

Report
of the Public Defender
of Georgia
on Defence
of Human Rights
and Liberties
in Georgia

Second half of
2005

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The previous report described the situation related to the defence of the human rights and basic freedoms in the country in the second half of 2005. Despite the fact that by the law this report relates only to the second half of the past year I must mention in the introduction the events that took place in the beginning of 2006. I will describe them in full in my next report.

Before I move on discussing the situation in the country, I will say a few words about the Administration of the Public Defender's Office. This office was actually once again created, its structure, staff and work style changed. If before the Administration was replying to the incoming letters only now we try to follow up every occurrence of human right's violation which comes to our attention. Plus there is a strong emphasis on monitoring.

The monitoring is carried out at the police offices, penitentiary facilities and military units. For the first time the Office is monitoring psychiatric hospitals and children's homes. This requires a lot of time, energy, human and financial resources but the result is much better.

In parallel with this work the staff is being trained, which also requires time and finances. I want to thank our donors: United Nations Development Programme, Swedish International Development Agency, Raul Valenberg Institute of Human Rights and International Humanitarian Law of Sweden, Norwegian Government, OSCE, European Council, European Centre of Ethnic Minorities and other donors. With their help

we are able to carry out numerous programmes. Among these programmes are: teaching international standards of human rights and Georgian legislation, rise of qualification. These programmes are carried out not only for our staff but also for judges, prosecutors, policemen, lawyers and journalists.

In the framework of these projects we publish a monthly magazine "Solidarity" which aims to reflect diversity of our public and raise the level of tolerance. We published a few books, in particular: 1. International Standards of Human Rights (for law enforcement structures); 2. Economic, social and cultural rights; 3. The police and human rights.

With the Assistance of the Norwegian Government we started work in a few new directions, in particular: centre of patients' rights defence. This is a completely new direction in the work of our office; judicial centre, which helps us conduct legal expertise to the Georgian legislation in the sphere of human rights defence.

Introduction



Centre of tolerance operates in the framework of the same grant. This report was published thanks to the donors.

Before I start my report about the situation in the country I want to quote from the declaration of the General Secretary of the European Council, Terry Davis, which he made on May 15. This quotation exactly reflects my position:

“Opinion about the human rights jeopardizing public security is not correct and is dangerous. Obviously all the governments are responsible to protect the people; right to live is the most essential human right but there is no serious justification to the declaration that our security can be achieved only through the violation of the human rights by the governments”.

Terry Davis made this declaration to get the attention of the certain European governments who are attempting to restrict human rights for the reason of fighting against terrorism. Fortunately terrorism is not a real threat in our country, but I understand how serious the threat of organized crime is and how strong can grow the influence of the “thieves-in-law” if effective measures are not taken against these crimes. I want to declare from the beginning that I fully support the Government’s efforts to fights against these crimes but it should not be based on the violation or in many cases disregard of human rights. This is a very dangerous tendency which should not become an accepted practice and should be timely eliminated.

I also support the Government in its efforts to fight against criminals because without this fight the lives of the citizens would be unbearable. But in this fight the police should not use excessive force, norms should be established, which would regulate the use of force by the police. There should be strict control on the use of weapons and each case of use of weapon should be a subject of strict and objective investigation. At the same time during the investigation the victim’s side should be involved in the case to avoid doubts about the objectivity of the investigation.

Serious steps have been taken in the country to develop it as a country oriented on the democratic and liberal values but recent numerous human rights violations indicate that the consensus is not yet reached on what the interest of the state is and where the line between the interests of the state and the citizens goes.

On the one hand, the reforms initiated by the government give us the right to declare that the government is on the way to democratic development, but on the other hand human rights violations and tendency of ignoring the rule of law by the government creates a serious threat to the development course taken by the country.

The most important priority of a democratic state should be protection of fair and lawful interests of a citizen and no interest of a state should contradict them. Protection and implementation of fair and lawful interests of citizens is the most important function of the government in a democratic state. The government elected by the public should be first fulfilling this goal.

Before I move on to the main part of the report I want to thank all those people who contributed to the saving of life of Tinatin Khakelashvili. In the beginning of June a citizen appealed with a letter to me who was asking for assistance in getting a visa to Greece. The applicant’s wife Tinatin Khakhelashvili was at the hospital in Athens in a bad state. After our interference the head of the Consular Department of Georgia, Irakli Zhordania, and the Georgian Consul in Greece got involved in this matter. I want to thank the Government of Greece for allocating half a million Euros to save Tinatin Khakhelashvili’s life. The patient was transported to France where she was operated on and her life was saved. I want to also thank the Embassies of France and Bulgaria in Georgia and extend my gratitude personally to the Ambassadors and the Consuls

of these embassies who did not hesitate to issue visas to the family members of Tinatin Khakhelashvili late at night.

I want to thank Georgian Consul in France Vakhtang Jaoshvili who was personally monitoring the health state of Ms. Kakhelashvili on daily basis and thank Mr. Zhordania who did his utmost to save a life of a Georgian citizen.

This is a good example of what can be achieved through joint efforts which is directed to saving of a human life. On this background there is an unfortunate tendency of mishandling the lives of citizens by the representatives of the law enforcement structures, I mean frequent special operations. I must admit that the public's protest had its positive results and such practice is being revised.



The previous report describes at length those events which took place at the penitentiary system. I will briefly repeat the positive as well as the negative tendencies. Positive tendency is the commencement of fight against “the world of thieves” and corruption which existed in this system. This is a fight against privileged prisoners. But lately we discovered a few cases when prisoners were kept in special conditions.

On the other hand, the fight against “the world of thieves” is carried out with massive human rights violations: beating, insulting and inhumane treatment of prisoners, and not only them but their family members as well.

I want to indicate to the devastating situation in the healthcare system of the Department of Corrections. Material technical base of the Department of Corrections, human resources, affordability of healthcare service and the quality of the service, security of patients and protection of their rights and dignity is critically low (sometimes it does not exist at all) compared to the general situation in the country. None of the medical units at the penitentiary facility (with more than 100 prisoners) have a license for carrying out medical activities which is a requirement of the law.

Furthermore, the medical facility for accused and convicted under the Ministry of Justice does not have a license for conducting medical activities. The law prohibits carrying out medical activities without the relevant license. Medical service at the penitentiary system severely lacks human resources, often there are facts when a doctor licensed in one sphere of medicine has to render medical services to a patient and this service is beyond the doctor's competence and qualification. Such facts must be evaluated as illegal medical activity!

As a result of the monitoring of the healthcare system we revealed facts of violations of all principle laws and the constitution.

It is impossible to render proper medical service to the patients at the medical structure of the penitentiary system. Furthermore the environment in this structure endangers patients' health and life. At the same time the information about this situation is being hidden and falsified. When rendering medical assistance to the prisoners there are facts of discrimination because the prisoners have restricted freedom.

I will mention about a few facts and add that only because of our interference it was possible to save the lives. Minor Naskid Kh., was tortured by the prisoners and he was at the verge of death in the medical department for accused and convicts. Our monitoring team visited him and demanded that he was immediately moved to sepsis centre. Thus his life was saved. In this particular case the administration of the Department fully supported us but because of the negligence of the representatives of the medical departments this person was left to die.



Regarding the riot on March 27 at jail No. 5, According to my information and the information spread a few days before the riot, I think that the prisoners were planning a protest for a long time. But it was difficult to know in what form the prisoners protest would take: riot, hunger strike, (which took place end of the last year and the beginning of this year) or noise. But once the riot starts the authorities have the legal right to use power to suppress it.

Despite all that, the information collected by my office gives me the right to express my doubts that the riot was provoked by the activities of the administration of the department and power used to suppress the riot with fire guns was not adequate to the resistance of the prisoners.

And lastly, during monitoring of jail No. 6 we found 20 wounded prisoners who got the injuries during the suppression of the riot. They were not rendered proper medical assistance and only after our interference and conducting forensic medical analysis and after addressing the director of the respective department with a recommendation the prisoners got medical treatment. Besides, these 20 wounded prisoners were not listed among those 21 officially injured prisoners. Most of them had wounds from rubber bullets, and one of them according to forensic medical analysis was wounded by a fire gun but was registered at the jail as wounded from a rubber bullet.

Below is an example as to how the administration of the penitentiary facilities mistreats the citizens. Ms. Tina Margania sent a letter to me. She is 70 years old and her only son is a prisoner and she had not seen her son from the day of the arrest. Because the case was at the trial stage Ms. Margania took permission from the judge to visit her son as the law permits it. With this permit she went to jail No. 7 where she was refused the right to see her son for the reason that the permit did not include Ms. Margania's ID number. The old lady went back to the judge but she was denied access to his office. When the guards turned away the old lady took the chance and rushed into the judge's office (she herself admits that she did not act right). The judge explained to her that such requirements were not prescribed by the law and it was not in practice but taking into consideration the situation of the old mother he filled out the permit again filling in not only the ID number but also the private number of Ms. Margania to save her from further barriers. Ms. Margania was denied the right to visit her prisoner son again because it was almost 5 p.m. and the time of visits was coming to an end. This happened on May 8. The following day, May 9 was a holiday. On May 10 Mr. Khulordava, the director of the jail told Ms. Margania that she would not be given the access to the jail because the permit was issued on May 8. But this is the date of the issue of the permit not the date of the visit. Ms. Margania was able to visit her son with this permit only on June 8 and this happened because she came to our office and our representatives went with her to the jail. I will repeat that she visited her son after one month with the same document issued on May 8, which was not accepted by the jail administration reasoning that it was expired.

Though late the justice was restored. It is obvious that our office people can not follow every citizen to the jail and there are lots of facts of mistreating the citizens. Furthermore, this is turning into tendency now, which is dangerous. You can get the information about lots of the similar stories of human tragedies at our office. The correction of this problem is that everyone creating such barriers to the citizens should be strictly punished according to the law.

When I am talking about the penitentiary system, I can not avoid mentioning the written reply from the Department of Corrections to my recommendation on July 3 of the current year. In particular, I requested that the video cameras at the visiting rooms of prisoners with the lawyers at jails No. 2 and No. 7 be removed. According to the imperative requirement of Article 84 of the Georgian Criminal Procedure Code "a lawyer has the right to meet with his defendant alone without being kept an eye on". The administration of the Department replied to me on July 3 that they would not take the recommendation into consideration

because this may be prohibited by the Georgian Law but is allowed by “the UN Standard Minimum Rules for the Treatment of Prisoners” and because the international agreements are higher than the Georgian law the Department attaches priority to them and is guided by them.

I understand that it is embarrassing to talk at the Georgian highest legislative branch about such simple truth that the minimal standard is not an international agreement which is ratified by the Parliament and which is higher than the Georgian Legislation. Minimal standard establishes that minimum standard below which according to the 1955 UN Document should not go any State. This document was adopted during the times of the Soviet Union and many other dictatorial regimes when not only standards were ignored but the human rights were violated as well. The Georgian Legislation in this case establishes a higher standard and this is one of the signs of our democracy. At the same time I am sure that the Department of Corrections understands it very well. Simply this is the case when a high ranking official takes the liberty to stand higher than the Law.

When I talk about the unbearable situation of the prisoners and frequent cases of torture, I want to mention one fact which I repeated numerous times before. This is a case of a prisoner Zurab V., a clear demonstration of torture. He along with a few other prisoners was severely beaten up on March 27, 2006. A few of my colleagues and me confirm this fact because we visited him those days in prison. This is conformed by the forensic medical analysis as well. Zurab V., suffers from epilepsies and numbness on one side. By the doctor's decision he needed to be at the medical facility but after the riot he was moved first to the jail No. 7 and then to the jail No. 6 whose medical facilities don't have any status. Afterwards he developed urine retention for 5 days. He could not be assisted at jail No. 6 and was not moved to the medical facility. The alarming fact is that the doctors were advising the prisoner not to take too much liquid with the epilepsies medication because it would enhance his pains.

After our interference the prisoner was moved to the city hospital No. 1 for medical treatment and the same day he was returned to the jail No. 6.

Mr. Thomas Hamarberg, Human Rights Commissioner of the European Council was visiting here in July. He himself saw the situation at the punishment cells at jail No. 5 and practically demanded to abolish punishment cells in one day, because existence of such cells contradicts all human standards and placing prisoners there is be considered torture. Despite the fact the European Union had made such recommendation before as well punishment cells still exist. We are not talking only about the unbearable situation in punishment cells; often the administration's attitude makes this situation more unbearable. In terms of punishment cells the situation is much worse in Ksani strict regime facility. I will discuss an example of how the administration often acts.

Prisoner Giorgi J. was sitting in punishment cell for 60 days when the limit for punishment cell is 20 days. The procedure was very simple. After the expiration of 20 days the prisoner was taken out of the cell for 2 hours and then for some invented reason he was returned there. By the declaration of the prisoner he was being kept in that punishment cell only because of private hostility from the deputy head of the Corrections Department Megi Kardava against him.

Despite the court reforms serious problems with court independence and qualification and professionalism of judges still remain. This is clearly shown in the analysis prepared by the Association of the American Lawyers. I will not talk about it now. When we are discussing professionalism of the judges I want to draw your attention to one particular case. Kutaisi city court judge Ms. Ana Gelekva was elected after the reforms. She sentenced Zurab Shalikian (born on October 17, 1988) to 14 days of administrative imprisonment on May 22, 2006. Though Kutaisi appeal court released Shalikaini from the prison the following day but



still he was under illegal arrest for 24 hours. According to the part 3, article 32 of the Georgian Administrative Code “administrative imprisonment can not be sentenced to pregnant women, mothers with children under 12, minors under 18 and invalids of the first and the second category”. Zurab Shalikaini is not 18 years old yet and therefore sentencing him to imprisonment was illegal. Based on our recommendation an investigation was launched on the fact of official negligence.

I want to mention the fact of leaving Shalva Ramishvili and David Kokhreidze without defense. Chamber of criminal cases of Tbilisi Appellation Court chaired by judge Nana Chichileishvili reviewed the criminal case of accused Shalva Ramishvili and David Kokhreidze. The prosecutor general raised a motion at the court hearing on waiver of the lawyers Gocha Svanidze and David Korkotashvili. The motion was approved by the prosecutor. The judge indicates in the resolution to part e) of the article 107 of the Georgian Criminal Procedure Code that the reason for excluding the lawyer from the participation was the defendant’s denial of defence and the denial was accepted.

It is true that at the first instance court the defendants refused to have the lawyers but at the appeal stage Sh. Ramishvili and D.Kokhreidze asked for the lawyers Gocha Svanidze and David Korkotashvili. They had this right according to the article 78 of the Georgian Criminal Procedure Code which says that the defendant has the right to change his mind and ask again for a lawyer with the agreement. Such a request should be fulfilled if inviting the lawyer does not delay the court process or does not impede with other participants.

Coming from the above said the right of the defendants to defence was restricted and this right is guaranteed to them by the Georgian Constitution, international agreements and widely accepted principles and norms of the International Law. (Human Rights Universal Declaration; International Pact of Civic and Political Rights, European Convention on Human Rights and Main Freedoms).

The Public Defender addressed the Secretary of the Judicial Council about imposing disciplinary responsibility on judge Nana Chichileishvili.

I must mention that there is a certain progress in execution of court decisions but general situation is still bad. By the information of the second half of the past year the execution of the court decisions was 38% and execution of court decision won against the government was only 4%. The situation slightly improved after September of the past year and from September to July 1st of the current year total percentage of execution of court decisions went up to 46%. As for the cases won against the government, according to the number of cases the execution of court decisions is 24% though this is only 7.5 % according to the paid off amounts. It means that in the indicated period 3 million 800 000 GEL was paid off and 46 million GEL is still to be paid off. I want to mention here that Georgia lost 3 cases at the European Court of Human Rights on failing to execute court decisions. When adopting the budget the Government of Georgia and the Parliament should take into consideration the amounts that need to be paid off to execute court decisions. I think the state budget at present is capable of paying off 46 million GEL.

Fight against juvenile delinquency and prevention of juvenile delinquency should be one of the priorities of the state. At present the Government is carrying out repression policy as a preventive measure which to my mind needs to be changed by rehabilitation policy.

A clear example of the government’s repressive policy against juvenile delinquency is Giorgi Z-s case who was sentenced to 10 years of imprisonment for attempted deliberate murder. By the conclusion of the forensic medical analysis the extent of the victim’s injury is evaluated as less grave.

On April 28, 2006 part 4 of article 83 of the Georgian Law on Imprisonment was amended. The right to unlimited visits of juvenile prisoners by family members and long monthly visits by relatives was abolished.

By the amendment a juvenile prisoner has the right to a 1 hour visit 4 times a month (instead of 3 hours) and long visits 4 times a year.

The above said contradicts the reform strategy of the Criminal Code of Georgia which establishes principles of individual approach and re-socialization of prisoners, also considers as main principle of the rehabilitation the prisoner's contact with his family members and close relatives through long and short visits. This does not concern only the juvenile prisoners but it is a fact that we need to be more attentive towards them.

Prisoners' contact to the outer world helps to their rehabilitation-reintegration in public which is very problematic in regard to juvenile prisoners. The international community pays a lot of attention to the implementation of human rights defence of juvenile and a number of international documents, among them: UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); UN Standard Minimal Rules for the Administration of Juvenile Justice (The Beijing Rules); UN Guidelines for Protection of Juvenile Prisoners. These international documents point out the importance of the right of juvenile to regular and frequent visits.

We think that the above amendments in the Georgian Law on Imprisonment will have a negative effect on psyche of juvenile prisoners and the rehabilitation and the re-socialization process which is the initial goal of the punishment.

I want to talk about one particular case of domestic violence which is described in the report. This is the case of a parliamentarian Giorgi Chakhvadze and his former wife Eteri Chumburidze which to my mind has turned into another challenge of the Georgian justice. This case is being studied by the office of the Public Defender since September 2005 based on the written appeal of Eteri Chumburidze.

I was in Tskhinvali region together with the State Minister Giorgi Khaindrava on May 29 of the current year where we studied incidents of May 27 and 28 which took place in the conflict region. I personally met with the victims from both sides.

On May 27 about 8 young citizens of village Achabeti went to Kintsvi church through Tskhinvali. They were stopped by Osetian law enforcers and were taken to the local security office. The arrested Georgians were questioned and asked for testimony. The Georgians declare that the Osetian law enforcers did not assault them physically or verbally and the deprived private items were returned to them as well.

In 2 hours masked special force people arrested more than 40 Osetian citizens and brought them to Gori police station. These people were arrested at different places: Mtsire Liakhvi gorge, close to village Eredvi, Ergneti and other villages of the same region, village Kekhvi of Didi Liakhvi gorge. Their documents were checked and a few of them (10-12 persons) were physically assaulted. According to the victims they were severely beaten up at Gori police station by strangers who had come especially from Tbilisi while Gori police people treated them well and even tried to help.

The following day, May 28, at about 8 o'clock armed uniformed people stopped a minibus in Prone gorge. Local people Iuri Tkemaladze, Xazbe Chavchavadze, Ilia Toroshelidze, Vanda Giguashvili, Darejan Chavchavadze, 3 months old Zaur Chavchavadze and 2 years old Giorgi Chavchavadze were in the mini bus. The uniformed people severely beat up the passengers with guns (men) took their IDs and mobile phones and after 30 minutes let them go. The victims identified among the attackers brothers Gazeaevs living in village Gverteti (so called "Khetaga guys") who by the declaration of the citizens of village Tsuli robbed and terrorized the Georgian population.

We collected these materials and forwarded them along with our recommendations to the Prosecutor General's Office for reaction. As for the action of the Georgian law-enforcers, to my opinion, this was a violation of human



rights and freedoms, deliberate illegal arrest, torture and inhuman treatment. Especially alarming is that all the arrested were ethnic Osetians which means that the only reason for the arrest was their ethnic origin.

Based on the information collected by us on June 21, 2006 Shida Kartli Prosecutor's Office started investigation on the case of deliberate and illegal arrest of 48 ethnic Osetians (part 1, article 147 of the Georgian Criminal Code). We have not received any information about carrying out investigation or revealing and punishing responsible people for the above incident.

I want to say a few words about eviction of the refugees from hotels and sanatoriums in Adjara Autonomous Republic.

We studied the case and made the conclusion that the refugees were legally living in these buildings. According to the law eviction was possible only by the court ruling or agreement or allocating other living space for them of equal condition.

In case of the court decision the eviction should have happened by means of the execution department and the execution police. The Internal Affairs Department took this function illegally and forced out the refugees from the buildings with the help of the special forces and criminal police by the supervision of the head of the main department of Adjara Internal Affairs.

The representatives of the main department of Adjara Internal Affairs did not have the right to participate in refugee eviction process. Subsequently this action is a crime according to the Article 333 of the Georgian Criminal Code-abuse of power.

I forwarded the material of this fact to the office of the Prosecutor General to initiate a preliminary investigation.

I want to underline that I understand very well how important is big investment for the country and the creation of new jobs and the development of tourism but this policy should not be implemented based on ignoring the law and violating the human rights, and in this case, violating the rights of the refugees.

The President of Georgia issued a decree #173 on February 26, 2006 about introducing extraordinary situation in Khelvachauri Region. According to this decree the population of Khelvachauri region was deprived of their possession-poultry. Georgian organic law on "rules about depriving private possession out of immediate necessity for the public need" stipulates that in case of the similar necessity the possession is evaluated according to the market prices and its cost is paid off to the owner before the deprivation. We addressed the Prime Minister with a request to observe the law in this regard but the population has not been paid the cost of their possessions yet.

I want to mention the fact of an assault of a soldier Giorgi Sharikadze. On May 31, 2006 Private Giorgi Sharikadze from the 4th infantry brigade of the Ministry of Defence was taken to Tbilisi Clinical Hospital. The patient had numerous injuries and could not talk. The doctors found closed trauma of brain, closed traumas of abdomen and chest, bruises and excoriations in different parts of the body. He declared that he was beaten by the sergeants and the privates because he reported to the investigator about the fact of the assault and named the assaulters. (He was forced to sit on the chair and his hair was shaved off partly, he was beaten up in the face, right shoulder, he was cut on the stomach with a knife and his money was stolen).

Giorgi Sharikadze was beaten up 5 times before this incident. The first reason was that he was refusing to wash the soldiers' socks and clothes. According to Sharikadze he ended up at a military hospital few times as a result of the physical assaults.

During the investigation he identified particular people (sergeants and a soldier with a nick-name “svan”) but the investigation did not identify them as suspects and did not arrest them.

On May 3, 2006 Bagrat Kiria, a representative of the Public Defender was not admitted to 10144 military unit in Senaki despite the fact that he was a representative of the Public Defender. There was a posted act at the duty officer's room issued by the head of the headquarters D. Shvelidze which listed the names of the ranking officials who had the right of access to the territory. This act contradicts the requirements of point a), article 18 of the Georgian Organic Law about the Public Defender. I addressed the Minister of Defence with a recommendation for administrative punishment of the duty officer Zaza Berianidze and for amending the above act but have not received a reply yet.

In the second half of the last year we continued monitoring the police. We conducted 961 visits in the reporting period (1763 visits during one year) and registered 1147 violations and complaints about violations (more than 1800 during the year). Besides private meetings and conversations with the arrested people the monitoring group members were checking registry books of arrested people and general situation in the pre-trial detention units. I must mention that the situation in most units is unbearable and arrested people should not be placed there even for a short while. For example Kaspi pre-trial detention unit has water up to the knees in rainy days.

During the monitoring arrested people were examined and questioned at the pre-trial detention units. In case of an obvious law offence, visible injury or other doubtful circumstance the monitoring group members first asked for an explanation from the policemen and afterwards they asked the victims for written explanation reports.

In total the facts of assault and torture of the arrested have significantly decreased and the situation with the Georgian Police in this respect has improved. But using excessive power at the moment of arrest remains a problem. Reactions to the facts of violations discovered by us and especially to violations requiring disciplinary punishment were not always adequate but in general the monitoring had good preventive effect.

I must draw your attention to the fact which took place in Poti. I was in Poti on March 8, 2006 with the purpose of monitoring the Poti psychiatric hospital together with the monitoring team members. The local journalists complained to us that Poti police raids were systematic. According to them the policemen behaved like bandits, stopped citizens or transport means and pedestrians and assaulted and threatened them with weapons etc. According to them the actions of the police reminded the local people of the raids by “Mkhedrioni”. The journalists showed me articles published on this topic and asked me to react. I could not believe what I read and heard and thought that the journalists were exaggerating the facts. The same evening at the cross roads of Maltakva we came across the special task force of the Ministry of Internal Affairs and criminal police people. They had created a block-post and were stopping the people and searching them. Some of the policemen did not wear uniforms, did not have IDs or identification badges, only weapons. I addressed the general inspection of the Ministry of Internal Affairs with a recommendation to impose administrative punishment on those policemen who violated the law. According to the answer from the general inspection the facts of disciplinary offence were not confirmed but such facts were very obvious.

The incident of the beating of Revaz Tsalani happened on August 10, 2005 in the reporting period but the public and we learned about this fact only this year. According to the explanation report of the victim 3 special force members beat him up: Malkhaz Tsiklauri, Tariel Pruidze and Solomon Khorbaladze and inspector-investigator of Mestia Internal Affairs Department Temur Chikovani. In the private conversation with the representative of the Public Defender the representatives of Mestia Internal Affairs Department and the current head of the local police Giorgi Samarganashvili confirm the fact of assault but at present only Temur Chikovani is arrested.



We took explanation reports from 6 persons and revealed the offence not only by the police but also negligence by Mestia Prosecutor Guliver Gurchiani.

In the report of 2004 I spoke about the fact of assault and torture of Khvicha Kvirikashvili by the representatives of the 3rd division of Gldani-Nadzaladevi Internal Affairs Department on May 22, 2004. The court revealed that he was beaten at the police station and afterwards in order to conceal the crime was released on May 23. He died 30 minutes after the release. The court ruled a strict reprimand for the 2 policemen in regard to this case and the third-Roland Mindaze was arrested for 6 months and released afterwards.

After the report the investigation on this case was resumed at Tbilisi Prosecutor's office. Preliminary investigation was launched on the fact of abuse of power by police inspector Roland Mindaze on May 22, 2004. He used force against suspect Kvirikashvili and caused him slight injuries on the forehead. With the purpose of concealing this fact without any resolution he illegally released suspect Kvirikashvili on May 23, 2004. The latter died in 30 minutes after the police delivered him home. Afterwards Minadze falsified documents and evidence; in particular he created a document about release of Kvirikashvili on May 22 at 12 midnight. In reality the latter was released early in the morning on the 23rd. He also falsified a signature on resolution of acknowledging E. Bliadze as a victim and made his interrogation report without his presence and falsified his signature.

Tbilisi city court sentenced in absentia Roland Minadze to 4 years of imprisonment.

The applicant indicates that Roland Mindadze is illegally arrested and the responsibility for this crime should lay on the head of the 3rd division of Gldani-Nadzaladevi district Internal Affairs Department and the head of the criminal police because the investigation was carried out under their supervision. By the declaration of the wife of Khvicha Kvirikashvili Roland Mindadze was not guilty and she asked for his release at the court. At the same time Khatuna Kvirikashvili was asking for revealing those people who caused physical injuries to her husband.

On July 14, 2001 arrested Temur Mikia died in Poti. By the initial official information he was caught on the fact of robbery by Poti Transport Police. The arrested was moved the same day to Poti Internal Affairs Department. He jumped from the window attempting to escape from there and died.

His family believes that he was illegally arrested and was tortured with the purpose of getting information from him and then was thrown out of the window to hide the crime.

On July 15, 2001 a preliminary investigation was launched on the fact of bringing Mikia to the condition of suicide but no policeman was arrested and no one was accused.

I addressed the Speaker of the Parliament with a recommendation to create an investigative commission. The commission was not created but the Parliamentary Committees on Human Rights and Legal Issues held hearings on this case and the investigation of the case was carried out fast.

Murtaz Migineishvili was arrested on March 2005 for illegal and deliberate arrest, abuse of power and falsification of evidence (at the moment of the incident he was the deputy head of the criminal investigative office of the department of internal affairs of Poti). Marlen Smagin was arrested for official negligence (at the moment of the incident he was the head of criminal police of the Internal Affairs Department of Poti). Policemen Shota Beraia, Emzar Sarsania and Kote Kharebava were accused of falsification of evidence.

Currently Poti city court is reviewing the case.

From the start of the preliminary investigation many violations were made which caused the delay of the case and brought it to a dead end. The investigation was not fairly carried out. It was obvious that the procuracy was protecting the offenders. The procuracy did not approve a number of motions from the

victim's side, among them conducting investigation experiment and forensic examination to verify existence of particles of glass and wood on the clothes of the victim.

As a result, because of the ranking officials from the prosecutor's office and the internal affairs department a number of policemen and officers avoided criminal responsibility.

On March 13, 2006 there was a turning point in the investigation because of the Poti city court ruling. The court put aside the interrogation protocols by the former head of Poti Internal Affairs Department T. Sajaia and other related materials from the case file and submitted them to the prosecutor's office for the investigation.

Based on the court ruling the General Prosecutor's office initiated an investigation and arrested T. Sajaia, head of human resources office of Tbilisi Main Internal Affairs Department and other policemen (Jgamadze, Lipartia, Shurgulaia and Sikhuashvili).

Despite this fact, there are still unanswered questions about this case; in particular, like in the case of Amiran Robakidze, law offence by the number of police and procuracy officials needs to be revealed who for years tried to conceal the offenders.

As for Sandro Gvirgvliani's murder and the court case I will talk more about it in my next report but I must mention that personally I don't believe the investigation version that Akhalaia and others quite by chance met Sandro Gvirgvliani at the restaurant door and overheard Gvirgvliani cursing Akhalaia and others and because of that they took him and Bukhaidze to the forest, assaulted, tortured and left them to die. Even if this version was true this would not be one criminal story, the fact that the officials of the Internal Affairs Ministry behave this way is a serious political problem for the whole country and makes us wonder if this is a rule of law country and whether adequate people hold responsible positions at the law enforcement structures.

A few serious evidences appeared at the court which makes us doubt this version, in particular the fact that the security guard of the restaurant did not notice anything at the door and the fact that Bukhaidze denies any conflict with Alania or other accused. These are enough evidences to doubt the above version.

And lastly there are many facts that the former head of the information and public relations department at the Ministry of Internal Affairs Guram Donadze was systematically violating human rights, acted very rude, insulted journalists and violated the law among them administrative code. Despite all that and despite the recommendation of the Public Defender Doandze resigned from his position based on his resignation letter and was not dismissed on the facts of the violations. I won't draw your attention to the fact that this causes a doubt of his participation in ordering the crime and falsification of Robakidze's evidence.

As for the right to ownership, I can not avoid mentioning the case with "Shin Hoper". The whole Georgia knows about this case and I won't go into the details. I will only say that this was an investor who was going to invest 18 million Euros and employ 3000 people. Big investigation is not needed for this case. If it is true that the research conducted in Georgia concluded that the products by Shin Hoper were health hazardous then why are these products on sale in our country. And if this is not so then why the responsible people were not punished who caused such problems to this company and put our country in a scandalous situation. The scandal began—months ago and the investigation still does not have an accused person and this is the case which is under the personal control of the President of Georgia. The Prime Minister of the country promised his European colleague that the justice would be restored.

On this background it is clear why those officials are not punished who created problems to Gori farmer Nodar Maisuradze who has a land under lease in village Khviti and whose crops were collected by a stranger



twice already. Gori police was very calm observing this situation!!! The farmer was arrested illegally with the purpose of depriving him of his property and because his offence could not be proved he was released!!! His case got for the third time in the report of the Public Defender, but despite this no one is punished on this case, neither the immediate performer nor the one who ordered this. Personally for me the case of Nodar Maisuradze is another test as to how we build our country: we build the rule of law country or the country where any offence of a ranking official will remain unpunished if it has political support.

One of the priorities of the Public Defender's administration is to control police activities, to reveal human rights violations and to react to them.

Reaction to human rights violations is based on the information of monitoring as well as on applications received from the citizens.

It must be generally noted that in the recent period instances of beating and torture of arrested at the police stations have abruptly decreased. Beating and torture, which was traditionally part of unofficial investigation by police is rare now, but adequacy of use of force by the police at the process of arrest is a problem. Often police uses excessive force when there is no need for it.

The Public Defender's administration informs the respective authorities about such incidents. The Monitoring Council over police activity operates at the Public Defender's administration. The Council, based on protocols of human rights violations created at the Internal Affairs agency in 2005, sent a notice from the Public Defender's administration to the General Prosecutor's Office and the Ministry of Internal Affairs about human rights violations of 392 arrested. 146 arrested had signs of physical injury. 46 of them were injured during the process of arrest, among them 26 have made a claim about physical pressure by the police.

Based on applications an investigation was launched on 29 cases of human rights violations (injuries as well as other procedural violations). 7 cases are under in-

vestigation at this stage and the investigation of 22 cases was terminated due to absence of evidence. The Prosecutor's Office sent protocols of 16 arrested to the court for inclusion in the case file. So far there is no private ruling made on any of these cases.

By the information of the Department of Corrections for 9 months in 2005 (unfortunately we have not yet received information for 3 months: January April and May) among the prisoners brought to the penitentiary facilities 604 had signs of injury, 196 of them claimed that they got the injuries at the process of arrest and at the pre-trial detention centre.

Below are few cases of human rights violation by the police (beating, torture, inhumane treatment, illegal arrest, etc).

On February 24, 2004, the representatives of Rustavi Internal Affairs Department arrested David Japar Ogli Japarov. First, they beat him during the process of arrest

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and later at the police office. Information about this occurrence was submitted to the General Prosecutor's office for study. The latter informed the Public Defender that Kvemo Kartli district prosecutor's office was investigating the case within paragraph 1, article 333 of the Criminal Code of Georgia (misappropriation of power). Akaki Gurgenidze's case is similar. The representatives of Isani-Samgori Internal Affairs Department caused severe physical injuries to him. According to the information of Isani-Samgori district prosecutor's office, the case is under preliminary investigation within paragraph 2, 144¹ of the Criminal Code of Georgia (torture).

Lawyer Nino Robakidze addressed Kutaisi Regional Department of the Public Defender's administration stating that she was defending interests of accused Temur Chelidze who was arrested based on testimonies of Giorgi Mikeladze and Temur Vanadze. They are juveniles and claim that they gave evidence at the police station under pressure.

Concerning the above, the representatives of Kutaisi Regional Department asked Giorgi Mikeladze, Temur Vanadze and Chairman of Zoti Village Council Omar Antadze to write an explanation report.

Through the report, it became clear that on August 30, 2005 at 6 a.m. Chokhatauri Police arrested in the village Zoti, Temur Vanadze, resident of village Zoti, born 28.08.1988 and Giorgi (Jemal) Mikeladze, resident of village Buknari, born 02.02.1986 who was visiting his grandfather's house at the moment. They were taken to Chokhatauri police office.

According to the arrested, they underwent physical and psychological pressure. According to Giorgi Mikeladze, police officers beat him at the police office. By Temur Vanadze's explanation, police officers psychologically pressured him. According to them at the moment of arrest police officers did not explain to them the reason of the arrest or for what they were suspected. They claim that they were illegally arrested and detained for 3 days (September 1-3). Afterwards they were moved to a pre-trial detention facility.

Based on the analysis of the information by Mikeladze and Vanadze signs of offence within article 144', 144'', 144''' of the Criminal Code of Georgia are obvious as well as violations of provisions of number of articles of the Criminal Procedure Code of Georgia (73, 142, and 145). We reviewed arrest reports of these persons and they do not state the reason of arrest.

Collected material was submitted to the Regional Prosecutor of the West Georgia Mikheil Chogovadze with the purpose of initiating a preliminary investigation. We have not received any response yet.

Zaal Akobia was arrested in Zugdidi at his own house on April 18, 2005, and according to him, he was taken to the police unit of special operations at Kedia St. According to Akobia, everyone there wore masks. They beat him during the process of arrest, transportation, and at the police office. "At the beginning I was on my feet but afterwards I fell down, while beating me they filled my mouth with tissue to prevent me from crying. Afterwards they put a gun into my mouth and forced me to sign a "confession"; they threatened to fabricate a new case against me if I would manage to get away with this matter". Zaal Akobia was trying to prove that he was innocent of Jemal Narmania's murder and said that he would commit suicide if he would fail to prove his innocence. The same evening he was moved to Samegrelo-Zemo Svaneti regional police. According to him, he met with his lawyer for the first time on April 19. Vakhtang Guchua was arrested together with him.

Forensic medical expert Roin Petelava examined Vakhtang Guchua and Zaal Akobia on April 27, 2005 and found bruises and scratches on their bodies. According to him, these slight injuries were caused by a blunt object.

Both of them were released on July 16, 2005 and all charges were lifted. They were charged with premeditated murder with aggravated circumstances. Vakhtang Guchua was also charged with illegal carrying of weapon.

The representatives of the Public Defender in Samegrelo-Zemo Svaneti visited Z. Akobia and V. Guchua right after their arrest and later arranged a meeting for Human Rights Watch representatives with them. The Public Defender appealed to Zugdidi Prosecutor's office with a recommendation to initiate a preliminary investigation based on claims of torture and inhumane treatment of Zaal Akobia and Vakhtang Guchua. Zugdidi Prosecutor's office launched a preliminary investigation on October 3, 2005. Former representative of Special Operations Department of Abkhazian Division of the Ministry of Internal Affairs was arrested on November 1st "for misappropriation of power" (article 333, Criminal Code of Georgia). The preliminary investigation determined that police officers filled Zaal Akobia's mouth with tissue to prevent him from crying aloud; afterwards one of the officers, who are accused now together with three other police officers, physically assaulted him in order to get a confession from him.

Monitoring of internal affairs department of Mtatsminda-Krtsanisi district revealed that patrol police had arrested Irakli Mzareulashvili though an arrest report was not made neither at the time of arrest nor at the police office. By the recommendation of the Public Defender Tbilisi Prosecutor's office an investigation was initiated on the illegal arrest of Irakli Mzareulashvili within paragraph 1, article 147 (deliberate illegal arrest or detention).

The Public Defender's administration received an application from Mikheil Jmukhadze and Maia Papelashvili, the lawyers of defendant David Kbiltsetskhlashvili. According to the lawyers' application, the defendant was accused within subparagraph "c", paragraph 1s and 2n of the article 178 of the Criminal Code of Georgia.

The case had as main evidence a telephone message of a witness Nino Chikovani, interrogation report of a witness, confrontation protocol between the accused and a witness, identification protocol by N. Vartanova of accused D. Kbiltsetskhlashvili.

