ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

The Situation of Human Rights and Freedoms in Georgia

2013

The Public Defender Of Georgia

EUROPEAN UNION

The present report was published with finansial support of the EU funded project “Support to the Public Defender’s Office of Georgia”.

The views expressed in this publication do not represent the views of the European Union.

ANNUAL REPORT
OF THE PUBLIC DEFENDER
OF GEORGIA

The Situation of Human Rights and Freedoms in Georgia

2013

THE PUBLIC
DEFENDER OF
GEORGIA

www.ombudsman.ge

OFFICE OF PUBLIC DEFENDER OF GEORGIA

6, Ramishvili str, 0179, Tbilisi, Georgia

Tel: +995 32 2913814; +995 32 2913815

Fax: +995 32 2913841

E-mail: info@ombudsman.ge

TABLE OF CONTENTS

INTRODUCTION 7

HUMAN RIGHTS IN CLOSED INSTITUTIONS (REPORT OF THE NATIONAL PREVENTIVE MECHANISM) 11

SITUATION IN PENITENTIARY INSTITUTIONS 11

THE PENITENTIARY HEALTHCARE SYSTEM AND TORTURE PREVENTION MECHANISMS 38

HUMAN RIGHTS IN THE AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS 60

CONDITIONS OF DISABLED INDIVIDUALS IN PENITENTIARY INSTITUTIONS, THE INSTITUTION FOR INVOLUNTARY PSYCHIATRIC TREATMENT AND TEMPORARY DETENTION ISOLATORS 65

RIGHTS OF CHILDREN IN SMALL FAMILY-TYPE CHILDREN'S HOMES 70

AMNESTY AND PAROLE 83

FAILURE TO FULFILL THE PUBLIC DEFENDER'S LAWFUL REQUESTS 86

RIGHT TO LIFE 89

PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT 95

INDEPENDENT, IMPARTIAL AND EFFECTIVE INVESTIGATION 104

RIGHT TO LIBERTY AND SECURITY OF PERSON. 120

RIGHT TO A FAIR TRIAL. 128

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE 153

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION. 159

THE STATE OF PROTECTION OF NATIONAL MINORITIES' RIGHTS. 172

FREEDOM OF EXPRESSION 180

FREEDOM OF ASSEMBLY AND DEMONSTRATIONS 189

FREEDOM OF MOVEMENT 196

RIGHT TO PROPERTY 201

RIGHT TO WORK. 221

RIGHT TO LIVE IN AN ENVIRONMENT ADEQUATE FOR LIFE AND HEALTH 231

RIGHT TO HEALTH CARE 238

RIGHTS OF THE CHILD 243

GENDER EQUALITY AND WOMEN'S RIGHTS 266

GENERAL REVIEW OF THE PROTECTION OF PERSONS WITH DISABILITIES. 281

RIGHT TO ADEQUATE HOUSING 298

RIGHT TO SOCIAL SECURITY 303

THE STATE OF PROTECTION OF OLDER PERSONS' RIGHTS. 308

HUMAN RIGHTS OF IDPS AND CONFLICT-AFFECTED PERSONS IN GEORGIA 312

THE STATE OF PROTECTION OF THE RIGHTS OF FORCIBLY MOVED VICTIMS OF NATURAL CALAMITIES (ECO-MIGRANTS) 332

ABOUT REPATRIATION OF PERSONS FORCIBLY REMOVED FROM THE SSR OF GEORGIA IN THE 1940S BY THE FORMER SOVIET UNION 338

THE STATE OF PROTECTION OF RIGHTS OF PERSONS HAVING A REFUGEE/HUMANITARIAN STATUS AND ASYLUM SEEKERS 341

INTRODUCTION

This document is the Report of the Public Defender of Georgia for 2013 on the protection of human rights and freedoms in Georgia covering wide spectrum of civic, political, economic, social and cultural rights. Furthermore, it highlights positive and negative trends in human rights area for the reporting period, brings together key recommendations developed by the Public Defender towards various branches of government, the timeliness and degree of fulfilment of which to a great extent will define the establishment of high standards in human rights protection in Georgia.

This document has been developed in accordance with the Organic Law of Georgia on Public Defender, Article 22 and is submitted to the Parliament of Georgia.

The year 2013 was less dramatic compared to turbulent 2012 resulting in peaceful change of power following October Parliamentary Elections. Compared to extremely charged-up pre-election period ahead of Parliamentary Elections, Presidential Elections proceeded in the atmosphere of peace and non-violence. Although the public witnessed a year-long painful cohabitation of the two main political powers, this tension did not translate into fundamental changes in overall human rights protection – if we do not take into account an alarming trend in post-Parliamentary Election period, when civil servants were massively dismissed from local-self-governance bodies. International observers positively assessed Presidential elections of 27 October, which concluded complex cohabitation and peaceful transfer of power.

Mr. Thomas Hammarberg in his capacity of EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia took active part in the discussions on the status of human rights protection in Georgia and prepared a special report. In addition, a National Human Rights Strategy was also developed, and the work is ongoing to finalise the Action Plan, the work is under way on anti-discrimination draft law as well.

The number of persons having appealed to the Office of the Public Defender of Georgia (PDO) reached over 11 thousand in 2013, double the number compared to previous years, which reflects increased expectations towards PDO, greater awareness among population on the infringed rights, and free environment in the country.

Despite dissemination of video materials in September 2012 depicting torture and inhumane treatment in penitentiary facilities, with the entire public attention focused on the protection of inmates' rights, thanks to political will and implemented reforms, cases of torture and inhumane treatment of inmates are no more among the list of main challenges. Nevertheless, thousands of inmate complaints on torture, inhumane and degrading treatment are still being investigated and apart from single cases, there have been no decisions made on these systemic violations.

Investigation is still in progress on the incident of 28 August, 2012 which took place in Lopota Gorge. With the investigation ongoing the information on its progress cannot be accessed neither by the victims' families, nor interested parties or wider public.

One of the significant achievements of the year in the field of human rights can be considered liberalisation of the Criminal Law, which used to be subject of the Public Defender's numerous recommendations for number of years. Though, on the other hand, incidents of active demonstration of intolerance by various groups have intensified, which, in some cases, have been left without adequate response.

As a result of legislative changes implemented in 2013, strict Criminal Law, so called "zero tolerance" policy was replaced by more liberal approaches, which from the angle of human rights should be assessed positively. The

Public Defender of Georgia welcomes restoration of punishment absorption principle in the Criminal Law on the cases of multiple offences for avoiding disproportionally increased and strict punishments.

In compliance with the amendments to the Law of Georgia on Common Courts implemented in 2013, the ban was lifted from video, photo and audio recordings in court rooms. Public Defender believes that these changes, in the long run, can significantly increase public trust to judiciary.

Despite the described positive changes, the Parliament of Georgia left in force temporary rules for witness interrogation, while, one of the key positive aspects of enacting the new Procedure Code was the possibility of questioning of witnesses only in court.

The Public Defender of Georgia considered that detention of Town Hall and Skarebulo staff by the Investigation Department of the Ministry of Finance was a violation of Law, requiring further investigation. Legitimate questions remain regarding possible violations of requirements of Law in so called "tractors' case", which requires comprehensive investigation.

The Public Defender of Georgia deems unsatisfactory the steps taken by the Government following large-scale amnesty with regards to persons arrested "for political reasons or persecuted for political reasons through criminal procedure". The Public Defender of Georgia welcomed the amnesty implemented on 28 December 2012, however, stated that restoration of justice cannot be confined to single act of amnesty, as the Public Defender of Georgia believes, that for full legal rehabilitation of such people, it is necessary to create an effective mechanism within reasonable timeframe, which will allow not only for the restoration of dignity and reputation, but also for obtaining equitable compensation for the illegally incurred damage from the part of the State.

There have been over 20 thousand cases filed to the Prosecutor's Office requesting investigation of violations committed in the past. Many former high officials, including the former Prime Minister Ivane Merabishvii, were arrested on various charges. Political opposition, several organisations and experts were asking questions on the practice of selective justice and as to why the investigation was so interested in former high officials' cases. Special monitoring mission of the OSCE Office for Democratic Institutions and Human Rights was set up to monitor trials of former high officials. The Public Defender of Georgia presented the assessment of identified violations in his 2012 Parliamentary Report, as well as partially covered in this report. PDO continues monitoring of courts and the public will be duly informed.

In 2013, the Public Defender of Georgia was appealed by many inmates or ex-inmates who consider themselves illegal prisoners. Since the Criminal Procedure Code spells out in detail the basis for appealing and reviewing the sentences in force, the Public Defender of Georgia finds it expedient to create a mechanism within the shortest possible term for reviewing enforced court judgments, including property restitution and moral compensation for illegal prisoners, if such exist.

In 2013 PDO was addressed by numerous persons on the alleged cases of ill treatment and abuse of authority by the representatives of law enforcement bodies.

During 2013 institutional independence of the investigation on the alleged cases of human rights from the part of law enforcers still remained an issue. The cases examined by the Public Defender during the year gives ground to state that there are gaps in both legislation, and its implementation in practice. One of such issues is competencies and authorities of the Georgian Ministry of Internal Affairs, General Inspections of the Chief Prosecutor of Georgia, and Investigation Department of the Georgian Ministry of Penitentiary and Corrections.

For effective investigation of the cases of alleged violations of human rights by the representatives of law enforcement agencies, it is important to review the existing legislation and create an independent investigation mechanism ensuring impartial study of such cases. In addition, authority of the Public Defender should be strengthened in terms of the possibility to record violations in the closed-type facilities.

The Public Defender welcomes the fact that in 2013 the trend of using imprisonment as preferred method of preventive measure has sharply diminished. Nevertheless, the Public Defender of Georgia still believes that court judgments on preventive measures in most cases are not sufficiently substantiated, especially, when the applied method is imprisonment.

