcement:

- To ensure the recovery of the amount of idle time for the benefit of the illegally dismissed persons, it is recommended to initiate and conduct the forced execution process promptly upon the request of the creditors.

5. Right to Respect for Private Life

5.1. Introduction

In 2022, significant challenges related to the inviolability of personal and family life remained. State bodies could not ensure effective protection of the right and prevention of its violation. The main basis of such a situation, against the background of problematic legislation, is the weakness of parliamentary, judicial, or other types of control mechanisms.

In the previous chapter, we reviewed the following issues of the right to privacy: amendments to the Criminal Procedure Code, constitutional justice in the case of the elimination of the State Inspector's Office, cases of violation of privacy and the state of the investigation into these cases; Challenges in terms of contact with the outside world in closed institutions.

The Public Defender positively evaluates the amnesty law adopted by the Parliament of Georgia in 2022, by which the sentence/imprisonment term of persons in penitentiary institutions was reduced in order to compensate for the restrictions imposed to prevent the spread of the new coronavirus.³⁷⁰ With this step, the Parliament of Georgia shared the call of the Public Defender,³⁷¹ as well as the recommendation³⁷² given to the Minister of Justice, and took additional measures to compensate for limiting the prisoners' contact with the outside world.

In the reporting period, the amendments made to the Criminal Procedure Code of Georgia on September 6, 2022 (the so-called "Eavesdropping Law"), which allowed investigative agencies to conduct covert investigative actions for a longer period of time, during the investigation of more crimes, were a big concern during the reporting period. Against the background of acute privacy problems in the country, when many cases of illegal surveillance remain uninvestigated, and in 2021 an unprecedented leak of materials depicting covert surveillance took place in 2021,³⁷³ and the Constitutional Court has not yet issued a decision on the lawsuit of the Public Defender of Georgia regarding the legislation of covert surveillance (Although the substantive review was completed at the beginning of 2018), in addition, the adoption of such legislation raises doubts that the state's desire is not to eliminate existing challenges and adapt the legislation to human rights protection standards, but to grant more powers to law enforcement structures, which without proper control further increases risks of arbitrariness and unreasonable interference in private life.

The Public Defender evaluates the decision made by the Constitutional Court on the case "Londa Toloraia and the Public Defender of Georgia against the Parliament of Georgia" as a step back. The court's decision, in this case, weakened the constitutional standard of protection of the right to privacy.

³⁷⁰ Law of Georgia "On Amnesty", is available at: < bit.ly/3S6Hmpl > [last viewed: 17.02.2023].

³⁷¹ The Public Defender supports the amnesty bills, Public Defender's statement, 31.12.2022, is available at: < <http://bit.ly/3k6bl4l> > [last viewed: 17.02.2023]

³⁷² 2021 parliamentary report of the Public Defender, Tbilisi, 2022, 133.

³⁷³ 2021 Report of the Public Defender, Tbilisi, 2022, 120-121.

Unfortunately, most recommendations submitted by the Public Defender of Georgia under the 2021 Parliamentary Report Chapter on the Protection of the Right to Respect for private life have not been fulfilled. The Public Defender made 17 recommendations and 9 parliamentary proposals,³⁷⁴ Of these, the Parliament of Georgia did not implement any of the recommendations, while 1 of the given recommendations was implemented, 11 were not implemented, and 5 were partially implemented.

5.2. Amendments to the Criminal Procedural Legislation

On September 6, 2022, the Parliament of Georgia supported the amendments to the Criminal Procedure Code³⁷⁵, which significantly changed the procedure for conducting undercover investigative actions and reporting information about them to the relevant party. Legislative changes regarding undercover investigations have created even more opportunities for disproportionate, warrantless intrusions into people's private lives. As a result of changes:

- An additional 27 less serious crimes can be investigated undercover by law enforcement agencies³⁷⁶
- The maximum term for conducting covert investigative actions has been increased from 6 to 9 months. Concerning several crimes, the time limit for conducting covert investigative actions has been completely removed³⁷⁷
- The maximum notice period for the subject of covert investigative actions has been increased from 24 to 36 months. And concerning the above-mentioned circle of crimes, the prosecutor has been given the authority to request an extension of this term as many times as he proves the relevant legal grounds before the judge.³⁷⁸

The Parliament of Georgia did not take into consideration the critical assessments of non-governmental organizations³⁷⁹ and the Venice Commission regarding the above-mentioned legislative changes. In particular, the Commission negatively assessed both the sharp increase in the list of crimes,³⁸⁰ as well as the extension of the time limit for the investigation of a number of crimes as many times as necessary for the investigation,³⁸¹ also the indefinite extension of the notification period for the person against whom the secret investigative measure is being implemented.³⁸² In conclusion, the Venice Commission, taking into consideration the context of Georgia, against the background of existing weak controls and mass

³⁷⁴ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 132-134.

³⁷⁵ The Law of Georgia "On Amendments to the Criminal Procedure Code of Georgia", Legislative Gazette, 1722-IXms-Xmp

³⁷⁶ Criminal Procedure Code of Georgia Article 143³ Part-2 sub-clause "A".

³⁷⁷ Criminal Procedure Code of Georgia Article 143³ Part 121 – 129.

³⁷⁸ Criminal Procedure Code of Georgia Article 143³ Part 4 - 6.

³⁷⁹ "Legislation regulating surreptitious surveillance is getting worse", joint statement of a section of NGOs, Center for Social Justice, 21.04.2022. is available <<https://bit.ly/3McBdWj>> [Last Viewed: 07.10.2022].

³⁸⁰ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), URGENT OPINION ON THE DRAFT LAW ON THE AMENDMENTS TO THE CRIMINAL PROCEDURE CODE ADOPTED BY THE PARLIAMENT OF GEORGIA ON 7 JUNE 2022, CDL-PI(2022)028. Par. 45. Available at: < <https://bit.ly/3CetzG7> > [Last Viewed: 17.02.2022].

³⁸¹ Ibid. Para. 50.

³⁸² Ibid. Para. 54.

leakage of secret records, assessed the adoption of such legislation as unjustified.³⁸³ Additionally, these legislative changes have been the subject of intense criticism from the EU ambassador.³⁸⁴ Concerns about this issue have been expressed in the annual review of the implementation of the Association Agreement between the European Union and Georgia,³⁸⁵ and according to the assessment of the international organization Human Rights Watch, this law has allowed lifelong secret listening and Surveillance of people without informing them.³⁸⁶

5.3.The Abolition of the State Inspector's Service

According to the Public Defender's assessment, the cancellation of the State Inspector's service in Parliament was hasty and, contrary to international standards, there was no prior consultation. The OSCE/ODIHR considered this process a violation of the rule of law and a threat to the effective functioning of independent institutions. The Public Defender also responded to the ruling of the Constitutional Court of Georgia and stated that the Constitutional Court did not unjustifiably use the mechanism of suspension of norms, and as a result, the state inspector and his deputies were prematurely terminated.³⁸⁷

During the reporting period, the Constitutional Court discussed the issue of the abolition of the state inspector and partially satisfied the claims.³⁸⁸ The disputed issue, in this case, was the procedure and conditions for the cancellation of the State Inspector's service and the State Inspector's position. The Constitutional Court determined that the unconditional release of the state inspector and his deputies elected with a guaranteed term of office, without offering him/her an adequate, equivalent position or fair compensation, could not meet the constitutional standards of protection of the right to unhindered public service activities, which is why it recognized the contested norms as unconstitutional. Unfortunately, the court considered the norms according to the constitution, by which the service of the state inspector was canceled from March 1, 2022, and the investigative sub-location of the added cases. The constitutional court considered the cancellation of the independent agency by the legislative body narrowly, only in terms of leaving its head without compensation. Accordingly, allowing the legislative body to cancel at any time the independent agency controlling the legality of personal data processing at its own discretion and without justification, and considering this decision by the Constitutional Court as only a legislative editorial change, cannot provide constitutional guarantees for the protection of human rights.³⁸⁹

According to the Public Defender's assessment, the decision will have an irreversibly damaging effect on

³⁸³ Ibid. Para. 62.

³⁸⁴ Representation of the European Union in Georgia, comment of the Ambassador of the European Union, Karl Hartzel, regarding the introduction of amendments to the Code of Criminal Procedure, 06.08.2022. Available at: < <https://bit.ly/3EBjAgO> > [Last Viewed: 10.03.2022].

³⁸⁵ Association Implementation Report on Georgia, HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY, EUROPEANCOMMISSION, SWD(2022) 215 final, 10.8.2022, page 4, Available at: < <https://bit.ly/3fUgjb0> > [Last Viewed: 20.02.2023].

³⁸⁶ Georgia, events of 2022, Human Rights Watch, 2023, available at < <http://bit.ly/3KnsGAS> > [Last Viewed: 20.02.2023].

³⁸⁷ Parliamentary Report of the Public Defender for 2021, Tbilisi, 2022, 121-123.

³⁸⁸ Decision No. 1/9/1673,1681 of the Constitutional Court of Georgia on November 17, 2022, in the case "Londa Toloraia and the Public Defender of Georgia against the Parliament of Georgia".

³⁸⁹ 2022 Report of the Criminal Justice Department of the Public Defender.

other independent bodies. By reducing the standard of constitutional protection, independent state institutions have reduced their guarantees of legal protection and faced the threat that their service will be canceled if their activities are unacceptable to the political authorities. The decision is accompanied by a dissenting opinion of Judge Giorgi Kverenchkhiladze, in which it is noted that "the decision has a "diminishing effect" on others, especially the leading persons employed in independent public bodies, who are appointed to their positions for a guaranteed term and who have a legitimate expectation that the intervention of the state government, the feeling of subordination, without instructions from persons and/or from any direct or indirect pressure, will exercise their authority without interruption until the expiration of the guaranteed period".³⁹⁰

5.4. Cases of Violation of Privacy and Ongoing Investigation

In last year's parliamentary report, the Public Defender reviewed in detail the facts of the disclosure of an unprecedented amount of materials obtained by the State Security Service on September 13, 2021, as a result of monitoring people's private communications.³⁹¹

During the reporting period, on September 17, 2022, with the footage of hidden surveillance and surveillance made public on the air of "TV Pirveli", it was once again confirmed that people in the country are the objects of total surveillance.³⁹² The released information included video, audio, and written materials about the sightings and movements of various politicians and information obtained from closed groups, which were allegedly obtained by representatives of the State Security Service. The legitimate goal of large-scale and total control cannot exist and be justified by any state or public purpose.

Unfortunately, so far as part of the investigation of the above-mentioned crimes, the law enforcement agencies have not been able to identify the relevant criminals. On September 13, 2021, an investigation is underway in the General Prosecutor's Office of Georgia into the facts of unauthorized monitoring, recording, and other provision of access to private conversations, under the first and second parts of Article 158 of the Criminal Code of Georgia, as well as the subsection "A" of part 4 provided by the signs of the crime.

Based on the high public interest, the Public Defender approached the Prosecutor General of Georgia and requested to get familiar with the materials of the started investigation in an exceptional manner, however, the prosecutor's office refused this request.³⁹³ Based on the public defender's written request for information, the General Prosecutor's Office of Georgia advises³⁹⁴ that investigative activities are ongoing to determine the persons making the recordings, and the authenticity of the disseminated information.³⁹⁴ As part of the investigation, requests for legal aid have been sent to various countries, but

³⁹⁰ The dissenting opinion of the judge of the Constitutional Court of Georgia - Giorgi Kverenchkhiladze regarding the decision of the first panel of the Constitutional Court of Georgia No. 1/9/1673,1681 of November 17, 2022, para. 5.

³⁹¹ 2021 Parliamentary Report of the Public Defender. Tbilisi 2022, 123-124.

³⁹² Statement of the Public Defender of Georgia regarding large-scale secret surveillance, 20.09.2022 available at: < <https://bit.ly/3LiddlW> > [Last Viewed: 13.03.2023].

³⁹³ Public Defender's 2021 Parliamentary Report. Tbilisi 2022, 123

³⁹⁴ The General Prosecutor's Office of Georgia. Letter No 13/84290

the answers to them and the conclusions of the appointed experts have not been received at this stage. Also, in 2022, the victim status was granted to several persons.

The Case of Mikheil Saakashvili

During the reporting period, the right to privacy of the third president of Georgia, Mikheil Saakashvili was once again violated³⁹⁵ and on December 14, 2022, video recordings of his hospital room were published without his consent. According to the Penitentiary Service, the distribution of these materials was based on high public interest. In particular, they wanted to explain to the public that Mikheil Saakashvili resorted to simulated actions, the purpose of which was to hinder the implementation of justice and to mislead the public and international partners.

According to the Public Defender's assessment, the existence of a legitimate purpose for the deployment of personnel, including the satisfaction of the high interest of the public, as well as the proportionality and adequacy of this decision, cannot be confirmed.

Even if there is a legitimate purpose, it is important to maintain a balance between the public interest and a person's right to privacy and personal data protection when disclosing information about their health. The validity of the medical diagnosis of the patient Mikheil Saakashvili has been questioned by the published footage. This kind of reasoning categorically contradicts the medical evaluation issued by the 7th conclusion of the group of specialists/experts created by the Public Defender. In addition, the majority of the published recordings were taken at the beginning of October 2022 or before, and according to the assessment of the expert group of the Public Defender, the prisoner's health sharply deteriorated in October-November. Consequently, the public interest in the prisoner's health condition in December could not be satisfied by the release of the past period's footage.³⁹⁶ It should be noted that in order to study the legality of the disclosure of Mikheil Saakashvili's personal data, the Personal Data Protection Inspector has started an inspection. As a result of the inspection, the Personal Data Protection Inspector identified the special penitentiary service as an offender and fined him 500 GEL.³⁹⁷

5.5. Contact with the outside world in penitentiary institutions

The problems accumulated in penitentiary institutions in terms of contact with the outside world in the past years have been preserved in 2022. It remains an important challenge: implementation of the telephone conversation in a confidential environment in closed and high-risk penitentiary institutions; absence of video visitation³⁹⁸ is allowed according to the Imprisonment Code, limiting prisoners' contact with the outside world as a disciplinary punishment; problems with using conjugal visitations; realization of prisoners' right to written correspondence; taking advantage of the right to be placed in the institution

³⁹⁵ Public Defender's 2021 Parliamentary Report. Tbilisi, 2022, 125-126.

³⁹⁶ The statement of the Office of the Public Defender of Georgia regarding the distribution of the video recording of Mikheil Saakashvili's hospital room, 15.12.2022, is available at: < <http://bit.ly/3XlzonV> > [Last Viewed: 20.02.2023].

³⁹⁷ Personal Data Protection Service Statement 14.03.2023, available at: < <http://bit.ly/3ljSIQN> > [Last Viewed: 17.03.2023].

³⁹⁸ №2, №10, №12 and №18 Penitentiary institutions.

closest to the place of residence of the family members, guaranteed by the law.

Also, several of the suggestions made by the Public Defender in the past years, which serve to improve the legal status of prisoners, have not yet been implemented. In particular, the legislation of Georgia does not provide for the possibility of using video visits for prisoners in special risk penitentiary institutions, the prisoner cannot switch to other means of contact for a conjugal visit or family visit, and for the defendants to use the right of a conjugal visit.

It should be noted that the draft of the new Penal Code includes the above-mentioned suggestions of the Public Defender, and we hope that the mentioned provisions will finally be reflected in the updated Code. In addition, the Public Defender submitted several lawsuits to the Constitutional Court of Georgia to ensure the above-mentioned rights for the prisoners.³⁹⁹

Below we briefly review the main challenges identified in penitentiaries in terms of the contact of prisoners with the outside world, detailed information about which can be found in the special reports of the Public Defender.⁴⁰⁰ During the reporting period, the Office of the Public Defender received messages from the prisoners about their correspondence and statements being lost or not sent, which was followed by the appropriate response of the Office.⁴⁰¹

Prisoners in penitentiaries cannot privately talk on the phone. The way the infrastructure is set up, the telephones are placed either in the guard shack or in a cabin that does not have sound insulation, and the conversation of the prisoners can be heard outside the phone cabin. In addition to infrastructural problems, there are also facts of illegal surveillance by the employees of the institution. In particular, the Office of the Public Defender learned about the case of one of the prisoners who wanted to provide confidential information to the Office of the Public Defender. The video recordings obtained in this case prove that the employees of the penitentiary facility stand within a one-meter radius from the convict, carefully observing the prisoner visually and being so close, they naturally hear his conversation.

Unfortunately, it is still a problem to provide phone cards to the prisoners in the shortest possible time. As a result, they don't have the opportunity to contact their families for approximately 2 weeks after being placed in the penitentiary.

The problem of phone communication also affects foreign prisoners. There are still 2 days a week for making calls abroad, and if the cell's call day does not coincide with the international call day, the prisoner cannot contact family members abroad at all. Besides, calling abroad is also associated with financial costs for prisoners. Phone calls are expensive, and sending written correspondence is expensive in some

³⁹⁹ 2021 Parliamentary Report of the Public Defender, Tbilisi, 2022, 130.

⁴⁰⁰ see 2022 activity report of the Criminal Justice Department of the Public Defender of Georgia and 2022 report of the National Prevention Mechanism of the Public Defender of Georgia.

⁴⁰¹ or example, the application of the Public Defender's Office dated April 18, 2022 to the Monitoring Department of the Special Penitentiary Service Convict G. G about June 17, 2022 №15- 5/6190 appeal to the monitoring department Convict. N. Ts. about; September 26, 2022 №15-5/9684 Appeal to the monitoring department convicted d. about G.; Letter No. 15-9/232 of January 11, 2023 to the Penitentiary Department to convicted G. V Regarding the loss of letters, etc.

countries. Stateless prisoners, or citizens of Georgia and their family members living abroad, face the same problem. It should be noted that the Parliament did not consider the proposal of the Public Defender, and the prisoners, who cannot enjoy in-person and long-term meetings due to their families living abroad, still cannot use video meetings.⁴⁰²

It is difficult for prisoners to implement the possibility of longer visits and video meetings in penitentiary institutions. This is caused by the lack of appropriate infrastructure in penitentiary establishments. In the 2021 report, the Public Defender, recommended to the Minister of Justice of Georgia that in 2022, penitentiary institutions No. 2, No. 3, No. 6, No. 10, No. 12, and No. 18 should be equipped with the necessary infrastructure for video meetings as a priority. According to the information received from the Ministry of Justice of Georgia, to update the video meeting infrastructure, in 2022, renovation works were carried out in penitentiary institution No.10.⁴⁰³ Also, it is noteworthy that spaces intended for conjugal meetings were organized in establishments #8 and #18. The Office of the Public Defender hopes that the repair works will be carried out on time in order to organize the infrastructure in the other penitentiary institutions listed above.

As in previous years, in 2022, limiting the contact of prisoners with the outside world as a disciplinary punishment remains a problem. In addition to being restricted from contact with the outside world as a disciplinary measure, inmates are also restricted from contact with security measures such as de-escalation rooms and solitary confinement. In the 2021 report, the Public Defender of Georgia appealed to the Minister of Justice of Georgia with a recommendation to maintain contact of prisoners with the outside world during the period of use of security measures and to make appropriate changes in Regulations of the institutions.⁴⁰⁴ Unfortunately, this recommendation was also denied.⁴⁰⁵

Also, like last year, in 2022, the practice of prosecutors restricting contact with the outside world for the plaintiff was problematic. The prosecutor's office continues to arbitrarily and unjustifiably use the power provided by Articles 77 and 79 of the Imprisonment Code, to limit the prisoners from outside world contact. The Office of the Public Defender considers that, in the interests of the investigation, it should be possible to restrict the prisoner's right to contact the outside world only based on a court ruling.⁴⁰⁶

The problem of communication with the family was still relevant during the reporting period. The office studied several cases where convicts claimed that they and their family members (close relatives) live in a municipality located in Eastern Georgia, yet they were serving their sentence in a penitentiary in Western Georgia. According to the convicts, the family members could not visit them due to the territorial distance, hence they could not enjoy the right to a short and long-term meeting, and the right to receive a parcel was also limited. After studying the issue, it was made clear, that relevant risk establishments are also in

⁴⁰² 2022 Report of the National Preventive Mechanism

⁴⁰³ Spaces for long-term visitations were organized in №8 and №18 penitentiary establishments, Special Penitentiary Service 27.02.2023, available at: < bit.ly/3KKVt2k > [Last Viewed: 01.03.2023].

⁴⁰⁴ 2021 Report of the National Prevention Mechanism of the Public Defender,103.

⁴⁰⁵ 2022 Report of the National Prevention Mechanism of the Public Defender

⁴⁰⁶ Ibid

Eastern Georgia, where depending on the number of prisoners, it is possible to place prisoners.⁴⁰⁷ Based on this, according to the Public Defender's assessment, convicts are unjustifiably restricted from the possibility of placing their family members in the facility closest to their place of residence, which has a negative impact on the right to family life.⁴⁰⁸

5.6. Contact with the Outside World in Psychiatric Institutions

As in past years, the situation at mental health institutions in the part of the respect for the right to private and family life, is still concerning.⁴⁰⁹

Restrictions due to the pandemic were still maintained at Acad. b. Naneishvili National Mental Health Center. The administration did not take appropriate steps and did not allow the patients under forced and involuntary psychiatric treatment to meet their family members, in compliance with epidemiological norms. From March 1, 2020, to March 1, 2022, patients had completely limited access to visitors, which had an extremely negative impact not only on patients' right to privacy but also on their mental and psychological stability.

There are no proper accommodations for receiving visitors in psychiatric institutions. Due to the lack of private visiting areas, the visitor meets the patient in the corridor or the nurses' room. At the Center for Mental Health and Prevention of Addiction, during the monitoring visit, no face-to-face meeting was allowed at all, and the visitor talked to the patient from the courtyard of the institution through video call. According to the Public Defender's assessment, patients in all institutions must have the opportunity to meet family members and friends face-to-face and in a confidential environment.⁴¹⁰

The Public Defender positively assesses the restoration of the possibility of receiving parcels in institutions. However, the situation at the B. Naneishvili National Mental Health Center remains a problem, where patients are restricted from receiving food products through parcels due to the lack of a proper scanner. The visitors can only send products to the patients from the store located at the institution. This restriction also applies to the voluntarily admitted patients in the civil department, who should be able to leave the facility for a short time and buy the products they wish, in the stores of their choice. The Public Defender emphasizes that the restrictions on sending food products purchased outside the institution by parcel to all departments and patients due to the lack of scanners and security risks an unjustified and raises the question of the existence of private, commercial interests.

The right of patients to use the phone remains an important challenge in psychiatric institutions. During the reporting period, phones were allocated in the visited institutions⁴¹¹ although their use depends on

⁴⁰⁷ For example: as of November 2022, 357 prisoners were placed in Penitentiary No. 10, while the limit for the placement of plaintiffs and convicted persons in the institution is 700 plaintiff/convicted persons.

⁴⁰⁸ 2022 report of the Criminal Justice Department of the Public Defender.

⁴⁰⁹ 2021 Parliamentary report 130-131 of the Public Defender, Tbilisi, 2022, 2020 Parliamentary Report, Tbilisi, 2021, 159-160.

⁴¹⁰ 2022 Report of the National Preventive Mechanism of the Public Defender.

⁴¹¹ In 2022 the special preventive group visited the following 4 psychiatric institutions: 1. Center for Mental Health and Prevention of Addiction; 2. Acad. B. Naneishvili Mental Health National Center; 3. Kutaisi Mental Health and Drug Addiction Center; 4. Senaki Mental Health Center

in order to assess the state of implementation of the recommendations issued in 2021, a monitoring visit was also carried out at the

the goodwill of the staff and only during the daytime. In addition, all patients' phones in the institution are confiscated. Restricting calls to institutions or confiscating personal phones is only a verbal rule, and its written version is not available. It should be noted that it is not possible to make a call in a confidential environment. In addition, facilities do not provide access to the Internet for patients.

It should be positively evaluated that the phones belonging to the patients in the Senaki Mental Health Center and the Kutaisi Psychiatric Clinic have not been confiscated.

The public defender believes that it is important for all patients to be able to make a phone call without interference and at any time of the day or night. Yes, in a psychiatric hospital, the doctor is authorized, in case of extreme necessity, to limit the patient's right to make a phone call for security reasons, although this must be documented in writing.

Proposals to the Parliament of Georgia:

To start a transparent and inclusive process of reforming the legal norms regulating undercover investigative actions, which will result in the revision of:

- The list of crimes for investigation of which it is allowed to conduct secret investigative measures.
 - Time limits for conducting covert investigative measures and the maximum limit for the extension of these time limits.
 - Deadlines for notification of undercover investigative activity and maximum limit for extension of those deadlines.
- Amend the Imprisonment Code Articles 77 and 79 and based on the interests of the investigation, restrict a defendant's contact with the outside world only based on the 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 visits and telephone calls for the inmates of special risk and closed institutions.
 - Amend the Imprisonment Code and enable inmates of special risk institutions to use video visitations.
 - 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-term and long-term visitations due to living abroad.

Recommendations

To the Minister of Justice:

- For those citizens of Georgia whose family lives outside the country, for foreign prisoners and stateless persons, to create an opportunity to make international calls at a reduced and more affordable price.
- Cancel the days set aside for international calls and make it possible to make international calls every day, with the frequency and duration established by the legislation.
- 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.
- To review the current procedure for conducting video meetings to ensure more active and frequent use of video meetings by adapting it to the existing challenges, as well as to start work on the creation of a secure application that will simplify conducting video calls;
- Prioritize №2, №3, №6, №12 and №18 penitentiary institutions to equip the infrastructure necessary for video visitations.
- Amend the regulations of penitentiary institutions, according to which, during the period of use of security measures, prisoners will be given the opportunity to use the right of contact with the outside world (telephone conversation, correspondence, long and short meetings).
- The Special Penitentiary Service to carry out all measures to ensure that defendants' phone cards are produced within the shortest possible time.
- Monitoring Department of the Special Penitentiary Service:
 - a) To reveal the facts of violation of the right to correspondence of prisoners in penitentiary institutions through systematic inspection.
 - b) to produce statistics on detected violations.
 - c) to impose responsibility on the persons guilty of infringing the prisoners' right to correspondence.
- In closed type and special risk penitentiary institutions, appropriate infrastructure should be organized, which ensures that the telephone conversation of prisoners takes place in a confidential environment.
- At the normative level, a mechanism should be defined to ensure that when the social worker receives/delivers an open letter, a document is made in two copies, which: a) will be confirmed with a seal; and in which the following information will be entered in the presence of the prisoner: b) the name and surname of the author of the letter; c) name and surname of the social worker receiving the letter; d) date of delivery of the letter; e) addressee of the letter; f) the number of sheets. Both sheets should be signed by the prisoner and the social worker, one completed sheet should be given to the prisoner and the other should be kept by the social worker.

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- Under the Law of Georgia on Psychiatric Care, ensure the realization of the right to freely use telephones and other communication devices by patients.
- To eliminate the obstacles to receiving parcels for patients at the Acad. B. Naneishvili National Mental

Health Center.

- To take measures to arrange a confidential space for the meeting of the patient and the visitor in every psychiatric institution.

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 respect for personal life.

6. Freedom of Expression

6.1. Introduction

Media representatives in 2022 still had to work in a dangerous environment. In this regard, it is worth noting both the criminal acts committed against journalists and other media representatives, as well as other cases of interference with their activities both in practice and at the normative level. Although the investigation of individual crimes committed against journalists has been assigned to special investigative services and information about them⁴¹² is fully available to the office, it still does not provide an opportunity to see a unified comprehensive statistical picture, because other types of criminal actions committed against journalists are not included in these data.⁴¹³

Last year, amendments to the law of Georgia on "Broadcasting" essentially changed the model of media regulation and created a threat of restricting the freedom press. At the same time, the number of lawsuits filed against media organizations and their representatives raised suspicions that similar, at first glance, legitimate demands might be excessive and/or groundless in some cases.

6.2. Protection of Media Representatives

In 2022, the Office of the Public Defender registered a number of cases of possible criminal actions committed against media representatives, which meant illegal interference in professional activities, damage to property, assault, persecution, threats and invasion of private life secrets.⁴¹⁴

As a result, the investigation was started on 13 cases. According to the Special Investigation Service, criminal prosecution was conducted in 5 cases, and the criminal prosecution was conducted in 5 cases, and the investigation was terminated in 1 case.⁴¹⁵

⁴¹² Law of Georgia "On Special Investigation Service", Article 19.

⁴¹³ Law of Georgia "On Special Investigation Service", Article 19. According to the letter No. 670020 of the Ministry of Internal Affairs of Georgia dated March 9, 2023, statistical data is processed in the Information and Analytical Department of the Ministry according to the articles of the Criminal Code and not the circumstances of the crime (including the victim's professional activity).

⁴¹⁴ Information about similar cases is available on the website: < <https://bit.ly/3OmHTkw> >, < <https://bit.ly/3QpGGL5> >, < <https://bit.ly/3xyh6ee> >, < <https://bit.ly/39vX5wV> >, < <https://bit.ly/3y4riMR> >, < <https://bit.ly/3D3R9pm> >, < bit.ly/3DDQUCP >, < <https://bit.ly/3YZekLG> >, < <https://bit.ly/3ZarbtP> >, < <https://bit.ly/3lIR12U> >, < <http://bit.ly/3SjIh6y> > [Last Viewed: 01.03.2023].

⁴¹⁵ In accordance with the letters No. 2457 of February 17, 2023 of the Special Investigation Service, No. 6492 of July 1, 2022 and No. 4301 of May 25, as well as the letter No. 571526 of the Ministry of Internal Affairs of Georgia dated February 27, 2023, the investigation has been started for interfering with the professional activities of the operator of "Imedi" TV Company and item damage; TV company "Formula" illegally interferes with the professional activities of journalists; Members of the "Alt Info" party will illegally interfere with the professional activities of the journalists of the "TV Monitoring" television company; During the opening of the office of the political party "Conservative Movement", TV company "Formula" and also journalists of other TV companies will illegally interfere with their professional activities and persecute people with violence in connection with their professional activities; Illegally obstructing journalist V. B.'s professional activities and encroaching on the secrets of her personal life; "Pirveli" TV company is persecuting the journalist with violence in connection with his professional activities; on the fact of professional persecution of "Mtavari TV" journalist - E. G. and cameraman, committed by violence, illegal interference in professional activity and participation in group crime; "Georgian Times" journalist - on the fact of illegally obstructing M. R.'s professional activities; On the fact of illegally obstructing the professional activities of N. K., a journalist of TV First; TV company Illegally obstructing the professional activities of "Formula" journalists - R. Ts. and N. G., by threatening violence; TV company "Formula" will illegally interfere with the professional activities of the journalist - D. K.; Illegally obstructing the professional activities of "TV First" journalist N. K.; and on the facts of illegal interference in the professional activities of M. M., a journalist of "TV First" TV company.

In the reporting year, an audio recording was also released in the media, which depicted the planning process of the "Mtavari TV" program "Post Factum" and contained information about the journalists' confidential sources.⁴¹⁸ This was not the first time that it became known about alleged illegal surveillance of media representatives.⁴¹⁹ The public defender responded to this fact with a public statement, stating that the practice of monitoring media representatives has a dampening effect on journalists' full use of freedom of expression and aims to intimidate and interfere with their activities⁴²⁰.

According to the public defender, it is particularly dangerous for investigative journalism, where the protection of the source's confidentiality becomes more important. Regarding the violation of the secret of private communication, the investigation is conducted by the Special Investigation Service, according to which, at this stage, no one is known as a victim and/or plaintiff in the case.⁴²¹

The Office of the Public Defender of Georgia was also interested in the ongoing investigation against media outlets, journalists, or persons close to them, which began in 2020-2021. In particular, according to the requested information regarding 19 criminal cases detected in 2021⁴²² and 7 criminal cases detected in 2020, for the given stage, only in one case it was possible to raise the issue of the responsibility of the offender.⁴²³ According to the requested information regarding the criminal case, for the given stage, it was possible to raise the issue of the offender's responsibility in only one case.⁴²⁴ The investigation into

⁴¹⁶ Per the Special Investigation Service's letters No. 2457 of February 17, 2023, No. 6492 of July 1, 2022, and No. 4301 of May 25, criminal prosecution has been initiated for illegally obstructing the professional activities of "Formula" journalists; Persecuting "Pirveli" journalist with violence in connection with his professional activities; Illegally obstructing the professional activities of "Mtavari TV" journalist E. G. and cameraman; On the facts of illegally obstructing the professional activities of "Formula" journalists - R. Ts. and N. G., by threatening and illegally obstructing the professional activities of "Formula" journalist - D. K.

⁴¹⁷ The investigation into the fact of illegally obstructing the professional activities of the journalist of the "Georgian Times" was terminated based on the absence of signs of crime.

⁴¹⁸ Information available at < <http://bit.ly/3Ku8woH> > [Last Viewed: 22.02.2023].

⁴¹⁹ Statement of the Public Defender of August 3, 2021 regarding the facts of alleged illegal surveillance, available at: < <http://bit.ly/3xHpWGY> > [Last Viewed: 22.02.2023].

⁴²⁰ Statement of the Public Defender of July 15, 2022, regarding the fact of possible unauthorized surveillance of media representatives, available at < <http://bit.ly/3kktvyr> > [Last Viewed: 22.02.2023].

⁴²¹ Letter No. 2457 of February 17, 2023, of the Special Investigation Service.

⁴²² Possible preparation for the intentional murder of N. M. and M. Ch.; N. threatens M.'s family member; threatening E.G. and damaging her car; Violent abuse of authority by individual employees of the Ministry of Internal Affairs towards S. Ch.; of the violence committed against K. K.; damage to A. T.'s car; violence committed against the camera crew of "Mtavari TV"; Attacking the representatives of the Public Broadcasting Company of the Republic of Moldova at the entrance of the Dmanisi Municipality; attack on the camera crew of "TV Pirveli"; carelessly harming L. A.'s health; D. threatens M.; Illegally obstructing the professional activities of "Imedi" journalist; S. threatens Ch.; interfering with the professional activities and verbally insulting the journalist of "TV First"; physical abuse of a media representative and threats against him; Illegal interference in professional activity for S. N.; damage to the vehicle of the "Formula" operator; of the violence committed against E. G.; and the facts of illegal interference in the professional activity of the "TV First" journalist in the voting building, in the location of the election commission or the surrounding area.

⁴²³ 3 cases of illegally obstructing a journalist in his professional activities; of the violence committed against V. M.; threats against V. T.; Unauthorized access to the computer system of Adjara Television; The facts of the theft of a video camera and a direct connection device from the car of the "Mtavari TV" journalist.

⁴²⁴ Per the letter of the General Prosecutor's Office of Georgia No. 13/13654 of March 1, 2023, criminal prosecution was initiated against 1 person in connection with the fact of illegal interference in the professional activity of a journalist of "TV Pirveli" and violence in the election commission's location or the surrounding area.

the disappearance of the Azerbaijani journalist Afgan Mukhtarli, which began in 2017,⁴²⁵ is particularly noteworthy within the framework of which criminal prosecution against specific persons has not yet been initiated.⁴²⁶

The question of the responsibility of the perpetrators of the crime still has not been raised⁴²⁷ in connection with the injuries of media representatives, which occurred as a result of the use of force by law enforcement officers against the participants of the gathering on June 20-21, 2019, and November 8, 2020.⁴²⁸

The Public Defender has pointed out several times in the past that the high rate of criminal acts committed against journalists and other media representatives is, in some cases, directly related to the inappropriate response of investigative agencies, which contributes to creating and maintaining an environment of impunity in the country.

6.3.Facilitating Environment for Media Representatives' Activities

In addition to crimes committed against media representatives, the office identified other cases of interference with their activities, verbal abuse, and violation of labor rights.

In particular, the public defender found the discriminatory treatment of the journalist, who was dismissed due to the expiration of the contract due to his differing opinion, on the part of the former director of Public Broadcaster of Ajara Television and Radio, which, was due to his preparation of stories criticizing the government.⁴²⁹

In 2022, it became known about cases of restrictions on the attendance of the editor-in-chief of the media outlet "BM.GE" at the meeting of the Georgian government. The Public Defender responded to this case and called on the authorities to ensure unhindered access to information for media representatives, including by respecting the principle of equality, allowing journalists to attend events and ask them the questions they want.⁴³⁰

In 2022, the Office of the Public Defender received several reports about verbal attacks⁴³¹ by members of the Parliament of Georgia against journalists in the building of the legislative body and, thus possible violations of the code of ethics. The information related to such facts was provided to the Chairman of the Parliament of Georgia to respond. Unfortunately, at this stage, the co-chairmen of the Ethics Council of the Parliament of Georgia have not been elected. Accordingly, the council will start to consider the

⁴²⁵ 2021 Parliamentary Report of the Public Defender of Georgia, p. 176.

⁴²⁶ Letter No. 13/13654 of the General Prosecutor's Office of Georgia dated March 1, 2023.

⁴²⁷ 2021 Parliamentary report of the Public Defender of Georgia, P. 185.

⁴²⁸ Letter No. 13/14285 of the General Prosecutor's Office of Georgia dated March 2, 2023.

⁴²⁹ The recommendation of the Public Defender of Georgia of November 29, 2022, regarding the establishment of direct discrimination based on different opinions in labor relations. Available at: < <https://rb.gy/j6sgle> > [Last Viewed: 23.02.2023].

⁴³⁰ The statement of the Public Defender of Georgia regarding the restriction of professional activities for journalists is available on the website: < bit.ly/3xqsUPR > [23.02.2023].

⁴³¹ Information available at < <https://ajaratv.ge/article/98858> >, < <https://cutt.ly/HMSZolk> >, < bit.ly/3SyMZxh > [Last Viewed: 23.02.2023].

issues step by step only after their election.⁴³²

It is also worth noting that in recent years, several defamation lawsuits have been filed against critical media and their representatives. According to the "Georgian Democratic Initiative" (GDI), in 2022, the number of such lawsuits reached 32. Their initiators, as a rule, were government officials and persons connected with them.⁴³³ Such types of cases, not only in Georgia but also across Europe, are known as strategic litigation against public involvement (so-called "SLAPPs").⁴³⁴ In the framework of such cases, doubts arise that the demands of the plaintiffs are mainly used by influential persons to tire out the weaker party - those who perform the role of "public watchman", to deprive them of financial or psychological resources and to intimidate them, and not to restore the violated right. Such practice poses a particular threat to freedom of expression and democracy, which is why, at the international level, its prevention is at the center of special attention.⁴³⁵ In this regard, it is worth noting the Office of Democratic Institutions and Human Rights of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is worth noting, that states should use defamation legislation only in strictly necessary cases and avoid applying the corresponding sanction as a punitive measure for human rights and journalistic activities.⁴³⁶

From the point of view of freedom of press, it should be especially noted the changes in the Law of Georgia "On Broadcasting", compatible with the 2010/13/EU directive on audiovisual media services,⁴³⁷ which significantly modified the model of media regulation and created a threat of limiting the freedom of expression. Among other issues, the list of entities subject to regulation has been increased, their obligations have been determined differently, and the powers of the national regulatory body – the National Communications Commission of Georgia have been expanded in the direction of supervision over violations of program restrictions. The legislation also mandated the committee to respond to cases of hate speech and violations of the right of response, as well as the possibility of immediate enforcement

⁴³² Letter No. 11590/2-7/22 of the Office of the Parliament of Georgia dated December 1, 2022.

⁴³³ Georgian Democratic Initiative (GDI), Human Rights in Georgia. 2022, pp. 5-6, available at: < bit.ly/3Kwu5VJ > [Last Viewed: 23.02.2023].

⁴³⁴ Council of Europe, Commissioner for Human Rights, Human Rights Comment, Time to take action against SLAPPs, Strasbourg, 27.10.2020, Available at: < <https://bit.ly/3ld7uKH> > [Last Viewed: 23.02.2023]; Protecting Public Watchdogs Across the EU: a Proposal for an EU Anti-SLAPP Law, pp. 7-8, Available at: < <https://bit.ly/3Rt0WS> > [Last Viewed: 23.02.2023].

⁴³⁵ e.g. see The decision of the European Court of Human Rights of March 15, 2022, in the case, OOO Memo v. Russia, in which the Court referred to the said concept, took into account the risks to democracy of proceedings aimed at limiting public participation, as well as the power imbalance between the plaintiff and the defendant, and considered it important to assess whether a legitimate purpose was served by a public authority exercising defamation against a media company. case; The indication of the Human Rights Commissioner is also significant, according to which, in response to the challenge in question, a three-step approach is needed: refusal to accept the claim at an early stage; establishment of appropriate punitive measures in cases of overstepping of rights by the claimant; and minimizing the consequences of litigation by providing practical assistance to the defendant, the position is available on the website: < <https://bit.ly/3ld7uKH> > [last viewed: 23.02.2023]; At this stage, an expert committee on strategic litigation against public involvement has been created, with the aim of submitting a working version of the recommendation of the Ministerial Committee on this matter by the end of 2023, information is available on the website: < <https://bit.ly/3ycQ78d> > [last viewed: 23.02.2023]; Prevention of the discussed problem is also relevant for the European Union, within the framework of which an initiative has already been submitted to protect human rights defenders and journalists in strategic proceedings against public involvement, information is available on the website: < <https://bit.ly/3yeGDJM> > [last viewed: 23.02.2023].

⁴³⁶ OSCE/Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Situation of Human Rights Defenders in Individual OSCE Member States (2017-2019), 2021, p. 10, Available at: < bit.ly/3IA9wVZ > [last viewed: 23.02.2023].

⁴³⁷ "On Amendments to the Law of Georgia "On Broadcasting" Law No. 2482 of December 22, 2022.

of its legal action.

The Public Defender firmly supports Georgia's European aspirations and the measures taken or planned to obtain the status of a member state of the European Union. Accordingly, the Office welcomes the desire to approximate national legislation in the field of audiovisual media services to EU standards, which is one of the requirements of the Association Agreement.⁴³⁸ However, taking into consideration a number of deficiencies⁴³⁹ identified over the years regarding the activities of the National Communications Commission of Georgia, numerous criticisms⁴⁴⁰ expressed at the agency at the national and international level, and the low trust of broadcasters in it, the increased supervisory mandate of the committee may not ensure the proper performance of such task. Considering this, the Office of the Public Defender, in light of the changes made in the legislation, continues to supervise the activities of the commission.⁴⁴¹

6.4. Improper Use of Legislation to Interfere with Freedom of Expression

In the reporting year, there were cases where the Code of Administrative Offenses of Georgia, which is outdated and does not meet the standards of compatibility with human rights, was used for unjustified restrictions on freedom of press.

For example, in the meeting held on March 1, 2022, at the Embassy of Ukraine in Tbilisi, 2 participants were arrested under the Code of Administrative Offenses of Georgia Based on Article 166 (petty crime). These persons had banners criticizing the government, according to law enforcement officers, they were offensive and their demonstration violated public order.⁴⁴² As the freedom of expression excessively protects messages of political content that do not create a real and immediate threat of violence/confrontation, the Public Defender, with the opinion of the friend of the court, applied to the Tbilisi Court of Appeal and asked for its decision taking into account this high standard. Nevertheless, the Court of Appeal left unchanged the resolution of the Tbilisi City Court regarding the recognition of these persons as administrative offenders and the determination of fines for them.

The problematic nature of using the banning norm of petty crime in order to restrict expression related to matters of public interest, even containing offensive language, was well demonstrated by the decision of the European Court of Human Rights on December 15, 2022, "Feradze and others v. Georgia". In this case, the participants of the rally against "Panorama Tbilisi" were arrested by law enforcement officers⁴⁴³ because of the insulting words posted on the banners. As a result, the infringement was found precisely

⁴³⁸ Association Agreement between Georgia, on one hand, and the European Union and the European Atomic Energy Union and their member states, on the other hand, Annex XXXIII.

⁴³⁹ 2021 parliamentary report of the Public Defender of Georgia, Tbilisi 2022, 177-179; 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 229-232; 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, 232-233.

⁴⁴⁰ Reporters Without Borders statement of July 20, 2020 available at: <<https://bit.ly/3a4yMDx>> [last viewed: 27.02.2023]; 2021 Report of the United States Department of State on the State of Human Rights in Georgia, Section 2.a. freedom of expression of media representatives. Available at: <bit.ly/3lyprUK> [last viewed: 27.02.2023].

⁴⁴¹ Council of Europe experts - Toby Mendel and Yves Salomon, Technical document on professional media regulation: European standards, practices and perspectives for Georgia, Tbilisi, July 2022, p. 7.

⁴⁴² The following inscriptions were written on the posters: "Georgian Government F*** Off", and The Ship of Georgian Dream F*** Off".

⁴⁴³ On the petitioners' banners was placed the inscription "No to Panorama ****".

because the national courts, by focusing only on the form of the disputed slogan, separated its vulgar nature too far from its context and purpose, when such an expression was a stylistic tool to indicate an extremely high degree of dissatisfaction with an ongoing construction project in the city.⁴⁴⁴

In addition, in 2022, the office became aware of the administrative arrest of a person due to his insults to police officers on his personal page of social network. According to the law enforcement officials, the published statements belong to the actions provided for by Articles 166 (petty crime) and 173 (verbal abuse of law enforcement officers) of the Code of Administrative Offenses.

It should be noted that there is a decision of the Tbilisi Court of Appeal regarding the dissemination of expressions of offensive content on social networks.⁴⁴⁵ It clarifies that this type of expression does not constitute petty hooliganism as long as it is not intended to immediately provoke an illegal act and thus does not result in a breach of public order.

As for the verbal abuse of the employee of the law enforcement agency, the Code of Administrative Offenses of Georgia links liability if it is committed by the addressee "during the performance of official duties". According to this wording, the purpose of the article is not to protect the honor and dignity of special subjects in general but to ensure the smooth exercise of public authority by them, which is threatened by face-to-face insults and thus, public order violations. Expressions spread through a social network cannot cause such a real threat.⁴⁴⁶

Despite the above-mentioned circumstances, the Batumi City Court interpreted the prohibitive norm of verbal abuse of a law enforcement agency employee too widely and included such obscene statements made to the law enforcement agency employee in connection with the performance of official duties and not directly in the process of exercising such authority. At the same time, the court considered that it is possible to commit minor hooliganism through the social network, however, since Article 173 of the Code of Administrative Offenses represented a special norm in a specific case, only the latter was used for sanctioning. Such an interpretation did not coincide with the interpretations made by the Court of Appeals in the past and threatened to interfere with the freedom of expression. At this stage, the decision is appealed.

The fact that to substantiate the resolution, the Batumi City Court relied on the decision of the European Court of Human Rights regarding the spread of hate speech in the social network and noted that the behavior of the arrested person may have become a factor encouraging hate speech in the society deserves special attention. The Public Defender especially points out that it is not allowed to equate hate

⁴⁴⁴ Decision of the European Court of Human Rights of December 15, 2022, in the case of Feradze and others v. Georgia, par. 45.

⁴⁴⁵ Resolution of the Tbilisi Court of Appeal of December 9, 2019, on case No. 4/A-889-19.

⁴⁴⁶ From this point of view, the decision of the European Court of Human Rights on August 28, 2018 in the case of Savva Terentyev v. Russia, in which the court found a violation of freedom of expression as a result of a person referring to law enforcement officers with gravely offensive language on the Internet, due to his conviction, which was based on a norm prohibiting incitement to hatred and enmity. The court pointed out that, compared to private individuals, the scope of permissible criticism of officials who exercise public authority is wide ... this scope may also include evasive measures, especially when it reflects a person's reaction to what is perceived as an illegal or unjustified action of the addressed official. (par. 75). According to the court, the police owe a particularly high degree of tolerance to offensive speech, as long as such speech is not intended to immediately provoke illegal action against its officers and does not put them at real risk of physical violence (para. 77).

speech with cursing, as long as, unlike hate speech, it does not aim to encourage, promote, spread and justify violence, hatred or discrimination against people due to their real or ascribed personal characteristics or status or to humiliate them.⁴⁴⁷ In addition, national legislation, in contrast to face-to-face insults, does not provide for criminal or administrative liability for spreading hate speech in public space (except in the field of broadcasting).⁴⁴⁸, when it does not create a clear, direct, and substantial threat of committing a violent act.⁴⁴⁹

It should also be taken into account that the above-mentioned person was administratively arrested 8 days after the disputable "post" was placed, which is problematic in light of the demand for the appropriateness and/or necessity of using this measure. In particular, the Code of Administrative Offenses envisages administrative detention as one of the measures to prevent administrative offenses and ensure the conduct of administrative cases.⁴⁵⁰ In the case under consideration, the arrest was not a necessary measure to prevent an administrative offense by the specified person, since the detainee had already published a "Facebook post", therefore, the disputed action was already completed. Unfortunately, the Batumi City Court does not judge the legality of the arrest, and a week after the conclusion of the disputed fact by the law enforcement body, the fact of the person's arrest remains without a legal evaluation.

Recommendations

To the Minister of Internal Affairs of Georgia:

- To produce special statistics that reflect the criminal acts committed against journalists in connection with their professional activities, except for the cases assigned to the investigative sub-area of the Special Investigation Service.

⁴⁴⁷ Recommendation CM/Rec(2022)16 of the Committee of Ministers of the Council of Europe on combating hate speech against member states, adopted on 20 May 2022 at the 132nd session of the Committee of Ministers, Annex, Section 1.2., Available at : < [bit.ly/3xZobFg](https://www.coe.int/en/web/cm-recommendations/cm-rec-2022-16) > [Last Viewed: 28.02.2023].

⁴⁴⁸ Articles 552 and 71 of the Law of Georgia "On Broadcasting".

⁴⁴⁹ see Article 2391 of the Criminal Code of Georgia and Article 11 of the Law of Georgia "On Assemblies and Manifestations".

⁴⁵⁰ Code of Administrative Offenses of Georgia, Article 244, Part 1.

7. 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. Everyone has the right to receive and disseminate information, as well as to get acquainted with the documents in the public institution.⁴⁵¹ In the conditions of open government, state bodies expect that their activities may be verified by any interested person.⁴⁵² Without access to information, it is impossible to ensure the freedom of opinion and the vital discussion characteristic of a free society.⁴⁵³

The main obstacle to the proper realization of the right to access public information is the existing outdated legislation⁴⁵⁴, which cannot meet the needs at this stage. "Human Rights and Freedoms in Georgia" In the 2020 parliamentary report,⁴⁵⁵ Public Defender overviewed in detail the problems related to exercising the right of access to public information. **Despite the recommendations of the Public Defender of Georgia, unfortunately, the Government of Georgia has not prepared a draft of a special law regarding freedom of information. At the same time, for more than five years, the preparatory process of the proposal defined by the law of Georgia for the mandatory recognition of the Council of Europe Convention of June 18, 2009 "On Access to Official Documentation" has been underway.**⁴⁵⁶⁴⁵⁷ The European Council's conclusion of June 17, 2022, also mentions the gaps in the proper implementation of the right to access public information.⁴⁵⁸

Regarding the availability of public information during the reporting period, the majority of cases reviewed by the Office of the Public Defender of Georgia⁴⁵⁹ are about the cases of public institutions providing public information in violation of the deadline set by law and/or incomplete. The 2022 study of the NNLE Institute for the Development of Freedom of Information focused on a similar problem, which will concern media access to public information.⁴⁶⁰

For media representatives, as public supervisors, gathering information is an integral part of their activities,⁴⁶¹ unreasonable obstacles created for journalists in relation to accessing public information represent not only the right to access public information but also the limitation of media freedom.⁴⁶² According to a study conducted by the NNLE Institute for the Development of Freedom of Information,⁴⁶³

⁴⁵¹ Constitution of Georgia (786, 24/08/1994), Article 17, Article 18.

⁴⁵² Decision No. 1/4/693, 857 of the Constitutional Court of Georgia of June 7, 2019.

⁴⁵³ Decision No. 2/3/406, 408 of the Constitutional Court of Georgia dated October 30, 2008.

⁴⁵⁴ General Administrative Code of Georgia, Chapter III.

⁴⁵⁵ 2020 report of the Public Defender of Georgia, pp. 250-252.

⁴⁵⁶ Letters 01/6223 dated 28.02.2017, 01/5592 dated 25.02.2019, 01/2440 dated 05.02.2021 of the Ministry of Foreign Affairs of Georgia, letter GOV32300002406 dated 26.01.2023 of the Government of Georgia.

⁴⁵⁷ The convention entered into force on 01.12.2020.

⁴⁵⁸ see Conclusion of the Council of Europe of June 17, 2022, p. 6. Available at <<https://bit.ly/3lDelPB>> [last viewed: 27.03.2023].

⁴⁵⁹ In 2022, the Office of the Public Defender of Georgia registered 39 applications regarding the violation of the right to access public information.

⁴⁶⁰ see Research "Media access to public information" Legislation V. Reality <https://bit.ly/3Xl73hO>

⁴⁶¹ see decisions of the European Court of Human Rights; Guseva v. Bulgaria, par. 37; Shapovalov v. Ukraine, par. 68.

⁴⁶² Magyar Helsinki Bizottság v. Hungary [GC], par. 167; Tarsasag v. Hungary, par. 38; Shapovalov v. Ukraine, par. 68.

⁴⁶³ *ibid*

only 12% of journalists were able to obtain public information in a complete form within the time limit set by the law. **It is important to analyze that the existing challenges related to the availability of public information threaten the effectiveness of media activities.** In 2022, the Office of the Public Defender considered one of the cases,⁴⁶⁴ which was related to the availability of the Ministry's lawsuit and the decision of the first instance court on the ongoing dispute between the Ministry of Defense of Georgia and the former Minister of Defense of Georgia - Davit Kezerashvili regarding the issue of compensation for damages.⁴⁶⁵ **In addition to the fact that, in this case, the law was misinterpreted in order to close the information, the current legislation does not provide access to court decisions related to the official activities of former and current officials. Unfortunately, the draft law submitted to the Parliament of Georgia does not provide for such a record.**⁴⁶⁶

In addition to the above, the absence of an effective supervisory institution for the realization of the right to access public information has been a significant challenge for years. The current legislation envisages the possibility of judicial consideration of the issue as the only means of protection of rights, however, the long⁴⁶⁷ period of consideration of the case in the judicial body deprives public information of its basic value, which may be decisive for the interested person. In recent years, the declining statistics⁴⁶⁸, of cases filed in court regarding the provision of public information may indicate a failed mechanism of judicial control as a right protection (meaning a prolonged period of consideration of the case).

We would like to emphasize once again that in order to ensure the availability of public information in the country, it is necessary to reform the legislation regulating freedom of information and create an effective supervisory institution.

Recommendations

To the Government of Georgia:

- To submit drafts of freedom of information and related legislative changes to the Parliament of Georgia.

⁴⁶⁴ Case №5830/22.

⁴⁶⁵ Recommendation of the Public Defender №04-3/8730 29.08.2022.

⁴⁶⁶ 09.11.2022 №07-3/265.

⁴⁶⁷ see 11.07.2022 study of the NNLE Institute for the Development of Freedom of Information "Access to public information and the right to a fair trial". Available at: <<http://bit.ly/40FnAVG> > [Last viewed: 27.03.2023].

⁴⁶⁸ *ibid.*

8. Freedom of Assembly

In 2020, the public defender evaluated the systemic challenges identified in connection with the use of freedom of assembly in a special report - "Freedom of peaceful assembly (sphere protected by the right and the standard of assembly management)", and made some recommendations to eliminate gaps in legislation and practice.⁴⁶⁹ Among other issues, the document discusses the problem of improper regulation of the possibility of holding spontaneous gatherings, in connection with which the Public Defender filed a constitutional lawsuit in 2021.⁴⁷⁰ On June 17, 2022, the lawsuit was submitted to the Plenum of the Constitutional Court of Georgia for consideration.⁴⁷¹ This was based on the fact that the court considered it appropriate to change the definition it had made in the past, according to which "the Constitution of Georgia does not guarantee the right to unhindered spontaneous protest demonstration of people and transport without prior warning, even in the case when the participants of the protest are carrying out transport and occupying the place of movement of people or blocking it, obstructing the movement".

In addition to the above-mentioned issue, the practice of administrative detention of assembly participants for petty hooliganism⁴⁷² and disobedience⁴⁷³ to the lawful request of a law enforcement officer was again problematic last year. Similar cases, which are based on the flawed Code of Administrative Offenses⁴⁷⁴ have been evaluated by the Public Defender for years as a harmful practice, which mostly fails to meet the requirements of necessity and causes unjustified interference with the freedom of assembly.⁴⁷⁵

Among them, a peaceful and non-violent action for the purpose of the protest was assessed as a violation of the law on March 7, 2022, when the participants of the ongoing meeting with the Georgian government administration made a symbolic gesture and threw toilet paper in the direction of the building. The law enforcement officers mobilized between the building and the participants of the gathering, who were positioned behind the security barriers, believed that the papers were thrown at them, and several Protesters were administratively detained.⁴⁷⁶

In the opinion of the public defender, in this case, expressing a similar form of protest against the government did not create a danger of committing a serious law violation/crime, and it was unjustified to interfere with the right to assembly. As a result, the Public Defender addressed⁴⁷⁷ the Tbilisi City Court hearing the case of 8 detainees with the opinion of 2 friends and through the review of the standard of reasonable restriction of freedom of assembly, he tried to support the correcting of the systemic flaws at

⁴⁶⁹ Report available at < <https://bit.ly/3HT75v3> > [Last Viewed: 02.03.2023].

⁴⁷⁰ Constitutional lawsuit No. 1635 of the Public Defender of Georgia of July 26, 2021, available at < bit.ly/3kFvY85 > [Last Viewed: 02.03.2023].

⁴⁷¹ Ruling of the Constitutional Court of Georgia of June 17, 2022, No. 1-3/1/1635.

⁴⁷² Article 166 of the Code of Administrative Offenses of Georgia.

⁴⁷³ Article 173 of the Code of Administrative Offenses of Georgia.

⁴⁷⁴ See the detailed discussion in the Freedom and Security chapter of the 2022 parliamentary report of the Public Defender of Georgia.

⁴⁷⁵ 2021 Parliamentary Report of the Public Defender of Georgia, pp. 188-190; 2020 Parliamentary Report of the Public Defender of Georgia, p. 240; Special Report of the Public Defender of Georgia "Freedom of Peaceful Assembly (sphere protected by right and standard of assembly management)", Tbilisi, 2020, p. 45.

⁴⁷⁶ Information available at: < bit.ly/41C6mJM > [Last Viewed: 01.03.2023].

⁴⁷⁷ Opinions of the Public Defender No. 15-3/2830 dated March 16, 2022, and No. 15-3/3224 dated March 23 (Amicus Curiae).

the practical level, which are caused by the outdated provisions of the Code of Administrative Offenses.

The fact that the participants of the assembly were arrested after a significant period had passed after the implementation of the disputed action when there was no longer a serious threat, but even an interest in preventing the commission of a crime, testified to the unnecessary nature of the use of intensive restrictive measures. In this context, the public defender asked the court to assess whether the arrest of the participants of the gathering by law enforcement officers caused an artificial escalation of the situation. In this regard, it should be noted that the participants of the rally threw flour at the policemen right after the arrest of the activists.⁴⁷⁸

In addition, the Office of the Public Defender became aware of the administrative arrest of 2 participants of the gathering held near the Parliament of Georgia on June 11, 2022, when they tried to cross the pedestrian crossing to continue the rally near the Patriarchate. Despite such an intention, the police officers pointed to the blocking of the traffic lane as the reason for interfering with the freedom of assembly.⁴⁷⁹ Taking into account that the march in the direction of the addressee of the protest is fully in the area protected by the freedom of assembly, and in addition, in the case under consideration, there was not enough evidence to confirm that the activists obstructed the traffic movement or attempted to do so, the Public Defender presented the opinion of the friend of the court in this case as well.⁴⁸⁰ In addition to discussing the relevant legal standard, the document also drew attention to the behavior of police officers who, allegedly in order to create an artificial precondition for administrative detention, blocked the path of an activist on a pedestrian crossing, which is a major violation of their obligations in terms of supporting a peaceful assembly.

The participants of the above-mentioned gatherings were considered lawbreakers by the Tbilisi City and Appeal Courts for petty hooliganism, disobeying the legal request of a law enforcement officer, or cooperatively committing such actions.⁴⁸¹

Regarding the practice of administrative detention of assembly participants, the decision of the European Court of Human Rights dated September 1, 2022, in the case Makarashvili and Others v. Georgia is noteworthy. According to the decision, the state did not violate the European Convention on Human Rights and Fundamental Freedoms on November 18, 2019, as a result of picketing near the Georgian Parliament building, during the arrest of the first and third applicants, although a violation of rights was established concerning the arrest of the second applicant. According to the decision, by detaining the latter, the state failed to prove the existence of relevant and sufficient grounds to justify interference with his freedom of assembly.⁴⁸²

In the same case, the European Court of Human Rights focused on the national level, within the framework of the proceedings, on the standard of distribution of the burden of proof. In this regard, it was taken into consideration the approach of the City Court that the evidence presented by the police enjoyed a

⁴⁷⁸ Information available at: < <https://bit.ly/3lbT3oA> > [Last viewed: 01.03.2023].

⁴⁷⁹ Information available at: < <https://bit.ly/3OwkY66> >, < <https://bit.ly/3ObeFFy> > [Last Viewed: 01.03.2023].

⁴⁸⁰ Opinion of the Public Defender of Georgia No. 04-2/6933 friend of the court (Amicus Curiae) of July 8, 2022

⁴⁸¹ Letter No. 4/1151-22 of Tbilisi City Court dated February 16, 2023.

⁴⁸² The decision of the European Court of Human Rights of September 1, 2022, in the case, Makarashvili and Others v. Georgia, par. 104-106.

higher degree of confidence and it was noted that this was accordingly criticized⁴⁸³ by the Supreme Court of Georgia.⁴⁸⁴ In the decision, the violation of the right to an additional fair trial against the second applicant was caused by the fact that he was held responsible only based on the statements of the police officers, which was not supported by other types of evidence, and the person found himself in a situation where he had to prove his innocence.⁴⁸⁵

Recommendation to the Parliament of Georgia

- To consider the special report of the Public Defender of Georgia - "Freedom of peaceful assembly (sphere protected by right and standard of assembly management)" and to discuss the implementation of legislative changes by the shortcomings and recommendations outlined in it.

⁴⁸³ Decision No. BS-544-535(K-12) of the Administrative Affairs Chamber of the Supreme Court of Georgia dated April 2, 2013

⁴⁸⁴ Decision of the European Court of Human Rights of September 1, 2022 in the case of Makarashvili and Others v. Georgia, par. 61-62.

⁴⁸⁵ Decision of the European Court of Human Rights of September 1, 2022 in the case of Makarashvili and Others v. Georgia, par. 64.

9. Human Rights Defenders

During the reporting period, the unfortunate trend of creating obstacles for the activities of human rights defenders continued, which was manifested over the years in campaigns aimed at discrediting them and criminal actions against them.⁴⁸⁶

From this point of view, the initiation,⁴⁸⁷ of the draft law of Georgia "On Transparency of Foreign Influence" was particularly worrying, which provided for the registration of such non-entrepreneurial (non-commercial) legal entities and media as "agents of foreign influence" whose income is derived from abroad. According to the proposed regulation, such organizations were subject to the obligation of excessive financial reporting, and the Ministry of Justice of Georgia is given the opportunity to monitor to identify such entities or to check their compliance with the law. The Ministry will have the authority to impose fines and compulsory registration of organizations.