N. Chikovani and T. Chikovani describe in their explanation report addressed to the Public Defender that the police and the victim's grandmother rendered systematic pressure on her and her sister Tsiuri Chikovani. In particular, they asked them to name any person who committed the crime otherwise; they would be arrested as accomplices. According to Nino Chikovani, under psychological pressure she was forced to call the police office and later identify D. Kbiltsetskhlashvili as an offender in her interrogation report and at the confrontation between the witness and the accused. N. Chikovani's letter to the lawyers of D. Kbiltsetskhlashvili states the same. She denied the testimony she had given explaining that she was forced to do it.

Concerning the above-said, the administration of the Public Defender sent a letter to the Prosecutor's office of Gldani-Nadzaladebi district, the latter replied back that D. Kbiltsetskhlashvili's case with indictment was submitted for substantial hearing to the panel of criminal cases of Tbilisi city court.

The Public Defender's administration reviewed Giorgi Javakhishvili's letter explaining that the representatives of Telavi Internal Affairs Department tried to get testimony from him under physical and psychological pressure. In particular, he was forced to admit cutting down the neighbour's vineyard. He was forced to confess under pressure. In connection with this, the Public Defender applied to the General Prosecutor's office to start a preliminary investigation. As a result the preliminary investigation was launched within paragraph 1, article 333 of the Criminal Code of Georgia (exceeding power).

I want to say a few words about the facts of human rights violations by police officers mentioned in my previous reports.

Gldani-Nadzaladevi police arrested Khvicha Kvirikashvili on May 22, 2003 who died the following day after returning home. He had signs of torture on his body. Criminal proceedings were initiated based on this evidence but it ended with a strict reprimand for two police officers Jemal Sanaia and Pavle Tatunashvili and



6 months detention for the third police officer Roland Minadze who was released afterwards. I spoke about it in my parliamentary report in 2004. After the report, the circumstances changed and the investigation continued against Roland Minadze. The court made a decision within article 369 (falsification of evidence) and article 341 (official fraud), and within paragraph 3, article 333, Criminal Code of Georgia (exceeding power). The case is appealed.

After my parliamentary report in 2004, circumstances changed regarding A. Robakidze's case who was murdered by patrol police officer G. Vashaleishvili. On November 23, 2004, patrol police officer Grigol Vashaleishvili murdered citizen A. Robakidze by firing a gun in Didube district. In the beginning, criminal proceedings were initiated against the persons accompanying Robakidze. Two of them were under arrest during my reporting in April 2005. We expressed doubts about the version of the investigation and expressed concerns that it was deliberately misled to save trust for patrol police. After the report of 2004, the investigation changed its version and G. Vashaleishvili was prosecuted. The case is being heard by the court.

L. Levidze, senior inspector of the first division of the main department of criminal investigation of the Ministry of Internal Affairs misappropriated his power and violated provisions of paragraph 1, article 245 of the Code of Administrative Infringements of Georgia. On December 18, 2003, L. Levidze conducted an administrative arrest of Giorgi Inasaridze without verifying if he was really under the influence of drugs and did not inform Inasaridze's family about his arrest. Inasaridze was searched at the place of arrest and white powder and a mobile phone were removed from him. He was not allowed to call his family from this phone. It was sealed together with the white powder. Afterwards L. Levidze committed official fraud by entering false data in the arrest report. He wrote that Inasaridze's brother was notified of the arrest. The same day at 6 p.m., Inasaridze was moved to the Ministry of Internal Affairs where L. Levidze again exceeded his power. In particular, instead of verifying whether Inasaridze was guilty of being under the influence of drugs by immediately taking him to the institute of drug abuse he brought him to the Ministry of Internal Affairs. He took explanation reports from Inasaridze and from the witnesses of the search and only afterwards took him to the institute of drug abuse. Clinical examination confirmed that Inasaridze was indeed under the influence of a drug.

After the examination instead of arresting Inasaridze, L. Levidze deliberately kept him at the Ministry of Internal Affairs where he assaulted him physically and caused him injuries. On December 19, 2003, Didube-Chugureti district court sentenced him to 10 days of administrative imprisonment and he was placed at the temporary detention facility of the Ministry of Internal Affairs. On December 20, 2003 at 9 a.m., Inasaridze was found hanging from the second tier of the double tier bed with a fabric loop around his neck.

L. Levidze was found guilty of violations of the provisions within subparagraph "b" of paragraph 3, article 333 and article 341 of the Criminal Code of Georgia (exceeding power and official fraud) and was sentenced to 6 years of imprisonment.

The sentence was appealed and criminal law chamber of the Supreme Court (Chairman D. Sulakvelidze) by ruling of March 2, 2006 amended the court decision, in particular qualification of the offence changed to official negligence and L. Levidze was sentenced to 1 year and 9 months of imprisonment. I believe that by the decision of the Supreme Court the police officer avoided punishment, though he was guilty of actions that sacrificed a human life.

By the information of the General Prosecutor's office of Georgia from June 1 of 2005 to March of 2006, 10 cases were under preliminary investigation against law enforcers within article 332 of the Criminal Code (abuse of power); 73 cases within article 333 (exceeding power); 5 cases within article 335 of the Criminal Code (forcing to give explanation report, testimony or conclusion); 3 cases within 342 article of the Criminal Code (official negligence); 29 cases within article 144¹ (torture); 1 case within 142² article of the Criminal Code (official negligence).

nal Code (threat of torture); 4 cases within 144³ article (humiliating or inhuman treatment). 15 persons were prosecuted for 10 criminal cases and court hearings were held on 5 of them.

By today's information, 56 criminal cases are under preliminary investigation and preliminary investigation of 64 criminal cases are terminated.

It must be noted that often persons who were physically assaulted or inhumanly treated at the moment of arrest or afterwards, change their testimony and deny these claims. It is because they are afraid that their cases may get aggravated during the investigation process, which is a weapon of psychological pressure for law enforcers.

We welcome the fact that the work is carried out on modifying standards of using force at the process of arrest. This is a very important step to prevent police officers from violating human rights. This will be the second step. The first step is that occurrences of beating and torture of arrested people at the police offices have significantly decreased as a "necessary behaviour" and method of the police.

Recommendations:

- Elimination of torture and inhuman treatment remains the priority for the authorities;
- Ensure adequate protection for those arrested that apply with complaints concerning torture or cruel treatment thus enabling them to apply with complaints without fear of subsequent persecution or vengeance;
- Train the law enforcement bodies staff members in methods of conducting investigations without resorting to torture; also teach them the use of only lawful and proportional methods at the time of detention;
- Ensure permanent bearing of identification insignias by law enforcement staff when arresting, as well as in the places of detention, when entering the penitentiary institutions and when meeting with detainees and inmates.
- Forbid use of masks and other means of concealing identity of police officers. Exception can be made for need of ensuring safety of a police officer. In such cases it is important that every law enforcer including members of special operations unit wear a private distinctive sign, for example private number, by which this person can be identified;
- Create municipal police within the framework of police reforms;

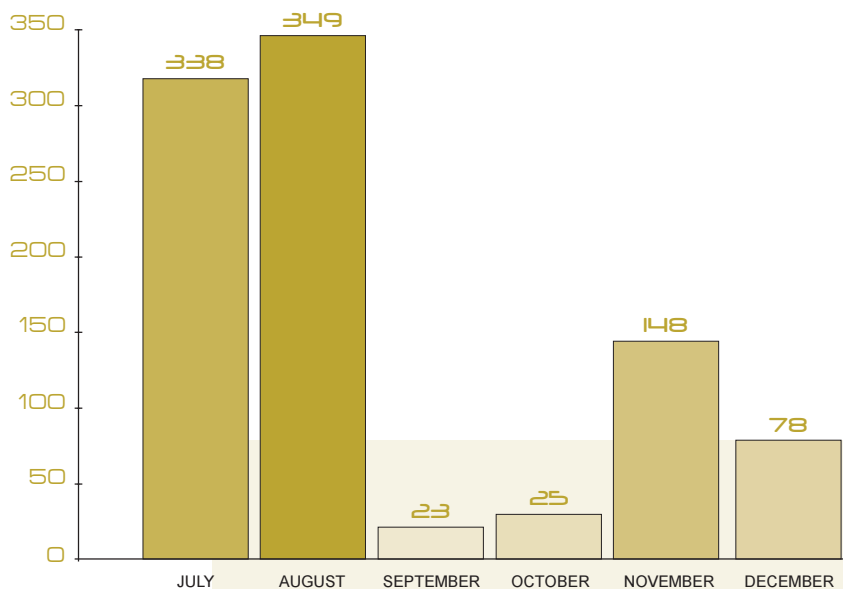
Statistical Analysis of Police Monitoring (July-December 2005)

Department of Investigation and Monitoring at the Public Defender's administration includes a monitoring team. Its main function is to control police activity, to reveal occurrences of human rights violations and to react to them. From January 2005, the monitoring team conducted intensive monitoring of district police offices, sub-divisions and facility of temporary detention, of Tbilisi city department of Internal Affairs. The team practices writing reports on each violation, as a result, information on human rights violations by police is gathered at the research and evaluation centre of the Public Defender's administration on a monthly basis. Data processing makes it possible to reveal problematic issues, discuss and analyze them.

Monitoring teams reveal and react to occurrences of violations of human rights guaranteed by the Georgian Legislation as well as by the International Conventions on Human Rights. When monitoring police pre-trial detention facilities the monitoring teams pay attention to incidents of physical and psychological pressure and other forms of inhumane and insulting treatment conducted by the police. There is a control over fulfilment of procedural norms stipulated in the Criminal Procedure Code of Georgia. Under procedural norms is meant: advising an arrested person of Miranda rights, the right to make a phone call, the right to remain silent, the right of counsel (hiring a lawyer) and its realization, handing a copy of Miranda rights and protocol of arresting a suspect.

From January, the monitoring teams worked at different levels of intensity. Monitoring in January and February was more active than in March and April. At certain stage, the team conducted 24 hour monitoring of police. It aimed at preventing human rights violations by police at pre-trial detention centre. From May, monitoring teams stably increased dynamic of their visits to the police offices. Number of visits in June and July exceed 3 times to the indicator of the previous months. It must be noted that in September and October monitoring was conducted only at temporary detention centre of Tbilisi City Department, as a result the number of visits significantly decreased. From October, monitoring of district police offices and sub-division resumed.

Monthly dynamic of visits of monitoring teams to the police offices



Monitoring teams paid 961 visits to Tbilisi police offices and Tbilisi City Department during July-December of 2005. Maximum number of visits were paid in August - 397, and minimal in September - 23.

As a result of 961 visits to the police paid by Monitoring Council 1147 violations were discovered, among them 1136 cases are human rights violations, which is 99% of the total violations. Number of procedural violations is 11%.

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Monthly dynamic of human rights violations according to the data of Monitoring Team

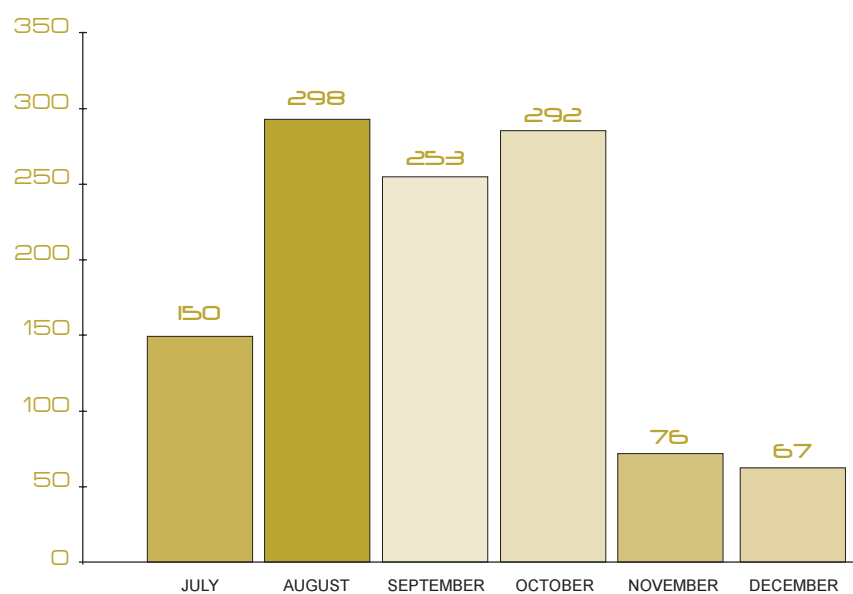
Monitoring Team registered maximum cases of human rights violations in August - 298, minimal in December - 67.

As for police failing to fulfil procedural norms prescribed by the Law, it must be noted that according to the data of March-April practice of mishandling registration book has significantly improved. Number of violations typical to January-February such as incorrect or incomplete registration of an arrested person decreased in April and in July, in August, September, and October such occurrences were not registered any more. Nevertheless, the monitoring team revealed 11 incorrect/incomplete registrations in district police offices in November.

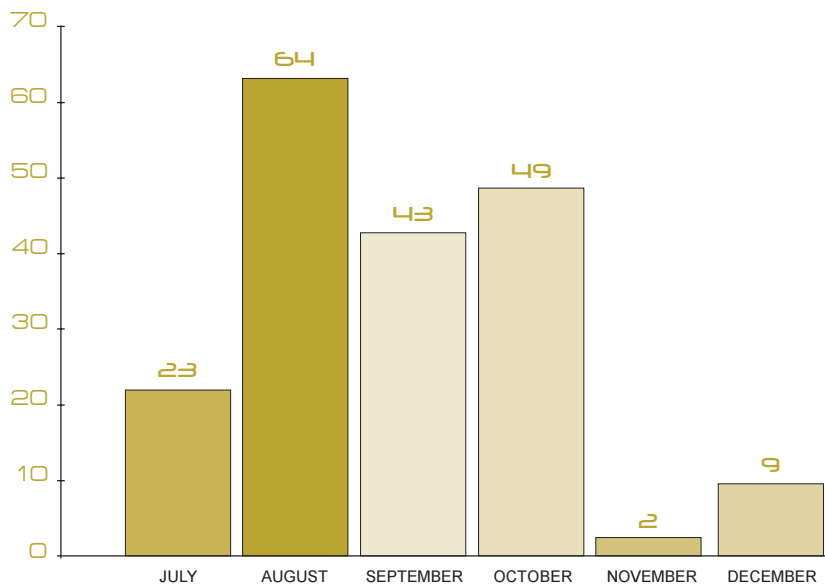
Arrested persons were physically examined and interviewed during monitoring at the pre-trial detention facilities. When discovering obvious law offence, visible injury or suspicious circumstance, the first reaction of the monitoring team was to ask police officers for an explanation, afterwards the team asked the victims to submit a description of the incident in writing.

The monitoring team interviewed 347 arrested, among them 190 had visible body injuries, which is 54% of total number of arrested people. From these 190 persons only 20 claimed occurrences of physical pressure, which is 10% of all arrested injured people.

Maximum number of signs of injuries among arrested was registered in August - 64, minimal in November - 2.



Monthly dynamic of physical injuries



Percentage indicator of physical injuries in the total number of law

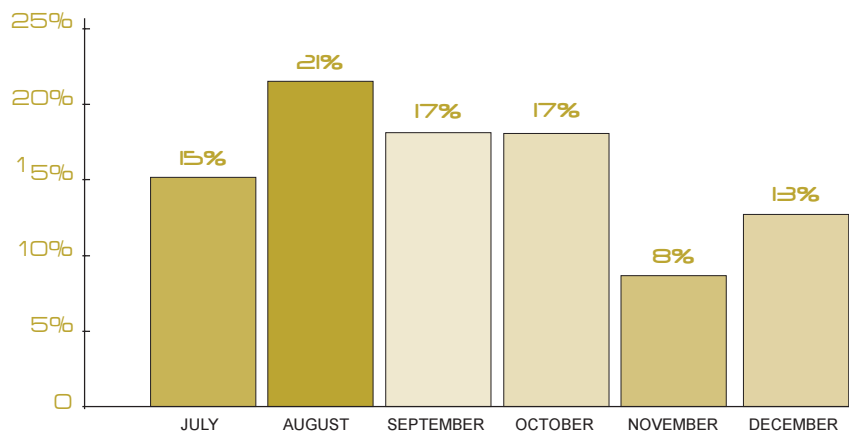
When talking to members of the monitoring team the arrested persons noted that the law enforcers conducted psychological pressure on 20 arrested, 110 were not advised of Miranda rights, 261 were not handed a copy of protocol arresting a suspect, 100 were not advised of the right to remain silent, 178 arrested were not given possibility to use a telephone, 95 were not advised on the right of counsel, 178 were not handed a copy of Miranda rights.

In July-December, monitoring did not reveal incidents of not registering arrested in the registration book.

Monitoring discovered 347 persons at a police temporary detention centre whose rights were violated. Maximum number of human rights violations was registered in August - 99 and minimal in December - 17.

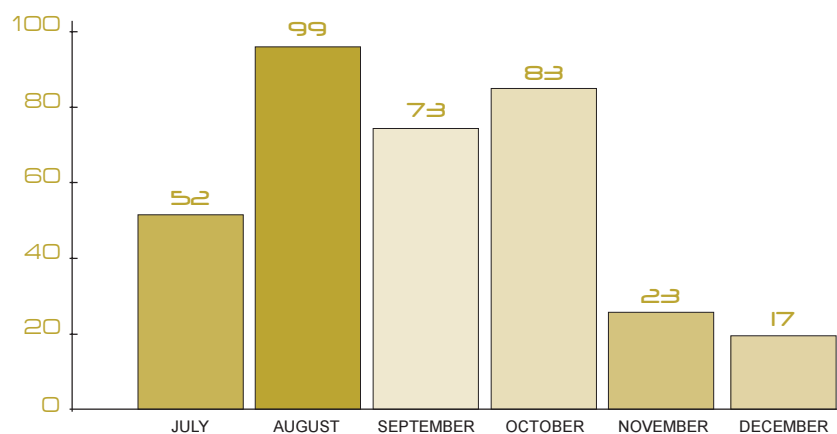
In general majority of those whose rights were violated are men, their number is 266, which is 77% of the total number, 51 women and 30 juveniles.

Among 347 persons, whose rights were violated 60 belong to the national minorities.

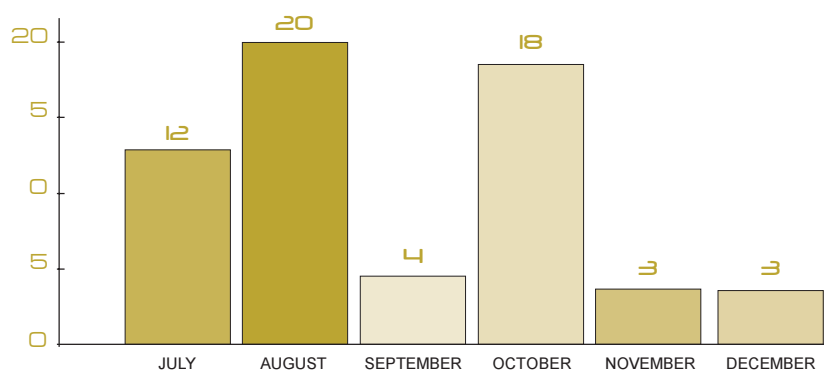


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Monthly dynamic of human rights violation by the information of the monitoring team



Monthly dynamic of representatives of the national minorities among victims



Statistics of violations revealed through monitoring (July-December 2005)

Type of violation	VII	VIII	IX	X	XI	XII	Total
Signs of physical injury	23	64	43	49	2	9	190
Admits physical pressure	9	3	3	4	0	1	120
Admits psychological pressure	7	5	3	4	1	3	23
Was not handed a protocol of arresting a suspect	36	70	61	61	20	13	261
Was not advised on Miranda rights	13	31	22	27	9	8	110
Was not allowed to make a telephone call	32	53	38	39	7	9	178
Was not advised on the right of counsel	12	26	17	24	9	7	95
Was not registered at the registry book	1	0	0	0	0	0	1
Was not advised on the right to remain silent	12	29	19	23	9	8	100
Was not handed a copy Miranda rights	14	20	50	65	19	10	178
Total number of human rights violation	150	298	253	292	76	67	1136

Absence if registry book	0	0	0	0	0	0	0
Presence of two or more registry books	0	0	0	0	0	0	0
Incorrect/incomplete records found in the registry book	0	0	0	0	11	0	11
Did not open doors to all cells	0	0	0	0	0	0	0
Did not open doors to all rooms	0	0	0	0	0	0	0
Policemen resisted	0	0	0	0	0	0	0
Total procedural violations	0	0	0	0	11	0	1
Total number of violations	150	298	253	292	87	67	1147

Plaintiff/victim of human rights violation

Woman	9	9	7	18	4	4	51
Man	42	83	58	60	11	12	266
Juvenile girls	0	0	0	0	0	0	0
Juvenile boys	1	7	8	5	8	1	30
Representatives of the national minorities	12	20	4	18	3	3	60
Representatives of religious minorities	0	0	0	0	0	0	0
The total number for 24 hours	52	99	73	83	23	17	347

Geography (indicate number of offices)

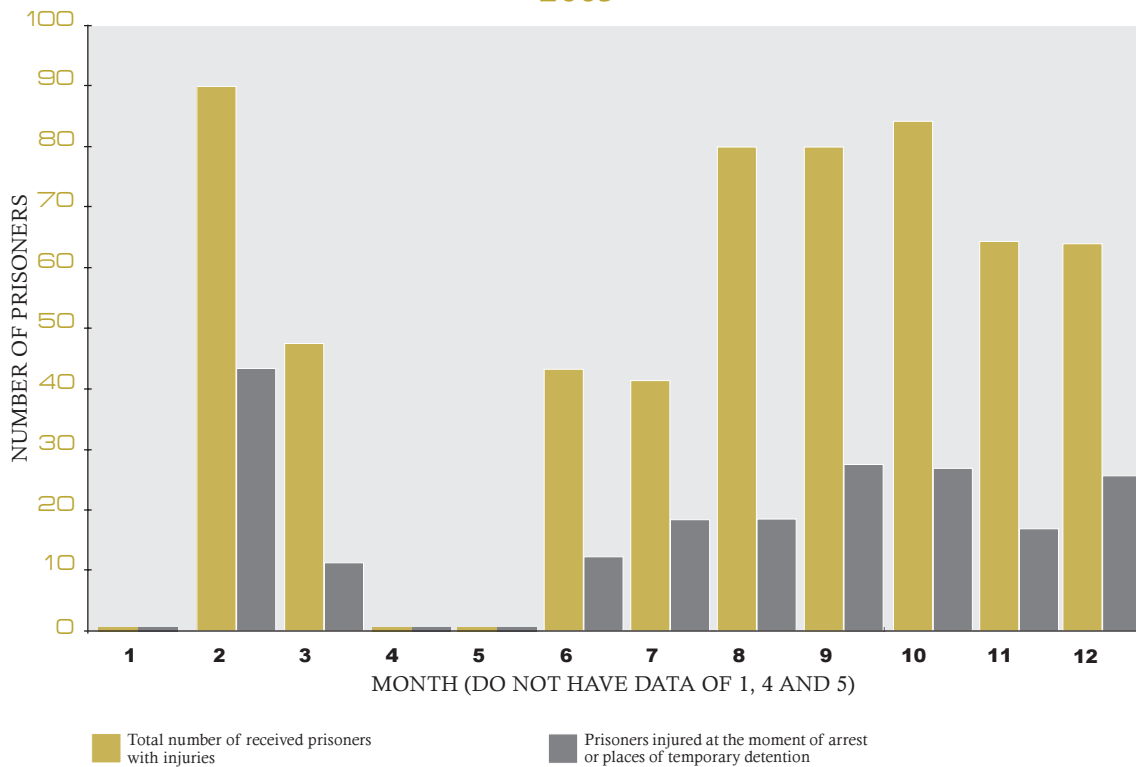
Tbilisi City Department	28	29	16	16	6	5	100
Gldani-Nadzaladevi	87	108	0	0	44	25	264
Didube-Chugureti	47	54	0	0	18	14	133
Vake-Saburtalo	5	59	7	7	18	9	157
Mtatsminda-Krtsanisi	35	29	0	2	17	7	90
Isani-Samgori	84	70	0	0	45	18	217
Total number of offices	338	349	23	25	148	78	961



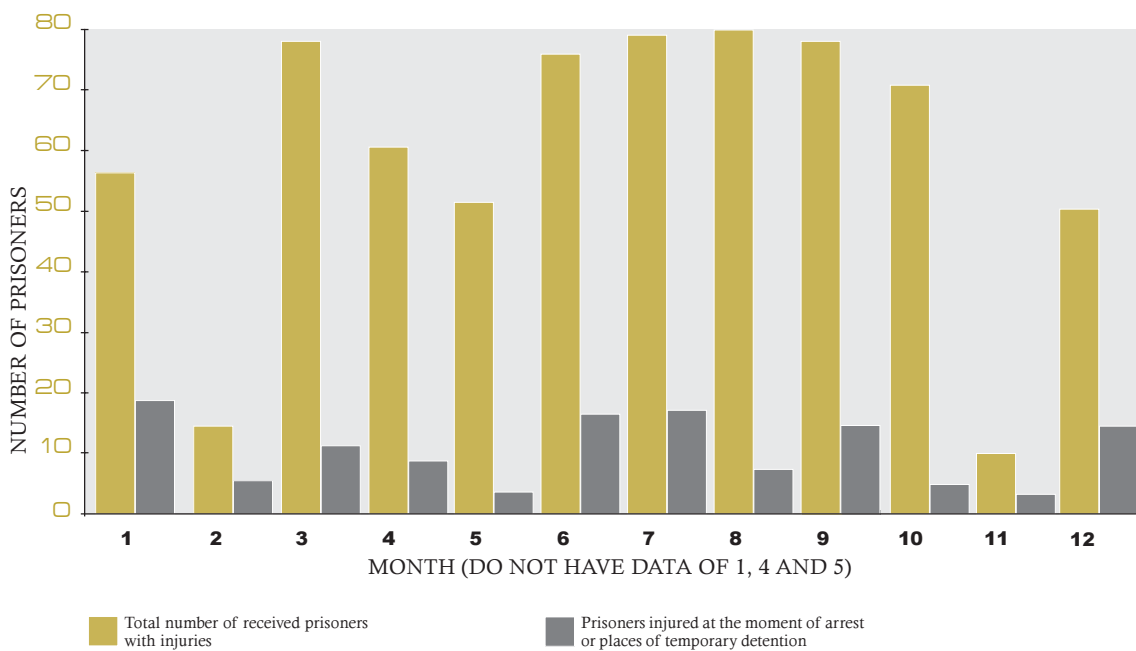
Total monthly statistics of convicts at the department of corrections of Georgia 2005

Month	Total number of injured convicts	Number of convicts injured at the process of arrest or at the temporary detention facility	Percentage indicator of convicts injured at the process of arrest or at the temporary detention facility out of total number of injured convicts	Average annual percentage indicator of convicts injured at the process of arrest or at the temporary detention facility out of total number of injured convicts
January	Department of corrections did not release information			31± 8.7(%)
February	91	43	47	
March	47	9	19	
April	Department of corrections did not release information			
May	Department of corrections did not release information			
June	47	12	26	
July	43	21	40	
August	80	21	26	
September	80	25	31	
October	88	24	27	
November	63	17	27	
December	65	24	37	
Total annually	604	196	32	

Total monthly statistics of convicts at the department of corrections of Georgia 2005



Total monthly statistics of injured convicts at Tbilisi temporary detention centre No. 2 2005



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Total monthly statistics of injured convicts at Tbilisi Department No. 2 of the Ministry of Internal Affairs of Georgia 2005

Month	Total number of injured convicts	Convicts injured at the process of arrest	Percentage indicator of convicts injured at the process of arrest out of total number of injured convicts
January	56	17	30
February	13	6	46
March	79	12	15
April	58	9	16
May	53	4	8
June	(Σ354) 75	16	21 (5*)
July	(Σ325) 77	18	23 (6*)
August	(Σ320) 78	8	10 (3*)
September	76	14	18
October	(Σ368) 64	6	9 (2*)
November	(Σ78**) 7**	3	43**
December	(Σ234**) 52	13	25 (6**)
Annual Total	688	126	18

Σ Total number of convicts per month

* Share of the total number of convicts per month

** Incomplete data

Based on the human rights violations protocols made by the monitoring team at the agencies of the Ministry of Internal Affairs during 2005, the administration of the Public Defender sent an application to the office of the Prosecutor General and the Ministry of Internal Affairs about human rights violation of 392 arrested. Among them 146 have visible physical injuries, 64 of them received these injuries at the process of arrest, 26 made claims about psychological pressure, the rest had injuries before the arrest. Investigation started on the claims of human rights violations of 29 arrested (injuries as well as procedural violations) based on the application. At this moment, 14 cases are under investigation, investigation of 15 cases was terminated due to absence of evidence. The Prosecutor's office submitted 16 arrest reports to the court for inclusion in the case file.

Monitoring of Technical Condition of Temporary Detention Centre

In February-March of 2006 the representatives of the Public Defender monitored temporary detention centres in Shida Kartli (Kareli, Khashuri, Gori, Kaspi); Mtskheta-Tianeti (Dusheti, Tianeti, Akhalgori); Kvemo Kartli (Rustavi, Gardabani, Tetrtskaro, Bolnisi, Dmanisi, Borjomi, Akhaltsikhe, Adigeni, Tsalka) and Kakheti (Telavi, Gurjaani, Kvareli, Signaghi, Akhmeta, Lagodekhi, Dedoplistskaro, Sagarejo). The monitoring aimed to study living and technical conditions in these facilities and reveal violations.

The monitoring revealed that most of the temporary detention facilities are in dilapidated condition, buildings require immediate repair, sewerage, ventilation and heating systems don't work, water leaks in cells and in the investigation rooms, windows are broken, cells don't get heated, arrested often have to sleep on the floor for the lack of beds.

Food is another problematic issue in these facilities. According to the law, a person should not stay at a temporary detention facility for more than 72 hours (48 hours in the status of a suspect and 24 hours in the status of accused). During this time, the State should provide food for the arrested but this is a problem that is not resolved yet.

The Public Defender believes that poor conditions at the temporary detention facilities and poor sanitation affect dignity and violate rights of the arrested.

As for Tbilisi temporary detention centre, after the renovation its technical condition is satisfactory.

Below is the information of technical condition at temporary detention centres according to the regions.

KAKHETI REGION

Telavi temporary detention centre of the Ministry of Internal Affairs:

- 6 cells total
- No ventilation system in cells
- No heating in cells
- Windows have no glass
- Poor sanitation conditions

Gurjaani temporary detention centre of the Ministry of Internal Affairs

- 9 cells total
- No ventilation system in cells
- No heating in cells
- Windows have no glass
- Poor sanitation conditions

Kvareli temporary detention centre of the Ministry of Internal Affairs

- 6 cells total
- No ventilation system in cells
- No water-piping system
- No heating in cells
- Poor sanitation conditions

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Signaghi temporary detention centre of the Ministry of Internal Affairs:

- 6 cells total
- No ventilation system in cells
- No water-piping system
- No heating in cells
- Poor sanitation conditions

Akhmeta temporary detention centre of the Ministry of Internal Affairs:

- 3 cells total
- No ventilation system in cells
- No heating in cells
- Poor sanitation conditions

Lagodekhi temporary detention centre of the Ministry of Internal Affairs:

- 5 cells total
- No ventilation system in cells
- No heating in cells
- Poor sanitation conditions

Dedoplistskaro temporary detention centre of the Ministry of Internal Affairs:

- 3 cells total
- No ventilation system in cells
- No water-piping system
- No beds in cells
- No heating in cells
- Poor sanitation conditions

Sagarejo temporary detention centre of the Ministry of Internal Affairs:

- 4 cells total
- No ventilation system in cells
- No heating in cells
- Poor sanitation conditions

SHIDA KARTLI REGION

Kareli temporary detention centre of the Ministry of Internal Affairs:

- 5 cells total
- No ventilation system in cells
- No heating in cells
- No water-piping system
- Poor sanitation conditions

Khashuri temporary detention centre of the Ministry of Internal Affairs:

- 5 cells total
- No ventilation system in cells
- No heating in cells
- Poor sanitation conditions

Gori temporary detention centre of the Ministry of Internal Affairs:

- 12 cells total
- No ventilation system in cells
- No heating in cells
- Poor sanitation conditions

Kaspi temporary detention centre of the Ministry of Internal Affairs:

- 7 cells total
- No ventilation system in cells
- No heating in cells
- Water leaks in cells and investigation rooms
- Poor sanitation conditions

Mtsketa temporary detention centre of the Ministry of Internal Affairs:

- No heating in cells

KVEMO KARTLI REGION

Rustavi temporary detention centre of the Ministry of Internal Affairs:

- No heating in cells
- No ventilation system in cells
- No system of feeding arrested, they mainly get food from received parcels
- Poor sanitation conditions

Gardabani temporary detention centre of the Ministry of Internal Affairs:

- No heating in cells
- No ventilation system in cells
- No warm blankets
- Poor sanitation conditions

Tetritskaro temporary detention centre of the Ministry of Internal Affairs:

- 4 cells total
- No heating in cells
- No ventilation system in cells
- No warm blankets
- Poor sanitation conditions

Bolnisi temporary detention centre of the Ministry of Internal Affairs:

- 5 cells total
- No heating in cells
- No ventilation system in cells

Dmanisi temporary detention centre of the Ministry of Internal Affairs:

- 2 cells total
- No heating in cells
- No ventilation system in cells
- No warm blankets
- Poor sanitation conditions;

Tsalka temporary detention centre of the Ministry of Internal Affairs:

- 3 cells total
- No heating in cells
- No ventilation system in cells
- No water-piping system
- Poor sanitation conditions

MTKHETA-TIANETI REGION

Dusheti temporary detention centre of the Ministry of Internal Affairs:

- 3 cells total
- No heating in cells
- No ventilation system in cells
- No water-piping system
- Poor sanitation conditions

Tianeti temporary detention centre of the Ministry of Internal Affairs:

- 2 cells total
- No heating in cells
- No ventilation system in cells
- No beds in the cells
- Poor sanitation conditions

Akhalgori temporary detention centre of the Ministry of Internal Affairs:

- 5 cells total
- The cells are useless condition
- The building is amortized

SAMTSKHE-JAVAKHETI REGION

Borjomi temporary detention centre of the Ministry of Internal Affairs:

- 8 cells total
- No heating in cells
- No ventilation system in cells
- No water-piping system
- Poor sanitation conditions

Akhalsikhe temporary detention isolator of the Ministry of Internal Affairs:

- 6 cells total
- No heating in cells
- No ventilation system in cells
- No water-piping system
- Poor sanitation conditions

Adigeni temporary detention centre of the Ministry of Internal Affairs:

- 4 cells total
- Only one cell has beds
- No heating in cells
- No ventilation system in cells
- No warm blankets
- Poor sanitation conditions

Valeri Gelashvili, Khashuri Majority deputy of the Parliament was riding in his car along the left riverbank near restaurant “white house” on July 15, 2005 at 2 p.m. when armed people attacked him. They were 8 men with masks. Bodyguard Malkhaz Tskhakaia and Gelashvili’s cousin Megi Lomidze, director of construction company “Evra” were in the car as well. Gelashvili sustained serious injuries, both his jaws were broken and he had severe injuries on the face. The bodyguard received slight injuries; the attackers did not harm the woman. She was ordered to stay still under gunpoint when she tried to escape. It is known officially that 2 Opel Omega cars crossed the way to the car of the parliamentarian. The attackers took Megi Lomidze’s purse and Gelashvili’s private documents.

Despite the fact, that Gelashvili and his party members exclude the fact of robbery, Levan Berodze, Didube-Chugureti District Police investigator after questioning a few witnesses declared in 1 hour after the incident that it was money extortion. Investigation is working on this version. Most of you have seen on TV Valeri Gelashvili at the hospital that he wore golden chain on his neck, which makes this version doubtful.

On June 14, Gelashvili was riding in his wife’s car because that morning his own armoured vehicle did not start. By the declaration of the opposition party members patrol police stopped Gelashvili’s car on June 13 and checked how many bodyguards he had and what weapons they carried. The victim declared in his interview granted to one of the TV companies that this

was arranged by the special services. He thinks that the incident is related to his interviews broadcasted by TV and published in the papers. He identified one of the attackers as an operative agent of the seventh department of the Ministry of Internal Affairs.

Judging by the statements that Valeri Gelashvili made about the authorities right before this incident suspicions arise that this attack was organized by the authorities. This suspicion has strong grounds because the attack happened during the day in the middle of the city and the case is still not investigated. The State has positive obligation to investigate similar incidents especially if a parliamentarian is involved who is protected by immunity. Law enforcers should do their utmost to timely investigate this case.

Right to Immunity

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Results of Monitoring the Department of Corrections and Existing Problems

Introduction

During the past year and the beginning of this year, the Administration of the Public Defender was systematically monitoring penitentiary facilities under the Ministry of Justice. A number of problems and topical issues were revealed, which needed immediate resolution and we mentioned them in every public speech. For many years until the end of last year, the existing problems remained unchanged and there was no will from the management of the department of corrections to change the situation.

After the Ministry of Justice changed the management at the department of corrections at the end of December 2005, the fight against lawlessness in prisons really started. This is what we insisted on from the Ministry of Justice.

I will briefly list these problems and evaluations. We devoted much

space to this issue in the report of 2004 but the problem remained unresolved until the end of December 2005. In particular, these were three main problems: total corruption, unrestricted and controlled sale of drugs by both the administration and criminal's full control by the thieves-in-law over processes in prisons. Furthermore, control from prison over ongoing processes outside.

The thieves-in-law had complete control over events in prisons, they lived not only in different and luxurious cells, which had open doors, and this was a "golden rule" of a prison, but administered justice inside the prison. Every prisoner was obliged to make monthly payment to the so-called "pot of thieves' money"; whoever failed to pay was severely punished. If anyone violated rules of "world of thieves", they would be severely punished and even sometimes murdered. The murder could never be proven. The administration of the department of corrections would carefully erase traces of crime creating obstacles for the investigation. For example, there are doubts about the death of convict Tsintsibadze. Z. Tsintsibadze was found hanged in Khoni Strict Regime Facility No. 9 on September 30, 2005. Official version is suicide but there are suspicious details about this case, and Tsintsibadze's relatives are sure that he was murdered by the order of the thieves-in-law.

The situation at the Department of Corrections with the new administration changed radically. It started serious and real fight against corruption and spread of drugs in prison. First the thieves-

in-law and then closest persons to them, so called “watchers” were moved away from other prisoners and placed separately in prison No. 7. Now they are under the same regime as other prisoners. This process was followed by a furious resistance from the criminal world. For example, at the end of 2005 and the beginning of 2006 thousands of prisoners went on massive hunger strikes at all facilities of the department of corrections. Many prisoners in private conversations with me declared that they had no wish to be on hunger strike, furthermore, some of them were sick and it was harmful for them to be on hunger strike, but they had to join the others because there still was a so called “watcher” in every cell and no one could go against his wish. Thousands of prisoners had to go on hunger strike for more than 2 weeks. This resistance action was well supported by different campaigns from outside the prison and it had very good media coverage.