The Public Defender of Georgia welcomes the fact that in 2013 it was the first time when the Ministry of Internal

Affairs of Georgia admitted illegal tapping of the citizens and the widely representative commission destructed up to 110 files of secret video and audio recordings. Despite this positive trend, we believe that such one-time action cannot ensure protection of personal space of the person, without creating solid legislative guarantees.

As a result of widespread amnesty and liberalization of criminal law, the number of persons in penitentiary facilities has reduced notably, which has eliminate the issue of prison overload and improved inmate conditions. During 2013 there has been no case of torture recorded in penitentiary facilities, and number of inmate deaths has markedly reduced. Nevertheless, by the end of the year appeals regarding ill-treatment have started in increase.

Despite positive changes, the Public Defender of Georgia found alarming circumstances related to the death of several inmates, when the State failed to ensure effective protection of the health and personal safety of the persons under its oversight. Moreover, other issues have surfaced, among them, ensuring healthcare protection and effective forms for medical examination of persons in penitentiary facilities.

The majority of public actions carried out in 2013 proceeded without major incidents, though there were some exceptions when the State failed to ensure protection of constitutionally guaranteed right to freedom of peaceful assembly, due to inaction and/or insufficient response, among them raiding of an street action to mark an International Day against Homophobia and Transphobia by the participants of the parallel action on 17th May, 2013.

2013 should be positively assessed in terms of ensuring variety of information and freedom of media environment. In the reporting period there have been no cases of pressurising media, if we do not take into account several cases of disrupting journalist's activities, and developments around the Public Broadcaster.

2013 was problematic in terms of ensuring religious freedoms and tolerance, which manifested itself in several cases against Muslim population of Georgia. In May and June of 2013, orthodox Christian population of Samtatskharo protested against opening of mosque in the village, and through threats, verbal abuse and in some cases even by force did not allow Muslim congregation to gather and carry out traditional Friday prayer. In the village of Chela, Adigeni dismantling of minaret resulted in physical confrontation between law enforcers and local Muslims, with the local population being injured, eleven Muslims arrested and criminal case initiated against several of them. Within 3 months from the incident, though, on 27th of November, minaret was fully restored.

In terms of civic integration and protection of minority rights, full participation of ethnic minorities in political, cultural and public life still remains problematic.

In the past year there were numerous cases recorded when persons were restricted the right to free movement, both in the cases of foreign nationals entering the county, as well as citizens of Georgia crossing the State border. The Public Defender of Georgia was unable to obtain information on factual and legal grounds for refusing entry into the country or leaving it, despite filing numerous requests to respective institutions.

Last year there were several cases of unjustified release of civil servants from their duties during reorganisation of State intuitions on the basis of the reduced number of positions, which clearly entails the violation of the civil servants' right to work. The Public Defender of Georgia sees the implemented amendments to the Labour Code of Georgia as a step forward in the protection of right to work, which has brought Georgian Labour Code close to international standards and created more effective opportunities for the implementation of the right to work, nevertheless, it is necessary to further continue the process of stage-by-stage modification of the Labour legislation in the country.

There is no coherent national policy on labour, health and working environment developed at the national level in the country, and respectively, there is no monitoring mechanism to assess to the degree of safety at work place, which calls for immediate action from the part of the Government, through creation of respective legislation and mechanisms within the shortest timeframe.

In 2013 the number of appeals to the PDO concerning lack of shelter or living conditions has increased. The examination of the appeals revealed that the problem is of systemic character. There are no advanced guarantees for the protection of the rights of homeless persons. One of the key issues is lack of financial resources allocated by the local or central budget for targeted assistance to homeless persons.

In 2013, like in previous years, there was a high rate of appeals to the PDO regarding the State allowance allocation for the socially vulnerable families.

The President announced the year 2013 as the year of persons with disabilities (PWDs), while the Parliament of Georgia ratified the UN Convention on Person with Disabilities of 2006.

Despite positive trends of 2013 in terms of protecting PWD rights, there are many issues requiring immediate resolution. For the great majority of PWDs, especially those living in provinces, the key problem is the lack of access to information on the existing social, medical and other types of programmes.

Positively should be assessed expansion of IDP definition at legislative level for the protection of IDP rights. Namely, according to the new Law of Georgia on Internally Displaced Persons - Refugees from the Occupied Territories of Georgia, the definition of the IDP status has changed and apart from occupation, one of the criteria for granting IDP status to a person is massive violation of human rights. This change is especially significant for the population of the villages along the so called 'administrative border line' who were not entitled to IDP status based on the previous legislation in force.

In 2013 the process of distribution of flats to IDPs was launched in Tbilisi and various regions of Georgia. Despite some progress, the issue of grave living conditions for the majority of IDPs still remains unresolved in various parts of Georgia. It is essential that distribution of the living space is carried out transparently, under the monitoring of the Public Defender of Georgia and non-governmental organisations.

As in previous years, condition of 35 204 families affected by natural disasters is alarming. The State is not implementing programmes to ensure adaptation of eco-migrants to the place of re-settlement; there are no State programme for creating adequate social conditions for relocated families. The Public Defender of Georgia welcomes the initiative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to set up a Commission for the development of a respective law. High rate of child mortality and poverty levels, high degree of public tolerance to child abuse, especially grave conditions of children in high mountainous regions of Georgia must become the area of special focus for the Government.

The key challenge to gender equality remains low participation of women in the country's political life. Women representation in the Parliament of Georgia is 11%, cabinet of ministers 21%, while in local self-governance – 10%.

Homophobic attitude to LGBT community also remains a challenge. In 2013 crimes committed on the bases of hatred were on the rise, as well as other cases against LGBT community and organisations protecting their rights.

Especially alarming to the Public Defender of Georgia were the events of 17th May and its subsequent developments, namely, violence against LGBT representative and human rights activists, which continues to find different forms of expression.

In the reporting period one of the key areas of Public Defender's work was the right to living in healthy environment. The PDO currently examines lawfulness of the planned construction of the cascade of Khudoni HPP in the village of Khaishi, Mestia and Shuakhevi HPP in Ajara, as well as alleged violations of the rights of the local population.

The report also reviews human rights of refugees and asylum seekers, as well as repatriates -victims of 1944 repressions.

A separate chapter is dedicated to human rights of the elderly in Georgia. Considerable challenges have been identified during past year in this regard, among them, death of 5 elderly persons within the interval of two days in one of the shelters. In the current year, the Public Defender will intensify his work to identify the problems and alleged violations of rights in this field.

HUMAN RIGHTS IN CLOSED INSTITUTIONS (REPORT OF THE NATIONAL PREVENTIVE MECHANISM)

SITUATION IN PENITENTIARY INSTITUTIONS

This report describes results of the monitoring conducted in 2013 in penitentiary institutions, police stations, temporary detention isolators and the Academician B. Naneishvili National Center of Mental Health. It also provides information about the monitoring of small-size family-type children's homes carried out in February 2014.

The monitoring of the penitentiary institutions and the agencies subordinated to the Georgian Interior Ministry system was made possible by the European Union's financial support. The monitoring of the small-size family-type children's homes was financed by the Open Society Georgia Foundation.

Members of the Prevention and Monitoring Department of the Public Defender's Office conducted 45 planned visits and 313 special visits to Georgia's penitentiary institutions meeting 2,670 prisoners during the reporting period. 140 planned visits and 13 special visits were paid to and 107 detainees were visited in temporary detention isolators and police stations within the Georgian Interior Ministry system. 9 visits were paid to and 25 patients were visited in psychiatric institutions. 3 planned visits were paid to detention facilities for military servicemen (hauptwachts) and 27 military servicemen were visited. 30 visits were paid to and 250 children were visited in small-size family-type children's homes.

During the monitoring visits, Public Defender's trusties were inspecting both the physical environment and the status of protection of rights of individuals in these institutions. A special attention was paid to the actual treatment of these persons.

CHANGES IN THE PENITENTIARY SYSTEM

The reporting period was marked with many positive changes in the penitentiary system. Torture and other cruel, inhuman or degrading treatment has no longer been a systemic issue. Moreover, no single occurrence of torture has been detected and only a few facts of ill-treatment were revealed in the reporting period. We would like to commend the eradication of prison overcrowding[1] through active use of legal mechanisms such as amnesty, parole, pardon and release on account of health condition. The measures taken are fully consistent with the Council of Europe Committee of Ministers Recommendation concerning prison overcrowding dated 30 September 1999.[2]

Along with the decrease in the number of prisoners, the funding of the penitentiary system increased. Penitentiary institutions nos. 1 and 4 were shut down due to inappropriate residential conditions; repair works were commenced in the penitentiary institutions nos. 3 and 16 and the Medical Institution for Accused and Convicted Persons.

The penitentiary healthcare system received increased funding and attention. The number of prisoners transferred to civilian medical institutions significantly increased in the reporting period. Several programs were launched, including a programme for preventing, diagnosing and treating hepatitis C. Mortality rate decreased. The legal

1 The number of prisoners decreased from 19,349 by December 2012 to 9,177 by December 2013.

2 See https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538633&SecMode=1&DocId=412108&Usage=2 [last accessed 21.03.2014].

regulation of parole and postponement of sentence enforcement on account of health condition was changed.

The Minister of Corrections and Legal Assistance enacted up to 60 legal acts with a view of perfecting the applicable rules. Penitentiary personnel were provided with training opportunities. However, despite these positive changes and activities implemented, a handful of problems remains in the penitentiary system, which we will be discussing in detail below.

ILL-TREATMENT IN PRETRIAL DETENTION FACILITIES AND INSTITUTIONS FOR SENTENCED PRISONERS

Prohibition of torture and inhuman and degrading treatment is one of the fundamental values in a democratic society protected by Article 3 of the European Convention on Human Rights and Fundamental Freedoms.[3] Another important international instrument in the area of combating ill-treatment is the Optional Protocol to the Convention against Torture, which laid foundation for the creation of national preventive mechanisms. In Georgia, the Public Defender acts as a National Preventive Mechanism, pursuant to the Georgian Organic Law on Public Defender.