The Public Defender of Georgia responded to this initiative with a public statement, in which he noted that it did not comply with the standards of human rights protection and was incompatible with the basic principles of a modern democratic state.⁴⁸⁸ At the same time, the bill was strongly criticized by a number of local and international organizations and the country's strategic partners, whose evaluations show that the adoption of the above-mentioned legislative arrangement will, among other things, threaten Georgia's integration into European and Euro-Atlantic structures.⁴⁸⁹ It is welcoming that the Parliament of Georgia stopped considering the draft law.

In addition, in 2022, in the decision-making process, it was observed the creation of an obstacle to the effective involvement of human rights defenders in the Parliament of Georgia, which was accompanied by an attempt by high political officials to discredit NGOs and reduce their credibility in society. According

⁴⁸⁶ 2021 parliamentary report of the Public Defender, Tbilisi, 2022, 194-195; 2020 parliamentary report of the Public Defender, Tbilisi, 2021, 257-260; 2019 Parliamentary Report of the Public Defender, Tbilisi, 2020, 250-254; 2018 Parliamentary Report of the Public Defender, Tbilisi, 2019, 165-168.

⁴⁸⁷ The bill available at < <https://parliament.ge/legislation/25787> > [Last viewed: 02.03.2023].

⁴⁸⁸ The statement of the Office of the Public Defender of Georgia of February 17, 2023 regarding the draft law of Georgia "On transparency of foreign influence", available at: < bit.ly/3Eizzj1 > [last viewed: 02.03.2023].

⁴⁸⁹ Among them, see Joint statement of local non-governmental and media organizations. Available at: < bit.ly/3EMzdla > [last viewed: 02.03.2023]; Statements by the representative of the US State Department. Available at: < bit.ly/3Zfp2ZM > [last viewed: 02.03.2023]; The statement of the American ambassador to Georgia is available on the website < bit.ly/3y5HGvT > [last viewed: 02.03.2023]; The statement of the EU ambassador in Georgia is available at: < bit.ly/3y6qQgh > [last viewed 02.03.2023]; The press statement of the High Representative of the European Union for Foreign Affairs and Security Policy is available on the website: < bit.ly/3KRaslq > [last viewed: 02.03.2023]; combined.

The statement of the representation of Georgia to the United Nations is available on the website: < bit.ly/41zqrAN > [last viewed: 02.03.2023]; The statement of the speakers of the Parliamentary Assembly of the Council of Europe is available on the website: < bit.ly/3y4QBh5 > [last viewed: 02.03.2023]; The position of the Commissioner for Human Rights of the Council of Europe is available at: < bit.ly/3mlPOFZ > [last viewed: 27.03.2023]; A statement from the Norwegian Ministry of Foreign Affairs is available: < bit.ly/3YuLVfr > [last viewed: 27.03.2023]; The statement of the Ambassador of Sweden to Georgia is available: < bit.ly/3ZdDrKM > [last viewed: 02.03.2023]; The statement of the Ambassador of the Netherlands to Georgia is available: < bit.ly/3ETcbZU > [last viewed: 02.03.2023]; The "Transparency International" statement is available at: < bit.ly/3YfRLAU > [last viewed: 02.03.2023]; Evaluations from the International Center for Non-Commercial Law (ICNL) and the European Center for Non-Commercial Law (ECNL) are available at: < bit.ly/3SXXkipr > [last viewed: 02.03.2023]; A statement from the Human Rights Houses Network is available at: < bit.ly/41CIZzX > [last viewed: 02.03.2023].

to the Public Defender's assessment, this conflicted with the conditions set for Georgia to receive the EU membership candidate status, as well as with the standards established by the United Nations, the Council of Europe and the OSCE/democratic institutions and the Human Rights Office.⁴⁹⁰

The fact of painting the car of civil activist Nata Feradze and leaving insulting inscriptions on it was also highlighted, which the public defender condemned as possible retribution, the purpose of which was to create an intimidating environment for the implementation of rights protection activities in the country.⁴⁹¹ In connection with this, Nata Feradze was given the status of a victim, and 2 persons were charged for damaging someone else's property.⁴⁹²

The Office of the Public Defender was again interested in the ongoing investigation into the threats directed at the rights defenders of women and representatives of the LGBTQ+ community in 2017-2019, as well as the theft of the flag from the office of "Tbilisi Pride" in 2020.⁴⁹³ According to the Prosecutor's Office of Georgia, criminal prosecution against specific persons in the mentioned cases has not been started yet.⁴⁹⁴ This proves that more effective measures are needed to ensure the protection of human rights defenders.

It should be taken into consideration that the Ministry of Internal Affairs of Georgia and the Special Investigation Service⁴⁹⁵ have not developed a manual and/or policy document that defines the concept of a human rights defender and will create the possibility of recording the crimes committed against the mentioned entities in connection with their activities. On the other hand, the lack of relevant statistical data has been preventing the planning and carrying out of appropriate measures to solve systemic challenges for years.⁴⁹⁶

Recommendations

To the Minister of Internal Affairs of Georgia and the Head of the Special Investigation Service:

- In accordance with international standards, including the 1998 UN Declaration on Human Rights Defenders and the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders, define the concept of human rights defenders and compile statistics on all criminal acts committed against them, which is related to their activities.

To the Officials:

- During the implementation of the powers granted by the law, to observe the internationally recognized standards of human rights defenders. Among them, refrain from engaging in the

⁴⁹⁰ The statement of the Public Defender of September 20, 2022 regarding the discrediting campaign against human rights defenders is available on the website: < bit.ly/3ERR3TT > [last viewed 02.03.2023].

⁴⁹¹ The statement of the Public Defender of October 24, 2022 regarding the fact of damage to Nata Feradze's car is available on the website: < bit.ly/3h9DLJI > [last viewed: 02.03.2023].

⁴⁹² Letter No. 13/13656 of the General Prosecutor's Office of Georgia dated March 1, 2023.

⁴⁹³ 2021 parliamentary report of the Public Defender, Tbilisi, 2022, 195.

⁴⁹⁴ Letter No. 13/13656 of the General Prosecutor's Office of Georgia dated March 1, 2023.

⁴⁹⁵ Letter No. 2582 of the Special Investigation Service of February 20, 2023.

⁴⁹⁶ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 195.

discrediting campaign of human rights defenders and support their activities. At the same time, ensure the essential involvement of civil society in the decision-making process and prevent cooperation with relevant organizations based on the acceptability of their expressed positions.

10. Right to Vote

2022 was not an election year in Georgia⁴⁹⁷. Thus, this year, in this chapter of the report, we will review the issues that are related to the investigation of criminal activities detected during the 2021 local government elections, as well as the legislative changes adopted in the reporting year.

As it is known, the Public Defender of Georgia in the 2021 parliamentary report reviewed in detail the criminal incidents that occurred during the local self-government elections. According to the information provided by the law enforcement agencies, the investigation, in most cases, is ongoing without tangible results.

An investigation is underway into the fact of possible coercion committed against the candidates of the party **"For Georgia"** to withdraw their candidacy, no specific person is known as the victim or the plaintiff.⁴⁹⁸ ⁴⁹⁹ The investigation is also ongoing in 4 cases of possible voter bribery, a specific person is not known as a victim or accused in these cases, and in 1 case, the investigation was terminated due to the lack of action provided for by the criminal law.⁵⁰⁰ In addition, the investigation is ongoing⁵⁰¹ on 13 facts of different illegal content,⁵⁰² in 8 of which no specific person is known as the victim or plaintiff at this stage, only one of them has been charged⁵⁰³.

Improvement of the electoral framework and elimination of all deficiencies identified by the OSCE/ODIHR and the Council of Europe/Venice Commission is one of the priority directions, the fulfillment of which, according to the assessment published by the European Commission in 2022 and the recommendation given to the Council of Europe, is a prerequisite for Georgia to obtain candidate status.⁵⁰⁴ Unfortunately, the non-governmental organization, "Fair elections", the participation of which was negatively evaluated by the local civil sector, as well as international responses.⁵⁰⁵ As a sign of solidarity, other civil organizations are not involved in the work either.⁵⁰⁶ According to the assessment of the public defender, the refusal to participate in the working group for "fair elections" damaged the inclusiveness of the processes.

Finally, positive changes have been made in the electoral legislation in various directions,⁵⁰⁷ although the

⁴⁹⁷ 2022 On April 2 of the year, intermediate elections of Rustavi-Gardabni and Batumi majoritarian constituencies were held.

⁴⁹⁸ Article 150 of the Criminal Code of Georgia, Article 1, Case No. 090220921001.

⁴⁹⁹ Letter of the General Prosecutor's Office of Georgia No. 13/16985 dated 15/03/2023.

⁵⁰⁰ Ibid.

⁵⁰¹ Ibid.

⁵⁰² №038300721003, №056010920002, №004021021014, №038270921002, №038300721003, №031031021001, №068021021001, №173270821005; №014220921001; №012210921001; №171291021006; №031021021003; №056140921005.

⁵⁰³ And in 4 cases, a specific person is known as the victim, although prosecution has not been initiated against anyone.

⁵⁰⁴ See the link <<http://bit.ly/3ZxhSU>> [Last viewed: 27.03.2023].

⁵⁰⁵ See link: <<https://www.radiotavisupleba.ge/a/32004161.html>> [last viewed: 27.03.2023].

⁵⁰⁶ See link: <<https://civil.ge/ka/archives/505044>> [last viewed 27.03.2023].

⁵⁰⁷ e.g. Introduction of certificates confirming the competence of members and heads of the precinct election commission, expansion of the list of cases of incompatibility of positions for members of the precinct election commission, in the summary protocol the so-called Determining the grounds for re-counting of votes when an imbalance is detected, extending the deadline for appealing violations found at the polling station, and the deadline for reviewing complaints received by the District Election Commission. : < >

evaluations of the national monitoring organizations are taken into account regarding the completeness of the changes and the full reflection of the recommendations of the Venice Commission and the OSCE/ODIHR.⁵⁰⁸ The Public Defender explained in 2021 that for the stability of the electoral legislation and the formation of public trust, it is important to plan an electoral reform focused on long-term goals, not fragmented.⁵⁰⁹

[last viewed: 27.03.2023].

⁵⁰⁸ Evaluation of changes made in the electoral legislation in December 2022, 2023, International Society for Fair Elections and Democracy, Transparency International - Georgia, Association of Young Lawyers of Georgia [last viewed: <<https://drive.google.com/file/d/1ycgWZGTFIWt5AQnoR082TyV4PaadQRK/view>> [last viewed: 27.03.2023].

⁵⁰⁹ Parliamentary Report of the Public Defender of Georgia, 2021, Tbilisi, 2022, 240, see link:

<<https://www.ombudsman.ge/res/docs/2022040413242699860.pdf>> [last viewed: 27.03.2023].

11. Right to Property

The right to property is recognized and protected by the Constitution of Georgia and national legislation.⁵¹⁰ Its protection is of particular importance in all democratic states.⁵¹¹ In 2022, as a result of the study of the statements submitted to the Office of the Public Defender, the facts of the delay in the registration of ownership rights to legally owned land plots were again highlighted, which was due to the failure of the State Property Agency to submit information within a reasonable time frame based on the request of the National Agency of the State Public Registry of State Property. However, from August 25, 2022, the National Agency of the Public Registry of the Republic of Uzbekistan is authorized to decide on the correction of the state-owned land in certain cases. In particular, according to the information⁵¹² provided by the LEPL National Agency of State Property, by the same agency's letter No. 17/47877 of August 25, 2022, the National Agency of the Public Registry of the State of Ukraine approved the applications submitted in the geographic areas of systematic registration (including sporadic registration), on state-owned land plots, to cancel the registration of the state property right, recorded in the part of the superstructure, if the only obstacle to the registration of the private property right is the superposition with the real estate registered as state property, which must be positively assessed.

11.1. Problems related to the prevention of interference with the use of property rights

As in previous years,⁵¹³ years, in the reporting period, the problem related to the delay in judicial and enforcement proceedings in the cases of reclaiming real estate property from the ownership and use of others, due to which the owners are not able to realize their rights in time, was revealed. Although the cases of claiming real estate property from illegal possession must be considered in court in an accelerated manner, in the first and second instances courts within 1 month, and the Supreme Court - within 2 months, disputes of this category are still not considered following the deadlines established by law.⁵¹⁴

The period from the submission of the lawsuit to the completion of the enforcement proceedings in the cases of requisitioning real estate property from illegal possession continues for years, which is also confirmed by the information provided by the Supreme Court of Georgia.⁵¹⁵ In particular, the provided data shows that the consideration of cases in court, in some cases, even lasts for 5-6 years, in addition, several court disputes started in 2019-2020 have not been completed until now.⁵¹⁶

Timely enforcement of legally effective decisions also remains a problem. According to the information

⁵¹⁰ Constitution of Georgia, Art. 19.

⁵¹¹ Decision No. 1/1/543 of the Constitutional Court of Georgia dated January 29, 2014 on the case, "Metalinvest LLC against the Parliament of Georgia", II, para 1.

⁵¹² Letter No. 17/1965 dated January 16, 2023 of the LEPL State Property National Agency.

⁵¹³ 2021 report of the Public Defender of Georgia "On the state of protection of human rights and freedoms in Georgia", p. 234.5

⁵¹⁴ Civil Procedure Code of Georgia, Art. 59, article 3, Art. 391, article 6.

⁵¹⁵ Letter No. P-208-23 of the Supreme Court of Georgia dated March 13, 2023.

⁵¹⁶ Annex to the letter No. P-208-23 of the Supreme Court of Georgia dated March 13, 2023.

provided by the LEPL National Bureau of Enforcement to the office of the Public Defender⁵¹⁷, from March 1, 2022, to January 1, 2023, 444 cases were submitted to the National Bureau of Enforcement, and according to the data available at the end of January 2023, there were 1,920 ongoing enforcement cases related to the recovery of real estate from illegal possession.⁵¹⁸ Although, despite the request of the Office of the Public Defender, the Bureau did not call for information on the dates of the start of enforcement proceedings, the analysis of the provided statistical data reveals that the enforcement process is also delayed in time. This is confirmed by the statements submitted by the citizens in the Office of the Public Defender, whose cases the enforcement process started in 2019 and 2020, and the proceedings were not completed even according to the latest data of 2022.⁵¹⁹ The increase in the number of cases related to recovery from illegal possession in the proceedings of the National Bureau of Enforcement was also facilitated by the fact that due to the Covid pandemic, from July 15,⁵²⁰ 2020, to March 1, 2022,⁵²¹ the enforcement (eviction) of cases on recovery of real estate property from illegal possession was suspended.

According to the current legislation, cases of revocation of real estate from illegal possession/use must be executed immediately, and there is no legal act regulating the order of execution. In the conditions of procrastination of enforcement proceedings, it is unclear for the owner the issue of marking the expected date of release (eviction) of the immovable object from the possession of the debtor. According to the information of the National Bureau of Enforcement,⁵²² the Bureau in each case, taking into account the specifics of the actual circumstances in the case, will conduct the enforcement cases following the proportionality of the interests of the parties, including determining the date of eviction.

Thus, timely, effective proceedings cannot be carried out in the cases of requisition of immovable property from illegal possession/usage, both at the judicial and enforcement stages. Disputes related to the recovery of real estate property from illegal possession/use by the general courts must be considered within the time limits provided by the legislation. And, to eliminate the issue of unreasonable delay of enforcement proceedings caused by the accumulation of enforcement cases of this category by the LEPL National Bureau of Enforcement, it is important to prioritize enforcement cases - through the development of a temporary rule regulating the criteria determining the order.⁵²³

⁵¹⁷ LEPL National Enforcement Bureau Letter #17076 dated March 14, 2023.

⁵¹⁸ LEPL National Enforcement Bureau Letter #17076 dated March 14, 2023.

⁵¹⁹ D. J's No. 10027/22 presented at the Office of the Public Defender; Statements of Z. J. No. 13267/22

⁵²⁰ Order No. 582 of the Minister of Justice of Georgia dated July 15, 2020 "On the administration of the activities of the National Enforcement Bureau of a legal entity under public law to prevent the spread of the new coronavirus (COVID-19) and the determination of temporary rules different from those established by the law on the services of persons", Article 8, Paragraph 2 : In cases of requisitioning real estate from the possession/use of others, the debtors and their accompanying persons shall not be forcibly evicted from the real estate specified in the writ of execution. Other enforcement actions on cases of this category shall be conducted under the law of Georgia "On Enforcement Proceedings".

⁵²¹ Order No. 812 of the Minister of Justice of Georgia dated March 1, 2022.

⁵²² N68417 of the National LEPL Enforcement Bureau of September 19, 2022; N74918 of October 17, 2022; Letters N88964 of December 9, 2022 and N17076 of March 14, 2023.

⁵²³ 2013 parliamentary report of the Public Defender of Georgia, Tbilisi, 2014, 397-403; 2014 parliamentary report of the Public Defender of Georgia, Tbilisi, 2015, 513-519; 2018 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2019, 214-216; 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 237-239.

11.2. Property Rights in Criminal Cases

In the criminal cases investigated by the Office of the Public Defender, the practice of restricting the right to property, like the previous years, was unfortunately also highlighted in this reporting period. A few of them were particularly critical, as there was no legal basis for limiting the property right.

In one of the cases studied by the Office of the Public Defender⁵²⁴, within the framework of the criminal investigation, a person's car was confiscated on the territory of Georgia, as it was wanted by Interpol of The Republic of Turkey. It should be noted that the original owner of the car is a Turkish Insurance Company. It is significant that the investigation of the case has been ongoing for 4 years. During this period, the Prosecutor's Office of Georgia sent a number of appeals to the Interpol Department of the Republic of Turkey with an offer to return the car to the insurance company and shared the information about the regulations established by the Georgian legislation. On the other hand, despite being informed, the insurance company has not done anything to return the vehicle, all means have been exhausted to enable the company to return the owned vehicle.⁵²⁵

In addition to the above, it is significant that according to the Public Defender's assessment, the person is a bona fide buyer of the car, there is no proof of his dishonesty. Therefore, according to the legislation of Georgia, the car must be returned to him⁵²⁶. Taking this into consideration, the public defender addressed the Prosecutor General of Georgia with a proposal to return the car to the person.⁵²⁷ However, unfortunately, the person still has not received the car back.⁵²⁸ The delay of a decision by the General Prosecutor's Office of Georgia regarding the return of the car for a long time unreasonably restricts the right to ownership and causes material damage.

Another case study by the Office of the Public Defender is also significant in this part, which refers to the complete restriction of making a transaction regarding the disputed property for the plaintiff. It should be noted that in the mentioned case, the blanket and indefinite restriction of entering into a transaction for a person did not have any legal basis. In particular, the plaintiff was sentenced to imprisonment as a preventive measure and was in a penitentiary institution, whose director refused to certify the power of attorney issued to him. The director's refusal was based on the request of the State Security Service⁵²⁹

⁵²⁴ The Kakheti Main Division of the Patrol Police Department of the Ministry of Internal Affairs of Georgia is in the process of criminal case No. 079121217002, on the fact of using a fake official document, a crime stipulated by the first part of Article 362 of the Criminal Code of Georgia.

⁵²⁵ Letter No. 13/31462 of the General Prosecutor's Office of Georgia dated May 31, 2021; Letter No. MIA 3 21 01747286 of the Ministry of Internal Affairs of Georgia dated July 6, 2021.

⁵²⁶ If the owner/legal owner did not return the vehicle within the specified period (90 days after receiving the written notification), and if the identity of the owner or legal owner could not be established within 90 days after the vehicle was seized, or if the notification was not delivered to him within the same period, the vehicle by the prosecutor's decision, in good belief it is returned to the buyer (Part 2 of Article 80 of the Criminal Procedure Code of Georgia).

⁵²⁷ Proposal of the Public Defender of Georgia No. 15-3/11163 of November 7, 2022.

⁵²⁸ According to the information of the General Prosecutor's Office of Georgia, a letter was additionally sent to Interpol of the Republic of Turkey to determine whether the insurance company that owns the vehicle has been informed of the relevant regulation of the Criminal Procedure Code of Georgia (Letter No. 13/76453 of November 28, 2022 from the General Prosecutor's Office of Georgia).

⁵²⁹ The investigative office did not consider it appropriate to certify the power(s) of attorney or any other documents for the plaintiff,

However, it is important to note that the current legislation does not provide for the limitation of the power of attorney certification.⁵³⁰ Considering this, the public defender addressed the Minister of Justice of Georgia with a proposal⁵³¹ to ensure the certification of the power of attorney for the plaintiff, based on which the director of the penitentiary institution certified the power of attorney for him.⁵³²

In addition to the above, the case of the "removal" of a mobile phone as a result of a personal search of a person detained administratively is also significant. In particular, even though the procedural legislation does not provide for the right to "remove" an item during an administrative arrest, the police confiscated the detainee's mobile phone.⁵³³ The "removal" of the mobile phone was signed on the next day. As part of the investigation, the mobile phone was sent for expert examination. Significantly, the public defender applied to the Ministry of Internal Affairs with a proposal to initiate disciplinary proceedings against the policemen, which remains unanswered until now.⁵³⁴ The Public Defender's attempt to get full information on the case was also unsuccessful.⁵³⁵ According to the information at the disposal of the office, the examination has been completed, but the issue of returning the belongings to the citizen will be resolved only when the final decision on the case is made.⁵³⁶

Recommendation

LEPL National Bureau of Law Enforcement:

- In order to eliminate the challenges related to the cases of requisitioning (eviction) of real estate property from illegal possession/use and realizing the property rights of the owners, develop a temporary rule determining the order of production.

since the criminal case against him was being investigated to find the property obtained through criminal means.

⁵³⁰ In relation to property transactions, the Criminal Procedure Code of Georgia provides a procedural basis for limiting the transaction on specific property - in the form of seizure (Part 1 of Article 151 of the Criminal Procedure Code of Georgia).

⁵³¹ Proposal No. 15-8/5101 of the Public Defender of Georgia dated May 17, 2022.

⁵³² Letter No. 304204/24 dated October 17, 2022 of Penitentiary Institution No. 8 of the Special Penitentiary Service.

⁵³³ 2021 Activity Report of the Criminal Justice Department of the Office of the Public Defender of Georgia, p. 110. Available at: < <https://bit.ly/3Xtk5Aq> > last viewed: 17.03.2023].

⁵³⁴ Proposal No. 15-5/7355 of the Public Defender of Georgia dated July 27, 2021.

⁵³⁵ Letters of the Office of the Public Defender of Georgia dated October 22, 2021 No. 15-5/10041, December 21, 2021 No. 15-5/12181, February 9, 2022 No. 15-5/1652 and December 23, 2022 No. 15-5/12877.

⁵³⁶ Letter NMIA92300181397 of the Ministry of Internal Affairs of Georgia dated January 23, 2023.

12. Freedom of Belief and Religion

12.1. Introduction

This chapter provides an overview of the main challenges related to freedom of belief and religion during the year 2022, including the issue of financing religious organizations, discriminatory norms in legislation against various religious associations, alleged hate crimes committed on religious grounds, and the unclear role of the State Agency for Religious Affairs in protecting religious freedom, dedication.

In the 2021 parliamentary report, the Public Defender addressed a total of 14 recommendations to the Parliament of Georgia and various state agencies regarding freedom of belief and religion.⁵³⁷ It is well received that, based on the recommendation of the Public Defender, the Special Penitentiary Service has ensured the publication of information on the official website about the initiation of the process of receiving parcels in penitentiary institutions in connection with the holidays of religious minorities, like Orthodox holidays.⁵³⁸

As for the unfulfilled recommendations, the existing discriminatory norms in the legislation still apply unchanged; The method of financing religious associations is unchanged; The problem related to the construction of a new mosque in Batumi is unresolved. To date, no steps have been taken, as a result of which the amount of damage and confiscated property caused by the state Soviet regime to the religious associations in the territory of Georgia would be described and appraised. The lack of legislation and policy regulating the return (restitution) of religious property confiscated during the Soviet period for religious minorities and the severity of this issue also showed itself in 2022.⁵³⁹ Besides, the Public Defender's recommendation to take into account the needs of representatives of different religious denominations when preparing food has not been implemented so far.⁵⁴⁰

It should be noted that during the reporting period, the report of the Human Rights Commissioner of the Council of Europe was published, in which all the issues related to religious minorities, which the Public Defender has been referring to in the parliamentary reports of the current and past years, were wrongly assessed.⁵⁴¹

The investigation into the distribution of secret recordings last year is still ongoing, based on which it was revealed how large-scale the control, surveillance, and illegal monitoring of the activities of religious

⁵³⁷ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 169-171.

⁵³⁸ Letter No. 20927/01 of the Special Penitentiary Service of the Ministry of Justice of Georgia dated January 26, 2023, attachment.

⁵³⁹ On October 4, 2022, the Orthodox clergy in Kutaisi forbade the Catholic congregation to enter the disputed church with the statue of the Mother of God. During the procession, the Catholics were met by a safety tape around the yard of the cathedral, and the entrance was jammed with cars. At this stage, the temple is owned by the Orthodox Church. Human Rights Education and Monitoring Center (EMC), "Non-dominant religious groups, freedom of religion and politics - 2022 assessment, 14.12.2022. is available: < bit.ly/3Y5Fq2x > [last viewed: 30.01.2023].

⁵⁴⁰ 2020 Parliamentary Report of the Public Defender of Georgia, p. 86.

⁵⁴¹ Follow-up report on the visit of the Council of Europe Commissioner for Human Rights, Dunia Mijatović, to Georgia on 21-24 February 2022, CommDH(2022)17, para. 43, 2022 Available at: < <http://bit.ly/3DoqOU9> > [last viewed: 22.02.2023].

associations is⁵⁴² although so far the persons responsible for the alleged illegal listening and surveillance have not been identified.⁵⁴³

12.2. Legislation of Georgia

In 2022, the Parliament of Georgia still did not adopt changes in the legislation to eliminate the discriminatory norms, the existence of which has been pointed out by the Public Defender and the Council of Religions with him for many years.

12.2.1. Legislation on State Property

The Public Defender has been addressing the Parliament of Georgia for several years to amend the existing discriminatory norms in the legislation on state property,⁵⁴⁴ however, as of today, the disputed norms have not been changed.

To this day, only the Patriarchate of Georgia enjoys privileges related to state property. In the Law "On State Property", the norms of Article 3, which restrict the acquisition and exchange of state property to religious associations, except the Orthodox Church, are still valid⁵⁴⁵ Additionally, only the Orthodox Church was allowed to take ownership of the 20 hectares of forest around the churches.⁵⁴⁶

In addition, the practice of transferring state property to the Patriarchate of Georgia at a symbolic price of 1 GEL is problematic.⁵⁴⁷ According to the Public Defender's assessment, Article 3 of the Law "On State Property" allows the Government of Georgia to bypass the spirit of the decision of the Constitutional Court of Georgia on July 3, 2018. According to the court's decision, the state's ability to transfer property to the Orthodox Church free of charge was declared unconstitutional. And, by transferring the state property at a symbolic price, the state created an alternative mechanism by which, from the point of view of results, the state property is still transferred to the Patriarchate free of charge. This problem is also indicated by the Commissioner for Human Rights of the Council of Europe in the 2022 report.⁵⁴⁸

12.2.2. Healthcare Legislation

Jehovah's Witnesses face significant barriers to access to medical care due to health care regulations. In particular, the use of the hemotransfusion (blood transfusion) procedure is unacceptable for the religious beliefs of Jehovah's Witnesses, and the order of the Minister of Health, which establishes a special form

⁵⁴² 2021 Parliamentary Report of the Public Defender, p. 121-122.

⁵⁴³ For information about the investigation, please see the Privacy section.

⁵⁴⁴ 2021 Parliamentary Report of the Public Defender of Georgia, 164-165. 2020 Parliamentary Report of the Public Defender of Georgia, p. 214-215.

⁵⁴⁵ Paragraphs 1, 2 and 5 of Article 3 of the Law of Georgia "On State Property"

⁵⁴⁶ Ibid., paragraph 6.

⁵⁴⁷ Institute for Tolerance and Diversity (TDI), TDI and Forum 18 Joint Report to the United Nations on the State of Religious Freedom in Georgia, para. 20. 2020. Available at: < <http://bit.ly/3kibAtw> > [last viewed: 22.02.2023]; See also "Interpress News", state property worth more than 29 million GEL was sold for 1 GEL in 2020, 01.03.2021, available at: < <http://bit.ly/3KuMTEX> > [last viewed: 22.02.2023].

⁵⁴⁸ Follow-up report on the visit of the Council of Europe Commissioner for Human Rights, Dunia Mijatović, to Georgia on 21-24 February 2022, CommDH(2022)17, para. 47, 2022. Available at: < <http://bit.ly/3DoqOU9> > [last viewed: 22.02.2023].

for informing the patient and obtaining consent for treatment from him⁵⁴⁹ does not allow the patient to choose alternative means of blood transfusion instead of the hemotransfusion (blood transfusion) method. Among them are bloodless surgery and special medicines, which in terms of results, replace the blood transfusion procedure. As a result, Jehovah's Witnesses are forced to refuse treatment that may endanger their health or accept blood transfusions, which causes them to feel that they are acting against their religion.

Studying the issue revealed that the use of alternative blood transfusion methods is allowed in the country, however, the issue is not regulated, which creates problems in practice. Also, the number of doctors who have information on alternative methods of hemotransfusion is small in Georgia. Therefore, the state should provide as much information as possible to the medical staff on this topic, so that the interests of the health care of the patients are protected in such a way as to exclude unjustified interference with the freedom of religion. Refusal to receive blood transfusions is the result of Jehovah's Witnesses' free expression of will and is protected by Articles 8 (right to private life) and 9 (freedom of religion) of the European Convention on Human Rights.⁵⁵⁰

Based on the above, according to the Public Defender's assessment, the current legal arrangement puts Jehovah's Witnesses in a disadvantageous position in terms of the realization of the right to freedom of religion and health care.

12.2. Discriminatory practice of financing religious organizations at the municipal level

During the reporting period, the Marneuli municipality allocated budget funds only to the local Orthodox diocese. According to the Public Defender's assessment, such a decision of the self-governing unit imposes a different treatment between religious organizations, which does not have a sufficient, objective, and reasonable justification.⁵⁵¹

The public defender calls on the municipal authorities to take into account the principle of equality when disposing of local finances and not to allow discrimination when financing religious organizations

⁵⁴⁹ Order No. 108/N of the Minister of Labor, Health and Social Protection of Georgia dated March 19, 2009 "On approval of the procedure for producing inpatient medical documentation in medical institutions", Art. 10, Appendix 9.

⁵⁵⁰ Judgment of the European Court of Human Rights of 10 June 2010 in the case JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA, Appeal No. 302/02, para. 131-134. See also the judgment of September 7, 2022 in the case of TAGANROG LRO AND OTHERS v. RUSSIA, Appeal No. 32401/10, para. 162.

⁵⁵¹ Against this background, the decision of the Bolnisi District Court, which found the municipality's approach discriminatory, was welcome. Unfortunately, on December 8, 2022, the Tbilisi Court of Appeal canceled this decision. It should be noted that before the decision of the Court of Appeal, despite the fact that the above-mentioned approach of the municipality was considered discriminatory according to the decision of the Bolnisi District Court, the 2023 budget project was submitted to the Marneuli City Council in accordance with the existing discriminatory practices. On December 26, 2022, the City Council approved the budget. See more details. In the statements of the Human Rights Education and Monitoring Center (EMC): the Bolnisi court made a precedent decision on the municipal funding of dioceses, 01.07.2022. Available at: < <http://bit.ly/3kXLtZ1> > [last viewed: 30.01.2023]; The Tbilisi Court of Appeal annulled the decision of the first instance court, which determined the discriminatory nature of financing the Patriarchate of Georgia from the budget of Marneuli, 12.12.2022. is available at: < <http://bit.ly/3FrknzK> > [last viewed: 30.01.2023].

12.3. Alleged Hate Crimes

The Public Defender positively assesses the trend of substantially improving the state policy of combating hate crimes, which resulted from the steps taken to increase the quality of response to this type of crime. It is to be welcomed that in terms of referrals to the Office of the Public Defender, during 2022, like last year, the trend of reducing the serious facts of abuse and violence against Jehovah's Witnesses was maintained.

Along with the positive trends, it should also be noted that the ineffective investigation of alleged hate crimes remains a significant challenge. The response of law enforcement agencies still does not meet the standards of efficiency and timeliness. The level of trust of representatives of vulnerable groups towards law enforcement agencies is also low. The 2022 report of the Commissioner for Human Rights of the Council of Europe pointed to the problem of the lack of effective investigation and identification of the hate motive for alleged hate crimes committed on religious grounds.⁵⁵²

In addition, some cases are problematic when the law enforcement agency qualifies the fact as an administrative offense if it considers that there are no signs of a crime. However, since the administrative legislation does not distinguish discriminatory motive as an aggravating circumstance, it is not clear that the victim was harmed on a discriminatory basis. The Public Defender points out that due to the seriousness and gravity of illegal actions caused by discriminatory attitudes toward a democratic society, it is important, in the presence of an alleged discriminatory motive, in each specific case, for the law enforcement agency to consider the action, at least, as a less serious crime of criminal law (for example, under the Criminal Code Article 142 - violation of equality) qualification issue.⁵⁵³

Inadequate state response to hate crimes poses the threat of future violations of the rights of religious minorities. Therefore, it is important to know what is the policy of the state concerning the criminal facts already committed on the grounds of religious intolerance.

In Georgia, in the past years, high-profile cases of alleged rights violations against representatives of religious minorities took place in Samtatskaro,⁵⁵⁴ Nigvziani,⁵⁵⁵ Tsintskaro,⁵⁵⁶ Kobuleti⁵⁵⁷, Tbilisi (in connection with the fire that broke out in the sports palace in 2013)^{558,559}, Mokhe village of Adigeni and Buknar village of Chokhatauri municipality.⁵⁶⁰ The started criminal investigation was stopped in 2020 due

⁵⁵² Council of Europe Commissioner for Human Rights, Dunia Miatovic, in Georgia on 21-24 February 2022 February follow-up report, CommDH(2022)17, para. 48, 2022. Available at: < <http://bit.ly/3DoqOU9> > [last seen: 22.02.2023].

⁵⁵³ "2022 special report on the fight against discrimination, its prevention and the state of equality" of the Public Defender of Georgia, 2023, pp. 33-34.

⁵⁵⁴ 2013 Parliamentary Report of the Public Defender, Tbilisi, 2014, 295.

⁵⁵⁵ 2012 Parliamentary Report of the Public Defender, Tbilisi, 2013, 520.

⁵⁵⁶ Ibid.

⁵⁵⁷ 2014 Parliamentary Report of the Public Defender, Tbilisi, 2015, 432.

⁵⁵⁸ 2013 Parliamentary Report of the Public Defender, Tbilisi 2014, 446-448.

⁵⁵⁹ 2015 Parliamentary Report of the Public Defender, Tbilisi 2016, 487.

⁵⁶⁰ Ibid, 166-167.

to the lack of action provided for by the criminal law, in the cases of Tsyntskaro and Nigvziani.⁵⁶¹ As for the rest of the cases, according to the information provided to the Office of the Public Defender, one person is known as a plaintiff under Article 120, Part 2, "a" and "c" of the Criminal Code, in connection with the conflict⁵⁶² that occurred on religious grounds in the village of Buknar, Chokhatauri Municipality, in January 2021. by sub-paragraphs, on the crime provided for by sub-paragraph "a" of part 2 of Article 177 and sub-paragraph "a" of part 3 of Article 177. And 2 persons were recognized as victims.⁵⁶³

In connection with the incidents in the village of Mokhi, two persons were charged with religious intolerance based on article 333, part 3, sub-paragraph "b" of the Criminal Code⁵⁶⁴ of Georgia, and the case is currently being considered in the Akhaltsikhe District Court.⁵⁶⁵

As for the other high-profile cases listed above: the fact of persecution related to religious activity in Kobuleti, the fact of illegally obstructing the implementation of religious rules in the village of Samtatskaro of Dedoplistskaro municipality, and the fact of fire in the Sports Palace in Tbilisi is still being investigated, and summary decisions have not been made so far.⁵⁶⁶ At this point, a specific person is not known as a victim or plaintiff. Taking into consideration the period of implementation of these facts (the facts took place in 2013-2014), we can see that the current investigation processes do not meet the standards of transparent and effective investigation. Delays in the investigation of these cases and the granting of victim status to victims remain a challenge.

12.4. State Agency for Religious Affairs

The State Agency for Religious Affairs (later - the Agency) is a legal entity under public law, which is engaged in informational, research, scientific-educational, and advisory activities in the field of religion for the Government of Georgia and the Prime Minister of Georgia.⁵⁶⁷

As part of its activities, the agency has not presented to the government progressive recommendations and visions based on human rights that would lead to positive changes in legislation and policies related to religious freedom.⁵⁶⁸ It should be noted that neither the Public Defender's Office nor the Public Defender's Council of Religions is responsible for any issues related to the legislation related to freedom of religion or institutional cooperation of the Agency. It should also be noted that on March 1, 2016, the European Commission against Racism and Intolerance (ECRI) expressed grave concern about the activities of the agency and called on the government to instruct the agency to establish active cooperation with

⁵⁶¹ 2020 Parliamentary Report of the Public Defender, Tbilisi, 2021, 217.

⁵⁶² The Public Defender's statement regarding the events developed in Buknar village of Chokhatauri municipality is available: <<https://bit.ly/3w1OfgQ>> [last viewed: 31.01.2023].

⁵⁶³ Letter of the General Prosecutor's Office of Georgia dated December 29, 2022 No. 13/84490.

⁵⁶⁴ 2021 Parliamentary Report of the Public Defender of Georgia, p. 167.

⁵⁶⁵ Letter of the General Prosecutor's Office of Georgia dated December 29, 2022 No. 13/84490.

⁵⁶⁶ Letter MIA 3 23 00241268 of the Ministry of Internal Affairs of January 27, 2023. No. 13/84490 of the General Prosecutor's Office of Georgia dated December 29, 2022.

⁵⁶⁷ Article 1, Clause 1 of the Resolution No. 177 of the Government of Georgia dated February 19, 2014 "On the creation and approval of the statute of the public law legal entity - State Agency for Religious Affairs" see: <<https://bit.ly/3dFOYh3>> [last viewed: 27.02.2021].

⁵⁶⁸ Recommendations of the Council of Religions under the Public Defender of Georgia, 2020, p. 27-28. Available: <<https://bit.ly/3ux6lRr>> [last viewed: 27.02.2021].

the Public Defender's Council of Religions and share the latter's experience and recommendations.⁵⁶⁹ However, according to the Committee's (ECRI) further assessment, its recommendation was not implemented.⁵⁷⁰

It should be noted that, in addition to the Council of Religions, a significant part of the religious associations are full of distrust towards the agency.⁵⁷¹ The Council of Europe Commissioner for Human Rights also points out the problem of mistrust towards the agency in his 2022 report.⁵⁷²

According to the Public Defender's assessment, distrust is caused, among other things, by the activity and mandate of the State Agency for Religious Affairs. Beyond the advisory function, the agency is sometimes directly involved in the process of solving and managing financial and property issues of religious associations.⁵⁷³ Particular dissatisfaction is caused by the current mandate and activities of the agency, which contain high risks of state control of religious organizations and interference in their internal affairs.⁵⁷⁴ Some religious organizations believe that the agency's mandate does not fully reflect the challenges in the country in terms of the protection of religious freedom, equality, and secularism.⁵⁷⁵

Based on the above, the effectiveness of the State Agency for Religious Affairs and the expediency of its existence raise questions, and that is why the Public Defender has for many years indicated the need for changes in the activities and mandate of the State Agency for Religious Affairs through consultations with the State, the Public Defender's Council of Religions and non-governmental organizations.

Proposal to the Parliament of Georgia:

- Similar to the Georgian Orthodox Church, in order to ensure the possibility of acquisition and exchange of state property by other religious associations, amendments should be made to the 1st, 2nd, 5th and 6th paragraphs of Article 3 of the Law of Georgia "On State Property";
- To ensure the possibility of religious and cult buildings owned by the state, their ruins, as well as the plots of land on which they are located, to be acquired through privatization by religious associations, amendments should be made to Article 4, Clause 1, Sub-Clause "M" of the Law of

⁵⁶⁹ The European Commission against Racism and Intolerance (ECRI), Report on Georgia (fifth monitoring cycle), CRI(2016)2, received Dec. 8th, 2015, published March 1st, 2016, par.. 97-103. Available at: < <https://bit.ly/3dMpuyp> > [last viewed 27.02.2021].

⁵⁷⁰ ECRI, Conclusions on the implementation of the recommendations in respect of Georgia, Subject to interim follow-up, CRI(2019)4, Accepted 5 December 2018, Published 5 March 2019, Available from: < <https://bit.ly/3pEaBjR> > [last viewed: 27.02.2021].

⁵⁷¹ Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), Third Opinion on Georgia, ACFC/OP/III(2019)002, Received on March 7, 2019, para. 83. available: < <https://bit.ly/2MttTuY> > [last viewed: 27.02.2021].

⁵⁷² Follow-up report on the visit of the Council of Europe Commissioner for Human Rights, Dunia Mijatović, to Georgia on 21-24 February 2022, CommDH(2022)17, para. 55, 2022. Available at: < <http://bit.ly/3D0qOU9> > [last viewed: 22.02.2023].

⁵⁷³ Recommendations of the Council of Religions under the Public Defender of Georgia, 2020, p. 27-28. is available at: < <https://bit.ly/3ux6lRr> > [last viewed: 27.02.2021].

⁵⁷⁴ Human Rights Education and Monitoring Center (EMC), Religion, Politics and Social Contexts - Collection of Studies, Reports and Articles, 2020, p. 87, is available: < <https://bit.ly/3l0dT4R> > [last viewed: 09.03.2023].

⁵⁷⁵ Institute of Tolerance and Diversity (TDI), joint statement of the Council of Religions and non-governmental organizations under the Public Defender regarding the State Agency for Religious Affairs, 05.05.2014, available at:< <bit.ly/3XRZSUS> > [last viewed: 31.01.2023].

Georgia "On State Property";

- An alternative legislative provision should be written in the Labor Code of Georgia, allow the non-Orthodox population the opportunity to have a guaranteed rest during their religious holiday if they wish.
- With the participation of the Public Defender's Council of Religions and non-governmental organizations, a law on restitution should be developed, which would determine the rules, criteria, responsible agencies, and deadlines for the return of property confiscated from religious associations during the Soviet period to the historical owner.

Recommendations to the Government of Georgia:

- To register the amount of damage and confiscated property caused by the Soviet regime to the religious associations in the territory of Georgia.
- Amend the Resolution No. 117 of the Government of Georgia of January 27, 2014, and, along with the four religious associations, other religious associations should also be given appropriate compensation for the damage;
- In consultation with the Public Defender's Council of Religions and non-governmental organizations, develop a tax system for financing religious associations, which will respond to the requirements of equality and neutrality of the state.
- Through consultations with the Public Defender's Council of Religions and non-governmental organizations, discuss the need for changes in the activities and mandate of the State Agency for Religious Affairs.

To the Minister of Justice

- When preparing food in penitentiary institutions, the needs of representatives of different religious denominations are to be taken into consideration.

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- "On approval of the procedure for the production of inpatient medical documentation in medical institutions" to amend the Annex No. 9 of the Order No. 108/N of the Minister of Labor, Health and Social Protection of Georgia dated March 19, 2009, as a result of which the patient will be allowed to refuse blood transfusion, along with giving informed consent for pain relief;
- For the medical institutions operating in Georgia, to develop guidelines regarding the admission and instructions for the use of those methods/medications that can replace the blood transfusion procedure.

To the Minister of Internal Affairs of Georgia

- In the presence of an alleged discriminatory motive, in each specific case, consider the question of qualification of the action as a less serious criminal offense (for example, Article 142 of the Criminal Code of Georgia - violation of equality).

13. The Right to Equality

13.1. Introduction

The year 2022 was not remarkable in terms of improving the state of equality in Georgia.⁵⁷⁶ In terms of improvement, it was not outstanding. Despite the European Committee's call to ensure the equality of vulnerable groups, among other demands, the state has not taken effective steps to improve the equality policy.

For years, the Public Defender of Georgia called on the state to create a unified policy document that would contribute to the achievement of equality. However, unlike other social groups, LGBT+ people are not mentioned at all in the 2022-2030 National Strategy for Human Rights Protection submitted by the Government of Georgia to the Parliament of Georgia, which is not a single document.

Another document in which LGBT+ people are not mentioned is the "State Concept of Georgia on Gender Equality" approved by the Parliament of Georgia.⁵⁷⁷ During the 2006 revision of the concept, there was an expectation that its content would be more progressive and oriented on human rights. However, the content of the new version of the concept hurts the state of gender equality in the country, as its goal is narrowed to the gender equality of women and men, and LGBT+ people are left outside the document.

Politicians did not make statements supporting equality during this reporting period either. On the contrary, discriminatory expressions were heard quite often. For example, politicians used several discriminatory expressions against journalists and other persons.⁵⁷⁸

In 2022, women, people with disabilities, LGBT+ people, and representatives of ethnic and religious minorities faced many challenges again.⁵⁷⁹ In the same reporting period, the situation of equality in the fields of media and culture was problematic.⁵⁸⁰

In 2022, the Public Defender studied 153 facts of alleged discrimination, most of which - 20% were related to cases of alleged discrimination based on different opinions. 13-13% of the applicants pointed to facts of discrimination based on **sex/gender and disability**. Based on **sexual orientation and gender identity** - 11% and 10% of applicants disputed discrimination based on **ethnic origin**.⁵⁸¹

⁵⁷⁶ For detailed information, see the 2022 report of the Public Defender of Georgia on the fight against discrimination, its prevention and the state of equality.

⁵⁷⁷ Resolution of the Parliament of Georgia on the approval of the "State Concept of Gender Equality of Georgia", 22.12.2022, available: < <https://rb.gy/vbn7n5> > [last viewed: 28.03.2023].

⁵⁷⁸ See 13.4 of the 2022 parliamentary report of the Public Defender of Georgia. Subchapter.

⁵⁷⁹ See the 2022 parliamentary report of the Public Defender of Georgia on the protection of national minorities and civil integration, as well as the chapter on freedom of belief and religion.

⁵⁸⁰ See the chapters of the 2022 report of the Public Defender of Georgia on the right to freedom of expression, as well as the right to protect cultural heritage.

⁵⁸¹ Additionally, the protected sign of nationality/citizenship appeared in 7%, and political opinion in 4% of statements. Alleged discrimination due to religion and professional union membership was detected in 2-2% of the cases. Disputes about discriminatory treatment based on other characteristics were also relevant in this reporting period and made up 18% of statements.

13.2. Equality of Women

During the reporting period, women actively appealed to the Public Defender about sexual harassment. The appeals were mainly related to the facts that happened at the place of employment. During the same period, the Public Defender monitored the process of studying several cases of sexual harassment in public places by the Ministry of Internal Affairs of Georgia.⁵⁸²

Taking into account last year's practice, in most cases, the harasser is the supervisor, however, sometimes employees are harassed by persons of the same rank or lower position. In the current reporting period, the Public Defender identified three cases of sexual harassment by the supervisor against a female subordinate, out of which, in two cases, the victims had to end the employment relationship and leave the job.

As for sexual harassment in a public place, during the reporting period, the public defender studied two such cases. In both cases, as part of an effective response to the harassers, violation protocols were drawn up and the case was sent to the relevant courts for further consideration.

In addition, it became clear that in the reporting year, the players who competed in women's football clubs still could not benefit from health insurance and were not reimbursed for the costs of procedures and medicinal drugs necessary for the treatment of injuries received, which creates risks of causing irreversible damage to their health and professional activity. A similar problem emerged in the field of volleyball, where the treatment of injuries of volleyball players, including the national team, is tied to limited financial resources.⁵⁸³ The Public Defender points to the obligation of sports federations to aim and act to attract investments in the development of women's sports and to actively promote gender equality.⁵⁸⁴

In terms of the equality of women athletes, the issue of setting different prize money for men/boys and women/girls who win in the same category in the field of chess was highlighted as problematic. In particular, within the framework of one of the open tournaments in which women and men participated together, cash prizes were divided according to gender - in the case of first place, a male chess player would receive 1700 GEL, and a woman - 900 GEL.⁵⁸⁵ It was about such treatment that one of the female chess players participating in the tournament spread the information.⁵⁸⁶

13.3. Persons with Disabilities

For years, the Public Defender's reports have focused on the practice of systematic discrimination against

⁵⁸² Decisions of the Public Defender of Georgia on the determination of sexual harassment are available: < <https://rb.gy/hnnb5j> > [last viewed: 28.03.2023].

⁵⁸³ Letter No. 1/254/22 of the National Volleyball Federation of Georgia dated December 20, 2022.

⁵⁸⁴ "Fighting for a level playing field - eliminating discrimination against women in the world of sport", Council of Europe, p. 1.

⁵⁸⁵ Information available at: < <https://bit.ly/3loQl2S> > [last viewed: 28.03.2023].

⁵⁸⁶ Information available at < <https://bit.ly/3ib7aUa> > [last viewed :28.03.2023].

disabled people caused by the continued use of the medical model.⁵⁸⁷ It should be noted that the Public Defender has repeatedly called on the Government of Georgia to replace the medical model of granting disability status with a biopsychosocial model as soon as possible, and to take into account the medical model and take into account the individual needs⁵⁸⁸, of disabled people when planning health care programs.⁵⁸⁹

In 2022, the neglect of the individual needs of persons with disabilities was revealed during a medical and social examination,⁵⁹⁰ as well as when receiving notary services.⁵⁹¹

For example, when receiving notary services, a blind person could not verify the authenticity of a signature (facsimile), as the notary refused to use pre-cut letters (stencil) and required him to sign with his hand. The applicant disputed the compliance of the order of the Minister of Justice⁵⁹² with the standards established by the UN Convention regarding the procedure for performing notarial acts. As part of the proceedings, it became known to the Office of the Public Defender that work is underway on the project of changes to be made in the mentioned order, in which the needs of blind people will be taken into account.

During the reporting period, it was still problematic for a person using a wheelchair to enter JSC "Liberty Bank" and use the social card. According to the practice of the Public Defender, those wishing to attend the cultural event held at Niko Dadiani's palace also faced a problem with access to the physical Environment in Zugdidi.

In 2022, it was still difficult for children with disabilities to enjoy the right to receive education adapted to their individual needs at preschool age. For example, according to one of the cases considered by the court, in which the public defender presented the opinion of a friend of the court (Amicus Curiae),⁵⁹³ the educational institution recommended the child's mother hire a special needs teacher for the child herself

⁵⁸⁷ Parliamentary report of the Public Defender of Georgia "On the state of protection of human rights and freedoms in Georgia" (2021), p. 191, available at: < <https://bit.ly/3G7HxLS> > [last viewed 28.03.2023]; Special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality" (2021), p. 19, is available: < <https://bit.ly/3CiBKIG> > [last viewed 28.03.2023]. 2017 Parliamentary Report of the Public Defender "On the State of Protection of Human Rights and Freedoms in Georgia", p. 33, available at: < <https://bit.ly/3CIQOPk> > [last viewed: 28.03.2023]. 2016 Parliamentary Report of the Public Defender "On the State of Protection of Human Rights and Freedoms in Georgia", p. 663-78, available at: < <https://bit.ly/3loY4xU> > [last viewed 28.03.2023].

⁵⁸⁸ The biopsychosocial model of evaluation implies that determining the status of a person with disabilities and granting them a social benefit (material or non-material) should be based not only on the diagnosis made as a result of medical examination, but also on the individual assessment of the individual needs and environmental factors of a particular person.

⁵⁸⁹ Special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality" (2021), p. 71, available at: < <https://bit.ly/3CiBKIG> > [last viewed: 28.03.2023].

⁵⁹⁰ The general proposal of the Public Defender of Georgia dated October 25, 2022 to the Minister of Labor Health and Social Protection of IDPs from the occupied territories of Georgia is available: < <https://bit.ly/3CmThcw> > [last viewed: 28.03.2023].

⁵⁹¹ The general proposal of the Public Defender of Georgia dated October 25, 2022 to the Chairman of the Board of the Chamber of Notaries of Georgia is available: < <https://bit.ly/3loZtoa> > [last viewed: 28.03.2023].

⁵⁹² Order No. 71 of the Minister of Justice of Georgia dated March 31, 2010 on the approval of the instruction "On the procedure for the performance of notarial acts" is available at: < <https://bit.ly/3lvKets> > [last viewed: 28.03.2023].

⁵⁹³ The opinion of the friend of the court of the Public Defender of Georgia of October 25, 2022, regarding the principle of reasonable accommodation to the judge of the civil affairs panel of the Tbilisi City Court. Available at: < <https://bit.ly/3Cysl9X> > [last viewed: 28.03.2023].

during the education process.⁵⁹⁴

13.4. Equality of LGBT+ People

The European Court of Human Rights, by its decision on December 1, 2022, called on the government of Georgia to introduce fast, transparent, and accessible procedures for changing the gender marker in the identity document, which would be used by transgender people without hindrance. The Public Defender, who has been pointing out the need for this regulation for years, also applied to the European Court for third-party intervention within the above-mentioned case.⁵⁹⁵

As for the national level, there is no human rights improvement. For LGBT+ people, it was also a significant challenge during this reporting period to deal with homophobic, biphobic, and transphobic attitudes in society, including the encouragement of such rhetoric by politicians.⁵⁹⁶ The situation is aggravated by the fact that, as mentioned, the state policy documents developed for the protection of Human rights – the national strategy for the protection of human rights and the state concept of gender equality, are not only ineffective in the direction of the protection of LGBT+ people, but this group is not even mentioned in them.

The practice of the Public Defender reveals⁵⁹⁷, that LGBT+ people are often the victims of alleged hate crimes.⁵⁹⁸ It is also a problem that in some cases when the law enforcement agency considers that there are no signs of crime, the fact qualifies as an administrative offense. However, since administrative legislation does not recognize discriminatory motive as an aggravating circumstance, it does not appear that the victim was harmed on a discriminatory basis. The Public Defender points out that due to the seriousness and severity of illegal actions caused by discriminatory attitudes toward a democratic society, it is important, in the presence of an alleged discriminatory motive, in each specific case, for the law enforcement agency to consider the action as at least a less serious criminal offense (for example, Article 142 of the Criminal Code Article - Violation of equality) also on the qualification issue.

Regarding the enjoyment of freedoms of expression and assembly by LGBT+ people, compared to 2021,

⁵⁹⁴ In the opinion submitted to the court, the Public Defender reviewed the existing approaches to access inclusive education for children with disabilities, including the standards established by the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Committee on the Rights of Persons with Disabilities. Also, the document focused on the importance of using reasonable accommodation and its elements.

⁵⁹⁵ A.D. and Others v. Georgia, No. 57864/17, 79087/17 and 55353/19, European Court of Human Rights, available at: < <https://rb.gy/0mov1f> > [last viewed: 28.03.2023].

⁵⁹⁶ radiotavisupleba.ge, 1) The statement of the Vice Speaker of the Parliament of Georgia, Gia Volski, 30.05.2022. available at: < <https://bit.ly/3ZsZ3Dj> > [last viewed: 13.12.2022]; 2) metronome.ge/Statements of Vakhtang Megrelishvili and Iago Khvichia, members of the Parliament of Georgia and political party "Girchi", 30.06.2022/22.09.2022 Available at: < <https://bit.ly/3IEPmvH> > [last viewed 28.03.2023]; < <https://bit.ly/3ID5Xjs> > [last viewed: 13.12.2022]; 3) publika.ge, Statement of the chairman of "Labor Party", Shalva Natelashvili, 03.07.2022. Available at: < <https://bit.ly/3k9SDZA> > [last seen: 13.12.2022].

⁵⁹⁷ 2021 special report of the Public Defender on the fight against discrimination, its prevention and the state of equality, p. 62-64. Available at: < <https://bit.ly/3CIBKIG> > [last viewed 28.03.2023]; 2020 special report of the Public Defender on the fight against discrimination, its prevention and the state of equality, p. 49-51. is available: < <https://bit.ly/3QlhiX9> > [last viewed: 28.03.2023]. Special report of the Public Defender of Georgia "Positive obligations of law enforcement officers in terms of protecting the equality of vulnerable groups", 2021.

⁵⁹⁸ 2021 Consolidated Intolerance Crime Statistics Report, 2021, p. 3.

Pride Week in 2022 was held in a much safer environment and with fewer obstacles, although this was largely indoors/on private property instead of the public spaces of the events planned by the organizers. "Tbilisi Pride's" refusal to effectively use the freedom of assembly in public space was due to the experience of July 5-6, 2021, when the law enforcement officers did not use positive measures against the violent actions committed by radical violent groups, and on the facts of the organization of group violence and public calls for violent actions, the investigation and criminal prosecution have not started yet.⁵⁹⁹

It should be noted that in 2022, even though the threats of the leaders of the ultra-nationalist and pro-Russian party, "Conservative Movement - Alt-Info" before the "Pride" week, were intense and real, the Ministry of Internal Affairs of Georgia started an investigation only after the leaders of the violent groups and the supporters, during the week of July 2, 2022, gathered in the vicinity of the festival and confronted the mobilized police officers on the spot.⁶⁰⁰

In addition to the above, on May 31, 2022, about 20 unidentified persons attacked five transgender women at their home with bricks and stones. The assailants verbally abused the transgender women, as well as the elderly homeowner, on transphobic grounds and threatened to take their lives.⁶⁰¹ According to reports, the representatives of the patrol police, who arrived at the scene of the incident, chased the attackers away from the scene of the incident, but did not immediately arrest them. Nor were the investigative actions carried out immediately (survey, inspection of the accident site, etc.). Investigative activities were planned only after media coverage of the case and the involvement of human rights defenders.

13.5. Encouragement of Discrimination

The spread of discriminatory statements by political officials or other public persons also took place in 2022, which does not contribute to the establishment of a culture of equality in the country.

During the reporting period, the fact of encouraging discrimination based on sexual orientation and gender identity on the part of the Deputy Speaker of the Parliament was problematic, with which he responded to the EU Ambassador's statement and stated that on July 5, nothing "happened that does not happen in the European space".⁶⁰² LGBT+ people were presented in a negative context by the member⁶⁰³ of the political party "Girchi" and by the chairman of the "Labor Party".⁶⁰⁴ The homophobic

⁵⁹⁹ In connection with this issue, the Public Defender has submitted a proposal to the Prosecutor's Office of Georgia with the request to initiate criminal prosecution against Zurab Makharadze and Spiridon Tskifurishvili. Available at: < <https://bit.ly/3Qb6VoN> > [last viewed: 28.03.2023].

⁶⁰⁰ Radio Liberty, "The Ministry of Internal Affairs arrested 26 people, including leaders, at the "Alt-Info" rally." 02.07.2022 [last viewed: 11.12.2022]. available at: < <https://bit.ly/3Cw6Gz9> > [last viewed: 28.03.2023].

⁶⁰¹ Civil.ge, "Transgender women were allegedly attacked in their home" 30/05/2022. Available at: < <https://bit.ly/3GpENd5> > [last viewed: 11.12.2022].

⁶⁰² In addition see < <https://cutt.ly/sMnJh6s> > [last viewed: 28.03.2023].

⁶⁰³ "When you say that you are a representative of the LGBT community, naturally there is a feeling that you are not an ordinary person, but that you are demanding to walk on Rustaveli wearing leather "panties" and that you are fighting for this right. In fact, for people who are ordinary people and have a different orientation, it's more of a problem than a help." See. < <https://cutt.ly/VMnNjyl> > [last viewed 28.03.2023].

⁶⁰⁴ Shalva Natelashvili responded to the visit of Damon Wilson, the president of the National Endowment for Democracy Foundation,

and encouraging discrimination term was also used by the chairman of the government of the Autonomous Republic of Ajara when he made a discriminatory assessment of the ongoing European integration protests in the country.⁶⁰⁵

One incident was related to the public speech of a member of the Parliament – Mariam Lashkhi, which was followed by insulting comments towards her.⁶⁰⁶ At the same time, the Minister of Culture and Sports Thea Tsulukiani pointed out that she, as a female minister, has many problems with the male representatives of sports federations.⁶⁰⁷ Also, a critical emphasis was made on the social network on the attire of the President of Georgia, Salome Zurbashvili. Expert Gia Khukhashvili made an insulting statement about the President of Georgia, Salome Zurbashvili, on the social network.⁶⁰⁸

During the reporting period, the screen spread on the Facebook page of Nato Gogelia, a journalist of "TV Pirveli" was also noteworthy, which proves that the deputy chairman of "Georgian Dream" of Ozurgeti Municipality writes offensive and sexist comments to a woman.⁶⁰⁹ One of the "Facebook" users, who is employed at the West Georgia Interventional Medicine Center, shared a post full of contempt and hatred towards overweight women.

It is alarming to spread offensive/unethical/discriminatory opinions in public space.⁶¹⁰

In the current reporting year, the Public Defender discussed the case of the civil activist Samira Bairamova, which was related to the incidents that happened on July 2, 2022 in Marneuli within the framework of the "Home to Europe" information campaign. The employees of the Marneuli Municipality City Hall and the secretary of the Marneuli "Altinfo" office, verbally insulted Samira Bairamova, attempted to physically retaliate, and tried to prevent the peaceful assembly.⁶¹¹

to Georgia on his Facebook page: "I am pleased to announce that Damon Wilson, the president of the National Endowment for Democracy Foundation, came from Washington to participate in the Pride events these days and to meet with the opposition sitting motionless in the parliament. *According to Wikipedia, this gentleman even recently got married, which is belated, but congratulations anyway. However, if the high-ranking guest, in addition to talking about painful issues with the honorable Pride and the leaders of the parliamentary opposition, had focused on the problems related to the ban and persecution of the Labor Party, it would not have detracted from his highly effective mission.*" See. < <https://cutt.ly/MMnXnzO> > [last viewed: 28.03.2023].

⁶⁰⁵ "I don't think it is the will of the Georgian people of the dream of our ancestors to hand over the power to the shadow cabinet of liberals". see. < <https://cutt.ly/pMnLjiq> > [last viewed: 28.03.2023].

⁶⁰⁶ See. < <https://cutt.ly/RMmzv0h> > [last viewed: 28.03.2023].

⁶⁰⁷ See. < <https://cutt.ly/f4E5ZF1> > [last viewed :28.03.2023].

⁶⁰⁸ "Salome Zurbashvili is like a woman who flirts with every man, but remains loyal to her abusive husband...". See. < <https://cutt.ly/C1lfpV> > [last viewed: 28.03.2023].

⁶⁰⁹ "Is seems like you don't have a man at home to shut you up, you rude..." See. < <https://cutt.ly/dMSEEEY> > [last viewed: 28.03.2023].