The hunger strike stopped because of a few reasons. First of all the prisoners understood that the administration would not make concessions and would not agree to the prisoners’ “innocent offer” to move at least one thief-in-law to the prison No. 5, which would bring everything back to normal and resistance actions would stop and it would be peaceful at prisons for long time. This offer is still valid and if the administration agrees, it would mean that the authorities retreated. Another important factor was that the Patriarch of all Georgia Ilia II addressed the prisoners and asked them to stop hunger strike. The thieves-in-law and the “watchers” could not go against the appeal of the Patriarch.

On the other hand establishing order at the department of corrections and implementing principles of rule of law are often followed by human rights violations, restrictions not prescribed by the law: beating, insulting and treating the prisoners inhumanly. We have information on many such occurrences but we cannot provide documentary proof for all because some of the prisoners avoid talking about it.

I will return to this topic in my report. Before I move on listing particular facts another factor should be taken into consideration: creation of an image for the new administration of the department of corrections that they violate prisoners’ rights, beat, torture, insult and treat them inhumanly, is part of the strategy of the “world of thieves” to fight against the new administration and get back their influence in the system. We were reassured of the reality of this strategy after verifying information. Here is one example, a riot started in Rustavi prison of common regime No.1 on January 29 of the current year. The media still informs that the riot started because of the administration of the department. The media perpetuates the belief, in particular, that the head of the department Bacho Akhalaia together with his companions went to the prison at night drunk, woke up the prisoners, beat, and insulted them. As soon as I got this information, I personally went to Rustavi prison and had private conversations with a few prisoners. I can declare with full responsibility that this information is not true. I will talk more about this incident because it creates a clear general picture:

There were six “watchers” in the facility that traditionally lived in different conditions, separate, well-designed and furnished cells. Bacho Akhalaia and 15 persons with him went to destruct these cells. They entered the territory at night because in case of riot most of the prisoners could have a possibility to avoid participation in it. During the daylight, the “watchers” would better control the prisoners. After the riot started the head of the department and the accompanying people had to leave immediately the territory of the facility. Special operations unit was sent to the facility, which restored the order soon using batons and weapons of rubber bullets.

One of the components of this strategy is causing self-injury and then blaming this on the administration. It is difficult to understand what happened in reality, whether the injuries are caused by beating or they are self-injuries. I know of a few incidences and have no doubts that those injuries were caused by the administration staff because of beating; there was also occurrences of insulting and inhumane treatment.

One of the novelties during reporting period is new prisons in Kutaisi and Rustavi and Kutaisi facility of strict regime. These facilities offer better conditions and better possibilities for the administration to keep control.



The previous management of the administration took efforts to change the situation. It happened on December 21, 2005 when prisoners were moved to Kutaisi new prison No. 2 and facility of strict regime. The prisoners were not allowed to bring restricted items to the new facilities, and they were restricted in interaction and were placed in isolated cells as the “Law on Imprisonment” prescribes it. The prisoners were placed in cells based on principle of equality. The cells are up to European standards with 2-4-6 beds in them and respective number of prisoners was placed there. The facility has a separate space (rooms) for bathroom/toilet. It has central heating and permanent supply of electricity and water.

Despite that, the situation got tense and on December 22, 2005, the first flow of the prisoners (about 100 accused and defendants) started a riot right after they moved in the new facility. In particular, they burnt linen and kicked doors and floors in cells. As a result, the cells on the second floor were damaged, glass broke, doors in a few cells became loose and internal installation came out of order. The management of the Department of Corrections with the help of the Ministry of Justice and special operations unit of the Ministry of Internal Affairs restored order in the prison. Using force in this case was legitimate but after studying the situation, we got the impression that the force was not adequate to the resistance. Special operations unit avoided those cells, which did not make noise. As we found out from the prisoners, special operations unit members beat every prisoner without distinction in cells making noise. We visited prisoners who were severely beaten up. Unlike No. 1 or No. 5 prisons, cells in Kutaisi prison fit from two to six prisoners. Taking into consideration that the prisoners could not go out in the hallway using such force against them, to our mind, was inadequate. According to the witnesses special operations unit of the Ministry of Internal Affairs acted especially cruelly. They went into cells and without saying, anything or warning prisoners beat them even if they did not resist.

Because of this special operation Malkhaz Serginava died. He was under pre-trial detention. After the riot, the head of the Department of Corrections Shota Kopadze was fired from his position and the Minister of Justice was moved to a different position.

It must be noted that the prisoners were moved to the new prison fast, the building was not fully functional and construction work had not been finished yet. Water supply and heating systems were not tested. These faults revealed after the prisoners moved in. The heating system failed and the building did not have water. Those faults were corrected in one day and the prisoners did not experience problems with the lack of water but they used it as a formal reason for riot. The real reason for riot was solidarity to the “world of thieves”. Some of the prisoners were openly asking to appoint so-called “watchers” in prison.

The administration hurried the move of the prisoners. The management was supposed to first test the heating and water supply systems. Delaying the move for a few days would not have changed anything. The haste created the formal reason for riot and it resulted in the loss of one life.

Later on December 25, 2005 the situation got tense in Kutaisi prison No. 2 (old building), where more than 400 prisoners were waiting to be moved to the new facility. Some of the prisoners resisted officials while being searched. As a result, compulsory measures were taken repeatedly excessive force was used. First, the special operations unit of the Ministry of Justice, which has particular, experience, was guarding the perimeter outside the prison while the special operations unit of the Department of Constitutional Safety of the Ministry of Internal Affairs was handling the prisoners’ move. This special operations unit is trained for other purposes and tasks: render criminals harmless, fight against terrorism and similar operations. Force used by them against the prisoners was inadequate against the resistance. Furthermore, some of the prisoners declared that they were beaten up according to the crime they were accused of or sentenced to. Some were beaten up because they refused to swear openly at the “thieves-in-law” and criminal authorities. This is what the prisoners told us, we do not have other proof. Significant number of prisoners moved to the new prison had injuries of different degree. This makes us think that excessive power was used during the move.

These events were followed by disturbances at the other facilities. Criminal authorities were managing these processes. This was a very well organized action. I became reassured in that after speaking with a number of prisoners. They were openly saying that they had no desire to be on hunger strike or participate in resistance action but had to do so out of fear of so-called “watchers”.

With the change of the administration at the Department of Corrections, searching and checking the facilities became systematic. This is not only a legitimate but also a necessary measure to keep order in the penitentiary facilities. At the same time, we express concern about unjustified and unlawful restrictions and cruel, inhumane and insulting treatment, which follow such legitimate searches. I will briefly list negative s and approaches found in this system.

Injury: beating, torture, inhumane and insulting treatment

Special attention should be paid to the physical force used against prisoners. To our mind, this was often inadequate. We got this impression after studying the situation in Kutaisi new penitentiary facility as well as in Batumi No. 3 and Tbilisi No. 7 prisons.

Because of the events in Kutaisi, prison more than 100 prisoners were injured. A lot more were beaten up but some did not have visible signs and others refused to talk about it.

The same happened in Batumi prison on January 24, 2006 after searching the facility. Many prisoners were injured but most of them did not declare this to the doctor. At the meeting with the representatives of the Administration of the Public Defender at first, they hesitated talking about it but afterwards I met them personally and many of them spoke quite openly about the operation and showed the injuries to me. According to them, they were forced to stand out in the snow on a cold day for almost 4 hours (according to other prisoners for 8 hours) and wait until the search of the cells was over. Some of them did not wear shoes and had only slippers on.

The prisoners declared that during the operation they were beaten up and insulted, deprived off their private items, which are allowed in the facility by the Minister's, decision. These items were wooden crosses, icons, TVs etc. Many of the prisoners were injured. Among injured prisoners are: Aslan Emiridze, Mamia Dvalishvili, Gela Gabitashvili, Marlen Megrelishvili, Lasha Khalvashi, Zviad Geladze, Gocha Kakhadze, Bagrat Gorgadze, Mamuka Jincharadze, Nukri Nozadze, Nika Gogeshvili, Taniel Gorgiladze, Zviad Paksadze, Avtandil Zoidze, Guram Paksadze, Malkhaz Kakabadze, Zurab Modebadze, David Shatirishbvili, Vitali Sikharulidze, Gela Ghonghadze, Mikheil Koberidze, Vazha Mukhashavria, Mamuka Gasviani, Roland Chamba, Avtandil Sanikidze, Gia Chavleishvili, Elguja Meladze, David Emiridze, Revaz Kadidze, Ruslan Kviritidze, Iason Metreveli, David Tedoradze, Eduard Digani, Roman Surmanidze, Mindia Broladze, Gocha Mamaladze, Razden Khalvashi, David Nakaidze, Ramaz Tsulukidze, Shota Megrelishvili, Vazha Rusidze, David Dzeladze, Irakli Dolidze.

By the explanation of the administration of the Department of Corrections, they had information that there were weapons at the facility. With the purpose of removing the weapons, the operation had to be carried out very fast, in all cells at the same time. That is why they had to take the prisoners out in the snow. However, according to them it did not last longer than 2 hours. It must be noted that information did not get confirmed and weapons were not found.

As I mentioned above these acts of beating and torture can be evaluated as inhumane and insulting treatment. Respectively, we recommend the General Prosecutor's office to initiate a preliminary investigation concerning these claims. It must be noted that during the monitoring of Kutaisi prison No. 2 and facility of



strict regime the prisoners were saying that on January 26 and February 6, 2006 special operations unit was at these facilities and physically abused some of the prisoners. According to the prisoners, special operations unit members physically abused and insulted those prisoners who refused to swear openly at criminal authorities and representatives of the “world of thieves”. A few prisoners declared this, among them are Lado Bochorishvili, Varlam Bochorishvili, and Kakhaber Katamadze etc. According to the prisoners, the representative of the Department of Corrections Levan Maruashvili and the Deputy Director of Kutaisi prison No. 2 and facility of strict regime Irakli Kuchukhidze were especially cruel to them. These people are still holding their official positions.

According to the prisoners on February 6, 2006 armed Levan Maruashvili and Irakli Kuchukhidze, who were under the influence of alcohol visited Kutaisi prison No.2 and facility of strict regime at night, walked through the buildings, and woke up prisoners by kicking on the doors of the cells. If a prisoner would react to this noise from the cell, they would beat him up. Many prisoners were physically assaulted on February 6 but they refused to give us an explanation and by their request, we will not mention their names. In private conversation, current and former employees of the facility confirm this information. The prisoners avoid talking about occurrences of pressure. They think that they are not protected because they received warnings from the facility staff many times.

According to our information, these people physically assaulted an employee of this facility Paata Lomsianidze. Later Levan Maruashvili verbally assaulted medical personnel and other employees. Employees of the facility talk about it in private conversations; because they are afraid to lose their jobs, they do not dare talk about it openly. We think that if they are granted immunity they will not be afraid to talk.

We recommend the office of the Prosecutor General to initiate preliminary investigation about these incidents.

On July 17, 2006 during the monitoring of prison No.1 under the Department of Corrections of the Ministry of Justice we visited convict Gocha Patsuria, who had numerous serious injuries on the body. According to the prisoner and his family members on January 14, 2006 special operations unit members physically abused Gocha Patsuria at Ksani medical facility for prisoners diseased with TB and Ksani facility of strict regime No.7.

In connection with this information, we requested initiation of preliminary investigation from the General Prosecutor’s office. Despite the fact the Gocha Patsuria declared to us that he would give testimony for the investigation and despite the fact that we got him a lawyer free through an NGO, he later refused to cooperate with the investigation and chose the right to keep silence. Respectively proceedings were not initiated on the claim of physical abuse of Gocha Patsuria. I personally confirm that he was severely beaten up, his body was covered with bruises and injuries caused to him with a blunt object and a baton.

On January 31, 2006, the representatives of the Administration of the Public Defender visited prisoner David Zarnadze at prison No. 1 of the Department of Corrections of the Ministry of Justice. According to him, he was physically abused by the head of the Department of Corrections (Bachana Akhalaia) and other employees (G. Goniani etc) at Ksani facility of strict regime No. 7. Zarnadze was asked to give explanation report in connection to this claim. By superficial examination, he did not have signs of injury but information about this case was submitted to the office of the Prosecutor General. According to Zarnadze, he was beaten up by the handle of a pistol and other objects. It is strange that there are no traces on his body. I am sure that this case is part of the campaign, which is aimed against the head of the department of corrections. Nevertheless, an application was sent to the office of the Prosecutor General for study.

As we mentioned above, efforts of establishing order at the facilities of the Department of Corrections were followed with well-organized resistance from the “world of criminals”. Part of this resistance is spreading constant rumours about officials of the facility physically abusing the prisoners etc.

Creation of public opinion as to how the rights of the prisoners are violated is one constituent part of the resistance strategy. Often these claims are not fiction but real. Our position is to review and study every case.

Right to Defence

The Georgian Constitution guarantees right to defence within paragraph 3, article 42. This right is regulated by legislative acts that ensure implementation of constitutional rights. Right to defence in itself also means right to an unimpeded meeting with a lawyer. Georgian Law on Imprisonment, Paragraphs “a.c”, Chapter 1, and Article 26 provides for the right of a convict to unimpeded meeting with a lawyer. The similar guarantee is provided by Chapter 7, Article 48 which ensures that “all convicts have right to meet with a lawyer without any involvement or censorship. The representatives of the Department of Corrections may observe such meetings visually but not listen”.

Prisoners (accused and defendants) enjoy the same right. Article 89 of the Law on Imprisonment provides for the right “of a prisoner to unimpeded meeting with a lawyer. This is regulated by the Criminal Procedure Code of Georgia”.

Despite the Constitution and imperative requirement of the Law, the Department of Corrections was systematically restricting the right to defence, which was expressed in temporary suspension of meetings of convicts and prisoners with their lawyers.

In the last decade of December 2005, right to defence was restricted at Kutaisi prison No.2 and facility of strict regime because of the ongoing events. Lawyers were not admitted to the facility to meet with the prisoners. It is important that no act was issued to support this action, officials of the Department of Corrections and detention facilities were giving verbal orders about it.

These restrictions were effective starting from December 25 and lasted in different forms for 8 days. At first the restrictions were lifted from lawyers, whose procedural terms were expiring, the rest were allowed to meet with defendants after January 2.

A similar situation was at other facilities of the Department of Corrections. If in Kutaisi the reason to the restriction was disturbance at the facility than in Batumi prison No. 3 lawyers were denied access to the facility for 5 days (from January 24 to 28) because of sanitary-hygiene activities taking place in the facility. As in the previous case, this was not a lawful reason for denial. Furthermore, acting director of the facility issued a decision about the restriction of access to the facility and put a notice about it at the entrance. This decision was illegitimate because it contradicts the Constitution and international norm requirements of the Criminal Procedure Code and Law on Imprisonment.

At the same time lawyers, prisoners and family members declare that in response to their legitimate requests they were receiving cynical treatment. Family members of the prisoners in prison No. 7 declared that the representatives of detention facility were taking their requests with cynicism and did not reply to the written application within timeframe prescribed by the law etc. Restriction of Lawyers at prison No. 7 started at the end of December and lasted until January 5, 2006.

The Public Defender of Georgia appealed with a recommendation to Bacho Akhalaia, head of the Department of Corrections and requested that he put an end to interference in the implementation of the right to defence, because this right is unrestricted and is ensured by the Constitution as well as Criminal Procedure Code of Georgia and Law on Imprisonment. After the recommendation, admission of the lawyers to the detention facilities was resumed and they were given a possibility to meet with the defendants. Despite the



above said, unimpeded right for the meeting of a lawyer with an accused or a defendant was again restricted in Batumi prison No. 3 with an illegal motivation of sanitary/hygiene activities in the facility. The decision was issued on January 24, 2006. Unfortunately, the Public Defender's recommendation was not taken into consideration by the Department of Corrections. It must also be noted that lawyers stand in line for hours in front of prison No. 7 in Tbilisi because there are not enough rooms for meetings with lawyers. There are days when lawyers despite standing in line for the whole day cannot meet with their defendants. By the declaration of the facility administration, few meeting rooms are under renovation currently and the situation will improve.

Right to Belief

According to the article 19 of the Georgian Constitution:

1. Everyone is entitled to right of freedom of speech, opinion, consciousness, confession and belief.
2. A person is not persecuted because of his/her speech, opinion, consciousness, confession and belief a person is not forced to express an opinion about others.
3. Restriction of the freedoms listed in this article is inadmissible unless it violates others' rights.

In order to implement Article 19 of the Georgian Constitution at the penitentiary facilities the right prescribed in the Law on Imprisonment is defined to a certain extent. In particular: Chapter 3, Paragraph "d", Article 26 provides for the "right of a convict to participate in cultural-educational and religious activities and use respective inventory and literature".

According to the third part, Article 51 a convict can subscribe scientific, scientific-popular, religious, fiction, newspapers, magazines and journals at his own expense. The same right is provided by the Article 94 of the Law on Imprisonment. According to it, the administration is responsible for creating conditions that meet religious requirements of convicts, and if technical conditions of the facility permit, a priest can stay at the facility under the authority of the church.

Despite such attitude of the legislators to this right, the prisoners were deprived of precious metal crosses as well as wooden ones, icons and other religious items during different special operations and searches conducted by the Department of Corrections.

The prisoners spoke about it in Kutaisi prison No. 2 and facility of strict regime, Batumi prison No. 3 and Tbilisi prisons No. 1, No. 5 and No. 7.

We understand objective reasons of safety require taking off all printed material from the walls but removed crosses were not made of precious metal and were not historic relics.

It must be noted that at the meeting with the prisoners of detention facility No. 7, some of them asked for a possibility to meet with a priest. The Law provides for this right. The Public Defender of Georgia sent a recommendation to the head of the Department of Corrections, and by the request of the prisoners, sent a letter to the Patriarch of Georgia Ilia II asking him to send a priest to that facility.

Right to Ownership

It is important to know what items were removed from the detention facilities because of search and what happened to them, not to say anything about items that were lost or damaged. We support removal of restricted items from the detention facilities but each item should be kept together with other personal items

of a prisoner and returned to him after the release from prison with a receipt for belongings or with his approval be submitted to his family. The Public Defender requested from the Department of Corrections information about removed items from the detention facilities during these events. A month has passed since then but the Department has not come back to us with a reply. It must be noted as well that most of the prisoners had TVs and Radios at the cells. Parts of these items were removed during the special operation though the reasons for removal of these items are not clear to us. Some cells still have TVs and radios but they are not the removed ones. These TVs were purchased and provided again by the families of the prisoners.

Coming from the above said we could conclude that activities carried out by the Department of Corrections violated prisoners' right to ownership. The Public Defender will appeal to the respective authorities to initiate investigation in connection with this incident.

Postal Wrapper and Parcels

Georgian Law on Imprisonment defines different power and obligations for different types of penitentiary regimes. By the same Law, defendants and accused are placed in confinement section of a prison. Unlike the prisoners who are placed in prison regime as a measure of coercion, defendants and accused enjoy more rights and liberties. However, restrictions may be imposed on them to ensure smooth investigation. It must be noted that they have right to buy food products or receive parcels. Restriction of this right for convicts is possible and this is one of the disciplinary punishments. However, imposing such disciplinary punishment on a defendant or an accused is inadmissible. Only reprimand or punishment cell up to 10 days can be applied to them. Unfortunately, despite this requirement of the Law this right was illegally restricted for prisoners under different motivations and reasons. Despite our appeal to resume submission of parcels to the prisoners, it did not happen for long time. At present parcels are admitted with big restrictions.

It must be noted that the "Law on Imprisonment" and the decision of the Minister of Justice about "Serving a Sentence" says:

Article 92. Conditions in prison for a prisoner

1. Prisoners in prison are allowed to:

- a) Purchase additional food products with own expenses, by electronic transfer;
- a1) Receive food products by parcels and postal wrappings under administration's control with the exception of the designated penitentiary facilities indicated by the Minister of Justice;

Such penitentiary facilities are not designated by the Minister of Justice therefore the above norms should be applied to all the facilities.

It must be noted that in accordance with the decree of the Minister of Justice about the rules of serving a sentence, the Law of Georgia on Confinement is more specifically defined. This applies to parcels and postal wrappings:

Article 12. Receipt and send out of prisoners' parcels and packages.

- 1. Prisoners receive parcels and packages at a specially allocated building. A prisoner has the right to receive unlimited quantity of parcels but the weight should not exceed norms established by postal rules, also packages should not exceed 30 kilos per month. There is no weight limit on packages for juvenile, sick, suffering from serious diseases, (approved by the prison doctor), pregnant women, and mothers of children from 1 to 3 years old. Packages are received in sequence of visitors.



2. List of food products, items of personal use, clothes, shoes and other industrial products, which are allowed for prisoners to have, keep, receive by parcel and packages, purchase by bank transfer will be put out in the facility of the parcel admission.
3. Person delivering a parcel fills out and signs a form in 2 copies. The both copies, a parcel and an ID of the person delivering a parcel are submitted to the respective official at the facility.
4. Examination of the parcel content and its weight is conducted in presence of the person delivering it. After the examination, ID is returned to the owner.
5. Facility official returns an ID and one copy of a filled out form to a person delivering a parcel and encloses the second copy to the prisoner's case file with a prisoner's signature confirming the receipt of a parcel. If a prisoner refuses to sign, a respective note is taken down in the form.
6. Weight and content of a parcel is registered at a special registry book and afterwards a parcel is forwarded to an addressee.
7. A parcel is not admitted and is returned to a person delivering it in the following cases:
 - a) Release of a prisoner or his absence from prison for 3 days;
 - b) Prisoner's death;
 - c) Prisoner can not personally receive a parcel or make use of its contents;
 - d) Parcel is overweight;
 - e) Person delivering a parcel does not produce an ID;
 - f) Incorrectly filled out form;
 - g) Exceeds monthly weight limit 30 kilos for packages;
 - h) Prisoner's refusal in written form not to receive a parcel;
8. Recommendations of a doctor treating sick prisoners are taking into consideration when receiving parcels for them;
9. Commission comprising 3 employees of a facility open a parcel, examine its content, and draft an act. The act lists products and items, their external signs, quality, particular items removed from a parcel or given for keeping. The act is signed by the commission members. The act is read out to a prisoner and after his signature; it is attached to his case file.
10. Items, substance and food product found in parcels, which are forbidden for prisoners to keep or use, will be returned to a person delivering a parcel with an explanation, or will be kept or be destructed in presence of the prisoner. Money will be transferred to the prisoner's account.
11. In cases stipulated by the Law, respective materials will be compiled to hold a person delivering a parcel criminally or administratively responsible.
12. In cases stipulated in paragraph 7 of this article a parcel is returned to a person delivering it;
13. Parcels and packages brought for prisoners being in punishment cell at that moment will be kept at the storage and will be submitted to a prisoner at the end of his term in punishment cell;
14. Prison administration will keep parcels and packages, but is not responsible for spoiled food products or their quality as a result of keeping them for long time;
15. Parcel or package should be delivered to a prisoner no later than one day after the receipt and in case of prisoner's temporary absence should be handed to him to upon his return;

According to the mentioned norm prisoners have the right to purchase additional food products with own expenses by bank transfer but this right cannot be practically exercised by the prisoners because the prisons have no shops.

As for receiving food products by parcels and postal wrappings, by the decision of the Minister of Justice about "Rules of Serving a Sentence", restrictions on weight and quantity of parcels is not set. Furthermore, a prisoner is allowed to receive unlimited number of parcels but weight should not exceed established postal limit.

Postal limit is 31.5 kilos and it was established on September 14, 1994 by multilateral international agreement, article 3:

1. Exchange of parcels can be done either directly, or through one or several countries. Exchange of parcels exceeding 10 kilos is facultative. A parcel should not exceed 31.5 kilos.

By current practice, receipt of parcels and packages is restricted at penitentiary facilities. There is a weight restriction of 30 kilos. per month, also certain products and items allowed by the resolution on “Rules of Serving a Sentence” are restricted. This means that the Department of Corrections is violating prisoners’ right to receive parcels and packages, purchase food products or receive them from others.

The Department of Corrections cannot provide normal conditions for prisoners; cannot fulfil responsibilities obligated to it by the legislation. The administration is responsible to provide food products in established norm, clean linen once a week etc. When the State cannot provide for that than a prisoner’s family should be given a possibility to provide the prisoner with respective material means.

Prisoners in Batumi prison No. 3 were not provided with sugar for a few days. After sugar provision was resumed, it is less than established norm (40 gr. per day). In addition, prisoners did not have toilet paper in prison No. 7 and had to cut linen and towels and later prisoners’ families weren’t allowed to send these items to the prison because the administration said that the prisoners were timely given linen and towels.

Detergent and other household items are restricted at certain detention facilities. For example, at Batumi, prison No. 3 and Tbilisi prison No. 7 prisoners are not allowed to receive toothpaste by parcel or package and the administration cannot provide it for the prisoners. Restrictions were periodically imposed at different detention facilities. At Kutaisi No., 2 prison and facility of strict regime restrictions were imposed on all kinds of parcels and packages on December 2005 and January 2006.

It should also be noted that food provision at all penitentiary facilities is organized better compared to last year. Still it does not correspond to the requirements established by the decision of the Ministers of Justice and Public Health.

A separate issue is the right to correspondence and access to mail. Every prisoner is entitled to right of private correspondence but is not given this possibility. The reason is that a prisoner should conduct correspondence at his own expense, paying out of his personal account. This is not possible because the Department of Corrections (or a respective facility) has not opened private accounts for prisoners. At the same time prisoners do not have right to have cash in cells. Therefore, it is impossible for them to conduct private correspondence.

Lack of Conditions

Living conditions at most of the facilities of the Department of Corrections with the exception of Kutaisi new prison No. 2 and facility of strict regime and Rustavi prison No. 6 are not up to the standards. At certain facilities, like Tbilisi prison No. 5 and Batumi prison No. 3 there is so many prisoners in each cell that they have to sleep in 3 shifts. For example, Batumi prison No. 3 is built for 200 prisoners and currently the number of prisoners there exceeds 400. At Tbilisi prison No. 5, right before the riot on March 27 there were 3800 prisoners on 1600 places. There are problems with walking the prisoners. Both the administration and prisoners told us that unless more than 10 prisoners from each cell want to walk otherwise this right is denied to all of them.

I will try to describe the situation in the facilities:

Common living conditions at the facilities (with the exception of Kutaisi new prison No. 2 and facility of strict regime and Rustavi prison No. 6) are dissatisfactory. Toilets are in the cells and prisoners eat there. This



creates poor sanitary situation. Linen is not changed every week as it is established by the rule. Cells are not ventilated and there is strong, unpleasant and often unbearable smell. There are not enough beds. Space norms for prisoners prescribed by the Law on Serving a Sentence are violated. There is not enough light at certain facilities and it is impossible for prisoners to read, it harms their eyesight. The Public Defender gave verbal recommendation to the administration of prison No. 7 concerning this problem and lighting system improved since then. Prisoners are denied the right of walking 1 hour every day. Often this is explained by the lack or poor condition of walking rooms in the facility. The prisoners have been denied this right at prison No. 7 for the past 3 months.

Prisoners are not often given a possibility to use facility telephone in accordance with the established rules because there are no telephones in the facility.

Certain restrictions are imposed on visits at prisons. In particular, prisoners at prison No. 7 are not allowed to have short or long-term visits. According to the administration, there are not adequate rooms in the facility. Currently reconstruction work is going on which will change the situation for the better in this respect.

Another separate issue is escorting defendants to the court. Lawyers appeal to the Public Defender expressing concern that defendants are not escorted to the court, which delays trial terms. Escort of the Department of Corrections does not contain enough cars and the ones available ones are not in good condition. This violates right to speedy trial.

During the reporting period, the situation was difficult with transportation of sick prisoners to Tbilisi. The regions do not have enough well equipped ambulances and Tbilisi cannot provide them in time. Prisoner Muradov in Kutaisi prison No. 2 was in a difficult health condition. Despite the involvement of the Public Defender and his administration, he could not be transported from Kutaisi to Tbilisi in time. This prisoner later died. Similar problems occurred at the other facilities.

With this regard, we appeal to the Ministry of Public Health with a recommendation to purchase well-equipped ambulance for transportation of prisoners from the regions to Tbilisi.

Certain problems were created because the second attachment of a decree No. 362 of the Minister of Justice of Georgia adopted on December 28, 1999 about “Rules of Serving a Sentence” for years was not enforced. It listed food products, items of personal use, clothes, shoes and other industrial items that prisoners have the right to have, keep, receive and purchase.

Entry into force of this decree caused certain irregularities. In particular, the items allowed to the facility are not enough to meet hygienic needs of a prisoner. For example, nail clipper is important for hygiene needs. Prisoners are in poor hygiene conditions. In accordance with the “Law on Imprisonment”, a prisoner should be given a possibility to take a shower once a week and administration should change linen once a week. This does not happen at many facilities. In many cases, this is due to the lack of material resources. In this case, responsibility lies not on the administration but on the Government because it cannot provide funding.

Recommendations

Based on the facts and conditions described in this report we address with a recommendation to the respective authorities:

TO THE OFFICE OF THE PROSECUTOR GENERAL:

- Initiate preliminary investigation on occurrences of used force, beating, inhumane and insulting treatment of prisoners during the special operation carried out at Batumi prison No. 3.
- Initiate preliminary investigation on the occurrences of removing prohibited items from penitentiary facilities that should be registered and kept with prisoners' other personal items. Determine whereabouts of the non-prohibited items removed from the facilities.
- Initiate preliminary investigation on the claims of physical abuse of prisoners at Kutaisi prison No. 2 and facility of strict regime on January 26, 2005 and February 6, 2006.
- Initiate preliminary investigation on the claim of insult of Kutaisi prison employee Paata Lomsianidze.

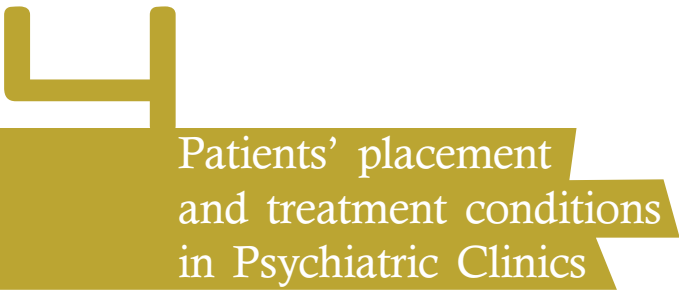
TO THE MINISTRY OF JUSTICE OF GEORGIA AND THE DEPARTMENT OF CORRECTIONS:

- Timely creation of permanent commissions of public control at every penitentiary facility as it is prescribed by the Law on Imprisonment. The commission members should have access to the facilities at any time of a day to meet and talk with prisoners in private, visit cells, storages and other rooms. Disciplinary measures should be taken against the persons impeding the commission members to carry out responsibilities mandated to them by the law.
- Forbid use of masks and other means for concealing identity of police officers. Exception can be made for necessity of ensuring safety of police officers. In such cases, it is important that every law enforcer including members of special operations unit wear a private distinctive sign, for example private number, by which this person can be identified.
- As it is provided by the "Law on Imprisonment", prisoners should be given the right to receive unlimited number of parcels not exceeding 30 kilos per month. This should not include items of personal use, linen and clothes.
- Arrange rooms for short and long-term visits and do not restrict prisoners' right to visits prescribed by the Law.
- Allocate separate cells (wards) at the medical penitentiary facilities for the prisoners requiring stationary medical treatment for which placement in prison is used as a measure of coercion.
- Prisoners should be given the right to walk every day as it is prescribed by the Law. This right should not be restricted because of poorly arranged walking rooms.
- Find financial sources to provide food supply up to the standards prescribed in the joint decree No. 5/500/n by the Ministers of Justice and Public Health of Georgia on December 22, 1999 about food norms, clothes and sanitary-hygiene conditions;
- Purchase enough vehicles to ensure escorting prisoners to court hearings.

TO THE MINISTRY OF LABOUR, HEALTH AND SOCIAL PROTECTION OF GEORGIA:

- We recommend the Ministry of Labour, Health and Social Protection of Georgia to purchase well-equipped ambulance for transportation of diseased prisoners from the regions.





Patients' placement and treatment conditions in Psychiatric Clinics

The results of monitoring conducted in Psychiatric clinics in November-December of 2005 and March of 2006.

Following the memorandum signed between the Public defender of Georgia and the Ministry of Labour, Healthcare and Social Welfare (November, 2005), the public council was established at the Office of Public Defender, which is aiming at implementing public monitoring for the protection of human rights in closed types of institutions.

For carrying out the monitoring, three types of questionnaires are used (for administration, medical doctors and medium-level staff, and patients). The methods for obtaining information are semi-structured interviews, observation and photographic documentation.

Volunteer monitors have been trained, "Awareness consent form" has been devised, basic principles of monitoring have been devel-

oped, for example, confidentiality and patient's anonymity, etc.

In November-December Monitoring Council and the monitors studied **patients' rights and treatment conditions** in Tbilisi Psychiatric Hospital named after A. Zurabashvili (so called Gldani Hospital) and in Psychiatric Hospital in Surami.

In 2006, the monitoring group studied the conditions in a "Boarding house for patients with disabilities" in Dzevri – which is an asylum for mentally and physically disabled patients and in the close supervision psychiatric hospital in Poti. The plan is for the process to continue and the intention is to monitor four other psychiatric hospitals.

Monitoring Results

The monitoring results have shown that since the times of hardship in nineties, certain positive changes in terms of patients' care and improvement of life conditions are taking place. In particular, as patients themselves have noted, nutrition has improved in all the above-mentioned clinics. However, the food ration is still poor and insufficient, as in all clinics the patients receive three meals a day that is in contradiction to the instruction of the Ministry of Health on "Provision of four meals a day in all hospitals". In general, the patients are under severe sanitary and living conditions, hospitals do not have sufficient resources to ensure efficient treatment of mentally disturbed patients, patients' rights are being violated in terms of the accessibility to information, contacts with outer world, appeal, the right

to protect themselves against inhumane treatment and forced labour. Due to their mental state, they represent a predominantly vulnerable group of our society and their rights are being violated.

The patients from low-income families or homeless patients are staying in the above-mentioned hospitals (except for the Poti close supervision psychiatric hospital to which patients are admitted on the resolution of forensic expertise and are subject to forced treatment). The Municipal (Gldani) psychiatric hospital named after A. Zurabashvili and Surami psychiatric hospital, are not intended for chronic patients. However, the majority of them are those, who do not need active drug therapy and consequently do not require staying in hospitals, but because, either their relatives cannot take care of them or they do not have any, they stay in hospitals for years without being discharged.

There are considerable differences between hospitals, especially in terms of living conditions. However, it is worth noting, that protection of basic rights of mental patients is the key problem for all such establishments. **It is obvious, that medical staff, patients and their relatives as well do not understand the concept of human rights.**

Monitoring has clearly revealed that the quality of human rights' protection is directly proportional to the quality of mental health care and patients' treatment; or can be just the contrary to it (which stands closer to reality), the more mentally disturbed persons' rights are violated in psychiatric hospitals, the lower the quality of medical service, standards of treatment, etc. are.

Based on the situation described above, it can be assumed that the results of the investigation conducted in the light of human rights also reflect such basic medical problems as:

- Accessibility to appropriate and professional medical service; consensus
- Possibility of differential treatment;
- Existence of adequate methods of rehabilitation and re-socialization;
- Practices of awareness consent form, possibilities of treatment refusal and others.

Violation of Patients' rights

1. SUPERVISION OVER INVOLUNTARY TREATMENT

While under involuntary treatment, the patient is unable to make a decision. Thus, the treatment is carried out without the patient's consent "reasoning from patients and public interests". In such cases, the law currently in force stipulates the notification of Public Prosecutor's Office, although there is no mention of how the supervision over the patient's involuntary hospitalization has to be carried out. In fact, hospitals consider it to be an extremely formalized procedure, as they say, the notifications are simply sent but there is no expectation of any response, there is hardly one such instance to call to mind.

The monitoring has shown that the patient who is hospitalized against his/her will is not able to defend his/her rights or appeal against the decision of the involuntary hospitalization. There is no independent control over such patients, which is a gross violation of norms recognized by the Constitution and international law.

2. THE RIGHT TO RECEIVE ADEQUATE INFORMATION ON TREATMENT AND DISEASE

This right is violated for different reasons. For example, the relevant social services are not properly developed, the so-called "chronic" patients are staying in hospitals for years (e.g. 18 years), as they have "nowhere



to go". Not only **treatment terms** are violated, but also the patient gradually finds him/herself in a "vicious circle". Lengthy isolation causes the loss of social contacts and the skills for living independently and thus, the so-called "hospital addiction syndrome" is being developed. A person is completely deprived of the ability and the wish of living outside the hospital. Therefore, the result is a state of helplessness and despondency. Naturally, these people say "I can't live outside the clinic, I am afraid of becoming a hobo..."

Hence, the patient's right – to get proper and efficient treatment in his/her family and close to the place of residence – is grossly violated.

The main form of treatment is drug therapy, but the choice of drugs is poor (in municipal hospitals there are only drugs of five denominations). Other forms of treatment such as psychotherapy, socio-therapy, art therapy, work therapy – are not included in service package.

The patients are roughly aware of their own disease or diagnosis, in most cases they are not being familiarized with the treatment scheme, possible prognosis, and the mechanism of drug effect.

Patients possess no information about their own rights, there is no information board in the units, and no awareness raising work is conducted with patients. The latter have noted, that they are verbally told what is not possible to do. One of the patients said in the interview: "Even if we knew our rights, we still wouldn't be able to use this knowledge here, as we have to obey the local rules".

3. RULES ON APPLYING COMPULSORY MEASURES AND RESPONDING TO COMPLICATED SITUATIONS (BYLAWS)

There are no bylaws in hospitals that would regulate the relationships between patients and medical staff in terms of their duties and responsibilities. It is noteworthy that the majority of medical staff asserted that internal rules did exist, but nobody knew what they regulated, when or whom they were drawn by and who was in charge of making changes to them. In Surami psychiatric hospital, the monitoring group saw only the duty roster, some warnings about the consumption of alcohol by medical staff, beating and insulting patients. In Poti close supervision psychiatric hospital, only the timetable for meal times was put up.

The monitoring has shown that in hospitals, no written rules on dealing with problematic situations exist, and because of this, medical staff treats every individual case on their own accord, using their own experience, or they just carry out verbal instructions. This is why, there was no uniform answer regarding how they react in the event when the patient is in the state of excitement or in any other extraordinary situations. There were also no consistent answer regarding whose orders the patient must be fixated and for how long. The same was true for the question of whether it is possible to let the patients contact others or use the lavatory when they are physically constrained

For example, in a city hospital the medical staff said that a patient is being fixated from 15 minutes up to one hour, until the drug has taken effect, while the monitoring group saw a patient who had been fixated without wearing any underwear and who remained so on both days of the monitoring.