It goes without saying that, compared to the previous years (until Fall 2012) when torture and other ill-treatment were of systemic nature in pretrial detention facilities and penitentiary institutions, the situation has drastically improved in 2013. In the course of monitoring such facilities and institutions, our special preventive group has not detected a single allegation of torture – a fact that should be evaluated as a positive change in combating inhuman practices. However, ill-treatment of prisoners remains a problem because in 2013 a number of prisoners did mentioned that they had been ill-treated again.

During the reporting period, the Public Defender received requests and applications from numerous prisoners alleging that they had been subjected to torture and other cruel, inhuman or degrading treatment in the period preceding Fall 2012. The Office of the Public Defender responded to each case by forwarding relevant information and materials to the Chief Prosecution Office and followed up by requesting the Prosecution Office to provide information about actions taken. According to the replies received, the Prosecution Office had opened criminal investigation on a majority of applications through its territorial offices, according to their jurisdictional rules. However, effectiveness of these investigations is questionable in some cases, which we will explain in detail in this report.

The case concerning O.G.

On 24 December 2013, members of our Special Preventive Group were on their scheduled visit to the Penitentiary Institution No. 8. When examining quarantine conditions, they heard several people shouting loudly. To find out what was going on, the Group members went up on the second floor of the quarantine building where they saw a prisoner surrounded by some of the staff members of the Institution No. 8. They were verbally and physically insulting the prisoner. The Special Preventive Group noticed injuries on Prisoner O.G.'s body.

As O.G. stated to the trustees of the Public Defender, on 24 December 2013, he was met with by one of the members of the prison staff in the quarantine building of the Institution No. 8. According to O.G., this prison official had been beating him up in 2011 – 2013 as a result of which his health was injured and the Gldani-Nadzaladevi Prosecution Office of Tbilisi was investigating this case at the material time. As O.G. explained to us, he was suffering from mental disorder that caused him enter into some disagreement with the mentioned official who then started verbally and physically abusing him.

The Public Defender addressed the Chief Prosecutor with a recommendation to immediately open investigation into the ill-treatment possibly administered against the prisoner. The Prosecution Office replied that they commenced criminal investigation under Article 333 of the Criminal Code.

3 The European Convention on the Protection of Human Rights and Freedoms, 4 November 1950, Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment.".

The case concerning M.G.

On 10 December 2013, a member of the Special Preventive Group met with M.G., a convicted prisoner, at the Penitentiary Institution No. 7. According to the prisoner, in the evening of 7 December 2013, he had some minor disagreement with a staff member of the Institution. 5 minutes after the incident, the staff member told M.G. the boss wanted to talk to him. The staff member then escorted M.G. from his cell to the administration premises where there they were met by the director, two of the director's deputies and some other prison officials. They wanted to know why M.G. used foul language against the staff member and started to beat him. According to the prisoner, the beating lasted for about 5 minutes. He was then escorted from the administration room towards his cell. As they were passing through the corridor, M.G. told other prisoners that he had been beaten up. He was then taken back to the administration room where he was handcuffed and beaten up again. The prisoner had visible injuries on his body.

On 11 December 2013, the Ministry of Corrections published information on its website that the Ministry's Inspectorate-General launched internal examination on the basis of a complaint filed by M.G.'s lawyer.

With a view of ensuring effective investigation in the ill-treatment administered against M.G., the Public Defender addressed the Ministry of Corrections with a recommendation to forward the case to the Prosecution Office for their response. This recommendation was upheld.

The case concerning I.N.

On 10 May 2013, the Special Preventive Group met with and talked to I.N., a convicted prisoner at the Penitentiary Institution No. 7. According to the prisoner, the same day he was visited by representatives of the Penitentiary Department whom he informed about alleged violations of prisoners' rights in the Institution No. 7. He was then taken out in a yard which is normally used b prisoners for taking a walk. According to the prisoner, he was approached by the Deputy Director of the prison who complained of the fact that the prisoner provided information to the members of the Penitentiary Department. As the prisoner stated to us, he was verbally abused, punched with a hand and beaten with a club in his back and sides by the Deputy Director. Our Special Preventive Group member documented the injuries on the prisoner's body.

The Office of the Public Defender forwarded materials of this case to the Chief Prosecution Office for further response. According to a reply received from the Prosecution Office, on 13 May 2013, they opened investigation into alleged exceeding of official power by the officials of the Penitentiary Department under Article 333(3) of the Criminal Code of Georgia. The Tbilisi Prosecution Office is investigating the case.

The case concerning D.B.

On 30 September 2013, trustees of the Public Defender met with and talked to D.B., a convicted prisoner at the Penitentiary Institution No. 2. According to the prisoner, on 25 September 2013, a prison official took him out of his cell by deception. Then, by using force against him, he was taken to a solitary confinement cell in Building A by the Chief of Prison Regime Unit and the Shift Leader. As D.B. stated to us, he was driven into the solitary confinement cell, handcuffed and abused both verbally and physically. In particular, the Prison Deputy Director punched him with a fist into his face several times. The prisoner says he was spent the entire night handcuffed in the cell.

The Office of the Public Defender forwarded a copy of a protocol of our conversation with D.B. to the Chief Prosecution Office for their response. Through its Letter No. 13/6703 dated 11 November 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 073250913005 under Article 3782 of the Criminal Code of Georgia but no separate investigation has started on account of alleged ill-treatment of the prisoner.

The case of D.O. and N.B.

On 6 December 2013, D.O. and N.B., convicted prisoners from the Penitentiary Institution No. 6, furnished the Office of the Public Defender with information. According to the prisoners, in mid-November 2013, they went

on hunger strike requesting that the Parliament of Georgia amend the Criminal Code. By the end of November, they were paid a visit by an official from the administration of the Institution No. 6 who asked them to follow him to the administrative building. According to the prisoners, on their way to the administrative building, they were joined by other officials from the prison administration who handcuffed them by using force. D.O. and N.B. stated that the prison officials were deliberately pressing them on injured body areas with their hands (squeezing their upper limbs where the prisoners had self-inflicted injuries) and hitting them in their heads and backs. According to the prisoners, the prison officials brought them to the administrative building where they continued verbally and physically insulting them. N.B. stated that he was verbally and physically insulted also by the Prison Director.

The Office of the Public Defender forwarded these prisoners' explanations to the Chief Prosecution Office for their response. However, a reply received from the Prosecution Office suggests that they are investigating alleged storage by D.O. and N.B. of a prohibited item but no separate investigation has started in regard to ill-treatment of these prisoners.

The case of A.B.

On 6 December 2013, A.B., a convicted prisoner, addressed the Public Defender for assistance. According to the prisoner, his transfer to the Penitentiary Institution No. 17 was scheduled on 25 September 2013. But that day he felt unwell, of which he informed the guard before they got into a vehicle. However, he was told that he would be provided assistance if needed. On the way to the institution, the prisoner felt worse and asked for medical assistance but the guard told him he could only get assistance after arrival at the place of destination. According to A.B., he then fainted. After he came around, he injured himself using a piece of tinplate he found in the car protesting against the guard's refusal to provide medical assistance. According to the prisoner, he was brought into the yard of the Penitentiary Department where, acting out of heat of passion, he injured himself again and verbally insulted the physicians who came out to assist him. The prisoner was then handcuffed, driven out of the vehicle and put down on the ground. About twenty officials of the Penitentiary Department started beating him with their feet. The prisoner stated that these individuals stopped beating him only after a person unknown to him arrived at the scene and ordered his transfer to the Penitentiary Institution No. 6. According to A.B., on the way from the Penitentiary Department to the Institution No. 6, the penitentiary officials continued to verbally insult him.

The Office of the Public Defender forwarded the prisoner's explanations to the Chief Prosecution Office for their response. With their Letter No. 13/7629 dated 7 February 2014, the Prosecution Office informed us that the Investigation Department of the Ministry of Corrections opened investigation into alleged storage and carriage of a prohibited item by Prisoner A.B. but it was terminated due to lack of elements of crime under the Criminal Code of Georgia.

The case concerning I.M.

On 11 April 2013, trustees of the Public Defender met with and talked to I.M., a convicted prisoner in the Penitentiary Institution No. 7. According to the prisoner, on 5 April 2013, he had been brought from Institution No. 6 to the Institution No. 7 where, on entry, he was verbally insulted and threatened by the Institution's Deputy Director.

According to I.M. he was accommodated in Cell No. 7 where he was subjected to menace and physical abuse. In protest, he injured himself. About three hours later, he was transferred to a civilian hospital where his wounds were treated. He was then brought back to the Institution No. 7.

On arrival, he was questioned by a prison security official and the Director of the Institution. They wanted to know the reasons of why he inflicted injuries to self. The prisoner told them about the physical insults and threats he was subjected to. If he were brought into the institution again, he said, he was determined to injure or even kill himself.

According to the prisoner, this time he was accommodated in Cell No. 3 where he was in a company of prison security officials all night long guarding him from injuring himself again. In the morning, he was again visited by Deputy Director named "Gia" who again threatened him saying "this is where you die". The prisoner says he had nothing to do but injure himself, in particular, his legs, again. Having done that, he was verbally insulted and threatened by the Director saying he would "spoil" him. The Director also said he would punish other prisoners for his

behavior and he would then have to answer to these angry prisoners. According to I.M., he then inflicted injuries on his throat. He said he did not feel secure.

The Office of the Public Defender forwarded the prisoner's explanations to the Chief Prosecution Office for their response. With their Letter No. 13/43210 dated 23 April 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 0732220413003 under Article 333 of the Criminal Code of Georgia (exceeding official power).