⁶¹⁰ Note: Natalya Babukhadia, later deleted the post: "If you have noticed, some people, mostly women, fat (and not overweight, in one word and concisely) seem to speak childishly and gently (of course artificially), but you know exactly, they ate a whole cow an hour earlier. *It's as if to compensate for the primal tenderness that they lost so little by eating. It almost sounds like a hippo meowing with a kitten's voice. Don't start with me on the hate speech etc. Being overweight is a shame. My teacher and senior colleague liked to say when he would see a fat person, if a person does not know how much he should eat, what would he know about someone else. The new year is coming and that reminded me.*"

⁶¹¹ See: < <https://cutt.ly/9MmpfVy> > [last viewed: 28.03.2023].

Proposal

To The Parliament of Georgia:

- Discuss the introduction of such changes to the "State Concept of Gender Equality of Georgia" for the concept, of gender equality, including the equality of LGBT+ people.

Recommendation

To The Minister of Internal Affairs of Georgia:

- In each specific case, in the presence of an alleged discriminatory motive, consider the issue of qualification of the violation as a less serious criminal offense (for example, Article 142 of the Criminal Code of Georgia - violation of equality).

14. Gender Equality

14.1. Introduction

Despite the positive steps taken over the years in legislative regulation and practice, achieving gender equality in Georgia remains a challenge. In 2022, the rate of violence against women and domestic violence remained high, and the spread of harmful practices, and the effective implementation of sexual and reproductive health rights remain a problem.

In 2022, significant changes were made at the legislative level, which will positively affect the achievement of gender equality. Among them, the validity period of gender quotas was extended until 2032. The rule for determining and issuing the amount of compensation to victims of violence against women and/or domestic violence was approved and put into effect. As a result of the changes implemented at the legislative level, it became possible to provide free legal services to some victims of domestic violence in criminal cases.

Additionally, as of March 2023, the "national referral procedures for identification, protection, assistance and rehabilitation of victims of violence against women and/or domestic violence" have not been approved". Accordingly, coordinated work and effective response among agencies in the direction of violence against women and domestic violence remains a challenge. Gender Equality Thematic Action Plans were belatedly approved.⁶¹² In the state concept of gender equality approved by the Parliament of Georgia, in addition to issues of LGBTQ+ persons, such important issues as femicide, and sex education, definitions of terms related to gender are not found.

14.2. Women's political participation and gender mainstreaming

According to the 2022 Global Index⁶¹³ of Gender Inequality, an indicator of women's political empowerment, Georgia moved from 60th to 57th out of 146 countries, which is an indicator of slow progress. According to the data of the Inter-Parliamentary Union,⁶¹⁴ among 187 countries, Georgia, with 28 women in the parliament, moved from the 120th to the 121st place⁶¹⁵

According to the indicator of 2022, the number of professional civil servant women employed at the level of the executive authority is high,⁶¹⁶ although the statistics are different according to the agencies. For example, 38% of employees in decision-making positions in the Ministry of Defense of Georgia are women.⁶¹⁷ While the number of women in decision-making positions in the police units of the Ministry of Internal Affairs of Georgia (3.7%) is critically low.

It is noteworthy that the validity period of gender quotas in the elections of the parliament and local self-governments has been extended until 2032.⁶¹⁸ However, equal participation of women in political life remains

⁶¹² The 2022-2024 national action plan for the implementation of the UN Security Council resolutions on women, peace and security and the 2022-2024 action plan for the fight against violence against women and domestic violence and for the protection of victims.

⁶¹³ Available at: < <https://cutt.ly/j2fNS1B> > [last viewed: 03.01.2023].

⁶¹⁴ Available at: < <https://cutt.ly/M2fMpTz> > [last viewed: 03.01.2023].

⁶¹⁵ Data as of November 2022.

⁶¹⁶ 54% of I-II rank civil servants employed in ministries, and 67% of III-IV rank civil servants are women. It should be noted that the data does not include the two largest, male-dominated public agencies: The Ministry of Internal Affairs and the Ministry of Defense. Public Service Bureau Letter No. G9927, 30.12.2022.

⁶¹⁷ Letter of the Ministry of Defense of Georgia MOD 4 23 00055988, 18.01.2023.

⁶¹⁸ Also, according to the amendment, if a male member of the parliament's deputy and the municipal council's mandate is terminated before the deadline, the candidate for the next membership in the relevant party list will take his place.

a challenge. According to a study⁶¹⁹ published in 2022, the problem is the absence of an internal party gender policy and a hostile and discriminatory work environment for female politicians. The absence of appropriate mechanisms at the internal party and state levels makes women much more vulnerable.⁶²⁰

In the majority of municipalities, ⁶²¹ the absence of internal mechanisms for the prevention of sexual harassment is problematic.⁶²² Due to the burden of work and care at home, and stereotyped and discriminatory attitudes towards women, it is also problematic for women to be in decision-making positions in some municipalities. Which in most cases is manifested in the employment of women in low-ranking positions⁶²³ and their performance of technical work only.

Women's participation in local self-government meetings is a problem, especially for women with disabilities and ethnic minorities. In addition, the results of the research⁶²⁴ conducted by the Office of the Public Defender of Georgia revealed that limited access to transport and their low awareness of the right to participate in the decision-making process creates a barrier for women to participate in meetings and events.

14.3. Women's Economic Participation and Labor Rights

According to the 2022 "Global Index of Gender Inequality"⁶²⁵ Georgia moved from 64th to 72nd place among 146 countries with the indicator of economic participation and opportunities of 625 women. The main barriers to women's economic empowerment in terms of economic empowerment are the paucity of employment promotion measures in the country, women's unequal family work and burden of care, the language barrier, women's professional training, and the lack of childcare services.⁶²⁶ According to which Georgia moved from 115th place to 119th place.⁶²⁷

It should be noted that in 2022, the Civil Code of Georgia was amended⁶²⁸ and the status of single parents was expanded.⁶²⁹ Which, in turn, raises the possibility of increased access to government services by single mothers.⁶³⁰

In 2022, the percentage of women entrepreneurs in the projects included in the grant program, "Enterprise Georgia"⁶³¹ micro and small entrepreneurship promotion program, increased.⁶³² However, equal

⁶¹⁹ The survey was developed by the National Democratic Institute; is available at: <<https://cutt.ly/z2gmNzi>> [last viewed: 03.01.2023].

⁶²⁰ Prevention mechanisms of sexual harassment, dissemination of personal information, sexism, cyberbullying, etc.

⁶²¹ It is worth noting that some municipalities (Kutaisi, Van, Gardabani, Gori) pointed to the general records of the code of conduct/ethics and bylaws.

⁶²² Research of the Office of the Public Defender of Georgia "Evaluation of Gender Equality Policy of Municipalities" 2022.

⁶²³ According to the research, there are positions in municipalities where practically only women are exclusively employed, for example, in the reception and case management departments.

⁶²⁴ Research of the Office of the Public Defender of Georgia "Evaluation of Gender Equality Policy of Municipalities" 2022.

⁶²⁵ is available at: <<https://cutt.ly/j2fNS1B>> [last viewed: 03.01.2023].

⁶²⁶ Meetings held with women by the Office of the Public Defender of Georgia.

⁶²⁷ According to the same source, the estimated annual income of a man is twice that of a woman and amounts to 18.92 (thousand) US dollars, while women earn an average of 9.46 (thousand) US dollars.

⁶²⁸ is available at: <<https://cutt.ly/s2A2uaC>> [last viewed: 11.01.2023].

⁶²⁹ The following was added to the list: a person whose minor child's second parent (mother or father) is dead or missing; and a person whose minor child's second parent (mother or father) has been deprived of all parental rights and duties.

⁶³⁰ In 2022, 1,746 persons were granted single parent status in Georgia, of which 1,705 were single mothers, and 41 were single fathers. Letter №01/6539; 11.01.2023 from the Ministry of Justice.

⁶³¹ Letter No. EG-3.1/17 of "Produce in Georgia" legal entity under public law; 12.01.2023.

⁶³² In 2018, this indicator reached 45%. In 2020, this figure was 48.5%, and in 2021 - 48.7%. In 2022, this indicator increased to 50.3%.

participation of women in the fields of innovation and technology remains a significant challenge.⁶³³ According to the 2022 Global Index of Gender Inequality, the participation rate of girls in ⁶³⁴ STEM programs is almost twice as low (girls 38.68%, boys - 61.32%).

The share of time spent by women on unpaid care and family activities is high, which amounts to 17.8 percent and is 4.8 times higher than the corresponding indicator of men (3.7%).⁶³⁵ The statistics on the use of paid leave by men in the public service for childcare or adoption is still low – only 5 cases in 2022.⁶³⁶ Economic participation is particularly problematic for rural, disabled, displaced and conflict-affected women. This is confirmed by the research conducted by the Public Defender, according to which the majority of them, both on working and non-working days, travel only in connection with work and care at home. The data is alarming, according to which the mobility of women to get an education is extremely low in all regions.⁶³⁷

14.4. Women, Peace and Security

The issue of peace and security in the country is still relevant. It should be noted that the 2022-2024 national action plan for the implementation of the UN Security Council resolutions on women, peace and security was approved late.⁶³⁸

It is welcome that various training courses of the Ministry of Defense have introduced issues of peace and security, including sexual, gender-based violence, and sexual harassment. Also, various documents related to gender have been developed in the office.⁶³⁹ Similar to the Ministry of Defense, the Ministry of Internal Affairs of Georgia is retraining its employees, although the gender equality strategy document in the agency has not yet been approved.⁶⁴⁰ Unfortunately, the rate of female servicewomen in the Georgian Defense Forces is still critically low and is only 7%. The development of the initial working version of the "Georgian State Strategy for De-occupation and Peaceful Conflict Resolution" in 2022 should be evaluated positively.⁶⁴¹

In 2022, only one round of international negotiations was held in Geneva, where special attention was paid to the frequent cases of illegal detention of women in the recent period. Only 2 members of the meeting delegation were women (20%).

UN Security Council resolutions call on countries to ensure the effective participation of women and youth in decision-making processes on peace and security issues. However, in the reporting period, the problem of IDP women's awareness and participation in the decision-making process is still evident. It is also problematic for displaced women to be aware of the issues of protection of women's rights, and programs aimed at women's empowerment and support, which significantly hinders their empowerment and

⁶³³ UN Women's research "Involvement of women in the information and communication technology sector in Georgia".

⁶³⁴ is available at: < <https://cutt.ly/j2fNS1B> > [last viewed: 03.01.2023].

⁶³⁵ The Time Use Survey is available at: < <https://cutt.ly/G2bdKBn> > [last viewed: 06.01.2023].

⁶³⁶ In public service, in 2022, 127 women and 5 men took paid leave due to pregnancy and childbirth, childcare or adoption of a newborn, letter of the Public Service Bureau No. g9927; 30.12.2022.

⁶³⁷ Out of 47 objects included in the research, IDP women living in only two settlements (Tserovani and Zemoetseri) named their own education as one of the goals of daily mobility.

⁶³⁸ The action plan was approved by the Government of Georgia by Resolution No. 510 on October 26, 2022.

⁶³⁹ Is available at: < <https://mod.gov.ge/ge/page/50/genderi> > [last viewed: 23.03.2023].

⁶⁴⁰ Letter of the Ministry of Internal Affairs of Georgia MIA 4 23 00438973; 15.02.2023.

⁶⁴¹ Letter of the Ministry of Foreign Affairs No. 01/1432; 17.01.2023; The extremely acute security situation created in the region as a result of the large-scale military aggression carried out by Russia in Ukraine put on the agenda the need to extend the period of work on the document in order to adequately reflect the changing context.

involvement in the decision-making process.⁶⁴²

14.5. Women's sexual and reproductive health and rights

One of the major challenges, especially for women living in rural parts of the country, is access to sexual and reproductive health services. As a result of information meetings held by the Office of the Public Defender with women living in the region, it is clear that due to the absence of maternity and/or gynecological departments in some municipalities, women have to travel to other municipalities to receive services.⁶⁴³

Stereotypical attitudes related to receiving services are still an acute problem, especially for women who are not in a civil marriage, which is why they refrain from medical consultation.⁶⁴⁴ Misinformation of women about access to abortion services is still problematic.⁶⁴⁵ In fact, there are no accessible sexual and reproductive health services for women with disabilities in clinics, including an adapted gynecological chair, which creates insurmountable barriers to receiving services for representatives of this group.

Expanding the age group for vaccination against papilloma virus (HPV) for the prevention of uterine cancer should be evaluated positively. As of today, this service is free for the age group of 10-26 years.

Unfortunately, the rule approved by the State Maternal and Child Health Program⁶⁴⁶ does not provide for an exceptional opportunity to apply for antenatal care services after the 13th week, which limits the Access of pregnant women to such services.⁶⁴⁷ Such a rigid restriction, on the one hand, increases health risks, and on the other hand, pregnant women lose the opportunity to fully benefit from the state program. In addition, the postnatal service still does not include the services of a psychologist.

Timely access to abortion services for victims of sexual violence is problematic.⁶⁴⁸ State-imposed requirements significantly limit access to abortion for victims of sexual violence.

14.6. Human Trafficking

According to the 2022 report of the United States Department of State,⁶⁴⁹ Georgia, like the previous year, meets the minimum standards for combating trafficking and is still in the first basket. Nevertheless, the report notes that the representatives of the relevant authorities still lack sufficient knowledge in the direction of the investigation and collection of evidence of financial and organized crimes, as well as online trafficking.

⁶⁴² Research by the Office of the Public Defender of Georgia "Barriers to the Mobility of Persecuted Women and Their Impact on Women's Economic Empowerment". Available at: < <https://bit.ly/3l2s21z> > [last viewed: 13.03.2023].

⁶⁴³ According to the instructions of the members of the Gender Equality Council of Tsalenjikha Municipality, due to the absence of a maternity clinic, one of the locals gave birth on the road, which ended fatally. Research of the Office of the Public Defender of Georgia "Evaluation of Gender Equality Policy of Municipalities" 2022.

⁶⁴⁴ Focus group with women living in Khulo and Akhmeta municipalities.

⁶⁴⁵ Women participating in the informational meeting believed that abortion is prohibited in Georgia. Focus group with women living in Samtredia municipalities.

⁶⁴⁶ 2022 "On Approval of State Programs for Health Protection", the State Program for Maternal and Child Health defined by Resolution No. 4 of the Government of Georgia of January 12, 2022.

⁶⁴⁷ There is no possibility of an exception due to a delay caused by a medical condition, such as a menstrual cycle disorder. Reasons related to age or medical indication, the case of minor pregnancy, when she may not have proper knowledge and information, etc. Case No. 321/22.

⁶⁴⁸ The practice shows that the necessary prerequisite for receiving this service is the passing of a guilty verdict in the case of sexual violence by the court.

⁶⁴⁹ 2022 US State Department report on Georgia; Available < <https://cutt.ly/Z2ljNN0> > [last viewed: 10.01.2023].

In 2022, the permanent group⁶⁵⁰ did not identify any victims of trafficking.⁶⁵¹ The problem of detection of trafficking cases and the low referral rate is also indicated by the small number of people using shelters for victims of human trafficking (trafficking) and the 2022 statistics of trafficking crimes.⁶⁵² According to statistics, 16 cases of possible crime of trafficking were investigated, and criminal prosecution was started for 4 cases. The status of the victim was given to 3 persons and the verdict of guilty was reached against 2 persons.

It should be noted that in 2022, the 2023-2024 action plan for combating human trafficking was developed.⁶⁵³ It is welcome that the new action plan echoes the recommendations of the United States Department of State in terms of increasing the awareness of agencies, crime prevention detection, and effective functioning of existing mechanisms. Nevertheless, the action plan for 2023-2024 still does not envisage the creation of a work permit system for migrants, which would allow them to be employed.⁶⁵⁴

14.7. Violence Against Women and Domestic Violence

In 2022, the rule for determining and issuing the amount of compensation for victims of violence against women and/or domestic violence was approved⁶⁵⁵ and implemented, which is welcoming. However, the terms⁶⁵⁶ and volume⁶⁵⁷ of compensation are problematic, as it does not fully meet the needs of the victims.

In 2022, in response to the recommendation issued by the Public Defender, an important change was made in the Law of Georgia "On Legal Aid", according to which an insolvent victim of family crime will enjoy the right to free legal aid at any stage of the criminal case. However, it is problematic that the possibility of using this right, in criminal cases, only applies to some of the victims of domestic violence, and not to any cases of violence against women.

In addition, the 2022-2024 action plan for the fight against violence against women and domestic violence and measures to protect victims was approved belatedly.⁶⁵⁸ The Action Plan outlines important measures to prevent violence, and protect and assist victims, however, the Action Plan does not consider judges as one of the target groups for awareness raising and professional development.⁶⁵⁹ The stereotypical views used by judges in the legal assessment of the verdict in cases of violence against women and domestic violence

⁶⁵⁰ Standing group created with the inter-agency coordination council implementing measures against human trafficking.

⁶⁵¹ Letter of the Ministry of Justice No. 177; 10.01.2023.

⁶⁵² In particular, in 2022, two men who suffered from the crime of trafficking received services, among them 1 - used the services of the shelter, 1 - the services of the crisis center, letter of the State Care and Assistance Agency for Victims of Trafficking, Victims of Trafficking, Letter No. 1000318 7 22 00717449; 30.12.2022.

⁶⁵³ The plan was approved by the Interagency Coordinating Council implementing measures against human trafficking.

⁶⁵⁴ In this regard, the action plan only provides for the analysis of existing practices and opportunities and the development of recommendations for promoting the employment of victims and victims of trafficking.

⁶⁵⁵ Resolution No. 523 of the Government of Georgia dated November 9, 2022; Available at: <<https://bit.ly/3IIMVNP>> [last viewed: 23.03.2023].

⁶⁵⁶ There is no special rule for cases where the criminal prosecution against the perpetrator has been discontinued due to his conviction or death. Also, compensation will not be issued if the submitted/requested documents do not meet the requirements for issuing compensation under this rule. According to the record, victims do not have an opportunity to correct the error after being referred.

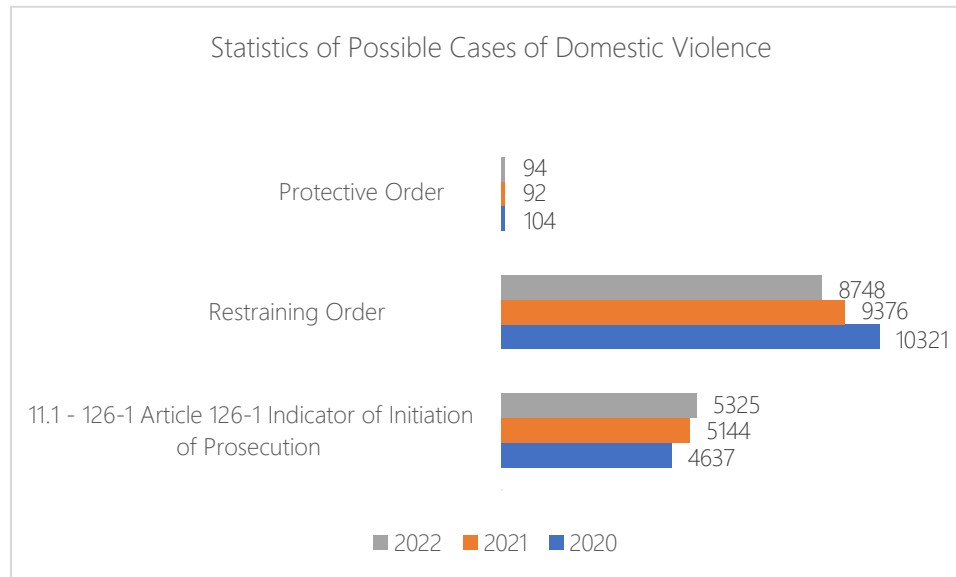
⁶⁵⁷ According to the resolution, the state compensates the damage only in the case when the amount recovered within the framework of forced execution is less than 40% of the amount determined by the court's decision on compensation.

⁶⁵⁸ The action plan is available at: <<https://bit.ly/3Ys6JER>> [last viewed: 23.03.2023].

⁶⁵⁹ In addition, it is important that technical staff employed in shelters and crisis centers for victims of violence undergo trainings on violence against women and domestic violence.

are problematic.⁶⁶⁰ Again, no violent behavior correction programs have been developed for offenders subject to protective orders. And for convicts, this course is still voluntary.

The legislation of Georgia still does not fully comply with the standards stipulated by the Council of Europe Convention on the Prevention and Suppression of Violence against Women and Domestic Violence, which is manifested in the problematic record of rape in the Criminal Code and the lack of the possibility of remote interrogation of the victim or the temporary removal of the plaintiff from the courtroom.



It is noteworthy that according to statistics, the number of cases of murder/attempted murder of women in the current reporting year exceeds the number of cases in previous years.⁶⁶¹ According to the General Prosecutor’s Office of Georgia,⁶⁶² 25 murders of women were detected in 2022, of which 15 cases were committed based on family crime, and 11 cases – based on non-family crime.⁶⁶³ Also, 37 cases,⁶⁶⁴ of attempted murder of women were identified, of which 28 were committed on the grounds of family crime, and 9 cases - on the grounds of non-family crime.

The number of cases where a GPS monitoring system was used along with the issuance of a restraining order is still minimal.⁶⁶⁵ One of the reasons for this may be wrong and stereotyped views in society about

⁶⁶⁰ In criminal law case No. 1/5632-19, the judge notes that since the action taken against T.T. does not reach the degree of psychological suffering, the information about sexual violence provided by him to the investigation is not true. In Criminal Case No. 1/4291-21, the judge questioned the victim's credibility due to her late reporting to law enforcement agencies, going to a birthday party after the alleged abuse, and her verbal and non-verbal communication during the court hearing.

⁶⁶¹ For detailed information, see the chapter on the right to life in the 2022 parliamentary report of the Public Defender of Georgia.

⁶⁶² Among them, the fact of driving 2 women to suicide on the grounds of family crime and 1 fact of deliberate serious damage to health, which led to loss of life.

⁶⁶³ Two persons killed 1 woman, for family and non-family reasons.

⁶⁶⁴ Among them, 17 cases of suicide attempt due to family crime and 2 cases of suicide attempt due to non-family crime.

⁶⁶⁵ In 2022, a total of 16 electronic surveillances were established, of which electronic surveillance was used in 3 cases of violence against women, and in 13 cases - of domestic violence. Letter of the Ministry of Internal Affairs of Georgia MIA 7 23 00373761; 09.02.2023.

such a monitoring mechanism.⁶⁶⁶

In cases of domestic violence, the timely involvement of witnesses and victim coordinators in cases of violence against women and domestic violence and the accurate determination of their activities is critical.⁶⁶⁷

The meeting with witness and victim coordinators reveals that both their busy work schedules and the geographical coverage of domestic violence cases are problematic.⁶⁶⁸

14.8. Marriage at Young Age

The harmful practice of early and childhood marriage remains a significant challenge. According to the information of the Ministry of IDPs, Labor, Health and Social Protection from the occupied territories of Georgia,⁶⁶⁹ in 2022, 815 underage pregnancies were registered, and the number of underage births reached 434. The Ministry of Internal Affairs of Georgia has started an investigation into 171 cases of possible early marriage. In 2022, the number of early marriage cases (400 facts) studied by the State Care and Assistance Agency for Victims of Trafficking and Victims of Trafficking is significantly higher than the number of cases studied in previous years.⁶⁷⁰ In addition, it is still problematic for underage girls to stop receiving education due to early marriage.⁶⁷¹

In the cases studied by the office⁶⁷² it was problematic to start administrative proceedings on facts of possible marriage and/or engagement at an early age. There has been an increase in the number of referrals to the Public Defender's office regarding the possible engagement of minors.⁶⁷³ In the studied cases, the authorities could not identify the alleged forced marriage. They also find it particularly difficult to respond to incidents of child marriage that do not constitute a crime.⁶⁷⁴

⁶⁶⁶ Police officers say that in some cases, women refuse to use the monitoring system because they do not want someone to monitor their movements. Also, the victims are afraid of equipment damage and/or destruction. It should be noted, that during the meeting with the policemen, one of the policemen stated that he was unable to issue the restraining order and send the e-mail. When using supervision, the victims are warned that in case of damage to the item, they are responsible for the item cost. During the meeting with the coordinators of the witness and victim employed by the MIA (10.01.2023), it was mentioned that in the event that the item is damaged, there is no responsibility towards the victim.

⁶⁶⁷ In 2022, the coordinators of the Ministry of Internal Affairs on family crimes provided support to 2,900 persons. And the prosecutor's office coordinators were involved in 1454 cases. For comparison, in 2022, 4,677 possible cases of domestic violence and family crimes were investigated. Letter of the Ministry of Internal Affairs of Georgia MIA 2 23 00373810; 09.02.2023. Letter of the General Prosecutor's Office of Georgia No. 13/2234, 17.01.2023; During the meeting with witness and victim coordinators employed by the Ministry of Internal Affairs, it was said that there are cases when their involvement does not take place immediately after the beginning of the investigation. In addition, witness and victim coordinators employed by the prosecutor's office point out that there are no specified cases when the witness and victim coordinator of the Ministry of Internal Affairs will be involved, and when - the General Prosecutor's Office.

⁶⁶⁸ Witness and victim coordinators working in the regions are generally only able to engage and provide counseling for cases that occur in the center of the region.

⁶⁶⁹ Letter of the Ministry of IDPs from the Occupied Territories of Georgia, Ministry of Labor, Health and Social Protection MOH 3 23 00102285; 31.01.2023.

⁶⁷⁰ LEPL State care and assistance agency for victims of trafficking letter No. 1000318 0 23 00179719, 17.02.2023.

⁶⁷¹ According to the information of the Ministry of Education and Science of Georgia, in 2022, 47 girls and 1 boy stopped receiving education due to marriage. Letter of the Ministry of Education and Science of Georgia MES 3 23 0000031054; 16.01.2023.

⁶⁷² Case №6536/22; 6325/22; 2250/22; 3290/22.

⁶⁷³ Harmful practices of early/childhood marriage in Georgia - current challenges and solutions; Available: <<https://bit.ly/3KW12er>> [last viewed 23.03.2023]. As part of the research, it was revealed that in 2020, the Office of the Public Defender studied 2 cases of alleged engagement of a minor. And 2021-2022 (6 months) - 6 possible cases.

⁶⁷⁴ Which means fully assessing the legal status of the minor and subsequently planning measures in the best interests of the child.

Effective coordination between the relevant agencies was problematic within the scope of the studied cases, as well as the fulfillment of the obligations imposed by the legislation by the entities responsible for the referral. As a result of the lenient practice established for crimes related to marriage at an early age,⁶⁷⁵ conditional sentences were used for the convict, which could not ensure an adequate response to the mentioned crimes.

Proposal to the Parliament of Georgia:

- Develop a legislative package to align sexual violence legislation in line with the Istanbul Convention.
- Amend the law "On Legal Aid", according to which the victims of violence against women will have the right to free legal aid in criminal cases.

Recommendations

To the Government of Georgia:

- To improve the procedure for determining and issuing the amount of compensation to be given to victims of violence against women and/or domestic violence. In particular:
 - Develop a special rule for granting compensation for cases where the criminal prosecution of cases of domestic violence against women is terminated due to the conviction or death of the defendant.
 - The state should compensate for damages even in such cases when the amount recovered within the framework of forced execution is more than 40% of the amount determined by the legally effective decision of the court on compensation of damages.
- Develop violent behavior correction programs for violent offenders against whom a protective order has been issued, make the programs mandatory for convicts.
- To approve the national referral procedures document for identification, protection, assistance and rehabilitation of victims of violence against women and/or domestic violence (national referral mechanism)
- Develop a unified communication strategy to prevent child marriage and related crimes.

To the Minister of Internal Affairs of Georgia

- Conduct awareness-raising meetings regarding the GPS monitoring system; Also, when responding to incidents of domestic violence, provide victims with complete information regarding the GPS monitoring system.

To the Minister of Internal Affairs of Georgia and the Prosecutor General of Georgia:

- A report on the effectiveness of the work of the witness and victim coordinators should be developed and made publicly available every year.
- The issue of the involvement of witness and victim coordinators employed in the General Prosecutor's Office and Ministry of Internal Affairs of Georgia in the criminal justice process and their rights and duties should be written down and separated from each other.

⁶⁷⁵ In all three cases of forced marriage studied by the office within the framework of the research, conditional sentences were used.

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- To develop guidelines for uniform operating procedures to respond to cases of child marriage.
- To develop specific criteria, in case of existence of which it will be possible to register a person as a beneficiary of antenatal care services and receive antenatal care services in the pregnant women and newborn care program after the expiry of the deadline set for the application.
- Integrate postpartum care and psychological support services into the state maternal health program.
- Amend Order No. 01-74/N of the Minister of Labor, Health and Social Protection of Georgia on October 7, 2014, and make it possible for victims of sexual violence to receive abortion services as soon as the investigation begins.

Minister of Education and Science of Georgia:

- To prepare guidelines for school administration staff operating procedures for representatives of the school administration, regarding detection, effective response, and redirection (referral) of cases of child marriage.
- School administration staff, including school principals and teachers, are to be systematically trained on the issues of early marriage, as well as referral procedures and legal obligations for those employed in the education system.

To Local Self-government Bodies:

- Before developing the budget, ensure that research on the legal status of women is conducted at the local level and based on its results, different types of services are developed, taking into account the needs of representatives of all vulnerable groups;
- Ensure adequate access to transport, including non-working days/hours, and take into account the needs of women with special needs when arranging transport-related infrastructure (outdoor lighting, footpaths, rest areas, stops, etc.).

15. Right to the Protection of Cultural Heritage

15.1. Introduction

According to the Constitution of Georgia, caring for cultural heritage protection and cultural development is an integral part of the social state, and⁶⁷⁶ creative freedom and caring for cultural heritage are considered basic human rights.⁶⁷⁷ Thus, the Public Defender was actively monitoring the developments in the field of culture and cultural heritage during the reporting year. The topic of the **Gelati Monastery Complex, a World Cultural Heritage Monument, was particularly noteworthy. Decisions made with discriminatory motives in the field of culture have become acute. Appropriate legal regulations for the protection of cultural heritage have not yet been developed.**⁶⁷⁸ **It is a constant challenge to take into account the interests of cultural heritage protection in spatial planning.**

Unfortunately, we have not received any correspondence from the Ministry of Culture, Sports and Youth of Georgia/LEPL Cultural Heritage Protection Agency regarding the Public Defender's numerous letters⁶⁷⁹, regarding various issues, including the implementation of the recommendations outlined in the Public Defender's parliamentary report of the previous year.⁶⁸⁰ This kind of situation prevents and, in some cases, makes it impossible for the Public Defender's Office to fully investigate the issues.

In the reporting year, it was still problematic to consider the interests of cultural heritage protection in spatial planning in the city of Batumi. In Batumi Boulevard, which is a cultural heritage monument, LLC "Ambassador Batumi" decided to build a multi-story hotel, ignoring public interests.⁶⁸¹ The public defender believes that before developing/approving the development plan for the boulevard, the relevant agencies should at least not allow the implementation of such large-scale projects in order to prevent further aggravation of the situation and irreversible damage. Moreover, Batumi is already facing serious challenges in terms of the protection and preservation of recreational areas, historical features, urban cultural heritage, and individual monuments.

15.2. Discrimination and Challenges in the Field of Culture

The public defender is worried about the problematic environment that has been created in the field of culture recently. In particular, the current events in the field of culture **raise questions among the employees of public law legal entities under the governance of the Ministry of Culture, Sports and Youth of Georgia and civil society regarding the proper provision of labor rights and the principle of equality of employees in the Ministry's system, as well as the attempt to impose censorship.**

⁶⁷⁶ see Clause 6 of Article 5 of the Constitution of Georgia.

⁶⁷⁷ Ibid., Article 20, creative freedom, cultural heritage.

⁶⁷⁸ The Public Defender has been pointing out the need for fundamental legislative changes focused on the proper and effective protection of cultural heritage for many years, see for more details. Parliamentary reports of the Public Defender of Georgia, 2020, p. 330; 2021, p. 248.

⁶⁷⁹ For example, letters from the Office of the Public Defender of Georgia: 02.02.2022, №04-9/1283; 03.02.2022 №04-9/1411; 03.02.2022 №04-9/1412; 16.09.22 №04-15/9388; 13.07.2022 №04-9/7155; 21.02.2022 №04-9/2096. The letters were about the Gelati Monastery complex, Tavkvetula Monastery, St. George church of Tsveri, Shatili towers, the building and exhibits of the National Museum, as well as G. G.'s labor rights.

⁶⁸⁰ Letter of the Office of the Public Defender of Georgia No. 12-5/12237, 08/12/2022.

⁶⁸¹ See more Recommendation of the Public Defender of Georgia, available at: < <http://bit.ly/3SmxxnY> > [last viewed: 27.03.2023].

Among the cases that became the subject of public discussion are: the dismissal of 70 employees from the National Museum of Georgia and the National Agency for Cultural Heritage Protection in March 2021 based on reorganization;⁶⁸² The dismissal of Nana Burchuladze, the chief curator of the medieval direction, Nino Chikhladze, the curator of the New Georgian Art Funds, Nino Khundadze, and the art critic Mako [Maya] Macharashvili from the art museum;⁶⁸³ Dismissal of Gaga Chkheidze, director of the film center;⁶⁸⁴ From June 1, 2022, dismissal of 21 employees (including art historians, archaeologists, elderly scientists employed as expert scientists) from the National Museum;⁶⁸⁵ The appointment of a representative of the Ministry as a member of the jury of Litera literary competition, which the writers participating in the competition assessed as "establishing party control" overwriting.⁶⁸⁶

In the current reporting period, the Public Defender addressed the Minister of Culture, Sports and Youth of Georgia and the members of the directorate of the LEPL Georgian National Museum with a recommendation and a general proposal on the elimination of discrimination based on a different opinion. It became known that the Board of Directors of the National Museum refused funding to 4 applicants, whose project, on behalf of the National Museum, won the fundamental research competition of the Shota Rustaveli Scientific Foundation, because the employees involved in the project repeatedly criticized the decisions of the Minister of Culture and the new administration of the National Museum. At the same time, they were released from the National Museum, which is why they are suing in court.⁶⁸⁷

The public defender, on the issue of preventing and fighting against discrimination, also addressed a general proposal to the Minister of Culture, Sports and Youth of Georgia and requested the implementation of changes in the selection process of artistic directors of professional state drama theaters in order to facilitate making decisions free from discriminatory motives.⁶⁸⁸

The action of the artist Sandro Sulaberidze came to the public's attention, which is related to removing his own work at the exhibition held in the National Gallery and the inscription "Art is alive and independent!" on the wall in its place. According to later reports, the Ministry of Internal Affairs launched an investigation into the incident based on Article 177, Part 2, Sub-paragraph "a" of the Criminal Code, which refers to theft that caused significant damage. Taking into account the fact that, as explained by the director of the museum, it was known at the time of his notification to the law enforcement agency that⁶⁸⁹ the work was taken down by the author himself and the mentioned inscription was made, the

⁶⁸² Information is available at: <<https://civil.ge/ka/archives/469845>> [last viewed: 27.03.2023].

⁶⁸³ Information is available at: <<https://netgazeti.ge/life/586613/>> [last viewed:27.03.2023]; <<https://rb.gy/xdq3we>> [last viewed: 27.03.2023].

⁶⁸⁴ Information is available at:<<https://rb.gy/lnbqso>> [last viewed:27.03.2023]; <<https://rb.gy/ktjiph>> [last viewed:27.03.2023]; <<https://rb.gy/vwmano>> [last viewed:27.03.2023].

⁶⁸⁵ Information is available at:<<https://rb.gy/7319by>> [last viewed:27.03.2023].

⁶⁸⁶ Information is available at:<<https://civil.ge/ka/archives/435314>> [last viewed:27.03.2023].

⁶⁸⁷ The recommendation of the Public Defender of Georgia dated October 26, 2022 to the Minister of Culture, Sports and Youth of Georgia and the members of the Directorate of the National Museum of Georgia is available: <<https://cutt.ly/FMSh85G>> [last viewed: 27.03.2023].

⁶⁸⁸ The general proposal of the Public Defender of Georgia dated October 31, 2022 to the Minister of Culture, Sports and Youth of Georgia is available at: < <https://cutt.ly/FMSne1p> > [last viewed: 27.03.2023].

⁶⁸⁹ see Explanation of the director of the National Gallery: "At the time of writing the statement, we already knew who had taken the

investigation into the fact of theft was started, other participants of the exhibition, representatives of the art field and the public interfered with the artist's free self-expression and It was perceived as interference in creative freedom.⁶⁹⁰ Finally, due to the absence of signs of crime, the criminal case was closed.⁶⁹¹ The Public Defender believes that **such measures by the state, which are perceived as an attempt to interfere with the creative freedom enshrined in the Constitution of Georgia, are dangerous and inadmissible**, since they may in the future have an intimidating effect on the expression of their positions by the representatives of art, without the realization of creative freedom is unthinkable.

15.3. Events developed around Gelati, a world cultural heritage monument

Like the previous year, the events surrounding the **Gelati Monastery Complex** were particularly relevant in the reporting year.

In the parliamentary report of 2021, the public defender spoke at length about the importance of planning and conducting the measures necessary to protect the monuments and the publicity of the processes in the direction of cultural heritage protection.⁶⁹² In the same report, based on international standards, it was pointed out the need to produce accurate documentation in all phases of the works,⁶⁹³ which also occupies a central place in the conclusion developed by the joint mission of the World Heritage Center (WHC), ICOMOS and ICCROM.⁶⁹⁴

In February 2023, it became known that instead of the Ministry, the work carried out in Gelati will be led by the Patriarchate of Georgia, and the Ministry will only finance the work.⁶⁹⁵ According to the current legislation, **the state is responsible for the protection of cultural heritage**.⁶⁹⁶ The Ministry supervises the protection of cultural heritage and **develops and directs the state policy for the protection and development of cultural heritage**.⁶⁹⁷ The inclusion of the church and the state in the proper protection and maintenance of the cultural heritage monument is provided for by the "Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia".⁶⁹⁸ Thus, the existing legal framework does not provide for the solution of the issue in such a way that the Patriarchate of Georgia will fully take over the rehabilitation works and lead it. In addition to the legal problem, considering that the Patriarchate of Georgia has no experience in managing such large-scale measures, in particular, the management of rehabilitation works on the World Cultural Heritage Monument, there is a risk that the condition of the monument, which is already in a difficult

work"; Available: < <https://www.radiotavisupleba.ge/a/32267422.html> > [Last viewed: 27.03.2023].

⁶⁹⁰ see Statement of Exhibitors, available at: < <http://bit.ly/3EwgF8t> > [Last viewed: 27.03.2023]; The Georgia Penn Center statement is available at: < <https://www.radiotavisupleba.ge/a/32266930.html> > [Last viewed: 27.03.2023].

⁶⁹¹ is available at: < <http://bit.ly/3Y8cDdD> > [last viewed: 27.03.2023].

⁶⁹² Conservation-rehabilitation and publicity of processes, see p. of 249, link: Available at: < <https://www.ombudsman.ge/res/docs/2022040413242699860.pdf> > [last viewed: 27.03.2023].

⁶⁹³ Ibid.

⁶⁹⁴ REPORT of the Joint World Heritage Centre/ICOMOS/ICCROM Advisory mission to the World Heritage property "Gelati Monastery" (Georgia) 28 November – 2 December 2022, p. 4, 16, 30.

⁶⁹⁵ Available at: < <bit.ly/3EIPuHO> > [last viewed: 01.03.2023].

⁶⁹⁶ Article 5, Clause 6 of the Constitution of Georgia.

⁶⁹⁷ Law of Georgia "On Cultural Heritage", Article 5, Paragraph 1, Sub-paragraph "A".

⁶⁹⁸ "Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia", Article 9.

situation, will become even worse, and at the same time, the state will not be held responsible.

Proposals

To the Parliament of Georgia:

- To carry out active and effective parliamentary supervision regarding the World Cultural Heritage Monument, the Gelati Monastery Complex, including, based on Article 37, Clause 3 of the Regulation, by studying the activities of state agencies and preparing the relevant conclusion.

Recommendations

To the Minister of Culture, Sports, and Youth of Georgia:

- To conduct norm-creating and executive activities in compliance with the principles of equality.

16. Right to a Healthy Environment

16.1. Introduction

In 2022, the UN General Assembly passed a historic resolution⁶⁹⁹ recognizing a clean, healthy, and sustainable environment as a human right. By adopting the resolution, the organization formally called on states, international organizations, businesses, and other stakeholders to step up their efforts to ensure a clean, healthy, and sustainable environment for all. Additionally, in the reporting year, the Council of Europe recommended the member states to actively consider the recognition of the right to a clean, healthy, and sustainable environment as a human right at the national level.⁷⁰⁰

Against the background of global changes, it becomes even more important for Georgia to fully realize the right to environmental protection. Like previous years, the reporting year once again confirmed the need for the state to take additional steps in various directions. First of all, it is necessary **to plan effective measures in response to the events that took place in the village of Itkhvisi of Chiatura municipality and the threats expected in the future, as well as to strengthen the supervision of environmental protection in various fields and to establish appropriate responsibilities for violations of law, to take into account human rights in the field of construction, to improve the environmental impact assessment system, to improve the quality of ambient air. Appropriate regulation of the issue of companion animals.**

In addition, the Public Defender hopes that in 2023 the documents reflecting the country's energy policy will be presented and approved by the Parliament, which,⁷⁰¹ as known to the Office of the Public Defender, will include the state's energy policy until 2030 and the state's energy policy vision until 2050.

It is worth noting that in the reporting year, the Public Defender of Georgia published a study that reviews development projects relevant to the country in the last ten years.⁷⁰² The study once again made it clear that the introduction of human rights-based approaches within the framework of development projects is vital, and the rights standard, first of all, implies the full participation of society in the processes.

Unfortunately, neglect of human rights in the process of spatial planning and urban development remains a challenge. In the reporting year, amendments were made to the Code of Spatial Planning, Architectural, and Construction Activities of Georgia in an accelerated manner. The changes made it possible for the wide range of planned constructions in Batumi not to be subject to the kind of construction obligations

⁶⁹⁹ Information is available on the website: < <https://rb.gy/1qpgpr> > [last viewed: 27.03.2023], resolution A/76/L.75. The resolution was preceded by the first official recognition of a clean, healthy and sustainable environment as a fundamental human right by the UN Human Rights Council 2021.

⁷⁰⁰ see Statement and recommendation on links: < <https://rb.gy/nshted> > [last viewed: 27.03.2023]; < <https://rb.gy/8t9kp3> > [last seen: 27.03.2023].

⁷⁰¹ By letter No. 04/10333 dated 29.12.2022 of the Ministry of Economy and Sustainable Development of Georgia, we are informed that the developed projects of the energy policy of the state of Georgia and the national integrated energy and climate plan are undergoing the scoping procedure and the corresponding report has been submitted to various agencies.

⁷⁰² The study was prepared together with the Danish Institute for Human Rights, available at: < <https://www.ombudsman.ge/res/docs/2022113014285594326.pdf> > [last viewed: 27.03.2023].

that ensure a safe environment for the safety and health of the building. The public defender applied to the court with a constitutional lawsuit, requesting the suspension of the temporary exceptional rule approved for the implementation of planned constructions in Batumi and recognition as unconstitutional.⁷⁰³ During the reporting year, the public defender also revealed the neglect of public interests during the ongoing construction in Batumi Boulevard, as well as in the process of building a residential building on one of the streets in Batumi.⁷⁰⁴

16.2. Dangerous living environment in Itkhvisi Village

Environmental problems arising from mining activities are one of the unsolved problems of the country.⁷⁰⁵ In the reporting year, the public's attention was drawn to the most serious events that took place in the village of Itkhvisi, Chiatura Municipality,⁷⁰⁶ as a result of which the property of many residents was destroyed or damaged, and a dangerous environment for living was formed.⁷⁰⁷

Taking into account the complexity of the situation, a deliberative body of the Government of Georgia - an interdepartmental committee - was created.⁷⁰⁸ As a result of the four-month work of the commission, a conclusion was drawn up,⁷⁰⁹ according to which about 100 families are at risk of danger and it is recommended to gradually move them to a geologically stable and safe place, as well as to arrange an instrumental monitoring network in the target area. As for the causes, after analyzing complex issues, the commission determines that, taking into account various factors, we are dealing not with landslide deformation, but with subsidence, which is caused by several circumstances at the same time. Among them, voids created by underground mining in different periods of the last century in the research area (anthropogenic impact) are named.⁷¹⁰ The committee does not rule out that a similar type of void may exist in the entire settlement area.

This conclusion also confirms that the village of Itkhvisi and its inhabitants are facing an extremely difficult challenge, the entire area is at risk and there is no safe living environment in the village. Taking into consideration the legitimate interests of the affected population, at the very first stage, the responsible agencies needed to plan and take timely, effective, result-oriented steps. At the same time, the

⁷⁰³ Information is available on the website: < <https://rb.gy/rxbzfn> > [Last viewed: 27.03.2023].

⁷⁰⁴ Recommendation of the Public Defender No. 04-11/4298 21/04/2022 regarding ongoing construction in Batumi Boulevard, No. 04-11/9169, 9/09/2022 Recommendation of Inasaridze st. About the ongoing construction in No. 21.

⁷⁰⁵ e.g. see The difficult situation in the village of Shukruti in Chiaturi municipality, which was related to the activities of the company "Georgian Manganese" in 2019, < <https://netgazeti.ge/news/404780/> > [last seen: 27.03.2023]; In 2021:< <https://rb.gy/tejjy4> > [last seen: 27.03.2023].

⁷⁰⁶ e.g. Information is available on the website: < <https://www.radiotavisupleba.ge/a/31776448.html> > [last viewed: 27.03.2023].

⁷⁰⁷ As a result of the damage, 20 families whose houses were no longer fit for living were temporarily relocated for the first time.

⁷⁰⁸ Decree No. 1016 of the Government of Georgia dated 10.06.2022, the purpose of the commission was to determine the causes of the geodynamic processes developed in the village of Itkhvisi and to identify the homestead plots/residential houses located in the area of the disaster.

⁷⁰⁹ An area of 40 hectares was affected. Homestead plots/houses of 86 families were assessed (visual assessment) and divided into three categories. As a result of the assessment, 34 families need to be transferred to a geologically stable, safe place as a priority, and the rest are recommended to be monitored. see Conclusion in full: < <https://rb.gy/ehobeq> > [last seen: 27.03.2023].

⁷¹⁰ According to the Committee, the mining works in this area were done in the 70s-80s, and the company "Georgian Manganese" cannot be held responsible for the damage caused by the works carried out before 2007.

seriousness of the issue and the realization of the property rights of residents, the right to live in a safe and healthy environment required every effort to establish high public trust in the process, which would be facilitated by the unwavering adherence to the standard of publicity and access to information and the involvement of the population and the civil sector in the processes.

According to the joint assessment of several non-governmental organizations,⁷¹¹ the activities of the committee were not conducted transparently, and none of the trusted representatives of the village participated in its activities, information about the work was not made public, the relevant agencies did not respond to the request to include a representative of the population's interests in the work of the commission even after the publication of the conclusion by the commission; In addition, for part of the population, the basis for getting into different categories of injury is unclear.

In conclusion, recommendations were issued several directions for implementation, including long-term accommodation and monitoring.⁷¹² Taking into consideration the activities and results of the committee, **the Government of Georgia⁷¹³, in order to realize the property rights of the population and satisfy their legal property interests in a fair and dignified manner, should plan complex steps, defining the agencies responsible for implementation and deadlines. Comprehensive information about all this should be provided to the interested public.**

16.3. Regulations related to the environmental impact assessment system

The Public Defender welcomes the positive steps taken in 2022 to improve the environmental impact assessment system and also considers it necessary to continue improving the EIA system in the future.

In particular, according to the information obtained by the Office of the Public Defender, the environmental impact assessment and strategic environmental assessment manuals, which were developed in 2017, are being updated, but are not used, since they are of a general nature and do not include detailed criteria for decision-making, and are also not fully aligned with the Code.⁷¹⁴ As it turns out, among other things, the guidelines will specify screening criteria and quality control circumstances. It is also planned to develop a manual for "Environmental Impact Assessment of Hydroelectric Power Stations".

The Public Defender hopes that the updating of the manuals will be completed in a short time and will be smoothly implemented in practice, which will contribute to the full involvement of the public in the processes and the adoption of informed decisions.

⁷¹¹ see Joint assessment of three non-governmental organizations - Center for Social Justice, Association of Young Lawyers of Georgia, Green Alternative on the activities and conclusions of the commission, p.4, information available on the website: < <https://rb.gy/oi9zav> > [last viewed: 27.03.2023].

⁷¹² Letters No. 04-11/9476, 19/09/2022 and No. 04-11/9553, 21/09/2022 of the Office of the Public Defender of Georgia to the administration of the Government of Georgia were forwarded to the Ministry of Economy and Sustainable Development of Georgia and the National Mineral Resources Agency of Georgia (GOV 7 22 00031111 letter), who provided us (letter No. 22/146) the report prepared by the commission.

⁷¹³ The Law of Georgia on the Structure, Powers and Procedures of the Government of Georgia, Art. 29.

⁷¹⁴ LEPL National Environment Agency letter 21/2343, 08/06/2022 to the Ministry of Environment Protection and Agriculture of Georgia.

The Public Defender of Georgia, for years, has been actively pointing out the need to adapt the individual components of the list provided by the annexes of the Environmental Assessment Code to the peculiarities of Georgia.⁷¹⁵ As a result of a positive legislative change introduced in the environmental assessment code in the reporting year, open-pit mining of minerals with an area of more than 10 hectares (instead of 25 hectares)⁷¹⁶ was defined as an activity subject to EIA; And open-pit mining of solid minerals was subject to screening when the surface of the mining site is more than 5 hectares (instead of 10 hectares).⁷¹⁷

However, unfortunately, sand-gravel mining activities are still excluded from the activities subject to screening. The threshold value set for the urban development project (10 ha) is also unchanged.

Unfortunately, there has been no change to the public rule that a public hearing that is not attended⁷¹⁸ by any representative is not considered to have taken place.

16.4. Effective Supervision of Environmental Protection

In 2020 and 2021, the Public Defender spoke at length about the environmental problems caused by entrepreneurial activities in many municipalities, since various cases of environmental legislation violations had a continuous and systematic character over the years, which also indicates the weakness of the supervision levers.

This challenge is still relevant. For example, in the reporting year, citizens appealed to the Public Defender, this time, in Kakheti, in the village of Giorgeti, as well as in Rustavi. In the case of Kakheti, the case concerned the activities of an asphalt enterprise, the inspection of which revealed that the Department⁷¹⁹ of Environmental Supervision revealed a number of violations in 2021-2022; Violations of environmental regulations took place in Rustavi as well.⁷²⁰

It is necessary to strengthen the levels of supervision in the field of extraction of useful minerals since mining activities affect many aspects of the environment. In the process of supervision, it is important to check the fulfillment of license conditions and to detect environmental violations. According to one of the studies conducted on this topic,⁷²¹ along with many challenges, it is especially necessary to clearly

⁷¹⁵ e.g. Special Report of the Public Defender of Georgia "Environmental Impact Assessment System - Policy, Legislation and Enforcement Challenges", p. of 33, available: < <https://www.ombudsman.ge/res/docs/2021072917152995294.pdf> > [Last viewed: 27.03.2022].

⁷¹⁶ Clause 26 of Annex I.

⁷¹⁷ Clause 2.1 of Annex II.

⁷¹⁸ Order No. 2-94 of February 22, 2018 of the Minister of Environment Protection and Agriculture of Georgia on approval of the rule of public hearing.

⁷¹⁹ Letter of the Department of Environmental Supervision DES 9 22 00049831 08/07/2022.

⁷²⁰ JSC "Rustavis Azot" violated the conditions of the environmental decision; letter of the Department of Environmental Supervision DES 9 22 00021273, 30/03/2022. An investigation has also been launched into the fact of water pollution, which allegedly led to the slaughter of one of the citizens' sheep.

⁷²¹ Social Justice Center, Anano Tsintsabadze, "Flaws in the legislation and practice regulating state supervision of mining activities", 2022, from p. 23; < <https://rb.gy/s6tudd> > [last viewed: 27.03.2023].

separate the powers of the Department of Environmental Supervision and the National Agency of Mineral Resources, both at the legislative level and in practice, so that state supervision of environmental requirements within the scope of this activity does not remain open.

Thus, the public defender believes that the practice accumulated over the years in the field of environmental protection needs to improve the effectiveness of the supervision levers. Among them, through the tightening of imposed sanctions, separation of powers, and proactive activities of agencies, to avoid and prevent violations as much as possible.

16.5. Supervision of Acoustic Noise Control

Living in a healthy environment is one of the important aspects of human rights. The negative effects of noise in many directions are widely known - it lowers the quality of life, interferes with people's normal activity, and affects concentration, communication, and sleep; In addition to the negative socio-psychological result, harms human health, especially on the state of the cardiovascular system.⁷²²

Thus, it is justified that the legislation of Georgia imposes sanctions for exceeding the permissible norms of acoustic noise.⁷²³ The establishment of the offense was due to the high statistics of the population disturbed by noise, the severe negative effects of noise and international approaches. Also, it turns out that international practice provides different amounts of fines for this type of offense depending on the specifics of the countries.⁷²⁴ In Georgia, as a sanction, a physical/legal person warning was imposed; Only in case of repetition of the violation, the law establishes a monetary fine (150-300 GEL for an individual, and 500-1000 GEL for a legal entity).

According to the Public Defender's assessment, **taking into account the serious challenges in practice, the effectiveness of the established regulation is called into question and the need to create additional levers is evident.**

For example, the public is aware of the concerns of citizens living in Tbilisi, Rustaveli Street No. 1, in the surrounding area, regarding the noise coming from the so-called "street musicians". In the reporting year, the Office of the Public Defender considered the application of local residents as well.⁷²⁵ With the available materials, only in the period of 29.04.2022-02.06.2022, the fact of exceeding the permissible limit of acoustic noise in this area was revealed in 5 cases.⁷²⁶ With the available materials, only in the period of

⁷²² LEPL Sakvarelidze National Center for Disease Control and Public Health, a manual published by the World Health Organization in 1999 "On Community Noise" and the 2009 Guidebook "On the Impact of Night Noise", see Explanatory card of the bill, < <https://info.parliament.ge/file/1/BillReviewContent/149412> > [Last accessed: 27.03.2023]

⁷²³ Code of Administrative Offenses of Georgia, Article 771 Exceeding the acceptable standards of acoustic noise in a residential house, privately owned real estate or public/public institution building during the day or night.

⁷²⁴ see Detailed explanation card: < <https://info.parliament.ge/file/1/BillReviewContent/149412> > last viewed: 27.03.2023].

⁷²⁵ In 2022, G. K. resident of Rustaveli Street No. 1, in Tbilisi, filed a complaint No. 9136/22 regarding the problem created by the noise coming from the cafe-bar located in Leonidze Street No. 8, Tbilisi, in complaint No. 6362/22 Citizen Z. V.

⁷²⁶ As the Municipal Inspection of the City Hall of Tbilisi City Municipality informs us, citizens have repeatedly addressed this agency

29.04.2022-02.06.2022, the fact of exceeding the permissible limit of acoustic noise in this area was revealed in 5 cases.⁷²⁷ Thus, it turns out that different people may commit this type of offense in the same area, even on a daily basis, as a result, residents are continuously in a harmful environment, their quality of life is reduced and their health is negatively affected, and the supervisory authority has the only lever – warning, and only in the case of committing the act for the second time within 1 year, it is possible to be fined, that too within the limits of 150-500 GEL. Even the above-discussed example shows that a warning, even more so, in some cases, a verbal instruction, only momentarily and temporarily prevents the violation of the law, although it cannot ensure the prevention of the violation of the law in the future. Such a situation puts a part of the population in a harmful environment continuously and for a long time in specific areas and infringes on their right to live in a harmless environment.

In addition to this specific case⁷²⁸, according to the data available to us, the inspection service revealed a total of 251 violations of the law in the direction of acoustic noise control in 2022, and more than half of them were subject to a warning sanction.⁷²⁹ Also, it turns out that less than half (1,572) of the approximately 3,500 notices received a response since the remaining notices only required a verbal explanation of the established regulations. All this may point to the need for proper awareness of the population regarding the content of the restrictions and the authorities of the agency.

Thus, the Public Defender considers it necessary to analyze the challenges in practice, the relevant statistical data and to achieve the legitimate goal of establishing the offense and imposing responsibility, to review the types/amounts of the imposed sanctions, as well as the time limit (1 year) for repeated actions. It is important that the forms of responsibility facilitate effective and result-oriented enforcement in practice and avoid leaving unreacted consequences that are harmful to citizens.

16.6. Challenges Related to Companion Animals

The realization of the right to live in a safe environment is closely intertwined with many areas. One of them is the challenges related to companion animals in the country, which has been a cause of special public concern in recent years. The obviously visible abundance of animals (dogs/cats) living on the street, along with various incidents occurring periodically, including several confirmed cases of rabies in Ambrolauri Municipality, indicates the seriousness of the issue.⁷³⁰ The difficult situation both in the capital

through the hotline, relevant protocols have been drawn up for violators, in some cases it was not possible to determine the fact of excess as a result of measurement and the service employees limited themselves to verbal instructions to "street musicians".

⁷²⁷ Exceeding the permissible norms of acoustic noise during the day/night hours will result in a warning for the first time, and the repetition of the action within 1 year will already result in a fine.

⁷²⁸ Letter of Municipal Inspection No. 17-01230483219, 17/02/2023.

⁷²⁹ Administrative fine protocols have been drawn up: under Part I of Article 771 - Protocol 134 (warning); Part II - 40 minutes (physical person 150 GEL, legal person - 500 GEL); Part III - 79 minutes (physical person 300 GEL, legal person 1000 GEL).

⁷³⁰ For example, according to the information spread by the media, the citizen allegedly poisoned the dogs, according to the information, the incident was preceded by the bite of a child by one of the dogs, and an investigation into the incident has been started in terms of animal torture or cruel treatment, see link: < <https://rb.gy/xcvv3s> > [last visited: 27.03.2023]. In the reporting year, information was spread about the dog biting the owner and neighbors, as a result, the representatives of the patrol police had to kill the dog, the information is available on the website: < <https://netgazeti.ge/news/631842/> >, as a result of the laboratory confirmation of rabies in the village of Kvatskhuti in Racha, it became necessary to impose quarantine restrictions, see on the link: < <https://rb.gy/avdhhp> > [last seen: 27.03.2023]; Additionally, 3 cases of rabies were confirmed in Ambrolauri municipality <

and in the regions, in some cases, becomes dangerous for citizens, especially minors and the elderly, and requires the introduction of proper regulation and mechanisms from the state.

Unfortunately, there are still no systematic and effective regulations governing the field of companion animals. The Law of Georgia on "The World of Animals" regulates only the field of protection of wild animals. Separate regulations on liability for animal abuse are outlined in various legislative acts.⁷³¹ According to the current general rule, establishing the rules for having pets and solving the issues related to stray animals belong to the powers of the municipality.⁷³² However, the field needs uniform and systematic regulation to determine the legal status of domestic animals, maintenance, liability for breach of obligations, and other issues. In addition, **creating a safe environment for citizens should be based on approaches based on humane principles/methods.**⁷³³

Given the challenges, homeless animal rights activists⁷³⁴ have been talking about the need for systemic change for years. They have been talking about the need for systemic changes for years. According to them, the new approach should be based on several main principles. It is necessary to produce statistics on animals living on the street, **their mass sterilization/neutering, imposing the obligation of animal chipping, banning the breeding of animals at home, and controlling this issue, imposing strict responsibility for throwing animals out of the house.**

According to the data of the LEPL Animal Monitoring Agency,⁷³⁵ which operates only within the Tbilisi municipality, during 2022,⁷³⁶ the agency received more than 65,000 reports regarding animals (dogs/cats)⁷³⁷ which is an increased number compared to the previous year.⁷³⁸ In the reporting year, the agency transferred more than 8,000 dogs to the shelter, of which almost half were returned to the living area, some were donated, transferred to the adopter and the smallest part (97 dogs) were returned to the owner, and almost 2,000 dogs' lives ended (by euthanasia/natural death). It is also significant that compared to the data of the previous year, the rate of castration/neutering of dogs/cats has decreased.⁷³⁹ The agency revealed up to 400 cases of violation of dog/cat rules in 2022, and up to 500 in 2021.⁷⁴⁰

Thus, the current situation needs systemic change. However, transfer to a shelter and other temporary measures are not and will not be a long-term solution to the problem and can only be considered as an urgent need in individual cases. Significantly, the LEPL Animal Monitoring Agency itself points to many

<https://rb.gy/o86oqi> > [last seen: 27.03.2023].

⁷³¹ e.g. Article 103 of the Code of Administrative Offenses of Georgia, violation of the rules of having a dog and a cat; Article 104, improper treatment of animals; Article 259 of the Criminal Code of Georgia, torture or cruel treatment of an animal.

⁷³² Code of Local Self-Government of Georgia, Article 16, Clause 2, Clause "R".

⁷³³ Animals living on the streets themselves face a number of threats, they have limited access to food, health services, which causes them to suffer and/or die.

⁷³⁴ eg. Information is available on the website: < <https://www.radiotavisupleba.ge/a/31441841.html> > [last viewed: 27.03.2023]].

⁷³⁵ Statistical data are fully available on the website: < <https://rb.gy/x6elf4> > [last viewed: 27.03.2023].

⁷³⁶ Resolution No. 17-56 of December 12, 2014 of the City Council of Tbilisi Municipality on the establishment of the Animal Monitoring Agency of the City of Tbilisi Municipality and approval of its statutes (statutes).

⁷³⁷ In particular, 63390 dogs, 2532 cats.

⁷³⁸ 58,314 notifications in seven agencies in 2021, see Link: < <https://rb.gy/fefer> > [last viewed: 27.03.2023].

⁷³⁹ In particular, in 2022 - 5,633, in 2021 - 5,734.

⁷⁴⁰ Administrative Offenses Code of Georgia, Article 103: 2022: 384, and 2021: 483 facts.

challenges facing the agency and the industry as a whole.⁷⁴¹

As is known to the Office of the Public Defender, the draft law **on domestic animals is being developed in the legislative body.**⁷⁴² A similar process took place in the past years as well, but it did not end with the adoption of the law.⁷⁴³

Considering the seriousness and urgency of the issue, the Public Defender considers it necessary to adopt relevant regulations and implement them in practice. In addition, taking into consideration the specifics of the issue, experts in the field should be involved in the process of working on the draft law, Good international examples should be researched and taken into account. The law should determine the legal status of animals and the rules of maintenance, strict liability should be established for the violation of obligations, and the body responsible for the enforcement of regulations should be defined in all municipalities, which should also be equipped with appropriate human and material resources, it should be possible to effectively manage the animal population and create humane, effective mechanisms as a whole. The Public Defender hopes that the law will be adopted in 2023 and will be effectively implemented in practice.