4. THE RIGHT OF PROTECTION AGAINST SEVERE AND INHUMANE TREATMENT

Due to insufficient financing of these establishments, the existing conditions are humiliating and hard for both patients and medical staff. Medical staff offices as well as wards are amortized and need repairs. Such conditions have developed the sense of "solidarity" between the medical staff and patients. The medical personnel say that out of pity for the patients, they bring food, clothes from home. The patients say "What can they do, how can they pay more attention to us, having such low salaries".

Some patients indicated that they were being shouted at, insulted, beaten up – “they beat them with broom-stick or metal keys in the head and if you complain, nobody will believe you”. At the same time, the patients say, “It used to be worse before”.

As we have already mentioned, no written rules on forceful actions exist, the staff has never received special training – “The old teach the young”. To the question, whether it is possible for the patients being in the state of excitement to use the lavatory, the hospital attendants’ answers differ. Some say – “No, not possible”, some say “Yes”. As the patients themselves say, if it is a “good shift”, then the attendant will help you, take you to the lavatory or bring you a bed-pan/ pail”, while the “bad shift does not allow you to do anything”.

To the question whether or not has someone ever been injured when under compulsion, the medical staff would claim, that there have been cases of injuries but only among medical staff – “Some sustained a concussion, or fracture while fixating the patient. There have not been any cases of patients’ injuries, just bruises on hands, if gripped tightly”. As for the patients, they claim the opposite, saying that they have been injured – “If while being fixated, the patient got bruises and if a patient complains to the doctor about it, then the medical staff denies it and blames other patients, as if the patient beat the other one up, although everybody knows it is not so, but they still do not react”.

5. PUBLIC CONTROL

While it is true that journalists and representatives of international organizations occasionally visit hospitals, no public control is in place and patients’ rights are not being studied either. Hospitals are cut off the outer world. Medical staff also contributes to the cause, as they are trying to keep the hospital out of sight from others as much as possible. One example of this is a case at A. Zurabashvili municipal psychiatric hospital (so-called Gldani), when a relative was denied access to the in-patient unit to see where the patient was staying.

Generally, the medical staffs are punished if the patient escapes/ leaves the place without permission. The staffs on duty have to find the patient at their own expense and bring him/her back. Thus, the staffs are especially interested in locking up the hospital unit and maximally restrict patients’ moving around, in order to avoid problems.

Patients often compare hospital to prison, some even think, that prison is better. In Poti, the hospital is called “psychiatric prison” and in our impression too, it is more like a prison than a medical institution.

The lack of public control results in that, the personnel consider themselves accountable only to the administration, while patients have no hope that their own problems will be given an unbiased consideration.

Short summary

We have mentioned only some rights and described situations in several psychiatric hospitals in general in order to demonstrate the alarming state of the people with mental disorders who get their treatment in hospitals.

It is worth noting the fact, that we do not limit ourselves to only “diagnosing” the situation but we are trying hard to contribute to the settlement of urgent and severe problems. For example, as a consequence of the monitoring at Tbilisi Municipal Psychiatric Hospital after A. Zurabashvili (so-called Gldani), due to our efforts, gas supply to the hospital was resumed and after a nine-month interval the patients were able to take a bath, change bed sheets and get warm. In addition, the municipality has promised to repair the road to hospital, which was actually impossible to drive on. The hospital was given some warm clothes (Fund Caritas, church parish). At present, the hospital is moving to another building and we hope these inhumane conditions will be overcome at last. It is also worth noting that financing psychiatric field has increased from 2006.



Recommendations in the field of psychiatry

GENERAL RECOMMENDATIONS

Our general recommendations cover two basic issues to be implemented by the Parliament being the executor and the facilitator of the following:

1. To make improvements to the law on psychiatric aid;
it is necessary to strengthen the legal basis, i.e. draft and adopt a new, up to date law, in order to better the protection of patients' rights and to eliminate serious drawbacks (e.g.: practices of involuntary treatments in hospitals); The executor – health committee of the Parliament of Georgia; Ministry of Labour, Healthcare and Social Welfare of Georgia.
2. To develop the concept of mental health, devise the action plan and start the process of deinstitutionalization i.e. shifting the focus from closed type of institutions to community-based services by creating a consistent chain of mental healthcare services. The executor - health committee of the Parliament of Georgia; Ministry of Labour, Healthcare and Social Welfare of Georgia.

SPECIFIC RECOMMENDATIONS

■ Improvement of living conditions

The recommendation implies that the management of each establishment pays utmost attention to issues such as heating hospitals – both wards and offices of medical staff; providing conditions for patients to take a bath regularly; changing bed sheets, supplying patients with warm clothes, footwear and sufficient crockery (cups and saucers, spoons, etc.).

Special attention needs to be paid to the provision of hygienic articles (soap, toilet paper, etc.).

It is important that the hospital administration take care of providing patients with items of furniture such as bedside tables/ wardrobes for keeping their personal belongings.

Social area should be provided where besides telephone and TV-set, newspapers, books and some stationary will be available.

The administration has to provide at least four meals a day, as is indicated in the instruction of the Ministry of Healthcare on “Organizing meals in medical institutions”.

It is necessary that the administration develop bylaws that would regulate the whole spectrum of standards of differential treatment and rehabilitation among them is the following:

- Admission and discharge of patients
- Management of cases of aggression and excitement (dosage of psychotropic drugs, procedure of fixating the patients)
- Principles of active treatment, terms
- Regular check-up of patients to reveal physical injuries and identify their origin;
- Provide patients' contacts with outer “world”
- Supply patients with information about their own rights
- Norms of behaviour of the medical staff, etc

The executor - Ministry of Labour, Healthcare and Social Welfare of Georgia. Management of each individual organization.

■ Education

This recommendation implies raising the level of education in hospitals in terms of professional knowledge and practical skills of medical staff and awareness of patients and their family members of their rights.

Ministry of Labour, Healthcare and Social Welfare of Georgia is being recommended to upgrade the standards of treatment and care and impose a stricter control on the implementation of these standards. Besides, the Ministry of Healthcare should make improvements to the continuous medical education program and include in it issues of human rights' protection and ethics.

The recommendation is given to the administration of hospitals, as well as to the Ministry of Healthcare and Social Welfare, the coordination panel of psychiatrist experts under the Ministry and the public council monitoring at the Public Defender's Office of Georgia, also NGOs involved in the process of healthcare reforms to plan and implement the following:

- Conduct trainings on human rights and medical ethics for medical staff;
- Special trainings for medical staff – “The norms of behaviour in cases of patients' aggression and excitement”; also “ Modern principles and methodologies of treatment”
- Trainings for relatives and guardians and for the patients /under remission/ - “Patients' rights and the ways of their protection”
- Public campaigns to raise awareness of mental health problems

RECOMMENDATION FOR THE IMPROVEMENT OF THE PROTECTION OF PATIENTS' RIGHTS IN HOSPITALS:

- regular monitoring to protect rights and identify problems, to support the transparency of hospitals
- Create the procedure of appeal to enable the examination of occurrences of violation of patients' rights and to bring the mechanism of response in effect

The executor - Ministry of Labour, Healthcare and Social Welfare; also will be involved Public Defender's personnel and Public Monitoring Council under Ombudsman's office.

RECOMMENDATION FOR IMPROVING THE FUNCTIONING OF POTI CLOSE SUPERVISION PSYCHIATRIC HOSPITAL:

The recommendation implies the implementation of fundamental changes in Poti hospital, which need to be developed in three basic directions:

- Strengthen the security service of the hospital of close supervision, which implies the application of certain measures such as reinforcement of technical engineering constructions, installation of watching, alert and alarm systems, etc. Security should provide the safety of patients in a hospital, eliminate the risk of escaping, and defend the medical staff when they are under the threat of possible aggressive actions of patients. Executor – Ministry of Health, hospital administration.
- Give the hospitals the appearance of a medical institution – at present the hospital looks more like prison – 90 -100 seriously-ill patients are being taken care of by only 2 doctors, the wards are locked with heavy metal doors, etc. It is necessary to increase the number of medical personnel and expand the methods of treatment – at present only drug therapy is available; Executor – Ministry of Health, hospital administration.
- Special training of medical staff in such issues as “Ways of interference into the treatment of culprits with mental disorders”; Executor – National Bureau of Psychiatric Expertise, Ministry of Health, hospital administration.





Rights of people with disabilities

One of the priorities in the activities of Public Defender of Georgia is the protection of rights of the disabled.

General evaluation of the situation in Georgia regarding the rights of the disabled was given in 2004 annual report of Public Defender of Georgia followed by appropriate recommendations. It should be noted that situation since 2004 until 2006 has not changed. If we consider specific major priorities recognized by standard rules on the provision of equal opportunities for the disabled, and compare them to the overview given in the annual report of 2004, we will clearly see that the rights of the disabled do not present a priority for the country. In fact, not a single step has been made towards their integration in the society.

Non-existence of a global policy remains a serious problem. As it turns out from the response of the Ministry of Labour, Healthcare and Social Affairs about the devel-

opment of the state policy regarding the disabled, a consulting council was created at the Georgian Ministry of Labour, Healthcare and Social Affairs in accordance with the order No. 238/o (appendix 1), dated 21.09.2005. The aim of the council was to prepare recommendations for the implementation of adaptation and social integration process of the disabled. The proposals have been taken into account in "The state programme supporting adaptation and social integration of the disabled" approved by the minister's order No. 53/n of February 15. The document is one of the mechanisms of the implementation of social protection of the disabled. Within the framework of the existing budget financing it is aiming at the fulfilment of No. 48/96 of December 20, 1993 UN resolution requirements specified in No. 756 as per June 14, 1995 law on "The Standard Rules for Providing Equal Opportunities to People with Disabilities".

The consulting council that was established on minister's order No. 238/o dated 21 September 2005, developed proper proposals and recommendations for cancelling the "National Coordination Council to support NGOs for the people with disabilities at the office of the President of Georgia", which was created on the decree No. 225, May 25 2002 of the President of Georgia and establishing a new Coordinating Council. Its direct function will be to carry out further work on improving state policy and strategy for dealing with problems of the people with disabilities.

As for the current legislation in the sphere of the people with disabilities, in 2004 annual report it was

specified that the current legislation should entirely be based on “International Classification of Functioning, Disabilities and Health” (ICF) developed by World Healthcare Organization.

The above classification did not work in Georgia, that made the solution of problems of the identification of disability and related to it rehabilitation, educational and employment issues impossible. The recommendation concerning the introduction of the above classification was put forward in 2004 annual report of the Public Defender.

This is the only component of the recommendation, which has partly been taken into consideration by the Ministry of Health. On Deputy Minister’s comments, for supporting state policy towards the disabled, within the framework of “State Program on Socio- Medical Expertise in 2006”, it has been planned to elaborate the system of evaluation of the extent of disability, adequate to international standards. At the current stage, a thematic group composed of the representatives of the Ministry of Labour, Health and Social Welfare, guest specialists and stakeholders is being created. The group will coordinate publishing the complete version of ICF in Georgian and elaborate the optimal system of the evaluation of a disability on its basis.

The problem of accessibility remains the most severe. This implies access to public places, outdoor spaces, transport, and installation of special devices for the people with poor auditory abilities and the blind, transportation of the people with restricted moving abilities to medical and educational institutions, workplaces. It is also important, how much the media takes into account the needs of the disabled, whether there is any literature in Brail, etc.

Although numerous recommendations on the issues of accessibility were made in the Annual Report of 2004 of the Public Defender, the situation has not changed. Disabled people have spent another year and a half without having the basic conditions necessary for them. While it is true that some articles were included in the legislation that should serve as the guarantee for the protection of the rights of the disabled, unfortunately these articles remain at the level of declaration at the present moment.

In 2002/61 resolution of the UN peoples’ rights commission, it is recognized that the defiance of fundamental principles, or any other discriminative action or negative treatment of the disabled which is in conflict with the standard rules of the equality of the people with disabilities, will be considered a gross violation of their rights.

In accordance with 48/96 UN Assembly resolution on the Standard Rules of Providing Equal Opportunities for the People with Disabilities, the introduction of the above rules obliges the government to bear moral and political responsibility for the provision of equal opportunities for people with disabilities. The rules also envisage taking measures for the fulfilment of the responsibilities and ensuring principles related to cooperation.

The governments should admit the importance of accessibility of the disabled for the participation in every sphere of life in the process of provision of equal opportunities. The state should implement such programmes that would make material world accessible for them; proper measures need to be taken for enabling people with disabilities to access information and communications.

The states should take measures for the elimination of obstacles in using environment to their advantage. Such measures should include the elaboration of standards and guiding principles, also raising questions for the discussion of adopting those legal acts that are directed at ensuring the accessibility to buildings and facilities, public transport or other vehicles, streets, etc.

The states should ensure the accessibility of adequate information about the policy to be carried out regarding the people with disabilities to architects and civil engineers or other specialists of the related fields, who devise and project the material world.



The states should create conditions in which mass media – television, radio and press will be able to make their services available.

The state should provide active support in the involvement of the people with disabilities in free labour market.

The states should lend their support to the accessibility of such cultural-educational establishments as theatres, museums, cinemas and libraries.

In accordance with the law on “Social Protection of the People with Disabilities”, state entities, enterprises, institutions and organizations provide the people with disabilities with the possibility of having decent dwelling conditions, public and production facilities, transport and transportation links, using communications and information means, enjoying free orientation and displacement. It is inadmissible to design residential areas, other units, build and reconstruct, unless they suit the wants and needs of people with disabilities. The state should provide conditions so that people with disabilities could enjoy visiting cultural establishments and sports facilities, and supply them with sports equipment and other necessary items.

According to criminal code, denying and abusing the right granted by law and/or international agreement to the people with disabilities is considered a crime.

According to the code of administrative infringement, to evade establishing proper conditions provided by the law for the people with disabilities, also ignoring their needs while designing and constructing buildings, is the basis for administrative liability.

The same code above indicates that the minutes about administrative infringement, specified in articles 178/1-178/2 shall be written up by the related to the Ministry of Labour, Health and Social Welfare bodies. However, as it turned out, despite the fact, that the relevant article was included in the code a year ago, the Ministry in question has not yet determined which body will have the competence to write up the minutes. Consequently, no precedent of filing the minutes exist.

To our question, to what extent have the needs of the disabled been taken into consideration while designing or constructing buildings. And to the question whether a programme envisaging instalment of new doors, lifts and access ramps in old buildings adapted to the needs of the disabled exists, the Tbilisi City Hall urban planning municipal service unit replied that when designing blocks of flats or any other multi-functional public buildings, they determine and communicate the conditions of urban construction to the customers. Along with other conditions, there are compulsory ones, dealing with building access ramps to lifts. However, as the head of the service, N. Chkhaidze puts it; the efficiency of the implementation of the above is not very conspicuous on the part of customers.

As for the issue concerning the accessibility of public transport, the Tbilisi City Hall municipal transport service unit informed us that there are special seats in public transport allocated for the people with disabilities, in the first row, behind the driver’s cabin. Transport means operating at present are not equipped with special ascending facilities. Naturally, the question arises, if the person with disabilities cannot get on the bus on his/her own, then the special seat is designed for whom? Undoubtedly, the fact impedes the integration of people with disabilities into public. Moreover, please note, that the buses mentioned above have been introduced in Georgia in the past two years.

Municipality of Tbilisi does not own such specially designed means of transport, which would provide the transportation of people with disabilities to educational and medical establishments or their workplace. This is one more obstacle that does not allow the people with disabilities to feel themselves full members of the society.

In newly redecorated streets and crossings of Tbilisi, it is obvious at one glance that nobody thought about the disabled people while doing repairs in the streets. There are no ramps, no voice signals or any other devices in place.

On September 10, 2006, the employees of the Public Defender's Office inspected the premises of the Tbilisi municipality, Rustaveli Theatre, Ministry of Health and Vake-Saburtalo Local Council. The new block at the eastern entrance of Vake Park (Mosashvili St.) and the new block buildings on Gabashvili St. (No. 2, 3 and 4) were also examined.

In the City Hall of Tbilisi, there were not any special facilities for the invalids.

The same is true of Rustaveli Theatre and Vake-Saburtalo Local Council buildings. In the Ministry of Health, there is a special lift and access road leading to the waiting room of the Ministry.

In numbers 2, 3, 4 Gabashvili Street, no facilities for the disabled exist.

Out of five underground passages in Chavchavadze Avenue, four of them have special units for the disabled, while in the underground passage in front of Tbilisi technical University building there are not any.

Out of four crossings, only on one of them in front of the main entrance of Vake Park is possible to hold the wheelchair from behind on the stairs fitted between rails.

In the other, three places (Kipshidze turning, near the hospital No. 9 and the former Vake fire station), the safety in the units of the disabled cannot be guaranteed unless the brake system of the wheelchair is in full order. The people with disabilities also confirm the above. In their words, because of incorrect design of these units, the angle of slope is so high, that in fact they become useless.

The head of the Tbilisi City Hall municipal improvements explained that for the people with disabilities, there is a plan to build wheelchair paths on the territory of the capital in underground passages in precincts, which will be implemented by the company that wins the tender. On the streets and roads of the capital that are to undergo capital repairs, it is envisaged to build ramps. However, it is not clear why the needs of the disabled were not addressed when recent repairs took place.

As we understood from the reply of the Tbilisi City Hall municipal service unit of education and culture, at the given stage, the following schools adapted to the needs for people with disabilities are functioning: No. 10, 21, and 98, in which adequate conditions are in place for the integration of the children with disabilities into the society. As for libraries, as they explained, voice books for the blind and for those with poor hearing are being recorded.

From the reply of the Ministry of Education, it has been clarified that there are 11 pilot schools (Guram Ramishvili school, No. 180, 61, 10, 6, 151, 130, 44, 60, 4 and the 2nd experimental school), in which there is an inclusive education system. Among the listed schools only two are equipped with ramps and lifts for the children with disabilities (No. 180, No. 6), but the lifts are not functioning, since the school does not have the lift mechanic's place on its staff). None of the schools has bussing service. Introduction of inclusive teaching is a necessary condition for the integration and socialization of children with disabilities. Under such circumstances, the absence of adequate facilities significantly impedes the implementation of the idea of inclusive education. That the City Hall municipality service of education and culture and the Ministry of Education point out different schools that are adapted to the needs of the persons with disabilities speaks for the fact that even collated information does not exist.

As for the issue of awareness of the people with disabilities, the Ministry of Education explains that the main work is being carried out with teachers and representatives of administration (supplementary re-train-



ing of teachers, headmasters' trainings) and that the people with disabilities themselves participate in the process.

A very important issue is the employment of the people with disabilities. The legal personnel of public law of the Ministry of Labour, Healthcare and Social Welfare and the Agency for Social Aid and Employment have no information whether there is any quota allocated in public service for the people with disabilities. During 2005, 12 persons with disabilities were registered at the Agency for Social Aid and Employment, but none of them were been given the job.

From a letter of Tbilisi City Hall Healthcare and Social Protection Municipality Service, we learned that the 2006 budget of the municipality unit will finance the following programmes for people with disabilities: the programme providing the services of interpreter-dactilologists for auditory handicapped (budget 16000 GEL); social integration support programme for the children with disabilities (budget 31 000 GEL); cultural programme for the handicapped children (10 000 GEL); Rehabilitation and inclusion programme for the children with disabilities (80000 GEL); medical insurance programme for the poor.

NO. 10 SECONDARY SCHOOL (NADZALADEVI, TSOTNE DADIANI AVE.);

Inclusive teaching plan and technical support in the school is being carried out by NGO "Anika". The school has 24 children with disabilities, 12 out of them move around in wheelchairs. A bus equipped with special lift is provided to take children to school and back home. In primary school, such children are placed in a separate class, from which later they are placed in usual classes together with other children. The school has a lift. There is an IT room and a canteen. In the main entrance, as well as in the whole building, special access ramps are installed for wheelchairs. The lavatories have sitting compartments, although there are no handles fixed to the walls that would make it easier for the disabled to move. "Anika" pays the salary for the services of a psychologist and speech therapist, as well as everything else mentioned above. As we can see, the adaptation of the school is being implemented not by state, but by the organization "Anika".

NO. 98 SECONDARY SCHOOL (AVLABARI, MARTKHOPi ST.)

School building is rather nice and security guards protect it. For the people with disabilities there is a separate access road to the main entrance, although there are no handicapped children in school. The lavatories have no facilities for the handicapped and there is no lift. As it turned out from the conversation with the administration, they have not developed any specific approach regarding the plan according to which they would teach or place these children in classes. Overall, the school is well furnished and at first sight from the point of view of its technical facilities (except lavatories), it is ready to accept handicapped children.

NO. 21 SECONDARY SCHOOL (VERA, PETRIASHVILI ST., THE FORMER SCHOOL NO. 6)

The conditions for inclusive teaching are provided by the administration through private grants. There are nine handicapped children registered in total, one of whom moves around in a wheelchair.

The lift is in working condition, although it cannot be used since the administration is unable to pay salaries to technical staff. The lavatory facilities for handicapped children are in place, although the repair works are still going on. The school has ramps inside and outside. There are well-equipped rooms for labour lessons and information technologies that are intended for all types of children. Taking on a psychologist is also envisaged under the grant sum. There is a canteen and a cinema hall in the school building.

One of the major problems for handicapped children is to travel from home to school, which would be possible if there was a bus equipped with the special lift. It is true that the number of children in wheelchairs

is not big at present, but there are families that cannot drive/take their children to school in wheelchair every day because either they do not have time or they cannot afford to. Thus, the availability of a bus would allow the handicapped children to receive education.

NO. 180 SECONDARY SCHOOL (VARKETILI, 3RD MICRORAYON)

The school has a few years' experience in the field of inclusive teaching thanks to mainly two NGOs – “Axali Nabijebe” (New Steps) and “Tanadgoma” (Support). There are 12 handicapped children registered, three out of them are in wheelchairs. Those classrooms in which the children are distributed are on the first floor (the school has two buildings, both of them equipped with ramps).

There is a lift, but similar to school; No. 21, there is no technical personnel. Consequently, in order to get to the IT classroom (II floor); the children need to be assisted by teachers and classmates. Psychological services are also envisaged, as in schools No. 10 and 21. The school building needs repairs. There is a swimming pool, which cannot be used since there are not enough funds for its exploitation. There even existed a project of school reconstruction, which never started for some unknown reasons. In lavatories, special facilities were to be installed, but repair works have not yet been finished. There is a canteen, a gym, classrooms for labour and computer lessons.

The main problem is for children to travel from home to school and back. The issue more severely affects the given school than the school No. 21 because the school is a bit far from the main road and the access road, as well as other roads in the district are in terrible condition. In bad weather, it becomes almost impossible to get there in a wheelchair. Even in good weather, wheelchairs are difficult to move along the 100 meters, i.e. the distance from the highway.

We think it expedient that apart from private organizations, state structures also considered inclusive teaching a priority and not only that – state organizations should make important steps towards the adaptation those 11 pilot schools intended for the people with disabilities, which the children with such problems actually attend.

As for the coordination of activities, as NGOs and Ministry of Health explain, there is an idea of creating a coordinating body under the President of Georgia, which will manage the establishment of global policy regarding people with disabilities. We should also note here that in the 2004 annual report of the Public Defender, one of the recommendations was exactly on creating a coordination council under the Prime Minister's office, but for some reason, it took two years to make the decision and the establishment of the council is still just an idea.

It is important that at the Ministry of Labour, Healthcare and Social Welfare identify the entity, which will write up the minutes of the cases of administrative transgression in compliance with articles 178¹-178² of the Administrative infringement code.





Rights to Quality Health Care

Availability of quality health care is one of the basic human rights. Every government, its institutions and citizens should pay big attention to it. Respectively patients as customers of health care service must be sure that all efforts are taken for their safety.

Health sector is a sphere of high risk. Unfortunate outcome is often connected with medical treatment rather than disease; the latter may cause death, serious injury, complications and suffering. Despite the fact that many hospitals and health care establishments provide good procedures ensuring patients' safety, still the health care sphere is lagging behind other spheres and service sectors establishing systematic safety processes. It is clear that the first step to be taken is introducing culture of patients' safety throughout the health care system.

Focusing on patient's safety leads us to making savings on medical treatment, which would have been spent in case of unfortunate out-

come. Savings can also be made on administering expenses related to complaints and paid out compensations. Most important is that living standards are raised for patient's safety. In order to achieve this progress serious effort should be taken to improve safety culture.

The declaration adopted at Luxembourg Conference on April 5, 2005 about patients' safety recommends that "patient's safety" should be one of the priorities of health care policy of the European Union, country members of the European Union and local health care systems. Through this declaration, the national governments are given recommendations, among them: provide patient with full information about his/her health condition, ensure precision of data and full understanding by a patient of undertaken medical treatment. It is important that patients informed about their health condition can better provide for their health safety.

Georgian legislation about health care system:

There are 16 current laws in medical sphere in Georgia and 12 laws regulating social issues. It is important that today Georgia is among those countries, which have perfect legislation in the sphere of protection of patient's, rights, which regulates issues related to patient's social and individual rights protection. Our country is among top 10 countries, which adopted a separate law about "Patient's Rights" (enforced from March 1, 2001). At the same time, the international documents and declarations (Luxembourg Declaration) obligate us to

consider “patient’s safety” as one of the priorities of health care policy of the European Union, country members of the European Union and local health care systems.

Effective legislation plays certain role in relation to patient’s safety as well as knowledge of this legislation by medical personnel and patients. Current laws in health care system need to be revised and amended periodically.

Comments regarding a definition of a “patient”:

We believe that Georgian legislation should give a clear and unified definition to concept “patient”:

Georgian current law defines term “patient” is in three different laws:

1. Chapter 1 of the Law about Patient (article 4) defines term “patient”-any person despite his/hers health condition, who currently uses, needs to use or will use services of health care system.
2. Georgian Law about Health Care (Chapter 1, Article 3, Paragraph “q”) reads: patient-a person using health care services despite his/hers health condition.
3. Georgian Law about Psychiatric Care (Article 2, Paragraph 1) reads, patient-a person diagnosed with psychiatric disease that is rendered psychiatric medical assistance.

Presented definitions do not correspond to each other. Concepts “health care system service” and “medical assistance” are different. By the current law, patients of certain category exercise their rights only in the sphere of health care system. Others can be called patients only if they are rendered medical assistance. It creates an impression that psychiatry is not part of medicine because term “patient” is defined differently in this law.

Definition of “patient” in legislative acts should correspond to judicial norms. The need of legislative definition of this term is caused by the fact that relations between the government authorities and judicial and private persons should be regulated by the legislation about health care. Thus, it is very important that all the components of the system (sides) be given unified and clearly defined names. Besides, out of 16 current laws in the health care system all of them are Georgian Laws (do not belong to organic act or act of different importance in hierarchy) and therefore all definitions presented in these documents have equal power.

The World Health Organization based on explanatory dictionary of health care systems and European observatory policy defines term “patient”, as a person related to health care system because his/her health condition requires attention from this system.

Based on international practices and the experiences of other countries it is clear that under the definition “patient” is meant any person needing medical attention (not the attention from health care system) care or treatment. Based on the measures taken because of this attention, either this person is diseased (is characterized with pathology) or injured for which he is treated or needs treatment by a doctor or other health care professional. Some government agencies, insurance companies and certain groups of patients differently interpret term “patient”. They may refer to a patient as a healthcare customer or healthcare system customer.

For optimal selection and definition of the term, we think that the issue should be reviewed by the Ministry of Labour, Health and Social Protection and the Parliament of Georgia.

Comments about informed consent

Analysis of the current legislative material in the healthcare system makes us consider that important element about the human rights defence in the Georgian Legislation related to conducting different medical



manipulations and consent of a patient on treatment methods and possible outcome is marked with a term “informed consent”, Georgian Law on Patient’s Rights, Article 4, b informed consent- consent of a patient, and in case of patient’s incapability, of a relative or a legitimate representative on this or that medical service, after getting the information.

Informed consent is included in the Georgian Law about “Doctor’s Activity” (article 44); “Law on Health care” (article 8) does not fully reflect the essence of this activity. We think that giving information to a patient is not sufficient. A patient (or his/her legitimate representative) should be able to comprehend and understand this information adequately.

Recommendation

We appeal to the highest legislative branch of Georgia to add one last sentence to the definition of informed consent in the Law on Patient’s Rights: informed consent- consent of a patient and in case of patient’s incapability of a relative or a legitimate representative on this or that medical service, after giving them the information, which is correctly understood and comprehended.

Performer: The Ministry of Labour, Health and Social Protection; Parliamentary Committee on Health Care and Social Issues.

HIV/AIDS in Georgia

By the data of 2005, indicator of HIV/AIDS spread is 0.14%-0.15% per 1, 000 people. Despite the low indicator of HIV/AIDS in Georgia lately it is growing fast compared to the similar indicator in other countries. First case of HIV/AIDS in Georgia was registered in 1989. By the information of February 20, 2006, 918 HIV/AIDS cases were registered in Georgia. Among them AIDS developed in 372 patients. 192 out of them died. Registered cases do not reflect a real picture of HIV/AIDS spread in Georgia. By the assumption of the experts of the World Health Organization there should be about 3.500 persons infected with HIV/AIDS in reality in Georgia. Forecasted situation about HIV/AIDS is alarming. At the same time it is important that the Global Fund is financing state programme to prevent and effectively control HIV/AIDS, tuberculosis and malaria with the purpose of raising awareness in Georgia. Different components of this programme cover educational, preventive and treatment activities.

There is an alarming situation regarding the spread of HIV/AIDS at the penitentiary system. Spread of HIV/AIDS at the penitentiary system has been studied since 1997. The study was conducted through free testing of HIV antibodies on a voluntary basis at the facilities of this structure. About 10.000 convicts and prisoners were pre-tested and consulted concerning HIV/AIDS. Among this groupstingblishments provide their 9. 439 voluntarily took a blood test for HIV antibodies.

In 2005 spread of HIV/AIDS among the population was 0.15 % and at the facilities of the penitentiary system 1.76%. It means that it is spreading 10 times faster in the penitentiary system. By the research of AIDS and Clinical Immunology Centre 67, prisoners were registered with HIV infection from 1997 to 2005. Among them 7 died, 35 were released and are undergoing dispensary treatment (under dynamic medical supervision), and by the information of December 2005, 25 convicts infected with HIV are serving a sentence at the penitentiary system.

There are interesting results of a survey conducted by the Institute of Drug Abuse at two penitentiary facilities (250 male prisoners were interviewed at the age of 19-50). The survey revealed that 70% of respondents

used drugs in the past and 41% were using drugs in prison. Drugs are mostly used here through injection. Among those respondents who admitted using drugs in the past 3 months 30% used marihuana, 41% heroin, 18% subbotex, (through injection), and 8% opium. 10% of the respondents regularly used drugs through injections every day or every other day.

The following information was collected in connection with HIV: 87% of drug abusers reused their syringes, 42% admitted to have often used syringes used by others, 52% said that their syringes were used by others. For the numerous facts of drug abuse through injection and use of common syringes there is a big risk of spreading HIV and hepatitis at the facilities of the penitentiary system.

The Georgian Law about Prevention of AIDS says:

Article 8. Medical assistance and right to social defence for HIV infected/diseased with AIDS.

Paragraph 19. HIV infected/ diseased with AIDS at the penitentiary facilities enjoys the same rights and responsibilities as non-infected. They also have the right to get:

- a) Medical assistance;
- b) Complete and timely information on HIV/AIDS ;
- c) Make a decision about confidentiality on HIV/AIDS;
- d) Take preventive measures against HIV/AIDS;

Paragraph 20. Respective medical, psychological and social assistance should be rendered for HIV infected/diseased with AIDS at the facilities of the penitentiary system.

By the latest information, the representatives of the Ministry of Justice and Centre of AIDS and Clinical Immunology did blood testing for the prisoners placed at the medical facilities of the penitentiary system. This research was voluntary. Among 260 prisoners placed at medical facilities 200 prisoners participated, results are not published yet.

Implementation and monitoring of AIDS preventive measures stipulated by the law is one of the directions of work of the administration of the Public Defender. Georgian Law about Prevention of AIDS (1995) paragraph 4, article 2.

Recommendations:

- Strengthen control over convicts with the purpose of drug abuse prevention. Performer: Ministries of Justice and of Labour, Health and Social Protection.
- Prisoners infected with HIV/AIDS should have access to medical and other kind of assistance as it is stipulated by the law. Performer: Ministry of Labour, Health and Social Protection.

AIDS cases in Kutaisi

4-year old patient G. L. applied to the scientific-practical centre of infection pathology, AIDS and Clinical Immunology in July 2005 with a diagnosis of chicken pox and double pneumonia.

After testing, the patient was diagnosed with HIV/AIDS. The patient possibly was infected through blood transfusion at Kutaisi diagnostic centre for mothers and children; donor was 32-year-old man. He was a staff donor and from 1993 to April 2001 donated blood to Kutaisi regional blood bank 22 times. Each time his blood was tested for HIV, B and C Hepatitis and Syphilis. On April 27, the donor tested positive with Hepatitis C.

From 1998 to 2001, the donor's blood was used 19 times for different recipients. Among them 10 recipients are identified, (4 out of them are dead but not from HIV infection), 6 recipients were tested for HIV. 9 recipients cannot be identified.



Out of 6 recipients only 5 tested positive for HIV, among them 3 are children and 2 adults (they received donor's blood in the period of December 29, 2000 to March 20, 2001), one recipient (who received the donor's blood in 1998) tested negative for HIV.

The preliminary survey shows that the donor's blood was tested for HIV/AIDS, Hepatitis B and C each time he donated blood with the methods of the state programme "safe blood" but infection was not registered.

According to the Georgian Law about Prevention from AIDS, the State understands HIV/AIDS threat and with the purpose of resolving related problems has created:

Article 2. Government Commission on AIDS.
National Programme to Prevent and Combat AIDS.

The above-said indicates that the Commission as well as the programme provides assistance for the infected. After receiving the donor's blood in Kutaisi, several recipients were infected but only 5 were identified. Unfortunately, there is no information about the other 9 recipients.

As it is stipulated by the law Article 8 on medical assistance and right to social protection of HIV infected/diseased with AIDS, they are entitled to assistance and allowances.

Article 8, paragraph 5, Citizens of Georgia infected with a virus through medical manipulations are entitled to pension according to the procedure prescribed by the Georgian Law.

Article 8, paragraph 6, with the purpose of monitoring epidemics, periodic examinations and treatment, the persons infected with HIV/diseased with AIDS outside Tbilisi enjoy the right of free transportation from the place of permanent residence to Tbilisi and back 4 times a year. Transport cost is covered by the respective local budget.

Article 8, paragraph 9, unemployed persons infected with HIV/diseased with AIDS are paid monthly allowance of the amount of double minimal salary that is financed from the social assistance programme in the framework of assignments.

5 victims of the Kutaisi case are entitled by the law to privileges. As we found out from a private conversation with the representative of AIDS centre, infected Maia Tsintsadze often did not have money to go to Tbilisi for consultations and medications though they were free. State and insurance programmes cover these costs. Among infected there are 3 children and they enjoy additional privileges by the law:

Article 8, paragraph 7, parents, custodian or nannies have the right to stay at the hospital with the minor infected with HIV/ diseased with AIDS (up to 14 years old). During the stay at the hospital parents, guardian or care-person are released from work and paid temporary allowance of disabled.

Article 8, paragraph 8, persons infected with HIV/ diseased with AIDS less than 18 years are paid monthly allowance at the amount of double minimal salary which is financed from the social assistance programme in the framework of assignments.

Recommendations

5 citizens infected with HIV because of medical manipulations are entitled to pension and privileges. Performer: The Ministry of Labour, Health and Social Protection.

General recommendations on improvement of quality medical services:

- Population should be better informed about their rights (as patients), about the state medical and social programmes, about medical treatment of target groups in the framework of these programmes (vulnerable, oncology patients etc.), about criteria and funding (also co-funding).
- Improve (or simplify) work of medical-social expertise commission to determine material status and make it available for everyone (especially for the citizens of the regions).

Major Social Problems

According to the UN research, there are more than one hundred million homeless people worldwide. This problem is rather acute and urgent in Georgia too.

Many people address the Public Defender's Office with the problem of being homeless for different reasons. Some are homeless because of natural disaster (according to the 2002 data of the State Department of Statistics, the number of homeless families in Georgia is 788, among them 114 are in Tbilisi, although the data obtained from the City Hall show that this number is much higher in the capital), others – due to crumbling old houses. Very frequently, we face the problems of housing refugees, as there are many damaged flats that need to be pulled down. It must be noted that the number of the categories mentioned is very high and that the problem is mainly in Tbilisi. In accordance to the information from the City Hall of Tbilisi regarding the issues above, because of the earthquake in 2002, there are

3582 damaged houses in Didube-Chugureti district, and 50 families were left homeless. In Gldani-Nadzaladevi, up to 11 000 houses fall under the category of “damaged”, 1800 among them belong to the heaviest, 3rd category, 2484 buildings are under the second category and 1059 under the first. There was a case when the convict applied to us, who after having served the sentence returned home and it turned out that his house had been sold. There are many cases, when a person has to sell the house or mortgage it because of extreme hardship, caused by different reasons, such as debts, family problems, having no other source of income and selling the house is the only way to get food, in order to survive physically.

Among cases under consideration at the Public Defender's Office, the problem of employment and breach of the labour rights deserve mention. For example, the case concerning 15 employees who have been dismissed from the Ministry of Labour, Healthcare and Social Welfare, for no justifiable reason, just because of expressing their own opinion. What is more, the latter was indicated as the underlying reason of dismissal. According to 2005 data of the State Department of Statistics, the rate of unemployment was determined at 13,8%, i.e. there are 279,3 thousand unemployed persons in Georgia.

The claim of former employees of “Maudi” JSC (which is considered the assignee of “Logovaz”, JSC) is another example of breach of labour rights. As we found out, The Ministry of Economic Development of Georgia and “Logo-

vaz” JSC had concluded the agreement, under which the state-owned enterprise was transferred to “Logovaz” JSC on condition that they would not change the profile of the company (the main activity of which was wool production) and employ the production workers.

After having been dismissed, the employees of “Maudi” JSC demanded the annulment of the agreement claiming that the management did not fulfil its terms. The fact is that they were not given jobs and as it was found out later, “Maudi” JSC has not been engaged in wool production at all, and consequently no domestic industry of wool production exists today in Georgia. The court did not satisfy the declaration of the plaintiffs, as they were not in the right of being plaintiffs. In the given case, the plaintiff had to be the Ministry of Economic Development of Georgia, who normally is one of the parties in legal relationship. Thus, quite a few people are left unemployed.