In their applications to the Public Defender, prisoners have been complaining about unnecessary and disproportional use of force by the Penitentiary Department's representatives against prisoners. According to a standard established by the European Court of Human Rights, any recourse to physical force in respect of a person deprived of his liberty, which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 of the European Convention on Human Rights.[4]

In the reporting period, prisoners were often referring to use of physical force on the part of prison administrations even when they showed no resistance to the demands of prison officials. Moreover, according to prisoners' reports, the use of force was usually preceded by administrations' oral orders to behave in a certain way. Such practice seems to be an established trend when prisoners are transferred from one institution to another.

The case concerning I.F., G.K., and others

Through November – December 2013, the Public Defender received numerous applications, including collective applications, from convicted prisoners of the Penitentiary Institution No. 19 (Center for the Treatment and Rehabilitation of TB Patients). The prisoners were complaining of ill-treatment administered by prison officials.

Pursuant to the results of a monitoring visit carried out on 23 December 2013 within the framework of the National Preventive Mechanism to the Penitentiary Institution No. 19, I.F., G.K., and others – convicted prisoners of the same institution, were allegedly subjected to physical and verbal abuse as well as disproportional use of force. According to the prisoners, the unlawful treatment was implemented by the Chief of Security Unit and other administration officials of the Penitentiary Institution No. 19 who especially aggressive during a transfer of convicted prisoners to other prisons.

The Public Defender's trustees also met and conversed with I.F., a prisoner transferred from Institution No. 19 to Institution No. 6, and G.K., a prisoner transferred from Institution No. 19 to Institution No. 8. As the prisoners stated to us, on 18 December 2013, they were told to appear in the administrative building. On the stairs to the second floor of administrative building, they were met with by the Chief of Security Unit and some other person whom they did not know. According to the prisoners, it was at that moment that about 20 to 25 officials of the Institution entered the building who, acting on the instructions of the Chief of Security, made the prisoners put their hands on their backs and handcuffed them. The Chief of Security then started verbally insulting them. He pushed I.F. from the back; as a result, I.F. fell on the staircase with his face. The prison officials then lifted them with their hands and legs to take them to the prisoners' transport vehicle.

As the prisoners stated to us, the prison officials used force against them without first demanding to behave in a certain way; in other words, the prisoners were subjected to use of force without rendering any resistance to the prison staff.

The Office of the Public Defender forwarded materials of the above case to the Chief Prosecution Office for their response. The Prosecution Office responded that they did not commence investigation and forwarded the materials back to the Penitentiary Department instead.

The case concerning U.B. and A.M., juvenile prisoners

Trustees of the Public Defender met and talked to U.B. and A.M., juvenile prisoners at the Penitentiary Institution No 8.

4 Ribitsch v. Austria, Judgment of 4 December 1996, par. 38.

According to the juveniles, on 1 December 2013, they were transferred from Institution No. 11 to Institution No. 8 where Chief of Regime Unit, Deputy Director and other staff of the Institution No. 8 suddenly handcuffed and pushed them on the ground. According to the prisoners, the administration officials never required them to behave in a certain way before the use of force. A.M. was injured as a result.

We forwarded the information provided by the prisoners to the Ministry of Corrections for their response. The Ministry then informed the Public Defender's Office that the prisoners explained to an inspection group from the Ministry's Inspectorate-General that they had never been verbally or physically insulted by the staff of the Institution No. 8 and they had no claims to put forward.

In many of its judgments, the European Court of Human Rights has consistently stressed that States must ensure that the manner and the method of execution of punishment do not subject a convicted person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured.[5] The Court has also noted that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.[6]

Results of a special monitoring visit of the Special Preventive Group of the National Preventive Mechanism to the Penitentiary Institution No. 7 on 18 December 2013 have shown that the conditions of living in the institution are inconsistent with the national and international standards. In fact, the prisoners have to live in conditions that are humiliating their human dignity and are endangering their health.[7]

Another observation of ours for 2013 is that some prisoners had been subjected to ill-treatment by other prisoners. Unfortunately, one of such cases ended with the death of a prisoner.

The case concerning deceased L.K.

According to the information publicized by the Chief Prosecution Office, the Investigation Division of the Western Georgia Prosecution Office and the Regional Division of the Interior Ministry for Imereti, Racha-Lechkhumi and Lower Svaneti Region carried out joint investigative activities, which resulted in finding that on 12 May 2013 L.K. was transferred from the Penitentiary Institution No. 6 to the Penitentiary Institution No. 14 in Geguti. At about 20:00 hrs, as the prisoner was being accommodated in building 6 of the Institution, L.K. and I.Sh., a prison security officer, had a quarreled between each other. The security officer tasked Sh.S., another prisoner, with clearing up the situation with L.K. Acting on the security officer's instructions, Sh.S. started talking to L.K. but their conversation grew into mutual physical assault. Responding to Sh.S.'s violent behavior, L.K. hit Sh.S. Having learnt about this incident, security officer I.Sh. ignored his official duty to ensure the prisoners' security and to detect and put an end to their disorderly behavior.

Encouraged with the security officer's irresponsible attitude, Sh.S. and another prisoner G.Sh. took L.K. to Cell No. 338 on the third floor of building 3 by forcewhere they and other prisoners physically and verbally insulted L.K. Security Officer I.Sh. was aware of the fact that L.K. was taken to the mentioned cell with a view of brutally settling accounts with him. In contravention with his official duty to ensure security of the prisoner and to prevent and put an end to crime before it would unleash, Security Officer I.Sh. did nothing to help avoid the conflict and allowed violent individuals beat L.K. in Cell no. 338. L.K. started bleeding from his nose. Only after they finished beating him up did they let L.K. leave the cell.

A few minutes after this incident, when L.K. was with other prisoners in a cell located on the fourth floor of building 6, he was approached by another group of prisoners – Sh.S., G.Sh., S.D., G.U., T.G. and N.B. – who said they wanted to talk to L.K. They took him to Cell no. 336 where they beat him up as a group, for insulting prisoner Sh.S., with fists and feet as well as using solid parts of an electric teapot and a fan. The beating was extremely brutal and it continued for about 10 minutes. As the group of prisoners was beating L.K., he fainted but they continued beating him up even with his lost consciousness, for several minutes.

5 Valašinas v. Lithuania, Judgment of 24 July 2001, par. 102; Kudla v. Poland, Judgment of 26 October 2000, par. 94.

6 Dougoz v. Greece, Judgment of 6 March 2001, par. 46.

7 For more details, please refer to Chapter entitled "Conditions of Living" in this Report.

As a result of this group violence, L.K. was heavily injured so that the injuries were dangerous for his life. In particular, he had multiple wounds and bruises on his forehead, both eyes, right temple and nose with hemorrhages in his skull soft tissues and the brain substance, and a linear fracture of his nose.

With a view of letting the perpetrators go unpunished, Security Officer I.Sh. deliberately misled the investigator who arrived at the institution to inspect the scene. In particular, I.Sh. lied to the investigator by saying that L.K. got these injuries at a different place when he fell down on the stairs from the second floor. The Ministry of Corrections then unknowingly published this wrong information about the incident.

On 23 May 2013, as a result of a closed cranio-cerebral trauma that developed due to acutely swollen and softened brain, L.K. passed away without coming around.

A general obligation under Article 1 of the European Convention on Human Rights requires the States to conduct effective investigation in ill-treatment even if it was administered by private individuals.[8] The approach of the European Court of Human Rights is that, under Article 1 of the Convention, the High Contracting Parties are obligated to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention; to do so, the States must take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals.[9]

INVESTIGATION OF ILL-TREATMENT

Applications received and the results of monitoring activities carried out by the Office of the Public Defender show that effectiveness of investigation into alleged facts of ill-treatment in remand facilities and institutions for sentenced prisoners remain a concern.

With its purpose in mind, Article 3 of the European Convention on Human Rights requires by implication not only that States refrain from torture, inhuman and degrading treatment (hereinafter, «ill-treatment») but that they carry out an effective investigation into allegations of such treatment. Although this is not expressly stated in Article 3, such conclusion logically follows from the general obligation under Article 1 to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, including by means of conducting an effective investigation. Otherwise, the general legal prohibition of ill-treatment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.[10]

To prevent the spreading of the impunity syndrome amongst State agents, effective investigation into allegations of ill-treatment plays a crucial role, as stressed in general and specific reports of the Committee for the Prevention of Torture (CPT). The CPT has mentioned that lack of prompt and effective response to information indicative of ill-treatment leads those minded to ill-treat persons deprived of their liberty to a conclusion that they will get away with punishment.[11] According to CPT:

"The CPT wishes to stress that the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offenses are not held to account for their actions. Some of the delegation's interlocutors met during the visit were of the opinion that information indicative of ill-treatment was frequently not followed by a prompt and effective response, which engendered a climate of impunity."[12]

The Public Defender has been repeatedly expressed his stance concerning ill-treatment and impunity in both his annual reports to the Parliament and special reports. In this report too, we emphasize that each occurrence of ill-treatment must be investigated following the procedural standards implicated by Article 3 of the European Convention on Human Rights. This is crucial to preventing the development of the impunity syndrome in the

8 M. and Others v. Italy and Bulgaria, Judgment of 31 July 2012, par. 99.

9 Denis Vasilyev v. Russia, Judgment of 17 December 2009, par. 98.

10 Labita v. Italy, Judgment of 6 April 2000, par. 131; see also Boicenco v. Moldova, Judgment of 11 July 2006, par. 102.

11 14th General Report CPT's Activities, par. 25.

12 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 17, available at http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf [last accessed 16.03.2014].

society and fear amongst prisoners as well as ensuring that the State's upright denouncement of torture and other ill-treatment is not questionable.