16.7. Right to Clean Air

Air pollution is one of the most important problems in the country. Its main causes are road transport, energy, industry, agriculture and waste. The main sources of emission of the two largest pollutants - nitrogen dioxide and dust solid particles - are, respectively, the road transport and the industrial sector.⁷⁴⁴

Over the years, the Office of the Public Defender identified many problems that prevented the full realization of the right to clean air. Despite the many important measures taken so far to improve the ambient air, there are still significant challenges that require a more effective response from the state.

For example, the atmospheric air quality monitoring network⁷⁴⁵ still does not provide a complete picture of pollution, which is caused by the lack of observation points.⁷⁴⁶ According to the instructions of the Ministry of Environmental Protection and Agriculture of Georgia, to develop the system of monitoring and evaluation of atmospheric air quality, a gradual expansion of the system is planned. Among them, according to the agency, with the support of international donors, by the end of 2026, 18 automatic monitoring stations will be installed and 1 mobile station will be purchased, and it is also planned to create

⁷⁴¹ Among them, the production of statistics, the insufficient number of castrations/sterilizations performed, the need to raise public awareness, and impose strict liability. see Link: < <https://rb.gy/5lxuob> > [Last viewed: 27.03.2023].

⁷⁴² Information available at :< <rebrand.ly/3pv9jvs> > [last viewed: 27.03.2023].

⁷⁴³ Information available at < <https://bit.ly/3mlgKQl> > [last viewed : 27.03.2023].

⁷⁴⁴ Letter No. 1690/01 dated March 10, 2023 of the Ministry of Environment Protection and Agriculture of Georgia.

⁷⁴⁵ According to the letter No. 1690/01 of the Ministry of Environment Protection and Agriculture of Georgia dated March 10, 2023, as of today, the atmospheric air quality monitoring network in Georgia includes 7 automatic stations: 1. St. Tbilisi, Tsereteli Ave. 105; 2. st. Tbilisi, Kazbegi Ave. renovated park named after V. Godziashvili; 3. Tbilisi, Varketili 3, I microdistrict, area adjacent to the 2nd building; 4. Agmashenebeli Ave, Tbilisi 73a, "Iliá's Garden"; 5. City of Rustavi, Batumi St. 19; 6. Kutaisi St., Lado Asatiani St. 98 and 7. City of Batumi, Abuseridze Street No. 1. Also, atmospheric air pollution in Zestafoni Checked 3 times via a non-automatic checkpoint.

⁷⁴⁶ For more information on the types and number of deployment stations, see 2020 Parliamentary Report of the Public Defender of Georgia, 262-263.

an atmospheric air quality modeling and forecasting system.⁷⁴⁷

It is significant that in 2022, the development of ambient air quality management plans for the Tbilisi agglomeration, the central zone (which includes Rustavi), and the Black Sea zone (which includes Batumi)⁷⁴⁸ began, which is the result of the legislative changes carried out to move to the European standard of air management.⁷⁴⁹ Until now, similar plans were developed for Tbilisi in 2017,⁷⁵⁰ and for Rustavi, in 2020.⁷⁵¹ It is significant that according to the 2022 monitoring report of the action plan for the improvement of the atmospheric air quality of Rustavi, the average annual concentrations of solid dust particles (MP₁₀ and MP_{2.5}) in the city still exceed the permissible norms, although compared to the base year 2019, by 13-16% is less.⁷⁵² In addition, according to the report, compared to the base level, the mass of solids dispersed in the air from stationary sources has also decreased by approximately 40%, the reason for which is the better implementation of air protection requirements by industrial facilities and the maintenance of air trapping systems.⁷⁵³ It should also be noted that to fulfill the task of the action plan, this indicator is not enough and it is necessary to take additional measures.

The Public Defender has repeatedly pointed out in the past the need to bring the industrial sector, as one of the biggest polluters, under complete regulation. Among them, the office actively called on the Ministry of Environmental Protection and Agriculture of Georgia to initiate the project of the law "On Industrial Emissions" in the Parliament of Georgia in order to reduce emissions and to move to the European standard of their control. This document was submitted to the legislative body during the reporting period, however, the period provided for the full implementation of its separate provisions exceeds the scope established by the EU Association Agreement.⁷⁵⁴

According to the Ministry's explanation, when determining them, the number of existing activities subject to the integrated permit and the time and financial resources needed for the industrial sector to adapt to the new regulations were taken into account, as well as the deadline for issuing the integrated permit and the capabilities of the competent authority issuing the permit.⁷⁵⁵

Taking into account that atmospheric air pollution from the industrial sector is an acute problem in Rustavi,⁷⁵⁶ the ongoing dispute in the Tbilisi City Court was particularly noteworthy, within the framework of which the plaintiffs, due to the failure to take effective measures to prevent emissions from factories located in Rustavi, from the Ministry of Environment and Agriculture of Georgia and the Department of Environmental Supervision They are asking for damages. Since the decision made regarding this lawsuit

⁷⁴⁷ Letter No. 1690/01 dated March 10, 2023 of the Ministry of Environment Protection and Agriculture of Georgia.

⁷⁴⁸ Letter No. 1690/01 dated March 10, 2023 of the Ministry of Environment Protection and Agriculture of Georgia.

⁷⁴⁹ 2021 Parliamentary Report of the Public Defender of Georgia, p. 206.

⁷⁵⁰ "State program on measures to reduce atmospheric air pollution in the city of Tbilisi" approved by the Decree No. 1457 of the Government of Georgia of July 12, 2017.

⁷⁵¹ Available at: < bit.ly/41NAa6p > [13.03.2023].

⁷⁵² 2022 Monitoring Report of Rustavi City Ambient Air Quality Improvement Action Plan (2020-2022), p. 7, available at: < bit.ly/3JAow7R > [last accessed: 13.03.2023].

⁷⁵³ Ibid. p 8.

⁷⁵⁴ The draft law is available on the website: < <https://parliament.ge/legislation/25590> > [last viewed: 07.03.2023].

⁷⁵⁵ Letter No. 1690/01 dated March 10, 2023 of the Ministry of Environment Protection and Agriculture of Georgia.

⁷⁵⁶ Rustavi City Ambient Air Quality Improvement Action Plan 2020-2022, p. 9, available at: < bit.ly/41NAa6p > [07.03.2023].

will be of precedential importance for determining a good standard for the realization of the right to live in an environment harmless to health, the Public Defender submitted the opinion of the friend of the court (Amicus Curiae) in the case on April 21, 2022.⁷⁵⁷ In the document, the Public Defender discussed the national legislation regulating the right to clean air, the current serious situation in terms of air pollution and its associated consequences, as well as the standards established by precedent law for the full realization of the right. As a result, the opinion noted that to resolve the dispute, the Tbilisi City Court needs to assess the impact of the air pollution detected in Rustavi not only on the plaintiffs' health but also on their quality of life. In addition, attention should be paid to how effectively the current legislation and its enforcement mechanisms reduce air pollution.

As for another biggest source of pollution, which is motor transport, the Public Defender has pointed out many times in the past that it was necessary to create an effective mechanism for detecting cases of higher-than-normal concentrations of harmful substances in their emissions and responding to this type of law violation.⁷⁵⁸ At this stage, the Parliament of Georgia has initiated a draft of relevant amendments to the Code of Administrative Offenses, which from June 1, 2023, provides for the control of the vehicle emissions on the roads using special equipment.^{759 760}

It is also positive news that responsibility was established throughout Georgia for violating the rules of placement,⁷⁶¹ transportations, and processing of dusty material, which, until the reporting period, covered only the territory of Tbilisi Municipality. This was the recommendation of the Public Defender of Georgia.⁷⁶²

Proposals

To the Parliament of Georgia:

- To review the norms establishing responsibility for violations of environmental protection regulations under the Code of Administrative Offenses, including Articles 79¹, 79², 79³, 79⁷, 79⁸,⁷⁶³ including Articles 56 and 57⁴ applicable in the field of the extractive industry, and to tighten them in such a way as to ensure as much as possible the prevention of such violations;
- to review the sanctions imposed for exceeding the permissible norms of acoustic noise under Article 77¹ of the Code of Administrative Offenses of Georgia and to make them stricter in such a way as to ensure the effective implementation of the legislator's legitimate goal.

⁷⁵⁷ The opinion of the friend of the court is available at: < bit.ly/3IVpaeP > [last viewed: 07.03.2023].

⁷⁵⁸ 2021 Parliamentary Report of the Public Defender, p. 207.

⁷⁵⁹ The draft law is available at: < bit.ly/3Tdbnoz > [last viewed: 13.03.2023].

⁷⁶⁰ Letter No. 1690/01 dated March 10, 2023, of the Ministry of Environment Protection and Agriculture of Georgia.

⁷⁶¹ Law No. 1522 of April 26, 2022, of Georgia "On Amendments to the Code of Administrative Offenses of Georgia"

⁷⁶² 2019 Parliamentary Report of the Public Defender of Georgia, p. 270.

⁷⁶³ Carrying out activities without an environmental impact permit, violating the conditions of the environmental impact permit (including the environmental permit) or the conditions stipulated by the ecological expertise report (including the state ecological expertise report); Non-fulfillment of the conditions established by the decision on the continuation of the current activity provided for by the Environmental Assessment Code; Implementation of activities provided for by the Environmental Assessment Code without an environmental decision or screening decision;

- The activities/threshold indicators established by the annexes of the Environmental Assessment Code should be studied and changes should be made to adapt to the specifics/challenges of the country, including sand-gravel mining activities should be subjected to the screening procedure, the threshold indicator established for the urban development project should be reduced.
- In order to effectively and humanely manage the animal population, in 2023, the law on domestic animals should be adopted and the legal status of animals should be defined, the uniform rules of care and maintenance should be established, strict liability should be established for the violation of obligations, effective supervision and enforcement mechanisms should be established.

Recommendations to the

Government of Georgia:

- To provide a wide public discussion of the conclusion of the inter-agency commission on the issue of the village of Itkhvisi of the Chiatura municipality, and to give comprehensive answers to the questions of the interested citizens.
- To plan complex steps for the realization of the right of the residents of Itkhvisi village of Chiatura municipality to live in a safe environment, including the monitoring outlined in the report of the inter-agency commission, to determine the responsible agencies and deadlines for implementation of long-term resettlement; Comprehensive information on these issues should be provided to the local population.

To the Minister of Environment Protection and Agriculture of Georgia:

- To complete the updating of environmental impact assessment and strategic environmental assessment manuals and to put them into practice.

Department of Environmental Supervision and National Agency of Mineral Resources:

- To study the existing challenges within the extractive activities, to plan and take effective steps to improve the realization of environmental interests in this field, and to perform effective supervisory functions.

17. Rights to Health

17.1. Introduction

The right to health protection is one of the important human rights, which is necessary for the realization of other human rights. According to the World Health Organization (WHO) - "other rights are insignificant without health". It is considered that "... every person has the right to a standard of living, including food, clothing, housing, medical and necessary social services, necessary to maintain the health and well-being of himself and his family..."⁷⁶⁴ From this point of view, provision of universal health care is possible by strengthening primary health care, providing high-quality, effective, safe, timely services.

Access to quality health services also includes access to quality, safe and affordable medicines. The World Health Organization considers the regulation of the field of drug and pharmaceutical market activity to be a big challenge for developing countries and calls on the countries to ensure effective regulation of the field by finding and correcting deficiencies in the regulation. The steps taken by the state in this direction contribute to the improvement of access to medicines, evaluation system, an increase of funding of medicines from the state, popularization of generic medicines;⁷⁶⁵ Improving control over the rational use of pharmaceutical products. At the same time, to increase trust in generic medicines, it is necessary to strengthen the capacity of the national regulatory body, to raise the awareness of the population about the availability of subsidized medicines.

17.2. Challenges of the Primary Health Care System

An important element of the right to health is accessibility, which includes financial, geographic, and informational access to health services, without any discrimination. Financial access refers to the availability of health care services from an economic point of view; In the case of geographic accessibility, services should be accessible to everyone. Access must be made without any discrimination on any of the prohibited grounds.

Despite a number of reforms carried out in the primary health care system in Georgia, challenges remain. For example, 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 healthcare institutions were considered to be the challenges of the primary healthcare system in Georgia during the pandemic.⁷⁶⁶

The monitoring carried out by the Office of the Public Defender in 2019⁷⁶⁷ and 2022⁷⁶⁸ within the framework of the "Village Doctor" state program on access to primary health care services for the population highlighted some acute problems related to the availability and quality of services. One of the

⁷⁶⁴ UN Committee on Economic, Social and Cultural Rights General Comment No. 14 (22nd Session, 2000).

⁷⁶⁵ A drug containing a chemical substance - the active pharmaceutical ingredient, is identical to that patented by the company, the original developer of the drug. It is manufactured and sold after the patent has expired and hence the price is lower.

⁷⁶⁶ WHO Regional office for Europe. Rethinking primary health care financing in Georgia (2021) information available at < <https://bit.ly/3lqMzWj> > [last viewed: 15.02.2023].

⁷⁶⁷ information available at: < <https://bit.ly/3k6rfMv> > [last viewed: 15.02.2023].

⁷⁶⁸ information available at: < <https://bit.ly/3EcX9SY> [last viewed: 15.02.2023].

main challenges is outdated infrastructure and compliance with minimum standards of relevant requirements.

Due to the urgency of the issue, a joint session of the Human Rights Protection and Civil Integration, Health Protection and Social Issues and Regional Policy and Self-Government Committees was held in the Parliament of Georgia, where the Public Defender's report and the problems described in it were discussed.⁷⁶⁹ According to the information provided by the responsible agency, NNLE "Georgia Medical Holding" carried out an analysis of the infrastructural condition of the rural ambulatory network in all regions of Georgia. After the initiation of problems, the holding plans to start from 2023, including, as a priority, the rehabilitation/construction of conflict villages, villages with resort status, and those outpatient clinics where telemedicine equipment is located. Changes were made to optimize the working conditions of medical personnel working in rural areas and increase their salaries.⁷⁷⁰

According to the Public Defender's assessment, in this direction, it is important to develop a clear and timely action plan, which, to provide services, ensures the acceleration and optimal management of the building construction/rehabilitation process.

17.3. Highly Qualified Auxiliary Medical Personnel

Effective management of human resources and capacity building in the healthcare system is a complex task and requires a thorough and multifaceted approach. Georgia is one of the countries in the European region, where the number of doctors is high and growing rapidly. There are 647.4 doctors per 100,000 people in the country, while the average number in the European region is 314. The excess of doctors contrasts with the acute shortage of nurses (594.3 per hundred thousand people), which is largely caused by the low popularity and social recognition of nursing in Georgia, and inadequate development and compensation.⁷⁷¹ The number of nurses (per 100,000 persons) is -1.3 times less than the European average. This calls into question the quality of the medical service provided.⁷⁷²

Investing in the development of health human resources (especially at the primary health care level), increasing access to education and training opportunities, including modern digital technologies, and improving staff working conditions and compensation mechanisms remain a challenge.

The Public Defender believes that adequate training, education, distribution and maintenance of human resources need systematic improvement. The nursing profession remains a special challenge, which needs proper recognition at the legal level and strengthening of the professional status. Along with competence, the high motivation of healthcare workers to provide quality and effective medical services is also important.

⁷⁶⁹ information available at: <<https://bit.ly/413WcSf>> [last viewed: 15.02.2023].

⁷⁷⁰ Letter of the Ministry of IDPs from the Occupied Territories of Georgia, Ministry of Labor, Health and Social Protection MOH 7 23 00035077 13/01/2023.

⁷⁷¹ WHO. Health for All Database: Physicians/100,000 population and nurses/100,000 population. Information available at: <<https://bit.ly/3kdZ3aj>> [last viewed: 15.02.2023].

⁷⁷² "The market of medical services in Georgia, its structure and the consequences arising from the structure", Curacio Foundation. 2022 information available: <<https://bit.ly/3XTVUKA>> [last viewed: 15.02.2023].

17.1. Patient Rights

All forms of the right to health care contain not only fundamental prerequisites,⁷⁷³ but also the following basic elements: existence, accessibility, acceptability, and quality. The quality of existing health services and services must meet appropriate standards, which implies the requirement that services be appropriate for a specific context.⁷⁷⁴ Ensuring the quality of medical services and legal regulation of medical activities contribute to increasing the efficiency of the health care system and raising the confidence of patients.⁷⁷⁵ Effective, fair, and fast enough consideration of patients' statements/complaints is very important for quality and safe health care.

Society is very sensitive to the healthcare system and the providers of medical services and demands special responsibility and support from the doctor. In Georgia, the legal framework for regulating the professional responsibility of a doctor and the relationship between a doctor and a patient, on the one hand, includes normative acts that directly relate to the field of health care, the relationship between medical personnel and patients, and on the other hand, general normative acts, in which part of the provisions reflected directly or indirectly regulate the above-mentioned issues.⁷⁷⁶

Professional responsibility is the responsibility provided for the violation of medical standards and ethical norms related to patient examination, care, and treatment following the rules established by the legislation of Georgia.⁷⁷⁷ State supervision is carried out by the Ministry of IDPs from the occupied territories, the Ministry of Labor, Health and Social Protection, through the Professional Development Council.⁷⁷⁸

International good practice regarding patient complaints includes (but is not limited to) essential elements such as transparency of the process, objectivity, complaint procedures, accessibility, timeliness, confidentiality, and opportunity for feedback.^{779,80}

Citizens' applications studied by the Office of the Public Defender of Georgia in 2017-2022 reveal that the study has been delayed for years, in addition, citizens are not fully involved in the process of considering/studying the application, they are not fully informed about the ongoing proceedings, however, when the Professional Development Council makes a decision, the parties have the right to

⁷⁷³ Access to safe water and adequate sanitation, adequate supply of safe food, nutrition and housing, safe working conditions and environment, and access to health education and information, including sexual and reproductive health, see: UN Committee on Economic, Social and Cultural Rights General Commentary No. 14 (22nd Session, 2000), UN Doc. E/Ch. 12/2000/4.

⁷⁷⁴ Eide A., Krause K., Rosas A., Economic, Social and Cultural Rights.

⁷⁷⁵ Wilson L. and Goldschmidt P. Quality Management in Health Care. McGraw Hill Book Company, Sydney. 1995; 1-731: Fiscella K., Meldrum S. et al. Patient trust: is it related to patient-centered behavior of primary care physicians? J.Med.Care. 2004; 42(11):1049-1055.

⁷⁷⁶ Javashvili Givi et al. - "Review and analysis of regulations and ethics norms in the field of health care of Georgia on human rights issues" - Tbilisi, 2012.

⁷⁷⁷ Article 73 of the Law of Georgia "On Medical Activities".

⁷⁷⁸ Article 66 of the Law of Georgia "On Medical Activities".

⁷⁷⁹ Complaints Management Handbook for Health Care Service information is available at: < <https://bit.ly/3IOCX8c> > [last seen: 15.02.2023].

⁷⁸⁰ Best Practices In Managing Patient Complaints and Grievances Information available at: < <https://bit.ly/3Zfylxe> > [last viewed: 15.02.2023].

attend.⁷⁸¹

The Public Defender points out that the delay in the study of citizens' statements exceeds all reasonable study/consideration periods and causes just dissatisfaction among citizens. The opinion and satisfaction of the patient is the criterion by which the quality of the provided service is evaluated and, at the same time, it reflects the medical service from the patient's point of view. Adherence to deadlines during proceedings serves to conduct the application/complaint review procedure in a fair, efficient, and effective manner. The unjustified delay in the consideration of the issue causes citizens' anxiety, mistrust of the agency and the feeling that their rights are being violated.

The Public Defender, with the recommendation of the LEPL Medical and Pharmaceutical Activity Regulation Agency, applied to develop new norms/standards defining the procedure of proceedings, which defines the obligation of timely and complete submission of the review documentation prepared for the evaluation of the quality of medical services to the professional council for consideration.⁷⁸² The agency accepted only formal changes⁷⁸³ and did not qualitatively review the guidelines⁷⁸⁴ for the activities of the Professional Development Council.

According to the assessment of the Public Defender, the procedure of studying and processing applications and complaints related to the activities of medical personnel by the professional council should be effective and transparent. The introduction of the new procedure/standard will significantly increase the effectiveness of the Council's activities, reduce the time frame for consideration of issues and increase the institutional confidence of citizens.

17.4. Management of Withdrawal Syndrome

According to the practice of the European Court of Human Rights, the state is obligated to provide the detained person with adequate medical services, including management of restraint syndrome.⁷⁸⁵ As in previous years,⁷⁸⁶ only individuals placed in temporary detention centers of the Ministry of Internal Affairs will have access to replacement therapy, who used this service before their detention.⁷⁸⁷ For those who have not been on replacement therapy, medical staff will provide symptomatic treatment, which involves providing sedatives and pain medications, to manage the symptoms of withdrawal syndrome. In 2022, a review of the documentation found that there are cases when the effect of the medication is short-lived

⁷⁸¹ Article 87 of the Law of Georgia "On Medical Activities".

⁷⁸² 2021 Parliamentary Report of the Public Defender of Georgia, 224.

⁷⁸³ An amendment was made to the Order No. 01-9/N of the Minister of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia dated August 15, 2018, according to which, "the meeting of the Council is held on the Friday of the last week of every month. Depending on the current needs, an extraordinary session of the Council (electronic format is possible) can also be scheduled by the invitation of the Chairman of the Council, at the request of one third of the list of members of the Council or at the initiative of the Secretariat of the Council.

⁷⁸⁴ Order of the Minister of Labor, Health and Social Protection of Georgia dated May 16, 2008 No. 122/N.

⁷⁸⁵ The decision of the European Court of Human Rights on September 1, 2016 in the case of Wenner v. Germany (Application no. 62303/13), para. 78-80.

⁷⁸⁶ 2021 Report of the Public Defender, p. 222. 2020 report of the Public Defender, p. 95.

⁷⁸⁷ Article 16 of the Order No. 691 of the Minister of Internal Affairs of Georgia of December 8, 2016 provides access to replacement therapy.

and the doctor must administer painkillers and sedatives several times a day,⁷⁸⁸ causing the patient to suffer, although they are not admitted to the hospital.⁷⁸⁹

The Public Defender, in his reports, has for years indicated the importance of developing a single manual for the management of the prevention syndrome⁷⁹⁰ in the temporary detention center, which will include the amount of help in the temporary detention center and indicate in what cases the detainee should be transferred to the hospital. According to the information received from the Ministry of Internal Affairs, to fulfill this recommendation, the agency has developed a document, which is planned to be approved in the near future, and in addition, in January-February 2023, the training of medical personnel in this direction has started. The Office of the Public Defender welcomes the development of the document and hopes that it will be approved and implemented as soon as possible.⁷⁹¹

Recommendations

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- To develop a clear and time-bound action plan, which, in order to provide services, ensures the acceleration and optimal management of the primary healthcare infrastructure construction/rehabilitation process.
- To develop a guiding document that defines the competencies of auxiliary medical personnel, the regulation of postgraduate education, continuous professional education and development issues, and the introduction of mandatory (compulsory) elements.

To the Minister of Internal Affairs of Georgia:

- To approve a single manual for the medical staff for the management of the prevention syndrome in the temporary detention center, which will take into account the amount of assistance in the temporary detention center and will clearly state in what cases the detainee should be transferred to the hospital.
- Ensure timely referral of substance-addicted detainees to a medical facility.

Agency for regulation of medical and pharmaceutical activity:

- To develop new norms/standards defining the procedure of proceedings, which defines the

⁷⁸⁸ For example, in one of the cases, a detainee, who was placed in a temporary detention center for 8 days, had a withdrawal syndrome, mainly restlessness, tremors, muscle pain, neuroticism. To relieve these complaints, the patient was given painkillers and sedatives several times a day.

⁷⁸⁹ 2022 Activity Report of the National Prevention Mechanism of the Public Defender.

⁷⁹⁰ A group of symptoms of varying combinations and severity that arise when the use of a psychoactive substance is stopped or reduced, which is usually used for a long time and/or in large doses. The syndrome may be accompanied by physiological disorders. see link: < <https://bit.ly/3aGshWM> > [last viewed: 10.02.2023].

⁷⁹¹ Letter of the Ministry of Internal Affairs of February 27, 2023 # MIA 7 23 00564408

obligation of timely and complete submission of review documentation prepared for evaluation of the quality of medical services to the Professional Development Council for review.

18. Right to Work

Unemployment is one of the most important challenges in the country. Although the unemployment rate has decreased compared to previous years, the current data is 11 percent higher than the average rate of unemployment in the EU countries.⁷⁹² Unfortunately, measures taken to promote women's economic empowerment and employment are also insufficient.⁷⁹³

As for the employees and the challenges related to them, despite the positive reform of the labor legislation implemented in the country in 2020 and the creation of legal guarantees for the protection of the labor rights of the employees, a lot of effort needs to be made to properly enforce the current legislation. This circumstance is confirmed by the information presented in the 2021-2022 reports of the State Labor Inspection Service.⁷⁹⁴ It is important to continue awareness-raising activities related to the labor rights of employees. Also, a culture of constructive dialogue should be established between employers and employees in both the public and private sectors, and dissatisfaction expressed by employees regarding working conditions should not become a basis for their persecution.⁷⁹⁵

The problem remains the neglect of labor safety norms on the part of employers in heavy, harmful, and dangerous work - collective protective equipment is not used, risks are not assessed, instruction is not conducted and employees are not equipped with individual protective equipment.⁷⁹⁶ Employers do not properly record the working hours of employees and often do not reflect the rules of overtime pay in the labor contract.⁷⁹⁷ Both in the previous contractual stage and in the workplace, there are cases of unequal treatment on different grounds. In 2022, in the cases studied by the Office of the Public Defender of Georgia, facts of discriminatory treatment of employees due to different opinions in several Public institutions were highlighted.⁷⁹⁸

In order to create decent working conditions at workplaces, in addition to perfecting the legal regulations, authorized agencies must conduct an effective awareness-raising campaign with both employers and employees.

Activities of the LEPL Labor Inspection Service

In 2022, the supervisory agency "On Labor Safety" conducted inspections on 1147 facilities based on the Organic Law of Georgia, and on 565 facilities based on the Labor Code of Georgia. It should be noted that in recent years, the systematic monitoring of labor safety norms has been reflected in the rate of accidents at workplaces, and since 2019, the decreasing data of fatal cases have been maintained,

⁷⁹² See The data of the National Service of State Statistics are available at: <<https://rb.gy/lcmgol>> [last viewed: 27.03.2023]; Unemployment rate indicators for EU countries are available: <<https://rb.gy/bogvsf>> [last viewed: 27.03.2023].

⁷⁹³ See Detailed information can be found in the chapter of this report - Women's economic participation and labor rights.

⁷⁹⁴ See The 2022 report of the State Labor Inspection Service is available at: <<https://rb.gy/2nmnpv>> [last viewed: 27.03.2023].

⁷⁹⁵ The statement of the Public Defender of Georgia is available at: <<https://rb.gy/zgjise>> [last viewed: 27.03.2023]. Also, see Detailed information in the cultural rights and right of expression section of this report.

⁷⁹⁶ The 2022 report of the LEPL Labor Inspection Service is available at: <<https://rb.gy/2nmnpv>> [last viewed: 27.03.2023].

⁷⁹⁷ Ibid.

⁷⁹⁸ see Detailed information in the relevant subsections of this report, the right to culture, the right to expression and the right to equality.

although the rate of deaths at the workplace is still significant (in 2022, 35 employees died at the workplace and 330 were injured).⁷⁹⁹ The frequency of violations detected by the inspection service (8728 references were issued to violations of labor safety norms, and 3369 references to violations of labor code norms) shows that employers systematically ignore the norms of labor legislation, which unequivocally indicates the need to continue intensive inspections.

It is worth noting that despite the frequency of violations of labor legal norms by employers, the number of complaints submitted by employees to the labor inspection service in this direction is small (42 complaints were submitted to the inspectorate for violations of labor safety, and 231 complaints for violations of the norms of the labor code). The calls made on the initiative of the employees of the hotline of the counseling service make up only 14% of the total calls. The passivity of the employees in this direction may be caused by the fact that as a result of the demand to improve the working conditions or bring them into compliance with the law, they often become victims of different treatment from the employers.⁸⁰⁰ It is important for the Labor Inspection Service to continue an active information campaign to increase the credibility of the institute and raise awareness of the labor rights of employees.

Recommendation

To the Labor Inspection Service of the Ministry of Labor:

- In order to raise the awareness of employers and employees on the issues of labor safety and labor rights, as well as on the mandate of the Labor Inspection, to continue the production of an information campaign.

⁷⁹⁹ The indicators of fatal cases at the workplace are as follows: in 2018 - 59, in 2019 - 45, in 2020 -39, in 2021 -37. Detailed information is available: < <https://lio.ge/faq/occupational-accidents/> > [last viewed: 27.03.2023].

⁸⁰⁰ The statement of the Public Defender of Georgia is available at: < <https://rb.gy/zgjise> > [Last viewed: 27.03.2023].

Also, see Detailed information in the cultural rights and right of expression section of this report.

19. Right to Social Protection

19.1. Targeted Social Assistance

As of December 2022, 1,176,588 individuals and 369,515 families are registered in the targeted social assistance program, which is 31.5% and 34.7% of the entire population. About half of the registered persons - 535,343 persons and 149,864 families - receive subsistence allowance. Taking into account the number of beneficiaries and the importance of the issue, the Public Defender has been supervising the implementation of this program for years and has pointed out the flaws in the methodology of assessing the socio-economic status of the family. According to him, to provide fair, targeted, and effective assistance to the population, it is necessary to periodically review how correctly the families are assessed and, as a result of this analysis, update the methodology as necessary. It is important that during the reporting period, it was approved "New Test Methodology for Assessing the Socio-Economic Status of Households", using which 20,000 households should be selected step by step, using the random sampling method, and evaluated in the testing mode "From the Unified Data Base of Socially Vulnerable Families".⁸⁰¹ The Public Defender hopes that the selection and evaluation process will be carried out on time and smoothly, and taking into account the results, the methodology of the program will be updated.

In addition to the methodological flaws of the assessment, one of the challenges of the targeted social assistance remains the several-month period established for the appointment of the subsistence allowance, which the Public Defender also points out in the parliamentary reports⁸⁰² for years, and it is also important to take this issue into account at the stage of updating the methodology.

19.2. Right to proper food/access to free canteens

The Public Defender, like the previous years, actively supervised the situation in the country in terms of access to the right to proper food in 2022. The right to adequate food means access to the food necessary for a healthy and active life, including minimum rations of adequate calories, protein, and other specific nutrients. For this purpose, a program of free canteens is implemented in the country, and it is implemented in almost all municipalities. However, the program has significant flaws, which the public defender has been talking about for years.

In February and March of 2022, the office of Public Defender visited 59 free cafeterias operating in 25 municipalities of Georgia, based on the random selection principle. The monitoring results once again confirmed the challenges that the Office of the Public Defender has been dealing with for years and also revealed other important shortcomings of the program.

In particular, as a result of monitoring, it was revealed that:

⁸⁰¹ Order of September 30, 2022 of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia "On measures to be implemented in order to test the new methodology for assessing the socio-economic status of socially vulnerable families (households).

⁸⁰² 2018 parliamentary report of the Public Defender of Georgia, 268; 2019 parliamentary report of the Public Defender of Georgia, 290; 2020 Parliamentary Report of the Public Defender of Georgia, 302.

- There is no uniform standard for the management and delivery of the free cafeteria service in the country, therefore, the amount and calorie content of the food to be served, as well as mandatory requirements regarding the arrangement of the physical environment, safety protection, and sanitary-hygienic conditions, are not established as a standard throughout the country.
- The nutritional needs of the beneficiaries are not taken into account, and the ratio mainly depends on the amount of money allocated from the budget. Therefore, the menu does not take into account the energy value of the dinner, the age of the beneficiaries, the state of health, and religious beliefs.
- The relevant specialists do not participate in the preparation of the food menu. Cases were identified when the accountant set the food menu.
- In most cases, the menu does not change seasonally throughout the year.
- There are significant cases, especially in Tbilisi, when beneficiaries take only bread from canteens. In particular, on specific days in Tbilisi canteens, when only soup is on the menu (pea soup, bean soup, vegetarian borsht), the beneficiaries take only bread from the canteen. This can be explained by the fact that the beneficiaries miss the taste qualities of the food, as well as the lack of calories. In the menu, during the week, only two days a nutritious meal with meat is provided, therefore, the demand of the beneficiaries increases more on these days. In addition, it should be noted that in some canteens it is forbidden to take out only bread.
- The small amount of money allocated for canteens is especially striking in the case of Tbilisi Municipality, where the amount allocated per beneficiary is 1 GEL and 30 VL, which is less than the daily amount calculated per beneficiary in the regions (for example, in Borjomi - 2.47 GEL, in Kutaisi - 2.50 GEL, in Akhaltsikhe - 2.05 GEL, in Samtredia - 2.20 GEL, in Telavi - 2.65).

As a result of monitoring, it was also revealed that free canteens are located only in administrative centers. Therefore, in some cases, beneficiaries living in remote villages have to travel a long distance to receive the daily allowance. The issue is aggravated by the fact that some municipalities do not have home delivery services.

Also, in some municipalities, there is still the problem of the absence of additional lists, therefore, the municipality has explained to the waiting persons that they will be able to use the free meal only if the person is removed from the main list due to death or other reasons.

Recommendations

to the Government of Georgia:

- To ensure the development and approval of the minimum standards of service with free canteens, which will take into account the management of the service, menu calories, food quality, safety, sanitary-hygienic requirements, improvement-equipment of food blocks, compliance with hygienic norms and other issues.

Local municipalities:

- In 2023, in the territory of their municipality, they should study the needs of the residents, collect

statistical data and, taking this into account, follow the need, to ensure access to food, seek additional funds and increase the budget of the municipality for the current and future years.

20. Right to Adequate Housing

20.1. Introduction

Challenges identified in the direction of realizing the right to proper housing for homeless people have not changed for years.⁸⁰³ The state does not have a governmental strategy for homeless persons and a corresponding action plan, a full-fledged legal definition of a homeless person, and the necessary framework legislation for the realization of the right to adequate housing. The state does not process information to study the factors causing homelessness and the extent of homelessness in the country, as a result, the government does not have the necessary policies for the prevention of homelessness based on the results of the research. There is still no unified database of homeless persons and minimum standards for arranging social housing for homeless persons in the country. The challenge in municipalities is the heterogeneity of the definition of a homeless person and the inappropriate definition of international standards, the lack of full-fledged local databases, the lack of budgetary and infrastructural resources, the adequacy of social housing for homeless people, the absence of socio-economic integration programs for people placed in shelters and social housing, and in individual municipalities - their ineffectiveness.

Along with systemic challenges, it is significant that on September 5, 2022, the Georgian government approved⁸⁰⁴, the 2022-2030 national strategy for human rights protection, however, unfortunately, despite the recommendation of the Public Defender of Georgia, issues related to the realization of the right to proper housing were not included in the document. In the current situation, it has become even more necessary to develop a state strategy related to the realization of the right to proper housing, which in the long-term and short-term perspectives will form the vision of the state for the prevention of homelessness, and its gradual and final elimination. It should be noted here that according to the information provided by the Ministry of IDPs from the occupied territories of Georgia, the Ministry of Labor, Health and Social Protection, a working group was created in the agency on housing policy issues, which has developed a conceptual document and its review is planned in the near future.⁸⁰⁵ Unfortunately, interested groups, including homeless people, representatives of the civil sector and the Public Defender of Georgia, were not included in the working group's activities. The Public Defender of Georgia hopes that in the process of working on the policy document, the involvement of all interested groups will be ensured, there will be enough space for discussion, and the document will be based on international standards and best practices.

⁸⁰³ See 2019, 2020 and 2021 report of the Public Defender of Georgia "On the state of protection of human rights and freedoms in Georgia", chapter: Right to proper residence.

⁸⁰⁴ Available at the link: < <https://bit.ly/41suH4X> > [Last viewed: 27.02.2023].

⁸⁰⁵ Letter No. MOH32300143848 dated February 9, 2023 of the Ministry of IDPs from the Occupied Territories of Georgia, Labor Health and Social Protection.⁹

20.2. Strengthening International Mechanisms Regarding the Right to Adequate Housing

According to the assessment of the Public Defender of Georgia, in order to strengthen social rights, including the right to proper housing, to bring the national policy and framework legislation into line with international standards, the state needs to take steps to strengthen the international mechanisms for the protection of these rights. Since 1994, Georgia has been a contracting party to the International Covenant on Economic, Social, and Cultural Rights. Accordingly, the fulfillment of the obligations protected by the international agreement, including the right to adequate housing, must comply with the standards established by the pact. The standards provided for in this international agreement are an international legal source of high importance, to which the UN Committee on Social, Economic and Cultural Rights makes a great contribution, which monitors the rights protected by the agreement by the member states along with the authoritative definitions of rights. According to the 2008 Optional Protocol on Economic, Social and Cultural Rights, one of the monitoring tools is the individual appeal mechanism, however, since Georgia has not ratified the mentioned protocol, there is no possibility to submit a complaint to the Committee.

The European Social Charter and its Article 31 should be mentioned among the regional human rights protection agreements related to the right to adequate housing. According to the present norm, in order to effectively exercise the right to a place of residence, the states undertake three directions: 1) To facilitate the availability of an adequate standard of housing. 2) To prevent and reduce homelessness in order to eliminate it gradually; 3) To make housing prices affordable for those who do not have adequate funds. Since the Social Charter of Georgia has made a reservation on this article, it still does not recognize the obligation to protect and fulfill this right.

It is noteworthy that the socio-economic development of the country should also include the progressive strengthening of human rights protection standards, and one of the indicators should be the strengthening of international legal mechanisms in this direction. Providing adequate and decent housing is an obligation recognized by the state, both nationally and internationally. In this situation, it is important to strengthen the mechanisms of enforcement of the declared obligation at the international level. The Public Defender of Georgia takes into account the fact that soon it may not be possible to partially and/or fully ratify the optional protocol mentioned above, as well as Article 31 of the Charter, however, the planning of the necessary measures to join these international legal mechanisms must include the government's social policy and social - in the agenda of issues to be discussed in terms of protection of economic rights.

20.3. Current Situation in the Regions

In the first quarter of 2022, the representatives of the Public Defender of Georgia, together with an expert,

visited 11 social housing in 7 municipalities across the country.⁸⁰⁶ The main goal of the monitoring was to study the issue of providing decent living conditions for homeless persons placed in these institutions. The visits highlighted the inadequate living environment in social housing as one of the most acute problems. This ultimately, on the one hand, forces the residents to live in a degrading environment, and on the other hand, the conditions in individual dwellings may even endanger their lives and/or health. A special report was prepared regarding the monitoring results, where the challenges related to the implementation of the housing services are discussed in detail and depth.⁸⁰⁷

Unlike the project implemented with the Swiss Agency for Development and Cooperation, in the case of social housing independently created by the municipalities, no new buildings were built and the beneficiaries were housed in various non-residential buildings. For example, in Kutaisi, the social housing building in Nikea settlement was a former communication building, Ozurgeti social housing is located in a former maternity hospital, Gori housing is a former rehab center building, Rustavi housing is a former vocational school, and Orkhevi housing is a former warehouse. It is significant that, except for Rustavi, none of the above-mentioned residences can meet the established international standards regarding the adequacy of housing.⁸⁰⁸ The inappropriate living conditions in Ozurgeti, Kutaisi, and Tbilisi social housing were described in the previous year's parliamentary report, and we will not review them in detail in this report.⁸⁰⁹

The problem of housing adequacy is particularly acute in social housing in Gori, Kutaisi and Ozurgeti, however, the situation in the building of the former rehab center in Gori is particularly worrying. The building, in which about 80 families live, has not been arranged for living, the residents have made their own rooms in a makeshift manner, and it is not suitable for permanent residence. Sewage and drainage systems are not functioning in the residence, there are shared bathrooms with unsanitary conditions. Residents do not have access to clean water, in these conditions, it is impossible to maintain hygiene and store food safely. The extremely harsh sanitary-hygienic conditions in the facility contribute to the spread of parasitological diseases, insects, rodents and reptiles, which pose a particular threat to the lives and health of the building's residents.

Taking into account the current situation, the Public Defender of Georgia, within a short period of the monitoring, addressed the local authorities of Gori, Kutaisi and Ozurgati, first in writing⁸¹⁰, and later with public announcements⁸¹¹ and demanded the resettlement of the persons living there in the fastest

⁸⁰⁶ Tbilisi Municipality (3 dwellings), Kutaisi Municipality (2 dwellings), Batumi Municipality (1 dwelling), Zugdidi Municipality (1 dwelling), Ozurgeti Municipality (1 dwelling), Gori Municipality (2 dwellings) and Rustavi Municipality (1 dwelling).

⁸⁰⁷ see The special report "Implementation of housing services in Georgia, in terms of the rights of persons with disabilities", is available at the link: < <https://bit.ly/3mepgq9> > (last viewed: 28.02.2023.).

⁸⁰⁸ General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, para. 7 and 8.

⁸⁰⁹ see "On the state of protection of human rights and freedoms in Georgia" 2021 report of the Public Defender of Georgia, chapter: Right to proper residence, p. 229-233 p.

⁸¹⁰ No. 04-4/3644 of the Public Defender of Georgia dated April 5, 2022; Letters No. 04-4/4637 of May 3, 2022 and No. 04-4/4638 of May 3, 2022.

⁸¹¹ Available at: < <https://bit.ly/3J9wswV> > (last viewed: 28.02.2023).

possible manner and to provide them with an alternative living space corresponding to their human dignity. Unfortunately, nothing has been done to provide decent living conditions for the homeless families placed in these social housing. As a result, they are still living in an inappropriate living environment. The Public Defender of Georgia once again⁸¹² specifically notes that, like the arrangement of a temporary shelter,⁸¹³ it is necessary to approve the uniform minimum standards for the arrangement of housing, since in the absence of such a standard, municipalities are given the opportunity to use unfit buildings for housing homeless people and families, which not only affects the quality of life of the beneficiaries, but it may be dangerous for their life and health.

The insufficiency of social assistance/programs for homeless persons in the municipalities, and in some cases, their absence, remains a challenge. The Office of the Public Defender requested information from all those municipalities (22 in total)⁸¹⁴ that have approved the procedure for registering homeless persons and providing them with temporary housing. According to the provided information, it is clear that only the municipality of Adigeni has free space in social housing intended for the long-term accommodation of homeless people. In the rest of the municipalities, the program for homelessness is limited to apartment rent, which is set for one budget year and cannot eliminate homelessness in the long term.

Proposals

To the Parliament of Georgia:

- Based on international standards and best practices, the concept of a homeless person should be defined by legislation.
- To ensure the right to adequate housing, adopt framework legislation in line with international standards.

Recommendations to the Government of Georgia:

- To ensure the right to proper housing, create a state housing strategy by international standards, which will take into account the interests of all homeless groups.
- Develop minimum standards for social housing arrangements by the best international experience.

To the Minister of Foreign Affairs of Georgia:

- Arrangements should be made to initiate the necessary procedures for ratification of the Optional Protocol on Economic, Social and Cultural Rights 2008 and Article 31 of the European Social Charter

⁸¹² see "On the state of protection of human rights and freedoms in Georgia" 2021 report of the Public Defender of Georgia, chapter: Right to proper residence, p.p. 229-233

⁸¹³ "Technical regulation - on approving the minimum standards of functioning of the temporary shelter for the homeless" Resolution No. 131 of February 7, 2014 of the Government of Georgia.

⁸¹⁴ The municipalities of Khoni, Kharagauli, Chokhatauri, Senaki, Samtredia, Sagarejo, Rustavi, Ozurgeti, Mestia, Martvili, Tetrtskaro, Zugdidi, Vani, Dusheti, Dmanisi, Gori, Bolnisi, Batumi, Ambrolauri, Adigeni, Tbilisi and Kutaisi.

1996 (as amended).

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- Ensure the involvement of all interested groups in the work process of the working group on housing policy issues, including the participation of homeless persons, representatives of the civil sector and the Public Defender of Georgia.

To Gori, Tbilisi, Kutaisi and Ozurgeti municipalities:

- People living in social housing should be provided with alternative housing suitable for a dignified human life.

To the Town Halls of Khoni, Kharagauli, Chokhatauri, Senaki, Samtredia, Sagarejo, Rustavi, Ozurgeti, Mestia, Martvili, Tetrtskaro, Zugdidi, Vani, Dusheti, Dmanisi, Gori, Bolnisi, Ambrolauri, and Kutaisi Municipalities:

- To ensure adequate housing, priority should be given to long-term housing and a housing fund should be created.

21. Human Rights Situation of Persons with Disabilities

21.1. Introduction

Despite the positive steps taken in many directions, there are still many problems in Georgia in terms of protecting the rights of persons with disabilities.

The quality and continuity of inclusive education are again a challenge. Access to the physical environment, information, means of communication and various services for persons with disabilities remains a serious problem. In the reporting period, the national accessibility plan and standard for ensuring the access of persons with disabilities to information, means of communication, websites, and mobile applications were not approved. National accessibility standards of technical regulations are not effectively implemented.⁸¹⁵ Due to the absence of an active and large-scale information campaign, there is little knowledge about the elements of the named document among both public and private service providers. Access to facilities for various purposes⁸¹⁶ (built before the entry into force of these standards) remains a challenge for people with all kinds of disabilities.⁸¹⁷

People with disabilities still face difficulties in terms of employment. An obstacle is the stigmatizing attitude of employers, which is often the result of their lack of information.

The problem is the substantial participation of disabled persons/disabled persons' organizations in the decision-making process at different levels. The activities of local councils working on the issues of disabled people among them. As in the past years, the situation regarding the proper activation/functioning of the deliberative bodies with the municipalities remains unchanged.⁸¹⁸

In 2022, a positive event was the completion of the deinstitutionalization process of the Tbilisi Infant Home, as well as the approval of the 2023-2030 strategy for independent living and deinstitutionalization of disabled people and the 2023-2025 action plan.⁸¹⁹ In the process of implementing the action plan, it is

⁸¹⁵ Resolution of the Government of Georgia of December 4, 2020, on the approval of the technical regulations - "National Accessibility Standards". The document is available on the website: <<https://bit.ly/3ZQV1F6>> [last viewed: 10.02.2023].

⁸¹⁶ The problem of access to the physical environment is related to the police, prosecutor's office, courts, legal aid and notary offices. For detailed information, see Special Report of the Public Defender of Georgia: "Assessment of the Needs of Women and Girls with Disabilities and the State of Protection of their rights in Georgia". Year 2022. The report available at: <<https://bit.ly/3E9Vgld>> Access to social housing and free dining infrastructure is also a challenge. See: Reports of the Public Defender of Georgia: "Implementation of the Free Dining Program in Georgia". Year 2022. The document available at: <<https://bit.ly/408tvDh>> [last viewed: 28.03.2023]; "Implementation of Housing Services in Georgia, in terms of the Rights of persons with disabilities". Year 2022. The document available at: <<https://bit.ly/3YOMkd1>> [last viewed: 28.03.2023].

⁸¹⁷ When planning the adaptation process of public institutions, the interests of people with mobility difficulties are mostly taken into account, as opposed to people with sensory and intellectual disabilities.

⁸¹⁸ Even though in the majority of municipalities, a council has been formally created and disabled persons and/or organizations working on their rights are more or less represented in it, during the reporting period, the meetings of the deliberative body were held in only 33 municipalities. In addition, it is true that according to most of the regulations of the councils, during the year, it is prescribed to hold 4 sessions, however, the number of sessions held in practice varies from one to two sessions. It is worth noting the fact that, despite numerous recommendations issued by the Public Defender over the years, the council working on the rights of persons with disabilities has not yet been created in Kazbegi, Tianeti, Kaspi (it was not created last year, and this year we did not receive information from Kaspi City Hall) and Chiatura (according to information, it is planned to create a council in the near future) in municipalities.

⁸¹⁹ The Order of the Ministry of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Protection of February 6, 2023, NMOH 5 23 00000046 and the relevant attachments are available on the website: <<http://bit.ly/3DYXS5k>> [last viewed: 28.03.2023].

important to effectively monitor its implementation and analyze the identified challenges⁸²⁰. Among them, it is taken into account the number of people waiting to be admitted to boarding houses for disabled people and shelters for people with mental health disorders, the need to create and strengthen independent living support services⁸²¹ at both the central and municipal levels.

In the reporting period, the changes made in the Civil Code of Georgia, which are related to the rules of making transactions by blind people, should be considered a step forward.⁸²²

21.2. Inclusive Education

The quality and continuity of inclusive education remain a challenge.

Early and Preschool Education

In the regions,⁸²³ there is a shortage of specialists in inclusive education and the access of children with various types of limitations to the infrastructure of kindergartens.⁸²⁴ Identifying children with disabilities who are left behind in preschool education remains a problem.⁸²⁵ Monitoring of inclusive preschool education and education is not carried out properly in the majority of municipalities.⁸²⁶ 2022, training in the direction of inclusive education was conducted in 27 self-governing units,⁸²⁷ and research on the needs of children with disabilities was conducted in only 10.⁸²⁸

General Education

Out of 2,301 public and private schools operating across Georgia, students with special educational needs

The involvement of international and local organizations and disabled people in the process should be evaluated positively.

⁸²⁰ Among them: the absence of a timely detection mechanism of institutionalization risks, accessibility of services, lack of personnel, less coordination between central and local systems, stigma and social barriers, etc. "2023-2030 Strategy for Independent Living and Deinstitutionalization of Persons with Disabilities".

⁸²¹ Including personal assistant, home care and other individual support programs.

⁸²² Nevertheless, a complex approach is needed to create appropriate guarantees for the use of alternative means for people with all types of disabilities.

⁸²³ A total of 669 psychologists, 499 special teachers and 547 speech therapists are employed in kindergartens. Of them, 232 psychologists, 229 speech therapists and 370 special teachers are employed in Tbilisi. It is difficult to find a special teacher, speech therapist or psychologist in Ozurgeti, Lanchkhuti, Chiatura, Tkibuli, Dusheti, Tianeti, Akhaltsikhe, Akhmeta, Gori, Gurjaani, Marneuli, Dusheti, Sighnaghi, Kharagauli, Mestia, Tetrtskaro and Chokhatauri. In addition to the named specialists, it is necessary to involve occupational therapists, methodologists, a sign language specialist and an assistant in the educational process.

⁸²⁴ In 2022, the "State Standards of Early and Preschool Education" were reworked, and certain indicators were added to the standard of physical environment, in the part of the arrangement with the principles of universal design. However, it is necessary to put them into practice.

⁸²⁵ Such facts were revealed only in 2 municipalities (out of 53) - Borjomi and Marneuli. There is 1 child in Borjomi and more than 1000 children in Marneuli. Municipalities name the lack of appropriate resources/mechanisms and the stigma among parents of disabled children as the obstacles to identifying such children.

⁸²⁶ According to the information provided, monitoring was carried out in 11 out of 53 municipalities: Tkibuli, Adigen, Bolnisi, Borjomi, Dedoplistskaro, Telavi, Poti, Oni, Telavi, Ozurgeti, and Sighnaghi.

⁸²⁷ From 53 municipalities, the topics were mainly related to early inclusive education and its principles, motor and sensory support, methods of working with children with special needs, and behavior management. In some municipalities, retraining was carried out within the framework of the training module for educators.

⁸²⁸ from 53 municipalities. The research was conducted in Adigen, Gori, Dedoplistskaro, Oni, Samtredia, Marneuli, Tsalka, Tsager, Khelvachauri and Ozurgeti. They did not present the relevant document.

(disabled) are enrolled in only 1,595.⁸²⁹ It should be noted that, as in previous academic years, the number of girls⁸³⁰ with disabilities in general education is much less than that of boys. In the 2021/2022 academic year, cases of dropping out of school were identified.⁸³¹ It is a challenge to include all school-age children with disabilities in the educational process.

As of August 2022, there are 611 children with disabilities out of school, most of them - in Tbilisi (94), as well as in Gardabani (37) and Batumi (36).⁸³²

Awareness of school staff and parents on issues related to inclusive education remains a problem. Practice shows⁸³³ that in cases of parental neglect of the child's right to education,⁸³⁴ schools do not address the social link. Despite the activities implemented in 2022,⁸³⁵ access to infrastructure and learning resources, as well as the number of inclusive education specialists in the regions, remains a challenge.⁸³⁶

Professional Education

In 2022, 75 institutions were implementing vocational education programs. During the same year, 263 persons with disabilities were enrolled in professional programs. Despite the measures taken to increase regional access to vocational education,⁸³⁷ there is a need to increase geographical coverage. Due to the lack of a basic general education document, it is a special challenge to include disabled people in professional programs and to offer them a variety of choices to master the professions that are in high demand in the labor market. Specialists supporting students with special educational needs/disabled students are employed in 38 professional educational institutions.

⁸²⁹ A total of 11,976 students with special educational needs (disabled) are included in general education. As of January 1, 2023. Correspondence of the Ministry of Education and Science of Georgia MES 9 23 0000092035- 30.01.2023.

⁸³⁰ In 2022-2023 academic years - 3887 girls and 7819 boys.

⁸³¹ In particular, 221 students with special educational needs/restricted abilities stopped studying before the end of the basic level, and after the end of the basic level - 378 disabled students. Correspondence of the Ministry of Education and Science of Georgia MES 9 23 0000092035-30.01.2023.

⁸³² The social workers of the respective municipalities could not find 135 children with disabilities at the indicated residential addresses. The information was forwarded to the Social Service Agency of the State Government for further response. Most children with disabilities left out of school have severe health conditions or multiple disabilities.

⁸³³ Information meetings held by the Office of the Public Defender with various target groups in municipalities and Ind. statements. Among them, are cases 13891/22 and 14340/22.

⁸³⁴ Part 2 of Article 1198¹ of the Civil Code of Georgia, in case of refusal by the parent/legal representative to assess the student's special educational needs, provides for an appeal to the body of guardianship and care based on the actual location of the student. This refers to the case when, within 1 month after the initial refusal by the parent/legal representative, the student still has learning difficulties, and the repeated refusal of the parent/legal representative to evaluate hinders the child's development.

⁸³⁵ In 2022, the construction of 2 new, adapted schools was completed and the construction of 8 adapted schools is underway; 3 public schools were fully rehabilitated; Tbilisi Public School No. 202 is undergoing restoration/complete rehabilitation; 18 schools were adapted for various needs (arrangement of a ramp, lift, adapted sanitary junction). Correspondence of the Ministry of Education and Science of Georgia MES 9 23 0000092035- 30.01.2023.

⁸³⁶ In 2022, a total of 674 inclusive education specialists were employed in schools. 324 of them - in Tbilisi.

⁸³⁷ In 2022, the construction of 3 new universal standard colleges at the Tskaltubo, Khashuri and Lanchkhuti locations was completed. The construction of a new college in Borjomi municipality is nearing completion.



Highest Form of Education

In 2022, 162 applicants with disabilities won the right to continue their studies at a higher educational institution.⁸³⁸ It should be noted that the accreditation standards,⁸³⁹ were updated during the reporting period, but it is important to properly implement them in practice. At the university level, the following are on the agenda: the need to improve access to the infrastructure of students with disabilities, to use reasonable accommodation measures in the teaching/examination process, to introduce modern technologies, to adapt university websites, and to digitize educational resources.

21.3. Employment of Disabled Persons

During the reporting period, due to some obstacles, the employment of persons with disabilities in the open labor market was complicated.⁸⁴⁰ These barriers include lack of information⁸⁴¹ about employers and services available to youth with disabilities, employer stigma and lack of training in using reasonable accommodations, barriers to accessing formal education for people with disabilities, lack of continuing professional development, inaccessible infrastructure/recruitment websites,⁸⁴² inflexible working arrangements,⁸⁴³ lack of necessary equipment, technology and support Lack of services.⁸⁴⁴ Available data

⁸³⁸ It should be noted that in 2022, no research was conducted on the hindering factors that prevent people with disabilities from continuing their studies in higher education institutions after completing the general level. According to the information of the Ministry of Education and Science of Georgia (MES 9 23 0000092035-30.01.2023), a study of the needs of the students at the State University of Georgia is underway and recommendations are planned to be developed.

⁸³⁹ The standards provide for an appropriate environment for achieving learning outcomes and the existence of appropriate internal quality assurance mechanisms for evaluating remote/electronic processes. Approved by the order of the Minister of Education and Science of Georgia No. 83/N of July 7, 2022. see report: < <https://bit.ly/420COpN> > [last viewed: 06.03.2023].

⁸⁴⁰ Report of the Public Defender of Georgia "Right to work and employment of persons with disabilities". 2022 The report is available on the website: < <https://bit.ly/3G16oCs> > [last viewed: 28.03.2023].

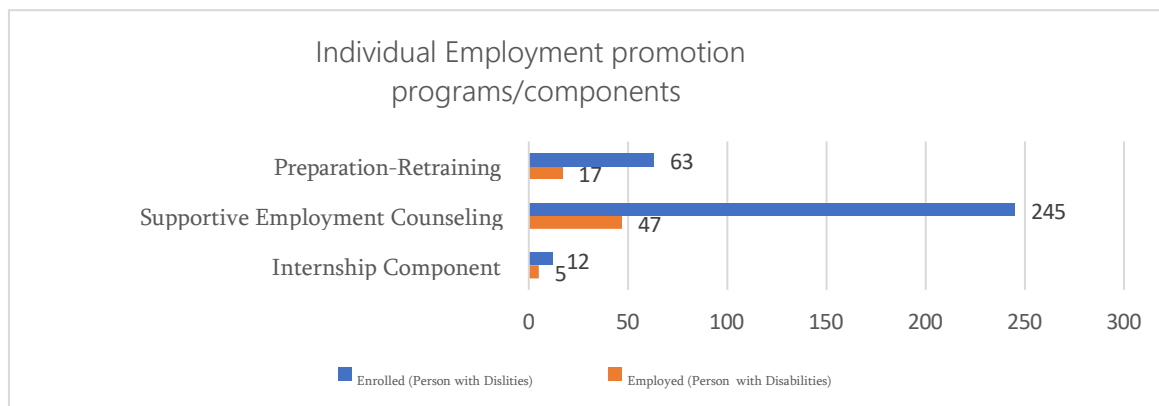
⁸⁴¹ For detailed information, see the study "Employment Needs Assessment of Youth with Disabilities". The year 2023. A platform for development and engagement. The document is available on the website: < <https://bit.ly/3km9nx7> > [last viewed: 28.03.2023].

⁸⁴² Among them, road infrastructure and workspace.

⁸⁴³ Among them, fewer opportunities for remote or part-time employment.

⁸⁴⁴ The study "Supporting the employment of disabled people in the public sector" was prepared by the Research Center for Disabled

on employment promotion programs reveal that during the reporting period, the number of job seekers still exceeded the number of actually employed.⁸⁴⁵ The geographical coverage of the service centers of the Employment Promotion Agency is also insufficient.⁸⁴⁶ As for the public sector, in 2022 some activities⁸⁴⁷ were carried out in the field, although more efforts are needed for the employment of persons with disabilities. As of December 31, 2022, a total of 235 persons with disabilities were employed in the public sector.⁸⁴⁸



21.4. Mental Health

Protecting the rights of people with mental health problems remains a challenge. The implementation process of the 2022-2024 action plan⁸⁴⁹ of the 2022-2030 mental health protection strategy is being delayed. During the reporting period, most of the activities provided for in the plan were not implemented. A package of legislative changes related to the protection of the rights of persons with mental health problems and the promotion of employment has not been prepared. No appeals and response mechanisms have been approved. A monitoring group for the protection of patients' rights and assessment of service quality has not been created. The mechanism for the purchase of medicines was not reviewed, and the corresponding changes were not reflected in the state program. Their implementation is planned to be delayed, from the spring of 2023.⁸⁵⁰

Persons of Tbilisi State University. 2022 p. 23-24 and 29. Available at: <<https://bit.ly/410Wo4r>> [last viewed: 28.03.2023].

⁸⁴⁵ As of January 26, 2022. An exception is a component of subsidizing wages for workplaces, within the framework of which, in 2022, 6 employers and 6 disabled job seekers were involved. 6 disabled people were employed. The contract was signed for 9 months.

⁸⁴⁶ Although the number of employment promotion agency service centers is increasing, its geographical coverage is still not sufficient. Report of the Public Defender of Georgia "Right to work and employment of persons with disabilities". The 2022 year. p. 28. The report is available on the website: <<https://bit.ly/3G16oCs>> [last viewed: 28.03.2023].

⁸⁴⁷ On February 10, 2022, an annual action plan was approved and a diverse workforce planning guide was prepared. The initial concept of adapting the hr.gov.ge website administered by the Public Service Bureau to disabled persons was also prepared.

⁸⁴⁸ Of them, 76 are professional civil servants, 30 are employed in managerial positions, and 159 are employed under contract. Public Service Bureau Correspondence No. G2278-06.03.2023.

⁸⁴⁹ Resolution No. 23 of the Government of Georgia dated January 18, 2022 "On the Approval of the Mental Health Strategy of Georgia for 2022 - 2030". The document is available on the website <<https://bit.ly/3Etv9WE>> [last viewed: 22.02.2023].

⁸⁵⁰ Letter of February 20, 2023 of the Ministry of IDPs from the Occupied Territories of Georgia, Ministry of Labor, Health and Social Protection MOH 9 23 00181491.

The standard of asylum for people with mental health problems, which increases the risks of violating the rights of these people during individual actions taken by the state to deinstitutionalize the field still does not exist.⁸⁵¹

Lack of beds in inpatient services and equal geographical coverage of services remain a problem.

The increase in the budget of the 2023 state program⁸⁵² for mental health can be positively evaluated, which should contribute to the development of the field and the improvement of the legal status of people with relevant needs.

21.5. Deficiencies of capacity reform

In the country, the replacement of the capacity system with a support model was an important step in protecting the rights of people with relevant needs, although its successful implementation in practice has been associated with problems over the years.

Among the circumstances hindering the effectiveness of the reform are the problems of its administration, inter-departmental coordination, and providing the body with human and material resources. Among them, is the insufficient number of social workers, which effectively excludes the possibility of quality monitoring.

One of the main obstacles to the implementation of the support model is the absence of an independent service necessary for the field. In practice, the support of a person is mainly limited to care, nutrition, and hygiene assistance and is not focused on the promotion of independence and autonomy of the support recipient. It is also difficult to find support persons, which hurts the legal status of people with psychosocial needs.

There are often cases when the supporter does not fulfill his duties⁸⁵³, properly, but it is difficult to respond to them properly.⁸⁵⁴

21.6. The process of introducing the social model of assessment of a disabled person

In March 2023,⁸⁵⁵ the 2023-2025 action plan of the measures to be implemented in connection with the

⁸⁵¹ According to the information of the Ministry of IDPs, Labor, Health and Social Protection from the occupied territories of Georgia (letter MOH 9 23 00181491 - 23.02.2023), the agency estimated the number of patients in the hospital, who are delayed for 6 months or more. From February 2023, it is planned to transfer 125 people to small family-type houses in Senaki.

In addition, the Bediani shelter of "Eastern Georgia Mental Health Center" LLC was handed over to the State Care and Assistance Agency for Victims of Trafficking, which will fully start its management from April 1.