As it has been noted, housing problems have been caused for a variety of reasons. For instance, the Public Defender’s Office examined the application from the association of the protection of rights of the cooperative construction members and found out that in the eighties of the last century 8050 families paid in cooperatives and repaid the contractors’ estimate by 100%.

From 1992, the cooperative construction stopped operations and thousands of families were left without flats.

Pursuant to article 48, subparagraph g, 1999 of the Georgian law on “State Liabilities”, concerning cooperative construction, the liability of the state shall be recognized as the state domestic debt.

Regarding the solution of the above issue, article 12, paragraph 4 of the law on “State Property Privatization”, states that “If the housing construction is not completed, in order to partially discharge liabilities occurred in connection with drivers who worked on contractual basis with cooperative construction and municipal enterprise Tbiltrans and did not receive new flats, the Ministry of Economics, Industry and Trade of Georgia shall submit proposals to the President of Georgia covering 2001-2005, on the transfer of particular privatization property (share, stocks, buildings, etc.) through direct sale, under which circumstances, the sum of compensation to be paid in exchange for flats shall be deemed as the value of the state property transferred.”

Article 14, paragraph 6 of the Georgian law on “Management and disposal of state-owned non agricultural land” is referred to the solution of the above issue. As is specified in the law “If the housing construction is not completed and if the drivers, working on contractual basis for the Municipal enterprise “Tbiltrans”, do not receive flats, in order to provide partial compensation to them on their consent, the local management bodies shall submit proposals to the president of Georgia covering 2001-2005, on the transfer of certain privatization property (land) in their direct disposal, under which circumstances, the compensation in exchange for flats will be deemed as the value of the transferred land.”

The issue was also considered by article 9 of the law of Georgia on “2005 State Budget of Georgia”.

Based on all the above said, on July 1 of the current year, the Parliament of Georgia adopted a resolution, under which, for the purpose of fulfilment of the listed laws, the government had been assigned to develop and submit appropriate projects to the president of Georgia. However, no efficient measures have been carried out in this respect, despite the fact of having a comprehensive legal basis.

Thus, we consider that a number of law requirements have been violated, that infringe upon the rights of thousands of people and we addressed the issue to the Prime Minister, Mr. Noghaideli for consideration. On December 20, 2005, we received the reply from the Ministry of Finance of Georgia, in which we were informed that the information would be processed by the Ministry and be forwarded to the commission



studying the Georgian state domestic debt problems for consideration. The commission had been established on the resolution No. 108, of November 15, 2004, of the Georgian Government. After the hearing, the commission will present concrete proposals and recommended solutions to the Government of Georgia. However, as it seems, this issue has had no advancement so far, as the members of the association addressed the Public defender's Office once again on February 22 of the current year informing us that they had already taken the case into court. The subject of litigation was the building located on 7 Ingorokva St. (in front of the State Chancellery, which is now being built to accommodate the hotel). On the order of August 31, 2004, of the Minister of Economic Development, Kakha Bendukidze, the building was intended for the coverage of liabilities the state owed the people left without flats. The order said: "The association for the protection of the rights of construction cooperative members shall provide information about the building under construction at 7 Ingorokva St., as well as about the person or group of people to receive 5410 square meters of space. Despite the fact, on the order No. 10 of January 13, 2006, of the President of Georgia, the building was transferred to the company "Centre" LTD through direct sale. We consider it a serious social problem and the government has to pay more attention to this issue and offer the members of the association an alternative solution. The order of August 31, 2004 was one-step forward, thanks to which some members of the cooperative will be satisfied and the problem will be solved successfully.

There is another important problem regarding housing, the problem of so-called "otstupniks", which has remained unsolved for many years. As it has become known, because of illegal decisions made by court, thousands of people were left without a roof. The court did not in all cases act in conformity with the statutory act, the law on "Relationships that occur while leasing a living quarter", or interpreted the law inappropriately, although the law adopted on June 25, 1998 was to regulate the issues. Here are some cases: Avtandil Gogiashvili lived at 7 Manjgaladze St. in Tbilisi in one room on the first floor of a two-storey house as a lessee. Upon the demand of the owners of the house Maya Kurdghelashvili and Maya Brachuli, the court made the tenant vacate the room and the owners, on the mandatory order were to pay compensation pursuant to article 5 of the law on "Relationships that occur while leasing a living quarter", in force at the time. However, the motivation for the resolution No. 35-62 of September 28, 1999, of the Supreme Court, does not comply with article 5 of the law. As per article 5, the tenant had to satisfy the demand of vacating the lodge, if the owner would give him another lodgement within the neighbourhood or would offer compensation for value of the lodge. It became clear from the court resolution, that no such offer took place. In order to determine the sum, the court based its judgment on the independent auditor's conclusion, who evaluated the lodge under litigation and not the one specified in the 2nd part of article 5 mentioned above, i.e. the court gave it an incorrect interpretation and thus infringed upon the interest of the citizen, A. Gogiashvili. (See Supreme Court of Georgia resolution No. 35-62, 28.09.1999, p.3).

The citizen, Mary Tsenteradze lived in Tbilisi, at 5 Askurava St. The owner of the house is Darejan Datashvili, who sued D. Tsenteradze and the latter, on the resolution of September 13, 1998, was recognized as a lessee, and on the resolution of September 10, 1998, Gldani-Nadzaladevi district court she was made to move out of the flat. In the descriptive part of the resolution it is indicated, that Mary Tsenteradze did not acknowledge the suit and demanded that she was given another lodgement. However, she did not specify that she was a lessee and the law on "Relationships that occur while leasing a living quarter" was to apply to her. Taken the motive, on the resolution of March 21, 2001, the Supreme Court of Georgia did not satisfy her appeal. The court did not study the circumstances in an objective and unbiased way, which was their direct responsibility in accordance to the code of practice in force then. In compliance with article 433 of the code of practice of Georgia, the current civil code of practice came in effect from May 15, 1999. Before that, the court applied the code of practice of Georgian Soviet Socialist Republic, article 11 of which states: "The court has to find it sufficient whatever materials and explanatory notes it is offered and take all the measures in compliance with the law to get a clear and objective picture of the circumstances and the duties and responsibilities of the parties." Hence, the judge, in 1998 had to study the circumstances anew and while making the decision was to apply the law on "Relationships that occur while leasing a living quarter".

Concerning the above cases, we addressed the Chairperson of the Supreme Court of Georgia with a recommendation to examine the legality of the above decision and we look forward to the reply.

It should also be noted, that the law on “Relationships that occur while leasing a living quarter” specifies that the law shall regulate the relationships until 2010. After 2010, the owner has the right to demand from the lessee to vacate the space unconditionally, if until then the lessee did not lay down terms required by law. Almost all lessees object to such condition, requiring the extension of the term, as due to their hard material-social conditions, they cannot afford to apply to the court.

An example of the violation of the proprietor’s rights is the case of P. Kvirkvia that was also due to an unlawful decision of the court.

Having studied the above case, we found that P.Kvirkvia is the owner of the flat located at No. 1 the second drive of Teleti lane in Tbilisi. He bought the flat from Z. Khorava, who is the heir to the former owner of the flat, L. Taruashvili. As indicated in the application, the citizen Zhuzhuna Bakhia had been living in P. Kvirkvia’s flat since 1977 based on the lease agreement, who at the same time was officially registered in the flat. Later, based on the court’s ruling (covenant), Bakhia’s daughter, Nino Pochkhua was also registered in the same flat on condition that she would move as soon as the construction cooperative built the house, to which both of them would move.

Since they became engaged in housing litigation, P. Kvirkvia appealed to the Krtsanisi-Mtatsminda district court demanding to annul the agreement, that had been satisfied based on the resolution of March 5, 2003. The resolution specified the position of the defendant claiming that they lawfully possessed the living space and that this right was given to them according to 1998 court ruling on covenant.

On the resolution of December 22, 2003, of the district court, the court decision had been annulled and a new resolution was made, according to which, Z. Bakhia and N. Pochkhua’s appeal was satisfied. Besides, the court considered that they were lawful lessees, pursuant to the law on “Relationships that occur while leasing a living quarter” of Georgia. As you know, according to the second part of article 2, of the edition at the given time, the covenant on leasing between the parties has to be testified by “registration, utility payments and certain rent” in addition to the lease agreement. It is important that this part of the law is cumulative and when applying, all the conditions have to be in place. If the court considered the ruling of 1988 as covenant, then we should note that there is no mention of payment of any kind of rent and neither is there any evidence in the materials of the case. P.Kvirkvia indicates that Bakhia and Pochkhua are the lessees. (Note that initially the litigation was about not paying the rent). It is also significant, that on the order No. 157 of May 22, 2000 of the Mtatsminda-Krtsanisi Local Council, the citizen Bakhia was given the flat located in 26 Purtseladze St. instead of a cooperative flat, which Kvirkvia considered as one more bases for her demand to move Z. Bakhia and N. Pochkhua out of the flat. Court of Appeal did not take into account the above for the reason that the flat in Purtseladze St. was not suitable for living. We consider that the judgment has no grounds, as Kvirkvia is not going to put up with the fact that she is being prevented from using her own property because the state allocated an imperfect flat.

Hence, the proprietor’s right guaranteed by the Constitution was violated. This is why, in conformity with article 21, subparagraph e, of the law on “Public Defender of Georgia”; we addressed the chairperson of the Supreme Court of Georgia with the recommendation to examine the legality of the ruling of November 14, 2005 (case No. as-89-786-03).

From the ruling of the supreme court of Georgia of February 20, 2006, it became clear that the Public Defender’s recommendation letter had not been considered for the reason of its inadmissibility, since it did not correspond to the requirements of the constitution and the civil practice code of Georgia.



Pursuant to article 21, subparagraph e of the organic legislation “On Public Defender”, the latter is entitled to address the relevant court with a recommendation to examine the legality of the resolution in the event if as a result of studying the case the Public defender considers that the violation of human rights and freedom could have an essential impact on making the decision. Civil practice code does not validate the revision of the resolution of the Supreme Court. This drawback in the legislation impedes the Public Defender’s efficient implementation of the activities in the field of human rights.

One of the most important issues we have studied is about provision of pensions to former financial police employees. T. Pataridze, V. Kochorashvili and G. Khuroshvili were discharged from the ranks of the financial police on their own report in connection with retirement, under article 20, paragraph *a* of the law on “Financial Police” (according to the rule on the length of service in the police).

Pension provision department of social insurance unified state fund of force structures refused the listed persons to give them pensions. The reason they brought forth was that article 23, paragraph 7 of the Georgian law on “Financial Police” did not stipulate the provision of pensions to the employees according to the length of service in the police.

As it became known to us, in order to solve the problem of elimination of the drawback, the Financial Police prepared and submitted the draft order to the Ministry of Finance, which stipulated for making changes and regulating the issues of pension provision. Thus, we addressed the legal department of the Ministry of Finance, where we obtained the information, that on the minister’s order, which represents a statutory act of law, it is impossible to grant pensions and the issue requires legislative regulation. However, which measures were the Ministry of Finance going to undertake, was unclear from the letter. No changes have been made to the Georgian law on “Financial Police”, but article 23 paragraph 7 simply gave the following wording: “Police employee who has been discharged from office due to age limit or becoming a disabled person, in compliance with the Georgian legislation, has the right to receive the relevant compensation or a state pension.”

In accordance to article 8, paragraph 3 of the Georgian law on “State Compensation and Academic Grants” “the norms under this article extend to the employees of the financial Police, if their length of service is not less than 20 calendar years (at least four years of service in Financial police). It should be noted, that the discharged employees would not be able to satisfy the above provision, as four years have not passed yet since the establishment of the Financial Police. Consequently, those who according to article 20, paragraph *a* of the law on “Financial Police” will be dismissed for the reason of retirement, and actually there already exist a number of cases like this, will not get a pension, which is a gross violation of social rights. All the above is because of the disparity in the law. To get a proper response, we addressed the Ministry of Finance as well as the Parliament of Georgia, with the request of making changes to the law. We also requested to withdraw from the law one of the provisions referring to a four-year length of service in the Financial Police.

As I already mentioned in the previous Parliamentary report, “Georgian State Electrosystem” LTD, had arrears of wages of their former employees that have been paid due to our efforts and recommendations. In 2005, a group of employees of the company addressed us again, with the same complaint.

We addressed the Ministry of Energy resources of Georgia in regards to the above issue, and in response we were informed that the Ministry refuses to pay the arrears of wages and officially points out that in connection with the gradual improvement of the financial state of “Georgian state Electrosystem”, the enterprise itself has to settle the issue with their employees. After that, we addressed the director of the company, Joseph Corphet and asked him to explain by what time they were planning to pay out arrears. In response, we were informed that the Ministry of Energy Resources filed the request on allocation of funds from the state budget in order to repay arrears.

“Electrosistema” LTD admits the arrears. According to the Labour Code of Georgia, the legal relationship between employees and organization is well regulated, and according to it, the organization itself is liable to employees. As per article 96 of the Code, “workers and employees are paid the full sum by the organization on the day of dismissal “.

Proceeding from what has been said above, we consider that the citizens’ labour and social security rights have been infringed upon, and we addressed Joseph Corphet, the general director of “Electrosistema” LTD, with the recommendation to provide timely paying of the salaries. It must be noted, that the enterprise has no financial difficulties and is able to clear their liabilities. The proof for the above is provided by ruling of panel of judges of city civil court of January 30, 2006, regarding the approval of the rehabilitation plan of the “Electrosistema” LTD. The ruling indicates that the management addressed the court with the request of ceasing the bankruptcy case, as the company is on the way to financial recovery. According to the ruling, “Electrosistema” LTD shall take the responsibility for clearing payroll liabilities.

Concerning the issue above, a press conference was held at the Public Defender’s Office and the public Defender once again stated his position. After that, we received a letter from “Electrosistema”, which says that “Georgian State Electrosistema” will pay off the arrears to the employees dismissed because of the reorganization, in stages, along with the improvement of financial state in the company.

One of the problem issues is the provision of transport, especially in the areas where the movement of mini buses have been banned. People find it difficult to reach the destinations from Freedom Square and Rustaveli Avenue. The Public Defender’s Office personnel carried out the experiment. They waited for the buses on Rustaveli Avenue, in front of the Opera House at 9 pm and during 1 hour only two buses arrived, both were No. 61 going in the direction of Vake and Bagebi. At that moment, the bus stop was full of people all of them were dissatisfied with the schedule. Concerning the fact, we addressed the city bus- service agency and enquired about the schedule of the buses. We found out that 16 buses were scheduled to run from Freedom Square and Rustaveli Avenue for different destinations. Among them, the bus No. 1 goes to Lilo settlement and Kakheti highway. The last No.1 bus leaves at 8 pm, which is normal, as it carries the passengers to the other end of the city and it is likely that there are no passengers after 8 pm. However, in crowded areas such as Saburtalo district, people are out until late and since mini buses do not run from Freedom Square and Rustaveli Avenue any more, it is quite problematic to travel. Besides, it should be noted, that from the area mentioned above to Saburtalo run buses No. 6, 87, 5, 12 and 44, but this has not solved the problem of travelling and passengers have to wait a long time for a bus. The mentioned buses run every 14, 10 12-14, 45 and 16 minutes respectively. The last bus to leave is a No. 6 leaving at 20:30, No. 87 – at 20:00, No. 5 at 22:00, although these buses do not actually run at these times. Bus No. 12 runs until 18:30, bus No. 44 until 20:30. In fact, those who work until 9 pm, cannot manage to catch the bus, neither can they use the mini bus service, so the only way is to take a taxi, which is often impossible due to being quite expensive. The survey revealed that most students have to change several transports to reach the university from suburbs (for example, Mukhiani), as there is no bus that goes in the direction of Vake.

Thus, we consider that in order to improve the provision of transport, it is necessary to make shorter intervals between buses and they should run until a later time, especially in districts that are more crowded. As well as that, it is necessary to add more buses in some districts that will move in the direction where mini buses are banned. Along with this, the municipal transport company should provide the implementation of monitoring on the schedule of buses, so that the population has no impediments in travelling around the city.

Based on above considerations, we think that all socio-economic problems, such as financial difficulties, unemployment, homelessness, social welfare are closely related to each other and it is necessary to do more work in this direction and take efficient measures. Development of various social programmes should become the key priority of the government.





Right of Ownership

Entrepreneurs' Rights

Development of private entrepreneurship and business is the key priority of the country. According to the law, entrepreneur shall enjoy full freedom and any predicament is inadmissible. At the initial stage of the development of private entrepreneurship it was indicated that the state must not interfere in the activities of entrepreneurs, the state should create a complete base for entrepreneurs so that they efficiently carry out their activities and by doing so lay the foundation to the upsurge of the country's economy.

It is clear that tax audit is determined by the law, particularly, in paragraph 4 of article 94 of Tax Code it is specified that tax audit shall cover 1. Current audit procedures comprised of: taxpayers accounting, verifying accounting and reporting data, general analytical procedures; 2. monitoring taxpayer's economic activity (invigilation, stock-taking, control purchase,

inspection) and lastly, 3. Tax audit (desk or field audit). Besides, paragraph 5 of article 98 specifies, "the procedures of tax audit should not disturb or restrain the normal rhythm of taxpayer's activity".

If after the audit, the taxpayer is found to have a tax violation, the latter shall be obliged to pay a fine. There is no allegation of applying a lien to the objects, in this regard the only mention is in article 114 of the Tax Code which says, that

"Representatives of the tax agency are entitled to lien those documents and inventories of the taxpayer, which are necessary for conducting the controlling field tax audit". As for inventories, the code gives the following interpretation to them - they are raw materials, half-stock, spare parts and finished goods of international accounting standards that a taxpayer uses in his/her usual economic activity.

It should be noted here, that according to the second part of article 99 of the Code, tax agency is authorized to implement forms and methods of tax audit on taxpayer's/tax agent's or other responsible person's activity only on the basis of order of the judge, except:

- a) Current audit procedures;
- b) Observation procedures of taxpayer's activities
- c) Desk tax audit;
- d) Field planned audit;
- e) Field control tax audit related to reorganization or liquidation of enterprise/organization;
- f) Cases defined by article 114 of this Code;

In the latter case, the tax agency has the right within the urgent necessity, on the written order of the head of the agency, to carry out the urgent controlling field tax audit without preliminary notification. according to the law, urgent situation of tax agency occurs when the tax agency believes that a taxpayer plans to evade fulfilment of tax liabilities by leaving the territory of Georgia, handing its own property to another person, destroying of documents verifying tax infringement, correcting or replacing or performing other actions.

Tax agency is responsible to apply to the court within 48 hours after starting the urgent controlling field tax audit in order to get permission on conducting controlling field tax audit. Along with this, as per part 3 of article 114 of the Tax Code, members of tax audit group are not entitled to begin the procedures of urgent controlling field tax audit before they can receive the permission from the court. Representatives of tax agency are entitled to lien those documents and inventories of the taxpayer, which are necessary for conducting the controlling field tax audit (article 114, part 4).

In December 2005, controlling field tax audit started in 6 restaurants in Mtskheta at the same time. For this reason, the above restaurants and parallel to those, the chain of “El Depo” restaurants were seized as well. As the media covered it, financial police implemented the seizure, which was also stated by the head of financial police, Davit Kezerashvili. The representatives of the Public Defender’s Office visited the restaurants and studied the materials. As some of the restaurants stated, they were visited by Gori district tax inspectorate accompanied by financial police, although others noted that financial police had not been there. From the conversation with restaurants’ administrations, we got the impression that they were intimidated and that is why they could not disclose full information, they were rather reluctant to discuss the matter. Although some of the entrepreneurs gave us certain information in private conversations, they mentioned that they would not confirm their words officially. It is noteworthy, that because of the seizure, all the restaurants incurred significant material losses, since each of them were closed for at least two weeks. It entailed the spoilage of food products and the loss of customers. The restaurants claimed that it took the tax agency a very short time to conduct the audit; actually, they managed to do the job in one day. Thus, there was no need to close down the restaurants for two weeks and in some cases for the whole month, as all this impedes entrepreneurial activities.

Tbilisi tax inspectorate seized club-restaurants and cafes: “Noa – Noa”, “Music Hall”, “Geo-stria”, “Metelitsa”, “Corona”, City Management” and the Khinkali restaurant “Odishi”.

In this regard, we addressed the above agency and demanded comprehensive information on the legal basis of seizing the mentioned entities. In their written reply, nothing is mentioned specifically, but there is a general reference to article 114 of the tax code, which specifies that before they can receive the permission from the court, the representatives of tax agency be entitled to lien inventories of the taxpayer. Moreover, as we have already indicated, according to the code, the inventories do not include the businesses in question.

As the reply from the tax agency was not fully satisfactory, we addressed the Board of Administrative Affairs of the Tbilisi City Court and enquired whether the tax agency notified : “Noa - Noa”, “Music Hall”, “Geo-stria”, “Metelitsa”, “Corona” City Management” and the Khinkali restaurant “Odishi” in compliance with the regulations to conduct the audit (seizure) for being authorized on the basis of the obligatory order to do so and if they did, we demanded that we were given the copies of the materials of the case in question.

The Board of Administrative Affairs of the Tbilisi City Court informed us, that tax agency applied only to the following companies: “Noa – Noa”, “Corona”, “Geo-stria”, “City Management” and the Khinkali restaurant “Odishi” for the authorization of the obligatory order on audit. The list does not include “Music Hall” and “Metelitsa” which seem to have been audited by tax agency without permission.

The administration of “Metelitsa” verifies that the restaurant was closed for 4 days and that it was audited by tax agency.



The tax agency verbally stated that it is practically impossible to audit a company in a full-fledged manner, without a lien.

Thus, it may well be a flaw of the law, but the fact is, that the law does not envisage the lien of the company. It is clear, that all the companies must pay taxes, since decent entrepreneurial operation is the basis of the country's economic growth, but the fight against tax evasion should not circumvent the law.

Lately the press frequently cites the words of different political parties and MPs that there are frequent cases of state rackets and exerting pressure on entrepreneurs. None of them has ever addressed the Public Defender with the issue, though. Hence, in order to defend entrepreneurs' rights, we addressed the Member of Parliament, Koka Guntsadze, Irakli Melashvili, the member of the "People's Front" and requested to provide us with a concrete name of a businessman, or a concrete fact of extortion, since Guntsadze and Melashvili mentioned to the press that they possessed some information on the matter. We also addressed the Executive director of business federation, Mr. Giorgi Isakadze, also the chairperson of the Chamber of Commerce and Trade, Mr. Jemal Imnaishvili, to supply us with facts on the violation of entrepreneurs' rights. We should note, that none of them replied to our letter. The tax ombudsman of Business Federation pointed out in conversation that their organization had not received any applications on the violation of rights and that they did not have any information on the matter. We also met the Ambassador of Great Britain to Georgia, Mr. Donald McLaren, as according to the information spread in the press he had made a statement on the facts of the violation of ownership rights. Although the Ambassador told us that, he had never made such statement.

The cases of Irina Nemsadze and Zurab Talakhadze

Zurab Talakhadze addressed the Public Defender's Office stating, that his right, as of an entrepreneur has been infringed upon. From submitted materials, it turns out, that Zurab Talakhadze owned the building adjoining 72 Vazha Pshavela Ave., intended for carrying out his economic activities. The building was Tamar Eriashvili's property. We should note that the construction of the building took place in compliance with the existing norms that can be supported by a number of documents – the order of the chief architect of Tbilisi, expert's conclusions, etc. Apart from that, the fact of ownership can be proved by the abstract from public register and as the presumption of the lawful origin of public register is in force, Tamar Eriashvili should be considered a legitimate owner.

As is commonly known, the inviolability of property is guaranteed by the Constitution of Georgia and unauthorized infringement upon property is illegal, thus no one had the right to destroy Tamar Eriashvili's property without judicial writ or ruling.

The declarant indicated that the building was dismantled under the supervision of the Municipal Service of the City Hall. Thus, we addressed the above-mentioned body and demanded to provide us with the information about the legal basis on which the house adjoining 72 Vazha Pshavela Avenue had been pulled down. We received a written notice from the above body that they had not demolished the house. The fact is that Tamar Eriashvili's property, which she lawfully owned, has been destroyed and the relevant bodies do not have any documentation on it. Thus, based on the above, we consider that the demolition of the building was illicit.

Irina Nergadze's case also refers to illicit destruction of private property. Based on the data provided by Public Register, Irina Nergadze, together with the state owned the space in the underground passage nearby 34a, Chavchavadze Avenue. The total space of the facility – 230 square meters was in the ownership of Nergadze, which is legally incorrect, since pursuant to article 150 of the Civil Code of Georgia, the building

standing firmly on the land represents an essential part of the land and if the land is owned by two subjects, then the building has to be under joint ownership.

From the materials presented in the case, it turns out that, initially Nergadze owned the space based on a lease agreement. She herself addressed the municipality of Tbilisi and requested to be allotted 160 square meters of the space for carrying out reconstruction works to the existing pavilion in the underground passage, in order to set up a trade centre. Her request was satisfied, which is proved by the resolution of November 17, 1998 of the Tbilisi Municipality Office. While from the order of November 17, 1998 of the chief architect, it becomes clear, that the total area of the construction was determined to be 230 square meters, which goes far beyond the figure indicated by the premier and instead of a mini trade center, quite a big building was erected. This is the violation in itself. Besides, according to the construction passport, it was envisaged to build a one-storey building, while according to the draft approved by the chief architect on November 17, 1998 the building is a two-storey one. The Inspection of law protection of Tbilisi states, that it is impossible to obtain the original order and the copy is not signed by the architect, and consequently the order presented to us is the one described above.

Pursuant to the Georgian law on “Declaring non-agricultural lands in the private ownership of physical and legal persons”, Vake-Saburtalo district court recognized Irina Nergadze the owner of 230 square meters of the area and a joint owner with the state of the area of 182 square meters of land. The property was registered in the above manner, and as we have already noted, it does not comply with the norms stated by civil law of Georgia.

Despite numerous violations that took place while acquiring the property and carrying out construction, we consider that nobody had the right, to destroy Irina Nergadze’s property without permission, since proceeding from the presumption of lawful origin of the public register, the person is considered the owner unless the opposite is proved. Accordingly, no infringement upon private property can take place by evasion of law, in order to observe the non-violation of human rights guaranteed by the Constitution. It should also be noted, that the city supervisory service states, that they have not pulled down Irina Nergadze’s building, and there is no court ruling regarding the issue, thus, everything has been done illicitly.

Regarding the issue, I addressed the Public prosecutor and the Mayor of Tbilisi with the recommendation for an adequate response and payment of compensation.

On March 23 of this year, we received the reply, saying that the issue is under consideration.

Nodar Maisuradze’s case

On November 20, 1997, a lease agreement was entered between Gori Municipality Office and the representative of Treasury enterprise “Kv. Khviti” agricultural labour group, Nodar Maisuradze on leasing 230 hectares of land for 9 years. The agreement was registered in the Gori land management department.

In regards to the agreement, on August 31, 2004, a criminal lawsuit was filed against N. Maisuradze on repetitive tax evasion of a big sum (8 147, 88 GEL) that caused the infringement of the state interest and physical persons’ rights. The lawsuit was filed because Nodar Maisuradze owned more area of land than envisaged by the agreement. Although the audit carried out later proved that there was no excess land owned by Maisuradze.

On the resolution of July 21, 2004, Gori Municipal board nullified the lease agreement, which the labour group considered unlawful and sued.

On the resolution of October 15, 2005, of the district court of Gori, the suit was not satisfied and was appealed. On December 29, 2005, on the decision of the Court of Appeal, N. Maisuradze’s appeal was



partially allowed, without settling the dispute and the legislative act – the resolution No. 147 of July 21, 2004 was made void. Gori Local Council was assigned to study and evaluate the circumstances around the case and issue a new individual legislative act.

As it is known, the case is being appealed.

Besides, it should be noted, that 72 kilos of wheat that was misappropriated by the Local Council of Gori was returned to the treasury enterprise “Kv. Khviti”, although nobody was made answerable for that.

Givi Jamelashvili

“Antony and Company” is located in village Tkhviavi, Gori region. The factory produced apple concentrate and marketed it in Germany. The energy source used by the factory was natural gas, which was supplied through a pipe that was connected to “Gorigazi” pipeline under construction.

On the statement of Givi Jamelashvili, the owner of the factory, he concluded an agreement with “Gorigazi” on gas supply. The gas was supplied to the company during one month, for which the company had paid.

Despite this, on October 11, 2005, “Gorigazi” stopped supplying the company with gas and later cut off the pipeline that was owned by the factory. Jamelashvili’s written enquiry regarding the reasons for cutting off the pipeline was not replied to and what is more, the pipeline was entirely removed from the place. After the owner’s urgent request, the pipeline was restored but without supplying the gas. In two days, Gori water-supply department welder cut off the pipe again. Jamelashvili once again repaired the pipe with the hope that the gas would be supplied. He wanted to process the accumulated raw materials that already started to spoil. On the same day, the welder from “Gorigazi” cut off the pipe.

According to the factory director’s words, in response to his verbal request, the head of “Gorigazi” Elguja Baruiashvili responded that it was Michael Kareli’s, the Gori governor’s order. The same reason was given by the administration of water- supply agency. The welder Temur Talashadze said that he cut it off on the order of the deputy governor, Giorgi Mchedlidze.

According to G. Jamelashvili’s statement, despite his numerous attempts, he just managed to have a quick talk with Michael Kareli in front of the administrative building. Kareli asked him why the pipeline was put to operation without his approval, and said that Jamelashvili would not get any gas until the village was supplied. The factory owner’s question how long the situation might last, as this would result in huge losses for the factory, Kareli responded, “It concerns my village and everything will be done as I decide”.

On November 9, the accusations stated against the authority resulted in the fact, that Michael Kareli’s driver and a few other people insulted Givi Jamelashvili verbally and physically. After the incident, Jamelashvili applied to the police. The investigation is now over, although nobody has been detained because of the occurrence.

About 2 or 3 weeks later, there was a gangster attack on Givi Jamelashvili’s son. The investigation is now over. The assaulter is detained, who happens to be Michael Kareli’s bodyguard’s close relative. Givi Jamelashvili finds some connection between the two assaults. As he states, the gas supply has not been restored so far and the factory has suffered huge losses.

In connection with the fact of cutting off the gas supply, the Public Defender’s Office representatives visited Gori. They asked the lawyer of “Gorigazi” Vazha Sukhitashvili and the director of Gorigazi” JSC, Elguja

Beruashvili for an explanation. Beruashvili explained that the gas supply to the company stopped because the pipeline had not been put into operation by that time. Sukhitashvili confirms that there was an agreement on purchase and sale of gas concluded with Jamelashvili, and at the same time there was a verbal agreement between “Gorigazi” and the enterprise “Anton and Company” according to which, in two days after signing the agreement, Jamelashvili were to present all necessary documentation, but he broke the promise. For this reason, “Gorigazi” ceased the supply of gas on October 11. On his explanation, “Gorigazi” did not cut off the pipe and that he does not know who did this. Another reason given for cutting off the pipe is that it represented a danger for the population. However, the representative of the Public Defender has video material that shows gas leaking from the cut off pipe, which was dangerous for Tkhviavi population.



Court and Implementation of Court Decisions

In my report of the first half of the last year, I discussed in details institutional reforms in the court system. The report gave positive evaluation of the reforms but pointed out the difficulties, which are typical to reforms at the starting stage.

At first, I would mention tendencies of delaying scheduling trial date and delaying trial caused by insufficient number of judges, which are directly related to the human rights violations.

The administration of the Public Defender requested information about all pending cases and number of judges from all the panels of the city court and the appellation court. According to the information received from the criminal cases panel of Tbilisi city court, on January 25, 2006 the panel had 2711 pending criminal cases, proceedings were initiated on 406. There are 15 judges at the panel, minimum 161 cases and maximum 225 cases were assigned to each.

The Criminal Cases Panel of Tbilisi City Court received 2092 criminal cases in the period of the past 6 months (July 1, 2005 to December 31 2005); proceedings are initiated on 225 cases.

According to the information from the panel of administrative cases by the situation of December 31, 2006, the panel of administrative cases had started proceedings on 1871 cases with available 15 judges. 100-115 cases were assigned to each. For the past 6 months, the administrative panel received 2280 pending cases. Among cases assigned to the judges, 1020 had a scheduled trial date.

Apart from lawsuits, the Panel of Administrative Cases monthly receives about 700 pending cases on administrative offences and cases related to checking entrepreneur's activities.

The panel of civil cases of the city court had started proceedings on 7939 cases with 14 available judges, out of which one was suspended from carrying out responsibilities.

For the past 6 months the civil cases panel received 4000 suits and appeals.

By the situation of January 13, 2006, Tbilisi appellation 25 judges were implementing court authority; 1 judge was sent there from Kutaisi appellation court. Criminal cases chamber of Tbilisi appellation court had 468 pending cases and chamber of administrative cases had 1322 pending cases. The Chamber of civil cases had 930 pending cases, which means that 25 judges had to adjudicate 2770 cases.

There are 385 staff vacancies at the common courts. Through testing in 2005, 52 staff vacancies were filled with new judges. 108 vacancies remain. Presumably, magistrate judges will fill up 20-25% of staff vacancies. With this purpose qualification, testing will be held for judges in spring of the current year. Constitutional amendments were made for the same purpose, which lowered established age limit of a judge from 30 to 28 years.

The above information once again confirms problems with delayed trials: 161 cases are assigned to a single judge at the panel of criminal cases, 110-115 cases at the administrative panel. The most alarming situation is at the panel of civil cases where 567 cases are assigned to a single judge; the total number of cases is 7939 and number of judges is only 14. These figures clearly indicate to the fact that it is not possible not to delay trials and judges confirm this fact.

By the statement of Irakli Adeishvili, chairman of the panel of civil cases of Tbilisi city court from May 2005 to January 1, 2006 1640 cases were completed, among them 449 cases were completed with 5 months delay. As for civil cases, which should be adjudicated in a period of one month, out of 50 cases on alimony 16 were completed with delay. Citizen L. Balavadze appealed to the Public Defender with the similar problem. Balavadze filed a suit at the panel of civil cases of Tbilisi city court about determining a status of a child's residence and imposing alimony and material support raised a motion on temporary resolution of a child's custody. The motion was sustained by the court decision on May 20, 2005.

Despite the requirements stipulated in chapter 3, article 59 of the Georgian Civil Procedure Code, there is no final court ruling about the above case yet. In other words, law requirements are ignored and human rights are violated.

Out of the completed 76 cases about work, relations and damage caused to employee's life or health 47 cases were completed with a delay. As for disputes related to the compensation of loss caused by the death of a family supporter and conflicts about the living space, by the explanation of I. Adeishvili such cases are not listed under special category and therefore are not registered separately. It must be noted that coming out of the specifics of the Georgian Law on "Dispute over Property" forensic expert should evaluate the value of the territory, which excludes the possibility of reviewing the case within a month.

As the chairperson of the panel of administrative cases declares, taking into consideration excessive number of cases and insufficient number of judges, it is a problem to keep trial time limit established by the law. To his opinion, one of the priorities of court reform is to eliminate reasons for violating trial time limits established by the law. This issue requires complex review; improvement (increase) of procedure terms provided by the current law is important to achieve better effect at court trials.

In my previous reports, I talked about implementation of court decisions. It must be noted that despite the recommendations of the Public Defender the problems are still acute. This problem got aggravated after Georgia lost two court cases at the European Court about budget offices failing to execute court decisions. One of such cases is "IZA" Ltd. and Nodar Makhrahidze against Georgia.

By the court decision of May 14, 2001 claim of "IZA" Ltd. was satisfied and the Ministry of Education was imposed a payment of 11 628 GEL. The decision was not appealed by the sides and it entered into force.

Execution writ was issued on the case of June 2, 2001 and the court decision was submitted to the Tbilisi Department of Enforcement of Court Judgments for implementation. Makhrahidze applied all internal legislative mechanisms but with no result. Afterwards he appealed to the European Court.

On September 27, 2005, the European Court adopted a decision against the Georgian State about violations of articles 6.1 and 13, and 1st article of the 1st additional protocol of the European Convention. The court



imposed payment of 10 000 ‘ to the State for the compensation of material loss, 2050’ payment of lawyer’s services and other expenses and 1000’ for the compensation of moral damage. At the end, the state budget has to pay 150%, more than it was supposed to pay at the beginning.

The decision entered into force on December 27, 2005 and it should be implemented within 3 months.

The State is concerned that implementing the court decision would seriously harm the state budget. Lost court cases at the European Court on Human Rights showed to us that the State is trying to hide from the problems. It is clear that this way important problem will not be resolved and the State budget will suffer more losses because of the imposed compensation payments. Most of the creditors are entrepreneurs, who often have to stop work because of debts. As a result, entrepreneurs suffer serious loss, their employees fill an army of unemployed, and the State budget suffers as well because of the reduction of number of taxpayers. The State budget today is capable of paying out all the debts and we think that the interests of the State budget should not be regarded higher than human rights, especially since the policy of avoiding paying debts will finally cause serious loss to the state budget.

Failure to implement court decisions has negative effect on the court image. Citizens avoid suing budget organizations because besides the fact that scheduling trial dates is a delayed process, even in case of the favourable court decision there is no guarantee that it will be implemented. What is important is that the citizens have no legislative tools to defend their rights in the country. That is why there is a tendency of appealing to the European Court, which puts the country in an unfavourable situation. One more claim was admitted to the European Court. Winning the case at the European Court on execution of court decision established a precedent for others to appeal to the European Court for the similar matters.

By the information of the Department of Enforcement of Court Decisions throughout 2005, 495 execution writs were implemented and 700 creditors were paid. Among them 21% were budget creditors and 56% different creditors.

The letter of the Department of Enforcement of Court Decisions says that different government structures through the state budget voluntarily implemented certain court decisions in favour of creditors. However, the special team of the Department of Enforcement of Court Decisions does not have any documents proving the payments. By today’s information debt of budgetary organizations towards different creditors is about 22 008 691 GEL.

Replacing old judges with new ones caused many emotions. According to the opponents of this process reform authors are trying to force unfavourable judges to resign from their positions otherwise disciplinary proceedings will be initiated against them. By the declaration of the opponents, one of the tools for pressure is the “Law about Supreme Courts”. It includes an article by which the judges of the Supreme Court and those judges who voluntarily resign will be paid pension equal to their salaries for the rest of the time. This was certainly good encouragement and many Supreme Court judges took the opportunity.



Occurrences of disorder and pressure on judges became frequent at court hearings. For example, Manunchar Eteria’s trial date was scheduled at 12 noon on January 11, 2006 at Zugdidi district court.