The Office of the Public Defender has forwarded all of the ill-treatment-related information to the Georgian Chief Prosecution Office for further examination and response. According to reply letters received from the Prosecution Office, instead of opening criminal cases and conducting investigation through its relevant divisions, the Chief Prosecution Office usually forwards these materials to the Ministry of Corrections. In some cases, the Chief Prosecution Office has refrained from commencing investigation based on information received about alleged ill-treatment of prisoners stating that they will examine and deal with these allegations within the ongoing criminal cases that have already been opened. Individual stories of prisoners described above and other cases are the examples of the prosecution office's such practice.

A.B., a convicted prisoner, complained of being verbally abused and beaten up by about twenty officials from the Penitentiary Department. The Public Defender's Office forwarded A.B.'s written complaint to the Chief Prosecution Office for their response. By its Letter no. 13/7629 dated 7 February 2014, the Prosecution Office informed the Office of the Public Defender that on 26 September 2013 the Investigation Department of the Ministry of Corrections opened Criminal Case no. 073250913006 under Article 3782(1) of the Criminal Code of Georgia to investigate alleged storage and carrying of a prohibited item by prisoner A.B. As part of investigative measures, A.B. was interrogated and the allegations he raised in his testimony, including alleged ill-treatment against him, were examined. On 23 December 2013, the Criminal Case no. 073250913006 was terminated on the ground that no elements of the impugned criminal offense were found.

Information provided by D.O. and N.B., convicted prisoners, alleging ill-treatment administered against them by the administration of Penitentiary Institution No. 6 were forwarded by the Public Defender's Office to the Chief Prosecution Office for their response. By its Letter No. 13/5654 dated 30 November 2013, the Prosecution Office informed the Public Defender that on 30 November 2013 the Investigation Department of the Ministry of Corrections opened a criminal case no. 073301113004 under Article 3782(1) of the Criminal Code of Georgia to investigate alleged storage and carrying of a prohibited item by prisoners D.O. and N.B. A forensic evidence taking was ordered but no report has been produced this far. Investigation is ongoing. It should be noted that the Prosecution Office's letter said nothing about any results of their examination of the alleged ill-treatment against the prisoners.

The Office of the Public Defender forwarded a copy of a protocol of our conversation with D.B., in which the prisoner complained of having been subjected to ill-treatment on the part of staff of the Penitentiary Institution No. 2 to the Chief Prosecution Office for their response. Through its Letter No. 13/6703 dated 11 November 2013, the Prosecution Office replied that the Investigation Department of the Ministry of Corrections opened investigation into Criminal Case No. 073250913005 under Article 3782 of the Criminal Code of Georgia; however, no separate investigation has started concerning the alleged ill-treatment of the prisoner.

Information provided by I.F. and G.K., convicted prisoners complaining of alleged ill-treatment administered against them in Penitentiary Institution No. 19, was forwarded by the Office of the Public Defender to the Chief Prosecution Office for their response. By its Letter No. 13/4738 dated 27 January 2014, the Prosecution Office informed the Public Defender that our information with appended materials had been forwarded to the Inspectorate-General of the Ministry of Corrections.

One criterion the European Court of Human Rights uses to determine whether or not an allegation of ill-treatment was effectively investigated is whether the investigation was independent and impartial. In this regard, it is worth noting that the Court has been reiterating its stance in a series of judgments against Georgia that an institutional connection between the investigators and those implicated by the applicant in the incident raises legitimate doubts as to the independence of the investigation conducted.[13]

The Court has further specified that investigation of alleged ill-treatment must be carried out independently from the criminal charges involving the victim, since the purpose of the criminal proceedings against the accused person (who is the victim of ill-treatment) is either to find him innocent or guilty of these criminal charges brought up

13 Mikiashvili v. Georgia, Judgment of 9 October 2012, par. 87; Tsintsabadze v. Georgia, Judgment of 15 February 2011, par. 78; Enukidze and Girgvliani v. Georgia, Judgment of 26 April 2011, par. 243.

against him and not to investigate the ill-treatment against him.[14]

Usually allegations of ill-treatment administered against prisoners in the Georgian penitentiary institutions are investigated by the Investigation Department of the Ministry of Corrections – a fact that puts a big question mark about effectiveness of these investigations.

It is without saying that the above-described practice cannot be deemed compatible with the procedural requirement of Article 3 of the European Convention – effective investigation of each occurrence of ill-treatment.

Investigation into possible facts of ill-treatment cannot be effective if it is done as part of investigation into a criminal case against the victim. Veracity of this statement is corroborated, for example, by the above-mentioned case of A.B., in which the investigation was discontinued on account of lack of elements of crime. It should be noted that in that case the investigating authorities were investigating possible storage and carriage of a prohibited item by the prisoner. The only way to terminate the investigation was to find that the prisoner had not committed a crime, while the prisoner's allegations about ill-treatment remained unexamined at all.

It is of crucial importance that each investigation into alleged ill-treatment of prisoners in penitentiary institution be commenced and carried out by an agency that is institutionally detached from the Ministry of Corrections[15] to ensure independence, impartiality and thoroughness of investigation.

In regard to effective investigation of ill-treatment, incorrect legal qualification of the conduct remains a major concern. Usually, investigation is commenced not under the torture article[16] or the article on inhuman or degrading treatment[17], but under Article 333(1) of the Criminal Code[18] – with the latter envisaging a rather milder sanction.[19]

In its 2010 Report, the Committee for the Prevention of Torture (CPT) indicated that the Prosecution Office often failed to initiate criminal cases into complaints of ill-treatment, and when cases were opened, this was rarely under Section 144 of the Criminal Code, but rather under Section 333. Furthermore, it was said that the proceedings were protracted and very rarely led to convictions, which diminished trust in the system for investigating complaints.[20]

In 2013, too, if the authorities were opening criminal cases, they were doing so under Article 333 and, accordingly, investigation in these cases cannot be described as effective.

The European Court of Human Rights has been reiterating in its judgments that investigation into ill-treatment must be such as to bring about detection and punishment of those responsible; otherwise, the general legal prohibition of ill-treatment would, despite its fundamental importance, be ineffective in practice [...][21]

Pursuant to information received from the Georgian Chief Prosecution Office, in 2014, criminal prosecution was commenced against 48 employees of the Penitentiary Department on account of alleged perpetration of ill-treatment and other related criminal offenses by these individuals against prisoners. 28 of these 48 employees were convicted. It should be noted with satisfaction that the criminal offenses committed by these individuals were given the legal qualification of torture or inhuman or degrading treatment; however, this is only true about actions committed before Fall 2012, while since then, the alleged offenders are prosecuted under Article 333 of the Criminal Code.[22]

14 Nechiporuk and Yonkalo v. Ukraine, Judgment of 21 April 2011, par. 164.

15 Having in mind the current legal system in Georgia, it would be the most appropriate for the prosecution office to in charge of investigation into allegations of ill-treatment.

16 Article 1441 of the Criminal Code.

17 Article 1443 of the Criminal Code.

18 Exceeding official powers.

19 A sanction under Article 333(1) of the Criminal Code is deprivation of liberty for up to three years, from nine to fifteen years under Article 1441 (1) and from four to six years under Article 1443 (2).

20 CPT Report to the Georgian Government, 2010, par. 17.

21 Assenov and Others v. Bulgaria, Judgment of 28 October 1998, par. 102. Labita v. Italy, par. 131; Boicenco v. Moldova, par. 102

22 It should be noted that, despite our request, the Chief Prosecution Office did not furnish the Office of the Public Defender with statistical data about the number of members of the Penitentiary Department prosecuted in 2013 for crimes under Articles 332, 333, 1441, 1442 and 1443 of the Criminal Code. Accordingly, the above-described opinion is based on the cases dealt with by the Office of the Public Defender.

As revealed by our monitoring, in the reporting period, victims of ill-treatment were not properly protected from becoming subjected to repeated violence or intimidation.

One important requirement of prohibition of ill-treatment under Article 3 of the European Convention on Human Rights is the protection of victims. Victims of ill-treatment and their family members should be provided with additional guarantees and must be protected against violence, threat of violence and any other form of intimidation that may emerge any time during the beginning and the end of judicial proceedings.

The Committee for the Prevention of Torture (CPT) regards it a major requirement of effective investigation that, while investigation into alleged ill-treatment is ongoing, potential victims of ill-treatment not be placed under the direction or supervision of individuals who might have administered ill-treatment against them.[23]

The above-mentioned requirement has been violated in the above-described case of M.G. The Inspectorate-General of the Ministry of Corrections commenced internal examination of the relevant allegation on 13 December 2013. The Chairman of the Penitentiary Department ordered suspension of the director of the Penitentiary Institution No. 7. On 16 December 2012, the Inspectorate-General completed its internal examination and forwarded the case materials to the Tbilisi Prosecution Office for their response. Accordingly, a formal basis for keeping the prison director suspended from office no longer existed and therefore he returned back to his office.

While this case was under investigation, a trustee of the Public Defender of Georgia met with Prisoner M.G. in the Penitentiary Institution No. 7. According to the prisoner, it was unavoidable for him to meet with the staff members of the prison administration whom he alleged to have physically and verbally exerted pressure upon him. For this reason, the prisoner explained, he was psychologically subdued and did not feel safe.

With a view of ensuring effective investigation into M.G.'s case, the Public Defender recommended the Minister of Corrections to move this prisoner to some other institution but the Public Defender's recommendation was not upheld.

It should be noted that the applicable Georgian law makes it possible to suspend a civil servant provided that he/she is not facing charges as an accused person[24] and the suspension is ordered within an internal examination procedure.[25] If within the examination procedure elements of crime are revealed, the internal examination procedure will end and the case will be forwarded to an appropriate investigative authority. However, where this is the case, it is no longer possible under the applicable law to suspend a civil servant from office. Accordingly, victims remain unprotected and cannot avail of the aforementioned protection measure. That is exactly what happened in the case of M.G.

Unfortunately, the applicable Georgian law does not envisage proper guarantees to protect victims of ill-treatment from re-victimization – a fact that obstructs and turns effectiveness of investigation into allegations of ill-treatment questionable.