⁸⁵² Resolution No. 609 of the Government of Georgia of December 30, 2022 "On the Approval of State Health Care Programs for 2023". The document is available on the website: <<https://bit.ly/3ZdB7Ty>> [last viewed: 24.02.2023].

⁸⁵³ The information was obtained during meetings (focus groups) with representatives of the state care and assistance agency for victims of trafficking. (18.10.2022, 19.10.2022, 20.10.2022, 25.10.2022;31.10.2022).

⁸⁵⁴ State Care and Assistance Agency for Victims of Trafficking

According to the letter No. 1000318 6 22 00571107 dated November 24, 2022, since the beginning of the reform, only 17 cases of non-performance/infrequent performance of duties by the supporter have been established, which became the basis for preparing a negative conclusion. In 4 of these cases, a decision was made to strengthen the supporter, and in 13 cases, the supporter was released from duty.

⁸⁵⁵ Article 37, Clause 2, Sub-Clause "A" of the Law of Georgia "On the Rights of Persons with Disabilities" obliged the Ministry of IDPs, Labor, Health and Social Protection from the occupied territories of Georgia to approve the plan of measures to be implemented for

implementation of the biopsychosocial model of the mechanism for determining the status of disability was approved.⁸⁵⁶ The timely implementation of the activities provided for in the plan will contribute to the transition to the biopsychosocial system of assigning the status of disability, which, in addition to medical indications, will focus on the psychological and social factors of a person, and his individual needs.

It should be said here that the pilot program of the biopsychosocial model for the assessment of a disabled person was started in the Adjara region by the Ministry of IDPs from the occupied territories, labor, health and social protection, with donor support, as early as April 2019, the evaluation of which revealed several gaps and needs.⁸⁵⁷

21.7. Violence against disabled people

The current situation in terms of violence against persons with disabilities is still characterized by several challenges. Among them: persons with disabilities are not questioned in individual cases⁸⁵⁸ of investigation by law enforcement bodies, according to the special report⁸⁵⁹, of the Public Defender, "Assessment of the needs of women and girls with disabilities and the state of protection of their rights in Georgia", the process of conducting an examination is problematic for women and girls with disabilities, they are often secondary victimized. The problem remains the physical accessibility of justice and investigative bodies, the stereotypical and negative attitude of persons working in the justice system towards disabled persons, including women and girls. Inadequate knowledge of investigators in terms of communication with persons with disabilities, discriminatory approach to women with disabilities in the investigation of sexual crimes, lack of support services, absence of segregated statistics, etc.

21.8. Analysis of Annual Action Plans of Agencies

In 2022, some of the responsible agencies and territorial bodies defined by the Law of Georgia "On the Rights of Persons with Disabilities"⁸⁶⁰ did not approve action plans on the rights of persons with disabilities.

During the reporting period, the Government of Georgia has also not approved a unified strategy and relevant action plan for the implementation of the UN Convention on the Rights of Persons with Disabilities and the Law of Georgia "On the Rights of Persons with Disabilities".⁸⁶¹

the implementation of the biopsychosocial model of the mechanism for determining the status of disability by January 1, 2023.

⁸⁵⁶ Order NMOH820000094 of March 9, 2022 of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia. The document and its appendix are available on the website: < <http://bit.ly/40j6MDC> > Date of posting on the website 09.03.2023.

⁸⁵⁷ Among them: stigma and stereotypes, accessibility, language of medical documents for ethnic minorities, weak competencies of specialists, preference of medical model by doctors, lack of information, etc. Attachment to the letter NMOH52300053741 dated January 18, 2023 to the Ministry of IDPs from the Occupied Territories of Georgia: 2020 report and recommendations on the evaluation of the pilot program of the disability assessment and status determination system.

⁸⁵⁸ Even though the fact that the justice-implementing agencies have approved the standard and methodology for working with disabled witnesses, victims, and accused persons, during the investigation process, there are cases when a disabled person is not interviewed (cases pending at the Office of the Public Defender: No. 9240/22, No. 3338/22, No. 6958/22).

⁸⁵⁹ Special Report of the Public Defender "Assessment of the needs of women and girls with disabilities and the state of protection of their rights in Georgia". The document is available on the website: < <https://bit.ly/3E9Vgld> > [last viewed: 28.03.2023].

⁸⁶⁰ The action plan has not been approved by: The Parliament of Georgia, the municipalities of Tetritskaro, Khulo, Tsalendjikha, Mestia, Kvareli, and Ninotsminda. Several municipalities informed the Office of the Public Defender that the plan was approved, but did not send the document.

⁸⁶¹ This obligation is determined by Article 24 of the Law of Georgia on the Rights of Persons with Disabilities. According to the letter

In the information received from the relevant agencies/municipalities, there is little data on the action documents approved by them. In particular, the answers do not contain data about the form, content of the plans, the involvement of disabled persons/organizations in the process of their adoption.⁸⁶²

As a result of processing the received information, it becomes clear that part of the local self-government action plans is identical, in some cases one or two tasks are defined, specific deadlines for their implementation are not specified, and an effective monitoring mechanism for the implementation of the planned activities is not specified.⁸⁶³

Recommendations

To the Government of Georgia:

- To approve the national accessibility plan and standard for providing access to information, means of communication, websites, and mobile applications for persons with disabilities. Both documents should be developed with the substantial participation of persons with disabilities/organizations working on the issues of persons with disabilities.
- To establish a state service of supporting persons, which provides the possibility of receiving the services of professional supporters for persons with psychosocial needs.
- Ensure the approval of a unified strategy and relevant action plan promoting the implementation of the UN Convention on the Rights of Persons with Disabilities and the Law of Georgia "On the Rights of Persons with Disabilities", in the process of which persons with disabilities/organizations working on the rights of persons with disabilities will be involved.

To the Minister of Education and Science of Georgia:

- In cooperation with higher education institutions, introduce inclusive preschool education bachelor programs and include early inclusive education components in them.
- In cooperation with the IDPs from the occupied territories of Georgia, the Ministry of Labor, Health and Social Protection and the municipalities, ensure the development of a system for identifying and monitoring children with disabilities who are left behind in preschool education.
- In terms of infrastructure, priority should be given to the accessibility of existing schools

of the Georgian Government Administration No. GOV 2 23 00002739 of January 23, 2023, it is clear that the protection of the rights of persons with disabilities is allocated as a separate goal in the second national strategy for the protection of human rights (2022-2030).

⁸⁶² The action plan of some municipalities contains information on the implementation of services for persons with disabilities and not the activities to be planned during the year. There was a case when the territorial body sent a budget instead of an action plan, which contains information about programs for people with disabilities.

⁸⁶³ In 2022, the Human Rights Protection Secretariat, a structural unit of the Government of Georgia's administration, published the annual report on the implementation of the 2021 action plans of the ministries of Georgia "On the Rights of Persons with Disabilities". However, the document does not contain the gaps, challenges and recommendations identified in the process of developing and implementing action plans, which would help the responsible agencies in their further activities. Action plans of territorial bodies have not been evaluated so far. The report is available on the website: < <https://bit.ly/3jUpIP6> > [last viewed: 28.03.2023].

(arrangement of ramps, elevators, adapted sanitary units, and tactile paths). To plan the necessary works as quickly as possible, including announcing relevant tenders.

- Raise the awareness of school staff and parents: on the importance of inclusive education, human rights-based approaches/proper communication to children with disabilities, reasonable accommodation measures in the learning process, difficult behavior management techniques and the procedures provided for by legislation regarding the identification/assessment of special educational needs.
- Schools should be instructed to properly inform parents of the procedural/referral arrangements established by law in cases of neglect of educational needs. Also, to monitor the fulfillment of the obligation provided for in Article 1198¹, Part 2 of the Civil Code of Georgia, so that if the parent/legal representative refuses to assess the student's special educational needs, schools will cooperate with the social circle.
- In cooperation with the Vocational Skills Agency and municipalities, promote access to vocational education at a regional and sectoral level. Appropriate activities should be carried out to facilitate the recognition of non-formal education, to protect the interests of disabled persons who, due to the lack of general education, are unable to register for professional programs.
- To provide diverse and demanding professional programs for students with disabilities, to support innovative teaching and continuous development of skills needed to increase competitiveness.
- With the involvement of the National Center for Education Quality Development and universities, promote the strengthening of inclusive education at the university level, the introduction of relevant profile/methodical training programs and the improvement of the independence of students with disabilities at the level of higher education (taking into account all aspects of the introduction and accessibility of assistive technologies).

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- To ensure the implementation of unfulfilled obligations in 2022 under the 2022-2024 Action Plan of the 2022-2030 Mental Health Protection Strategy. In particular:
 - to prepare packages of legislative changes related to the protection of the rights of persons with mental health problems and the promotion of employment.
 - Establish a rights-related appeal and response mechanism in the mental health system.
 - to develop a standard for the shelter of persons with mental health problems and to ensure the placement of persons with mental health problems in housing by the standard in the process of deinstitutionalization.
 - to create a monitoring group for the protection of patients' rights and assessment of service quality in the field of mental health care.
 - to review the mechanism of procurement of medicines and reflect the corresponding change in the state program.
- The Guardianship and Care Authority should be strengthened with financial and human resources

to effectively administer the support system and conduct quality monitoring and supervision. Including:

- to strictly define the maximum number of cases to be assigned to one social worker.
- to change the support monitoring procedure and tool, which includes frequent visits to the place of residence of the person receiving support and active communication with the persons receiving support.
- A continuous training system for social workers and support persons should be developed and implemented, which includes the rights of persons with disabilities, communication with them, and effective monitoring and supervision.

To the LEPL State Care and Assistance Agency for Victims of Trafficking:

- To provide study and response to the individual needs of persons waiting to be enrolled in boarding schools with disabilities and shelters for persons with mental health disorders, to avoid their admission to the institution.

To the LEPL Employment Promotion Agency:

- to expand the geographical coverage of the employment promotion agency's service centers and facilitate the access of persons with all kinds of limitations to employment websites.
- disseminate information about active employment promotion programs/components on a large scale, using accessible formats.
- Develop documents (guidelines, relevant recommendations) to promote the employment of persons with disabilities and to support them in the workplace, which will focus, among other things, on a rights-based vision of persons with disabilities, ethical terminology and communication, principles of universal design, practical aspects of reasonable accommodation and the implementation of modern assistive technologies.

To the Prosecutor General of Georgia and the Minister of Internal Affairs of Georgia:

- ensure continuous training of employees involved in the investigation of cases of violence committed against persons with disabilities, including women and girls with disabilities, and all other crimes, on the needs of the named persons and the standards of communication with them.
- Ensure the accessibility of the physical environment of the agency's buildings and in this process take into account the needs of independent movement of persons with physical and sensory and intellectual limitations.

To the Local self-government bodies:

- Ensure the accessibility of kindergartens and conduct awareness-raising meetings (with the involvement of inclusive education specialists) with the population, kindergarten staff and parents

of children: principles of inclusive education, legal guarantees of children with disabilities, correct approaches/terms, importance of early intervention, preschool education, social interaction with peers, the role of inclusive education specialists and positive management of challenging behavior;

- To ensure the holding of meetings of local councils working on the issues of disabled persons with the periodicity stipulated by the statute.

22. State of the Children's Rights

22.1. Introduction

In 2022, the protection of the rights of the child still faced many challenges. The programs operating in the country⁸⁶⁴ were not enough to meet the needs of families with children living in poverty. The programs could not provide them with long-term support and increase their social function to achieve their further independent life. At the same time, the indicator of school dropouts was still high, especially due to the departure of families abroad⁸⁶⁵, which may be related to the difficult socio-economic situation in the country.

Among the challenges of the juvenile violence protection system, the need to strengthen working on the prevention of violence against children, to provide children with an appropriate number of specialists of supporting professions and rehabilitation services is still noteworthy. It is important that, compared to 2021, the number of specialists in the guardianship-care body increased, and at the end of 2022, 273 social workers and 21 psychologists were employed in the agency throughout the country.⁸⁶⁶

It is welcome that in 2022 measures aimed at deinstitutionalization of large childcare facilities were actively implemented.⁸⁶⁷

⁸⁶⁴ Support components provided by the state program of social rehabilitation and childcare, as well as financial assistance for socially vulnerable families and municipal programs.

⁸⁶⁵ In 2022, 5,508 students had their student status suspended/terminated due to going abroad with their families; Correspondence of the Ministry of Education and Science of Georgia No. MES 3 23 0000031054, 16/01/2023.

⁸⁶⁶ According to the information received from the agency, as of December 2022, 290 staffing positions of social workers are provided in the agency, in fact, 263 are employed as regular employees, and 10 social workers are employed under the employment contract, as for psychologists, 20 staffing positions are provided, 17 are actually employed, and 4 specialists are employed under the employment contract. Correspondences of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking: No. 1000318 9 23 00204548, 24/02/2022 and No. 1000318 1 23 00290392, 17/03/2023.

⁸⁶⁷ Deinstitutionalization of Non-entrepreneurial Non-commercial Legal Entity (NNLE) Educational Institution of the Foundation of Batumi named after St. Matata the Apostle and Tbilisi Infant House. However, it should be noted that there is still one minor in the educational institution of the Foundation named after St. Matata the Apostle, and 10 children in Ninotsminda orphanage, one of them with a disabled status. Correspondences of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking: No. 1000318 9 23 00204548, 24/02/2022 and No. 1000318 1 23 00290392, 17/03/2023.

22.2. Right to education

22.2.1. Preschool upbringing and education

According to the data of 2022, Georgia has increased by 20 and a total of 1,668 early and preschool education institutions were functioning, where a total of 148,658 children studied.⁸⁶⁸ But, like in previous years, the number of institutions cannot cover the full contingent of preschool children, as a result, kindergartens are still overcrowded. Problems of both infrastructural-physical and geographical accessibility are identified. There is still a need to strengthen human resources.⁸⁶⁹

Challenges related to quality early and pre-school education, territorial accessibility, lack of bilingual education and lack of appropriate personnel are especially noteworthy for children representing national minorities.⁸⁷⁰ This is indicated by the absence of kindergartens in some villages inhabited by ethnic minorities. For example: in none of the communities compactly populated by ethnic minorities of Bolnisi municipality, except Tamarisis township, there is no kindergarten. Pre-school education institutions in Ninotsminda municipality are only in 10 settlements, and access to pre-school education is difficult in the remaining 21 settlements. It should also be noted here that most villages in Marneuli municipality do not have access to pre-school education.⁸⁷¹

It should be taken into account that the solution to these problems was somewhat affected by the amendment to the Georgian Law "On Early and Preschool Education and Education", according to which the period of authorization of kindergartens was extended until 2030, although transitional measures were defined for the previous period. In connection with this issue, the initiative of the Government of Georgia, which envisages the construction of 330 new kindergartens and the rehabilitation of 555 existing kindergartens, is welcome.⁸⁷²

22.2.2. General Education

In the 2022-2023 academic year, 215 private and 2086 public schools were operating in Georgia, 11 of which provided boarding services. During the reporting period, a total of 631,758 students studied in both private and public general education institutions throughout the country.⁸⁷³

It should be noted that out of 10,404 minors identified in 2020 who were never given student status, according to 2022 data, 1,863 children were enrolled in school⁸⁷⁴, which is 182 more than last year's quantitative data. In addition, information about 4,362 children is still being processed.⁸⁷⁵

⁸⁶⁸ Number of preschool upbringing and education institutions by years: 2021/2022 – 1,648; 2022/2023 – 1,668; See: < <https://bit.ly/3XulZP6> > [last seen: 15.02.2023].

⁸⁶⁹ This is indicated by the results of proceedings carried out by the Office of the Public Defender of Georgia in 2022.

⁸⁷⁰ Thematic Research Report of the Education and Science Committee of the Parliament of Georgia, 27, available at: < <https://bit.ly/3vxNdKx> > [last seen: 25.01.2023].

⁸⁷¹ *ibid.*

⁸⁷² see: < <https://bit.ly/3HO7qmi> > [last seen: 15/02/2023].

⁸⁷³ Correspondence of the Ministry of Education and Science of Georgia No. MES 3 23 0000031054, 16/01/2023.

⁸⁷⁴ *ibid.*

⁸⁷⁵ *ibid.*

It is true that, compared to previous years, the rate of suspension/termination of student status in 2022 is high, and the highest rate is in Tbilisi (4,834), Kvemo Kartli (2,301) and Adjara (1,231). However, it should be noted that among these students, 1,831 were citizens of foreign countries, and 1,163 students dropped out of school to continue their studies at a vocational educational institution.

Table №1

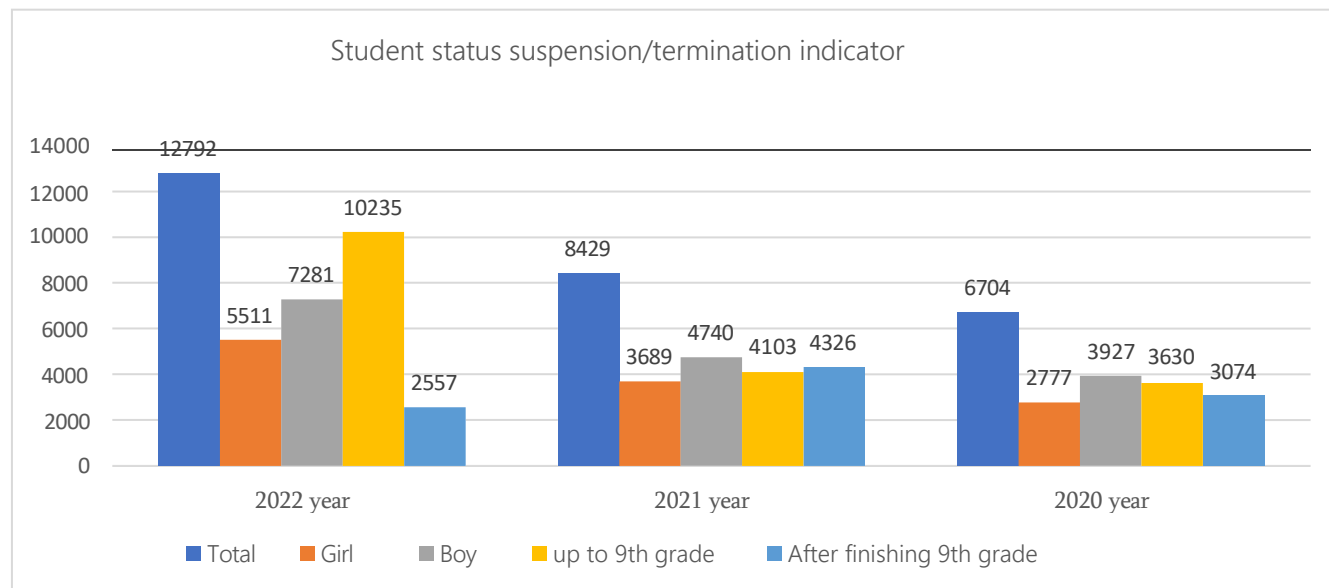
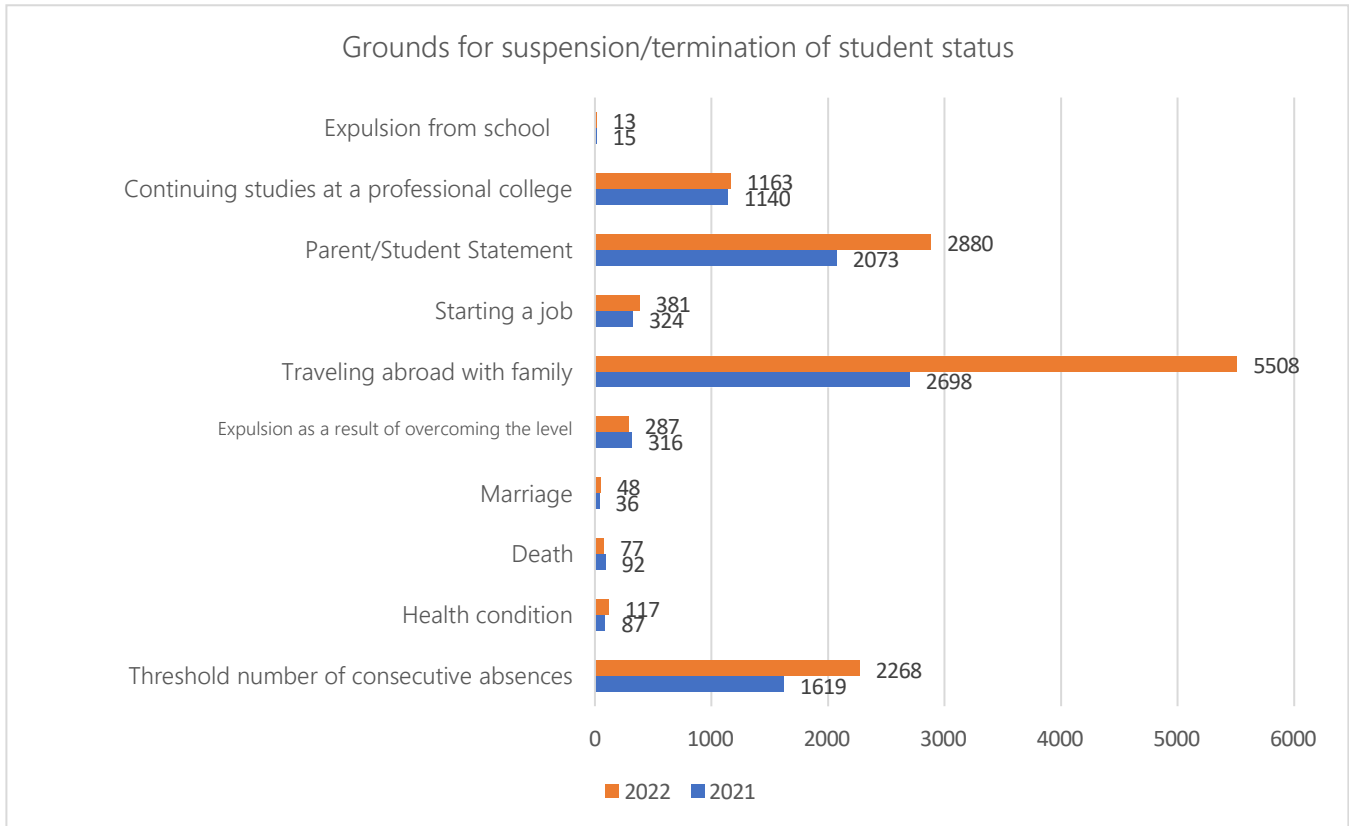


Table №2⁸⁷⁶

⁸⁷⁶ This table does not present further data on the grounds for suspending/terminating the student's status in 2022: the student continues to study at a school in the occupied territory of Georgia - 4, financial debt - 30, non-payment of the stuck student's voucher - 14, other - 2. Ministry of Education and Science of Georgia Correspondence No. MES 3 23 0000031054, 16/01/2023.



Compared to last year, during the reporting period, the number of students whose status was suspended on the grounds of "traveling abroad with their family" has doubled, which, in turn, may be closely related to the economic and social challenges in the country.

The suspension/termination statistics of the student status still need to be refined, which, in some cases, like in previous years, does not provide complete information about the real reason for the termination of education, when referring to grounds such as "Parent's Statement" and "Absence threshold". This is confirmed by the evaluation of the copies of the statements submitted by the Office of the Public Defender about the suspension of the status of students in 2021-2022 requested from educational resource centers throughout the country.⁸⁷⁷

It turns out that in addition to the reasons specified in the statistics of the Ministry, the reason for dropping out of education is often family situation, unwillingness to continue education at the secondary level, change of place of residence. In addition, there are many such statements that do not indicate the reason for the termination of studies. In addition, in connection with emigration, such circumstances as the economic situation, traveling for medical treatment and continuing education abroad were highlighted. In addition, the tendency of parents of first-grade children to submit statements about the suspension of student status, according to which their children were not ready for school, was revealed.

⁸⁷⁷ The Office of the Public Defender of Georgia studied 2188 statements of 2021 and 5230 statements of 2022 received from the territorial authorities of the Ministry of Education and Science of Georgia, educational resource centers.

As in previous years, the infrastructural issues in general educational institutions are acute, however, from this point of view, the initiative of the Georgian government on the construction and rehabilitation of 800 schools in the reporting period should be positively evaluated.⁸⁷⁸

22.3. Protection of children from violence

Prevention of violence against children, responding to cases with a timely and child-friendly approach remains a significant challenge, which is compounded by the problem of coordination between agencies and timely referral.

In 2022, double the number of child abuse cases - 4,131 cases in total - were referred to the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking⁸⁷⁹, and 1,013 children were identified as victims.⁸⁸⁰ Referrals to the Psychosocial Center of the Mandatory Service on the basis of violence against children are also increasing every year, reaching 315 in 2022 and making up 16% of the total referrals.⁸⁸¹ However, the results of the study reveal that both the prevention of violence against and among children and the response of specialists to case referral procedures is still associated with a number of challenges.

In this regard, one of the most acute problems remains the prohibition of violence and physical punishment in educational institutions and the effective response to cases, which became the basis for the initiation of administrative proceedings in 79 cases in 2022.⁸⁸²

It is noteworthy that the training of specialists on child abuse issues does not include checking the progress of their awareness and skills. In addition, the production of statistics of cases of violence against children in the agencies is still incomplete and cannot provide a segregated statistics of the cases according to the forms of violence, which complicates the assessment of the current situation in the country in this regard. At the same time, the number of child-friendly spaces in general courts and agencies⁸⁸³ is still scarce, there are insufficient specialists working with minors, rehabilitation and support-oriented services, which cannot meet the need for geographic accessibility.

⁸⁷⁸ See: < <https://bit.ly/3jm2CuQ> > [Last seen: 15/02/2023].

⁸⁷⁹ Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking, Correspondence No. 1000318 9 23 00204548 – 24/02/2023.

⁸⁸⁰ Correspondence of the General Prosecutor's Office of Georgia No. 13/2558, 18/01/2023.

⁸⁸¹ Total referrals to the Psychosocial Center of the Office of Resource Officers - 1,955; Correspondence of the Ministry of Education and Science of Georgia No. MES 3 23 0000031054, 16/01/2023; Correspondence of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking No. 1000318 9 23 00204548 – 24/02/2023. Also, see Report of the Public Defender of Georgia about protection of human rights and freedoms in Georgia, 2021, p. 286.

⁸⁸² Correspondence of the Ministry of Education and Science of Georgia No. MES 3 23 0000031054, 16/01/2023.

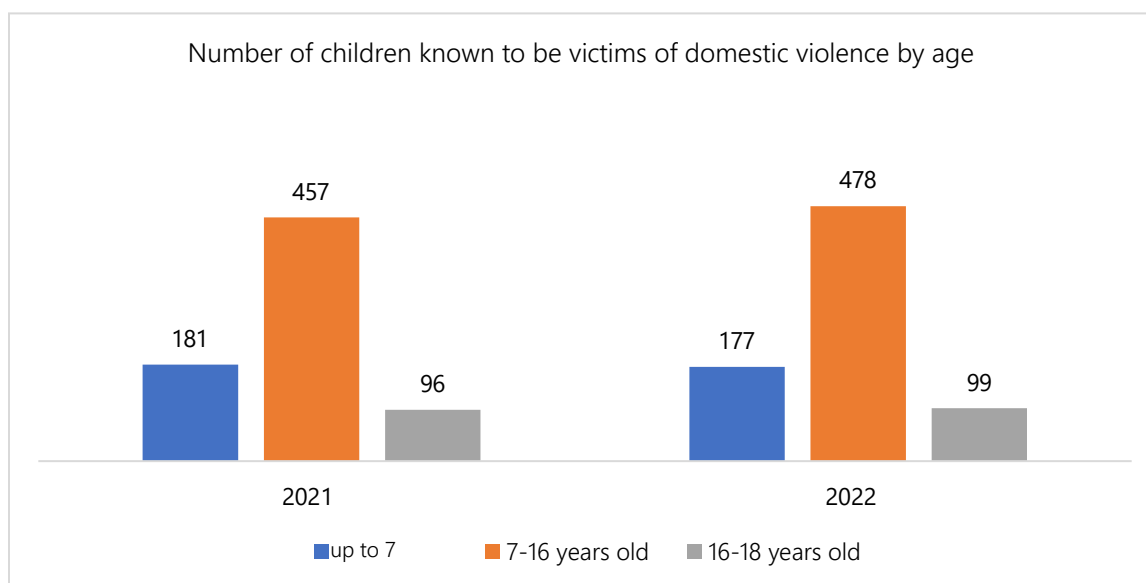
⁸⁸³ For example, a child-friendly environment is still provided in only 5 courts. In addition, in 2022, the kind of reconstruction works that would ensure the possibility of arranging a child-friendly environment were not carried out, Correspondence of the Supreme Council of Justice of Georgia No. 8/4233.03-o – 11/01/2023; Also, similar spaces are arranged in five territorial units, correspondences of the Ministry of Internal Affairs of Georgia: №MIA 7 22 00811864, 29/03/2022, №MIA 9 23 00465392 – 17/02/2022; Similarly, there are child-friendly rooms in only 5 territorial units of the State Care Agency, Correspondence of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking No. 07/5403 –: 30/06/2022.

22.3.1. Domestic violence

Among the forms of violence against children, the facts of violence committed against them in the family prevail. In particular, in 2022, 1,934 cases of domestic violence against children were referred to the state care agency, and 754 children were identified as victims.⁸⁸⁴ General courts issued protective orders against 28 children, and guilty verdicts were reached in 196 cases of domestic violence.⁸⁸⁵

It should be noted that the age data of children who are victims of domestic violence is almost unchanged over the years, and the crimes detected are mostly committed against children aged 7-16.⁸⁸⁶

Table No. 3



The challenges in detecting crimes of domestic violence against children remain unchanged, which, together with the involvement of state agencies, is connected with the lack of awareness of children and their family members about the forms of violence and the mechanisms of protection against it. Particularly alarming are the cases of psychological violence, manipulation and, as a result, the deterioration of the emotional state of children by the parents themselves during the process of making and enforcing disputes regarding the child's relationship with both parents.⁸⁸⁷

Considering the shortage of services and personnel, the state does not have an effective mechanism that could prevent similar circumstances, detect them in time and work effectively with the parent, with an individual approach. There are no positive parenting, parenting skills, behavior correction services in the country. In addition, in case of suspicion of psychological impact on the child, it is too late to involve the

⁸⁸⁴ Correspondence of the General Prosecutor's Office of Georgia No. 13/2558 – 18/01/2023; Correspondence of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking №1000318 9 23 00204548 – 24/02/2023.

⁸⁸⁵ Correspondence of the Supreme Court of Georgia No. P-1465-22 – 17/02/2023.

⁸⁸⁶ Correspondences of the General Prosecutor's Office of Georgia: №13/2558 – 18/01/2023, №13/2295 – 18/01/2022.

⁸⁸⁷ Special report of the Office of the Public Defender "Implementation of justice in cases of child's relationship with both parents".

necessary specialists and implement child protection-oriented measures, which makes the response virtually ineffective.

22.3.2. Sexual Violence

Prevention of crimes of sexual violence against children, timely detection and effective implementation of justice on them remains a challenge. National legislation on sexual violence against children still does not comply with the mandatory human rights instruments to which Georgia is a party. The existing evidentiary standard still does not properly take into account the specifics of crimes of a sexual nature.⁸⁸⁸

The rate of initiation of criminal prosecution for crimes of sexual violence against children, recognition of a child as a victim has increased.⁸⁸⁹ In particular, in 2022, criminal prosecution was initiated in a total of 339 cases, and 247 minors were identified as victims,⁸⁹⁰ and guilty verdicts were obtained in 143 cases.⁸⁹¹

The existence of the "Psycho-Social Service Center" (Barnahus) should be positively noted, which makes it possible to introduce a child-friendly approach in the process of justice and to rehabilitate children who are victims of sexual violence.⁸⁹²

The center provides an opportunity to interview a minor in a child-friendly environment, only by a psychologist, with an appropriate instrument⁸⁹³ which, during video-audio recording, will be remotely observed by other relevant persons involved in the process. However, according to the existing legal regulation and practice, the video-audio recording of the interview of the child and the protocol based on it will not be allowed as evidence. Therefore, this resource of the center is currently not properly used. In addition, at this stage, the institution serves only children who are victims of sexual violence and operates only in Tbilisi, which does not meet the need for geographic accessibility, both in terms of providing forensic medical expertise and rehabilitation services.⁸⁹⁴

22.4. Child poverty

With regards to the realization of children's social rights, the reduction of poverty and inappropriate living standards, the effective functioning of central or municipal services sensitive to their needs and the provision of additional necessary resources, focused on the socio-economic strengthening of families with children and the achievement of independent life, remain a challenge.

⁸⁸⁸ The Special Report of the Public Defender "Implementation of Justice for Crimes of Sexual Abuse and Sexual Exploitation of Children", 2021, is available at: <<https://bit.ly/3G8aLLN>> [last seen: 15/02/2023].

⁸⁸⁹ Correspondence of the General Prosecutor's Office of Georgia No. 13/2558 – 18/01/2023, initiation of criminal prosecution in 2021 – 252, 2022 – 339; Termination of investigation 2021 - 53, 2022 - 43, Victim recognition in 2021 - 187, in 2022 - 247.

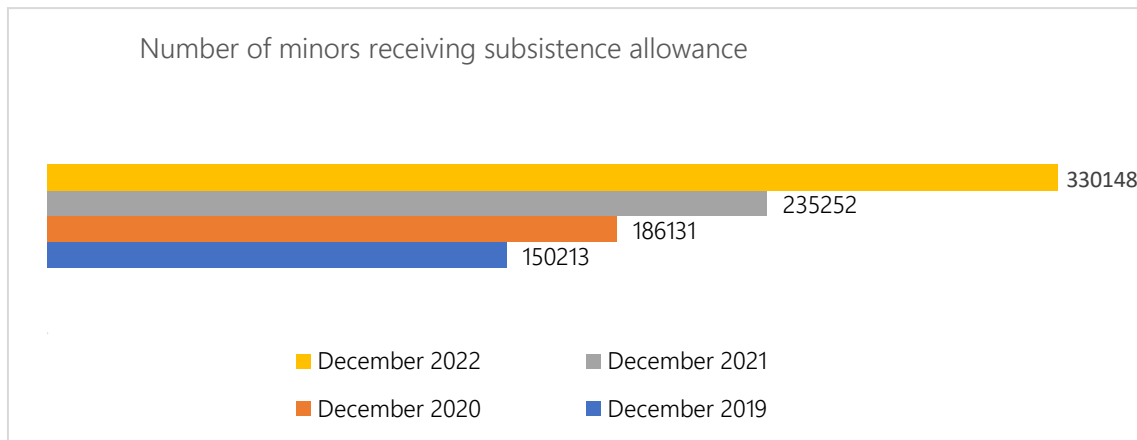
⁸⁹⁰ Correspondence of the General Prosecutor's Office of Georgia No. 13/2558 – 18/01/2023.

⁸⁹¹ Correspondence of the Supreme Court of Georgia No. P-1465-22 – 17/02/2023.

⁸⁹² From March 4, 2022 to December 30, 2022, one hundred minors benefited from the services of the center. Correspondence of the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking No. 1000318 9 23 00204548 – 24/02/2023.

⁸⁹³ US National Institute of Child Health and Human Development (NICHD) Structured Interviewing/Interrogation Instrument.

⁸⁹⁴ Monitoring results of the Public Defender's Office.



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In parallel with the 40% increase in the number of children registered in the "Unified Data Base of Socially Vulnerable Families" compared to the previous year⁸⁹⁶ it is clear from the cases studied by the Office of the Public Defender that families with children often face such circumstances as lack of safe, adequate housing, food and basic necessities for personal use. Because of this, children still have to perform various hard work that is dangerous for their life and health. In addition, many vulnerable families, especially in rural areas, may remain outside the social services available in the country. The existing central and local targeted state aid services for child poverty prevention and overcoming are not flexible and effective, including for the development of skills of children's parents, caregivers, and for families to achieve independent living. Unfortunately, this is also the basis for placing children in state care.

In this direction, it remains a problem for children and their families to develop municipal programs, coordinate their implementation, monitor and evaluate the process based on the assessment of the needs identified by the relevant services in the municipal authorities in their area of operation, which is also caused by the scarcity of local resources.

22.5. The situation regarding the rights of children in state care

There are 37 small family-type homes operating in Georgia, as well as 4 specialized family-type homes for children with severe and profound disabilities or health problems, and one large residential institution under the Georgian Patriarchate.⁸⁹⁷ In 2022, On the basis of deinstitutionalization of the Tbilisi Infant House and the Boarding House of the foundation named after St. Matata the Apostle, the children living there were transferred to alternative forms of care.⁸⁹⁸

⁸⁹⁵ Correspondence of the LEPL Social Service Agency No. SSA 3 23 00024153, 11/01/2023. Also, see Report of the Public Defender of Georgia about the situation in the protection of human rights and freedoms in Georgia, 2022, p. 272.

⁸⁹⁶ From this, the number of families registered for the first time, where at least one child under the age of 18 lives, amounted to 18,052; Correspondence of the LEPL Social Services Agency No. SSA 3 23 00024153, 11/01/2023.

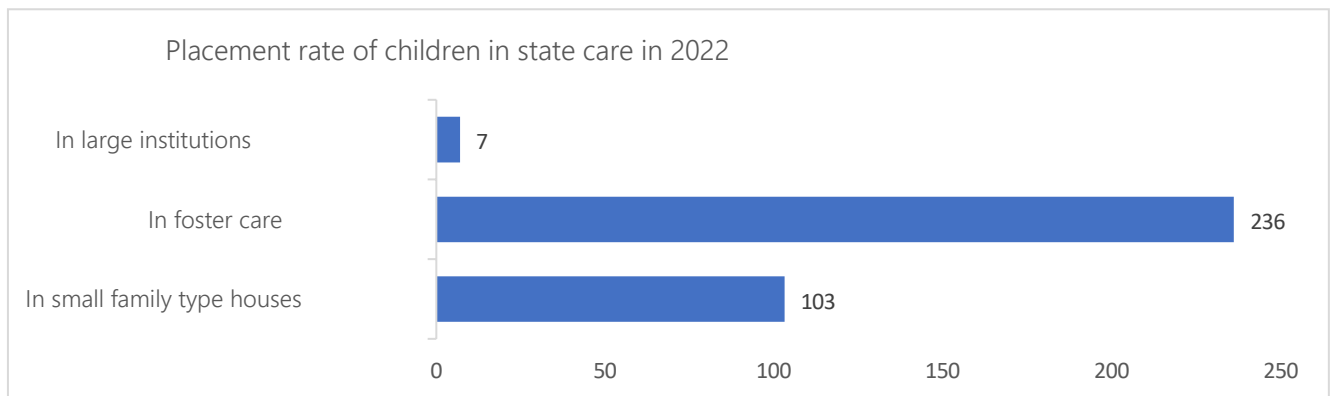
⁸⁹⁷ Ninotsminda boarding school for children deprived of care.

⁸⁹⁸ There is still one minor in the educational institution of the Foundation named after St. Matata the Apostle, and 3 houses are functioning for the children of the Tbilisi Infant House.

According to the latest data of 2022, 1462 minors transferred to state care were growing up in 690 foster care families. In total, in 2022, a total of 346 minors were placed in state care, and 119 returned to the biological family, 51 of them from the foster care sub-program, 28 from small family-type homes, 40 from large institutions.⁸⁹⁹

22.5.1. Grounds for separation of the child from the family

Separating children from their parents is an extreme measure and should only be used if it is required for the child's safety and best interests. According to state statistics, separation of a child from a parent is mainly related to violence and neglect of the child by the parent (81%), difficulty in the child's behavior (14.3%), abandonment by the parent (2.3%), health problems of the child or parent (2.4%).⁹⁰⁰



However, the public defender's investigation showed that the main reason for the separation of the child from the biological family or one of the significant contributing factors is the parents' difficult economic situation, lack of housing and stable income. All this is one of the reasons why the child cannot return to the biological family and remains in state care for years.⁹⁰¹ The request to extend this period is often not properly justified and does not include information on what steps the state plans to take to return the child to the biological family during this time.

The country does not have, effective mechanisms focused on prevention of separation of children from their families and timely reintegration. The state, with its existing services or the involvement of specialists, cannot fully provide such support to parents that the circumstances that they are unable to correct on their own do not become the basis for separation from the child.

22.5.2. The situation regarding the rights of minors living in large residential institutions

It is welcome that the Infant House was deinstitutionalized in 2022 and alternative care services were created for the children of this institution. Also, the de-institutionalization of the boarding house of the St. Matata Apostle Foundation, which was implemented after the 2021 monitoring and recommendation of the Public Defender, should be positively evaluated. As of December 2022, there were only 4 children

⁸⁹⁹ Correspondence of the LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking No. 1000318 4 23 00118675, 02/02/2023.

⁹⁰⁰ *ibid.*

⁹⁰¹ Special report of the Office of the Public Defender "Implementation of justice in the cases of the child's relationship with both parents".

in this institution.

There were 10 foster children in Ninotsminda orphanage under the Patriarchate.⁹⁰² Despite the many positive steps taken in this institution in the past period, the process of defining further forms of care for the foster children is delayed. Until now, it has not been possible to transfer the children to an alternative, family-like care service. The state, like previous years, has not yet developed a unified strategy for deinstitutionalization and, among other things, an action plan for this boarding house, which would be an important facilitating component of this process. The process of bringing justice to the facts of alleged violence against Ninotsminda children is still ineffective, despite the fact that the public defender addressed the Prosecutor General with a proposal⁹⁰³ in 2021 and outlined all the challenges at that stage of the investigation.⁹⁰⁴

22.5.3. The situation regarding the rights of minors living in small family-type houses

According to the data of 2022, there were 235 children in 37 small family-type homes.⁹⁰⁵ As in the previous year, the monitoring conducted by the Office of the Public Defender revealed that managing the complicated psycho-emotional state and behavior of children in small family-type homes is an acute problem.

In small family-type homes, the facts of repeated violence among the children, the challenges of ensuring their safety, as well as the need to actively encourage friendly and trust-based relationships in the homes were revealed. It should be noted that educators still fail to use positive behavior management approaches in practice.

In addition, special mechanisms for meeting the emotional, cognitive and social needs of foster children are still not developed in small family-type homes. In the institutions, especially in the regions, there are also infrastructural and children's socialization promotion challenges.

22.5.4. The situation regarding the rights of beneficiaries of state shelters for mothers and children

As of December 2022, there were 6 mother and child shelters operating across the country, where 32 mothers and 43 children were placed, 6 of them minors. In 2022, there were a total of 49 persons in shelters.⁹⁰⁶

It is worth noting that the state has slightly increased the daily funding for service provider organizations from 2021 - from 21 GEL to 25 GEL, and in the case of a child and/or mother with disabilities - from 30

⁹⁰² Correspondence of the LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking: №1000318 9 23 00204548, 24/02/2022 and №1000318 1 23 00290392, 17/03/2023.

⁹⁰³ Proposal No. 15-5/11525 of the Public Defender of Georgia dated December 12, 2021.

⁹⁰⁴ Detailed information is available from the 2022 Parliamentary Report of the Public Defender of Georgia on Prohibition and Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁹⁰⁵ Correspondences of the LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking: No. 1000318 9 23 00204548, 24/02/2022.

⁹⁰⁶ *ibid.*

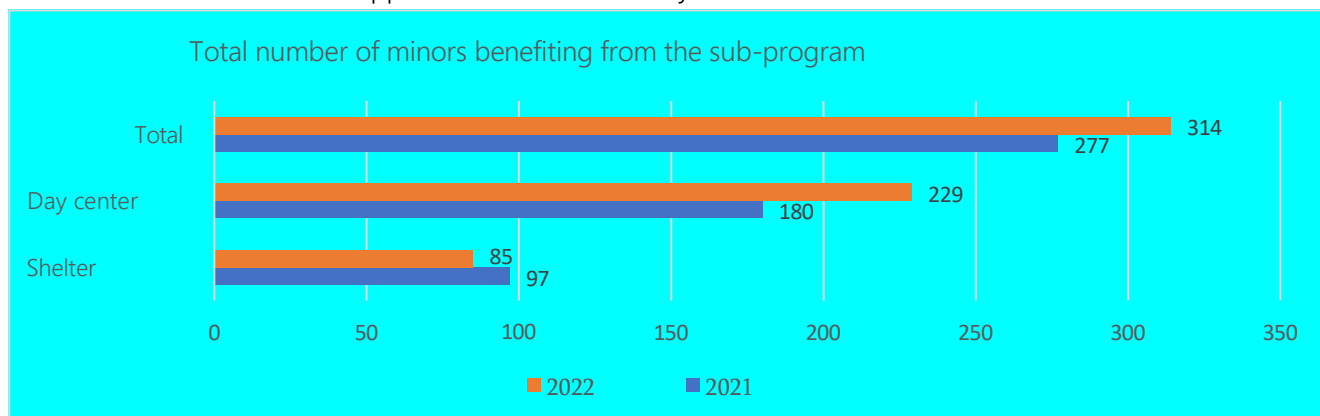
GEL to 35 GEL.⁹⁰⁷ But this is not enough, one of the main challenges of the implementation of the state sub-program is the lack of material and administrative resources, including in terms of providing healthy food and necessary items for personal consumption. Also, additional services for raising social skills and rehabilitation are scarce. Consequently, the desired result, which includes preparation for the next stage of life, education, employment and achieving economic independence, cannot be achieved for those enrolled in the service.

It is also problematic to create a safe environment in the shelters, to avoid frequent conflicts with the persons employed in the shelters and to effectively manage them with a multidisciplinary approach.⁹⁰⁸

22.6. Children living and/or working in the street

In terms of child protection, one of the most important challenges is the effective protection of the rights of homeless children. Substantial challenges are identified in terms of strengthening a child-centered, systematic and coordinated approach.

According to the data of 2022, services were provided to a total of 314 minors within the framework of the "Shelter for Homeless Children Subprogram", of which 229 children benefited from the services of the day care center, and 85 - from the 24-hour shelter. In addition, 129 minors were enrolled in the service under the sub-program, and 59 left it.⁹⁰⁹ Unfortunately, taking into account the insufficient number of services and the difficulties in identifying cases, the number of children living and/or working on the street who need to use similar support services remains beyond these statistics.



Prevention and effective response to alleged criminal acts committed by children living and/or working on the street are still associated with challenges. In this regard, the service providing organizations themselves face many problems, since the alleged violent actions committed by children often take place within the framework of service delivery, which endangers both other children and adults.

⁹⁰⁷ Correspondence of the Government of Georgia No. GOV 3 23 00002406, 26/01/2023.

⁹⁰⁸ See additionally Special Report of the Public Defender "Monitoring Results of Mother and Child Shelters", 2022. Available at: < <https://bit.ly/3I9gSiS> > [last accessed: 16/02/2022].

⁹⁰⁹ Correspondences of the LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking №1000318 0 23 00103622, 31/01/2023.

The development of the 2023-2026 strategy by the Ministry of Justice of Georgia for the protection of children living and/or working on the street from all kinds of violence, including trafficking, should be positively evaluated during the reporting period. It is also welcome that in 2022, the number of mobile groups working in the city of Batumi increased to two within the framework of the "sub-program for providing shelter for homeless children". However, unfortunately, in Adjara, despite its urgent need, the day-night shelter provided by the sub-program for homeless children has not yet been opened.

Despite a number of recommendations issued by the Public Defender of Georgia in the past years, unfortunately, the scarcity and fragmented nature of services supporting homeless children and their families remains a significant challenge, which does not allow for a long-term solution to the issue.

At the same time, there is still an urgent need to strengthen services, both with infrastructural and human resources, and intensively ensure coordinated work between relevant agencies. In addition, there is still a need to implement measures aimed at reducing stigmatizing attitudes towards homeless children in the society.

Proposal

Parliament of Georgia:

- On the basis of consultation with the general courts, the General Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia:
 - Consider legislative changes to align existing legal regulations on child sexual abuse with international standards;
 - Discuss and revise the legal challenges of admitting as evidence only a videotape of a protocol interview at a psychosocial service center for abused children.

Recommendations

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- To create a psychological support service focused on positive parenting, communication with the child, couple and family disputes;
- Within the framework of the "State Program of Social Rehabilitation and Child Care", increase the amount of financing of the sub-program for providing shelters for mothers and children, as well as providing shelters for homeless children, and develop a plan for assessing the effectiveness of the service and gradually strengthening it.

LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking:

- In cooperation with service provider organizations, persons employed in small family-type homes, mother and children's shelters, homeless children's shelters were trained on the prevention and

management of difficult behavior of adults, emotional aggravation, as well as on other specific topics identified when working with minors in each home;

- To develop indicators of effectiveness and result-oriented activities of social workers, lawyers and psychologists, based on this, to review their workload and to prescribe measures aimed at increasing the effectiveness of work;
- Every year, at least half of the number of social workers, lawyers and psychologists should be trained on thematic issues;
- To actively identify the needs of families with children living in poverty, to provide families with information regarding inclusion in supportive social services, as well as the necessary coordination with municipalities;
- A 24-hour service shelter should be opened in the Adjara region within the framework of the "Shelter for Homeless Children Sub-program".

To the Minister of Education and Science of Georgia:

- In order to implement an evidence-based school dropout prevention policy, improve the school dropout statistics produced by the Ministry of Education and Science of Georgia and systematically record the real reasons for the suspension of the student's status, based on the statements submitted by the parent/legal representative and the threshold number of consecutive absences, also in school dropout cases;
- In-depth assessment of the causes of the growing rate of suspension of students' status and, in cooperation with both the central government and local self-government bodies, to develop a future strategy to reduce the risks of suspension of education by students;
- Create informational meetings with parents of minors on the topic of violence against children, sexual violence, prohibition of discrimination, bullying, training modules and informational materials accessible to the general public.

To the Minister of Internal Affairs of Georgia:

- For the purposes of effective response to issues related to children living and/or working on the street, including crime committed by homeless children and similar possible facts, a single guidance document should be developed and the employees of the territorial units of the law enforcement agency trained.

To the Local governments:

- Within the framework of the kindergarten construction/rehabilitation program, priority should be given to the construction/rehabilitation of preschool institutions in villages inhabited by ethnic minorities;
- Within municipal services, active work should be carried out through early detection of families with children living in poverty, identification of their needs and offering flexible local programs for their families to achieve independent living.

23. Situation of Rights of Older Persons

23.1. Introduction

The world's population is rapidly aging, and this has an unprecedented impact on the socio-economic development of countries. By 2050, the number of people aged 65+ in the world is expected to reach 1.6 billion.⁹¹⁰ In view of this the discussion about the need for a new convention on the human rights of older persons and its normative elements has been going on for more than twelve years. The United Nations Open Working Group on Aging (UN OEWSGA) is a dedicated international forum for the protection and promotion of the rights of older persons. It was established in December 2010 by the UN General Assembly and unites all UN member states. The UN General Assembly in Resolution 911⁹¹¹ defined the tasks of the OEWSGA. In particular, the working group should submit a proposal to the General Assembly, which contains the main elements to be included in the international legal instrument for the promotion and protection of the rights and dignity of the older persons.⁹¹²

In 2022, at the 12th session of the OEWSGA, states supported the proposal to establish a small interregional working group to develop a document on gaps in international law.⁹¹³ States also participated in the UN Multilateral Meeting on the Human Rights of Older Persons⁹¹⁴, thereby directly supporting the new Convention on the Human Rights of Older Persons.⁹¹⁵

In Georgia, the percentage of older persons in the population is increasing every year⁹¹⁶. 36% of them are registered in the unified database of socially vulnerable families⁹¹⁷ and are therefore vulnerable.

For years, the Public Defender has been talking about the fact that the local self-governments are unable to offer the older persons appropriate programs for their dignified aging. Municipalities do not engage in social work in their territory, which means, among other things, determining and assessing the needs of older persons, presenting problems, introducing and further implementing relevant programs.

Despite the recommendations of the Public Defender, the results of the implementation report of the "2017-2018 National Action Plan of the State Concept on Population Aging in Georgia" have not yet been discussed and taken into account.

⁹¹⁰ Information is available on the website: < <http://bit.ly/3IDTJhz> > [last seen: 02.03.2023].

⁹¹¹ UN General Assembly Resolution No. A/RES/67/139, available at: < <http://bit.ly/3lltruj> > [last seen: 27.03.2023].

⁹¹² information is available on the website: < <https://bit.ly/3KcZZpC> > [last seen: 02.03.2023].

⁹¹³ Angola, Austria, Bangladesh, Bolivia, Brazil, Burundi, Cameroon, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Germany, Guatemala, Italy, Mexico, Morocco, Nigeria, Panama, Peru, Philippines, Slovakia, Slovenia, Turkey, United Kingdom, United States and Uruguay. Information is available at: < <https://bit.ly/3JMuq4D> > [Last seen: 02.03.2023].

⁹¹⁴ information is available at: < <https://bit.ly/40lhr15> > [last seen: 03.03.2023].

⁹¹⁵ Argentina, Austria, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Montenegro, Namibia, North Macedonia, Panama, Philippines, Portugal, Serbia, Slovenia, Thailand, Turkey and Uruguay.

⁹¹⁶ According to the data of the National Statistical Service of Georgia, people aged 65 and older will make up 15.5% of the population by 2022. (571 733).

⁹¹⁷ Distribution of persons registered in the database of the statistics of the social service agency - Targeted Social Assistance Program by age group, according to data 207 708 65+ older persons are registered, the information is available: < <https://bit.ly/3TM3AOI> > [last seen: 27.03.2023].

23.2. Findings of the monitoring of day care facilities for the older persons

In June 2022, the Office of the Public Defender of Georgia conducted monitoring⁹¹⁸ in the long-term care facilities for the older persons located in Tbilisi and East Georgia - Kakheti, Shida Kartli and Rustavi.⁹¹⁹ As a result of the monitoring, many violations were revealed, including infrastructural and sanitary conditions, the health of the older persons In the direction of protection, protection from violence and discrimination of the older persons, nutrition, etc.

The combined results of these visits and the monitoring⁹²⁰ conducted in 2021 revealed that the state does not monitor some types of institutions for the older persons in order to determine compliance with the established norms of "minimum standards of services for persons with disabilities and the elderly in 24-hour specialized institutions". We are talking about such institutions for the older persons, where service management is conducted by local self-governments⁹²¹, therefore, in such institutions, the requirements determined by international and national regulations, including the approved minimum standards, are not fulfilled properly or at all. The heads of the institution themselves also stated during the conversation with the members of the monitoring group that they had not heard at all about the standards of services for older people.

The institutions examined are a typical example of an institution where single older persons or older persons in difficult social conditions are enrolled for residential care, presumably for the rest of their lives, and where people do not have, or are not allowed to manage their own lives and make daily decisions, they become excluded and marginalized from the community, vulnerable to violations of their rights, stigma is high, which increases the risks of discrimination and subsequent violence, which is why these institutions and the people who use these services come under the attention of human rights defenders.⁹²²

The monitoring revealed serious violations in the Tsnori Nursing Home for the Older Persons, about which the Public Defender made a statement immediately after the monitoring⁹²³ and called on the Ministry of IDPs from the occupied territories of Georgia, the Ministry of Labor, Health and Social Protection (hereinafter the Ministry) and the LEPL Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking (hereinafter the Agency) to respond immediately to the violations there and to transfer the older persons to other institutions where they would be provided with decent conditions.

⁹¹⁸ Rustavi "St. Akaki Morchili Nursing Home" NNLE ", in Gori municipality the community organization of the village Khurvaleti " House without Borders NNLE ", Boarding house for the Older Persons "Satnoebis Gza" NNLE, "Savane Betheli" for the Older Persons in Tbilisi and Sighnaghi region.

⁹¹⁹ see Special report of the Public Defender of Georgia - "Follow-up report of the monitoring carried out in institutions for the Older Persons", (2022), available at: < <https://bit.ly/3njAFW5> > [last seen: 27.03.2023].

⁹²⁰ monitoring was carried out in the following day-night care facilities located in Western Georgia:

⁹²¹ there is also an institution that is a limited liability company (LLC) and has signed an agreement with the Ministry of Social and Health Protection of the Autonomous Republic of Adjara, and therefore, the funding of the boarding house is provided by a voucher.

⁹²² see Special report of the Public Defender of Georgia - "Follow-up report of monitoring carried out in institutions for the older persons", (2022). p. 4 < <https://rb.gy/xn95s4> > [last seen: 27.03.2023].

⁹²³ Public Defender's statement is available at: < <http://bit.ly/3npUhlj> > last seen: [03.02.2023].

Based on the appeal of the public defender, the representatives of the agency conducted monitoring in this institution, assessed the state of compliance with all standards and, as a result, issued recommendations. Also, they talked to the beneficiaries and, if they wish, they offered to transfer them to another institution.⁹²⁴ As a result, three beneficiaries expressed their will to change the form of care and they were placed in the relevant community organizations. A report was also prepared and recommendations for implementation were issued.⁹²⁵

Also, it should be noted that there are private long-term care institutions for older people in the country, where the rights of the older persons are not subject to supervision and control by the state. Moreover, the state does not know the exact number of such institutions.

Consequently, there is a high interest in studying and evaluating the condition of the older persons living in similar institutions.

23.3. Violence against Older Persons

Acts of violence against the older persons by family members are frequent in Georgia.⁹²⁶ It should be assumed that due to the importance of the family institution, the older persons are not properly informed about the violence against them. Common forms of abuse include neglect and physical and psychological abuse, which also includes humiliation and denial of contact with other people and other forms of financial abuse.

According to domestic violence statistics produced by the Ministry of Internal Affairs of Georgia (restraining orders), during 2022, 323 male and 813 female victims aged 61+ have been identified. According to the statistics of types of violence, psychological and physical types of domestic violence are the most frequent. Unfortunately, the statistics of types of domestic violence are not broken down by age, therefore, it is difficult to see the complete picture.

The challenge is the lack of psychosocial services and separate programs for the protection and assistance of older persons who are victims of violence, both at the level of central and local municipalities. It is important to have a comprehensive approach to the problem of domestic violence against older people, coordinated work between state agencies and taking specific steps.

Recommendations

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- In coordination with the Agency for the State Care and Assistance for the (Statutory) Victims of Human Trafficking, provide periodic monitoring and supervision of those institutions that function with the financing/co-financing of local self-governments;
- In the process of registration by the Agency as a service provider, the organizations of care for

⁹²⁴ Agency's letter of November 4, 2022 No. 1000318 5 22 00504399.

⁹²⁵ See: Special report of the Public Defender of Georgia - "Follow-up report of monitoring conducted in institutions for the Older Persons" (2022) <<https://rb.gy/xn95s4>> [last seen: 27.03.2023].

⁹²⁶ Report of the UN independent expert on the protection of the rights of the older persons "On enjoying all human rights by the older persons in Georgia", paragraph 31-33

the older persons should be checked for compliance with the "minimum standards of services for persons with disabilities and the older persons in day-night specialized institutions";

- To ensure the approval of the training-methodical programs for increasing the professional qualification of the staff of the institutions for the older persons, on the issues of service provision and health monitoring, protection from violence and discrimination.

To Local governments:

- Continuously collect data to assess the needs of the older persons living in their territory (older persons need an assessment document). Based on this information, develop targeted programs for the older persons, reflect in the budget, if necessary, increase the budget and seek additional funds.

24. Protection and Civic Integration of National Minorities

24.1. Introduction

This chapter reviews several challenges in terms of the protection and civil integration of national minorities in 2022, including the political integration of representatives of national minorities and participation in the decision-making process, existing problems in terms of access to the right to education, ineffectiveness of consultation mechanisms, issues related to access to the media, etc.

Unfortunately, a significant part of the recommendations issued by the Public Defender in the 2021 parliamentary report are unfulfilled. In particular, substantial steps have not been taken to promote the proportional and equal participation of national minorities in the decision-making process in state agencies; The policy of employment of national minorities in the public sector is still problematic; Provision of native language and literature subject textbooks published in Georgia for Armenian, Azerbaijani and Russian language schools. Also, it is a challenge to promote and restore the activities of culture houses/culture centers in regions densely populated by national minorities, as well as the scarcity of measures implemented specifically to promote the culture of national minorities. Also, the recommendation regarding the development of a long-term plan to prevent inter-ethnic conflicts and strengthen inter-community dialogue in municipalities with conflict experience is unfulfilled.

24.2. Integration and participation in the decision-making process

Consultation mechanisms

As in previous years, the situation regarding the consultation mechanisms in the country is unchanged.⁹²⁷ Unfortunately, an effective institutionalized consultation mechanism for national minorities has not been created at the level of the executive power, nor have effective steps been taken to strengthen the existing consultation mechanisms.

It is significant that the Scientific Advisory Council of National Minorities created in March 2021 on the basis of the Diaspora and Caucasus Affairs Committee of the Parliament of Georgia, whose creation was criticized by the Public Defender of Georgia and civil society,⁹²⁸ did not start working in 2022 either, and therefore did not hold meetings with representatives of national minorities.⁹²⁹ The mandate, goals and objectives of the Advisory Council are still unclear.

Employment policy of national minorities

As in previous years, the Government of Georgia does not produce statistics on the number of representatives of national minorities employed in the public service.⁹³⁰ Although there is a certain practice of collecting information on the ethnic affiliation of civil servants in municipalities densely

⁹²⁷ 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 407-409; 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 304-305.

⁹²⁸ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 305.

⁹²⁹ Letter of the Parliament of Georgia dated January 17, 2023 No. 334/2-7/23.

⁹³⁰ "Assessment of the involvement of ethnic minorities in public service", PMC Research Center, 2022, 6, available at: < <https://bit.ly/3y350KC> > [last seen: 01.03.2023].

populated by national minorities, however, at the central level, the Bureau of Public Service does not collect it. The methodology used by municipalities is heterogeneous and, in many cases, does not meet the principles of self-identification and anonymity provided by international standards.⁹³¹ According to a study commissioned by UNDP, the implementation of a uniform practice of collecting data on the ethnic origin of civil servants throughout the country and the availability of reliable statistical information are necessary to study the degree of involvement of ethnic minorities.⁹³²

Unfortunately, as in previous years, national minorities are still very rarely and/or mostly not represented in central government bodies (except for the Office of the State Minister of Civil Equality and Integration). This is also mentioned in the conclusion issued by the UN Human Rights Committee based on the assessment of the fifth periodic report of Georgia.⁹³³

As for the representation of national minorities in self-governments compactly inhabited by national minorities, unfortunately, the indicator is also low here. Ninotsminda⁹³⁴ and Akhalkalaki municipalities are exceptions from the point of view of protection of proportional representation of national minorities.⁹³⁵

Unfortunately, in this regard, negative trends are manifested in several municipalities compactly populated by national minorities, including Marneuli,⁹³⁶ Bolnisi⁹³⁷ and Dmanisi⁹³⁸ municipalities. These data are based on the document prepared by the National Statistical Service of Georgia, "Main Results of the 2014 General Population Census of Georgia", and the information requested by the Office of the Public Defender from municipalities as of December 31, 2022. Unfortunately, after 2014, official data updated in this regard by the National Statistical Service of Georgia are not available.