The prisoner could not be escorted from the prison to the trial. M. Sajaia, acting head of prison told the judge that prisoner could not be escorted because escort personnel were busy at other court hearings to keep order and ensure prisoner’s safety there. At about 1 p.m. family members of Eteria (about 20-30 persons) forced there way into the office of the judge and blamed him for falling to escort the prisoner to the court. The judge tried to

keep the situation under control but he was taken by force out of the office downstairs. He fell down on the second floor. The disturbance continued in the hallway. Later for security reasons police took Judge Nasaria to one of the rooms in the building. The attackers stayed all day outside the court and its surrounding territory. Judge Nasaria finds it difficult to categorize the incident; it was one of the rude cases of pressure on the court authority.

An investigation was launched on this incident. Some of the participants of the incident were sentenced to administrative imprisonment. The case is being investigated by Zugdidi investigation department. Such cases infringe the most important principle of court activity-its independence and prevent judge from making impartial and objective decisions. Anyone who violates order in the courtroom and attempts to influence the trial process through different means should be strictly punished.

We believe that it is important to introduce institution of Marshals (responsible for keeping public order at court hearing) through the “Law on Common Courts”, which entered into force on March 15, 2006. Institution of Marshals will provide guarantees for order and undisturbed court processes at the common courts.

The administration of the Public Defender requested statistical data from the High Council of Justice of Georgia on initiation of disciplinary proceedings against judges.

During 2005, High Council of Justice of Georgia received 2242 appeals on initiation of disciplinary proceedings against judges.

Initiating proceedings against 82 judges were based on citizens’ claims and written statements; written statement of the judges and the employees of the Administration of the High Council of Justice of Georgia became the reason for initiating proceedings against 37 judges, separate court decision was the reason against 7 judges and a letter from the prosecutor’s office was the reason against 3 judges.

During 2005, 83 disciplinary cases were passed on to the disciplinary council of judges of the common courts.

The Public Defender of Georgia sent 5 recommendations to the High Council of Justice about initiating disciplinary proceedings. The reason for initiating proceedings on one case is being preliminary investigated. High Council of Justice refused to initiate proceedings on the second case because of expiration of 3-year term of disciplinary punishment. We do not have responses regarding the remaining 3 recommendations.

It is important that the Law on Disciplinary Responsibility and Disciplinary Proceedings against Judges of the Common Courts be amended. This will make disciplinary proceedings more flexible, procedure of adjudication of case was transferred to the High Council of Justice, which in the circumstances of increased number of judges will create guarantees for fair judgment of disciplinary cases.

Recommendations:

- Ensure time limits of case adjudication as it is prescribed by the Law and avoid delays.
- Provide funds in the State Budget to pay debts of the budgetary organizations imposed on them by the court and execute court decisions.



By ratifying convention about protection of children's rights Georgia assumed responsibilities provided in this convention. However, today most of these responsibilities are neglected. Difficult social situation in the country created risk group of children (street children) and their number does not decrease.

The biggest problem for these children is addiction to toxins, robbery, prostitution and begging. Risk for these children to enter criminal world is very big. Problem of raising these children is very important for the public. Most street children are orphans, often they are the family supporters. This circumstance forces them to work non-stop, which pushes them out of regular study process. Most of them do not read and write. Parents force children to beg in the streets and take them out of shelters, which is a serious problem because there is no mechanism in Georgia, which would protect children from such

parents and relatives. This is a serious violation of children's rights, right to education is guaranteed by article 28 of the Convention.

The State ignores the evidence of children's addiction to toxins. There is no law or normative act to protect children from this. There is no state programme for rehabilitation of such children. Neglecting these children aggravates their health conditions. As it is provided in the 1st paragraph of article 24 of the Declaration on Children's Rights, "the member countries recognize the child's right to benefit from the services of health care system and means of rehabilitation. Member countries strive to ensure that no child is deprived of his/her right to benefit from the health care system services". This right of street children guaranteed to the by the above article is violated.

Homeless children are easily involved in criminal activities, for which they often are convicted. Prison makes lives of these children even worse and destroys their psyche. Imprisonment is the highest measure of punishment for a juvenile. After serving a sentence, a juvenile turns into a real criminal in Georgia. There is no rehabilitation programme or mechanism of social integration policy for such children. Another important thing is that a juvenile may be released from criminal liability if he/she was in the condition of partial incompetence at the moment of crime. In such case, the court may impose compulsory medical measure. Such measure can be placement at a special hospital of drug abuse under increased attention as it is prescribed in the Georgian Criminal Code, paragraph 1,

subparagraph “e”, article 142. This article has no power today, because the State does not have an establishment of drug abuse treatment for juveniles. This may lead us to fatal results.

Situation at Children's Homes

With the purpose of studying children's rights, the administration of the Public Defender started monitoring children's homes at the end of 2005. According to the information provided by the ministries of Education, and Health and Social Protection, there are 58 childcare institutions in Georgia. By now, the monitoring team of the administration of the Public Defender visited 39 of them (children's homes, sanatoriums and boarding schools). 38 of them are in Tbilisi, the rest in the regions: Mtskheta-Mtianeti-3, Kakheti-6, Rustavi-2, Kojori-2, Akhaldaba-1, Surami-1, Adjara-4, Martkopi- 1, and Kaspi-1.

The situation at the children's homes is a serious problem today. Monitoring revealed that healthcare, malnutrition, poor education and the problems of the socially vulnerable children are still not resolved. Situation at all the children's homes are almost identical. Institutions sheltering children from socially vulnerable families work in the similar regime. Barrack type buildings needing renovation, bedrooms with 15-20 beds without wardrobes, bad food etc. Children are socially lagging behind; they do not get professional education. Efforts taken on improvement of the conditions are only formal, throughout this time nothing has changed for these children.

Institutions sheltering socially vulnerable and handicapped have more difficulties. Besides the above listed problems, methods of rehabilitation and medical treatment need to be revised.

Monitoring group of the Public Defender also visited 12 boarding schools. At present, the need for such institutions is due to vulnerability of the lower social layer of the population and lack of schools at the villages. At such institutions, children are completely driven away from public. Children at children's home have possibility to communicate with other children at school but at boarding schools, this does not happen. There are other boarding schools for handicapped children. Often such schools function for the fact of children with different problems, for example boarding school for deaf. There are special educational programmes at schools for children with such problems but separating these children from the others prevents them from social integration.

Part of the handicapped children is in institutionalized facilities. They are in difficult situation, especially in the mountainous regions. Children are very badly taken care of. Among those children who have physical or mental disorders, there are children with serious psychological problems. Orthopaedic and other means of motion are not available for many of them.

The Convention about the children's rights declares that mentally and physically handicapped children should live valuable and dignified lives, which will ensure their dignity, build self-belief and ease their active participation in public life. Legal conditions of handicapped people and among them handicapped children are defined by the Georgian Law. Nevertheless, realization of legal interests of handicapped people and among them children comes across serious obstacles.

Description

Nonetheless, children's homes are important. All children's homes and shelters face the same problems but they can still be sorted by different types.



Situation is most lamentable at the institutions with handicapped children. Problems of hygiene are very acute here. For example, children's home in Kaspi with mentally handicapped children of different types has awful sanitary situation. There is bad smell in the whole building, for this reason the windows are constantly open in the hallway and it is cold in the building. Bathrooms/toilets are renovated but still sanitary situation is very bad here for the lack of disinfection or other cleansing means not to say anything about soap and items of personal hygiene. Children need pampers but there is no money to purchase them. The home depends on humanitarian assistance; the children wear old, torn clothes and do not have winter shoes.

Often at such homes despite its specifics, one group has one nanny and one teacher. This is a serious problem when eating because only a few children can eat independently. Some cannot even move independently.

The situation at the children's homes, boarding schools and sanatoriums is the same. We came across problems that may lead to cruelty if we do not resolve them. For example, Tbilisi boarding school for the blind is sheltering children of 3 categories: fully blind, blind and partially sighted. The building is very old (100 years), does not have heating system, handrail of the stairs is made of metal and in winter, it is freezing cold. Blind children whose sensitivity of hands is stronger than of average people suffer from cold. That is why life in winter is especially difficult for them at this school.

There are few shelters for children in Tbilisi, some are financed by the municipal budget, and others are created by NGOs, for example, children's home "Belief 1" in Gldani, 8th mc/reg. I spoke about this home in my report of 2004. Since then the situation at this shelter aggravated. "Belief 1" is situated on the first floor of a former kindergarten. It has a very unsuitable location. It does not have separate dining room, sport, play and medical rooms. Each group of age category sleeps and eats at the room allocated for the group, moreover, linen is very dirty. The internally displaced live on the second floor of this building. By the explanation of a director, this home was financed by the municipal city service but after the completion of the project, for 8 months now, they have not received any funding. This circumstance aggravated the children's situation, nutrition ration and its quality decreased. The home cannot afford meat, butter and other essential food for the children any more. The administration had to dismiss a psychologist because it could not pay a salary. The home shelters handicapped children as well and for correction of their problems, children need qualified psychological assistance. Despite the above problems the children's home still operates. It is interesting how the administration managed to provide for necessary living conditions for the children in the circumstances of no funding.

We often come across the problems of the internally displaced when monitoring children's homes. For example supporting building of Tbilisi boarding school No. 1 is partly occupied by the internally displaced. The same problem is at the boarding school for the blind. This creates sanitation problems in the building and delays its renovation process. The above-listed facts are serious violations of children's rights and the State has not resolved these problems yet.

The situation is improving at Tbilisi children's home No.1, orphanage for infants, and "house of future". This can be explained by the fact that these institutions have new directors and they manage to create necessary living conditions for the children with minimal funding. There is an interesting situation at rehabilitation centre for homeless children called "Lampioni". Composition of children's groups here is based on the principle of family not age. Each group has 10 children of different ages. This creates a family atmosphere and conditions. Big groups have 25-30 children and 1 nanny. It is not clear to us how can 1 nanny look after and rehabilitate 25 children.

Problems

Despite the fact that there is certain progress on legislative level, (de-institutionalizing process has started) systematic approach to the problem and complex resolution are not worked out yet. The monitoring revealed the following problematic issues:

One of the main problems at the children's homes and boarding schools is establishment of standard of childcare, keeping this standard on the level and control over it. These institutions should be guided by certain norms. For example, there should be common nutrition norms and all institutions should be guided by them.

There are certain problems with unqualified staff. They cannot be dismissed from their positions for different reasons. Most of the staff at such institutions is not qualified to conduct correct rehabilitation process for a child and this directly reflects on the child's development.

For example the administration of the "children's social adaptation centre" encountered such problems. It is not clear to us by what principle the staff was selected at the testing at this centre before its opening. None of them has respective professional qualification and they do not have the necessary experience for working with this type of children. Staff nannies spend 24 hours with the children and can have immense influence on the children's rehabilitation process.

After the restructuring process, social teachers were invited to the children's homes (before such pedagogues did not work at the centre). They help the children spend their free time purposefully and conduct educational work with them.

Of course, de-institutionalization is the right way for improvement of child's situation. Children's institutions violate children's rights to a certain extent. Nevertheless, this process can be harmful for these children. During monitoring, we discovered facts when documents of adopted children were not in proper order. The information given to us by the director was completely different from the information stated in the documents. In some cases, we could not find documentation at all. From the second half of 2006 and or from the beginning of 2007 the administration of the Public Defender plans to monitor the whole process of de-institutionalization.

Nonetheless important are children's homes in the process of liquidation. The situation there is more difficult. Children there are in hard conditions and nothing will change for them until after the liquidation is completed and no one knows when and where these children will be moved.

Children's shelters at the regions are mostly in bad conditions. All of them are barrack style buildings, bathroom/toilet are in bad conditions. The buildings are old and shabby and it is impossible to create family atmosphere for the children there.

Salaries of the staff (nannies and teachers) are very low, 50 GEL. Teachers here do as much work (sometimes more) as other pedagogues at the ordinary schools. The salaries for them have not increased throughout this time. This problem often leads us to confrontation. Taking care of children at the institutions is very responsible and hard work, with the low salary there is not enough motivation for the hard work and all that reflects on the children.

One important problem remains unresolved in the legislative sphere. According to the UN Convention on Children to which Georgia joined in 1998, 18 years is considered as a child age. It is the same in Georgia. At most of the institutions of socially vulnerable children in Georgia age of 15-16 years are considered a child's age. According to the current law, a child after turning 16 should leave a shelter. Most of these children are at risk of staying in the streets. Their rights to benefit from the state programmes until the age of 18 years are violated. There are concerns about of age adults who have no shelter. There are cases when 18 year old or even older adults still live in the children's homes, this is also a violation but there is no alternative to it.

Recommendations

- Create common standards for children's homes and shelters, which will be uniform and compulsory for the whole structure and every institution. There will not be institutions, which cannot provide necessary conditions for the children.



- Professional qualification of the personnel of these institutions should be reviewed and training offered.
- The definition of “childhood” shall be changed in all relevant Georgian laws and legislative acts in accordance with the UN Child Convention definition and make it 18 years (in the institutions child’s age should be extended up to 18).
- The Working Groups of the Technical Secretariat of the Georgian Children’s Protection and Deinstitutionalization Governmental Commission are working on elaborating the standards of childcare for both foster families and family supporting institutions and juvenile prisoners. It is necessary to arrange at all three juvenile penitentiary facilities the conditions of child care that comply with these standards.
- The legislation should provide for the administrative punishment of teachers or other school administration members if a child’s human dignity and honour is humiliated.
- The Law should identify an agency, which will supervise, care and prevent law offences by juveniles.
- One social worker should be among the permanent members of the agency for supervision, care and prevention of law offence by juvenile who would be granted the right to visit the juvenile in pre-trial detention centre.
- Create social rehabilitation programmes for juveniles and their families and mechanisms of their management.
- Create state database of juvenile law offenders.
- As it is prescribed in, the Law on non-custodial measure of restraint or serving conditional sentence a social worker from the penitentiary system should be carrying out probation activities for convicts. As for social service, it should be a structural unit of the Ministry of Justice, which will have qualified personnel (social workers with respective education or training related to the juvenile law offenders).
- Create standards and a system to care for children, victims of trafficking, and create reference system and official monitoring mechanism.
- Action plan of combating trafficking should indicate to the necessity of creation of children’s psychological rehabilitation service.

1. Facts of violation of freedom of religion

I mentioned in my previous report that in the first part of 2005 compared to 2004 occurrences of violence on religious grounds became frequent. Often law-enforcers inadequately and inefficiently reacted to these incidents. In the second half of 2005, the situation in this regard partly improved.

Persecution of Jehovah's Witnesses in Kutaisi

On April 28, 2005, Jehovah's Witnesses G. Kvaratskhelia, N. Norakidze, and T. Chogovadze bought a house (at 44 G. Tabidze St.) and started renovation work in order to use this house for religious gatherings. On June 26 about 40-50 people came to this house threatening the owners and demanding them to leave the house. Starting from that day the owners of the house were attacked and physically and verbally assaulted. Police would either ignore these incidents or detained victims and asked them to give false evidence. In parallel to this Kutaisi media coverage about these incidents was not objective, which promoted aggressive attitudes towards Jehovah's Witnesses. Several spiritual representatives of the Orthodox Church participated in the campaign against Jehovah's Witnesses and incited the population against them.

On July 5, 2005 at about 12 midnight people started throwing stones and bricks at the house bought by the Jehovah's Witnesses, they were threatening to burn, destroy the house and kill the owners. The case is under investigation.

On October 10, 2005 at 44 G. Tabidze St. (Kutaisi), about 60 people assembled at the gate. They were verbally assaulting people in the house doing renovation work and throwing stones at them. Police came to the place but did not take any measures to stop the crowd. The case is under investigation.

On October 20, Kutaisi police officers Janashia and Kokhraidze asked the victims Chogovadze, Kuprava, and their lawyer to give false evidence. The victims refused to do so and police officer Janashia verbally assaulted them. The case is under investigation.

The Public Defender's involvement in each Kutaisi incident and recommendations for the law enforcers brought results. Irakli Chimakidze, Head of Kutaisi Department of Internal Affairs informed us that on October 25, 2005 criminal proceedings were initiated against policemen of Imereti Department of Patrol Police and Kutaisi Department of Internal Affairs.

Situation about the Freedom of Religion

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ires for neglecting lawful interest of Chogovadze and for negligence of Chogovadze's declaration. The case is under the investigation within paragraph 1, article 42 and paragraph 1, article 332 of the Georgian Criminal Code. In addition, criminal proceedings were initiated against Z. Chechelashvili, living at 8 Gagarin St. and G. Kvernadze, living at 46 Tabidze St. in Kutaisi, within paragraph 1, article 143 of the Georgian Criminal Code. They were arrested.

Most important is that the offenders repented their deed. On January 3 the suspects were released on bail and paid 6 000 GEL. They requested reconciliation with the victims. They met with the victims and other representatives of Jehovah's Witnesses and apologized publicly, admitted their guilt and asked for forgiveness. The parents and the neighbours of the suspects were present there who also gave guarantees that Jehovah's Witnesses would not be persecuted any more. The Jehovah's Witnesses also expressed a wish for reconciliation and appealed to the investigation structures about it. This situation shows that when the authorities react adequately aggressive charge of the population against people of different religion is not as strong as it seems at one glance. Impunity of aggressors and permanent agitation against the minority promoted the development of the negative attitude in the population.

Persecution of Jehovah's Witnesses in Rustavi

On August 28, 2005, religious gathering of Jehovah's Witnesses at Olga Tabagari's apartment was stopped because of 30 people outside the apartment yelling and threatening them to stop the religious service. When they started taking down the door, the owner had to open the door and as a result, the crowd rushed into the house and drew out all the Jehovah's Witnesses from the apartment by force. On August 30, 2005, Olga Tabagari appealed to the local police to take measures so that this would not repeat at the next scheduled assembly of Jehovah's Witnesses. On September 1, the same group of the population blocked the street leading to the apartment and did not let the Jehovah's witnesses to the apartment. Patrol Police, despite the advance warning from the Jehovah's witnesses did nothing to stop the crowd; on the contrary, they asked the Jehovah's witnesses to leave the place. The religious assembly was cancelled. The same repeated on October 18 and patrol police again did not take any measures during the incident. By the recommendation of the Public Defender, the case is under investigation.

The Jehovah's Witnesses rented an apartment in Rustavi at 5 Tashkent St. where they held a few gatherings. On November 3, 30 people assembled in front of the house; among them was Paata Bluashvili, head of extremist group "cross". They were threatening to wreck the apartment if the gathering would not stop immediately. There was local TV coverage about this incident. The owner of the apartment got scared and refused to rent the apartment to the Jehovah's Witnesses. This incident is under the investigation. Paata Bluashvili was arrested. He was convicted before for the attack and persecution on religious grounds and was serving conventional sentence. Rustavi city court ruled 3 months pre-trial imprisonment for him. The suspect appealed this decision at Tbilisi district court and the measure of restraint was changed. Rustavi city court is reviewing the case at present.

Persecution of the followers of Evangelic church [ormotsdaatianelebi] in village Tsinubani

The Village Tsinubani is populated solely by Armenians. On December 2, 2005 at the burial process the village population, mostly Catholic Christians were present. Catholic priest of Armenian Church Pogos Grigorian made public address not to allow citizens of their village, the followers of Evangelic church to the cemetery because they were members of a harmful sect.

After this fact, the followers of Evangelic were persecuted in the village. The population of the village is 300 people; among them 36 belong to the followers of Evangelic church. These people are not given humanitarian assistance by Caritas reasoning that this assistance is only for the Catholics. They were denied access to the cemetery and were asked to arrange a separate cemetery. Through the leader of the village, the followers of the Evangelic church were denied the possibility to work for World Vision projects. By the initiative of priest, Pogos signatures are being collected against the followers of the Evangelic church. This spiritual person conducts lessons at Tsirubani School once a week where he agitates the pupils against these people. It is interesting that the Catholic Church of Armenian order does not subordinate to the Georgian bishop of Catholics.

In connection with this, citizens of the village, Arutun Grigorian and Makho Kerokian appealed to the Public Defender. They are followers of the Evangelic church. In the conversation with the representatives of the Public Defender the village leader Sarkis Agakian and priest, Pogos Grigorian confirmed the claims of persecution and discrimination against the followers of the Evangelic church.

The Public Defender recommended the Prosecutor General's Office to study the case and take respective measures to restore violated rights of the followers of the Evangelic church. The case is under investigation.

2. Restriction of Freedom of Religion and Unification

On September 14 Pastor Zaal Tkeshelashvili, the leader of evangelic church was denied certification of the statute of the Evangelic church by notary of Gldani-Nadzaladevi district Mzia Arsenishvili. The evangelists had been denied certification of the statute by other notaries before, among them B. Sekhniadze. In order to avoid misunderstandings, Zaal Tkeshelashvili revised the statute with the help of the representatives of the registry office at the Ministry of Justice but he encountered obstacles again at the notary office. According to Tkeshelashvili, he tried period of time to have the statute certificated but in most cases the answer from the notaries was that they did not know anything about this law. Notary Mzia Arsenishvili refused to certify the statute on religious grounds but after the representative of the Public Defender got involved in this matter, she took the document and asked Tkeshelashvili to come back in 10 days, on September 23. On September 23, the notary again refused the evangelists to certify their statute for religious reasons. She told Tkeshelashvili directly that she was orthodox and would not recognize and certify the documents of other churches. The Public Defender recommended the Ministry of Justice to initiate disciplinary proceedings against Mzia Arsenishvili and Besik Sekhniadze. The Ministry of Justice took into consideration the recommendation of the Public Defender and adopted a decision to disqualify these notaries for 1 year.

3. About Entry into force of Certain Articles of the Agreement between Georgia and the Georgian Apostolic Orthodox Autocephalous Church

According to the constitutional agreement signed between Georgia and the Georgian Apostolic Orthodox Autocephalous Church, the State takes certain responsibilities for the Georgian Orthodox Church. After the agreement entered into force some of these responsibilities are either partially fulfilled or not fulfilled at all.

Coming from the above said we think that the implementation of the articles about particular aspects of cooperation between the State and the Orthodox Church is very important. The implementation of the provisions of the Constitutional Agreement is important not only for the Orthodox Church but for other confessions as well, because it will create favourable conditions for the resolution of problems related to property, rights, etc.



I will list below articles from the agreement, which at this stage are not implemented or are implemented partially.

According to the Article 3 of the Constitutional Agreement, the State recognizes church wedding performed according to the rules prescribed by the Law. This article is not functioning at all and therefore amendments and additions should be made to the respective laws.

Article 4 provides for creation of confessor's institute at military units, prisons and places of detention and in connection with this, adoption of respective legal acts. This article is not functioning at all and amendments and additions should be made to the respective laws. In my report, I already spoke about places of detention in the chapter about detention facilities and how this right is being violated there. If the regulations of the Constitutional Agreement were supported by the respective legal acts, similar restrictions and violations would hardly occur.

Article 7, 8, 11 pertain to different aspects of ownership of church property and compensation of material and moral damage caused to the Orthodox Church in XIX-XX centuries. These articles are also partially dysfunctional and there is a need to make amendments and additions to the respective laws. For example by the Agreement, the church treasury, as part of the common national treasury, is in the joint possession of the State and the church according to the current law. However, the current law was never implemented and there are no prescribed procedures about the joint management of this treasury. In addition, the church treasury, which is not part of the common possession, was not given to the church, in particular saint relics.

According to the article 10, the State takes the responsibility to conduct negotiations with the respective States about taking care of all Georgian orthodox churches, monasteries, and other church constructions and church items existing on their territory. I must say that the State has not done anything significant concerning this matter.

4. Religious Intolerance

Intolerance expressed at the international symposium

On November 24-26, 2005 by the initiative of the Christian Research Centre at the Georgian eparchy an international symposium "Christianity in our lives: past, present, future" was held. International as well as local non-orthodox guests were invited to this symposium. They even led some of the sessions and made speeches. The symposium clearly expressed the wish of the Georgian Orthodox Church to promote tolerance and dialogue amongst the religions. By the session agendas, the scientists of different confessions and opinions and spiritual persons were to have interesting discussions. However, according to the non-orthodox representatives of the symposium all the non-orthodox guests and some of the orthodox representatives encountered quite aggressive attitude from a group of orthodox confessors. Intolerance was expressed towards the representatives of Armenian apostolic, catholic and even orthodox churches as well as international guests. Bishop of Lutheran-Evangelic church Andreas Shtoeckel was insulted. When he was making a speech, a group of adults called him "Lutheran monkey".

Orthodox Igumen Andria Uedi (Leader of the Orthodox Church in Turin, Italy, worked for many years on Georgian liturgy texts) said in his interview:

"Part of the participants of the symposium, mostly adults, attended the symposium for different mission and not to listen to the speeches of the guests. I was asked test-questions which did not relate to the topic of my speech. The test-questions were aimed at finding out the status of my orthodox confession. The question I was

asked was about salvation outside Orthodox Church. I tried to explain to them how this issue was regarded by the theology of the Orthodox Church but noticed that they were not listening. It went so far that the head of the section Professor Teimuraz Gvantseladze asked them to stop the discussion. Because such questions were, beyond the scope of my speech, I offered them to continue the discussion after the session but they never showed up. I can say that in general they were hesitant when speaking with the representatives of orthodox confession but it was not the same with non-orthodox confessors. They treated some of them very badly. For example, Bishop of Lutheran-Evangelic church Andreas Shtoeckel was making a speech “church and nationality”. In his speech, he expressed a wish to have a small room for services, he did not ask for a big building. This became the reason people to insult him. I want to say that on the background of wonderful hospitality these facts looked very awkward”.

5. Intolerance on the religious-ethnic grounds

Incident in village Samsari

On July 14, 2005, Akhalkhalaki Bishop Nikoloz Pachuashvili launched students’ expedition in village Samsari, Akhalkhalaki to clean historical places of worship. The expedition group included students from Tbilisi and nuns from Akhaltsikhe eparchy. The first day the village received the students heartedly but the second day locals of the village and the representatives of different organizations in Akhalkhalaki asked the students to leave the territory and return to Akhalkhalaki for negotiations. They named 2 reasons for the need of negotiations:

1. According to them, Samsari church compound was of Armenian origin and the students were accompanied by nuns. They laid an icon on the church and carried out a ritual service. These actions were understood as an attempt to claim ownership of the church compound and this was the real reason of this mission.
2. According to them, the students were trying to erase Armenian crosses painted on the walls in order to eliminate signs of Armenian origin of this church.

The students agreed to the condition and returned to Akhalkhalaki but the same evening came back to Samsari and raised the Georgian flag in front of the church. The representatives of Akhaltsikhe organizations raised the Armenian flag, and the locals of the village kicked the students and the nuns out of the territory using force. 3 members of this expedition were brought to Tbilisi hospital No. 5 with concussion.

In connection with this incident, Georgian TV channels reported information that there was violence at No. 3 Akhaltsikhe Georgian School and the attempted attack of the residence of Akhalkhalaki bishop.

The following day the Public Defender went to Akhalkhalaki, he met with the representatives of the local authorities, Bishop Nikoloz Pachuashvili and a priest of Armenian Church Babken, the representatives of Samtskhe-Javakheti organizations and the local population.

1. In the conversation with the Public Defender Akhalkhalaki Governor (Gangebeli) Artur Eremian declared that the local police and he did not know anything about the expedition planned by the eparchy, had they known about it the incident would not have happened.
2. Bishop Nikoloz Pachuashvili told the Public Defender that he did not inform the city Governor or Samtskhe-Javakheti Governor about the expedition. According to him this expedition was arranged at a much higher level, the population of village Samsara knew about it two weeks prior to the expedition, and they were negatively disposed towards it from the beginning. According to him after the incident Bishop of Georgian, eparchy of Armenian Apostolic Church Vazgen Mirzakhanian got in touch with him and offered to resolve the situation with joint efforts. Bishop Pachuashvili refused.



3. Priest Babken, the representative of Armenian Church of the Georgian Eparchy declared to the Public Defender that it would have been better to plan the expedition jointly with the participation of Armenian adults. He said there was no friendly interaction between the spiritual representatives the Armenian and the Georgian churches because there are no relations between these churches at all. The situation in this respect was much better during the term of Bishop Serapime Jojua. “The lack of communication causes such confrontations”-declared priest Babken.

Because of the study of this incident, the Public Defender revealed the following:

1. The Georgian students did not erase bas-relief of the monastery and did not damage anything. They only tried to clean its inner and outer space. The information spread by the media that the local population was using this monastery for keeping the cattle was false because the locals of the village consider this church of Armenian origin and take care of it.
2. Destruction of Akhalkhalaki School No. 3 did not get confirmed. 3 windows were broken at the school with the stones thrown from outside the fence, which is not the same as being destroyed. The members of this action did not even go in to the schoolyard.
3. Part of the local Armenian population really assembled at the building of the Eparchy demanding Bishop Pachuashvili to leave Akhaltsikhe. No other incidents took place; there was no attempted attack to his residence.

After the return from Akhalkhalaki, the Public Defender met with the representative of the Georgian Eparchy: Metropolitan Daniel Datuashvili and the leader of the Armenian Apostolic Church of the Georgian Eparchy Vazgen Mirzakhanian. The Public Defender offered the sides to condemn the acts of the violence. Afterwards the churches made a joint declaration whereas on the one hand, the leader of the Armenian Apostolic Church of the Georgian Eparchy Vazgen Mirzakhanian apologized for the violence and on the other hand, the Georgian Orthodox Church forgave those who insulted the expedition members in village Samsara.

I believe that concerning the incident in village Samsara the local population violated the right of freedom of movement and expression of the Georgian citizens by illegal use of force; revealed xenophobia and intolerance towards them, which is a criminal offence.,

On the other hand, had the expedition members taken into consideration attitude of non-Georgian population of this region, the political situation related to the withdrawal of Russian military forces and constant interests of the third side to promote conflicts from such incidents, this situation would have been easily avoided. It would have been better to inform the local authorities about the expedition in advance and it would have been desirable to involve the citizens and the spiritual persons of Javakheti in the implementation of this project, which would help building of friendly relations between the Georgian and the Armenian youth instead of the confrontation.



Despite the problems, the situation related to the freedom of religion has significantly improved in the reporting period. First of all the reason for this progress is the adequate reaction of the law enforcers to such incidents, which clearly expresses the will of the authorities not to admit impunity of violence and its escalation on the religious grounds (we spoke about this threat in the previous report). As a result, the number of occurrences of violence and confrontations on religious grounds decreased and for the first time in the past decades the initiator of religious violence publicly apologized to his victims-Jehovah's Witnesses.

At the same time, the level of public tolerance remains quite low. However, the fact that the Georgian Eparchy takes efforts in this direction gives us hopes. Coordination Council of Religions operates by the initiative of the Georgian Eparchy, which held important inter-confessional symposium.

The Georgian Public Broadcaster is making certain plans to help overcome problems of intolerance. The Council of Religions at the Public Defender's administration carries out important work in this respect as well.

The Government gave mosque to the Moslem population of village Tekalo, Marneuli region, which is a positive fact. The return of monasteries remains an acute problem for the Armenian Apostolic church and the Catholics.

Recommendations:

- We make a recommendation to the Ministry of Culture, Monuments Protection and Sports to ensure in the shortest period of time the handover to the Georgian Eparchy of the Armenian Holy Apostolic Church of the temples, the historic origin of which is incontestable and which belonged to the Armenian Church before Georgia's Sovietization, out of the officially requested six non-functioning temples: Church "Shamkhoretsots Surb Astvatsatsin" (Karmir Avetaranots), Tbilisi; Church "Surb Minas", Tbilisi; Church "Mughnu Surb Devorg", Tbilisi; Church "Surb Nshan", Tbilisi; Church "Norashen", Tbilisi; Church "Surb Nshan", Akhaltsikhe), and form the state commission to study those temples out of mentioned six, the historic origin of which is not unequivocally clear.



Situation in the Sphere of Human Rights Defence of Ethnic Minorities

Despite many difficulties we can easily declare that today there are no signs of discrimination on ethnic grounds from the State or from public. There are number of problems in different spheres of life, which may create favourable conditions for indirect discrimination.

Attention should be paid to the fact that the officials of Georgian and other governments sometimes use topics of the human rights defence of the national minorities and Diasporas in their interests. Presumably, this serves to different political interests and has nothing to do with human rights defence. Often such facts stimulate tension among the ethnic groups.

Priority for the Georgian public and the State should be identification and resolution of problems causing directly or indirectly violation of human rights of Georgian citizens representing different ethnic groups and preventing them from the integration in the common State space.

The following directions are very important for human rights defence of different ethnic groups, citizens of Georgia.

1. Education

For the defence of human rights and liberties of ethnic minorities, it is very important to carry out reforms in the educational system. The Government of Georgia and the international organizations are carrying out respective programmes in this direction, which bring positive results. At the same time, there are a number of issues requiring more attention and specific approach. The secondary schools of the regions densely populated with the national minorities have a deficit of pedagogues of the Georgian language speaking the language of the national minority. This problem makes the interaction between the teacher and the pupils impossible. According to the population of Kvemo Kartli, it is difficult for them to speak the language for this reason but learning how to write is much easier.

It must be noted that there is a big interest among the groups of the national minorities to study the Georgian language. That is why it is desirable to create a system, which will give the opportunity to everyone wishing to study the language and to do this without any problems. The opinion of the representatives of the national minorities should be taken into consideration when working out methods and forms of teaching the language. With this purpose, there should be a dialogue between the representatives of the national minorities and the experts of the Ministry of Education.

The problem of manuals is very important in the sphere of teaching the language. By the opinion of the parents, teachers and pupils further revision of manuals is desirable to make the study process easier. The population also thinks that the priority should be given to drafting such manuals, which will be oriented on language study and would contain information only. One of the serious problems according to the population of Kvemo Kartli is texts in the manuals are in old Georgian language. Understanding of these texts is difficult for Azeri population of Georgia and it makes the study process more difficult.

2. Mass Media

With the purpose of human rights defence of ethnic minorities and improvement of the level of civil integration, it is important that the information about the current events in Georgia is available for them in the language that they understand.

Today, compared to the previous years there are tendencies of progress in this respect. There are informational programmes on Public Broadcaster providing information to different ethnic groups of Georgia in their native language about the current events in the country. By our observations and according to the declarations of the representatives of the national minorities in Samtskhe-Javakheti and Kvemo Kartli, this is not sufficient because the above programmes are not broadcasted at convenient time for them and besides broadcasting does not cover border regions.

It must be noted that printing media in Samtskhe-Javakheti and Kvemo Kartli regions is badly developed. Few newspapers are published periodically but they are available for very small number of population.

It must be noted that the radio does not broadcast programmes in Samtskhe-Javakheti and Kvemo Kartli in the languages of the national minorities. The population of these regions mostly receives information from the Russian, Azerbaijan and Turkish and Armenian TV channels.

Providing information in the languages of the ethnic minorities by the means of the Georgian central media is easily achievable. In addition, the population of Samtskhe-Javakheti and Kvemo Kartli regions is interested in getting the information in their native language about the current events in Georgia.

Problematic is the fact that sometimes the authors of certain media products or publications take the liberty of mentioning this or that ethnic group or their saint relics in a negative context. There are cases when talking about a certain person negative statements are made about his ethnic group.

It is a problem that ethnic Georgians are poorly informed about traditions and culture of other ethnic groups and about public figures of Diasporas. Lack of information or misinformation creates bad images of the representatives of the different ethnic minorities to the ethnic Georgians.

3. Combat with crime

From the criminal point of view situation with crimes committed against the representatives of the ethnic minorities corresponds to the general picture in the country. It is clear to everyone that criminals have no nationality and it does not matter for them whose possessions they steal.

At present, there are no signs of active criminal actions against the national minorities. An exception is the Greek population in Tsalka. In the past years there were many criminal acts carried out against them. The process of migration of population from Tsalka is an important circumstance with this regard. Most of the



adults of Greek nationality went to work in Greece and only elderly Greeks stayed back. For different criminal groups it is much easier to commit crimes against elderly and unprotected.

It must be noted that criminal acts against different ethnic groups happen in Georgia as well as in many other foreign countries: murder, robbery, kidnapping etc. The State should take legal measures against such acts. Lately it has become a tendency for the different interested organizations to evaluate such occurrences of crime against the representatives of the national minorities as discriminations and oppression. We independently studied few notorious cases when the victims of the crime were the representatives of the national minorities and these crimes were given political evaluation and directly or indirectly were declared as incidents of ethnic discrimination or persecution. However, as we found out these occurrences were usual criminal offences, which can be committed against any citizen despite their nationality.

4. About the Council of the National Ministers at the office of the Public Defender

Centre of European Minorities and UNDP a Council of the National Minorities was created at the Public Defender's office on December 16, 2005 with the purpose of protecting human rights and freedoms of the citizens of Georgia representing the ethnic minorities and improving the level of civil integration. The Council unites more than 80 NGOs. Its memorandum was signed at the time of the creation of the Council.

For the purpose of realization of the Council's goals and the principles of the declaration Four respective commissions were created: Media and Information; Education and Culture; Regional Integration and Prevention of Conflicts and the Commission of Judicial issues.

The representatives of the different ethnic groups presented their candidates to work in these commissions. The commissions include respectable representatives of the Diasporas.

The council plans to carry out a number of activities with the purpose of human rights defence, among them close cooperation with the Parliament of Georgia. One of the main goals of the Council is to integrate the representatives of the ethnic minorities in the current processes of the country, to initiate discussions on interesting topics for them and to involve them in the discussions. At this stage, the Council members are scheduled to meet with the representatives of different committees of the Parliament and discuss topical issues.

The Council also plans to carry out many programmes, which will promote human rights defence as well as state integration of the citizens.

5. Employment and self-realization

Employment indicator of the representatives of the national minorities in State as well as private sector is low. In most cases, the reason for this is inadequate education, in particular, poor knowledge of the Georgian language. However, important circumstance is that among the representatives of the national minorities the number of adults speaking good Georgian is increasing. Despite this fact, they rarely find jobs at Georgian State organizations or NGO sector. They are mainly employed at the government structures in the regions densely populated with the national minorities but the indicator of their employment at the structures of the central authorities and regional management is very low. It indirectly indicates that this is a maximum to what a representative of the national minority can achieve in Georgia. This fact in its turn does not attract the repre-

representatives of the national minorities to look for self-realization in the space of Georgian State, among its authorities and public. This is the reason that most of the representatives of the national minorities carry out their activities outside Georgia. As a result, the possibilities of many distinguished citizens of Georgia are not used for the benefit of the Georgian State and public. This is an important problem that requires attention.

It is a problem that most of the representatives of the national minorities are driven away from the current processes in the country. The level of their participation in discussion on important issues or in decision-making process is very low.

Another important problem is low level of civil self-identification of the representatives of the national minorities, and in some cases extremist attitude of some ethnic Georgians towards the representatives of the national minorities.