Finally, it must be noted that effectiveness of investigation largely depends on whether the existing evidence are collected immediately in the beginning of the investigation. Documenting bodily injuries is crucial.[26] The established practice at this point is that, whenever injuries are detected, members of the Special Preventive Group will draw up a protocol to describe the injuries but such verbal description cannot be a replacement to photography.[27] Since there is a high probability of injuries fading away before a forensic examination is ordered and carried out (especially when a prisoner refuses to report about the injuries to the law enforcement bodies), it is crucially important that members of the Special Preventive Group be authorized to photograph injuries; in addition, it is highly

23 Report of the Committee for the Prevention of Torture (CPT) to the Albanian Government concerning its visit to Albania during 23 May – 3 June 2005, CPT/Inf(2006) 24, par. 52. See also Appendix to CPT's public statement concerning the Chechen Republic of the Russian Federation, CPT/Inf (2007), par. 17, 53.

24 Pursuant to Articles 159 and 160 of the Code of Criminal Procedure, a court may order a defendant's suspension from his official duties (job) if there is reasonable ground to believe that, if allowed to remain in office, he/she may obstruct the investigation, hinder reimbursement of damages inflicted by crime or continue criminal activity.

25 Pursuant to Article 91 of the Law of Georgia on Civil Service, a public official who has the right impose a disciplinary sanction may suspend an official subject to disciplinary proceedings from official duties while the proceedings are ongoing.

26 Mikiashvili v. Georgia, Judgment of 9 October 2012, paras. 78-79.

27 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") (United Nations; New York and Geneva, 2001 – 2004), par. 106.

desirable that members of the Special Preventive Group be entitled, based on a clear word of law, to photograph the physical surroundings because bad physical conditions in which prisoners are kept may sometimes amount to inhuman and degrading treatment.

➢

Recommendations:

To the Parliament

- **To amend the applicable law with a view of enabling members of the Special Preventive Group to photograph traces of injuries and the physical environment.**

To the Chief Prosecutor

- **To commence and carry out investigation, by itself, into each and every occurrence of ill-treatment against prisoners by employees of the Penitentiary Department;**
- **In regard to legal qualification of ill-treatment, to open criminal cases not under Article 333 of the Criminal Code but under the provisions on torture and inhuman or degrading treatment.**

To the Minister of Corrections

- **To immediately notify the Prosecution Office about ill-treatment of prisoners by employees of the Penitentiary Department;**
- **To move victims of ill-treatment to other penitentiary institutions and to ensure the safety of their persons;**
- **To provide employees of the Penitentiary Department with advance training in use of force.**

DISCIPLINARY PUNISHMENTS AND DISCIPLINARY DETENTION

According to the European Prison Rules, disciplinary procedures shall be mechanisms of last resort.[28] Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.[29] The severity of any punishment shall be proportionate to the offence.[30] Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment are prohibited.[31] Punishment shall not include a total prohibition on family contact.[32]

Pursuant to information received from the Ministry of Corrections, in the period of 1 January – 31 December 2013, prisoners have been disciplined for various violations in 1,408 cases. Of these instances, 532 prisoners were subjected to solitary confinement. According to information obtained from the Ministry of Corrections, in 2013, only one prisoner was subjected to administrative detention, in the Penitentiary Institution No. 7 – a fact that may deserve positive evaluation compared to what was the practice in previous years.

The information received from the Ministry of Corrections states that 4 prisoners challenged disciplinary measures they were ordered to. Three of these four complaints were rejected. The one remaining complaint is now being examined by a court. It is worth noting that prisoners normally do not appeal against the use of disciplinary measures in regard to them stating that such appeal would be of no avail.

Pursuant to Article 88(2) of the Code of Imprisonment, convicted and remand prisoners committed to solitary confinement have no right to short and long-term visits, telephone communication and purchase of food products.

28 The European Prison Rules, Rule 56.1.

29 The European Prison Rules, Rule 56.2.

30 The European Prison Rules, Rule 60.2.

31 The European Prison Rules, Rule 60.3.

32 The European Prison Rules, Rule 60.4.

The actual practice follows the written rules. The CPT has recommended the Georgian Government "to take steps to ensure that the placement of prisoners in disciplinary cells does not include a total prohibition on family contacts. Any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts."[33]

In this regard, the Public Defender addressed the Parliament in 2012 with a recommendation to enact appropriate amendments in the legislation but Article 88 of the Code of Imprisonment remains unchanged this far.

Having said the above, we believe prohibition of contact with the outside world should not be used as a form punishment. Stability in prisons could be achieved by increasing and expanding measures of encouragement and fair use of punishment when necessary; on the other hand, unfair and unlawful treatment may actually ignite unnecessary conflicts between the prisoners and the prison administration or amongst the prisoners themselves.

As regards application of sanctions by heads of penitentiary institutions for disciplinary misconduct, the laws currently in force do not determine which specific sanction should be used in specific circumstances. Therefore, the discretion afforded to heads of penitentiary institutions in deciding which sanction is appropriate in the given circumstances is too broad. Our monitoring has found that prisoners are sanctioned completely differently for the same misconduct in different penitentiary institutions. For example, punishments for violations such as "making noise and bumping on the cell door" or "insulting a staff member of the penitentiary institution" varied from institution to institution, from "limiting the right to receive parcels and packages" to "limiting the right to have a conversation over the phone" to "solitary confinement" for various periods. Solitary confinement as a sanction was most commonly used in the Institution No. 2 (43 cases), the Institution No. 8 (306 cases), and the Institution No. 15 (66 cases). In the Institution No. 7, pursuant to information obtained from the same institution, there were 38 prisoners by 1 January 2013 and 50 prisoners by 31 December 2013. During the reporting period, this Institution used "limitation of phone conversation" 43 times and "limitation of short-term visits" 11 times as sanctions. These figures are record figures compared to other penitentiary institutions if account is taken of the percentage ratio of other institutions' populations. As a conclusion, it follows that, in applying sanctions, in the Penitentiary Institution No. 7 they favor using sanctions envisaging greater isolation of prisoners from the outside world.

We would like to summarize by saying that penitentiary institutions apply disciplinary sanctions inconsistently, which may eventually serve as a cause of prisoners' protest.

Recommendations:

To the Parliament

- **To amend the Code of Imprisonment with an effect that prisoners placed in solitary confinement cells retain the right to visits.**

To the Minister of Corrections

- **To elaborate guidelines on the use of disciplinary sanctions so that the practice of application of such sanctions is consistent in all of the penitentiary institutions.**

CONDITIONS OF LIVING

Pursuant to the European Prison Rules, the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.[34] In all buildings where prisoners are required to live, work or congregate: the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system; artificial light shall satisfy recognized technical standards; and there shall be an alarm system that enables prisoners to contact the staff

33 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 115, available at http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf [last accessed 16.03.2014].

34 The European Prison Rules, Rule 18.1.

without delay.[35] It is established by the case-law of the European Court of Human Rights that conditions in which an individual is kept may cause violation of Article 3 of the European Convention on Human Rights.[36] And, it is one of the major principles of the European Prison Rules that prison conditions that infringe prisoners' human rights are not justified by lack of resources.[37]

The infrastructure was completely outdated in the recent past in the Tbilisi Institution No 1, Batumi Institution No. 3 and Zugdidi Institution No. 4. Prisoners had to live in unbearable conditions in these institutions for years. There were problems related to accommodation, lighting, ventilation, heating and hygiene.

In 2013, the Tbilisi Institution No. 1 and the Zugdidi Institution No. 4 were shut down – a fact that we want to welcome. Repair works have started in the Batumi Institution No. 3. Despite these changes, a number of penitentiary institutions still require thorough repair.

Tbilisi Institution No. 7

The conditions of living in the Penitentiary Institution No. 7 are largely inappropriate. The Public Defender has addressed the Minister of Corrections with a series of recommendations on this matter[38] but the problem has not been eradicated this far.

The European Court of Human Rights has been consistently stressing the States' obligation in its judgment to ensure that conditions of detention are compatible with respect for his human dignity and that the suffering and humiliation involved do not in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Health and well-being of those detained must be adequately secured.[39] The Court has also mentioned that when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.[40]

There are 25 cells in the Penitentiary Institution No. 7. Twelve of these cells are designed for two prisoners, five for four prisoners and the remaining eight cells are meant for eight prisoners each. In total, the institution has places for 108 prisoners.

Cells for two are about 7 square meters each, cells for four are nine square meters and cells for eight are 14.5 square meters. Each prisoner is allocated 3.5 square meters in a cell for two, 2.25 square meters in a cell for four and 1.8 square meters in a cell for eight.

Our monitoring revealed that, in cells for eight people, there were 7 prisoners in Cell no. 7, 5 prisoners in Cell no. 2, 4 prisoners in Cell no. 16 and 4 prisoners in Cell no. 23. As regards cells for four, there were 3 prisoners in Cell no. 17. There were 2 prisoners in Cell no. 14 designed for two people. 15 prisoners were accommodated separately in different cells.

We did some calculation based on these figures and concluded that, in Cell no. 7 with 7 prisoners, each prisoner has a floor space of about 2 square meters, which is a violation of a standard set forth in the Code of Imprisonment.[41] As regards Cell no. 2 with 5 prisoners, Cell no. 16 with 4 prisoners and Cell no. 4 with also 4 prisoners, the floor space occupied by each prisoner varies from 2.9 to 3.6 square meters.

It should be noted that this calculation does not include the toilet space and the area occupied by beds and chairs. The space on which toilets are located vary from 0.4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. Each bed occupies 1.3 square meters. It follows that we should subtract 5,2 (1,3X4) square meters as well as roughly 1 square meter occupied by toilettes and tables amounting to a total of 8.3 square meters from the total area of

35 The European Prison Rules, Rule 18.2.

36 See, inter alia, Ramishvili and Kokhreidze v. Georgia, Judgment of 27 January 2009, par. 79.

37 The European Prison Rules, Rule 4.

38 30/07/2013 No. 03-3/513; 16/12/2013 No. 894/03-5; 19/02/2014 No. 03/458.