In terms of the policy of promoting the employment of ethnic minorities, there are employment promotion programs of the social service agency in the country, as well as internships in public services for the beneficiaries of the Georgian language training program (1+4 program). Unfortunately, however,

⁹³¹ "Assessment of the involvement of ethnic minorities in public service" - summary, 2022, 2.

⁹³² "Assessment of the involvement of ethnic minorities in public service", PMC Research Center, 2022, 5, available at: <<https://bit.ly/3IM6gqK>> [last seen: 01.03.2023].

⁹³³ UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, par. 51.

⁹³⁴ 95% of the people employed in Ninotsminda Municipality's City Hall are representatives of national minorities (Ninotsminda Municipality City Hall's letter of January 13, 2023 No. 122-1222301332).

⁹³⁵ 84% of the people employed in Akhalkalaki Municipality's City Hall are representatives of national minorities (Akhalkalaki Municipality City Hall's letter dated February 14, 2023 No. 116-1162304519).

⁹³⁶ Only 36% of the employees in Marneuli Municipality's City Hall are representatives of national minorities, while 91.4% of Marneuli Municipality are representatives of national minorities (it is implied that Marneuli Municipality City Hall did not provide the requested information to the Office of the Public Defender, although the data is based on the data prepared by the "Social Justice Center" The document, "Critical assessment of the state strategy for civil equality and integration", 2021, 6, is available at: <<https://bit.ly/3tMZRUm>> [last seen: 24.01.2023]).

⁹³⁷ Only 15% of the people employed in Bolnisi Municipality Hall are representatives of national minorities (Letter #106-10623009186 of January 9, 2023 of Bolnisi Municipality Hall), while 69.1% of the population of Bolnisi Municipality are representatives of national minorities ("Center for Social Justice", "Critical evaluation of the state strategy of civil equality and integration", 2021, 6, available at: <<https://bit.ly/3tMZRUm>> [last seen: 24.01.2023]).

⁹³⁸ Only 23% of people employed in the Dmanisi Municipality Hall are representatives of national minorities (Dmanisi Municipality Hall Letter of January 10, 2023 No. 108-1082301063), while 66.9% of Dmanisi Municipality are representatives of national minorities ("Center for Social Justice", "Civil Equality" and a critical evaluation of the state strategy of integration", 2021, 6, available at: <<https://bit.ly/3tMZRUm>> [last seen: 24.01.2023]).

the named programs are not part of a coherent state policy, and are more of a fragmented intervention to correct the problem. It is significant that the effectiveness of the 1+4 internship program is limited,⁹³⁹ since it cannot ensure further employment of the graduates of the program in the public service, which is one of the goals of this program.

It is significant that public agencies often fail to properly use the resources of bilingual youth.⁹⁴⁰ As a result, interns are unable to develop the necessary skills.⁹⁴¹ Also, it is important to clearly define the requirements of the 1+4 internship program for the receiving institution and the expected results of the internship for the participants, as well as to introduce evaluation tools.⁹⁴²

24.3. Access to public services

Unfortunately, as in previous years, the access of representatives of national minorities to public services is still associated with such obstacles as: the language barrier, the insufficient number of persons who know their native language in service-providing institutions, and the financial barrier.⁹⁴³ Proper informing about state programs and public services in a language understandable to ethnic groups is still a major challenge.⁹⁴⁴ The lack of proper informing about municipal programs is also problematic, even when these programs serve to improve the health and quality of life of the beneficiaries.⁹⁴⁵ Of the 6 municipalities most densely populated by national minorities, only the website of Dmanisi⁹⁴⁶ and Akhalkalaki⁹⁴⁷ municipalities is translated into a language understandable to national minorities. In addition, it is welcome that the Dmanisi Municipality's City Hall has started posting information in the Azerbaijani language along with Georgian in the social network.⁹⁴⁸

24.4. The right to education

24.4.1. Early and preschool education

Unfortunately, it is a challenge to provide access to quality early and pre-school education for adolescents representing national minorities. Particularly problematic is the lack of bilingual education and the lack of personnel corresponding to the needs of adolescents.⁹⁴⁹

Additionally, it is significant that the bilingual pilot program started in 5 kindergartens was continued in 16 kindergartens in 2022,⁹⁵⁰ which is welcome, however, considering the overall picture, unfortunately,

⁹³⁹ "Assessment of the involvement of ethnic minorities in public service" - summary, 2022, 2.

⁹⁴⁰ *ibid.*

⁹⁴¹ "Assessment of the involvement of ethnic minorities in public service", 2022, 29.

⁹⁴² *ibid.*, 38.

⁹⁴³ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 306.

⁹⁴⁴ 2022 special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality"; 2021 special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality", 27-34.

⁹⁴⁵ 2022 special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality".

⁹⁴⁶ websites are translated into Azerbaijani language.

⁹⁴⁷ websites are translated into Armenian language.

⁹⁴⁸ 2022 special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality".

⁹⁴⁹ Thematic Research Report of the Education and Science Committee of the Parliament of Georgia, 27, available at: < <https://bit.ly/3vxNdKx> > [last seen: 25.01.2023].

⁹⁵⁰ *ibid.*, 28.

the implementation of the multilingual (bilingual) education model, which is the declared goal of the state, is still unachievable.

24.4.2. General Education

Unfortunately, like previous years, the challenge was the lack of a unified conceptual approach and vision, training of bilingual teachers, provision of institutions with relevant educational and methodological programs, supporting manuals and necessary material and technical resources.

The Public Defender has been pointing out for years that bilingual education is a necessary basis for full civil integration of national minorities. It is welcome that in the 2022-2023 academic year, the program "Introduction of state standards in preschool and school institutions of national minorities"⁹⁵¹ includes 41 schools, of which 16 were directly involved in the 2022-2023 academic year.⁹⁵²

It is also welcome that for the 2022-2023 academic year, classes I-IX of non-Georgian-speaking schools/sectors are fully provided with updated approved textbooks translated into the relevant language.⁹⁵³ It is significant that in 2022, like the previous years, the issue of compiling and publishing native language and literature textbooks for Armenian, Azerbaijani and Russian-speaking schools in Georgia and ensuring the educational process in these subjects with the textbooks published in Georgia is still problematic.

Additionally, it should be noted that during the reporting period, 10 bilingual subject experts and 54 bilingual assistants and 46 bilingual local teachers were trained at the primary level, while 12 bilingual experts were trained at the basic level.⁹⁵⁴ According to the data of 2022, a total of 5829 teachers are employed in Azerbaijani and Armenian schools.⁹⁵⁵ Considering this, The number of teachers trained/retrained in 2022 is particularly small.

Activities of the LEPL Activities of the National Center for Professional Development of Teachers

Since 2009, the National Center for the Professional Development of Teachers of the Russian Federation has been implementing the "supporting program for non-Georgian language schools."⁹⁵⁶ In 2022, within

⁹⁵¹ The purpose of the program is to implement state standards in preschool institutions and schools of national minorities using the bilingual education approach and in this way to arm children of preschool institutions and school students representing national minorities with the knowledge and skills necessary for full integration in modern public life (letter of the Ministry of Education and Science of Georgia dated February 3, 2023 no. 1 23 0000119028).

⁹⁵² *ibid.*

⁹⁵³ The Ministry of Education and Science of Georgia additionally informs us that the approved X textbooks marked in 2022 are being translated. (*ibid.*)

⁹⁵⁴ Letter of the Ministry of Education and Science of Georgia dated February 3, 2023 No. 1 23 0000119028.

⁹⁵⁵ It is also significant that a total of 1012 Georgian language teachers are employed in Azerbaijani and Armenian schools (*ibid.*).

⁹⁵⁶ The purpose of the program is to promote the professional development and teaching-learning process of teachers of non-Georgian language schools in regions densely populated by national minorities, as well as the professional development of teachers of non-Georgian preschool institutions and the promotion of the educational process by strengthening the state language and improving the practice of informal teaching at the school base (2023 of the National Center for Professional Development of Teachers January 27 letter No. MES 7 23 0000090701).

the framework of the program, a total of 239 consultants⁹⁵⁷ and assistant⁹⁵⁸ teachers⁹⁵⁹ were assigned to Samtskhe-Javakheti, Kvemo Kartli and Kakheti regions. The number of assigned consultant and assistant teachers has not changed substantially in recent years, on the contrary, a decreasing trend can be observed from 2018 to 2021.⁹⁶⁰ As for the reporting period, in 2022, compared to 2021, the number of assigned teachers increased by only 11, however, it is significant that compared to previous years, there is a decrease in this regard, for example, compared to 2018, the number of teachers in 2022 has decreased significantly - by 56.

Over the years, the dynamics of the quantitative indicators of the seconded teachers according to the regions and, in general, the geographical area of the implementation of the activities of LEPL National Center for Professional Development of Teachers, have been unchanged.

The number of teachers in Kakheti, Kvemo Kartli and Samtskhe-Javakheti regions,⁹⁶¹ as well as, in general, the area of activity of the National Center for Professional Development of Teachers, is not in proportion to the non-Georgian language secondary schools in these regions. For example, it is significant that in 2022 the activities of the center in the Kakheti region included 5 non-Georgian-language general education schools,⁹⁶² while there are 15 non-Georgian-language general education schools in the region.⁹⁶³ In Samtskhe-Javakheti, the center's activities covered 38 non-Georgian-language general education schools,⁹⁶⁴ while there are 108 such schools in the region.⁹⁶⁵ As for Kvemo Kartli, the center's activities covered 75 non-Georgian-language general education schools,⁹⁶⁶ while there are 139 such schools in the region.⁹⁶⁷

In addition, it is significant that in 2022, within the framework of the Georgian language course provided by the National Center for Professional Development of Teachers, in 9 municipalities of Kvemo Kartli, Kakheti and Samtskhe-Javakheti,⁹⁶⁸ a total of 641 teachers of non-Georgian-speaking general education institutions were trained. Unfortunately, as part of the Georgian language course, in 2022, as in previous years, the teachers of the non-Georgian-speaking general educational institution of Lagodekhi municipality were not retrained.

⁹⁵⁷ For example, the functions of a consultant teacher may include teaching Georgian as a second language; conducting a state language learning course provided by a long-term course focused on professional development for local teachers; promotion of professional development of local teachers and assistant teachers of the program; Conducting additional lessons in Georgian as a second language for primary and secondary students in the school, etc.

⁹⁵⁸ For example, the functions of an assistant teacher may include planning and conducting a lesson with a local teacher of Georgian as a second language from a non-Georgian-speaking school; Promotion of non-formal education, etc.

⁹⁵⁹ 121 consultant-teachers and 118 assistant teachers. Out of them in Kakheti - 4 consultant-teachers and 5 assistant teachers; in Samtskhe-Javakheti - 36 consultant-teachers, 38 assistant teachers; In Kvemo Kartli - 81 consultant-teachers, 75 assistant teachers.

⁹⁶⁰ In 2018, 295 teachers were assigned; in 2019 - 262; in 2020 - 250; in 2021 - 228.

⁹⁶¹ In 2022, there were 9 teachers in Kakheti region, 74 in Samtskhe-Javakheti region, and 139 in Kvemo Kartli region.

⁹⁶² Letter of January 27, 2023 from the LEPL National Center for Professional Development of Teachers №MES 7 23 0000090701.

⁹⁶³ Letter of the Ministry of Education and Science of Georgia dated February 3, 2023 No. MES 1 23 0000119028.

⁹⁶⁴ Letter of January 27, 2023 from the LEPL National Center for Professional Development of Teachers №MES 7 23 0000090701.

⁹⁶⁵ Letter of the Ministry of Education and Science of Georgia dated February 3, 2023 No. MES 1 23 0000119028.

⁹⁶⁶ Letter of January 27, 2023 from the LEPL National Center for Professional Development of Teachers №MES 7 23 0000090701.

⁹⁶⁷ Letter of the Ministry of Education and Science of Georgia dated February 3, 2023 No. MES 1 23 0000119028.

⁹⁶⁸ Bolnisi Municipality, Gardabani Municipality, Dmanisi Municipality, Marneuli Municipality, Tsalki Municipality, Sagarejo Municipality, Akhaltsikhe Municipality, Akhalkalaki Municipality, Ninotsminda Municipality.

24.4.3. Teaching the mother tongue to minority ethnic groups

The native language of small national minorities has been taught since 2015. Creating school textbooks for the languages of small ethnic minorities (Ossetian, Chechen, Hundzur/Avar, Udi,⁹⁶⁹ Assyrian and Kurdish/Kurmanji) and training teachers of the respective languages, as in the past years, is still a systemic problem.⁹⁷⁰

It is also significant that, despite the request, the issue of learning the Kurdish/Kurmanji language has not yet been resolved. In addition, it is significant that the courses for studying Hebrew, the native language of the Jews, are not available in the regions, and online courses are associated with a significant financial burden for the representatives of the Jewish community.⁹⁷¹

24.4.4. Teaching the state language

In the conclusion issued by the United Nations Human Rights Committee on the basis of the evaluation of the fifth periodic report of Georgia, among other things, it is indicated the importance of strengthening the teaching of the Georgian language, especially among those minority groups who do not have access to language learning or live in remote villages.⁹⁷²

It is significant that the School of State Administration named after LEPL Zurab Zhvania implements Georgian language training programs for adult citizens with state funding.⁹⁷³ Language learning is available both in the school's 12 regional centers and, depending on the place of residence, through mobile groups or remotely in a hybrid mode.⁹⁷⁴ In 2019-2022, the beneficiaries of the state language teaching program was 14648.⁹⁷⁵ It should be positively noted that, compared to 2020, the number of beneficiaries in 2021 increased by approximately 47%, and compared to 2021, by approximately 24% in 2022. However, it is a sad trend that only 51.6% of the participants in 2019-2022 completed the program successfully and were awarded a certificate.⁹⁷⁶ It is also sad that only 1.3% of the participants in the program in 2019-2022 were employed in the public sector. It is significant that the current trend in this regard is virtually unchanged from year to year.⁹⁷⁷

It should be noted that under the state language teaching program, teaching is carried out using mobile

⁹⁶⁹ According to the representatives of the community, the teaching process can only be evaluated formally, which does not lead to real results.

⁹⁷⁰ 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 411; 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 308.

⁹⁷¹ 2022 special report of the Public Defender of Georgia "On the fight against discrimination, its prevention and the state of equality".

⁹⁷² UN Human Rights Committee, Concluding observations on the fifth periodic report of Georgia, 13 September 2022, par. 51.

⁹⁷³ Letter No. 102-1-202301201359 dated January 20, 2023 of the Office of the Minister of State for Reconciliation and Civil Equality of Georgia.

⁹⁷⁴ *ibid.*

⁹⁷⁵ In 2019 - 3545, in 2020 - 2059, in 2021 - 1721, in 2022 - 3234 (Letter No. 2 23 0000055327 dated January 20, 2023 of the LEPL State Administration School named after Zurab Zhvania).

⁹⁷⁶ 43% of participants in the program in 2019, 52% in 2020, 44% in 2021, and 63% in 2022.

⁹⁷⁷ In 2019, 0.08% of the participants in the program were employed in the public sector, in 2020 - 1%, in 2021 - 1.1%, in 2022 - 1.8% (Letter No. 2 23 0000055327 dated January 20, 2023 of the Zurab Zhvania State Administration School).

groups in 24 villages of 3 regions⁹⁷⁸ and 10 municipalities⁹⁷⁹ - a total of 44 mobile groups. It is a pity that in the municipality of Dmanisi, where 66.9% of the population is a representative of the national minority, training is not carried out through mobile groups. It is important to increase the geographical area of activity of mobile groups.⁹⁸⁰

24.4.5. High Education

In 2022, according to the results of the unified national exams, a total of 1,202 entrants won the right to continue their studies based on the Armenian, Azerbaijani and Ossetian language tests. Among them, 352 entrants were admitted to the higher educational institution with the Armenian language test, 843 with the Azerbaijani language test, and 7 with the Ossetian language test.⁹⁸¹ Out of 1202 entrants, only 16.3% obtained the state educational grant. It is true that, compared to the data of 2020 and 2021, this indicator has increased, but the statistical data still confirms that, unfortunately, like in the past years, a large number of students representing national minorities remain without funding. For years, the Public Defender notes that it is important for the state to increase funding for students.⁹⁸²

Unfortunately, the full amount of funding was not increased for the 2022-2023 school year either. Only the rule of funding students enrolled based on the results of the Ossetian language test was changed.⁹⁸³ In particular, instead of allocating additional funds for the purpose of funding students based on the results of the Ossetian language test, there was an opportunity to distribute the funding provided for students enrolled based on the results of the Abkhazian language test.⁹⁸⁴

Disparities were revealed during the continuation of studies in bachelor programs, which is due to normative restrictions. Students enrolled in the educational program of preparation in the Georgian language, who wish to continue their studies on state-sponsored programs, pay tuition fees. In particular, according to the normative limitation, after the completion of the named program, they will no longer receive funding from the state in the case of enrolling in an accredited educational program where, according to the general rule, program directions are financed by the state.⁹⁸⁵ It is significant that this problem is indicated in the thematic research report conducted by the Education and Science Committee of the Parliament of Georgia to study the access to quality education of national minorities.⁹⁸⁶

⁹⁷⁸ Samtskhe-Javakheti region, Kvemo Kartli region, Kakheti region.

⁹⁷⁹ Akhalkalaki Municipality, Akhaltsikhe Municipality, Ninotsminda Municipality, Bolnisi Municipality, Gardabani Municipality, Marneuli Municipality, Tsalki Municipality, Sagarejo Municipality, Lagodekhi Municipality, Akhmet Municipality.

⁹⁸⁰ In addition, there are mobile groups in other locations as well - Tbilisi - 6 mobile groups, Martkopi shelter - 2 mobile groups, military bases - 25 mobile groups.

⁹⁸¹ Letter of the Ministry of Education and Science of Georgia dated February 3, 2023 No. 1 23 0000119028.

⁹⁸² 2019 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2020, 382; 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021, 414; 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 309.

⁹⁸³ Letter of the Administration of the Government of Georgia dated January 26, 2023 No. 3 23 0002406.

⁹⁸⁴ Paragraph 26 of the first article of the Resolution No. 220 of April 26, 2022 of the Government of Georgia "On determining the annual volumes, amounts and volume of program funding of the state training grant for the 2022-2023 academic year".

⁹⁸⁵ A detailed discussion on the issue is available in the 2022 special report of the Public Defender on the fight against discrimination, its prevention and the state of equality.

⁹⁸⁶ Thematic Research Report of the Education and Science Committee of the Parliament of Georgia, 61, available at: < <https://bit.ly/3vxNdKx> > [last seen: 25.01.2023].

24.5. Media Accessibility

It should be noted that in 2022, as in previous years, the Public Broadcaster will broadcast four news programs a day in Azerbaijani⁹⁸⁷ and Armenian.⁹⁸⁸ News programs will be broadcast on the website of the first channel, on various online platforms (social networks), as well as on Kvemo Kartli and Samtskhe-Javakheti regional television stations.⁹⁸⁹ The broadcaster provides simultaneous translation of the main news program "Moambe at 21:00" into Azerbaijani and Armenian languages.⁹⁹⁰ The simultaneous translation signal is transmitted free of charge to Kvemo Kartli and Samtskhe-Javakheti televisions.⁹⁹¹

Despite the implementation of important activities by the Public Broadcaster, the practice of disseminating information in the languages of national minorities mainly through the online platform is still problematic.⁹⁹²

A clear example of this is the statistics provided by the Public Broadcaster itself, according to which, from January 1, 2022 to October 1, 2022, viewing of the simultaneous translation of "Moambe" on online platforms in the Azerbaijani language amounted to approximately 115,000 views, and in the Armenian language - 108,000 views,⁹⁹³ which is the number of daily views of the Azerbaijani language. In the case of the Armenian language, it represents about 420 views per day, and in the case of the Armenian language - about 394 views. Along with the low number of views, it is also worth noting that, compared to 2021, there is no improvement in this regard, since, according to the statistics of online platforms provided by the Public Broadcaster, the daily rate of "Moambe" translated synchronously in 2021 was equal to 500-1500 views.⁹⁹⁴

It is also significant that in 2022, 293 people subscribed to the Armenian-language WhatsApp number, and 312 people subscribed to the Azerbaijani-language number.⁹⁹⁵ The number of subscribers to the Armenian-language WhatsApp number, compared to 2021, was only 13, and the number of subscribers to the Azerbaijani-language number increased by only 12.

It is a pity that, unlike in 2021, when the First Channel of Georgia signed a memorandum of cooperation with several regional media outlets operating in Kvemo Kartli and Samtskhe-Javakheti,⁹⁹⁶ In 2022, in

⁹⁸⁷ "Moambe" in Azerbaijani language at 12:00; "Moambe" in Azerbaijani language at 15:00; "Moambe" in Azerbaijani language at 18:00; "Moambe" in Azerbaijani language at 20:00.

⁹⁸⁸ " Moambe" in Armenian at 12:00; "Moambe" in Armenian language at 15:00, "Moambe" in Armenian language at 18:00; "Moambe" in Armenian at 20:00.

⁹⁸⁹ Public Broadcaster letter No. 866/07 of December 28, 2022.

⁹⁹⁰ Live broadcasting of the main news with simultaneous translation in Azerbaijani and Armenian languages is possible through set-boxes, as well as TVs with the language change function (Public Broadcaster's letter of December 28, 2022 No. 866/07).

⁹⁹¹ Public Broadcaster letter No. 866/07 of December 28, 2022.

⁹⁹² According to the data on the website of the National Statistics Service of Georgia, as of July 2022, the share of households equipped with a computer in Shida Kartli is 57.3%, in Kvemo Kartli - 55.9%, and in Samtskhe-Javakheti - 62.6%. The data of Georgia as a whole is also important, according to which, as of July 2022, 60.3% of the population of Georgia has a computer-equipped household (available at: < <https://bit.ly/3W3LveM> > [last seen: 09.01.2023]).

⁹⁹³ Ibid.

⁹⁹⁴ Public Broadcaster letter No. 67/07 of February 1, 2022.

⁹⁹⁵ Public Broadcaster letter No. 866/07 of December 28, 2022.

⁹⁹⁶ Ibid. - within the framework of cooperation, the Public Broadcaster transmits the product produced in Azerbaijani and Armenian languages free of charge to several television stations of the regions: TV company "Parvana", ATV 12 and Marneuli television.

addition, the practice of signing similar cooperation memorandums in other regions was not continued.⁹⁹⁷ It is important to ensure the possibility of television broadcasting of programs in all regions inhabited by national minorities.

Recommendations

To the Government of Georgia:

- For the 2023-2024 school year, increase the amount allocated for financing the students enrolled with the state educational grant based on the results of the Azerbaijani and Armenian language tests of general skills of the unified national exams, as well as the Ossetian language test;
- To increase the rate of employment of representatives of national minorities in state agencies, develop new employment programs;
- At the level of executive authorities, to create effective institutionalized consultation mechanisms for minorities;
- Promote the promotion of the teaching of the state language among national minorities, including through the development of targeted programs;
- Develop a long-term plan to prevent inter-ethnic conflicts and strengthen inter-community dialogue in municipalities experiencing conflict.

To the Minister of Education and Science of Georgia:

- In those schools where teaching is provided in the language of national minorities: introduce a multilingual education model; to develop school textbooks necessary for multilingual education; Bilingual teachers were trained/retrained;
- The school textbooks published in accordance with the national curriculum of Georgia should be translated and published in the languages of national minorities. To provide the mentioned textbooks to the schools;
- To start taking effective measures to prepare and publish native language and literature textbooks for Armenian, Azerbaijani and Russian-speaking schools of Georgia and to ensure the educational process in these subjects with the textbooks published in Georgia;
- To ensure the preparation and publication of school textbooks for the languages of small national minorities (Ossetian, Chechen, Hundzur/Avar, Udi, Assyrian and Kurdish/Kurmanji), as well as teacher training;
- To promote cultural and educational events, both for multicultural programs and specifically for the promotion of the culture of national minorities;
- To promote both multicultural programs and specifically the culture of national minorities, to strengthen student and student exchange programs within the country;
- In cooperation with local self-governments, in the municipalities and villages of the regions compactly inhabited by national minorities, to promote the activities of cultural houses/cultural

⁹⁹⁷ It is important to sign memorandums with those regional televisions that broadcast in the territory of Bolnisi, Akhaltsikhe, Gardabani, Dmanisi, Lagodekhi, Tsalka and Sagarejo municipalities.

centers, restoration and implementation of educational programs;

- According to the order "On approving the rules and conditions of granting program funding to higher educational institutions by the Ministry of Education and Science of Georgia in the 2023-2024 academic year", to cancel the normative restriction, according to which it is not allowed, within the framework of program funding, after the completion of the educational program of training in the Georgian language, integrated bachelor's/teacher training - Funding of studies of persons enrolled in an accredited master's/veterinary integrated master's education program.

To the public broadcaster:

- To increase the television broadcasting of the main news and analytical programs in the languages of national minorities;
- In the regions compactly inhabited by national minorities, to facilitate the availability and popularization of media products prepared in the languages of ethnic minorities on TV.

School of State Administration named after Zurab Zhvania:

- Expand the geographical area of school mobile groups by providing mobile groups in all municipalities densely populated by national minorities.

National Center for Professional Development of Teachers:

- To increase the number of teachers trained within the geographical area of the Center's activities and the programs provided by the Center in all municipalities densely populated by national minorities.

To the Minister of Education and Science of Georgia, Minister of State for Reconciliation and Civil Equality:

- To clearly define the requirements of the 1+4 internship program for the receiving institutions, as well as the expected results of the internship for the participants of the program, to introduce assessment tools and measures focused on the development of young people's skills.

Sagarejo, Lagodekhi, Telavi, Gardabani, Marneuli, Bolnisi, Dmanisi, Tsalki, Tetrtskaro, Akhaltsikhe, Akhalkalaki, Ninotsminda municipalities:

- To increase the quality of teaching and the effectiveness of activities in pre-school education institutions, ensure the training of teachers, including non-Georgian speaking teachers, the creation and delivery of educational resources;
- Ensure the availability of information posted on websites and social networks of municipalities in the native language of national minorities;
- Ensure accessibility of normative acts containing public interest adopted by municipalities (including social and health care municipal programs) in the native languages of national minorities living in their territory.

25. Human Rights Situation of Internally Displaced Persons - IDPs

According to the latest data of 2022, 292,946 displaced persons and 93,302 displaced families are registered in Georgia. Out of them, 48,600 families are settled long-term, and 35,375 families have filled out an application for housing provision according to the established procedure. Also, 699 families have been given an administrative promise to provide housing as soon as possible. In 2022, the rate of growth of families provided with long-term housing was maintained and their number amounted to 3,530 families.⁹⁹⁸

25.1. Amendments to the legislation

At the end of the reporting year, the Parliament of Georgia made changes initiated by the Government of the Autonomous Republic of Abkhazia to the Law of Georgia "On internally displaced persons from the occupied territories of Georgia". As a result, the state releases the obligation to provide long-term housing to IDPs born after January 1, 2023 (except for the case when the displaced parent/parents died/passed away before providing long-term housing). Also, for a person who is a minor until January 1, 2023, when providing long-term housing, will be considered together with the family members of his/her ascending branch, and he/she no longer has the right to request housing provision individually.⁹⁹⁹ The involvement of interested persons/experts in the process of drafting the law was problematic. In addition, the bill was discussed without the participation of the representatives of the LEPL Ministry of Labor and Health or the Agency for IDPs, Eco-Migrants and Livelihood Provision of IDPs from the occupied territories of Georgia, which are responsible for defining and implementing the state policy towards IDPs. Because of this, important questions related to the project were not answered.

According to the Public Defender's assessment, the implementation of similar changes requires more involvement of the public, to listen to more critical opinions, to give substantiated/grounded answers to relevant questions and to minimize the risks of deterioration of the legal situation.

As for the substantive part of the change, the Public Defender of Georgia has repeatedly expressed the opinion that the current status-linked monetary assistance for internally displaced persons and the status-linked housing obligation policy are flawed and confirm the solution of this issue and the transition to a more effective, needs-based system. The specified changes may be a step towards this policy, the implementation of which will be supervised by the Office of the Public Defender of Georgia.

In addition, during the reporting period, changes were made to the action plan for the implementation of the state strategy for IDPs¹⁰⁰⁰ and the rules for providing housing for IDPs¹⁰⁰¹ which determined that if an IDP family refuses the offer after the distribution of apartments by vote, the issue of providing housing to them will be considered at the last stage. Before the changes, in case of refusal, the family was restricted

⁹⁹⁸ Letter of IDP 2 23 00179647 dated February 17, 2023 of the Agency for IDPs, Eco-Migrants and Livelihood Provision; In 2021 - 3,130, and in 2020 - 1,977 families were resettled.

⁹⁹⁹ Article 231 of the Law of Georgia "On internally displaced persons from the occupied territories of Georgia".

¹⁰⁰⁰ Paragraph 2.1.9 of the Decree No. 292 of the Government of Georgia dated March 5, 2021.

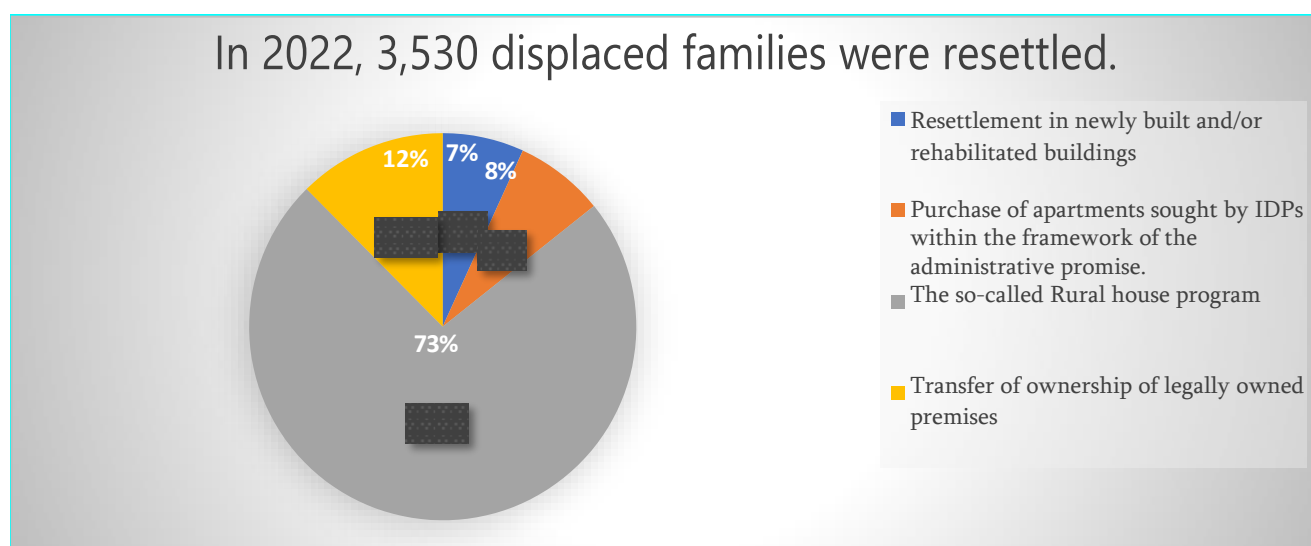
¹⁰⁰¹ Order No. 01-30/N of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia of April 8, 2021, Appendix No. 1, Article 1, Clause 3.

from participating in the resettlement program for 3 years.

In the situation when there is no justification, whether or not the restriction on participation in the resettlement program for 3 years has yielded results or how frequent the cases of refusal of the apartments distributed as a result of voting by the displaced persons are and/or whether there was a repeated refusal of the offer after the 3-year restriction, according to the assessment of the Office of the Public Defender of Georgia, such a restriction is disproportionate, especially in the conditions when the date of the last stage of the long-term resettlement of the IDPs is unclear.

25.2. Long-term settlement of IDPs

In the reporting period, a total of 3,530 families were resettled within the framework of various long-term resettlement programs. As it is clear from the presented data, the least - 240 families were resettled in newly built and/or rehabilitated buildings, while the demand is highest for the long-term resettlement program¹⁰⁰².



At the stage of long-term settlement, the so-called Delay in making a final decision on placement in the rural housing program. The illegal practice of not substantiating the negative decisions on accommodation and canceling the pre-assigned points due to living in "difficult living conditions" is maintained.¹⁰⁰³

25.3. Resettlement of IDPs from the facilities posing an increased risk to life or health

According to the data of the end of 2022, 716 families live in 35 facilities that pose a threat to life and health. During the reporting period, the number of families resettled from collapsing facilities has significantly decreased. In particular, in 2022, 8 so-called collapsing facilities were closed, from which 272 families were resettled¹⁰⁰⁴ which is almost a halved figure compared to last year.¹⁰⁰⁵ In addition to reducing

¹⁰⁰² More than 1900 applications for accommodation in newly constructed and/or rehabilitated buildings have been registered.

¹⁰⁰³ see 2021 Parliamentary Report of the Public Defender of Georgia, p. 342.

¹⁰⁰⁴ Letter of IDP 9 23 00191424 dated February 21, 2023 of the LEPL IDPs, Eco-Migrants and Livelihood Provision Agency.

¹⁰⁰⁵ In 2021, 20 so-called the crumbling facilities was closed, from which 539 displaced families were resettled. 2021 Parliamentary

the number, an inconsistent approach to the selection of facilities to be emptied, i.e. to be closed, was observed. It is clear from the expert conclusions that some of the already closed facilities were in a satisfactory condition, while the decision to close the facility in an unsatisfactory condition was not made.¹⁰⁰⁶

During the year 2022, the so-called Census of the families living in the dilapidating building was flawed.¹⁰⁰⁷ The existing practice in some cases cannot provide a complete examination of the fact of the displaced family's life. Despite the fact that there are no special rules, even under these conditions, the agency is obliged to investigate the case in every way, including making several visits. Therefore, it is important to change the current practice in this direction, since the thorough examination of this type of information is ultimately crucial in making the decision on resettlement. Declaring buildings as vacated is also problematic. There are many buildings that pose an increased threat to life and health, which have been declared closed, although internally displaced persons still live there.¹⁰⁰⁸ According to the current legislation, the so-called after declaring the destructible building vacated, families with a positive decision are obliged to leave the residential area within 2 months. As for families with whom there is no positive decision and who live in a closed destructible building for various reasons, their long-term housing will not be implemented until they leave the building.¹⁰⁰⁹ Often the stated limitation is not enough and the managing authority is aware of such buildings where the displaced persons continue to live despite the closure. During the reporting period, an IDP living in a similar building was even injured as a result of the ceiling falling.¹⁰¹⁰ Therefore, it is important for the agency to coordinate with the owner of the building to implement effective measures to limit IDPs' access to such buildings.

It is also a challenge that some of the accommodation facilities handed over to IDPs in the past years are destructible. The resettlement of displaced persons from such buildings is not recognized by the legislation applicable to IDPs, in practice the municipality also refuses to take any kind of measures.¹⁰¹¹ Thus, such IDPs do not have the opportunity to live in a safe environment with the help of the state. It should be noted here that the agency does not have information on how many such facilities there are in the country.

According to the assessment of the Office of the Public Defender of Georgia, this is a serious problem and will take on an even larger form over time. Thus, it is important for the state to develop a long-term vision in this direction as well, so that the lives and health of the residents are protected.

Report of the Public Defender of Georgia, p. 343.

¹⁰⁰⁶ For example, in Zugdidi, the Kombinati settlement, Mekagaldeta Street No. 26, the Vector building was emptied, while it was in a satisfactory condition, and the technical stability of the "Zhvaya" building in Samegrelo, Tsalenjikha, Zhvaya village is unsatisfactory and its operation is dangerous, although it was not closed.

¹⁰⁰⁷ See 2021 Parliamentary Report of the Public Defender of Georgia, p. 343-434.

¹⁰⁰⁸ In Zugdidi, district hospital building; In Zugdidi, Tamar Mepe St. The building of the former Hotel "Egris" located at No. 175, etc.

¹⁰⁰⁹ Order No. 01-30/N of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia of April 8, 2021, Appendix No. 1, Article 6, Clauses 8 and 14.

¹⁰¹⁰ In Zugdidi, Akhalabastumani village, IDP accommodation facility, former "boarding school" building.

¹⁰¹¹ For example, according to the report No. 01/401 of the Municipal Laboratory of Tbilisi dated August 1, 2022, the technical condition of the building located at No. 138 Davit Aghmashenebeli Street in Tbilisi corresponds to the III degree of damage.

Recommendations

Agency for IDPs, Eco-migrants and Livelihood Provision of IDPs:

- In 2023, no less than 550 displaced families will be resettled in the long-term from the former collective resettlement facilities that pose an increased threat to life and health;
- To develop the released so-called the rule of closing the destructible facilities, which will limit the access of the displaced people to such a dangerous environment.

To the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia:

- To remove the record - "or they refused during the voting provided for in this rule or after it to provide a long-term residential area of the appropriate reference standard" - from the paragraph 3 of Article 1 of Appendix 1 of Order No. 01-30/N of April 8, 2021 of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia and relevant policy defining documents.

26. Human Rights Situation of Eco-Migrants

In the reporting period, the legal status of eco-migrants did not improve significantly. According to the data of the end of 2022, out of 8,731 eco-migrant families registered in the database of the IDPs, Eco-Migrants and Livelihood Provision Agency (hereinafter referred to as the Agency), international organizations provided housing to 3,247 families.¹⁰¹² The process of transferring residential houses to private ownership for eco-migrants resettled in 2004-2012 has not yet been completed. Out of 1,062 families settled in different regions of Georgia, 582¹⁰¹³ families have not yet received real estate ownership.

26.1. Resettlement of eco-migrants

In the reporting year, 402 families were given a positive decision on resettlement and 349 housing units were purchased. Among them, 101 families lived under increased danger and were resettled without considering the points system.¹⁰¹⁴ 13 eco-immigrant families benefited from the agency's rent program. Consideration of the possibility of providing rent to eco-immigrant families in the budget of some local self-governing units,¹⁰¹⁵ which is of vital importance for a family under threat, should be evaluated positively. Also, the practice established by the agency, by which, before making the final decision on family resettlement, they receive information from the municipality regarding the resource/possibility of carrying out protective measures. As for the families living at high risk, in 2022, the relevant agencies issued a conclusion on 644 families¹⁰¹⁶ about living under increased risk.¹⁰¹⁷

Considering that the number of families affected by natural disasters is increasing every year, it is important to increase the funds allocated for resettlement. The increase in budgeted funds for resettlement by 2023 should be evaluated positively.¹⁰¹⁸ In the Autonomous Republic of Adjara, the financial limit for residential houses for purchase has also increased and amounts to 40,000 GEL, however, taking into account the increase in the number of families subject to resettlement, the need to mobilize more financial resources remains.

Years ago, before the implementation of the point system resettlement program, ecomigrant families were resettled in an organized manner in different regions of Georgia. Last year, the Office of the Public Defender met organized emigrant families from Svaneti and Adjara regions in Shida Kartli region. During the meetings with the eco-migrants, as a rule, the difficult socio-economic situation was identified as the main challenge. The population indicates such problems as: unemployment, scarcity of land (which, in

¹⁰¹² Letter N IDP 6 23 00196813 dated February 22, 2023 of the LEPL IDPs, Eco-Migrants and Livelihood Provision Agency.

¹⁰¹³ Letter N IDP 7 23 00263404 of 2023 No. IDP 7 23 00263404 of the LEPL IDPs, Eco-Migrants and Livelihood Provision Agency.

¹⁰¹⁴ According to the letter N IDP 6 23 00196813 dated February 22, 2023 of the LEPL IDPs, Ecomigrants and Livelihoods Agency of the IDP, 324 positive decisions were made and 271 houses were purchased. And according to the letter No. 05/1022 dated February 15, 2023 of the Ministry of Health and Social Protection of Adjara A/R, 78 residential houses have been purchased.

¹⁰¹⁵ Tsageri, Khulo, Shuakhevi, Khashuri, Khelvachauri, Baghdati municipalities.

¹⁰¹⁶ According to Article 3, Paragraph 3 Sub-paragraph "A" of the Order No. 779 of November 13, 2013 of the Minister of Internally Displaced Persons, Resettlement and Refugees from the Occupied Territories of Georgia, living under increased danger is the basis for resettlement without taking into account the points system.

¹⁰¹⁷ According to the letter No. 21/1308 dated February 28, 2023 of the LEPL National Environmental Agency of the Adjara A/R, the conclusion was issued to 308 families, and according to the letter No. 08/90 of February 16, 2023, the conclusion was issued to 366 families.

¹⁰¹⁸ For the year 2023, the budget of the LEPL IDPs, Eco-Migrants and Livelihood Provision Agency is 9,000,000 GEL, and the budget of the Ministry of Health and Social Protection of Adjara A/R is 4,080,000 GEL.

turn, creates the problem of lack of pastures), access to medical and utility services (including gas and Internet), lack of kindergarten, etc. The resettled persons, who had to leave their homes due to natural disasters and geological processes, in fact started to live again, due to which local infrastructural and other problems affected them much more acutely. It should also be taken into account that the resettlement procedure is focused on providing housing for eco-migrant families and does not include social guarantees. In this regard, it was especially problematic to take into account the needs of eco-migrants during collective resettlement before 2012, which can be considered as one of the determining factors of the continuing and unresolved challenges to this day. At the same time, the lack of support measures increases the risks of tension between the people who traditionally live in the respective areas and the displaced families.

26.2. Prevention of eco-migration

The situation related to the prevention of eco-migration has not improved. In some municipalities, preventive measures are not carried out and only liquidation measures are taken.¹⁰¹⁹

The majority of municipalities¹⁰²⁰ do not have information about the indicative costs necessary for carrying out preventive measures, also, part of the budget does not include funds in the direction of prevention,¹⁰²¹ although there are positive examples, funds for this purpose are provided in the budget of some municipalities¹⁰²² or, if necessary, they are mobilized from the reserve fund.¹⁰²³

There are also positive examples, funds for this purpose are provided in the budget of some municipalities¹⁰²² or, if necessary, they are mobilized from the reserve fund.¹⁰²³ Some municipalities¹⁰²⁴, within the framework of existing financial resources, carry out certain preventive measures, however, they do not provide information about the performed works to the body issuing the recommendation. That is why it is not possible to gather information in the agency that issues such conclusions.

It is important for local governments to focus on the prevention of eco-migration and not on eliminating the consequences. In this regard, it is necessary to calculate reference amounts for the preventive measures, for their further mobilization. Active implementation of preventive measures makes it possible, on the one hand, to avoid the damage caused by eco-migration and the need to resettle families, and, on the other hand, to save financial resources.

Recommendations

For the LEPL Agency for IDPs, Eco-migrants and Livelihood Provision of IDPs:

- As a result of the analysis of the geological conclusions received from the LEPL National Environment Agency, families living under high risk should be identified and at least 40% of the

¹⁰¹⁹ Lanchkhuti, Terjoli, Lentekhi municipalities.

¹⁰²⁰ Chkhorotsku, Tsageri, Khulo, Ninotsminda, Zugdidi, Khelvachauri, Borjomi municipalities.

¹⁰²¹ Municipalities of Abashi, Lanchkhuti, Ninotsminda, Terjoli, Baghdati, Lentekhi, Khoni.

¹⁰²² Municipalities of Oni, Vani, Khulo, Shuakhevi, Khashuri, Zugdidi, Khelvachauri.

¹⁰²³ Chkhorotsku, Tsageri, Akhmet, Adigeni, Borjomi municipalities.

¹⁰²⁴ Batumi, Oni, Khelvachauri municipalities.

amount allocated for resettlement should be used for the resettlement of such families;

- In 2022, the process of transferring the ownership of residential premises to eco-migrants resettled in 2004-2012 should be completed.

For Mayors of local municipalities:

- Calculate the estimated cost of the preventive measures to be taken;
- Information about the implemented preventive measures should be provided to the LEPL National Agency for the Environment of the Ministry of Environment.

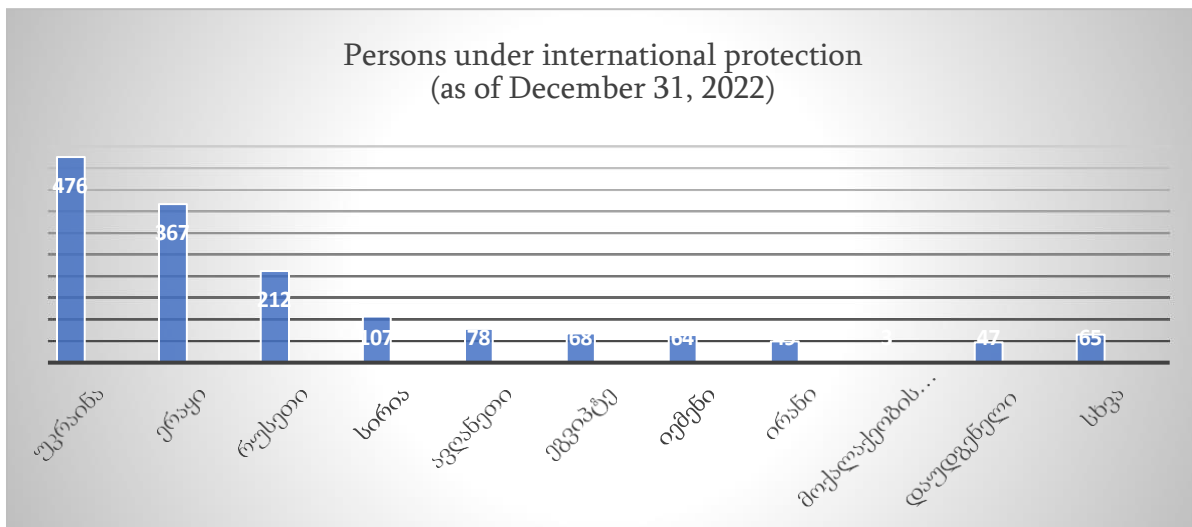
To the mayors of Abashi, Lanchkhuti, Ninotsminda, Terjoli, Baghdati, Lentekhi, Khoni municipalities:

- During the formation of the budget, in order to carry out preventive measures in the geologically active areas identified by the National Environment Agency, mobilize the relevant funds.

27. Human Rights Situation of Asylum Seekers and Persons under International Protection

Due to hostilities, natural disasters, persecution, violence and violation of human rights, the number of forcibly displaced people in the world is increasing year by year and reaching unprecedented levels. According to today's data, there are more than 100 million internally displaced people worldwide, including more than 42 million - with international protection and asylum seekers.¹⁰²⁵

As of December 31, 2022, 1,535 persons with international protection live in Georgia. Among them, 509 have refugee status, and 1026 have humanitarian status. The majority of persons with international protection are from Ukraine, Iraq and the Russian Federation.¹⁰²⁶

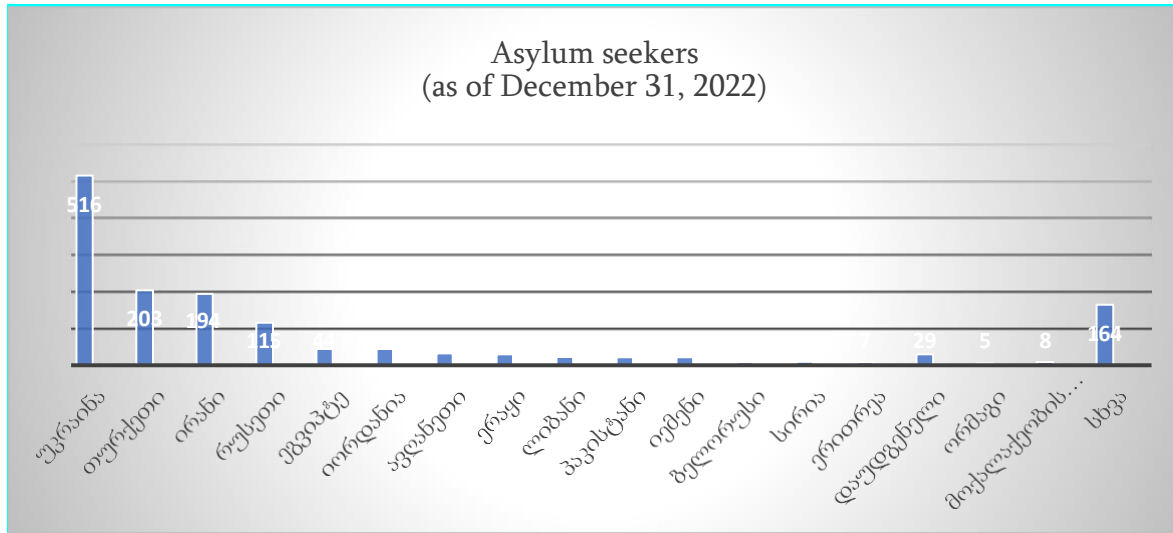


As of December 31, 2022,¹⁰²⁷ 1473 asylum seekers are registered in the country. Most of them are citizens of Ukraine, Turkey, Iran and Russia.

¹⁰²⁵ Available at: < <https://bit.ly/401uNPW> > [last seen: 27.03.2023].

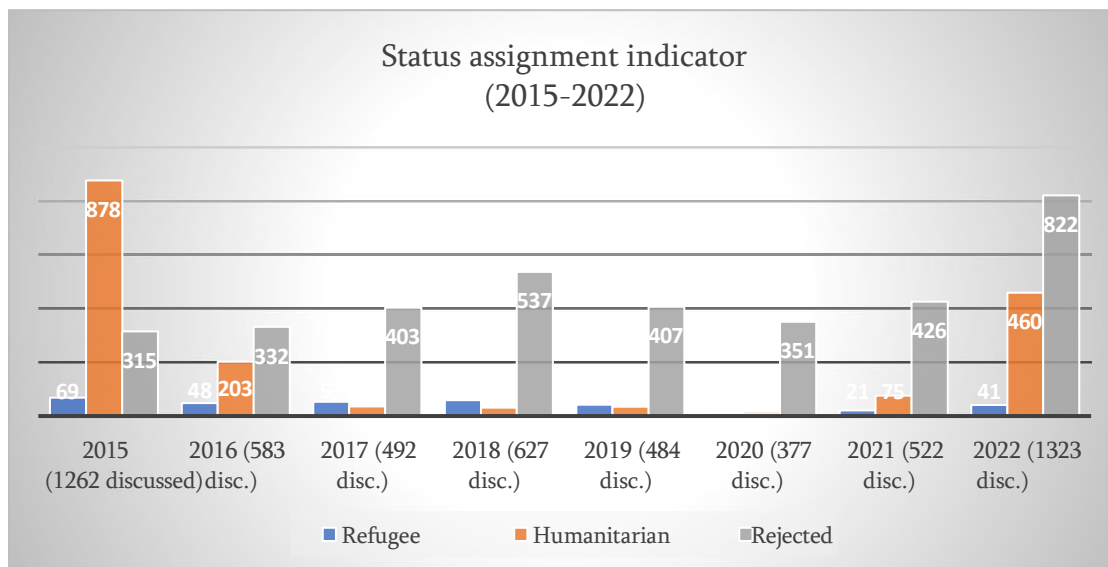
¹⁰²⁶ Letter No. MIA62300687050 of the Ministry of Internal Affairs of Georgia dated March 10, 2023.

¹⁰²⁷ Available at: < <https://bit.ly/3JS4iGW> > [last seen: 27.03.2023].



45 asylum seekers requested international protection (asylum) at the state border of Georgia.

Compared to previous years, the number of reviewed cases has doubled, and the rate of granting in the reporting period has increased mainly by establishing humanitarian status for Ukrainian citizens.



During 2022, out of 1323 considered cases, 822 persons were rejected. The grounds for refusal, in the main case, were lack of reasons (793 persons), and 29 asylum seekers were refused on the grounds of security.

The reviewed cases do not include cases of termination of the case based on his own statement and non-appearance. Among the persons who were refused on the grounds of security, there are 14 citizens of

Afghanistan and 2 citizens of Syria, whose countries of origin are still notable for human rights violations¹⁰²⁸.

As for integration, even in 2022, the "unified approach document" on the integration of immigrants was not developed.¹⁰²⁹ In 2022, 77 people took the Georgian language course. Beneficiaries still pointed to problems related to language teaching methods.¹⁰³⁰ Local municipalities¹⁰³¹ do not consider social allowances for persons under international protection. An exception is the municipality of Akhmeta, whose budget includes funding for persons with residence permits who actually live in the municipality, in the case of acute treatment emergencies.¹⁰³² Also St. The City Hall of Tbilisi Municipality provided financial assistance to internally displaced persons from Ukraine.¹⁰³³

27.1. State border monitoring

The lack of full-fledged databases regarding border crossings is still problematic.¹⁰³⁴ The Public Defender drew attention to this issue in the 2019 report, however, the Ministry has not yet taken appropriate measures to eliminate this problem.¹⁰³⁵ According to the information of the Ministry of Internal Affairs of Georgia, 3,246,757 foreign country citizens entered Georgia in 2022 and 21,698 foreigners were restricted from entering Georgia, although the Ministry does not have statistical data on the specific legal grounds for refusal.¹⁰³⁶

In order to assess the situation related to the foreigners' rights in Georgia, the Office of the Public Defender actively monitored the state border. During the reporting period, monitoring was carried out in the following border-immigration control departments:

"Sarfi", "Batumi Airport", "Batumi Port", "Kutaisi Airport", "Dariali" (Kazbegi), "Vale", "Sameba" (Ninotsminda), "Red Bridge", "Geguti", "Sadakhlo", Also, during the year, 29 flights were monitored at Tbilisi Shota Rustaveli International Airport. Based on the fact that every year the Office of the Public Defender of Georgia receives statements from foreign citizens, in which they talk about alleged humiliating and/or degrading treatment by the representatives of the Ministry of Internal Affairs of Georgia at border crossing points, violation of the principle of non-refoulement, grounds for refusal to enter Georgia and information about the procedure for appealing it, regarding non-delivery, during the monitoring, among other issues, attention was focused on these issues.

According to the current legislation, upon entering Georgia, a citizen of a foreign country is subject to inspection¹⁰³⁷, the purpose of which is to detect cases of refusal to cross the state border established by

¹⁰²⁸ Available at: < <https://bit.ly/406jOg2> > [last seen: 27.03.2023].

¹⁰²⁹ Letter No. MOH02300234637 dated March 4, 2023 to the Ministry of IDPs from the occupied territories of Georgia, Ministry of Labor, Health and Social Protection.

¹⁰³⁰ Foreigners mentioned that it was difficult to attend 4-hour lectures every day.

¹⁰³¹ Letter No. 44-442306661 dated March 7, 2023 of Kutaisi Municipality City Hall.

¹⁰³² Letter of Akhmeta Municipality City Hall No. 86-862134972 of December 15, 2021.

¹⁰³³ Letter No. 21-01230652347 dated March 6, 2023 of the City Service of Health and Social Services of Tbilisi Municipality.

¹⁰³⁴ See "On the State of Protection of Human Rights and Freedoms in Georgia" 2019 Report of the Public Defender of Georgia, Chapter: Legal Status of Foreigners in Georgia, p. 417-427.

¹⁰³⁵ *ibid.*

¹⁰³⁶ Letter No. MIA62300594369 dated March 1, 2023 of the Ministry of Internal Affairs of Georgia.

¹⁰³⁷ Law of Georgia "On the Legal Status of Foreigners and Stateless Persons", Art. 12.

law¹⁰³⁸ and, therefore, to observe the regime of crossing the state border. For this purpose, the representative of the Ministry of Internal Affairs of Georgia conducts an interview with a foreigner, however, according to the information obtained from the Ministry¹⁰³⁹, there is no guiding document that would regulate the procedure of conducting the interview.

Regarding the above-mentioned issues, it is worth noting the recommendations and guiding principles of the UN High Commissioner for Human Rights "On Human Rights at International Borders", which is a guiding document for states on the issue of human rights protection during border crossing regimes.¹⁰⁴⁰ In this document, promotion and protection of human rights at borders is the primary issue. Promotion of independent and impartial monitoring of human rights protection at the border and cooperation with human rights protection institutions is considered as one of the mechanisms for achieving this goal.¹⁰⁴¹ According to the same document, it is necessary to have a guiding document for conducting an interview with a citizen of a foreign country, which takes into account human rights and dignity.

The existence of this document is important from the point of view that the personnel trained through it will conduct the interview in accordance with the uniform standard, will have qualified knowledge on the technique of conducting the interview in a private and appropriate environment without intimidation and threats, where the specific needs of age, gender, disabled and other vulnerable groups will also be taken into account.¹⁰⁴²

According to the rule established by the law, the representative of the Ministry makes a decision on the entry of a foreign citizen to Georgia as a result of the inspection,¹⁰⁴³ and in case of a negative decision, the person is given an act of refusal to enter Georgia.¹⁰⁴⁴ As a result of monitoring, it was revealed that before the transfer of this act, in some cases, the representative of the Ministry refused to enter Georgia. In order to inform the foreigner about the basis of the statement and the procedure for appealing the decision, he takes a hand-held video camera, the recording of which is kept for 30 days.¹⁰⁴⁵

As a result of monitoring, interviews with representatives of the Ministry, as well as according to the information received from the Ministry¹⁰⁴⁶, it was established that the Ministry does not have any uniform rules, in which cases it is filmed with a video camera and when it is not.

In addition, it is worth noting the fact that during the study of individual applications, the Ministry did not present a hand-held video camera recordings in these cases, which once again confirms the need for a

¹⁰³⁸ Ibid., Art. 1.

¹⁰³⁹ Letter No. MIA62300594369 dated March 1, 2023 of the Ministry of Internal Affairs of Georgia.

¹⁰⁴⁰ "On Human Rights at International Borders" Recommendations and Guidelines of the United Nations High Commissioner for Human Rights, available at the link: <<https://bit.ly/41NflrO>> [last seen: 06.03.2023].

¹⁰⁴¹ Ibid., Guiding Principle 1, paragraph 8.

¹⁰⁴² Ibid., Guideline 6, paragraphs 9-17.

¹⁰⁴³ Paragraph 2 of Article 12 of the Law of Georgia "On the Legal Status of Foreigners and Stateless Persons".

¹⁰⁴⁴ Order No. 3 of the Minister of Internal Affairs of January 6, 2017, "Regarding approval of the decision and complaint form on the issuance of a Georgian visa at the state border of Georgia, refusal to enter Georgia and termination of validity of a visa issued at the state border of Georgia."

¹⁰⁴⁵ Article 121 of the Order No. 1310 of the Minister of Internal Affairs of Georgia "On the rules for patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia".

¹⁰⁴⁶ Letter No. MIA62300594369 dated March 1, 2023 of the Ministry of Internal Affairs of Georgia.

uniform rule and normative regulation on this issue, which, in turn, would ensure the protection of legal procedural guarantees.

It should be noted separately that there are a number of statements taken over by the managing authority, where the asylum seekers indicate that they entered Georgia bypassing the border-immigration control department due to persecution in their own country and reported the above immediately after their arrest, although the request for international protection was not noted and they were immediately referred to the migration department, and they were given criminal responsibility. According to the Criminal Code of Georgia, illegal crossing of the state border is punishable, however, if a person escapes from the danger stipulated by the 1951 UN Convention on the Status of Refugees in his own country, he is exempted from responsibility.¹⁰⁴⁷

Illegal crossing, however, if a person escapes from the danger stipulated by the 1951 UN Convention on the Status of Refugees in his own country, he is exempted from responsibility.¹⁰⁴⁷ On the other hand, the information provided by the Prosecutor General's Office of Georgia,¹⁰⁴⁸ according to which no person has been exempted from criminal liability on the mentioned basis in the last 3 years, is noteworthy. The mentioned information, as well as the discussion of the cases taken over by the managing authority, creates an assumption that in the case of the searchers entering Georgia bypassing the border control, the issue of the status request is not investigated in the cases of criminal prosecution against them.

27.2. Legal status of foreign citizens subject to non-refoulement based on family unity principle

The national legislation establishes the obligation to protect the principle of family unity at all stages of the expulsion of a foreigner from Georgia.¹⁰⁴⁹ Accordingly, the Ministry of Internal Affairs of Georgia, as the state body responsible for the expulsion of a foreigner, has the obligation to exercise this authority in such a way that the expulsion does not create a danger of family separation. According to the legislation, in the presence of the named risk, the use of this size is allowed only in special cases.¹⁰⁵⁰

Within the scope of the case studied by the Office of the Public Defender of Georgia, a legal flaw was identified when the court annulled the decision of the Ministry to deport a person from Georgia on the basis of the principle of family unity. In particular, in the given cases, the fact that, despite the entry into legal force of the court's decision to refuse deportation, the current legislation does not provide for the possibility of issuing any type of document for legal stay in the territory of the country.

Not having a document has a direct negative impact on the legal status of a foreigner, for example, to get a job, make a deal, participate in the creation of the socio-economic well-being of the family, etc. For

¹⁰⁴⁷ Note on Article 344 of the Criminal Code of Georgia.

¹⁰⁴⁸ Letter No. 13/17704 of the General Prosecutor's Office of Georgia dated March 17, 2023.

¹⁰⁴⁹ "On the Legal Status of Foreigners and Stateless Persons", Article 3, Sub-paragraph "b" of the Law of Georgia and Article 6, Paragraph 1 of the Resolution No. 525 of September 1, 2014 of the Government of Georgia "On Approving the Procedure for Deporting a Foreigner from Georgia".

¹⁰⁵⁰ *ibid*

the same reason, a foreigner is also not given the full opportunity of a family life.

It should be positively noted that according to the information provided by the Ministry, in order to solve the identified problem, the Migration Department will study the practice of the EU countries regarding the protection of the principle of family unity in relation to the foreigner who is subject to the expulsion procedure.¹⁰⁵¹ The public defender hopes that appropriate changes will be reflected in the legislation in the near future, which will regulate the legal stay of a foreigner who has not been expelled from Georgia on the basis of the principle of family unity by the judicial body.

27.3. Rights of stateless persons

In October 2019, at the session of the Executive Committee of the United Nations High Commissioner for Refugees, in order to reduce the number of stateless persons and improve their legal status, the Georgian authorities submitted a six-point document of voluntary commitment. As of today, part of the obligations have been fulfilled, while work is underway on the other part, which should be evaluated positively, since the fulfillment of each declared obligation will have a positive impact on the legal status of stateless persons in the country. It is unfortunate that, despite the expiration of the deadline, the state still has not fulfilled its obligations related to promoting the acquisition of Georgian citizenship by naturalization for stateless persons and halving the 10-year period established by law¹⁰⁵² for this purpose, as well as providing free legal services in the administrative body and general courts in the process of determining the status. The Public Defender once again calls on the relevant state institutions to fulfill their obligations at the international level.¹⁰⁵³

Proposal

To the Parliament of Georgia:

- In order to ensure simplified naturalization of stateless persons, an amendment should be made to the Organic Law "On Georgian Citizenship", as a result of which the 10-year residence permit for stateless persons established for naturalization will be halved.

Recommendation

To the Minister of Internal Affairs of Georgia:

¹⁰⁵¹ No. MIA 32203318063 of the Ministry of Internal Affairs of Georgia dated November 11, 2022.