6. Land issue

During the distribution of lands in Kvemo-Kartli and Samtskhe-Javakheti like in any other regions for many years in the past lots of problems were created. This causes tension among the population. According to the Kvemo Kartli population, very few people got hold of lands through corruptive arrangements. Most part of the population could not even get 0.5 hectare of land. Land distribution problem is important but it is impossible to find common solution, which will make everyone happy. There were several messages from Kvemo Kartli when the population complained that they were not given the land on ethnic grounds. We verified this information and found out that in some cases the other side was of the same ethnic origin and in other cases; it was a matter of civil dispute. It is the prerogative of the court to resolve such issues. In connection with the lands distribution there are problems in the regions but claims of mistreatment of Georgian citizens on ethnic grounds or discrimination was not conformed. It must be noted that for the reasons of failure to pay the lease or other violations lands were taken away from the owners. In number of cases, the local authorities negotiated with the leaseholders of big lands who made concessions and gave up parts of their lands in favour of the farmers with small lands.

Recommendations for the government of Georgia:

- Take measures to ensure the coverage by the Public Broadcaster of the regions densely populated with different ethnic minorities (Kvemo Kartli, Samtskhe-Javakheti).
- Promote employment of the representatives of the national minorities with adequate qualification in the structures of state governance and self-governance.
- For the Ministry of Culture and Sport: For the promotion of multi-cultural dialogues special attention should be paid and priority given to the joint participation of the adults of the different ethnic minorities in the implementation of the programmes of youth camps.





Freedom of Speech

The reports of the Public Defender of the first halves of 2004 and 2005 focused on media issues. During this period, editors and the journalists were complaining about editorial freedom and international organizations were evaluating activities of the Georgian media as “self-censorship”.

For example, the report of Human Rights Watch of 2005 about human rights situation in Georgia reported that after the Rose Revolution in 2003 the media was criticizing the government less compared to the period of Eduard Shevardnadze. If such comparisons were relevant in the post revolution period, the same cannot be said about today. Also if in the post revolution period the number of political debates decreased now this number is again increased.

Human Rights Watch indicates that this situation in the Georgian media established despite the improvement of the legislative basis, when the quality of defence of freedom

of speech increased and concept of calumny was discriminated.

The journalists and the representatives of NGOs and the international organizations informed the Human Rights Watch that the authorities influenced the owners of TV companies to control the broadcasted information. The owners in their turn were controlling editorial offices of their TV companies and there were cases when critical information ready for the release was blocked from broadcasting by the decision of the company owner.

The resolution of the European Council talks about the problems of financial independence of TV companies and absence of transparency related to media ownership. In particular, it says that it is very difficult for media to function with its own financial means in Georgia and this creates a threat for turning media into a sphere of money laundering.

The same report says that the Georgian newspapers are more or less free from the Government’s influence, though the leading TV companies through informational-analytical programmes show loyalty towards the government.

Despite such evaluation in the second half of 2005, the electronic media became more critical towards the authorities leaving no trace of loyalty, not to say anything on the newspapers, which were never loyal.

The issue of editorial independence that was underlined in our previous report remains topical. Independence of the journalists and

the editors from their media owners equals to zero but the journalists seldom speak about it. Often the reason for this is financial instability, lack of democratic practice and poor professionalism. European Council Resolution says that time is needed to achieve editorial independence and establish unbiased and objective media.

As for particular problems, inconsistency of the system of labour contracts occurred again. As we noted in the previous report either there is an absence of labour contracts of journalists or they are incomplete and do not meet the requirements of the Labour Code. This is a conclusion, which more or less pertains to the regional, as well as Tbilisi Media. The contract problem is directly connected to the deficit of editorial independence. Contracts are one of the main tools that can protect an editor and a journalist from the media owner. Journalists feel especially insecure when there is no official document indicating about the rights and the responsibilities of the employer and the employee, job description, contract term, salary, work hours and number of days off. These issues are foreseen in the Labour Code.

For example, during the reporting period, there was a serious concern among the employees of the Public Broadcaster for their one-month contracts. It meant that any unfavourable journalist and editor could have been fired from the job at the expiration of a month. As a result, a journalist tried to be careful not to confront the employer's will. This provokes dishonest activities and increases the risk of losing a job. That is why journalists all over Georgia were asking for legal contracts. The fact that the Public Broadcaster and other private companies started signing long-term contracts with employees is a positive tendency and it should continue.

The dispute between the journalist Rusudan Nikuradze and TV Company "Rustavi 2" about dismissing her from the job became publicly known. As the Moscow correspondent of "Rustavi 2" says dismissing the journalist from work was illegal. One of the reasons for dispute in this case was absence of contract in written form.

Activation of contract system is related to the other important problem-complete legalization of media space. Perfect system of contracts means that all media means should register real and not formal salaries; abolish illegal accounting and media owners should pay taxes imposed on them by the Georgian legislation. A clear example of this problem is a recent incident in Gori TV Company "Trialeti". The Journalists of the TV Company declared that they did not have contracts and employment process at the company was based on oral agreement with the general director of the TV Company. Due to the absence of the contracts, the status of their salaries was not clear, they could not have paid vacations, and there were other financial violations.

Full legalization of media space is inevitable because there is a political will in our country to legalize activities of any business. Nevertheless, legalization of media space will cause closing of some of the media means and growing of the others. This in its place will cause significant reduction of jobs in the media space. Only compatible media means and journalists will survive this process.

Full legalization of media space turned out to be an early and unacceptable measure for many journalist and editors. Complete analysis of the tax legislation and finding optimal compromises for establishing allowances for the electronic media would help the legalization process (for example in relation with real estate tax or purchasing).

The legalization of media space is extremely difficult and complex process. We are facing a risk that by raising this issue someone may take it as an effort to restrict the freedom of speech. We bring this issue once again for the discussion because most of the journalists ask for complete contracts but only small part of them are ready to resist severe competition that will naturally follow the legalization process of media space.

Absence of journalists' standards is still an important problem.

The absence of journalists' standards remains a problem. The absence of these standards is a source of human rights abuse, violation immunity of private life and discriminative attitude towards the national minori-



ties. This is related to the work of the journalists as well as TV programme “Patrol” by the Press Centre of the Ministry of Internal Affairs and operative video material, which is often broadcasted.

There are important problems concerning free information. Some of the senior officials take the responsibility of a legislator and decide what public information is and when and for whom it should be released.

According to the article 37 of the General Administrative Code: every one has the right to request public information despite its physical form and condition and choose the form to get the public information if it is kept in different forms; also get the information in the original. A person makes a written appeal to request the information. It is not necessary to indicate the reason or purpose for the request. According to the Article 26 of the same Code, public organization is responsible to appoint a responsible public servant to ensure availability of public information.

The need for transparency of the activities of public organizations, also the importance of release of public information, resulted in imposing on the public organizations the responsibility to present a report on December 10. The report will help create a general picture of public information release in the country. Respectively the President and the Parliament will be given an opportunity to monitor to a certain extent the implementation of the requirements of the third chapter of the Administrative Code (free information).

Despite the imperative requirement of the time limits of information, release prescribed by the Law it is often not fulfilled. Mostly journalists complain about this problem because they understand the requirements of the law better than average citizens do.

With the purpose of informing the population, the administration of the Public Defender started an action, which will cover all Georgia very soon. The purpose of the action is for every citizen to learn about his rights to receive public information from the administrative organizations within the time limit prescribed by the law.

Judging by our own example, we can say that the administrative organizations do not fulfil the requirements of the Code about release of the information within time limit.

The example of this fact is a statement of the former employees of the Ministry of Agriculture. They appealed to the Ministry 5 times to get testing protocols but their requests were ignored. These citizens presented copies of their appeal with respective registration numbers.

Because testing protocols are public information, the Public Defender appealed to the Minister of Agriculture to release immediately the protocols.

On December 28, 2005, we received a message from the Ministry of Agriculture that the request of the applicants was fulfilled.

The journalists often complain that it is getting very difficult to obtain information from the government structures. According to the resolution of the European Council, information can be blocked by the pressure from the Government or incorrect bureaucratic attitude. However, it is a fact that the access to the information is a serious problem. Certain ranking officials select journalists according to their preference when releasing information or inviting the journalists to the press conference.

The Public Defender of Georgia was conducting meetings with the representatives of the regional media during the reporting period. The representatives of the regional media oppose the norms provided by the Election Code and the “Law about Elections” granting free and fixed advertising time during election campaigns. They declare that Dimitri Kitoshvili, the Chairman of the Georgian National Communications Commission does

not keep in touch with the regional TV companies and they say that it would be better if he met with the representatives of the regional TV companies and listened to their problems.

As the representatives of the regional media say, the President made a statement about granting certain tax privileges to the regional TV Companies. They respectively request exemption from taxes, for a certain period, of the income through editorial work, which will promote to strengthening of the regional TV companies.

Regional journalists talk about the number of occurrences of pressure on them (threat, verbal and physical assault, refusal to grant an interview). However, often they cannot provide documentary proof of these incidents. Nevertheless, we decided to reflect these claims in our report.

We consider very important the fact that the strategic anti-corruption plan includes a separate article about mass media development, where the Public Defender is nominated as the responsible person for implementing a number of activities. According to the document, with the purpose of the development of mass media a plan should be worked out to protect journalists taking into consideration principles of anti-corruption strategies. This plan is necessary in order to achieve high quality of independence of mass media. and improve cooperation between the mass media and the government structures. The leading representatives of press and media will organize a conference. They will work out the plan for journalists' defence, recommendations for the government to carry out respective changes and legislative amendments. The Public Defender's office is ready to work actively with journalists in this direction.

Particular Details of Pressure on the Journalists

Gela Mtivlishvili

I spoke in my previous report about a number of attacks against the editor of Newspaper "Imedi" Gela Mtivlishvili. The Public Defender several times visited Gurjaani, met with law enforcers, and took promise from them that these incidents would be operatively studied. Several attacks against Gela Mtivlishvili were described in the previous report.

On November 6, 2005, the representatives of the Public Defender's administration visited Gurjaani and Telavi where an investigation team comprising media representatives was created to investigate the attacks against Gela Mtivlishvili. This group was created by the initiative of Maia Maulashvili, chief editor of the newspaper "Khma", and Maia Kalabegasjvili, editor of newspaper "Specter" and other journalists. The group decided to get information from the law enforcers about the investigation of the destruction of Mtivlishvili's office, physical abuse, and explosion at his house.

The journalists declared that they had well grounded fear that this could happen to any of them. They think that if these attacks really took place then it can be understood as an indirect pressure on any of them because of journalistic activity.

The members of the journalists' group asked the representatives of the Public Defender to attend their meeting with the law enforcers. That way no one would doubt that the collected material was not objective.

The representatives of the Public Defender's administration together with journalists' group met with Temur Anjaparidze, head of main department of Kakheti region who declared that every piece of evidence related to Mtivlishvili case was under investigation but refused to give detailed information out of the interests of the investigation. We met with the regional prosecutor of Kakheti, Tamaz Tsabutashvili and with the Prosecutor



of Gurjaani Alexander Periahsvili and talked about the same issue. Both of them confirmed that the investigation on the destruction of Mtvlishvili's office, physical abuse and explosion was in process. As for the claim of beating, the case was almost investigated. According to the investigation, this incident was not related to the journalistic activity of Mtvlishvili and was a private conflict.

We also met with Gurjaani Governor and Akaki Sikharulidze who was directly blamed by Mtvlishvili for throwing a grenade. Akaki Sikharulidze denied all accusations against him and said that the investigation would determine the truth.

The journalists noted that in the presence of the representatives of the Public Defender the meeting was very informative and that they received many answers to the questions they often could not get before despite many efforts.

According to the members of the investigation team working on the investigation material gave them an opportunity to analyze objectively the reasons delaying the investigation. By the opinion of the investigation team, it is clear that the law enforcement structures are not interested in investigation of the case. Neither is the media organization, which was permanently attacked throughout this period. By the declaration of the team members, the author of the committed crime against Journalist Mtvlishvili is the victim himself. The investigation team sent an appeal to the Media Council about this case.

Newspaper “Kakhetis Khma” (Voice of Kakheti)

Newspaper “*Kakhetis Khma*” (Voice of Kakheti) published materials based on journalists' investigation, which dealt with appropriation of thousands of Laris and claims of books sales at Gurjaani library. The Local Council (Gangeoba) created a commission, which concluded that the investigation material had no grounds. Afterwards the editor's office of the newspaper together with “Fair Elections” studied the work of the commission and held a press conference. That is when the pressure from Gurjaani city authorities started. There were threats that if Maia Mamulashvili, chief editor of newspaper “*Kakhetis Khma*” would not give up this case, she would regret about her family members. Akaki Sikharulidze, head of Gurjaani city authorities and Zaza Kobiashvili, head of the city council declared that Maia Mamulashvili misled Akaki Sikharulidze by a forged letter. The husband of the journalist who worked for the public organization was forced to resign.

“*Kakhetis Khma*” could not find any document in Gurjaani city administration, which would reflect renovation work, conducted at the Gurjaani library.

By the information of the chief editor of the newspaper “*Kakhetis Khma*”, the staff of the public organization in Gurjaani would not take the responsibility to release information. There is a need to give judicial consultations to them. As a result, terms are violated and operational work is delayed.

Newspaper “*Specter*”, Chief Editor Maia Kalabegashvili

According to the journalist, there were attempts of threat and pressure to prevent her from publishing this or that information. There was a case when Maia Kalabegashvili received a phone call from a concealed number with a threat about kidnapping her child. The caller did not specify the reason. Maia Kalabegashvili spoke about this at the International Centre of Caucasus Journalists.

At the meeting with the Public Defender Maia Kalabegashvili and Maia Mamulashvili declared that they did not inform the law enforcement structures about these incidents.

The editor of the newspaper had a private conversation, then got a threat and eventually had a court case with the former Governor of Signagi region Tengiz Bezhanishvili.

Whole edition of one publication of the newspaper was blocked in Telavi because it published materials of chamber of control about Telavi Governor.

There were incidents of threatening the journalists of newspaper “Specter” Zviad Rukhadze, Tea Alaverdashvili and Dali Mekhrishvili.

There was a case when Dedoplistkaro Governor Soso Khachiashvili asked for an accreditation from journalist Dali Mekhrishvili to attend a traditional plenary meeting. When the Governor was called and advised that this information was public and if the meeting was closed, there should have been an advance notice about it, he said, “it won’t be a meeting if everyone attends it!”

Akaki Sikharulidze, Governor of Gurjaani region through local TV accused local media of corruption, spread of information by order and threatened them with sending special services. Here is a citation from his speech: “It is my wish when I release information, and it is my good will whether I allow journalists to attend the session”. Sikharulidze declared that most of the journalists worked on someone. On November 17 media organized protest march in Gurjaani to protest against this fact.

Zviad Ruadze

In certain cases, there are occurrences of pressure on journalists from the citizens.

The Association of Georgian Regional Media declares that the journalist in the regions have to work under hard, unprotected conditions. There are no security guarantees for them.

Kakheti regional newspaper “*Specter*” No. 2 (116) 17-24 January edition published Zviad Ruadze’s correspondence with a title “Signaghi main gynaecologist and scandal around the polyclinic”. The article tells us about false documents made up on the name of Revaz Korganashvili, the resident of village Marshaani. According to these documents, this person is an oncology patient and for this reason, the polyclinic was issuing drug “morphine” in his name.

Revaz Korganashvili’s family members were selling these drugs. Tamila Kakhetelidze, main gynaecologist of Signaghi region was named as an accomplice. Police made first comments about this in the newspaper “*Specter*”.

Despite the fact that no one doubts this fact, the respondents reacted severely after the publication of this article: pressure, insult and threat against the journalist and the editor’s office.

Gori

On August 30, 2005, in the Gori District Local Council building Chief Legal Department Revaz Gogiashvili told journalist Saba Tsitsikashvili with a threatening tone that he would not “walk so freely” for long and would face serious problems if he did not stop writing critical letters. When Tsitsikashvili reminded him to talk in a polite manner, Revaz Gogiashvili attempted to assault physically the journalist in the corridor of the District office of the Local Council. Journalist Tamar Okruashvili, Director of GoriAvtoTrans Ltd Tamaz Svanidze and staff member Adikashvili attended the incident.



In September 2005, Saba Tsitsikashvili addressed in written form then newly appointed Chief of the Office of Administration of the President's Representative Aleks Jabadze inquiring about the origin of the sums transferred to the Fund of the President's Representative. Aleks Jabadze did not accept the application under the pretext that the Representative's Fund does not belong to Representative's Administration and offered Saba Tsitsikashvili to address directly the Representative of the President.

In general, in this period the representatives of local authorities have tried to avoid contacts with the local media representatives and hid public information.

On September 3, 2005, on his way to the railway station Saba Tsitsikashvili was attacked by an unknown person, which got stones from the road and tossed them at the journalist. Saba Tsitsikashvili managed to escape. He thought that the assailant took him for someone else and did not pay serious attention to this incident.

On September 5, 2005, Saba Tsitsikashvili was unexpectedly attacked at the railway station by three persons coming from the opposite direction. He was beaten up by unidentified objects and the assailants continued beating when he was on the ground and finally made off. Saba Tsitsikashvili was diagnosed with a concussion of the brain. The assailants did not demand a mobile phone, money, and did not say anything. One of the assailants was arrested and as a coercive measure, detention was applied.

Newspaper “Khalkhis Gazeti” [People’s Newspaper], Journalist Tamar Okruashvili

Very often journalists in Gori are not allowed to access the Gori District Court house. The courthouse guards do not allow them to attend even open trials. Once there was a case when they did not let the journalists that were directly involved in the dispute; they were complainants. For the journalists it is complicated to access the Regional Administration building where the guards are mobilized against the journalists. The guards hamper the journalists’ activity even outside of the building. There was a case when the journalists were asking the Head of the Department of Agriculture and Food for comments in the Administration building yard. The guards came out of the building, as well as staff member of Press Service of the President's Representative Mamuka Murachashvili who said, “Let this person alone, don’t you see he doesn’t want to comment on. Don’t you wish to come again to this place?”

In the village of Khviti during the confrontation with lessee Nodar Maisuradze, the journalists were attacked by the local population a number of times. There is a grounded suspicion that these people were instigated by the local authorities. The authorities reacted only once when the locals attacked the journalists with stones. Regarding this fact, the investigation was initiated and as the coercive measure for two defendants release on bail was selected; one assailant was wanted for some time but was also finally detained.

Kutaisi

Newspaper “Akhali Gazeti” [New Newspaper], Photographer Tornike Turabelidze

Tornike Turabelidze took photos depicting Gia Getsadze, Representative of the President in Imereti Region, and others while playing a game. The photo was published in the “*Georgian Times*” newspaper without the author’s consent and Tornike Turabelidze filed a suit against the persons that, according to him, got the photos that belonged to him from his computer without his permission and published them. By doing so, they violated his

property rights. By the time when the court hearing was to be held in Kutaisi, Ghia Getsadze already served as the Deputy Minister of Internal Affairs and ex-Vice-Mayor Givi Jibladze held the post of Deputy Chief of the “Archmsheninspektsia” [Architectural and Construction Inspectorate]. Givi Jibladze categorically asked Tornike Turabelidze to withdraw the suit and that way hinder the process of further making this theme public. When Tornike Turabelidze rejected that offer, he was twice contacted by Givi Jibladze who threatened his life. These conversations were recorded and audio files are available.

Irakli Imnaishvili

The reason for resignation of the third Representative of the President in Imereti Region was the fact of beating up journalist Irakli Imnaishvili.

The incident between Imnaishvili and Bobokhidze took place in Kutaisi on December 1, at about 9:00 PM when they had a live dispute on TV “Rioni” air over the state of freedom of speech and expression in Georgia. The dispute turned into an open confrontation. As the show was over Bobokhidze met Imnaishvili in the corridor of the TV Company and physically abused him; as a result, Imnaishvili sustained less serious health damage.

Regarding this fact on December 29, 2005, Kutaisi Internal Affairs Department launched preliminary investigation for the crime stipulated by Criminal Code of Georgia, Article 118, Part 1 (deliberate less serious health damage to somebody’s health).

On March 6, 2006, the Georgian Public Defender’s Office was addressed by Irakli Imnaishvili’s lawyer Girshel Dzebniauri, who noted that Akaki Bobokhidze by that time had not been interrogated and investigator Ghia Kharatishvili had groundlessly delayed the investigation. Akaki Bobokhidze who resigned from his post of the President’s Representative was promoted by status.

Irakli Mamaladze

TV Company “Rustavi 2” journalist Irakli Mamaladze sent an application to the Georgian Public Defender’s Office. He noted that Guram Donadze, Chief of the Ministry of Internal Affairs Press Service expressed his dissatisfaction both in personal conversations and in phone calls regarding the coverage that the journalist had. The coverage of the operation carried out by Security Officers in April 2005 caused extreme irritation of Donadze. After that, Mamaladze made a report on the prostitutes standing near the circus, which claimed that after the Patrol Police service appeared their work was much easier and were extending gratitude to the Patrol Police.

This statement extremely irritated Donadze and he demanded to exclude that coverage from the Rustavi 2 Night Courier show. The threats against Mamaladze were more frequent and for that reason, he avoided going to the Ministry of Internal Affairs. However, on March 13 he happened to meet with Donadze. During this meeting, Donadze with a pistol threatened the journalist and the incident was attended by a driver and a “Rustavi 2” camera operator.

According to Mamaladze, this was followed by a conversation at Eka Khoperia’s office, who announced that the journalist was dismissed. The reason for dismissal was the list received from the Ministry of Internal Affairs, which noted that Irakli Mamaladze was a drug addict. Although Mamaladze requested drug testing, Khoperia refused and noted that it was meaningless. After that, Mamaladze tried to request to see the list received from the Ministry of Internal Affairs but failed to obtain it.

Regarding this issue, the representative of the Georgian Public Defender’s Office met with Eka Khoperia, who claimed that Mamaladze was not a staff member but simply an intern. Nevertheless Mamaladze presented the



personnel document issued on September 28, 2005, by the “Rustavi 2” Human Resources Manager certifying that he held a position of Correspondent at the Information Service of “Rustavi 2” from September 2004 to June 2005. The members of the Georgian Public Defender’s Office have contacted many times camera operator Irakli Shetsiruli, who under the pretext of being busy has avoided meeting and giving an explanation. For the same reason it was difficult to obtain the explanation of the driver who, according to Mamaladze, attended the incident when Donadze threatened him.

The Georgian Public Defender’s Office has directed the obtained materials for relevant reaction to the General Prosecutor’s Office. In connection with this and some other occurrences of pressure exerted on journalists (Maya Margvelani, Sopo Zedelashvili, etc) the Georgian Public Defender made a recommendation to the Minister of Internal Affairs Ivane Merabishvili to dismiss Guram Donadze, Chief of the Information and Public Relations Department of the Administration of the Ministry of Internal Affairs.

Currently Guram Donadze is dismissed and the materials we provided were handed over to the Inspector General’s Office of the Ministry of Internal Affairs for conducting the IG investigation.

Eka Sekhniashvili

On September 21, 2005, Eka Sekhniashvili, journalist of the “*Georgian Times*” newspaper addressed the Georgian Public Defender’s Office with an application. She noted that in January 2005 the “*Georgian Times*” newspaper published an article “From Farming to Parliament”, which was related to the Member of Parliament Koba Bekauri and his activity.

As Eka Sekhniashvili said, a few days after the publication of the article Koba Bekauri phoned her from an unidentified phone and verbally abused her claiming that she would “pay” for that and added that the article was sent to him abroad by fax and again threatened her.

According to Sekhniashvili, by that time MP Koba Bekauri had already contacted by phone newspaper editor Giorgi Kapanadze and told him the following words: “Let journalist Sekhniashvili keep away from me otherwise I will take care of her”.

The Georgian Public Defender’s Office took an explanation report from Giorgi Kapanadze, Editor-in-Chief of the “*Georgian Times*” newspaper, who verified that he was phoned by Koba Bekauri who threatened Eka Sekhniashvili.

Bela Zakaidze

Journalist of “TV company 202” Bela Zakaidze addressed the Georgian Public Defender’s Office with an application. According to her during her work on and after airing the film “Debt of the Member of Parliament”, there were threats against her on the part of Sergo Javakhidze and MP Koba Bekauri.

Regarding this issue, staff members of the Georgian Public Defender’s Office took explanatory report from “TV Company 202” journalist Vakhtang Komakhidze and staff member Paata Jikhvashvili. Obtained materials regarding the cases of both Bela Zakaidze and Eka Sekhniashvili were forwarded to the Prosecutor General’s Office of Georgia for relevant reaction.

Rusudan Nikuradze

TV company “Rustavi 2” ceased the relations with its Moscow correspondent Rusudan Nikuradze. According to the journalist, her dismissal was unlawful and her lawyers filed a suit at the Tbilisi City Court Civil Cases Penal.

Staff members of the Georgian Public Defender’s Office got in touch with Rusudan Nikuradze and inquired about her lawyers’ contact details. Rusudan Nikuradze put down the telephone numbers of the Ombudsmen’s Office staff members and said that after receiving necessary authorization her lawyers would contact the Public Defender’s Office themselves. However, Rusudan Nikuradze’s lawyers have not contacted us so far. As we know, the court hearing of this case is underway.

Recommendations

- We make a recommendation to the Representative of the President in Shida Kartli, as well as Telavi and Gurjaani Governors to act in accordance with the General Administrative Code when providing information;
- We make a recommendation to the Chairman of the Georgian National Telecommunications Commission to have meetings with regional television companies enabling him to get the first hand information and consider the existing problems;
- We make a recommendation to the Ministry of Internal Affairs of Georgia and the Prosecutor General’s Office of Georgia to investigate in a timely manner each case of pressure exerted on journalists notwithstanding who has exerted that pressure;
- We make a recommendation to the Public Television to solve the contract related problems and switch as soon as possible to long-term contract practice thus promoting journalists’ security and independence;
- We make a recommendation to all private media sources to switch to long-term contract practice thus promoting journalists’ security and independence.



14 Improper Governance

Palace building and who held the right to hand it over. It must be noted that they violated all the terms set for providing information. Eventually, from their written response we learned that this building is a state property and the decision on its disposal was to be made by the subject who was a titleholder. In this case, the Tbilisi City Mayor's Office was not the titleholder of the building located at 6, Rustaveli Avenue and the building was a state property, and the Ministry of Economic Development was entitled to dispose of it and accordingly this Ministry was to make the decision.

The Youth Palace Case

In September 2005, the Tbilisi City Mayor made an announcement via media sources on the handover of the Youth Palace (former Pioneers' Palace) to the ballet company located at 6, Rustaveli Avenue.

This announcement caused protest from both the students of this Palace and their teachers, which addressed the Public Defender's Office with an application.

Regarding this we applied to the Tbilisi City Mayor's Office requesting to inform us of legal grounds and subsequently forward the document, based on which this building was to be handed over to the Vakhtang Chabukiani Tbilisi State Ballet Arts School. They notified in written form that there was no official document on this matter. After that we addressed the City Property Management Service at the Tbilisi City Mayor's Office and requested to notify us who was the title owner of the Youth

Zugdidi Supermarket

Regarding the closure of Zugdidi "Supermarket" Ltd central gates the Public Defender's Office found out that by the Resolution No. 63 of March 18, 2005, of Zugdidi District Local Council because of the rehabilitation works to be carried out the central gates of Zugdidi "Supermarket" Ltd were closed. As this fact caused protest of vendors, by the decision of the Local Council, a concrete wall was erected in front of the central gates; however, no document implied that. At the same time, it is known that this wall is protected 24 hours by the Special Operations unit.

As the claim was filed at the Zugdidi District Court, the illegally adopted decision was announced void. By this time, the review of the case was suspended by the Kutaisi Circuit Court because of the non-existence of the cause of dispute, as at the time of appeal this resolution was announced void by the Local Council itself. It must

be noted that, in accordance with the civil procedure legislation, if the review of a case is suspended, the party may not address the court on the same grounds. We believe that the Local Council deliberately prearranged all this in order to cut the ways for the party to uphold the rights at the court.

After all this, on December 21 of this year, the Zugdidi District Local Council issued Resolution No. 94, which enacted again the limitation of the functioning of the “Supermarket” Ltd central gates. Similarly, in this resolution, there is no mention of erecting a fence in front of the gates, it only provides for the limitation of the use of the central gate. Nevertheless, instead of a temporary fence that is normally constructed for the period of rehabilitation, a concrete wall was erected.

At the same time, by making such a decision the Zugdidi District Local Council violated General Administrative Code of Georgia, Article 95, Part 2, according to which “the administrative body shall notify the interested party on the beginning of the administrative activity, if the administrative-legal act may worsen party’s legal state, or shall ensure party’s participation in the administrative activity”. Article 2 of this Code clarifies the term “administrative activity”, which is “the activity of the administrative body for the purpose of elaborating, issuing and putting into effect an administrative-legal act, considering the administrative complaint, as well as elaborating, concluding and cancelling an administrative agreement”. Therefore, we believe that in the process of making such a decision the vendors were to be notified, and the Local Council was to invite them and engage in the administrative process as the adopted resolution negatively affected the vendors to a certain extent.

The problem is that by closing the central gates the normal functioning of the market was obstructed. In particular, the market’s side entrance cannot ensure unimpeded access; customers have to walk some distance to enter the market. As the market vendors claim, with the closure of the market’s central gates they lose their customers, because instead of trading in the market the customers prefer to go to a shop located on the opposite side. This is something that limits the conditions of open competition.

We think that taking into account the above mentioned the requirements of the General Administrative Code are violated, which in turn causes the violation of citizens’ rights. As we noted earlier, the Resolution does not provide for the erection of a concrete wall and its construction was unlawful. The Resolution says that the closure of the central gate is necessary for rehabilitation, but for that, a temporary fence would be enough. At the same time, the rehabilitation works should not be endless. In this particular case this is an attempt of cheating the people, which, we believe, is inadmissible, and, in accordance with the organic law “On Public Defender”, Article 21, Clause “B”, we make a recommendation to Zugdigi District Governor A. Kobalia to ensure deconstruction of the concrete wall erected in front of the market entrance and the resumption of the functioning of the market central gate.

It must be noted that Zugdidi District Governor and the Representative of the President in Samegrelo-Zemo Svaneti Z. Gorozia via media outlets publicly stated that the request of the Public Defender is not lawful and will not be complied. They noted that the Resolution of the Zugdidi District Local Council was adopted in accordance with the legal requirements.

After all this, on March 2, 2006, Zugdigi District Court voided Resolution No. 94 of December 21, 2005, adopted by the Zugdidi District Local Council as unlawful and made a decision that the so-called “barrier” should be removed and the functioning of the central entrance resumed. By this time, the District Court decision is appealed in the Court of Appeals. However, the motivation of the appeal that the rehabilitation of an underground located in front of the market and for that reason, the closure of the market gates was necessary seems to be doubtful to put it mildly.



The modern form of slavery, trafficking in persons, is related to grave forms of violence and is a gross violation of human rights. It is an organized crime and any state shall elaborate and put into effect a related policy of elimination of cases of trafficking on its territory and offer adequate assistance to the victims.

Trafficking in persons remains a very acute problem in Georgia. With the purpose of coordination, the activities of combating this crime the President of Georgia adopted a Decree of a national plan for 2005-2006 for combating trafficking in persons. For similar purposes the Special Inter-Agency Commission at the National Security Council of Georgia was formed. Because of the improvement of the indicators of combating trafficking, according to the 2005 U.S. State Department Report, Georgia moved to the tier two in the list of the countries observed. By the Decree No. 965 of the President of Georgia, the Prosecutor General of

Georgia was appointed the Chairman of this Commission.

Despite the fact that trafficking was recognized as a crime, the Georgian legislation is still very far from being perfect. In order to form an effective legislative base for combating trafficking, a comprehensive law should be adopted that would define the legal and organizational basis for preventing and combating trafficking in Georgia. This law should define the rights, obligations and the rule of coordinating the measures aimed at combating trafficking among the governmental bodies, civil associations and officials, as well as the legal status and the guarantees for social and legal protection of the victims of trafficking. In the reporting period, the Parliament did not adopt this law (it was adopted at the first hearing).

For taking effective measures against trafficking, it is necessary to assess adequately the scales of illegal labour migration and trafficking problems. Accordingly, a clear picture of illegal labour migration and the problems of trafficking should be formed. For that reason within the Ministry of Internal Affairs was created a unified centralized database of the persons connected to such activities as trafficking in persons and the organization and promotion of illegal labour migration. From our perspective, a single agency cannot create a unified centralized database and the creation of a unified information service should take place based on the databases of the Ministry of Internal Affairs, the Ministry of Foreign Affairs and the Prosecutor General's Office. It is necessary to elaborate more effective rules and

conditions for the use of the unified database, to introduce new systems for obtaining information and new electronic forms of registration.

Despite the steps taken, the Government of Georgia has no adequate mechanisms to ensure the protection and assistance of the victims. A national referral mechanism for the protection of the victim should be formed and implemented, which generally contains three basic elements: the identification of the trafficking victims, assistance and reintegration.

We should draw attention to a system of assistance to the victims of trafficking in Georgia, which should be focused on the victims' rights, dignity, security, confidentiality and long-term assistance by the State.

As the research showed, the assistance that was offered to the victims of trafficking was not adequate. Lack of possibilities and a coordinated system was noted. The assistance system does not correspond to the interests of the victims of trafficking: the procedure of immediate return is more of an additional punishment rather than assistance; confidentiality, security and long-term psychological and economic assistance are not offered. The current Georgian legislation does not assist those victims that do not wish to cooperate with the law enforcement bodies or do not enjoy the legal status of a victim after the completion of the court process. It must be noted that total anonymity of the victims is offered by the current Georgian legislation only in the process of preliminary investigation as, according to the Criminal Procedure Code, the victim is both the person who suffered and the witness and respectively his/her demographic data are included in the criminal case papers, which are accessible for the defendant's lawyers.

The functioning of a social and psychological service system requires the cooperation on the part of the governmental bodies, non-governmental organizations and public, availability of relevant human resources, calculation and adoption of the budgetary items.

Within the existing health programmes, the victims of trafficking are offered anonymous medical care and rehabilitation only in a limited number of cases (for instance, if a victim is infected with HIV/AIDS, emergency medical treatment, tuberculosis). Within the existing funding implementation of wider health care and rehabilitation programmes is impossible.

It is clear that a great deal of importance is attached to the Georgian governmental bodies focused on international relations. As a rule, the victims of trafficking abroad are assisted by the international migration and other non-governmental organizations. The Georgian Consulates are sporadically involved in this system lacking relevant capacity or the means for solving the issues. It is desirable that this work has permanent and persistent nature.

The Georgian public has no clear comprehension of the essence of trafficking and its threats. Despite preventive measures taken, a large-scale information campaign is needed to increase the level of awareness of the public and especially of potential victims. Through the campaign, the information would be shared on how the victims should protect themselves in case of the threat and what are the institutions that should be applied to for the assistance. Similarly, very important is to integrate the trafficking related issues into school curricula and develop educational programmes for wider layers of society.

After the reorganization activities conducted in different structures all chiefs of passport services, leadership of law enforcement bodies and the members of the Border Guards were factually replaced. The established links of recalling and transiting the victims of trafficking were abolished. At the same time, permanent interchanges in the Governmental bodies decreased the level of control, which in turn affected the situation negatively. Special training is needed for professional groups ("hot line" specialists, judges, police officers, staff members of the Prosecutor's Offices, etc).



The demand for forced labour of children, prostitution and other types of exploitation is increasing in all countries, including Georgia. In Georgia, there are different categories of victims of trafficking and the children that are potential victims. These are the following: orphans, children lacking parental care, children from large or single parent families, from the most impoverished and socially vulnerable families and the victims of family violence. These are the groups that suffer most from the growing level of trafficking whether domestically or internationally and are greatly involved in begging, trading smaller objects, production of pornographic materials and prostitution, as well as in housekeeping, drug dealing and anti-social activities.

Particularly should be noted children's sexual exploitation for commercial purposes. This theme is tabooed in Georgia as the public is convinced that for national traditions, Orthodox Christian morals and Georgian mentality such things are unimaginable and cannot perceive a juvenile as a commercial object for sexual exploitation. In reality, there are a great number of exploited juveniles, which are not only unprotected by the State but there are no approximate legal estimates of their number.

According to the data of 2005 from the office of the Georgian Prosecutor General in the sphere of trafficking in persons:

1. the investigation launched on – 26 criminal cases (2 criminal cases split for separate investigations);
2. charges brought against – 23 individuals in 14 criminal cases;
3. coercive measure selected for – 20 persons in 12 criminal cases;
4. trial took place on – 10 criminal cases against 15 persons;
5. court ruled on – 2 criminal cases against 6 persons;
6. warrant of caption issued on – 7 persons in 6 criminal cases.

The fact should also be noted that sometimes the uproar is artificial around the cases.

1. Tbilisi Isani-Samgori District Internal Affairs Dept. is conducting the preliminary investigation on a criminal case investigating the occurrence of committing child molestation by L.G. with minor I.P. On February 16, 2006, suspect L.G. was arrested.

Regarding this crime, newspaper "*Alia Kronika*" published an article related to trafficking problems in its 5th issue of February 5-12; the information published was not confirmed. Within the criminal case the investigation, additionally interrogated victim I.P. who rejected the published material that citizen Valodia Diachenko or anybody else was offering travel and employment abroad.

2. The fact of detention of N.Zh. caused public interest. The suspicion that N.Zh was a victim of trafficking was not confirmed. The investigation of the criminal case revealed that citizen of Uzbekistan N.Zh because of financial hardship agreed to her friend's offer to travel to Dubai and engage in prostitution. Along with ten other girls, N.Zh. arrived in Georgia and with the assistance of certain Monika received a false Georgian passport, with which she travelled to the United Arab Emirates, Syria and Turkey until December 2005. In the period of 2003-2005, she used to return regularly to Georgia for visa renewal.

Currently the investigation is underway to identify and detain the person and his/her accomplices that arranged the false passport.

The world agenda of the recent period is a task of not only improving women's state but also achieving the goal of gender equality.

Gender equality means equal opportunities, rights and responsibilities for men and women; the policy that would guarantee the right and opportunity for equal access to economic resources, economic independence, distribution of family obligations in the process of decision making, public life and social activity.

A Consultative Council on Gender Equality Issues at the office of the Chairperson of the Georgian Parliament has been functioning for more than a year, which has been the first governmental institutional mechanism, which is committed to support the introduction of the principles of gender equality in Georgia. Similarly, in June 2005 a Governmental Commission on the Gender Equality Issues was formed, the major goal of which is to implement gender policy and put it into effect in Georgia.