39 Valašinas v. Lithuania, Judgment of 24 July 2001, par. 102; Kudla v. Poland, Judgment of 26 October 2000, par. 94.

40 See Dougoz v. Greece, Judgment of 6 March 2001, par. 46 .

41 Under Article 64(2) of the Code of Imprisonment, floor area per each sentenced prisoner must not be less than 2.5 square meters in a closed place of deprivation of liberty.

each cell for eight people. It follows that even if only 4 prisoners are accommodated in a cell for eight people, the actual area that usable by prisoners is narrow enough. The same is true for cells designed for four people.

The European Committee for the Prevention of Torture (CPT), after its visit to Georgia in 2012, recommended the Georgian Government to provide every inmate in the penitentiary institutions nos. 2 and 8 with at least 4 m^2 of living space in the multi-occupancy cells and to remove excess beds.[42]

In assessing daily conditions of living from the perspective of Article 3 of the European Convention on Human Rights, the European Court of Human Rights pays attention, in addition to personal living space, other aspects of physical environment such as the ability to exercise outside, natural lighting, natural and artificial ventilation, appropriate heating, privacy in toilets, sanitation and hygiene.[43] In Peers v. Greece, the Court deemed that the sharing of a cell with an area of 7 square meters between two inmates was a violation of Article 3 of the European Convention on Human Rights coupled with the fact that there was a lack of ventilation and daylight.[44]

Our monitoring revealed improper conditions for living in the Penitentiary Institution No. 7. The cells in the Institution have small windows (75x43 cm) covered with several layers of iron bars making the entry of air and sun beams into the cells virtually impossible. The ventilation system existing in the institution does not provide sufficient movement of fresh air. Damp cells are ill lit and insufficiently heated.

It is planned to replace the windows in the Institution No. 7. However, the new windows will not open and thus the current problem of insufficient fresh air in the cells will not be remedied. As our group has found out on the spot, the works to replace the existing windows have already started. In particular, they have already installed pipes in the walls to provide artificial ventilation to compensate for the lack of fresh air.

According to Article 15(4) of the Georgian Code of Imprisonment, the premises where remand prisoners and convicted prisoners are accommodated must have windows to ensure natural lighting and ventilation. Prisoners must be provided with heating as well.

Pursuant to Rules 10 and 11 of the Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955, all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.

In regard to the planned installation of new windows in the Penitentiary Institution No. 7, on 16 December 2013, the Public Defender addressed the Minister of Corrections with a recommendation. In the recommendation, the Public Defender stressed that, even if artificial ventilation system would be provided, such a system could not be a replacement for the need for fresh air intake in the cells. Accordingly, the Public Defender's recommendation was to take account of domestic and international requirements by installing such windows as would allow both daylight and natural ventilation in the cells.

In its reports concerning its visits to Georgia, CPT has been paying special attention to windows in the cells of Georgian penitentiary institutions, which are covered with iron shutters and bars preventing the entry of daylight and fresh air into cells.[45] The Committee has been recommending the Georgian Government to take measures, without delay, to provide natural lighting and adequate ventilation in the penitentiary institutions. CPT has been particularly keen on prisoners' access to daylight and fresh air considering that these two are basic elements of life which must never be denied to prisoners despite any security needs.[46]

42 CPT Report to the Georgian Government on its visit to Georgia from 19 to 23 November 2012, CPT/Inf (2013) 18, par. 33.

43 Vlasov v. Russia, Judgment of 12 June 2008, par. 84; see also Trepashkin v. Russia, Judgment of 19 July 2007, par. 94.

44 Peers v. Greece, Judgment of 19 April 2001, paras. 70-72.

45 CPT Report to the Georgian Government on its visit to Georgia on 6-18 May 2011, see http://www.cpt.coe.int/documents/geo/2002-14-inf-geo.pdf [lasted accessed 13.03.2014]; CPT Report to the Georgian Government on its visit to Georgia on 18-28 November 2003; CPT Report to the Georgian Government on its visit to Georgia on 7-14 May 2004, http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf [last accessed 13.03.2014] .

46 11th General Report of the Committee for the Prevention of Torture (CPT) [CPT/Inf (2001) 16], par. 30, at http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf [last access 13.03.2014].

In its judgments on applications filed against Georgia, the European Court of Human Rights has been referring to the reports of the European Committee for the Prevention of Torture (CPT) stating that the iron shutters on windows of cells in penitentiary institution were blocking the entry of fresh and daylight into the cells, and there was no ventilation system to compensate for the absence of lack of air. The Court deemed that these conditions amounted to violation of Article 3 of the European Convention on Human Rights.[47] In particular, the European Court of Human Rights stated:

> "The Court also notes that, in the prison concerned, windows had iron shutters preventing air and natural light from entering the cells. There was no ventilation system to compensate for this lack of air. […] In the view of the Court, the evidence at its hand allows it to consider it proven "beyond reasonable doubt" that the applicant was indeed kept in the conditions of detention he complained of in his application. In particular, he had no bed of his own and was suffering from constant lack of air and dirt... Therefore, there was a violation of Article 3 of the Convention."[48]

The Penitentiary Institution No. 7 does not have infrastructure required for administering long-term visits for which reason prisoners are unable to enjoy their right to conjugal visits.

There are only two rooms for visits (the so-called investigation rooms) in the Penitentiary Institution No. 7. These rooms are used by clergymen, lawyers and representatives of investigative authorities. When these two rooms are busy, visitors may have to wait all day long. In some cases, lawyers had waited for many hours to meet with their clients, with no avail.

Institution No. 8: juveniles' division

The cells in the juveniles' division are dilapidated and out of order. Our monitoring revealed that the ventilation system is not operational. The number of bedside-tables in the cells is insufficient compared with the number of prisoners and most of these units are out of order.

Institution No. 12 in Tbilisi

Although this institution is a half-open institution and the convicted prisoners spend most of their time outside the buildings, the conditions in buildings are inappropriate for accommodation. There is no ventilation system. Since there is no central heating, prisoners have to use electric heaters to heat their cells. The institution does not have infrastructure for conjugal visits.

Institution No. 6 in Rustavi

This institution does not have a ventilation system. The windows do not ensure sufficient natural ventilation.

Institution No. 14 in Geguti

Medical division

The wards have no ventilation system, taps or toilettes. Prisoners have to use toilets and washstands located in the corridor. The medical division's shower room and laundry room are located within the same area. Two shower units are located side by side without any partition in between. Prisoners have to change their clothes, wash themselves and do laundry in one and the same area.

Regime building no. 6

The cells have no operational ventilation system.

47 Aliev v. Georgia, Judgment of 13 January 2009; Ramishvili and Kokhreidze v. Georgia, Application No. 1704/6, 27 January 2009; Ghavtadze v. Georgia, Judgment of 3 March 2009; Gorgiladze v. Georgia, Judgment of 20 October 2009.

48 Aliev v. Georgia, Judgment of 13 January 2009, paras. 82-84.

Kitchen/dining room

The physical conditions in the kitchen are not satisfactory. A major overhaul is needed. No ventilation system is operational. The existing inventory is outdated.

Shower room

There are 5 operational shower rooms on the first floor of the regime building no. 6. The shower rooms do not have a compartment for changing clothes. There are no shelves to put items of hygiene on. There are no partitions amongst showers. 6 prisoners can take shower at a time. The sewerage system does not ensure proper conductivity and the water gets ponded. Because of the dysfunctional ventilation system, steam accumulates heavily in the shower room.

Recommendations to the Minister of Corrections:

- **Rooms for visits (the so-called investigation rooms) should be added in Institution No. 7 so that authorized persons can meet with the prisoners without obstacles;**
- **Adequate natural and artificial lighting, ventilation and heating should be provided in all of the institutions;**
- **All of the above-referenced institutions should be repaired with a view of making them compatible with the established standards;**
- **Each institution for convicted prisoners should provide a meeting room so that trustees of the Public Defender and/or members of the Special Preventive Group can meet with prisoners at any time without being eavesdropped or subjected to surveillance.**

PERSONAL HYGIENE

In its judgment in Ananyev and Others v. Russia, the European Court of Human Rights pointed out that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity.[49]

In Kudla v. Poland, the Court has explained in a clear-cut manner that Article 3 of the Convention obliges the States to secure the physical health of detained persons.[50]

Pursuant to Article 14(a.a) of the Code of Imprisonment, convicted prisoners and remand prisoners have the right to be provided with personal hygiene. Under Article 21, convicted/remand prisoners must be able to satisfy their physiological needs and maintain personal hygiene in a manner that is not infringing on their honor and dignity.

It should be noted that, in terms of hygiene, conditions in the penitentiary institutions have improved but some problems persist in the Institution No. 7.

In the Institution No. 7, toilets are small-sized, no ventilation system exists and lavatory bowls are not installed. Although toilets are isolated from the rest of the cell space, the doors on the toilets are short to cover the toilets in full and, because of no ventilation system, the open space above the short doors lets bad odor out of the toilettes.

According to prisoners' reports, the process of satisfying natural needs is made difficult due to insufficient floor area of the toilettes. Toilet area varies from 0,4 (0,63 x 0,69) square meters to 0,5 (0,62X0,78) square meters. According to the prisoners, some prisoners, due to their physical limitations, have to satisfy their natural needs in a humiliating manner – with the toilet door open. It should also be noted that beds in the cells are located right in front of the toilets thus making it virtually impossible to maintain some privacy. The European Court of Human

49 Ananyev and Others v. Russia, Judgment of 10 January 2012, par. 156.

50 Kudla v. Poland, par. 94.

Rights has discussed this issue in the context of inhuman and degrading treatment in many of its judgments.[51]

Prisoners are experiencing are difficulties such as lack of bedside-tables and shelves and thus they can do nothing but to put their items and fruits on the floor and on their beds.