¹⁰⁵² According to the letter No. 01/48795 of the State Services Development Agency dated February 28, 2023, the review of the draft law is scheduled for the spring session of 2023 (it is reflected in the short-term plan of law-making activities of the Government of Georgia provided for the spring session of the Parliament of Georgia for the spring session of 2023 by the Decree of the Government of Georgia No. 218 of June 30, 2023 (Article No. 28).

¹⁰⁵³ See "On the State of Protection of Human Rights and Freedoms in Georgia" 2021 Report of the Public Defender of Georgia, Chapter: Legal Status of Stateless Persons, p. 358-359.

- Through the software, to process statistical data on the refusal to enter Georgia and indicate the specific legal basis for the refusal to enter the country.

28. Human Rights in the Defense Field

28.1. Introduction

The goal of the Public Defender of Georgia in Defense is to check the legal status of conscripts and military personnel of any rank through preventive visits. This chapter reviews the following issues: protection of military personnel from ill-treatment; their living and working conditions; Economic, social, civil and political rights of military personnel.

In 2022, within the framework of monitoring, representatives of the Public Defender visited 11 military units of the Ministry of Defense of Georgia, 4 paramilitary units of the Ministry of Internal Affairs of Georgia, as well as 3 units of external protection of the Penitentiary Department of the Special Penitentiary Service and 3 external protection units of the Information-Technical Security Main Division. During the monitoring, the material conditions and documentation in the military units were checked and individual interviews were conducted with military personnel.¹⁰⁵⁴

The Public Defender made 19 recommendations in the relevant chapter of the 2021 parliamentary report. Only a small part of the given recommendations was implemented. It should be positively noted that in 2022, the recommendation issued by the Public Defender on multiple occasions was fulfilled, which was related to the issue of providing food to the military servicemen enrolled in the main department of external protection and information-technical security of the Special Penitentiary Service.

From 2022, conscripts enrolled in the external protection units of the Penitentiary Department are provided with three meals a day during their stay. However, a number of recommendations are still unfulfilled, including not eliminating the use of non-statutory punishment as a measure of responsibility for military personnel and the practice of collective punishment. The recommendation regarding the provision of housing for each serviceman enrolled in the Defense Forces during his service period, etc., is also unfulfilled.

Along with the implementation of the recommendations issued in the 2021 parliamentary report, the current situation in terms of providing medical services in the military units is also significant. It should be noted that in the military units, in terms of medical services, positive trends were revealed during the reporting period, and military personnel did not express dissatisfaction with medical services.

However, despite the positive trends, the problem of outflow of medical personnel related to remuneration and busy work schedule remains a challenge. In addition, it is significant that the medical personnel constantly attend military training, however, they did not have professional training during the reporting period.

28.2. Protection against ill treatment

In the reporting period, as in previous years, the practice of informal and collective punishment of military personnel was still a systemic problem.¹⁰⁵⁵ As a result of visiting military units, the representatives of the

¹⁰⁵⁴ For detailed information, see the 2022 report of the National Prevention Mechanism of the Office of the Public Defender of Georgia.

¹⁰⁵⁵ see 2021 Parliamentary Report of the Public Defender of Georgia, 316, as well as 2020 Parliamentary Report of the Public Defender of Georgia, 421.

Public Defender did not receive any information in 2022 about violence committed by a superior or other military personnel against a military personnel, however, as in previous years, the practice of informal and collective punishment of military personnel still remains a systemic problem. A similar practice was identified in the case of the Department of Special Tasks of the Ministry of Internal Affairs of Georgia.¹⁰⁵⁶

According to the received information, in case of committing a disciplinary offense in the individual battalions of the Georgian Defense Forces¹⁰⁵⁷, for the purpose of punishment, without legal basis,¹⁰⁵⁸ the conscripts are obliged to perform additional physical activities (running, push-ups) and are forced to stay in the military unit after the end of working hours, and are also restricted from using mobile phones.

It should be noted that, like in the past years, the use of the principle of illegal punishment against termed military servicemen - "one for all, all for one" - which, in turn, implies that in case of a disciplinary offense committed by one military serviceman, informally, together with him, the whole platoon is punished. In its recommendation, the Committee of Ministers of the Council of Europe specifically notes that the practice of collective and informal punishment of military personnel, including unreasonable restriction of the right to leave the military unit during non-working hours and forced labor, is not allowed.¹⁰⁵⁹

According to the assessment of the public defender, in relation to the issues discussed above, there is an illegal practice against Georgian military personnel, which creates risks of improper treatment, since in specific cases, taking into account the state of health of the military personnel, physical capabilities, his subjective perception, the complexity and form of physical activity, the use of such punishment, may cause more stress and suffering than is normally associated with military service and reach the minimum threshold of inhuman and degrading treatment.¹⁰⁶⁰

During the visits, as in previous years, while talking to the members of the National Mechanism for Prevention,¹⁰⁶¹ a number of military servicemen mentioned that they were subject to disciplinary punishment or were informally punished by the above-mentioned methods, although they did not use the appeals mechanism, which was mainly due to the lack of information about the appeal mechanism¹⁰⁶²

¹⁰⁵⁶ It is significant that, unlike previous years, in the reporting period, no cases of collective or informal punishment of security guards were detected within the Department of Facilities Protection of the Ministry of Internal Affairs of Georgia, as well as in the Main Department of External Protection and Information-Technical Security of the Special Penitentiary Service.

¹⁰⁵⁷ In the 20th Cadre Brigade of the National Guard of the Defense Forces of Georgia, in the Mixed Aviation Squadron of the Aviation and Air Defense Command of the Defense Forces and in the C Marneuli Aviation division of the same squadron, in the Sergeant Academy named after Giorgi Antsukhelidze of the Defense Forces Training and Military Education Command, in the Training Center of the Defense Forces Training and Military Education Command, "Krtsanisi", in the Army Logistics Support Command Logistics Center Guard Battalion (West).

¹⁰⁵⁸ Resolution No. 124 of the Government of Georgia dated March 17, 2016 on the approval of the military disciplinary statutes of the military personnel of the Ministry of Defense of Georgia determines which action is a disciplinary offense and what kind of disciplinary measure should be used. The statute does not consider performing additional physical activity or leaving the military unit against their will as a measure of disciplinary responsibility.

¹⁰⁵⁹ Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on the human rights of members of the armed forces, 24 February 2010, paragraphs 16 and 18. Available at: < <https://bit.ly/3ImETRw> > [last seen: 18.03.22].

¹⁰⁶⁰ Decision of the European Court of Human Rights in the case of CHEMBER v. RUSSIA (7188/03), para. 49.

¹⁰⁶¹ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022, 318.

¹⁰⁶² Servicemen do not have information about their rights, appeal procedures, and do not have information that it is not allowed to punish or expel a serviceman for filing a complaint.

and distrust towards this mechanism.¹⁰⁶³ In this part it is also important to note that the existing institutional culture in the defense forces significantly hinders the existence of an effective appeal mechanism. In particular, according to the informal rules in the Defense Forces, filing an appeal is considered unacceptable behavior. Violation of these rules causes damage to the reputation of a military serviceman.

The Public Defender believes that in order to correct the harmful practices established within the Defense Forces and the Special Tasks Department of the Ministry of Internal Affairs, the agencies should provide information to military personnel about the types of disciplinary punishment provided by the law and the mechanisms for appealing the imposed punishment. In addition, it is necessary for the Military Police Department of the Defense Forces of the Ministry of Defense, the General inspections of the Ministry of Internal Affairs and the Ministries of Justice to provide systematic control and eliminate the use of non-statutory punishment as a measure of responsibility and the practice of collective punishment.

28.3. Living and working conditions

28.3.1. Infrastructure problems

The Public Defender positively evaluates the accommodation of the fixed-term servicemen in a number of military units¹⁰⁶⁴ of the Defense Forces in newly renovated buildings and the creation of adequate living and working conditions for them. However, during the reporting period, as a result of visiting the military units of the Defense Forces and separate subdivisions of the Department of Protection of the Ministry of Internal Affairs, it became clear that the provision of proper living and working conditions for military personnel still remains a problem.

The public defender believes that the poor living conditions of the military servicemen in the C Marneuli aviation division of the mixed aviation squadron of the Defense Forces aviation and air defense command are particularly noteworthy.¹⁰⁶⁵ According to the Public Defender's assessment, the mentioned conditions contradict the obligation to create decent living conditions for military personnel.¹⁰⁶⁶ It is also significant that there is a problem of equal access to sports halls and recreation spaces, which contradicts the obligation to create decent living conditions for military personnel.¹⁰⁶⁷

As a result of the monitoring, it was also revealed that there was no assessment/survey of the needs of

¹⁰⁶³ Upon initiation of disciplinary proceedings, the serviceman must be provided with appropriate information and be given the opportunity to participate in the disciplinary proceedings and appeal the decision (Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)4 to member states on the human rights of members of the armed forces, February 24, 2010, Sections 19 and 21. Available at: < <https://bit.ly/3i11it7> > [last seen: 19.02.2023].

¹⁰⁶⁴ Defense Battalion of the Logistics Center of the Logistics Support Command of the Defense Forces (West); the Sergeants' Academy named after Giorgi Antsukhelidze of the Training and Military Education Command and training center of the same command "Krtsanisi".

¹⁰⁶⁵ The building where their residence and classrooms are located is damaged. The wall of the building is cracked in several places and is significantly separated from each other. The sewage system is out of order, water is pooling on the floor and it is constantly wet with water.

¹⁰⁶⁶ Law of Georgia "On the Status of Military Servicemen". Article 4. Social and legal protection of the military serviceman is guaranteed by the state, which provides the serviceman with suitable living conditions, taking into account the special conditions and characteristics of the military serviceman.

¹⁰⁶⁷ Article 4 of the Law of Georgia "On the Status of Military Servicemen".

female military servicemen and the implementation of appropriate measures. Women were not provided with special hygiene products either.

Certain deficiencies were also found in terms of compliance with fire safety norms. Despite the presence of a fire-rescue group in the units of the Georgian Defense Forces for the primary response to emergency situations and their elimination, during the monitoring conducted by the National Mechanism of Prevention, it was established that some of the military personnel were not informed about fire safety rules.

As a result of the monitoring of the national prevention mechanism, it was also determined that the residential building of the subdivision of the Department of Facilities Protection of the Ministry of Internal Affairs of Georgia, where the fixed-term military officers and 18 conscripts undergoing initial military training were located, was not equipped with smoke detectors. In addition, it is significant that the fire safety board was not equipped with fire protection devices.¹⁰⁶⁸

28.3.2. Food and drinking water

Servicemen in the Defense Forces of Georgia are provided with three meals a day. Most of the servicemen interviewed as part of the monitoring were satisfied with the variety, quality, portion size and the possibility of adding food. It is welcome that in all the military units visited by the representatives of the Public Defender, continuous supply of drinking water is ensured. However, in some units,¹⁰⁶⁹ potable water is only available from taps in the sanitary-hygienic units, or during dining in the canteen, and no potable water is supplied to the living and working spaces.

During the monitoring carried out by the National Prevention Mechanism, it was revealed that there were no disposable cups at the water dispensers of the 20th Cadre Brigade of the National Guard of the Defense Forces and the Logistics Center of the Logistics Support Command of the Defense Forces (West) and the servicemen had to use a common cup.

A similar problem was revealed in the subdivision of the Department of Facilities Protection of the Ministry of Internal Affairs of Georgia. In addition, it is significant that according to the information obtained during the visit to the protection battalion of the Logistics Center of the Logistics Support Command of the Defense Forces, coliform bacteria¹⁰⁷⁰ were found in the water sample taken at the location of the military unit, which is inconsistent¹⁰⁷¹ with the requirements¹⁰⁷².

28.4. Economic, social, civil and political rights

As part of the monitoring, it was revealed through interviews with military personnel that most of them

¹⁰⁶⁸ Only a fire extinguisher was attached.

¹⁰⁶⁹ "Krtsanisi" Training Center of Defense Forces Training and Military Education Command; Sergeants' Academy named after Giorgi Antsukhelidze of the same command; Defense Forces Aviation and Air Defense Mixed Aviation Squadron.

¹⁰⁷⁰ National Bureau of Forensic Expertise report No. 5005639522 of August 22, 2022.

¹⁰⁷¹ In the yard and buildings of the battalion, it was not mentioned that the water is undrinkable. In this regard, according to the information received from the Ministry of Defense of Georgia, The error has already been eliminated and the inscription has been added: "The water is undrinkable".

¹⁰⁷² Resolution No. 58 of the Government of Georgia.

(contract military personnel) are not provided with a residential apartment for official purposes, due to which a certain part of the personnel is forced to stay at the base for living, in the conditions when the possibility of entertainment and recreation is not provided in most of the military units. In addition, as a result of interviews with military personnel, it became clear that they do not receive benefits for the payment of apartment rent and utility costs. Unfortunately, military personnel are still not compensated for their transportation costs¹⁰⁷³ in any case, despite the fact that 50 percent of their transportation costs are reimbursed by Georgian legislation.¹⁰⁷⁴

In the parliamentary report of 2021, the Public Defender mentioned the need to increase the monthly salary of conscripts enrolled in the Defense Forces.¹⁰⁷⁵ It is welcome that according to the decision of the Ministry of Defense of Georgia, the monthly salary of conscripts in the Defense Forces of Georgia has increased from 50 GEL to 100 GEL.

In addition to the above, it is noteworthy that according to the military personnel, although they are provided with military uniforms and military shoes, the shoes are not issued according to the season, are of poor quality and soon get damaged.

Recommendations

To the Government of Georgia:

- To ensure the allocation of the appropriate amount from the state budget for the distribution of the benefits provided by the legislation¹⁰⁷⁶ for the personnel enrolled in the Georgian Defense Forces.

To the Minister of Defense of Georgia:

- The Military Police Department of the Defense Forces of the Ministry of Defense should provide systematic control and eliminate the use of non-statutory punishment as a measure of responsibility and the practice of collective punishment and provide information about the measures taken to the Office of the Public Defender;
- To ensure that the personnel enrolled in the Defense Forces are informed about the human rights, duties and appeal mechanisms of the members of the Armed Forces; For this purpose, the rights and duties of the lawyer of the military unit should be clearly written and he should be instructed to hold individual and group meetings with military personnel at least once a month; Also, the above-mentioned information should be provided to military personnel in the form of a brochure

¹⁰⁷³ According to the information received from the Ministry of Defense of Georgia regarding this matter, in order to benefit from benefits for the transportation of servicemen and the payment of utility costs, money was not allocated from the state budget for the Ministry of Defense (the letter of December 21, 2022 of the Ministry of Defense of Georgia No. MOD 02201483826).

¹⁰⁷⁴ According to Article 19 of the Law of Georgia "On the Status of Military Servicemen", a military serviceman during a business trip, during basic and additional vacations, to travel to a sanatorium-treatment facility and back, as well as from military service - to travel to the chosen place of residence upon discharge, when being transferred to another settlement, has the right to travel by all types of road transport (except taxi) - at the expense of the funds allocated to the relevant military agency from the state budget.

¹⁰⁷⁵ 2021 parliamentary report of the Public Defender of Georgia, Tbilisi, 2022, 322; 2020 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2021.

¹⁰⁷⁶ Law of Georgia "On the Status of Military Servicemen", Article 19.

created in an easy-to-understand language (without complex legal terms and wording) and posted in places accessible to them;

- In the residential buildings of the Defense Forces, repair works and inventory should be carried out in a timely manner, infrastructural problems should be eliminated and sanitary-hygienic conditions should be improved, residential buildings should be fully equipped with mosquito nets;¹⁰⁷⁷
- In the 20th Cadre Brigade of the National Guard of the Defense Forces, full-time servicemen should be given the opportunity to use the gym on the base, on par with contract servicemen;
- To order the commander of the security battalion of the logistics center of the logistics support command of the troops (the relevant official) to ensure that the personnel under his command pass the fire safety course in accordance with the requirements of the existing standard¹⁰⁷⁸;
- To give high-quality military uniform shoes to the military servicemen enrolled in the Defense Forces, equally with the contract military servicemen;
- In order to eliminate the existing systemic challenge in the defense forces in terms of providing them with the necessary equipment, to reduce the terms of use of military uniforms and shoes for those military personnel who have to perform field exercises and work;
- By the end of the calendar year, at least 50% of the vacant places in medical centers and hospitals of all military units should be filled;
- By the end of the calendar year, at least 50% of the medical personnel employed in the military units should be retrained through professional trainings and education.

To the Minister of Internal Affairs of Georgia:

- The General Inspection of the Ministry of Internal Affairs should provide systematic control and eliminate the use of non-statutory punishment and the practice of collective punishment as a measure of responsibility in the protection department of the I Main Division of the Department of Special Tasks; In addition, to provide information about the measures taken to the Office of the Public Defender;
- Fire safety problems should be eliminated in the personnel training department, training provision sub-division of the Combat Division of the Facilities Protection Department;¹⁰⁷⁹
- Fixed-term military servicemen enrolled in the security department of the I Main Division of the Department of Special Tasks should be given the opportunity to use the gym on the base equal to contract servicemen;

¹⁰⁷⁷ Guard Battalion of the Logistics Center of the Logistics Support Command of the Defense Forces (West); 20th Cadre Brigade of the National Guard; Sergeants' Academy named after Giorgi Antskhelidze of the Training and Military Education Command; Air and Air Defense Command Mixed Aviation Squadron, 11th and 14th Battalions of the I Infantry Brigade.

¹⁰⁷⁸ Resolution No. 519 of the Government of Georgia dated August 21, 2020 "On approval of the internal service charter of the Defense Forces of the Ministry of Defense of Georgia", Article 113.

¹⁰⁷⁹ The fire-fighting board should be fully equipped with the necessary inventory.

- In the above-mentioned subdivisions of the facilities protection department,¹⁰⁸⁰ repair works and inventory should be carried out in a timely manner; Infrastructural problems should be eliminated and sanitary-hygienic conditions should be improved

¹⁰⁸⁰ Sub-department of ensuring training and preparation of personnel of the combat division; Subdivision I of Section I of Division II.

29. Human Rights Situation of the Conflict-Affected Population

Like the previous years, the year 2022 turned out to be full of difficulties for the population affected by conflicts. The most important challenge remains the issue of access to education in the native language in the occupied regions, which is why the number of students in both regions is decreasing every year. In order to continue studying in the Georgian language, parents have to leave their permanent residence and transfer their children to schools in the territory controlled by the central government.

Illegal arrests on the occupation line and frequent cases of illegal imprisonment remain a challenge.

An important challenge was the 69 cases of illegal "borderization" by the occupying forces,¹⁰⁸¹ which significantly damages the security environment and complicates the daily life of the indigenous population.

29.1. Illegal detentions and ill-treatment

On the occupation line, both in the direction of Abkhazia and South Ossetia, the vicious practice of detaining people living in the controlled and occupied territory of Georgia continues. According to official data, in 2022, 42 persons (including 3 minors, 35 men and 4 women) were arrested on the occupation line in the direction of Tskhinvali region, and 13 persons were arrested in the direction of occupied Abkhazia (including 8 men, 4 women and 1 minor).¹⁰⁸²

As of December 2022, 7 citizens remain in illegal detention in the occupied territories of Georgia. In occupied Abkhazia - Irakli Bebuia, Kristine Takalandze, Asmat Tavadze and Temur Chikovani, and in occupied Tskhinvali - Kakhaber Natadze, Mamuka Chkhikvadze and Gela Yobashvili.¹⁰⁸³

The right to freedom and personal inviolability against illegal detention while moving along the occupation line is guaranteed by the European Convention on Human Rights.¹⁰⁸⁴

In particular, this right envisages the possibility of imprisonment for a person only in the event that there is a legally binding sentence issued by a competent court. In the conditions when the current de facto government is not recognized, the verdict issued by its court will not be legal and in accordance with the European Convention.

Regarding illegal arrests and imprisonment, the decision of the European Court of Human Rights of March 7, 2023 is of great importance, where the Court, for human rights violations committed in the occupied territories before the 2008 war, for the first time, Russia's responsibility was established. In particular, the

¹⁰⁸¹ Statement of the State Security Service of Georgia of January 17, 2023. The information is available on the website: <<https://bit.ly/3SPqXq8>> [last seen: 27.03.2023].

¹⁰⁸² State Security Service of Georgia letter No. SSG62200262113 of December 27, 2022.

¹⁰⁸³ State Security Service of Georgia letter No. SSG62200262113 of December 27, 2022.

¹⁰⁸⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5. The information is available at: <https://www.echr.coe.int/documents/guide_art_5_eng.pdf> [last seen: 27.03.2023].

petitioners Levan Mamasakhlisi and Grigol Nanava were illegally arrested and imprisoned in Dranda prison in Russian-occupied Abkhazia in 2001-2007 and 2003-2005. They were treated inhumanely and were not allowed to see their family members.¹⁰⁸⁵

It is worth noting the decision of the European Court of Human Rights on January 21, 2020, which unequivocally confirmed the effective control of the Russian Federation over the non-controlled territories of Georgia and, due to human rights violations on the ground, including illegal detentions on the occupation line, it was Russia that was responsible.

Accordingly, the illegal detention of the above-mentioned persons falls under the responsibility of the Russian Federation.

29.2. The issue of freedom of movement and problems related to documents

The Public Defender has been talking in detail in his annual parliamentary¹⁰⁸⁶ and special reports¹⁰⁸⁷ about the challenges in terms of free movement in the occupied territories, the formal regime established by the de facto authorities and the Russian border forces, and the restrictions on the movement of residents due to artificial reasons.

In the reporting period, the so-called occupied Akhgori is important news. Opening of the checkpoint,¹⁰⁸⁸ which was used¹⁰⁸⁹ by 400 people daily until September 4, 2019.¹⁰⁹⁰ From August 20, 2022, according to the decision of the de facto administration, from the 20th to the 30th of every month, the so-called the checkpoint was opened.

The Public Defender positively evaluates the possibility of fellow citizens living in occupied Akhgori to move to the territory controlled by the central government, although it should be noted here that the de facto government has imposed some restrictions on movement. In particular, the so-called checkpoint open for 10 days a month does not allow the movement of cars and minibuses, therefore, Akhgori residents will not be able to use the traffic necessary for commercial activities. In addition, one person is allowed to carry only up to 50 kilograms of hand luggage.¹⁰⁹¹

In Akhgori district, for the movement within the so-called "checkpoint", a "pass" is required¹⁰⁹², which is issued by the de facto Tskhinvali Security Service. According to the procedure, the interested person

¹⁰⁸⁵ According to the decision of the Strasbourg court, the territory of Abkhazia was occupied by Russia even before the August 2008 war, and Russia is fully responsible for human rights violations, available at: < <https://bit.ly/3JdTxNw> > [last seen: 27.03.2023].

¹⁰⁸⁶ 2021 Parliamentary Report of the Public Defender of Georgia, Tbilisi, 2022.

¹⁰⁸⁷ Special report of the Public Defender of Georgia "2019-2020, so-called impact of closing the checkpoints on situation related to the rights of the population living in the occupied territories". Information is available at: < <https://bit.ly/3YkXBBi> > [Last seen: 27.03.2023].

¹⁰⁸⁸ Residents of Akhgori are waiting for the opening of the road, information is available at: < <https://bit.ly/3KZIJFk> > [last seen: 27.03.2023].

¹⁰⁸⁹ Letter of the State Security Service of Georgia dated October 21, 2020 No. SSG 6 20 00131318.

¹⁰⁹⁰ The situation became tense since the end of August 2019, after the occupation regime demanded from the Georgian authorities to remove the police checkpoint opened near Chorchana village of Khashuri municipality.

¹⁰⁹¹ Residents of Akhgori are waiting for the opening of the road, information is available at: < <https://bit.ly/3KZIJFk> > [last seen: 27.03.2023].

¹⁰⁹² Special Report of the Public Defender of Georgia "In 2019-2020, impact of closing the so-called checkpoints on the legal situation of the population living in the occupied territories". Information is available at: < <https://bit.ly/3YkXBBi> > [Last seen: 27.03.2023].

makes an appeal, where he substantiates the need for this "document". Regarding movement within the checkpoint, according to the decision of the de facto authorities, it would be possible to move even with a pass that has expired until November 31, 2022. After November 31, citizens had to apply for a "pass" to the relevant de facto agencies all over again.¹⁰⁹³

After the opening of the so-called occupied Akhagori checkpoint, the representative of the Public Defender conducted a number of on-site monitoring in order to study the current situation in terms of movement and to interview citizens. As a result of the monitoring, it was established that the main problem of the population who migrated from occupied Akhagori is obtaining a new "pass". According to their explanation, the "pass" formally has a one-year term.

Buying a new one is related to certain funds and costs approximately 10,000-15,000 (on average, 450-670 GEL) rubles. There are also cases when the pass still has an expiration date, but the de facto authorities still demand to replace it with a new one. In addition, there are frequent cases when the de facto government artificially delays the issuance of a "pass" or refuses a citizen with unsubstantiated arguments.

As for the so-called bridge on the Enguri bridge. The checkpoint was opened bilaterally during the reporting period, although still with certain restrictions. According to the decision of the de facto government, from 2022, the people living in the occupied Gali were forbidden to move according to the so-called form No. 9¹⁰⁹⁴, which complicates the situation of the people from Gali even more.¹⁰⁹⁵

During the reporting period, the representative of the Public Defender, like in occupied Akhagori, observed the movement of citizens at the so-called checkpoint on the Enguri bridge. As a result of the monitoring, it became clear that the residents of Gali have to pay the so-called fee to the so-called border guard when transporting the products. The amount of money is not predetermined and depends on which the so-called border guard is on duty. The amount of the so-called fee increases especially during the hazelnut harvest season.

At this stage, it is possible to move through the so-called checkpoint on the Enguri bridge only with the following documents: 1) de facto (new) passport;¹⁰⁹⁶ 2) the so-called residence certificate; 3) for persons under 14 years of age - birth certificate; 4) Movement is also allowed with a Georgian passport for those who have permission to enter the territory of Abkhazia (the so-called visa).

Many people living in Gali are opposed to obtaining a residence permit, which gives them the status of a foreigner. The residence certificate has strict criteria and a 5-year term, which may be used as a mechanism of additional pressure on the people from Gali. It also does not grant the holder of this document the right to own real estate, which is one of the most important factors.

¹⁰⁹³ Akhagori residents are waiting for the opening of the road, information is available on the website: <<https://bit.ly/3KZIJFk>> [last seen: 27.03.2023].

¹⁰⁹⁴ Until 2017, about 12,000 people used Form No. 9. After 2017, the de facto administration made the situation even worse when it removed the old Abkhazian passports from use and decided to replace the Form No. 9 with a residence certificate.

¹⁰⁹⁵ Up to 5 thousand people living in Gali will have to get a new document. Information is available on the website: <https://bit.ly/350Gqit5>

¹⁰⁹⁶ The old de facto passports were confiscated in 2014.

As for the de facto passport, since the residents of Gali are citizens of Georgia, the de facto authorities of Abkhazia will not issue the so-called Abkhazian passports to them unless they renounce their Georgian citizenship.¹⁰⁹⁷

The Public Defender believes that the arbitrary restrictions imposed by the de facto authorities on the freedom of movement have a negative impact on the enjoyment of various rights by the local population, including the enjoyment of the right to health care, education, security, an appropriate standard of living, the right to family life and freedom of religion.

29.3. Right to education

Access to education in the mother language remains one of the most important challenges in the occupied territories of Abkhazia and South Ossetia.

Similar to the previous years, during the reporting period, ethnic persecution and psychological pressure on schoolchildren and teachers were also highlighted. According to the information available to the Public Defender, all teachers were ordered by the de facto structures to hold their classroom celebration or other type of events in Russian and then post them on social networks.¹⁰⁹⁸

In 2021-2022, the issue of access to education in the mother language has become even more acute in occupied Gali. According to the de facto decision of the Ministry of Education, teaching in the Georgian language was completely banned,¹⁰⁹⁹ including in the 11th grade, and the native language was transformed into a subject similar to a foreign language and literature.¹¹⁰⁰ In order to exercise the right to receive education in the native language, including through the initiative of introducing multilingual education, both the Georgian side and international organizations are negotiating with the representatives of the de facto government, but this process has not yielded real results yet. For years, the Public Defender has been talking about the challenges in realizing the right to education in detail in his annual reports.¹¹⁰¹

According to the data of the 2022-2023 academic year, 30 complete general education schools, 9 pre-school institutions, and 5 art schools are functioning in the occupied Gali district. As of January 2022, 3770 students from preparatory to 11th grade are enrolled in the schools.¹¹⁰² According to the data of the 2020-2021 academic year, their number was 3803.¹¹⁰³ All 30 schools employ 965 teachers and technical staff.

¹⁰⁹⁷ According to the Office of the Georgian State Minister for Reconciliation and Civil Equality: As of 2021, 20,224 people in the occupied Gali region own the so-called residence card, and 1,065 people - de facto passport.

¹⁰⁹⁸ Information provided by the educational resource center of the occupied Gali. January 2022.

¹⁰⁹⁹ Until 2021, teaching in the Georgian language was allowed in the 11th grade, but at this stage it is completely prohibited.

¹¹⁰⁰ The complete ban of the Georgian language in Gali schools. Information available:

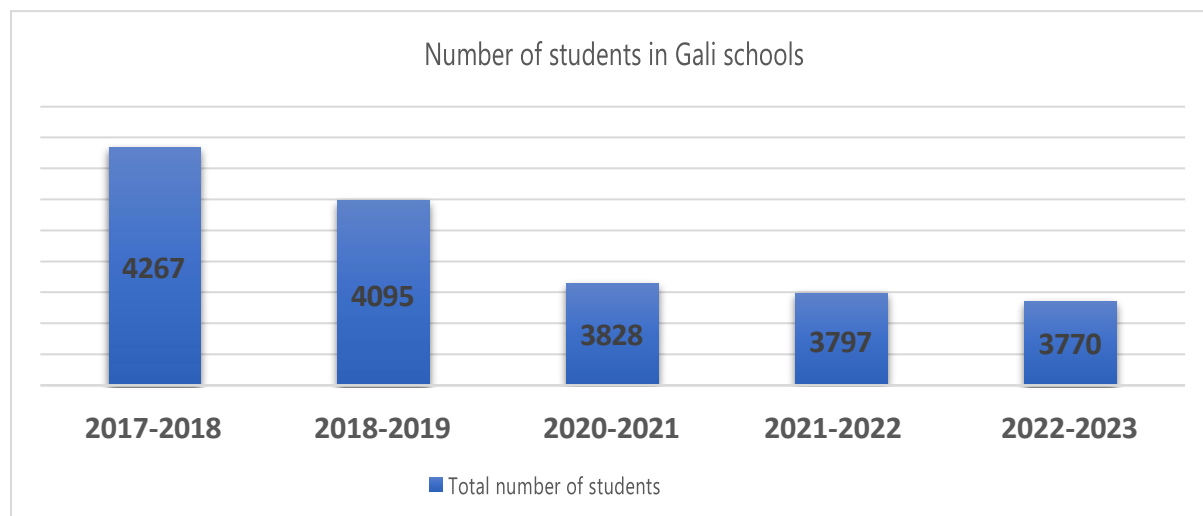
<<https://bit.ly/33jAPmH>> [last seen: 29.03.2023].

¹¹⁰¹ 2021 report of the Public Defender of Georgia on the situation related to the protection of human rights and freedoms in Georgia. Information is available on the website: <<https://bit.ly/41tHtQC>> [last seen: 29.03.2023].

¹¹⁰² Letter No. MES523000006603 dated January 10, 2023 of the Ministry of Education and Culture of A/R of Abkhazia.

¹¹⁰³ 2021 report of the Public Defender of Georgia on the situation related to protection of human rights and freedoms in Georgia. Information is available at: <<https://bit.ly/41tHtQC>> [Last seen: 27.03.2023].

533 children are enrolled in kindergartens.¹¹⁰⁴ In 2020-2021, this number was 557.¹¹⁰⁵ According to these data, the number of students is decreasing year by year.



One of the important issues is the recognition of general education received in the occupied territory.¹¹⁰⁶ The Education Recognition Commission of the Ministry of Education and Culture of Abkhazia, as a result of reviewing the submitted school documents, recognized 282 students - complete general education and 24 students - basic education in 2022.¹¹⁰⁷

For years, the Public Defender has been talking about the importance of professional training and development of teachers working in occupied territory. In this regard, the year 2022 should be evaluated positively. During the reporting period, the National Center for Professional Development of Teachers¹¹⁰⁸ conducted a number of trainings for teachers living in the occupied territory.¹¹⁰⁹

As for occupied Akhagori, at this stage, only 6 schools are functioning. According to the data of the 2022 academic year, a total of 53 students are enrolled in Akhagori Georgian schools and 108 teachers are employed.¹¹¹⁰ In 2021, there were 58 students and 115 teachers.¹¹¹¹ Out of 6 schools, 5 schools teach in the Georgian language and only from the 9th to the 11th grade,¹¹¹² While in 2020, teaching in the Georgian

¹¹⁰⁴ Letter No. MES523000006603 dated January 10, 2023 of the Ministry of Education and Culture of Abkhazia.

¹¹⁰⁵ 2021 report of the Public Defender of Georgia on the situation related to protection of human rights and freedoms in Georgia. Information is available at: < <https://bit.ly/41tHtQC> > [Last seen: 27.03.2023].

¹¹⁰⁶ Order No. 147 of the Minister of Education and Science of Georgia dated March 19, 2009.

¹¹⁰⁷ Letter No. MES523000006603 dated January 10, 2023 of the Ministry of Education and Culture of A/R of Abkhazia.

¹¹⁰⁸ Letter No. MES523 0000039832 dated January 17, 2023 of the National Center for the Professional Development of Teachers of the State Educational Institution

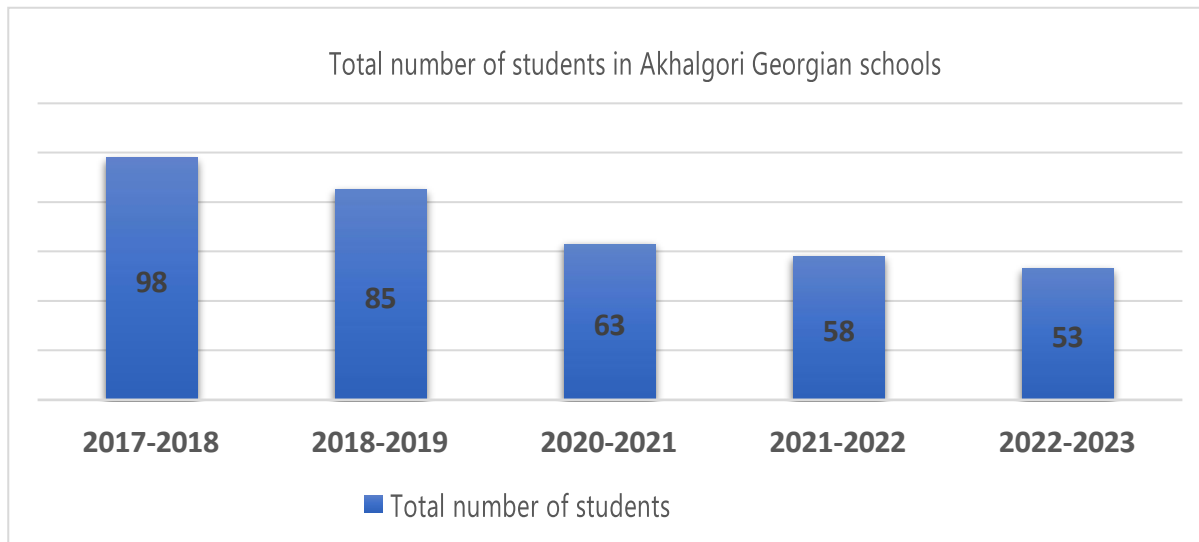
¹¹⁰⁹ Georgian language teaching training (80 teachers were involved); inclusive education (100 teachers); history teaching (50 teachers); school environmental training (150 teachers); Mathematics teaching training (30 teachers).

¹¹¹⁰ Information provided by the Education Service of the South Ossetian Administration to the representative of the Public Defender, February, 2023.

¹¹¹¹ 2021 report of the Public Defender of Georgia on the situation related to the protection of human rights and freedoms in Georgia. Information is available at: < <https://bit.ly/41tHtQC> > [Last seen: 27.03.2023].

¹¹¹² Information provided by the Education Service of the South Ossetian Administration to the representative of the Public Defender, 257 |

language was allowed from the 7th grade. In other cases, only five hours a week are devoted to the Georgian language. From the first to the sixth grade, education in all schools is allowed only in Russian.¹¹¹³ All this indicates that the situation has worsened even more.



As in previous years, the de facto Tskhinvali Security Committee continues to address the practice of intimidation of teachers and students. According to the information provided to the public defender, there are frequent cases of intimidation of teachers so that they do not conduct lessons in Georgian.

The above-mentioned facts prove that in the occupied regions, for years, the policy of putting pressure on the ethnically Georgian population and discriminating against them on the basis of ethnicity has been deliberately carried out. This is manifested, first of all, in limiting the opportunity to receive education in the native language. The Public Defender has been pointing out the challenges in terms of education in the occupied regions for years in his annual reports.¹¹¹⁴

As for higher education in the occupied territories, based on the order of the Minister of Education of Georgia,¹¹¹⁵ 231 people from the occupied regions were enrolled in the higher education programs of Georgia in 2022, and 19 people - in the professional education programs.¹¹¹⁶

January, 2022.

¹¹¹³ Information provided by the Education Service of the South Ossetian Administration to the representative of the Public Defender, February, 2023.

¹¹¹⁴ 2020 report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia. Information is available at: <https://bit.ly/3oFHLcF>

¹¹¹⁵ On July 7, 2020, Order No. 77 approved the procedure for enrolling and financing applicants living in the occupied region in higher educational institutions without passing the unified national exams. In accordance with this rule, persons living in the occupied territories of Georgia who have studied in the last 2 years and have received a document confirming their complete general education in a general educational institution located in the occupied territory and whose complete general education is recognized by the Ministry of Education of Georgia have the right to enroll in higher educational institutions without taking unified national exams.

¹¹¹⁶ Letter No. Mes 4230000056076 dated January 20, 2023 of the Ministry of Education and Science of Georgia.

The issue of recognition of the general education received in the occupied territories is also important - as a result of the review of the school documents submitted from the occupied Akhagori, in 2022, 7 students¹¹¹⁷, and 282 students from the occupied Gali, received full education.¹¹¹⁸

The Public Defender believes that the arbitrary restrictions imposed by the de facto authorities on receiving education in their native language are aimed at the ethnic cleansing of citizens living in the occupied Gali and Akhagori regions. By imposing artificial barriers, the number of students decreases every year, as parents, in order for their children to receive education in their native language, have to leave the region and transfer them to schools in the territory controlled by the central government.

29.4. The right to health care

In the 2021 report, the Public Defender will review in detail the difficult situation in terms of the right to health care in the occupied territories of Georgia, the faulty medical services and infrastructure, the unfavorable level of qualification of medical personnel and the high prices of services.¹¹¹⁹

In the reporting period, the complicated movement of patients from occupied Akhagori to the dividing line remains a problematic issue. In this regard, the Public Defender speaks in detail in the special report of 2020.¹¹²⁰ The de facto authorities continue to impose illegal and discriminatory restrictions on the issuance of movement permits. The artificial barriers established at the so-called checkpoints are directly related to the availability of the right to health of the population living in the occupied territory.

A clear example of this is the fact of the death of Elsa Kudukhovia, a one-and-a-half-year-old child from Akhagori in 2023, due to the lack of timely medical assistance.¹¹²¹ Unfortunately, due to inadequate access to medical services, many people died in 2019-2021 as well.¹¹²²

Considering the created situation, the state programs for health and social protection operating in the controlled territory of Georgia are vitally important for people living in the occupied territories. The most successful program of the Government of Georgia should be considered the state program of referral services, within the framework of which people living in the occupied territory are treated completely free of charge in medical institutions of Georgia.

During 2022, within the framework of "referral service", 1393 patients from the occupied territories were financed. Of these, 1,081 persons are from occupied Abkhazia (including 111 children) and 312 (including

¹¹¹⁷ Information provided by the Education Service of the South Ossetian Administration to the representative of the Public Defender, January 2023.

¹¹¹⁸ Information provided by the Educational Resource Center of Occupied Gali. January 2023.

¹¹¹⁹ 2021 report of the Public Defender of Georgia on the situation related to protection of human rights and freedoms in Georgia. Information is available at: < <https://bit.ly/41tHtQC> > [Last seen: 27.03.2023].

¹¹²⁰ Special report of the Public Defender of Georgia, "The impact of the closure of the so-called checkpoints in 2019-2020 on the legal status of the population living in the occupied territories". Information is available at: < <https://bit.ly/3YkXBBi> > [Last seen: 27.03.2023].

¹¹²¹ A one-and-a-half-year-old child from Akhagori, whose parents were taking her to a doctor in Tbilisi, died. Information is available at: < <https://bit.ly/3lO3e4x> > [Last seen: 27.03.2023].

¹¹²² 2021 report of the Public Defender of Georgia on the situation related to protection of human rights and freedoms in Georgia. Information is available at: < <https://bit.ly/41tHtQC> > [Last seen: 27.03.2023].

30 children) from occupied Tskhinvali.¹¹²³ However, as a result of the change made in the patient financing rules at the beginning of 2017, according to which primary diagnosis is no longer subject to financing, the number of patients decreased significantly.

29.5. Operation of international and non-governmental organizations in the occupied territories

Since November 2021, the activities of non-governmental organizations in Abkhazia have been under threat.¹¹²⁴ The threat came from the initiative of the law on "foreign agent", which was put on the agenda in Abkhazia in November 2020 to harmonize it with Russian legislation. This initiative involves limiting the activities of international and local organizations, especially in activities such as trust-building, conflict transformation and education.¹¹²⁵

A clear example of this is the meeting of the de facto Minister of Foreign Affairs of occupied Abkhazia on January 19, 2022¹¹²⁶ with the representative of the United Nations Development Program. At the meeting, Ardzinba said that some of the projects implemented in Abkhazia were unacceptable for them. In particular, it was about the sociological research conducted on the territory of Abkhazia in 2021, which was related to the internal political issues of Abkhazia and would study the possibility of establishing relations with the Georgian side.

The initiative of the "Foreign Agent" draft law was met with quite a lot of protest in the ethnically Abkhaz community. According to the public defender, the human rights situation in the occupied territories is also complicated by the obstacles arising in connection with the entry to the territory of international human rights monitoring organizations.

The number of international donors and non-governmental organizations that would strengthen the Abkhazian and Ossetian civil society is small. All this has a negative impact on the rights of the population living in the conflict regions. Accordingly, the adoption of this law will lead to further isolation of these regions and will have a negative impact on the prospects of bilateral dialogue with the Georgian side.

Recommendations

To the Government of Georgia and the Minister of Foreign Affairs of Georgia:

- conduct negotiations, using all possible formats, so that the occupation regimes, by removing illegal restrictions on the entire perimeter of the occupation line and to protect the freedom of movement of the population by the smooth operation of the so-called crossings;

¹¹²³ Letter of December 27, 2022 No. 100040372200699805 of the Ministry of IDPs from the occupied territories of Georgia, Ministry of Labor, Health and Social Protection.

¹¹²⁴ A unified, but completely Russian space for Abkhazia. Information available: <<https://bit.ly/3T4mTCr>> [last seen: 27.03.2023].

¹¹²⁵ Meeting of the de facto foreign minister of occupied Abkhazia with the representative of the United Nations Development Program. Information is available on the website of the de facto Ministry of Foreign Affairs: <<https://bit.ly/3ZBtFSH>> [last seen: 27.03.2023].

¹¹²⁶ The law on "agents of a foreign country" will increase the isolation of Abkhazia. Information is available at: <<https://netgazeti.ge/news/614774/>> [Last seen: 27.03.2023].

- Conduct negotiations, using all possible international formats, so that the Government of the Russian Federation allows full and unrestricted access of international monitors to the occupied territories of Georgia.

To the Minister of Education, Science, Culture and Sports of Georgia:

- Develop a scholarship and/or housing program for students from the occupied territories, so that if they successfully pass the exams, they can continue their studies at the university.

30. Human Rights Education

30.1. Introduction

The main challenge in the direction of human rights education remains the new unified strategy of education and science, together with action plans, which minimally reflect the issues of human rights education.¹¹²⁸ At the same time, the strategy and action plan for human rights education have not yet been developed.¹¹²⁹ As a result of a nationwide public survey on this issue, only 12% of young people consider the protection of human rights to be a priority direction of the country.¹¹³⁰ At the same time, only 8% of the population consider the level of human rights protection to be a challenge for the country's democratic development.¹¹³¹

The fact that the experts nominated by the Office of the Public Defender have been successfully cooperating with the Ministry of Education and Science for many years and in 2022 were also involved in the process of reviewing the content of school textbooks mock-ups deserves a positive mention.¹¹³²

In contrast, we regret to point out that the Public Defender's written recommendations were not shared within the framework of the ongoing thematic research on the selection of school textbooks in the Education and Science Committee of the Parliament of Georgia in 2022.¹¹³³

We consider it a change focused on improving cooperation and human rights education, the initiation of updating the content of some textbooks for the subject "Citizenship" intended for students of the VII grade, after the Public Defender determined that the content of the material is incompatible with human rights.¹¹³⁴

At the same time, in parallel with the determination of the incompatibility of the content of the "Georgian language and literature" textbook intended for first-grade students with human rights, it was revealed that the regulatory framework for reviewing the content of elementary level materials did not include a human rights expert as a member of the subject group.¹¹³⁵ We consider it a progressive step that the Ministry changed the review procedure in accordance with the recommendation of the Public Defender

¹¹²⁸ Appendixes approved by Resolution No. 446 of the Government of Georgia dated August 31, 2022 "On the approval of the unified national strategy of education and science of Georgia for 2022 - 2030 and its action plan for 2022 - 2024"; "On the State of Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 255-256.

¹¹²⁹ MES 1 23 0000119028 letter of February 3, 2023 of the Ministry of Education and Science of Georgia.

¹¹³⁰ Age category of 18-34 year olds; "Public Mood in Georgia", 2021, NDI, CRRC, p. 51-54, available at: < <https://bit.ly/3ElnoSw> > [last seen: 20/02/2023]; include "Public Mood in Georgia, Results of Face-to-Face Survey Conducted in December 2022" NDI CRRC p. 16, available at: < <https://bit.ly/3Z1WpDn> > [last seen: 22/02/2023]

¹¹³¹ Public Opinion Survey Residents of Georgia | September 2022 p. 12, available at: < <https://bit.ly/3SiLcfK> > [last seen: 22/02/2023].

¹¹³² Letter 17/2452 of the Office of the Public Defender of Georgia dated March 4, 2022.

¹¹³³ Appendix to the letter 17-1/5494 of the Public Defender of Georgia dated May 30, 2022; "The practice of using school educational resources in the process of ensuring effective teaching and learning", Report of the Education and Science Committee of the Parliament of Georgia, 2022, p. 76, available at: < <https://bit.ly/3JXIQSh> > [last seen: 10/02/2023].

¹¹³⁴ Letter of the Ministry of Education and Science of Georgia dated May 3, 2022 MES 0 22 0000441444; Recommendation 17-1/3646 of April 5, 2022 of the Public Defender of Georgia.

¹¹³⁵ Recommendation 17-1/10698 of the Public Defender of Georgia dated October 25, 2022.

and designated a human rights expert as a member of the subject group.¹¹³⁶

Representatives of the Public Defender conducted 1056 information meetings, trainings and seminars for different target groups throughout the country. Special attention was paid to educational issues related to the rights of the child and 435 meetings were held, 139 were addressed to the topics of equality rights, and 154 meetings were addressed to gender equality and women's rights. In addition, regional representatives met the population and various target groups in the regions with special activity, where 468 educational and informational meetings were held.

30.2. State policy of human rights education

In 2022, a new unified national strategy for education and science was approved along with action plans.¹¹³⁷ The level of integration of education about human rights and democratic citizenship in the drafts of these documents was assessed by the Public Defender in 2021 and highlighted the main gaps.¹¹³⁸

Until now, there have been no changes focused on improving human rights education.¹¹³⁹ It is worth noting that the mentioned topics are not included in the project of the new national strategy for the protection of human rights.¹¹⁴⁰

In this context, it is particularly important to have a national strategy and action plan for human rights education, which, despite numerous recommendations of the Public Defender, has still not been developed.¹¹⁴¹

An effective mechanism for promoting human rights education is to refer to the requirement of knowledge about human rights in the normative framework regulating the qualifications of specialists employed in formal education. It should be noted that, like in 2021, individual municipalities have not yet developed normative acts acceptable under the law of Georgia "On early and preschool education."¹¹⁴²

30.3. Promotion of human rights education in formal education

In 2022, the Public Defender actively studied the compatibility of the content of approved school textbooks with human rights and issued recommendations and proposals. The content review process of mock-ups of school textbooks was also evaluated, in which human rights experts nominated by the Public

¹¹³⁶ Letter of the Ministry of Education and Science of Georgia dated December 2, 2022 MES 2 22 0001539942; Paragraph 2 of article 3 of the rule approved by the first article of the order of the Minister of Education and Science of Georgia MES 6 23 0000032029 of January 16, 2023 "On the approval of the rule for reviewing the manual/series model of the general education institution of the primary, basic and secondary levels of general education".

¹¹³⁷ Appendixes approved by Resolution No. 446 of the Government of Georgia dated August 31, 2022 "On the approval of the unified national strategy of education and science of Georgia for 2022 - 2030 and its action plan for 2022 - 2024"; The strategy covers the years 2022-2030, and action plans have been approved for 2024 inclusive.

¹¹³⁸ "On the State of Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 255-256; Letter 17-1/4816 of the Office of the Public Defender of Georgia dated May 6, 2022.

¹¹³⁹ Appendixes approved by Resolution No. 446 of the Government of Georgia dated August 31, 2022 "On the approval of the unified national strategy of education and science of Georgia for 2022 - 2030 and its action plan for 2022 - 2024"; Letter of the Office of the Public Defender of Georgia dated May 6, 2022.

¹¹⁴⁰ The draft Human Rights Protection Strategy for 2022-2030 is available at: <<https://bit.ly/3DXBx8x>> [Last seen: 10/02/2022].

¹¹⁴¹ "On the situation relate to the protection of human rights and freedoms in Georgia" Report of the Public Defender of Georgia 2021 p. 256; MES 1 23 0000119028 letter of February 3, 2023 of the Ministry of Education and Science of Georgia.

¹¹⁴² Municipalities of Dedoplistskaro, Zestafoni, Sighnaghi, Tkibuli, Chiatura and Khoni have not developed normative acts.

Defender participated.

30.3.1. The contents of assigned school textbooks

The public defender studied the content of the books of the students used in the teaching of the subjects "Citizenship" and "Georgian Language and Literature".¹¹⁴³

One of the textbooks issued for students of the VII grade of "Citizenship" refers to people addicted to alcohol and drugs in derogatory terms.¹¹⁴⁴ Moreover, in the material, newborn children are considered to have no personality.¹¹⁴⁵

In addition to the above, when studying the illustrations and accompanying texts of the first-grade student's book of "Georgian Language and Literature", it was revealed that in most of them, only women are engaged in family affairs and childcare.¹¹⁴⁶

The public defender, while discussing the incompatibility of the above-mentioned records with human rights standards, explained that "...the educational content of the manual is a means for the state to fulfill its positive obligations established by the Convention on the Rights of the Child within the framework of the right to education. Thus, its content must comply with the standards defined by the convention itself".¹¹⁴⁷ In the same context, based on the requirements of the "Istanbul Convention", the importance of promoting gender equality was also emphasized in the given material.¹¹⁴⁸

30.3.2. The process of reviewing mock-ups of school textbooks

The cooperation between the Office of the Public Defender and the Ministry of Education and Science in the process of drafting school textbooks, which was established in 2019, continued in 2022.¹¹⁴⁹ It is important that as a result of sharing the recommendation of the Public Defender, "other specialists" for the first time were involved in the evaluation of mock-ups of school textbooks for the subject, "Citizenship".¹¹⁵⁰

As in 2021, low availability of human rights training for reviewers remains a challenge.¹¹⁵¹ During the reporting period, reviewers did not receive training on human rights issues,¹¹⁵² which indicates that, despite numerous recommendations of the Public Defender, the state has not yet created a mandatory

¹¹⁴³ Recommendation 17-1/3646 of the Public Defender of Georgia of April 5, 2022; Recommendation 17-1/10698 of the Public Defender of Georgia dated October 25, 2022.

¹¹⁴⁴ Recommendation 17-1/3646 of the Public Defender of Georgia dated April 5, 2022, p. 2-3.

¹¹⁴⁵ Ibid.

¹¹⁴⁶ Recommendation 17-1/10698 of the Public Defender of Georgia dated October 25, 2022, p. 2.

¹¹⁴⁷ Recommendation 17-1/3646 of the Public Defender of Georgia dated April 5, 2022, p. 6.

¹¹⁴⁸ Recommendation 17-1/10698 of the Public Defender of Georgia dated October 25, 2022. p. 4; "Council of Europe Convention on Prevention and Suppression of Violence against Women and Domestic Violence" adopted on May 11, 2011, has been in force for Georgia since September 1, 2017. The first paragraph of Article 14; see also UN Committee on the Elimination of Discrimination against Women General recommendation no. 36 (2017) on the Right of Girls and Women to Education, 16 November 2017, C/GC/36, para. Subsection 27 (d) cf. < <https://bit.ly/2DmxlNV> > [last seen: 22/02/2023].

¹¹⁴⁹ Letter 17/2452 of the Office of the Public Defender of Georgia dated March 4, 2022.

¹¹⁵⁰ Letter of the Ministry of Education and Science of Georgia dated May 3, 2022 MES 0 22 0000441444.

¹¹⁵¹ "On the State of Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 257.

¹¹⁵² Letter of the Ministry of Education and Science of Georgia dated July 19, 2022 MES 7 22 0000817228.

training program for reviewers in human rights issues.¹¹⁵³

This issue is especially problematic in the conditions when the criteria for the selection of reviewers with the status of teachers, field scientists and psychologists do not establish the requirement to have values compatible with basic human rights, and the selection criteria for other members have not been developed.¹¹⁵⁴

In order to consider the complaints of the applicants in the content review process, an appeals commission is created based on the minister's discretionary authority.¹¹⁵⁵ Within the framework of the complaint review, the commission is authorized to issue a new recommendation regarding the appealed criterion, to change the content of the recommendations issued by the reviewers, or to leave them unchanged.¹¹⁵⁶

For years, the Public Defender has been pointing out the problematic practice of staffing this body.¹¹⁵⁷ In 2022, the members of the commission were also administrative officials of the Ministry and school principals.¹¹⁵⁸ At the same time, the study of the practice of the appeals commission showed that its decisions are made unsubstantiated, without any reasoning regarding the establishment of facts and their legal interpretation.¹¹⁵⁹ According to the Public Defender's assessment, this kind of practice is dangerous to the introduction of mandatory teaching material compatible with human rights in the school space and the achievement of the national goals of general education.¹¹⁶⁰

The commission included a psychologist in only one discussion of the mock-ups contested from a legal point of view, although his position was not reflected in the final decision.¹¹⁶¹ Thus, the importance of the presence of a human rights expert in the composition of the commission is still noteworthy, because under the existing legal arrangement, an independent expert or reviewer invited to the session does not

¹¹⁵³ Letter of the Ministry of Education and Science of Georgia dated August 19, 2022 MES 3 22 0000920481; "On the Situation related to the Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 257.

¹¹⁵⁴ About making changes to the order N1.1/11 of February 9, 2022 of the head of the education management information system "About creating a competitive commission for the selection of manual series/model reviewers and approving its working procedures"; Qualification requirements and evaluation criteria developed by the commission created by the order N1.1/18 of February 24, 2022 of the Head of Education Management Information System;

Appendix 1 of the letter MES 5 22 0000801999 of July 14, 2022 of the Ministry of Education and Science of Georgia;

Appendix 1 of the letter MES 5 22 0000801999 of July 14, 2022 of the Ministry of Education and Science of Georgia.

¹¹⁵⁵ Paragraphs 1 and 2 of Article 10 of the rule approved by the first article of the Order 28/N of the Minister of Education and Science of Georgia dated February 16, 2017 „On Procedure for approval of the textbook/series of the general educational institution.

¹¹⁵⁶ About making changes to the order N582 dated May 10, 2019 "On the approval of the rules and deadlines for submitting, reviewing and taking decision on applicants' complaints during the registration of the textbook/series of the general educational institution" of the Minister of Education, Science, Culture and Sports of Georgia, the second paragraph of Article 7 of the rule approved by the first article of the order of the Minister of Education and Science of Georgia MES 7 21 0000320130 of April 2, 2021.

¹¹⁵⁷ "On the situation related to the Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 258.

¹¹⁵⁸ "On the creation of a temporary commission to receive and consider complaints from physical or legal person(s) (who submits/submit to the Ministry of Education and Science of Georgia an application for approval of a specific textbook/series mockup)" the first paragraph of the order MES 8 22 0000492248 of May 16, 2022 of the Minister of Education and Science of Georgia.

¹¹⁵⁹ Proposal 17-1/7818 of the Public Defender of Georgia dated August 1, 2022, p. 10.

¹¹⁶⁰ Ibid, p. 11.

¹¹⁶¹ Ibid., p. 5.

have the right to vote when making a decision.¹¹⁶²

The Ministry's position on the Public Defender's proposals aimed at solving these challenges is similar to the previous years.¹¹⁶³ Regarding the staffing of the Appeals Commission, the Public Defender believes that it is essential to define the field specialists as members of this body. In this situation, the thematic research initiated in the Education and Science Committee of the Parliament was of particular importance, which, among other things, would study the aspects related to the selection of school textbooks.¹¹⁶⁴

The Public Defender, within the framework of the thematic investigation, submitted a written position to the committee, in which the problems of the reviewing process were also discussed in detail and addressed with recommendations.¹¹⁶⁵ In the conclusion of the thematic investigation, the recommendations issued by the Public Defender in relation to these issues were not shared.¹¹⁶⁶ Moreover, the committee reflected the positions of the Ministry on the recommendations in the conclusion without critical discussion.¹¹⁶⁷

30.3.3. The issue of regulating the updating of school textbooks

In order to evaluate the compatibility of the new text with human rights while updating the content of the approved textbooks, the Public Defender studied the regulatory legal framework for updating school textbooks.¹¹⁶⁸

According to the approval procedure, any initiative to update the content of the manual must be substantiated, and it is not allowed to make content changes in the material without the consent of the Ministry.¹¹⁶⁹ During the study of the issue, it became clear that the procedure does not establish a system for checking the validity of the initiative, which, in the appropriate case, will be based on the approval of the Ministry.¹¹⁷⁰

Moreover, the current regulation does not establish the necessity of using only a written form to initiate a change in the school manual and give approval or rejection by the Ministry.¹¹⁷¹ Such regulation also creates the possibility of initiating content updating of the material orally, in a working format.

¹¹⁶² "The third paragraph of Article 10 of the rule approved by the first article of the Order 28/N of the Minister of Education and Science of Georgia of February 16, 2017 "On the approval procedure for the textbook/series of the general educational institution".

¹¹⁶³ Letter of the Ministry of Education and Science of Georgia dated August 19, 2022 MES 3 22 0000920481; See also "On the Situation related to the Protection of Human Rights and Freedoms in Georgia" Report of the Public Defender of Georgia 2021, p. 256-258; Letter of the Ministry of Education and Science of Georgia dated July 19, 2022 MES 7 22 0000817228.

¹¹⁶⁴ "The practice of using school educational resources in the process of ensuring effective teaching and learning", Report of the Committee on Education and Science of the Parliament of Georgia, 2022, available at: < <https://bit.ly/3JXIQSh> > [last seen: 10/02/2023].

¹¹⁶⁵ Appendix to the letter 17-1/5494 of the Public Defender of Georgia dated May 30, 2022.

¹¹⁶⁶ "The practice of using school educational resources in the process of ensuring effective teaching and learning", Report of the Education and Science Committee of the Parliament of Georgia, 2022, p. 76, available at: < <https://bit.ly/3JXIQSh> > [last seen: 10/02/2023].

¹¹⁶⁷ Ibid., p. 27-28.

¹¹⁶⁸ Proposal 17-1/9591 of the Public Defender of Georgia dated September 22, 2022.

¹¹⁶⁹ Paragraphs 3 and 4 of Article 18 of the rule approved by the first article of the Order 28/N of the Minister of Education and Science of Georgia dated February 16, 2017 "On the approval procedure for the textbook/series of the general educational institution".

¹¹⁷⁰ Proposal of the Public Defender of Georgia 17-1/9591 of September 22, 2022, p. 5, 6.

¹¹⁷¹ Ibid.

According to the Public Defender's assessment, such an arrangement is insufficient and creates a danger of content against human rights being included in the mandatory educational material.¹¹⁷² Accordingly, the Public Defender applied to the Ministry with a recommendation to make changes in the registration rule. In particular, the initiative to update the approved material must be submitted only in written form, a group of experts must be created to check its validity, including a human rights expert, and the Ministry's approval for the change must be given in writing, based on the positive conclusion of the working group.¹¹⁷³

The Ministry did not share a recommendation.¹¹⁷⁴ The Public Defender, in order to create a guarantee for the proper justification of the agency's position and to ensure the compatibility of the content of the approved materials with human rights, again specifically points out the need to establish only a written form to initiate and update the content of the material.

30.3.4. Teaching human rights in higher education

According to international standards, in order to ensure the use of educational materials compatible with human rights in teaching, the existence of a system of periodical updating of literature in higher educational institutions is of particular importance.¹¹⁷⁵

The Public Defender studied the compatibility of the content of the textbook used at the Faculty of Law of Tbilisi State University named after Ivane Javakhishvili with human rights.¹¹⁷⁶ It was found that the entries in the material regarding victims of sexual violence were heavily stereotyped.¹¹⁷⁷

The public defender addressed the legal faculty of the university with a recommendation to use materials compatible with human rights in teaching and to prepare changes to the existing edition of the book.¹¹⁷⁸ The university did not share the recommendation and with the arguments presented, it further deepened the approaches revealed in the teaching material, inconsistent with the modern standards of human rights education.¹¹⁷⁹

The public defender has many years of successful cooperation with state universities, in terms of updating educational materials and creating texts compatible with human rights. It is particularly noteworthy that the Law School of Ilia State University, as a result of successful cooperation with the Office of the Public Defender, planned to remove the parts of one of the textbooks incompatible with human rights from the program syllabus as soon as possible.¹¹⁸⁰ However, this teaching material is still used at the Faculty of Law of Tbilisi State University named after Ivane Javakhishvili.¹¹⁸¹

¹¹⁷² Ibid, p. 7.

¹¹⁷³ Ibid.

¹¹⁷⁴ Letter of the Ministry of Education and Science of Georgia dated January 27, 2023 MES 4 23 0000090799.

¹¹⁷⁵ Draft plan of action for the second phase (2010-2014) of the World Program for Human Rights Education, Human Rights Council, A/HRC/15/28 27 July 2010, p. 13.