Despite the steps taken, the state so far has not developed a National Concept of Gender Equality. Subsequently, a political strategy of gender integration has not been set and the concrete mechanisms for ensuring equality have not been created. The governmental bodies are not accountable, or in other words, the accountability procedures on gender equality have not been clearly set for them. Even more, often the representatives of the governmental bodies are not informed of what kind of international commitments should be considered during the decision making and implementation process.

Women and Labour Market

The events that have taken place in the transitional Georgia demonstrated, even to a greater extent, the role of female labour force on the labour market, though this did not affect much women's social and economic status. Often women demonstrated greater skills to adapt to market economy requirements; however, they have not found positions according to their profession and professionalism.

The analysis of the current state of the labour market shows that women's employment structure and income include the elements of inequality, which should be necessarily considered when developing the state employment and income regulation policy.

In spite of fact that the number of women in Georgia over 15 exceeds (1, 2 times) the number of men, the level of men's economic activity is

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higher than that of women. According to the data of the State Department of Statistics, in the recent period the number of economically active population has decreased (the number of economically active women decreased by 2, 3 %, and the number of economically active men decreased by 3, 6 %).

According to the official data for 2004, the number of unemployed women increased by 4, 5 % in comparison with 2002/2003, while the number of unemployed men in the same period decreased by 7.9 %. It should also be noted that the unemployment of women lasts longer and unlike men, they have little chances of finding new jobs.

According to the data of the State Job Placement Service, by December 31, 2005, the percentage of unemployed in the total number of jobseekers was 98,1. The number of jobseekers registered with the State Job Placement Service decreased by 36, 5 % and was equal to 30 400 persons, of which 16 100 (52, 8 %) were women.

It should be noted that the dramatic decrease of jobseekers registered with the State Job Placement Service was caused by the fact that in April 2005 the Job Placement Service removed from the registration list all jobseekers registered before 2004.

It should be noted that the level of women's employment in Georgia is not very different from the level of men's employment and for women this figure is 48 percent, and for men – 52 %. At the same time, we should note that the number of employed women decreased by 3, 2 % and the number of employed men by 2, 9 percent.

The highest percentage of employed population falls on those with secondary education and for employed women this is 38 percent and for employed men 41%. Despite the fact that in the employed population the share of employed females and males with high education is almost equal (each fourth employed is with high education), the females only infrequently hold administrative and managerial positions. With the increase of hierarchy, level the amount of such infrequency increases.

Traditional views on women's role in the society are impeding factors for women to hold higher positions and self-establish. The existing social mechanisms (free kindergartens, pregnant women and family assistance, etc) do not facilitate the development of promoting conditions.

When considering the gender aspects of modern economy it is necessary to take a careful look at the gender differentiation in salaries.

The research we carried out gave us the following picture:

The dynamics of the gender differentiation (in lari):

	2001	2002	2003	2004	2005	
					I-II	III-IV
Women	63	75,7	85,7	94	127,8	134,2
Men	125,2	150,1	163,0	169,2	266,4	279,6
The gender differentiation in salaries (%)	50,3	50,4	52,6	55,5	48	48

As we see, in spite of salary increases, the salaries for women are lower by almost 50 percent.

It is necessary to carry out full-scale analysis of the gender differentiation in salaries, which implies the study of the gender differentiation in salaries at both the intra-enterprise and inter-sectoral levels, as well as the study of income of the employees according to their employment statuses.

The protection of labour rights is one of the areas of the activity of the Public Defender. It must be noted that we have found a number of violations in this area. A great problem is the protection of the rights of mothers and children. The facts of violations of women's legal rights are frequent. The Labour Code specifically defines the maternity leave and unpaid leave procedures in the prenatal, natal and childcare periods, at the time

the guarantees of employment and dismissal, the privileges for pregnant women and mothers having children under 3. Unfortunately, in a number of enterprises and organizations the practice has been established when the mothers' labour rights are neglected.

Like women, men are not protected in labour relations either. Administrations frequently ignore the legislation and for that reason, the persons that suffered apply with complaints to various organizations.

It is necessary to remind to the authors of the Labour Code that any significant international document recognizes such fundamental rights as the labour right of pregnant women and women during breastfeeding period. This is something that is completely neglected by the new draft Labour Code. In particular, the reason of cancellation of labour relations should not be pregnancy, childbirth and child care. The national legislation should highlight the human rights related responsibility.

In an extremely unorganized informal sector marked by disregard to labour security and lack of privileges, mainly women are employed and that predetermines their economic insecurity. It is also important to note the difficulty that is related to such economic activities as street vending and home production, in which a large number of women are employed.

The Georgian Labour Code regulates both the public and private sectors. Despite that, the anti-discriminatory legislation is almost unutilized in the private sector. There is no legislation that would regulate the informal sector of housekeepers.

Violence

The Convention on the Elimination of All Forms of Discrimination against Women and General Recommendations adopted by the Committee on the Elimination of Discrimination against Women prove that violence against women is a result of unbalanced rights and obligations between women and men and that causes serious discrimination both in public and family life. Unfortunately, sometimes relation between woman and her defence against discrimination, violence on the grounds of sex and upholding human rights and freedoms is inadequately reflected.

Domestic violence is one of the most widespread problems in Georgia. It remains a tabooed theme, which often is perceived as a personal or family problem rather than a social one. Domestic violence has the power of psychological destruction. It must be the State and its institutions in cooperation with the non-governmental organizations that should take care of the protection of each individual.

The analysis of the applications received by the Public Defender's Office showed that the victims of domestic violence often address us because of the police non-intervention. It should be noted that this problem is more acute in villages and district centres where it is completely ignored. In the reporting period the Public Defender's Office received 17 applications.

Since special services for protecting the victims of domestic violence in the country have not been formed (counselling-rehabilitation centres, shelters, etc), the different units of the Ministry of Internal Affairs (patrol police and precinct offices of regional departments – precinct inspectors) are the only bodies that are obliged to protect the victims and register the occurrences of violence. Therefore, an actual issue is the introduction of the representatives of these bodies with the problems of domestic violence, the issues of victims' protection and adequate reaction to the cases of domestic violence.

The Public Defender's Office and non-governmental organization Counselling Centre "Sakhli" [House] are jointly monitoring the activity of the above-mentioned bodies trying to determine what difficulties they face if there are real mechanisms for protecting the victims and what would facilitate effective work. The material obtained from the interviews and answers to the questionnaires will describe the real picture of the existing



problems and demonstrate potential shortcomings; it would help evaluate the legal component of the problem and facilitate the improvement of the mechanisms for protecting the victims.

The activity of the law enforcement bodies in this sphere is complicated by the lack of legislation on the Protection from Domestic Violence. It should also be noted that the draft law has been elaborated but so far has not been adopted.

The content of the relevant articles of the Criminal Code does not cover fully domestic crimes and, therefore cannot be used as an argument that the legislation is efficient.

- The law does not imply that violence occurs among family members that are emotionally and financially interdependent. Moreover, the law says nothing about psychological violence against the woman.
- In most of the cases of domestic violence, if no grave crime is committed, the violator remains in the same house, in which the victim resides. The victim is forced to leave the house and find shelter at a relatives and friends' place or remain with the violator facing the threat of continued violence.
- During the preliminary investigation, if the court does not rule for pre-trial detention of the violator, there are no realistic mechanisms for protecting the victim from threats, menace of taking vengeance or repeated acts of violence on the part of the violator.
- The mechanisms guaranteed by the legislation for ensuring protection of the victims and witnesses of domestic violence at the stage of preliminary investigation and court process are not adjusted.
- The legislation does not provide for free medical, psychological and legal assistance for the victims of domestic violence.
- The legislation does not contain sufficient legal bases for functioning of specialized institutions, including shelters, which would assist the victims of domestic violence.

It is necessary to adopt such a law on the protection of the victims of domestic violence that would make it an effective tool for combating domestic violence.

The law should ensure the protection of the rights and freedoms of the family members, their physical and psychological integrity, protection of family values, and creation of the basis for protecting, assisting and rehabilitating the victims of domestic violence. It should be emphasized that in order to put into effect the law it is necessary to consider relevant funding when working on the state budget.

Domestic violence crosses all national, cultural, religious and socioeconomic interests and exists in all layers of society notwithstanding age, education, social or economic status.

A clear example of that is the case of Georgian Parliament Member Giorgi Chakhvadze and his spouse Eteri Chumburidze.

On September 13, 2005, we were addressed with a request for assistance by Eteri Chumburidze, spouse of Georgian Parliament Member Giorgi Chakhvadze. As she noted, because of the conflict between her and her spouse (by that time the divorce case was under consideration by Rustavi Court), Giorgi Chakhvadze prohibited her from seeing her two children (aged 8 and 10), threatened to kill, and a number of times abused her physically. In particular, according to her, on August 16, 2005, Eteri Chumburidze went to see her older child (it was the child's birthday) and Giorgi Chakhvadze in the presence of attendees abused her physically. After that Eteri Chumburidze was taken by Patrol Police officers to the Second Police Office of Internal Affairs of Vake-Saburtalo Department, where she was declared a victim and a forensic examination was conducted. The examination confirmed the injuries on her head and body.

A staff member of the Public Defender's Office met with Chakhvadze in order to double-check the facts. Chakhvadze's position was, firstly, that his children were to stay with him as he could offer better living conditions and, secondly, that his children did not wish to see their mother.

The staff member of the Public Defender's Office clarified that Chumburidze had the right to see her children, after which a “gentlemen” agreement was achieved between the staff member of the Public Defender's Office and Giorgi Chakhvadze that Eteri Chumburidze would be given an opportunity to see her children with the precondition that she would come alone without any accompanying persons. After this agreement the well-known events occurred. In particular, Eteri Chumburidze was accused of attempted murder of Giorgi Chakhvadze's and was arrested. Later a coercive measure of arrest was changed with police supervision. As Chakhvadze noted, immediately after entering the yard Chumburidze took out the weapon and shot four times at the gate.

On October 6, 2005, the investigation scheduled a complex chemical, trace, dactyloscopy and ballistic examination. The forensic examination concluded that Eteri Chumburidze's purse, jacket and other personal items have no traces of the weapon, likewise specific marks of gunpowder were not found on Eteri Chumburidze's hand, which would be necessarily found in case of shooting (at least with minor intensity) between shooter's thumb and trigger finger. Similarly, the forensic examination made a conclusion that no fingerprints were found on the “Makarov” system pistol presented on the case of the Giorgi Chakhvadze's murder attempt.

As Chumburidze testified, after the Rustavi Court made a decision on divorce of Eteri Chumburidze and Giorgi Chakhvadze, her ex-spouse contacted her and asked her to come alone to his house and meet their children outside in the churchyard where the children would come accompanied by Chakhvadze's driver Taras Gogichaishvili. When Eteri Chumburidze came to the yard of Chakhvadze's house after opening the gate Taras (Chakhvadze's driver) told her that Giorgi did not let the children out and if she wanted to see the children she was to go inside the yard. For that purpose, she entered and sat at the bench. The driver that stood near the gate called her; as soon as she approached him, he gripped his left hand around her neck and with his right hand, which was wrapped with cellophane, shot four or five times aiming at the closed gate. Then using force he threw her down on tiles and tried with the assistance of Koba Osashvili and Ushangi Chakhvadze to put her fingers on the pistol. After all this, her ex-spouse appeared and phoned to the Patrol Police informing them of the murder attempt.

At this stage, a motion has been forwarded to Tbilisi Prosecutor with a request to suspend the criminal case. As to the right of seeing the children, on March 3 of this year Giorgi Chakhvadze on his own initiative organized a meeting of the children with their mother; on April 14, 2006, by a temporary resolution of the Tbilisi Court of Appeals, the mother was given the right to see her children twice per week (on week-ends) from 12:00 noon to 20:00 PM, the right which is enjoyed without any obstruction by Eteri Chumburidze.

According to the information provided by the Ministry of Internal Affairs, in recent 6 months of this year, the Patrol Police officers registered throughout the country 1 469 cases of family conflicts; these figures do not reflect the real picture. We believe that introducing the statistics procedures are needed at least to clearly show the presence of this problem in the society and the need to solve it.

In Georgia, mostly in the regions, remains a tradition of abducting women for marriage, which is a crime and is a legally punishable offence. However, when the case is the abduction of a girl by a young man in an everyday life this is not presumed to be an offence. The families engage in talks followed by keeping the case in secrecy or forced marriage. While a number of violent actions may be occurring, like abduction, rape and forced marriage. Our public, unfortunately, is extremely tolerant to this form of violence and young men are almost assured in their impunity.

According to statistics:

In 2004 abductions with the purpose of marriage – 59 cases

In 2005 registered are 283 cases

First, it is necessary to raise public's awareness and the level of legal education, as such facts are perceived as local problems and conflicts.



Within the Frame of the United Nations Development Programme, with the Support of the Swedish Government, for Capacity Building of the Georgian Public Defender's Office, in 2005 a Number of Measures were Taken; the Staff Members of the Public Defender's Office, International and Local Experts Took Part in them

Seminar for Staff Members of the Public Defender's Office and the National Organizations of the South Caucasus Human Rights Protection held in Tbilisi, June 17-21, 2005

The seminar was aimed at deepening the knowledge of national organizations working on the human rights protection in the sphere of international standards and encouraging their cooperation in the South Caucasus.

The representatives of Azerbaijan, Armenia and Georgia took part in the seminar. The seminar was attended by 5 representatives from Armenia, 5 from Azerbaijan and 16 from Georgia. The UN Coordinator and UNDP Permanent Representative in Georgia Mr. Lance Clark, the Georgian Public Defender Mr. Sozar Subari and Raoul Wallenberg Institute Professor Mr. Brian Burdekin addressed the participants.

Raoul Wallenberg, Institute of Human Rights and Humanitarian Law Professor, Mr. Brian Burdekin and

Chief Technical Adviser of this Institute Mr. Bill Chapman were invited as seminar facilitators.

The seminar agenda was focused on the role of national mechanisms of human rights in the sphere of human rights protection. At the seminar sessions were discussed the issues of managing the existing problems in the sphere of human rights and cooperation with the Parliament. Special sessions were devoted to the development of strategies and working plans, evaluation schemes and criteria, as well as the issues of development of monitoring over the protection by the national organizations working on human rights. The first day of the seminar, the problematic issues in this sphere in Georgia, Armenia and Azerbaijan were discussed.

Each country representatives gave the overview of the current situation in their countries, their organizational structures, problems and experiences. After the presentations, debates were held.

Within the seminar, the Armenian and Azerbaijani participants visited the Georgian Public Defender's Office and were acquainted with the work. The seminar had media coverage.

The First Training for Staff Members of the Public Defender's Office on the Theme "The International System of Human Rights Protection" was held, May 20-24, 2005

The Georgian Public Defender Mr. Sozar Subari, UNDP Analyst Ms. Natia Cherkezishvili and Raoul Wallenberg Institute Programme Officer Ms. Lisa Grans addressed the participants at the opening of the training.

The training session was aimed at deepening the knowledge of the staff members of the Georgian Public Defender's Office in the international system of human rights protection in order to carry out their mandate and perform their functions more effectively.

The training session was attended by 35 staff members of the Public Defender's Office. Mr. Edwin Berry, UN Adviser on Human Rights Protection from Mongolia, Mr. Ralph Alevet from Frankfurt University Viadrina and Ms. Marina Kvachadze, Professor of Tbilisi State University were invited as training facilitators. The first day of the training was devoted to a general overview of the international system of human rights protection and the mechanisms of human rights protection in Georgia. Also were discussed the International Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the European Convention on Human Rights. After each issue, the cases were discussed and analyzed.

In connection with the changes to the Criminal Procedure Code, training for the staff members of the Public Defender's Office was required. Two trainings were held on this theme.

Thematic Training 1 – “The Rights of Arrested and Detained Persons according to the Georgian and the International Law on Human Rights”, July 6-8, 2005

34 staff members of the Public Defender's Office attended the training. Chief of the Information and Education department of the Georgian Public Defender's Office Ms. Anna Zhvania and Raoul Wallenberg Institute Programme Officer Ms. Lisa Grans addressed the participants. Mr. Alan Simons, Mr. Gigla Agulashvili and Mr. Irakli Kotetishvili were invited as seminar facilitators. They took part in the elaboration of the new draft Criminal Code. The international experts gave the overview of the rights of the persons arrested and detained according to the international law: the basics of arrest and procedural guarantees, while the local experts discussed protection of the rights of the persons arrested according to the Georgian legislation. The seminar participants were divided into groups to analyze the cases.

Thematic Training 2 – “The Guarantees for Human Rights Protection in the Investigation Process and the New Criminal Procedure Code” held on July 11-13, 2005, at the Public Defender's Office.

35 staff members of the Public Defender's Office attended the training. International experts Mr. Alan Simons, Chairwoman of the Georgian Young Lawyer's Association Ms. Anna Dolidze and Lawyer Ms. Eka Beselia were invited as the seminar facilitators.

Mr. Alan Simons gave an overview of the rights of the indicted persons according to the International Covenant on Civil and Political Rights and the European Law on Human Rights: the right to a fair and independent trial by an independent and unbiased court. The local experts discussed the rights and the issues of the presumption of innocence of the persons arrested according to the Georgian legislation. The final day of the seminar was devoted to the case study.

Thematic Training 3 – “Elimination of Discrimination According to the International Law on Human Rights Protection and the Georgian Legislation” held on October 12-14, 2005

The training session was attended by 18 staff members of the Public Defender's Office. The Georgian Public Defender Mr. Sozar Subari and Raoul Wallenberg Institute Professor Mr. Brian Burdekin addressed the attendees at the opening of the training session.

Mr. Brian Burdekin discussed the activity of the national human rights protection organizations in the case of combating discrimination. Similarly, he discussed the issue of elimination of discrimination in the UN and European systems. On the third day of training, the participants participated in case studies.



The Chairperson of the Georgian Young Lawyer's Association Ms. Anna Dolidze and local expert Ms. Lia Sanikidze served as facilitators of the seminar related to the gender and religious discrimination issues in Georgia.

Thematic Training 4 on Women's and Children's Rights was held on January 16-18, 2006. The seminar was organized in cooperation with the Parliament's Gender Council.

Some 25 participants were invited to participate in the seminar. Georgian Public Defender Mr. Sozar Subari, UNDP Analyst Ms. Natia Cherkezishvili, Raoul Wallenberg Institute Programme Officer Ms. Jen Svedberg and Member of Parliament Ms. Guguli Magradze addressed the participants.

Raoul Wallenberg Institute Representative Ms. Ilaria Botiliero was invited as the seminar facilitator. Ms. Botiliero gave an overview of relevant international legal aspects, trafficking and prostitution in the context of human rights related international law. Local expert Ms. Nino Tsikhistavi and representative of the Parliament's Gender Equality Council Ms. Darejan Lekiasvili discussed the situation of women's rights in Georgia. The core issue of the discussion was gender discrimination and violence against women. Ms. Londa Esadze was invited in connection with the children's rights protection issues.

Recently a great deal of importance has been attached to patients' rights. As one of the main activity of the Public Defender's Office has become the protection of patients' rights and the Centre for Protection of the Patients' Rights was established.

Thematic Seminar 5 on Health Care Rights was held for the staff members of the Public Defender's Office on February 23-25, 2006

16 staff members of the Public Defender's Office and the Monitoring Board Members participated in the seminar. Georgian Public Defender Mr. Sozar Subari and Raoul Wallenberg Institute Programme Officer Ms. Jan Svedberg addressed the seminar participants.

International experts Mr. Aart Hendrix and Chairman of the Society for Health and Bioethics Mr. Givi Javashvili were invited as seminar facilitators. The seminar agenda contained the issues of economic, social and cultural rights, the health care rights defined by the international law on human rights, and the facts of violation of health care rights. Mr. Givi Javashvili made a presentation on the health care rights in the context of international development.

On January 1, 2006, the new Georgian Criminal Procedure Code was put into effect and upon the request of the Georgian Public Defender on February 17-21, 2006, was held the First Technical Training related to the new Georgian Criminal Procedure Code.

16 staff members of the Public Defender's Office participated in the training session. Chairperson of the Court of Appeals Mr. Zaza Meishvili and international expert Mr. Ralph Alevet were invited as training facilitators. Mr. Zaza Meishvili discussed the court's independence and impartiality, the equality before the law. At the training session were discussed such significant issues as the adoption of changes and amendments to the Criminal Procedure Code. Mr. Ralph Alevet gave an overview of independent and impartial international court, the length of the process and the right to appeal. For the case studies, the participants were divided into groups.

Seminars for the regional representatives of the Public Defender's Office, the representatives of local NGOs and local government bodies were held in Georgian regions:

- September 14-16, 2005, Kutaisi, Imereti
- September 20-22, 2005, Zugdidi, Samegrelo-Zemo Svaneti
- November 18-20, 2005, Batumi, Adjara

The First Regional Seminar was held in Imereti (Kutaisi) on September 14-16, 2005, at the Regional Representative Office of the Public Defender.

25 representatives of the Prosecutor's Office were invited to take part in the seminar: police, financial police, and penitentiary, judiciary, NGOs and bar associations. The participants shared their experiences in the sphere of human rights protection.

Tbilisi State University Professor Ms. Marina Kvachadze and Deputy Chairman of the Tbilisi District Court Mr. Zaza Meishvili were invited as training facilitators. Chief of the Imereti Representative Branch of the Public Defender's Office Mr. Giorgi Mshvenieradze gave to the audience an overview of the general situation in Imereti region with human rights protection and drew attention to those violations of the human rights that are most frequent in this region. The major theme of the seminar was the rights of the detainees and the persons under arrest according to the international law on human rights, the right to an independent and impartial trial, as well as the issues of changes and amendments to the Georgian Criminal Procedure Code.

Georgian Public Defender Mr. Sozar Subari addressed the participants. The seminar was covered by the local television stations and print media.

The Second Regional Seminar was held in Samegrelo-Zemo Svaneti Region on September 20-22, 2005

25 representatives of the Prosecutor's Office were invited to take part in the seminar: police, financial police, penitentiary, judiciary, and NGOs. Professor Marina Kvachadze and Mr. Zaza Meishvili were invited as seminar facilitators.

The seminar was opened by Chief of the Department for Freedom and Equality of the Public Defender's Office Mr. Beka Mindiashvili. The seminar had media coverage.

The Third Regional Seminar was held in Batumi (Adjara) on November 18-20, 2005

25 representatives of the Prosecutor's Office were invited to take part in the seminar: police, financial police, and penitentiary, judiciary, NGOs and bar associations. The Georgian Public Defender Mr. Sozar Subari addressed the participants. Mr. Subari discussed the mandate and functions of the Public Defender, knowledge attained from the practical activity and plans for future.

The seminar agenda contained the following themes for discussion: international standards in the sphere of protecting the rights of detained and arrested persons, the right to an independent and impartial trial, as well as the issues of changes and amendments to the new Criminal Procedure Code.

Lawyer Ms. Eka Beselia and Chairman of the Tbilisi Court of Appeals Mr. Zaza Meishvili were invited as training facilitators.

Summer School for the Staff Members of the Public Defender's Office

4 staff members of the Public Defender's Office Teona Kuchava, Kutaisi Representative of the Public Defender's Office in Imereti Region, Natalia Tsagareli, staff member of the Administrative Law Department of the Public Defender's Office, Lana Galdava, staff member of the Justice Department, Tamar Sartania, staff member of the Department for Relations with Citizens, were selected for the summer course at Frankfurt Viadrina University.

The summer course was related to the European system of human rights protection. The focus was on the European standards of human rights protection, the principles of European Council for Human Rights Protection (the Euro-



pean Convention on Human Rights and the European Social Charter), problems of international public law and practical institutional aspects, such as procedures for appealing and the basics of humanitarian law.

Seminar “The Role of Prosecutors in the Human Rights Protection” held in Tbilisi on October 28-30, 2005

Ms. Carol Novak was invited as seminar facilitator. The Representative of the Prosecutor General's Office Ms. Tamar Tomashvili delivered a lecture on the role of prosecutors in the human rights protection.

International expert Ms. Carol Novak spoke about the right to a fair trial in accordance with the European Court on Human Rights and International Criminal Court procedures, exercising control over freedoms and security, the evidences assessment and abolishment of torture.

The seminar was attended by 25 representatives of the Prosecutor General's Office and Tbilisi District Prosecutor's Office.

At the opening session, the Georgian Public Defender Mr. Sozar Subari and UNDP Analyst Ms. Natia Cherkezishvili addressed the participants.

The seminar was aimed at deepening the knowledge in the sphere of human rights and promoting the protection and respect to human rights.

Seminar for Judges on the problems of human rights protection was held from October 31 to November 2, 2005

At the opening session Mr. Sozar Subari, Ms. Natia Cherkezishvili and Chairman of the Supreme Court of Georgia Mr. Konstantine Kublashvili addressed the participants; the latter discussed the judges' role in the human rights protection, existing problems in the judiciary and plans for future.

25 judges, including the newly appointed judges were invited to participate in the seminar.

Mr. Carol Novak and lawyer Eka Beselia were invited as seminar facilitators.

The seminar agenda included the following issues: the judges' role in human rights protection, the judge's activity against democracy, the right to a fair trial in the practice of the UN and European Court on Human Rights, protection of the right to a fair trial in Georgia, exercising control over the right to freedom and security. Similarly, a discussion took place on the evidences assessment and the abolishment of torture.

The First Seminar on the National Action Plan for Human Rights held in Tbilisi on October 17-19, 2005

The seminar was opened by the Georgian Public Defender Mr. Sozar Subari. The Minister of Justice Mr. Konstantine Kemularia, the Minister of Health Mr. Lado Chipashvili, the Chief of the Presidential Administration Mr. Giorgi Arveladze, as well as UN Coordinator and UNDP Resident Representative to Georgia Mr. Lance Clark, Invited Professor from Raoul Wallenberg Institute Mr. Brian Burdekin took part in the official opening of the seminar.

The representatives of the Government, international organizations and NGOs were invited to participate in the first seminar. Professor from Raoul Wallenberg Institute Mr. Brian Burdekin and Special Adviser to the Ministry of Justice of Sweden Ms. Perlina Berlin who shared with the participants the Swedish experience of developing and implementing the national action plan on human rights were invited as seminar facilitators.

The seminar agenda included the following issues: the main elements of the national action plan on human rights, anticipated results for Georgia of the development of the national action plan on human rights, the process of elaborating the national action plan on human rights.

The Second Seminar on the Development of the National Action Plan on Human Rights held at the Georgian Public Defender's Office, November 9-11, 2005

35 participants from governmental bodies, NGOs and the Public Defender's Office were invited to take part in the seminar.

Professor Brian Burdekina and Ms. Ulrike Shuerman were invited as the seminar moderators. The seminar agenda included the discussion of the subsequent steps towards the development of the national action plan on human rights, as well as a theme of the development of the national plan on human rights in the international context – Millennium Development Goals, human rights and common social responsibility.

At the seminar, three working groups were formed on the rule of law, health care protection and the minority's issues. All three groups held presentations on the problems in these three areas and set the plans for overcoming the problems.

Recommendations of the Georgian Public Defender

officers. Exception can be made for need of ensuring safety of a police officer. In such cases, it is important that every law enforcer including members of special operations unit wear a private distinctive sign, for example private number, by which this person can be identified

Recommendations to the Ministry of Internal Affairs

Within the police reform, consider the establishment of municipal police.

Recommendations regarding torture

Retain as a strategic priority of the authorities the elimination of torture and cruel treatment.

Ensure adequate protection for those arrested that apply with complaints concerning torture or cruel treatment thus enabling them to apply with complaints without fear for subsequent persecution or vengeance.

Train the law enforcement body's staff members in the methods of conducting the investigation without resorting to torture; also teach them the use of only lawful and proportional methods at the time of detention.

Ensure permanent bearing of identification insignias by the law enforcement staff when arresting, as well as in the places of detention, when entering the penitentiary institutions and when meeting with detainees and inmates.

Forbid use of masks and other means of concealing identity of police

Recommendations to the Penitentiary System

In the report are described the facts and according to the conditions, we address the relevant bodies with the recommendations:

To the Prosecutor General's Office:

Launch preliminary investigation on the occurrences of use of force, beating, inhuman treatment, and the treatment humiliating honour and dignity of prisoners because of a special operation carried out on January 24, 2006, in Batumi Prison No. 3.

Initiate preliminary investigation on the occurrences of removing prohibited items from penitentiary facilities that should be registered and kept with prisoners' other personal items. Determine whereabouts of the non-prohibited items removed from the facilities.

Launch preliminary investigation on the claims of physical abuse by

special operations unit members of prisoners on January 26 and February 6, 2006, in Kutaisi Prison No. 2 and facility of strict regime.

Launch investigation on the incident of abuse against Kutaisi Prison staff member Paata Lomsianidze.

The Ministry of Justice of Georgia and the Ministry's Penitentiary Department:

Complete in the shortest period the formation of the permanent public control commissions, as provided by the Law on Imprisonment, at each penitentiary institution. At the same time, the commission members should be entitled to unimpeded access to the institutions not only in working hours but also in any day of the week and any time of the day or night, meeting and talking with inmates personally, face-to-face and unimpeded access to any cell, technical or other rooms. Any time when the commission members will be hindered in the performance of their functions legally mandated by the law, take the discipline action against violating individuals.

Forbid use of masks and other means for concealing identity of police officers. Exception can be made for necessity of ensuring safety of police officers. In such cases, it is important that every law enforcer including members of special operations unit wear a private distinctive sign, for example private number, by which this person can be identified.

According to the Georgian Law on Imprisonment, the prisoners were allowed to receive an unlimited number of parcels as well as packages with weight not exceeding 30 kg per month; this weight does not include items of personal use, linen, and clothing.

The rooms for short- and long-term visits should be arranged in a better manner and the right of prisoners to enjoy a defined number of visits exercised.

For those prisoners that require hospital treatment and who are sentenced or for whom imprisonment was selected as a coercive measure, separate cells (wards) should be arranged in medical facilities of the Penitentiary Department and these prisoners should be transferred there.

The prisoners should be allowed to walk everyday as provided by the law and the restriction of this right should not take place under the excuse of poor arrangement of the walk rooms.

The necessary funds should be allocated to ensure the food organization according to the standards determined by the joint Decision No. 5/500/0 of December 22, 1999, of the Minister of Justice of Georgia and the Minister of Health of Georgia on the Food Norms, Clothing and Sanitary-Hygienic Conditions for Inmates.

Purchase necessary number of vehicles needed for escorting prisoners to the court process.

To the Ministry of Labour, Health, and Social Affairs of Georgia:

We make a recommendation to the Ministry of Labour, Health, and Social Affairs to purchase a well-equipped ambulance for the transportation of seriously ill prisoners from regions.

Recommendations in the Sphere of Psychiatric

General Recommendations

Our recommendations contain two fundamental issues and view the Parliament as the implementer and the facilitator:



1. Improve the Law on Psychiatric Assistance; strengthening the legal basis of psychiatric assistance, or in other words, the elaboration and adoption of the new law is needed for the better protection of patients' rights and elimination of some serious deficiencies (e.g. the practice of non-voluntary hospitalization); implementer – the Health Committee of the Parliament of Georgia; the Ministry of Labour, Health and Social Protection.
2. The development of the concept on psychiatric health, creation of the action plan and the launch of the deinstitutionalization process – switching from closed institutions to community oriented services with the formation of the consequent chain of psychiatric health care services; implementer – the Health Committee of the Parliament of Georgia; the Ministry of Labour, Health and Social Protection.

Concrete Recommendations

Improvement of Living Conditions

In these recommendations, we mean that the leadership of each institution should pay maximum attention to such issues as heating hospitals, including the wards and medical personnel rooms; ensuring regular showers for patients; regular changes of linen, provision of patients with warm clothing, footwear and necessary utensils (glasses, plates, spoons). We draw particular attention to hygienic means (soap, toilet paper, etc).

It is important that the hospital administration provides bedside-tables for patients' personal items and arranges a lounge for social interaction, where along with telephone and television sets the patients will have access to newspapers, books, pens, paper, etc.

The administrations should ensure four meals per day as it is indicated in the Instruction of the Ministry of Health on "the Organization of Food in the Medical Institutions".

The administrations should elaborate internal regulations of the institutions that would regulate the standards of differential treatment and the entire spectrum of rehabilitation, including:

- patients acceptance and discharging;
- management of exaltation and aggression cases (dosing psychotropic medicines, immobilizing procedures);
- principles and terms of active treatment;
- use of rehabilitation methods;
- regular examination of patients for physical injuries and identification of their source;
- patients contact with the "outer world";
- notification of patients on their rights;
- the norms of behaviour of the medical personnel, etc.

Implementer – the Ministry of Labour, Health, and Social Protection. The administration of each institution.

Education

This recommendation is aimed at the increase of the educational level in hospitals both in terms of raising professional knowledge and practical skills of the personnel as well as of patients' and their family members' of the awareness on their rights.

The Ministry of Labour, Health, and Social Protection is recommended to renew the standards of treatment and care and make stricter control over the implementation of these standards. The Ministry of Health should

also improve the continued medical education programme and include in this programme the human rights protection and ethics issues.

The recommendation is made to the hospital administrations, the Ministry of Labour, Health and Social Protection and the Coordination Board of Experts Psychiatrists at the Ministry, and also for the involvement in the process are prepared the Georgian Public Defender and the Public Monitoring Board at the Public Defender's Office, and also request the NGOs involved in the health care reforms process to schedule and conduct:

- training sessions for medical personnel related to human rights and medical ethics;
- special training sessions for medical personnel – “behavioural norms in case of patient's exaltation and aggression”, as well as “modern principles and methods of medical treatment”;
- training sessions for relatives and guardians and for the patients (in the remission periods) – “patients rights and the ways for their protection”;
- campaigns for raising public awareness on psychiatric health problems.

Recommendations to improve the patients' rights protection at the psychiatric clinics:

- regular monitoring to protect human rights and identify the problems and promote clinics' openness and “transparency”;
- establish the procedure for appealing to ensure the study of the occurrences of violation of patient's rights and activate the response mechanism.

Implementer – the Ministry of Health Care, also in this process will be involved the Georgian Public Defender's Office and the Public Monitoring Council at the Public Defender's office.

Recommendation to improve the functioning of Poti Strict Observation Psychiatric Hospital

This recommendation implies serious changes in Poti Hospital that should be enforced in three main directions:

- strengthening of the Strict Observation Hospital security service, which implies such measures as reinforcement of engineering and technical facilities, installation, and functioning of surveillance, alarm, warning, and other types of systems. The security service should ensure the hospital patients with security neutralize the risk of escape and protect the medical personnel at the times of aggression: implementer– the Ministry of Health and the Ministry of Internal Affairs.
- create the treatment environment in the hospital – currently the hospital resembles more a prison rather than a medical facility – two doctors take care of 90-100 severely ill patients, the wards have heavy iron doors, etc. It is necessary to increase the number of medical personnel and widen the scope of treatment methods applied – currently only medication method can be used implementer – the Ministry of Health and the hospital administration.
- specialized training of medical personnel in such issues as “the ways of intervention when treating the criminals with mental disorder”; implementer – the National Bureau of Psychiatric Examination, the Ministry of Health, the hospital administration.



Recommendations for the Court and the Implementation of Court Decisions

The case hearing at the court should be within the terms defined by the law and the terms protraction should be prevented.

The funds in the state budget should be assigned for full payment of the fines imposed on the budget institutions by the court decisions and for fulfilling the court decisions.

Recommendations on the Children's Rights

- Universal standards should be created for the orphanages and the shelters and its fulfilment should be obligatory for each institution. This would help avoid the existence of such orphanages and shelters that do not ensure necessary conditions for the children.
- Professional qualification of the personnel of these institutions should be reviewed and training offered.
- The definition of “childhood” shall be changed in all relevant Georgian laws and legislative acts in accordance with the UN Child Convention definition and make it 18 years (in the institutions child’s age should be extended up to 18).
- The Working Groups of the Technical Secretariat of the Georgian Children’s Protection and Deinstitutionalization Governmental Commission are working on elaborating the standards of childcare for both foster families and family supporting institutions and juvenile prisoners. It is necessary to arrange at all three juvenile penitentiary facilities the conditions of children care comply with these standards.
- The legislation should provide for the administrative punishment of teachers or other school administration members if child’s human dignity and honour is humiliated.
- The law should designate the agency in charge of juvenile’s control, care and crime prevention.
- The agency in charge of juvenile is control, care and crime prevention, should have in permanent staff a social worker who should be entitled to monitor the state of juvenile in pre-trial detention facilities.
- It is necessary to launch social rehabilitation programmes for juveniles and their families and form their management mechanisms.
- It is necessary to set up a state database of juvenile offenders.
- According to the Law on the Rule of non-custodial measure of restraint and Probation, Article 17, a penitentiary system social service worker should carry out the probation activities with regard to the convict. The social service should be a structural element of the Ministry of Justice, which will be staffed with qualified personnel (social workers that have had relevant education or training in terms of dealing with juvenile offenders’ issues).
- A system and standards should be established taking care of the children that are the victims of trafficking; a referral system and official monitoring mechanisms should be formed.
- In the action plan of combating trafficking should be stated the need for forming the children’s psychosocial rehabilitation service.

Recommendations in the Sphere of Freedom of Speech

- We make a recommendation to the Representative of the President in Shida Kartli Region, as well as Telavi and Gurjaani Governors to act in accordance with the General Administrative Code when providing information;
- We make a recommendation to the Chairman of the Georgian National Telecommunications Commission to have meetings with regional television companies enabling him to get the first hand information and consider the existing problems;

- We make a recommendation to the Ministry of Internal Affairs of Georgia and the Prosecutor General's Office of Georgia to investigate in a timely manner each case of pressure exerted on journalists notwithstanding who exerted that pressure;
- We make a recommendation to the Public Television to solve the contract related problems and switch as soon as possible to a long-term contract practice thus promoting journalists' security and independence;
- We make a recommendation to all private media sources to switch to a long-term contract practice thus promoting journalists' security and independence;

Recommendation:

We make a recommendation to the Ministry of Culture, Monuments Protection and Sports to ensure in the shortest period of time the handover to the Georgian Eparchy of the Armenian Holy Apostolic Church of the temples, the historic origin of which is incontestable and which belonged to the Armenian Church before Georgia's Sovietization, out of the officially requested six non-functioning temples: Church "Shamkhoretsots Surb Astvatsatsin" (Karmir Avetaranots), Tbilisi; Church "Surb Minas", Tbilisi; Church "Mughnu Surb Devorg", Tbilisi; Church "Surb Nshan", Tbilisi; Church "Norashen", Tbilisi; Church "Surb Nshan", Akhaltsikhe), and form the state commission to study those temples out of mentioned six, the historic origin of which is not unequivocally clear.

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Designed by Besik Danelia



UNITED NATIONS
DEVELOPMENT PROGRAM



GOVERNMENT
OF NORWAY

**The Office
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of Georgia**