¹¹⁷⁶ Recommendation 17-1/7981 of the Public Defender of Georgia dated August 4, 2022.

¹¹⁷⁷ Ibid. p. 7.

¹¹⁷⁸ Ibid.

¹¹⁷⁹ Appendix 1 of the letter 10760/22 of Ivane Javakhishvili Tbilisi State University Law Faculty dated September 21, 2022.

¹¹⁸⁰ Ilia State University letter 1277/23 of February 6, 2023.

¹¹⁸¹ Appendix to the letter 13674/22 of the Ivane Javakhishvili Tbilisi State University Faculty of Law dated December 1, 2022.

Recommendations

To the Minister of Education and Science of Georgia:

- Develop a unified strategy and action plan for human rights education;
- In the unified national strategy of education and science of Georgia (2022-2032) and action plans, for each level of formal education, tasks/activities aimed at promoting democratic citizenship and human rights education and relevant indicators that are subject to measurement should be defined;
- Amend the rule approved by the order of the Minister of Education and Science of Georgia dated February 16, 2017 28/N "On the approval procedure for the textbook/series of the general educational institution" and define the following:
 - The initiative to update the approved material should be submitted only in written form;
 - The reasoning of all initiatives will be checked by a group of experts, which will include a teacher, a scientist of the field, a philologist of the Georgian language, a psychologist, an expert on the national curriculum and an expert on human rights;
 - The Ministry's consent to the change should be given only in writing, based on the positive conclusion of the expert group.
- In the process of reviewing the contents of mock-ups of school textbooks, an expert with relevant experience in human rights should be determined as one of the members of the appeal commission created for the purpose of reviewing complaints, with full authority to participate in the decision-making process;
- In the process of reviewing the contents of mock-ups of school textbooks, to ensure the reasoning of decisions by the appeals commission created for the purpose of reviewing complaints, which includes, among other things, the description of the position of the person or persons invited to the session by the commission and the reasoning of the conclusions on them.

Local self-government bodies:

- The mayors and city councils of Dedoplistskaro, Zestafoni, Signaghi, Tkibuli, Chiatura and Khoni municipalities should develop and approve the normative acts provided for by subparagraphs "d" and "e" of Article 28, paragraph 4 of the Law of Georgia "On Early and Pre-School Care and Education".

31. Implementation of recommendations provided in the 2021 Parliamentary Report of the Public Defender of Georgia

31.1. General Overview

In this chapter, the situation related to implementation of the recommendations given to state agencies in the 2021 parliamentary report of the Public Defender is discussed. The public defender provides specific recommendations to public agencies in order to eliminate systemic deficiencies. Recommendations are developed as a result of supervision of specific areas of human rights¹¹⁸² and aim to improve the situation related to human rights protection in the country.

The Public Defender of Georgia, in the 2021 parliamentary report, addressed a total of 334 recommendations to state and local self-government bodies, and 56 proposals to the Parliament and the President of Georgia.¹¹⁸³ Out of 334 recommendations, 309 were addressed to state bodies,¹¹⁸⁴ 23 only to autonomous republics and municipal bodies and 2 recommendations were issued to all officials of public agencies.

The rate of implementation of 309 recommendations issued to state authorities is as follows:

	Quantitative indicator	Percentage rate	Change in percentage rate compared to last year
Fully fulfilled	37	12%	1,7% (decrease)
Partially fulfilled	73	23,6%	6.6% (increase)
Not fulfilled	169	54,7%	8,9% (decrease)

¹¹⁸² According to the first paragraph of Article 35 of the Constitution of Georgia, the mandate of the Public Defender is to supervise the protection of human rights on the territory of Georgia.

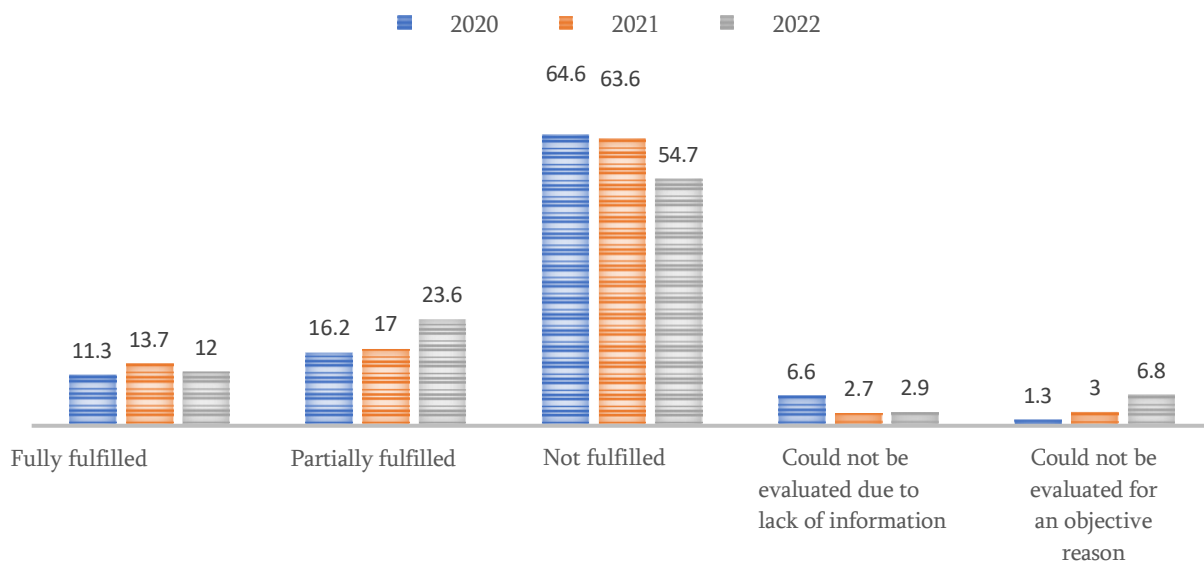
¹¹⁸³ 55 proposals were addressed to the Parliament of Georgia, and 1 to the President.

¹¹⁸⁴ Among them, 1 recommendation was issued to the Public Broadcaster of Georgia.

The situation related to implementation of the recommendation could not be assessed based on the lack of information provided by the agency	9	2.9%	0.2% (increase)
For objective reasons, it is impossible to assess the situation related to implementation of the recommendation ¹¹⁸⁵	21	6,8%	3.8% (increase)

The statistical indicator of the situation related to implementation of the recommendations from 2020 to the present looks as follows:

The percentage of the situation related to implementation of the recommendations in 2020 – 2022



¹¹⁸⁵ Recommendations of this category could not be evaluated due to objective circumstances, in some cases this was caused by the loss of relevance of the recommendation or the lack of relevant information in the public defender's office.

Based on the data indicated above, it can be said that the general condition of the implementation of the recommendations is still unsatisfactory. During 2022, public agencies did not fulfill more than half of the recommendations - 54.7% issued by the Public Defender in the 2021 parliamentary report. However, it should be noted positively that the unfulfilled recommendations issued in the 2021 parliamentary report are 8.9% less than the unfulfilled recommendations issued in the 2020 parliamentary report. Also, it should be positively noted the increase in the percentage of recommendations that the public defender assessed as partially fulfilled. In particular, compared to the recommendations of the 2020 parliamentary report, the rate of partially fulfilled recommendations has increased by 6.6%. At the same time, unfortunately, the rate of fully implemented recommendations issued by the 2021 report has been reduced by 1.7%.

As for the situation related to implementation of the proposal made to the Parliament and the President of Georgia in the 2021 parliamentary report, the proposal made to the President was fulfilled, and 3 of the 55 proposals made to the legislative body lost their relevance, and only 3 of the remaining 52 proposals were fulfilled.¹¹⁸⁶

31.2. The situation related to implementation of the recommendations by the state agencies to which the Public Defender gave the most recommendations

According to the 2021 parliamentary report, the Public Defender of Georgia addressed the following state agencies with the most recommendations:¹¹⁸⁷

	State agency	Number of Recommendations
1.	Minister of IDPs from the Occupied Territories of Georgia, Minister of Labor, Health and Social Protection (Health Care).	91
2.	Minister of Justice	64
3.	Minister of Internal Affairs	49
4.	Government of Georgia	37
5.	Minister of Education and Science	27

Among the public agencies listed in the table, the Minister of Education has the lowest rate of

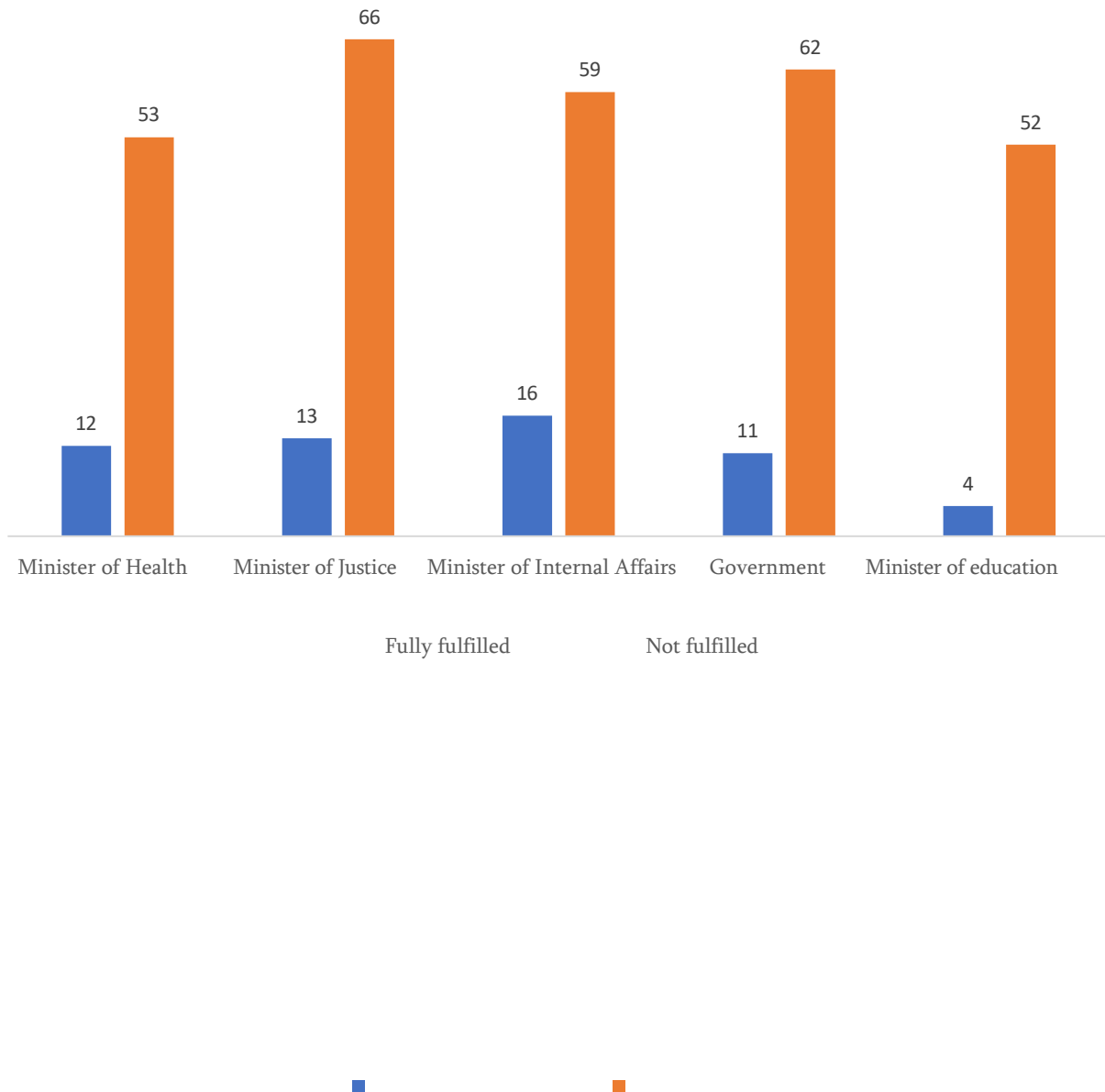
¹¹⁸⁶ These recommendations are:

1. Amendments should be made to the Code of Administrative Offenses of Georgia and it should be determined that if the judge suspects that torture, humiliating and/or inhumane treatment has been carried out against the person subject to administrative liability, or if the person subject to administrative liability, told the court about it, the judge will respond to the relevant investigation body;
2. As soon as possible, with broad public and political involvement, ensure the initiation of the necessary procedure for the election of non-judge members of the Supreme Council of Justice;
3. Not to support the legislative package initiated on October 13, 2021, which provides for amendments to the Election Code of Georgia and the Law of Georgia "On Broadcasting".

¹¹⁸⁷ These statistics also include legal entities of public law under the control of the agency.

implementation of recommendations, and the Minister of Internal Affairs has the highest rate. In particular, during 2022, the Minister of Education and Science implemented approximately 4% of the issued recommendations in full, and the Minister of Internal Affairs implemented 16% of the issued recommendations. The rate of fully implemented recommendations is distributed as follows: Minister of Justice - 13%; The Minister of Health - 12%, and the Government of Georgia - 11%.

The percentage of full implementation and non-implementation of the recommendations by the above-mentioned state agencies is as follows:



31.3. State agencies' data in detail

31.3.1. Government of Georgia

Among the 37 recommendations issued to the agency in the 2021 parliamentary report:

Fully fulfilled: 4

Partially fulfilled: 8

Not fulfilled: 23

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the implementation status of the recommendation: 2

31.3.2. Minister of Internal Affairs of Georgia

Among the 49 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 8

Partially fulfilled: 8

Not fulfilled: 29

The agency could not assess the implementation status of the recommendation due to the lack of information: 2

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 2

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 2

31.3.3. Minister of Justice of Georgia

Among the 64 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 8

Partially fulfilled: 12

Not fulfilled: 42

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 2

31.3.4. Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia¹¹⁸⁸

Out of 91 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 11

Partially fulfilled: 23

Not fulfilled: 48

The agency could not assess the implementation status of the recommendation due to the lack of information: 2

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 7

31.3.5. Minister of Education and Science of Georgia

Among the 27 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 1

Partially fulfilled: 10

Not fulfilled: 14

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 2

31.3.6. Minister of Environment Protection and Agriculture of Georgia

¹¹⁸⁸ The following public law legal entities under the control of the Ministry of IDPs from the occupied territories, labor, health and social protection are additionally included in this subsection:

1. LEPL State Care and Assistance for the (Statutory) Victims of Human Trafficking;
2. LEPL Agency for providing IDPs, eco-migrants and Livelihood;
3. LEPL Labor Inspection Service;
4. LEPL Agency for Regulation of Medical and Pharmaceutical Activities.

Out of the 4 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 1

Partially fulfilled: 1

Not fulfilled: 1

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 1

31.3.7. Minister of Economy and Sustainable Development of Georgia¹¹⁸⁹

Out of the 2 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 1

Partially fulfilled: 1

Not fulfilled: 0

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 0

31.3.8. Minister of Defense of Georgia

Out of 11 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 0

Partially fulfilled: 3

Not fulfilled: 0

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

¹¹⁸⁹ LEPL National Agency of State Property under the Ministry of Economy and Sustainable Development is additionally included in this subsection.

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 4

31.3.9. Minister of Culture, Sports and Youth of Georgia

In the parliamentary report of 2021, 4 recommendations were issued to the minister. Unfortunately, despite numerous appeals to the Ministry, the agency refused to fulfill its obligation under Article 24 of the Organic Law "On the Public Defender" and did not provide information on the steps taken to implement the recommendations in 2022.¹¹⁹⁰ As a result, the implementation status of the recommendations given to the minister is unknown.

31.3.10. State Minister of Reconciliation and Civil Equality of Georgia

Out of the 2 recommendations issued to the minister in the 2021 parliamentary report:

Fully fulfilled: 0

Partially fulfilled: 1

Not fulfilled: 1

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 0

31.3.11. Minister of Justice of Georgia and Minister of IDPs from the Occupied Territories of Georgia, Minister of Labor, Health and Social Protection

In the 2021 parliamentary report, 1 joint recommendation was issued to the agencies, which was not fulfilled.

31.3.12. The Government of Georgia and the Minister of Foreign Affairs of Georgia

In the 2021 parliamentary report, 2 joint recommendations were issued to the agencies, which were fully fulfilled.

31.3.13. Prosecutor General of Georgia

Out of the 6 recommendations issued to the Prosecutor General in the 2021 parliamentary report:

¹¹⁹⁰ See Letter of the Office of the Public Defender of December 8, 2022 No. 12-5/12237. See also other letters: 02.02.2022, No. 04-9/1283; 03.02.2022 No. 04-9/1411; 03.02.2022 No. 04-9/1412; 16.09.22 No. 04-15/9388; 13.07.2022 No. 04-9/7155; 21.02.2022 No. 04-9/2096. The letters were about the Gelati monastery complex, Tavkvetula monastery, Tseri St. George church, Shatili towers, the building and exhibits of the National Museum, as well as G. G.'s labor rights.

Fully fulfilled: 0

Partially fulfilled: 2

Not fulfilled: 3

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

It is impossible to assess the status of the recommendation based on reasons independent of the agency:
1

[31.3.14. Prosecutor General of Georgia and Minister of Internal Affairs of Georgia](#)

In the parliamentary report of 2021, 1 joint recommendation was issued to the agencies, the implementation status of which could not be assessed due to the lack of information provided by the agencies.

[31.3.15. Supreme Council of Justice of Georgia and General Courts¹¹⁹¹](#)

Out of the 6 recommendations issued to the agency in the 2021 parliamentary report:

Fully fulfilled: 1

Partially fulfilled: 2

Not fulfilled: 3

Due to the fact that the agency did not provide information, the implementation status of the recommendation could not be assessed: 0

Based on a reason independent of the agency, it is impossible to assess the status of the recommendation: 0

[31.3.16. Central Election Commission of Georgia](#)

1 recommendation given to the agency in the parliamentary report of 2021 has been partially fulfilled.

[3.3.17. Public Broadcaster of Georgia](#)

1 recommendation given to the agency in the parliamentary report of 2021 has been partially fulfilled.

¹¹⁹¹ The statistics also include the recommendations given to the Supreme Court.

Appendix #1 - Visits attended by the Office of the Public Defender

Within the function of the National Prevention Mechanism, which implies supervision through regular and unscheduled monitoring of places of detention, the special preventive group made 23 preventive visits to 9 penitentiary institutions, 73 preventive visits were made to 66 bodies of the Ministry of Internal Affairs (departments, divisions and temporary detention isolators), 9 preventive visits were made to 5 psychiatric institutions, 15 preventive visits were made to 11 military units, 4 preventive visits were made to 4 paramilitary units of the Ministry of Internal Affairs; 3 preventive visits were made to 3 external security units of the Special Penitentiary Service, 1 preventive visit was made to the temporary detention center of the Ministry of Internal Affairs; 1 preventive visit was made to the temporary detention center of the State Security Service; A preventive visit was made to 3 residential facilities; A preventive visit was made to 2 asylum institutions; Monitoring of waiting rooms was carried out in 10 judicial institutions; 2 preventive visits were made to the Department of Psychiatric Examination of the State National Bureau named after Levan Samkharauli. Additionally, monitoring of 2 flights of the return operation was carried out.

During the reporting period, the employees of the Department of Criminal Justice made 598 visits and visited 1540 arrested/imprisoned persons. Of these, 557 visits were made to penitentiary institutions and 1482 prisoners were visited. 15 visits were made to temporary detention centers of the Ministry of Internal Affairs and 13 detainees were visited. 18 visits were made to the Academician B. Naneishvili National Mental Health Center, where they met 37 patients. Also, 2 visits were made to the mental health and drug addiction prevention center and 1 patient was visited. In order to meet the arrested persons, 6 visits were made to the medical center "Vivamed", where 7 patients were visited.

In terms of protecting the rights of persons with disabilities, 49 planned visits were made to 33 free canteens (6 in Tbilisi and 27 regions) and 16 social housing and shelters (6 in Tbilisi, 10 regions) for homeless families operating at the municipal level across the country, visits to 5 psychiatric institutions.

57 information meetings were held in 42 municipalities, in which a total of 568 people participated (persons with disabilities, parents of children with disabilities and representatives of their organizations, members of the council working on issues of persons with disabilities; officials of local self-government bodies).

In terms of civil, political, economic, social and cultural rights protection, 59 free canteens located in 25 municipalities and 11 homeless shelters located in 7 municipalities were monitored together with the Department of Human Rights. Also, monitoring of 6 long-term care facilities for the elderly located in Tbilisi and East Georgia.

Within the framework of the protection of the rights of migrants and asylum seekers 15 monitoring sessions of the procedure for granting refugee and humanitarian status by the Migration Department of the Ministry of Internal Affairs, 8 monitoring of foreign citizens, including asylum seekers, housed in penitentiary institutions of the Ministry of Justice, 3 monitoring of the reception center for asylum seekers of the MIA Migration Department were carried out; Monitoring of the state border and international flights were carried out: 14 border-immigration control units and 48 international flights, 2 monitoring sessions of temporary placement center. Also, monitoring was carried out in 57 rural outpatient clinics of 18 municipalities.

Three meetings were held, attended by representatives from a total of 31 municipalities. We introduced the Public Defender's recommendations addressed to them, we were given the opportunity to listen to their positions and exchange information;

In terms of protecting the rights of the population affected by the conflict, 28 monitoring sessions of the so-called border villages were carried out.

Informational meetings and trainings were held for 874 employees of local self-government bodies and other public agencies, 367 representatives of vulnerable groups, 58 persons from the education sector, 175 young people and 144 employees of private companies within the scope of the powers defined by the Law of Georgia "On Elimination of All Forms of Discrimination". It should be noted that meetings on issues of discrimination in labor relations were held (38 participants) with members and employees of the professional union. The total number of meeting participants was 1656.

In terms of Protection of the Rights of the Child, in order to monitor the implementation of the Code on the rights of the child and other legislative acts of Georgia on the protection of the rights of the child, the Convention on the Rights of the Child and other international legal acts, a visit was made to 21 small family-type houses, 2 large children's residential institutions, mother and children's shelter, integrated service center for abused children, N11 Juvenile Correctional Facility, two and three general educational institutions of early and preschool education.

Also, 31 informational meetings/seminars about the rights and freedoms of the child were held with schoolchildren, 9 meetings with school teachers and one with employees of the relevant services (structural units) working on the rights of the child in Adjara A/R municipalities, two meetings with educators of early and preschool institutions, one with representatives of law enforcement agency.

In terms of Gender 279 informational meetings/seminars were held in the regions with students, teachers, members of the childcare department, college students, social workers, office of resource officers, police officers, prosecutor's witness and victim coordinators. 2 trainings were held with non-governmental organizations of the region, 1 training with journalists about the coverage of femicide, 1 training with prosecutors on gender-motivated murders of women, 1 training for teachers on early marriage; 5 shelters for victims of domestic violence and trafficking, 5 crisis centers and 3 public schools were monitored.

In order to raise awareness, 957 meetings with schoolchildren and teachers, university students, community organizations and representatives of non-governmental organizations, municipal employees and young people living in the regions were held by the East and West Georgia Divisions in different regions of Georgia about the mandate of the Public Defender, equality, rights of the child, gender equality and in order to get acquainted with the activities of the Public Defender.

Appendix #2 - Constitutional Litigation of the Office of Public Defender

In accordance with 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 if a normative act conflicts with the rights protected by the second chapter of the Constitution of Georgia.¹¹⁹²

From 2000 to the present day, the Public Defender of Georgia has filed a total of 101 constitutional claims in the Constitutional Court, 52 of them - from 2018 to the present.¹¹⁹³ Of these 52 claims, a part has already been accepted for substantive review (25 minutes record), a decision has already been made on 4 of these cases, and the substantive review has been completed on 12 claims, on which we are waiting for the decision to be announced. Only 6 out of 52 claims were declared inadmissible.¹¹⁹⁴

In accordance with Article 17, Clause 5, subparagraph "A" of the Statute of the Office of the Public Defender of Georgia, approved by the order of the Public Defender of Georgia dated December 18, 2018, No. 459, one of the main tasks of the Strategic Litigation Division is to draw up a strategic litigation plan and update it periodically. The existence of this type of document allows the public defender's appeal to the Constitutional Court of Georgia to be subject to a pre-planned methodology. The sources of the strategic litigation plan are statements received by the Office of the Public Defender of Georgia, studies prepared by the office, analytical documents and reports.

Below we present the constitutional claims sent by the Public Defender in 2022, which refer to the rights to dignity and life, the right to equality, the rights of prisoners placed in penitentiary institutions, the freedoms of assembly and expression, the rights of asylum seekers and foreigners.

I. Rights of persons placed in a penitentiary institution

1. In the presented constitutional claim (N1676)¹¹⁹⁵, we found it questionable, those parts of the provisions provided for in the Article 14 of the "Regulations of Penitentiary Institution No. 3 of the Ministry of Corrections and Probation of Georgia" approved by Order No. 109 of the Ministry of Corrections and Probation of Georgia on August 27, 2015 and in the first clauses of Article 15 of the "Regulations of the Penitentiary Institution N6 of the Ministry of Corrections and Probation of Georgia" approved by the order N108 of the Ministry of Corrections and Probation of Georgia on August 27, 2015, which, as a general rule for placing a convict in a cell, determined the placement of a convict in a single-place cell. According to the public defender, this general rule contradicted Article 9, Clause 2 of the Constitution of Georgia, according to which "torture, inhuman or degrading treatment, use of inhuman or degrading punishment is not allowed."

¹¹⁹² In addition, the Public Defender of Georgia is authorized to apply to the Constitutional Court when his competence is violated, or when the constitutionality of the norms governing the referendum and elections and the elections (referendum) held or to be held based on these norms is the subject of a constitutional dispute.

¹¹⁹³ The special structural unit of the Office of the Public Defender, which directly provides the representation of the Public Defender in the Constitutional Court, including the preparation of claims, was staffed in 2019 and began full-value activities in 2020.

¹¹⁹⁴ It is acceptable to take into account that out of the above-mentioned judgments - 3 judgments practically meet our claim requirements, thus, they can be considered as successful cases.

¹¹⁹⁵ Constitutional Claim available at: < <http://bit.ly/3ZkYWIO> > [last seen: 28.03.2023].

The Constitutional Court of Georgia, by its decision of December 21, 2022, satisfied the constitutional claim and recognized as unconstitutional the normative content of the disputed norms, which involves making a decision to place the convict in a single cell for an indefinite period of time to serve the sentence, and allows him to be left in this cell for a long and indefinite period by the director of the penitentiary institution - verbally and based on an unsubstantiated decision that is not necessarily based on the results of an individual assessment and investigation;¹¹⁹⁶

2. In order to prevent ill-treatment, it is important that at the level of legislation and in practice, persons deprived of their liberty/restricted persons are provided with minimum guarantees of legal protection. The existence of these safeguards at a normative level and their effective enforcement reduces the risks of improper treatment, as it becomes possible to detect and respond to illegal actions.

One factor that fails to prevent maltreatment and creates the risk of maltreatment is the existing way of detecting and documenting maltreatment. In order to prevent abuse, it is important that both the process of identifying and documenting such treatment goes smoothly.

An important role in detecting cases of violence in the penitentiary system should be played by the penitentiary institution's doctors, who should make maximum efforts to record the injuries on the prisoners' bodies in accordance with the "Istanbul Protocol"¹¹⁹⁷. The mechanism for documenting cases of violence in penitentiary institutions is regulated by Order No. 663 of the Minister of Justice of Georgia,¹¹⁹⁸ according to which, in case if a prisoner informs a doctor about torture and other cruel, inhuman or degrading treatment, or if the doctor himself has doubts about it, with the consent of the prisoner, the injuries on his body must be recorded in a special form approved by this order, and this should be followed by photography of the injuries and a report of the documented fact should be sent to the state inspector's office. According to the assessment of the special preventive group, as in previous years, the flawed practice of detecting and documenting the facts of alleged violence is mainly due to the obligation of the prisoner's consent to the medical examination.¹¹⁹⁹

According to Article 2, Clause 2 of the "Rules for recording injuries to accused/convicted persons as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions" approved by the order of the Minister of Justice No. 663, "Prior to the medical examination, the doctor must obtain the patient's informed consent." According to the information received from the Special Penitentiary Service, in 2021, doctors of penitentiary institutions recorded only 35 cases in accordance with the above rule. As in previous years, in 2021, the tendency was maintained that the doctors of

¹¹⁹⁶ Decision available at: < <http://bit.ly/3nlsx7r> > [last seen: 28.03.2023].

¹¹⁹⁷ Guidelines for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Istanbul Protocol, (Istanbul Protocol) / United Nations, 2004, available at: < <https://bit.ly/3RUREZd> > [last seen: 28.03.2023].

¹¹⁹⁸ "The Rule of recording of damage to accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions" approved by the order of the Minister of Justice of Georgia No. 663 of November 30, 2020 "On approving the rule for recording injuries to the accused/convicts as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions".

¹¹⁹⁹ National Prevention Mechanism 2021 Report, p. 54, available at: < <https://bit.ly/3Sc7Rch> > [last seen: 28.03.2023].

penitentiary institutions, in accordance with the rule approved by Order No. 663, documented only those cases when the accused named an employee of the Ministry of Internal Affairs as the perpetrator of alleged torture and other cruel, inhuman or degrading treatment.

Accordingly, in the constitutional claim (No.1748)¹²⁰⁰ submitted to the Constitutional Court, the corresponding normative content of Article 76, Part 3 of the "Imprisonment Code" of the Law of Georgia is appealed; Also, Various provisions of the "Regulations on the Registration of Damage to the Accused/Convicted as a Result of Possible Torture and Other Cruel, Inhuman or Degrading Treatment in Penitentiary Institutions" approved by the Order No. 663 of the Minister of Justice of Georgia dated November 30, 2020 "on approval of the procedure for recording injuries to accused/convicted persons as a result of possible torture and other cruel, inhuman or degrading treatment in penitentiary institutions".

3. In the constitutional claim (No. 1737)¹²⁰¹, the content of the first part of Article 17³ of the "Imprisonment Code" of the Law of Georgia is the subject of dispute, which grants the right to family visits only to female convicts, thereby limiting the possibility of using this right, on the one hand, to female accused, and, on the other hand, to male convicts/accused.

According to Article 17, Part 7¹ of the "Imprisonment Code", a female convict may be granted the right to family visits in accordance with Article 17³ of this Code. As for Article 17³, it regulates the rules and conditions of family visitation.

In particular, it is determined that a family date is a meeting of a female convict with the persons specified in the 2nd part of this article (son, stepchildren, stepdaughter, grandson, spouse, person with whom she has a common child, parent (adoptive), grandmother, grandfather, sister, brother) on the territory of the prison, in a specially designated room, which can last no more than 3 hours and which should be based on the consent of the General Director of the Service as a result of the written request of the female convict and the corresponding petition of the director of the prison.

The Constitutional Court of Georgia, accepted this constitutional claim for consideration with the minutes record of February 23, 2023.¹²⁰²

4. The norms disputed by the constitutional claim (No. 1675)¹²⁰³ provide for the termination/suspension of the right to receive state pension and compensation for accused/convicted persons deprived of liberty, which we consider unconstitutional. In particular, according to Article 16, Clause 1, Sub-Clause "B" of the Law of Georgia "On State Pension", the pension will be suspended from the first day of the month following the occurrence of the fact of the person being in pre-trial detention.

¹²⁰⁰ Constitutional Claims available at: < <http://bit.ly/3ZnsjKk> > [last seen: 28.03.2023].

¹²⁰¹ Claim available at: < <http://bit.ly/3npFVYk> > [last seen: 28.03.2023].

¹²⁰² Minutes record available at: < <http://bit.ly/3npEOjo> > [last seen: 28.03.2023].

¹²⁰³ Claim available at: < <http://bit.ly/3KbUUhy> > [last seen: 28.03.2023].

According to Article 17, Clause 1, Sub-Clause "C", the pension will be terminated upon the entry into legal force of the guilty verdict of the court, by which the person was sentenced to imprisonment, - from the date of suspension of the pension. As for the compensation, according to Article 30, Clause 1, Sub-Clause "C" of the Law of Georgia "On State Compensation and State Academic Scholarship", the compensation will be suspended from the first day of the month following the occurrence of the fact of the person being in pretrial detention.

According to Article 31, Clause 1, Sub-Clause "F", the compensation shall be terminated upon the entry into legal force of the guilty verdict of the court, by which the person was sentenced to imprisonment, - from the date of suspension of the compensation. Thus, it can be said that in relation to accused/convicted persons deprived of liberty, both laws impose identical restrictions. The Constitutional Court of Georgia has reviewed this constitutional claim on its merits and has gone to the deliberative room to issue a decision.¹²⁰⁴

II. Rights to dignity and inviolability of life

According to the current legislation, a doctor of a psychiatric institution is authorized, in extreme necessity, to limit some of the rights of a patient with a mental disorder by his own decision for the sake of safety, which must be described in the medical documentation. The Public Defender has repeatedly indicated in his reports that both at the legislative and practical levels, the procedure for restricting any rights provided for by law for patients should be strictly regulated, including, in order to avoid arbitrariness, it is important to specify the maximum term and criteria for restricting each right and to make a justified decision based on them.¹²⁰⁵

In the constitutional claim submitted to the Constitutional Court (No. 1679)¹²⁰⁶, the normative content of Article 15, Paragraph 3 of the Law of Georgia "On Mental Health" is appealed, which gives the doctor the authority, based on an unsubstantiated decision, to restrict a number of rights of the patient, which derive from Article 9, Paragraph 2 of the Constitution of Georgia ("Torture, inhuman or degrading treatment, use of inhuman or degrading punishment is not allowed"); From Article 12 ("Everyone has the right to free development of his personality.");

From the first paragraph of Article 15 of the Constitution of Georgia ("Private and family life of a person is inviolable. Limitation of this right is allowed only in accordance with the law, for the purpose of ensuring the necessary state or public security in a democratic society or protecting the rights of others."); From the first paragraph of Article 16 of the Constitution of Georgia ("Every person has the freedom of belief, religion and conscience."); From Article 17, Paragraph 2 of the Constitution of Georgia ("Every person has the right to freely receive and impart information."); From the first paragraph of Article 27 of the Constitution of Georgia ("Everyone has the right to receive education and to choose its form") and from Article 24 of the Constitution of Georgia and from Article 24 of the Constitution of Georgia ("1. Every citizen of Georgia from the age of 18 has the right to participate in the referendum, the elections of the

¹²⁰⁴ Minutes record available at: < <http://bit.ly/40lOkEO> > [last seen: 28.03.2023].

¹²⁰⁵ 2020 Report of the National Prevention Mechanism of the Public Defender of Georgia, 2021, pp. 166-170, available at: < <https://bit.ly/3lMKSHG> > [last seen: 28.03.2023].

¹²⁰⁶ Claim available at: < <http://bit.ly/42JRYzZ> > [last seen: 28.03.2023].

state, autonomous republic and local self-government bodies. The free expression of the voter's will is ensured. 2. The right to participate in the election and referendum is not available to a citizen who is in a penal institution for a particularly serious or according to the decision of the court, is known as the recipient of support and is placed in the appropriate inpatient medical facility").

1. In the constitutional claim (No. 1678)¹²⁰⁷, the normative content of Article 15, Paragraph 3 of the Law of Georgia "On Mental Health", which provides for the doctor's right, in extreme necessity, for the sake of safety, to restrict the rights of the patient, including the rights provided for in subparagraphs "b" and "e" of the first paragraph of Article 5.

a) According to Article 5, Paragraph 1, Sub-paragraph "e" of the Law of Georgia "On Mental Health", the patient has the right to refuse treatment. In addition, this right is limited in the cases provided by Articles 16, 18 and 22¹ of this law. In particular, in order to control the violent behavior of a patient in a hospital, during the use of restraint measures against him,¹²⁰⁸ during involuntary inpatient treatment¹²⁰⁹ and during forced psychiatric treatment.¹²¹⁰

Despite the above, the contested norm additionally provides for the doctor's right, in case of extreme necessity, to limit the patient's right to refuse voluntary inpatient treatment for safety reasons, which, we believe, contains a serious risk of arbitrariness, since this decision of the doctor is not subject to the same standards of justification as are used, for example, in the case of involuntary inpatient treatment. Therefore, we think that this violates the inviolability of the patient's dignity and freedom.

b) According to subparagraph "b" of the first paragraph of Article 5 of the Law of Georgia "On Mental Health", the patient has the right to receive appropriate treatment according to the necessary medical indications, with minimal restrictions of conditions and with the methods approved by the Ministry of IDPs, Labor, Health and Social Protection from the occupied territories of Georgia, as close as possible to his place of residence.

According to the disputed norm, the doctor has the right, in extreme necessity, to limit the above-mentioned right of the patient for the sake of safety. It is significant that Article 16 of the law envisages the use of restraints in order to control the violent behavior of a patient in a hospital. Nevertheless, the disputed norm gives the doctor an additional right to use a restriction measure different from the above mentioned – so-called "Chemical restraint" ("rapid tranquilization"), which is often associated with patient suffering. Since there is no proper mechanism to justify the necessity of this measure used by the physician, it carries a serious risk of arbitrariness, which may amount to maltreatment.

1. The Code of Spatial Planning, Architectural and Construction Activities of Georgia establishes various

¹²⁰⁷ Claim available at: < <http://bit.ly/3TNOdxw> > [last seen: 28.03.2023].

¹²⁰⁸ Article 16 of the Law of Georgia "On Mental Health".

¹²⁰⁹ *ibid.* Article 18.

¹²¹⁰ *ibid.* Article 22¹.

mandatory conditions for the implementation of construction projects. Among them, conditions related to the quality of building materials, volume of buildings, reliability, strength, safety, etc.

On June 23, 2022, the Parliament of Georgia adopted changes to the Code of Spatial Planning, Architectural and Construction Activities of Georgia in an accelerated manner.¹²¹¹ In particular, parts 23-25 of Article 141 and Article 141⁶ were added to the Code as transitional provisions, which establish an exceptional rule from the obligations established by the Code in relation to constructions planned in Batumi.

In particular, in accordance with Article 141, Part 23 of the Code, before the approval of the general development plan of the city of Batumi, but no later than January 1, 2027, on the submission of the mayor of the city of Batumi, by the decision of the municipal council of the city of Batumi, in the form of temporary supporting measures, without a detailed development plan within the administrative boundaries of Batumi municipality, it is possible to increase the maximum coefficient of development intensity.

It is also permissible to approve town-planning documentation and construction documentation under conditions different from those provided by the requirements established by the legislation of Georgia or to make changes to them (maximum building height, functional zone and its regulations (except for the maximum building factor and greening factor)).

In accordance with the first part of Article 141¹, by the decision of the mayor of the city of Batumi, in the form of temporary measures promoting the construction of new, multi-apartment housing and/or multi-functional houses, it is possible to exceed the maximum coefficient of land development and/or the maximum coefficient of development intensity without a detailed development plan as well as the requirements established by the legislation of Georgia (the maximum height of the building, the functional zone and its regulations, the requirements stipulated by the planning assignment of the approved development regulation plan/the requirements stipulated by the development regulation plan, the requirements stipulated by the conditions of the land plot for construction, the requirements stipulated by the architectural-construction project, traffic and greening regulations, the rules for placing the border zone and the building-structures, number of parking lots and other requirements, except for the regulations defined by the legislation on the protection of cultural heritage) to approve the construction documentation under conditions different from those considered or make changes to it.

Accordingly, in the constitutional claim submitted to the Constitutional Court (No. 1724)¹²¹², the constitutionality of the first parts of Article 141, Article 23 and Article 141⁶ of the Code of Architectural and Construction Activities, "The Code of Spatial Planning, Architectural and Construction Activities of Georgia" with the first paragraph of Article 10 of the Constitution of Georgia, according to which human

¹²¹¹ Law No. 1712-VIIIms-Xmp of June 23, 2022 "On Amendments to the Code of Spatial Planning, Architectural and Construction Activities of Georgia".

¹²¹² Claim available at: < <http://bit.ly/42JuHOC> > [last seen: 28.03.2023].

life is appealed.

2. According to the first sentence of subsection "e" of Article 14 of the "Instructions on the Rules for Patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia" approved by Order No. 1310 of the Minister of Internal Affairs of Georgia dated December 15, 2005, "a patrol policeman has the right:... in order to maintain public order and security, to respond to violations of law, to protect the rights of citizens and police officers, to conduct a comprehensive, complete and objective investigation of the case, using technical means, to carry out video-audio recording in accordance with the law."

It is significant that the hand-held video camera is a necessary element of the patrol-policeman's equipment, the use of which depends on the appropriateness of the patrol-policeman himself, based on the disputed norm, for the purpose of protecting public order and security, responding to violations, protecting the rights of the citizen and the policeman, and conducting a comprehensive, complete and objective investigation of the case. It must be said that the effective implementation of the named goals, which, among others, is served by the video recording defined by the instruction, represents the most important public interest. Therefore, naturally, the patrol-policeman, as the representative of the state responsible for the implementation of the above-mentioned goals, in order to achieve them, generally has the obligation to fulfill his rights and duties in good faith and due diligence. Otherwise, the interests protected by these goals are harmed.

According to the Public Defender of Georgia, the issue of the use of video cameras by patrol-policemen is especially important when the relevant person disputes that he was mistreated by the police, used excessive force, or violated his rights in another form. Back in 2018, the Public Defender of Georgia noted that equipping patrol inspectors with shoulder cameras could not be considered as a sufficient guarantee of protection against improper treatment, since the obligation of the police to videotape their interactions with citizens was not determined by law.¹²¹³

Accordingly, in the constitutional claim¹²¹⁴ (No. 1754) submitted to the Constitutional Court, the subject of the dispute is the first sentence of subsection "e" of Article 14 of the "Instructions on the Rules for Patrolling by the Patrol Police Service of the Ministry of Internal Affairs of Georgia" approved by Order No. 1310 of the Minister of Internal Affairs of Georgia dated December 15, 2005.

III. The right to equality

1. With the constitutional claim¹²¹⁵ (No. 1684) submitted to the court, the normative content of Article 2, Clause 1, Sub-Clause "A" of the "State Hepatitis C Management Program" approved by the Resolution No. 169 of the Government of Georgia of April 20, 2015 "On the Approval of the State Hepatitis C Management Program" is appealed, which excludes from using the program stateless persons with status

¹²¹³ 2018 Parliamentary Report of the Public Defender of Georgia, p. 57, available at: <<https://bit.ly/3FXigoz>> [last seen: 28.03.2023].

¹²¹⁴ Claim available at: <<http://bit.ly/4OpP5CM>> [last seen: 28.03.2023].

¹²¹⁵ Claim available at: <<http://bit.ly/3IGMd5z>> [last seen: 28.03.2023].

in Georgia, persons permanently residing in Georgia, foreigners with labor residence rights in Georgia, persons with refugee status, humanitarian status and temporary protection status.

2. With the constitutional claim¹²¹⁶ (No. 1680), the normative content of Article 15, Clause "A" of the Law of Georgia "On the Legal Status of Foreigners and Stateless Persons", which sets different requirements for obtaining a work residence permit, on the one hand, to foreigners employed in non-entrepreneurial (non-commercial) legal entities that do not engage in educational or medical activities (in such a case, the legal entity must have an annual turnover of at least 50,000 GEL for each employed foreigner), and on the other hand, to foreigners employed in a non-entrepreneurial (non-commercial) legal entity carrying out educational and medical activities (in such a case, the annual turnover should not be less than 35,000 GEL). The Constitutional Court, by its ruling of March 15, 2023, did not accept the claim for consideration.
3. With the constitutional claim¹²¹⁷ (No. 1705), the normative content of Article 6, Clause 1, Sub-Clause "B" and Clause 2 of the "Social Package Issuance Rules and Conditions" approved by the Resolution No. 279 of the Government of Georgia of July 23, 2012, "On Defining the Social Package", which considers it inadmissible for a person with a disability to receive a social package based on disability and an age pension at the same time. The Constitutional Court accepted the claim for consideration.¹²¹⁸
4. Constitutional claim¹²¹⁹ (No. 1749) disputes the constitutionality of the exclusion of persons with the right of residence from the social and health protection programs of the self-governing bodies in some municipalities¹²²⁰.

It is significant that according to the first part of Article 33 of the Constitution of Georgia, citizens of other states and stateless persons living in Georgia have the same rights and duties as citizens of Georgia, except for the exceptions provided by the Constitution and law.

According to Article 25, Clause 2 of the Law of Georgia "On the Legal Status of Foreigners and Stateless Persons", all foreigners in Georgia are equal before the law, regardless of origin, social and property status, race, nationality, gender, education, language, religion, political and regardless of other views, field

¹²¹⁶ Claim available at: < <http://bit.ly/3M1hvi2> > [last seen: 28.03.2023].

¹²¹⁷ Claim available at: < <http://bit.ly/3ntVnm5> > [last seen: 28.03.2023].

¹²¹⁸ Minutes record available at: < <http://bit.ly/3Zl08vO> > [last seen: 28.03.2023].

¹²¹⁹ Claim available at: < <http://bit.ly/40HwbHm> > [last seen: 28.03.2023].

¹²²⁰ Appealed: 1. Resolution No. 7 of April 28, 2022 of the Akhalkalaki Municipality Council "On approval of the rules for providing social assistance from the 2022 budget of Akhalkalaki Municipality"; 2. "About the approval of the social program of pharmacy and medical services for the population registered in the territory of the Adigeni Municipality" of the Resolution No. 19 of the Adigeni Municipality Council of May 7, 2019, subsection "b" of Article 5; 3. Paragraph "a" of Article 3 and "a" of the first paragraph of Article 5 of the "Rules for Promoting the Integration of Persons with Disabilities into Society in Marneuli Municipality" approved by Resolution No. 53 of the City Council of Marneuli Municipality of December 24, 2019; 4. Article 3, subparagraph "a" and Article 5, of the "Procedure for the implementation of the sub-program "Promoting the integration of persons with disabilities into society" provided for in the 2020 budget of the City of Tbilisi Municipality, approved by Resolution No. 58-59 of the City Council of Tbilisi Municipality of June 9, 2020 Sub-paragraph "a" of paragraph 2; 5. The first paragraph of Article 2 of the "Rules for the Implementation of the Epidemiological Control Sub-Program of Communicable and Non-Communicable Diseases" approved by Resolution No. 5-15 of Tbilisi Municipality of December 29, 2021.

of activity and other circumstances. And according to Article 31 of the same law, a foreigner permanently residing in Georgia has the same right to assistance, pension and other social security as a citizen of Georgia.

For example, the regulatory document on the manner of providing social assistance from the 2020 budget of Akhalkalaki¹²²¹ Municipality also defines the types of social assistance programs, the categories of beneficiaries, the amount of assistance to be provided and the documentation required for inclusion in the program. According to Article 2 of this document, the applicant must submit a copy of the ID card, which, in turn, leaves people with a residence card out of consideration.¹²²² Also, an ID card is a document to be submitted to receive co-financing of medical services in the municipality of Adigeni¹²²³.

Thus, the state's approach differentiates between essentially equal groups, especially in conditions where persons with permanent residence permits and citizens of Georgia have similar tax obligations to the state. Accordingly, the social or healthcare program financed from the budget should be equally accessible to these persons. Therefore, the requirement of an identity card and/or other documents proving the citizenship of Georgia in order to benefit from social and healthcare programs is unjustified, since this rule excludes persons with a permanent residence card from receiving benefits.

5. In the constitutional claim¹²²⁴ (No. 1755), the normative content of the first paragraph "c" of Article 6 of the "Rules and Conditions for Issuing the Social Package" approved by the Resolution No. 279 of the Government of Georgia of July 23, 2012 on "Defining the Social Package" is disputed, which considers it inadmissible for a person with a disability receiving a household subsidy to receive a social package and a household subsidy based on a disability at the same time.

6. In the constitutional claim¹²²⁵ (No. 1736), the normative content of Article 6, Clause 1, Sub-Clause "A" and Clause 2 of the "Rules and Conditions for Issuing a Social Package" approved by Resolution No. 279 of the Government of Georgia of July 23, 2012 on "Definition of the Social Package" is disputed, which considers it inadmissible for a disabled person who has lost a breadwinner to receive a social package due to disability and a social package due to losing a breadwinner at the same time. The claim is accepted for review on its merits.¹²²⁶

7. Women who are victims of sexual violence face a legal obstacle when terminating their pregnancy beyond

¹²²¹ of Tbilisi Municipality of December 29, 2021.

¹²²¹ Resolution No. 7 of the Sakrebulo of Akhalkalaki Municipality of April 28, 2022 "On approval of the rules for providing social assistance from the 2022 budget of Akhalkalaki Municipality". Available at: < <http://bit.ly/40F2R41> > [last seen: 28.03.2023].

¹²²² Subsections "A.B" and "A.G" of Article 2 of the rule approved by Resolution.

¹²²³ About the approval of the social program of pharmacy and medical services for the population registered in the territory of Adigeni Municipality" Sub-paragraph "b" of Article 5 of Resolution No. 19 of the Adigeni Municipality Council of May 7, 2019. Available: < <http://bit.ly/3JQv950> > [28.03.2023].

¹²²⁴ Claim available at: < <http://bit.ly/40kN2Qd> > [last seen: 28.03.2023].

¹²²⁵ Claim available at: < <http://bit.ly/40GzTkt> > [last seen: 28.03.2023].

¹²²⁶ Minutes record at: < <http://bit.ly/3LWJS0l> > [last seen: 28.03.2023].

the prescribed period.¹²²⁷ It is problematic that after the expiration of the 12-week period stipulated by the legislation, the artificial termination of a pregnancy resulting from violence can only be done after a guilty verdict has been rendered by the court.¹²²⁸ The duration of justice, as a rule, exceeds the period of pregnancy, therefore, in most cases, it is impossible for women who are victims of violence to have an abortion within the specified period, in accordance with the special rule established by the law. In terms of women's equality, women victims of sexual violence are one of the most vulnerable groups. For a woman in this situation, the refusal to terminate a pregnancy may become a source of additional psycho-emotional stress and social stigma.¹²²⁹ Accordingly, in the constitutional claim¹²³⁰ (No. 1736) Paragraph "a" of Appendix No. 5 - "List of non-medical indications for artificial termination of pregnancy longer than 12 weeks" - approved by the order No. 01-74/N dated October 7, 2014 of the Minister of Labor, Health and Social Protection of Georgia "On the approval of the rules for the implementation of artificial termination of pregnancy" is appealed.

8. Despite the provisions of the first and third paragraphs of Article 37 of the Labor Code, that the employee is given, at his request, paid leave due to pregnancy and childbirth in the amount of 126 calendar days (in case of childbirth complications or the birth of twins - in the amount of 143 calendar days), and child care Due to paid leave in the amount of 57 calendar days, these norms, together with Article 39 of the Code, determine that leave due to pregnancy and childbirth and leave due to child care are compulsorily compensated from the state budget of Georgia, in the form of monetary assistance - in the amount of no more than 1000 GEL. And, apart from the 1000 GEL cash assistance from the state budget, additional remuneration depends on the agreement between the employer and the employee.

Accordingly, the constitutional claim¹²³¹ (No. 1698) disputes the normative content of the 2nd and 3rd sentences of Article 39 of the "Labor Code of Georgia" of the Organic Law of Georgia, which determines the total amount of cash assistance for the period of paid leave due to pregnancy and childbirth and for the period of paid leave due to child care by no more than 1000 GEL, and the decision of the issue of additional compensation depends on the will of the employer.

The disputed norms are appealed: in relation to the first paragraph of Article 11 of the Constitution of Georgia,¹²³² in relation to paragraph 3 of Article 11 of the Constitution of Georgia,¹²³³ in relation to the first paragraph of Article 26 of the Constitution of Georgia,¹²³⁴ and in relation to paragraph 2 of Article

¹²²⁷ 2020 Parliamentary Report of the Public Defender of Georgia "On the Situation relate to Protection of Human Rights and Freedoms in Georgia", p. 168, available at: <<https://bit.ly/3jnkQQF>> [last seen: 28.03.2023].

¹²²⁸ Appendix No. 5 of Order No. 01-74/N dated October 7, 2014 of the Minister of Labor, Health and Social Protection of Georgia "On Approval of the Rules for the Implementation of Artificial Termination of Pregnancy".

¹²²⁹ 2020 Parliamentary Report of the Public Defender of Georgia "On the State of Protection of Human Rights and Freedoms in Georgia", p. 168, available at: <<https://bit.ly/3jnkQQF>> [last seen: 28.03.2023].

¹²³⁰ Claim available at: < <http://bit.ly/3JShp9I> > [last seen: 28.03.2023].

¹²³¹ Claim available at: < <http://bit.ly/3JP2Xzm> > [last seen: 28.03.2023].

¹²³² "All people are equal before the law. Discrimination on the basis of race, skin color, sex, origin, ethnic affiliation, language, religion, political or other opinions, social affiliation, property or rank, place of residence or other characteristics is prohibited."

¹²³³ "The state ensures equal rights and opportunities for men and women. The state takes special measures to ensure the essential equality of men and women and to eliminate inequality."

¹²³⁴ "Freedom of labor is ensured. Everyone has the right to freely choose a job. The right to safe working conditions and other labor rights are protected by organic law."

30 of the Constitution of Georgia.¹²³⁵

IV. Right to freedom and security

1. In 2020-2021, the Public Defender studied the legality of using extradition detention for a number of persons. As a result of the study of the issue, it was revealed that the substantive study of the issue of extradition of a person, in most cases, begins only after the convicted person subject to extradition is released from the prison.¹²³⁶

Thus, according to the current practice, if a citizen of a foreign country is in a Georgian prison and the Prosecutor's Office of Georgia receives a request from a foreign country regarding the extradition of this person, the Prosecutor's Office of Georgia waits until this person has fully served his sentence and only then starts extradition proceedings. As part of the proceedings, the prosecutor's office requests an additional prison sentence for the person, which the general courts grant. For example, if a person is sentenced to 1 year of imprisonment, the prosecutor's office starts proceedings after the expiration of this term and the release of the person, which leads to an additional term of imprisonment for the person.

If the prosecutor's office started extradition proceedings immediately, then after the release of the person, it would not be necessary to re-arrest him - because the issue of extradition would have been studied before his release from prison.¹²³⁷ Accordingly, the presented constitutional claim¹²³⁸ (No. 1758) appeals against the normative content of Article 30, Clauses 1 and 4 of the Law of Georgia "On International Cooperation in the Criminal Law", which allows for extradition detention in the conditions when, after the discovery of the basis for the initiation of extradition procedures against a person, he has already spent 9 months in custody, within the framework of any ongoing criminal case against him.

V. Freedom of Expression

1. In accordance with the clearly established practice of the National Communications Commission of Georgia, placing political advertisements in the non-election period violates Paragraph 1 of Article 70 and Paragraph 2 of Article 63 of the Law of Georgia "On Broadcasting". By the National Communications Commission, responsibility for placing political advertisements in the non-election period was assigned to "Main Channel" (several times), NNLE "Non-Profit Media Union Obiektivi", "Girchi TV" LTD, "Telekompania Pirveli" LTD and "Formula" LTD.

With these decisions, the National Communications Commission has revealed the case of imposing responsibility on the broadcaster during the non-pre-election period, due to the placement of political advertisements, including on the basis of the Law of Georgia "On Advertising", which does not apply to

¹²³⁵ "The rights of mothers and children are protected by law."

¹²³⁶ 2021 Report of the Criminal Justice Department of the Office of the Public Defender of Georgia, p. 83 (available at: < <https://bit.ly/3Jf4Og> > [last seen: 28.03.2023].

¹²³⁷ *ibid.*

¹²³⁸ Claim available at: < <http://bit.ly/3nqCFMp> > [last seen: 28.03.2023].

advertisements of political content. The Public Defender believes that the legislation of Georgia does not contain rules regulating advertising during the non-election period and, therefore, does not directly prohibit the placement of political advertising during the non-election period. Thus, the prohibition used by the Commission is vague and its justification does not meet the requirements of national and international standards of lawfulness of interference with freedom of expression.¹²³⁹

Accordingly, the normative content of Article 63, Clause 2 of the Law of Georgia "On Broadcasting", which prohibits posting of political advertisements in the non-pre-election period, is appealed by the presented constitutional claim¹²⁴⁰ (No. 1753).

VI. The Right to Property

1. In accordance with the first paragraph of the first article of the order of the Minister of Labor, Health and Social Protection of IDPs from the occupied territories of Georgia (hereinafter, "Minister") dated April 8, 2021 No. 01-30/N, in order to organize the resettlement of internally displaced persons - IDPs, the "Rule of provision of housing for displaced persons" is approved, which is presented as Appendix No. 1 of the Order.

The Appendix states that IDPs provided with long-term housing are prohibited from alienating the property transferred to them by the state within 3 years after the transfer of property.¹²⁴¹ The claimant believes that such a restriction is a disproportionate interference in the right to property.

Accordingly, the constitutional claim¹²⁴² (No. 1752) is in dispute with regard to "Approval of the Rules for Provision of Housing for IDPs" approved by the Order No. 01-30/N of the Minister of Labor, Health and Social Protection of IDPs from the Occupied Territories of Georgia of April 8, 2021 - Appendix No. 1 - Clause 17 of Article 3 of the "Rules for provision of housing for displaced persons".

VII. The right to hold public office

In a constitutional claim¹²⁴³, the abolition of the institution of the state inspector was disputed. This claim was consolidated with the claim filed by the former state inspector, to be considered together on their merits.¹²⁴⁴

According to the decision of the Constitutional Court of Georgia on November 17, 2022, the constitutional claim was partially satisfied.¹²⁴⁵ The Constitutional Court of Georgia¹²⁴⁶ recognized as unconstitutional only

¹²³⁹ 2019 Parliamentary Report of the Public Defender of Georgia, 232-233 and 2020 Parliamentary Report of the Public Defender of Georgia, 232.

¹²⁴⁰ Claim available at: < <http://bit.ly/40JBG8v> > [last seen: 28.03.2023].

¹²⁴¹ Order No. 01-30/N of April 8, 2021 of the Minister of IDPs, Labor, Health and Social Protection from the Occupied Territories of Georgia, Appendix No. 1, Article 3, Clause 17 ("In accordance with the law, the transfer of real estate (residential area) to the displaced family free of charge will be carried out under the condition of limiting the right to alienate this real estate within 3 years").

¹²⁴² Claim available at: < <http://bit.ly/3lFreQA> > [last seen: 28.03.2023].

¹²⁴³ Claim available at: < <https://bit.ly/3FXg7tc> > [last seen: 28.03.2023].

¹²⁴⁴ Minutes record available at: < <http://bit.ly/3KeXmny> > [last seen: 28.03.2023].

¹²⁴⁵ Decision available at: < <https://bit.ly/3LTdkF2> > [last seen: 28.03.2023].

¹²⁴⁶ Decision No. 1/9/1673,1681 of the Constitutional Court of Georgia dated November 17, 2022 in the case "Londa Toloraya and the

the normative content of the law, which provided for the dismissal of the state inspector and his deputies, without offering an equivalent position or without providing fair compensation. And in accordance with the constitution, he considered the norms by which the state inspector's service was canceled from March 1, 2022.

The Constitutional Court ignored the positive obligation of the state in terms of the absolute right to prohibit ill-treatment guaranteed by the Constitution - to investigate the mentioned facts by an institutionally and personally impartial and independent institution. The Constitutional Court considered the cancellation of the independent investigative mechanism by the legislative body narrowly, only in terms of leaving its head without compensation, and refused to identify a systemic problem.

The court focused on the need to protect the autonomy of the independent investigative body not only for the development of democracy, but also to ensure the protection of human rights and considered that "it is particularly important to ensure the protection of the autonomy of the independent investigative bodies in matters of human rights protection while they should be free from any interference by the legislative or executive authorities and any political influence that may exist in relation to them."

Nevertheless, the court perceived the issues of cancellation of the service, expansion of the investigative subordination as an editorial change and considered it sufficient that the Special Investigation Service was defined as an investigative body in cases of crimes subordinate to the State Inspector Service from March 1, 2022.

On the contrary, according to the assessment of OSCE/ODIR, the abolition of the State Inspector Service, disregarding international standards, was hasty, creates a threat to the rule of law and the effective functioning of independent institutions, and represents a dangerous precedent, which may affect the quality of human rights protection in the country, the investigation of cases of ill-treatment and deaths of persons in custody.¹²⁴⁷

Accordingly, allowing the possibility of the legislative body, at its own discretion and without any justification, canceling at any time the independent agency investigating the facts of improper treatment and violation of life by the state, and considering the cancellation of the independent investigation mechanism by the Constitutional Court as only a legislative editorial change cannot ensure the constitutional guarantees of human rights protection.

Along with this, the decision of the Constitutional Court is accompanied by a different opinion of one of the judges.

VIII. Right to a fair trial

1. On December 30, 2021, the Parliament of Georgia supported amendments to the Organic Law of Georgia "On General Courts".¹²⁴⁸ The Parliament of Georgia hastily considered extremely dangerous changes

Public Defender of Georgia against the Parliament of Georgia".

¹²⁴⁷ see < <https://www.osce.org/files/f/documents/d/1/512728.pdf> > [last seen: 28.03.2023].

¹²⁴⁸ Organic Law No. 1346-VIIrs-Xmp of December 30, 2021 regarding amendments to the Organic Law of Georgia "On General Courts".

related to the judicial system without any prior consultation and sufficient discussion with the civil society.¹²⁴⁹ In our opinion, the amendments made to the law threaten the independence of judges and the administration of justice.

The amendments made to the Organic Law of Georgia "On General Courts" contradict the human rights guaranteed by the Constitution of Georgia, and with this constitutional claim we request to declare unconstitutional those issues that are extremely dangerous for the independence of judges and are aimed at worsening the current situation in the judicial system, namely:

- a) The terms of involuntary business trips of judges have been increased four times and the basis of general and vague content has been added. Also, the ban on the involuntary business trip of the judge of the Court of Appeal to the lower instance was canceled, thus creating the possibility of using new punitive leverage against the judges;
- b) The removal of judges from the consideration of the case has become extremely easy and there is room for manipulations, which creates the possibility of influencing an individual judge;
- c) The number of votes needed to make decisions on the issues of disciplinary responsibility of judges decreases, and only the votes of the judges of the Supreme Council of Justice will be sufficient for this, which contradicts the principle of separation of powers and increases the risks of violating human rights;
- d) Judges' freedom of expression was limited by the new basis of disciplinary responsibility, the definition of which, due to its vagueness, contains risks of improper use in practice;

In the constitutional claim¹²⁵⁰, the relevant provisions of the Organic Law of Georgia "On Common Courts", which were adopted by the Parliament of Georgia on December 30, 2021, are appealed. The claim is accepted for review on its merits.¹²⁵¹

¹²⁴⁹ Statement of the Public Defender of Georgia of December 30, 2021, available at: < <https://bit.ly/3Glb7vu> > [last seen: 28.03.2023].

¹²⁵⁰ Claim available at: < <https://bit.ly/3TNR0yu> > [last seen: 28.03.2023].

¹²⁵¹ Minutes record available at: < <http://bit.ly/3Zp2tWi> > [last seen: 28.03.2023].