In the Institution No. 7, prisoners are not allowed to have shaving and nail care tools in their cells. All such tools belonging to prisoners from the same cell are kept in various boxes made of what formerly used to be milk product packages. These boxes are, on its turn, kept in officers' duty room together with various supplies and stationery. This is not only a violation of hygienic norms but a potential source of contagious diseases.

We should note that, in the Institution No. 7, 28 prisoners are suffering from chronic hepatitis C and their items of personal hygiene such as shaving and nail care tools must not be kept with those of others, since this poses other prisoners under the danger of getting infected with the disease.

The Institution No. 7 does not have a laundry room and the prisoners have to wash and dry their clothes and linen by themselves, in their cells.

Recommendation to the Minister of Corrections:

- **To provide the population of the Penitentiary Institution No. 7 with appropriate conditions to meet the requirements of hygiene.**

THE RIGHT TO STAY ON FRESH AIR

In Yevgeniy Alekseyenko v. Russia, the European Court of Human Rights stated that the applicant's situation that he had to spend the entire days and nights in the cell was exacerbated by the fact that the opportunity for outdoor exercise was limited to one hour a day.[52]

In Moiseyev v. Russia, the Court found that the outdoor exercise yard that was just two square meters larger than the cell and was surrounded by three-meter-high walls with the opening to the sky protected with metal bars was not able to provide recreation and recuperation.[53]

In Ananyev and Others v. Russia, the Court explained that in assessing the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners can take it.[54]

Under Article 14(g) of the Georgian Code of Imprisonment, convicted and remand prisoners have the right to be on fresh air at least 1 hour a day.

The European Committee for the Prevention of Torture (CPT) has recommended the Georgian Government to ensure that both sentenced and remand prisoners are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Prisoners under special security regime must have such opportunity for at least 1 hour every day.[55]

In none of the pretrial detention facilities and closed-type institutions for convicted prisoners are exercise yards properly equipped. The prisoners thus have to spend their walk time on their feet. Often times they waive their right to take a walk or prefer to go back to their cells before due for this reason.

51 Ramishvili and Kokhreidze v. Georgia, Judgment of 27 January 2009, par. 86; Aleksandr Makarov v. Russia, Judgment of 12 March 2009, par. 97.

52 Yevgeniy Alekseyenko v. Russia, Judgment of 27 January 2011, par. 88.

53 Moiseyev v. Russia, Judgment of 9 October 2008, par. 125.

54 Ananyev and Others v. Russia, Judgment of 10 January 2012, par. 150.

55 Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 February 2010, par. 17, available at http://www.cpt.coe.int/documents/geo/2010-27-inf-geo.pdf [last accessed 16.03.2014].

It should be noted that, in terms of duration of outdoor walk, the conditions in penitentiary institutions have generally improved but certain problems still persist in the Institution No. 7.

Prisoners in the Institution No. 7 complain of the location and arrangement of the Institution's walking yards. The yards are small-size and are located where there is almost no movement of air. As our monitoring shows, each walking area is as narrow as 13 square meters (4,2x3,1) and there are four such walking areas in the Institution. Each of these small yards is surrounded by walls of about three meters high and is covered with bars and an iron net. These conditions coupled with the fact that the yards are encompassed by buildings around them are responsible for the fact that sun beams and fresh air do not properly penetrate into the walking areas.

One should also take into account that the Penitentiary Institution No. 7 is a closed-type facility for both sentenced and remand prisoners and the prisoners are entitled to 1 hour of walk per day. Amongst the Institution's population are prisoners who are suffering or have previously suffered from lung tuberculosis multiple times. These prisoners are accommodated in the cells of the first floor with damp walls, floor and ceiling. This situation exacerbates their health condition dramatically increasing the risk of them getting infected with tuberculosis again.

The right to stay on fresh air is limited in the Penitentiary Institution No. 14 as well. Although the Institution has a shared dining room, it is out of use and prisoners are provided with food in the cells. By lunch time, prisoners have to go back to their cells to have their lunch. The lunch time lasts for about 2 hours. During this period, the prisoners have to stay in their cells. This practice violates their right under the Code of Imprisonment to freely move around in the Institution's territory during daytime.

Recommendations to the Minister of Corrections:

- **In pretrial detention facilities and closed-type institutions for sentenced prisoners, to increase the time the prisoners can spend outside to breathe fresh air as much as possible;**
- **To ensure that benches and inventory for physical exercises are installed and equipped in a way to suit different climate conditions.**

CONTACT WITH THE OUTSIDE WORLD

The European Committee for the Prevention of Torture (CPT) has been attaching considerable importance to maintaining good contact with the outside world by all persons deprived of their liberty. "The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources."[56]

Likewise, Article 61 of the Standard Minimum Rules for the Treatment of Prisoners stresses the importance for the prisoners to maintain contact with the society. In particular, the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard the rights relating to civil interests, social security rights and other social benefits of prisoners.

Under Article 24.4 of the European Prison Rules, the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

Short-term visits

The Georgian Code of Imprisonment regulates rules of administering short-term visits to prisoners. In particular, under Article 62(2)(b), a sentenced prisoner who is serving his sentence in a half-open institution is entitled to 2 short-term visits per month and to 1 additional short-term visit a month as an incentive measure.

56 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards: "Substantive" Sections of the CPT's General Reports, Strasbourg, 18 August 2000, p. 37.

Under Article 17(7) of the Code of Imprisonment, a short-term visit shall last from 1 to 2 hours. Short-term visits may be subjected to only visual surveillance by a representative of the prison administration save in the events described in the legislation.

Article 50 of the Order of the Minister of Corrections and Legal Assistance No. 97 determines further details regarding the short-term visits. In particular, short-term visits should take place in special rooms located on the territory of penitentiary institutions. Depending on the type of a penitentiary institution, a short-term visit may be held in the form of a meeting or through a separating glass.

It should be noted that visits are usually administered in a room with a glass partition with parties sitting across the partition. Such arrangement does not allow a prisoner any physical contact with his family members. Only in exceptional circumstances such as prisoners with serious health condition and or juvenile visitors, and subject to a prison director's consent, may a visit take place without this barrier.

Conditions in which prisoners are meeting with their guests are one of the important factors affecting prisoners' successful social rehabilitation. Lack of direct contact and inadequate communication with the visitor across the glass partition is psychologically suppressive. Such visits violate the confidentiality of conversation too since prisoners may feel restrained to openly talk to their family members in the presence of other inmates.

The Code of Imprisonment determines a limited list of persons who may pay short-term visit to an inmate. In particular, under Article 17(2), upon their written request, sentenced and remand prisoners may be allowed to receive a short-term visit from their close relatives (children, spouses, parents/adopting parents, adopted children and their descendants, grandchildren, sisters, brothers, nephews and their children, grandparents, parents of grandparents, uncles, aunts, father's sisters, cousins, or any person with whom the inmate had been living together during the last 2 years before his/her imprisonment).

It should be noted that, the European Committee for the Prevention of Torture (CPT) has been referring to the said provision from the Code of Imprisonment stating that it allows prisoners to meet only with their family members and close relatives. The CPT regards it improper that prisoners are not allowed to meet with their friends, especially with consideration given to the fact that many prisoners are single, divorced or living apart from their families. Those who do not have families or close relatives are virtually deprived of the opportunity of maintaining contact with the outside the world and integrating into the society. Under the Code, inmates may not be visited by their friends and to receive some direct human support from them.

We would like note with satisfaction the fact that a new paragraph 21 has been added to Article 17 of the Code of Imprisonment stipulating that "With the consent of the Chairperson of Penitentiary Department, sentenced or remand prisoners may be allowed to have a short-term visit with individuals who are not listed in Article 2(2) of this Law." This amendment will play a positive role in resocializing sentenced prisoners.

Recommendation to the Minister of Corrections:

- **To provide the possibility of conducting short-term visits without a glass partition.**

Conjugal visits

Under Article 23 of the International Covenant on Civil and Political Rights, the family is the natural and fundamental group of unit of society and is entitled to protection by society and the State. The ability of prisoners to receive long-term visits furthers this goal as such visits are the best way for prisoners to resocialize and maintain full-fledged contact with their close people – something that is most needed by inmates in closed-type penitentiary institutions.

Under Article 172(1) of the Georgian Code of Imprisonment, a long-term visit means a period in which an sentenced prisoner is permitted to live with individuals listed in paragraph 2 of this Article on the territory of a penitentiary institution for sentence prisioners, in a room specially designed for this purpose, at the expense of this prisoner or the visiting individual, without the presence of the prison administration representatives. Pursuant to Article 62(2)(e) of the Code of Imprisonment, a sentenced prisoner who is serving his sentence in a half-open

prison for sentence prisoners is entitled to 2 conjugal visits per year and to 1 additional conjugal visit a year as an incentive measure.

Article 65(3) of the Code provides that life prisoners serving their sentence in closed institutions for sentenced prisoners are entitled to 2 conjugal visits per year and to additional 2 conjugal visits a year as an incentive measure.

It is worth noting that the Code of Imprisonment does not prescribe rules and procedures of administering conjugal visits for sentenced prisoners in closed-type penitentiary institutions, which is a serious flaw in the law. However, it is contemplated to amend the Code by adding a new paragraph "d" to Article 65(1) entitling sentenced prisoners serving their sentence in closed penitentiary institutions to 2 conjugal visits per year and to 1 additional conjugal visit a year as an incentive measure.

Pursuant to Section 4 of the Order of the Minister of Corrections and Legal Assistances No. 42 dated 18 March 2011, a conjugal visit shall be administered at the expense of the sentenced prisoner or his/her visitor. One such visit costs 60 Georgian Lari payable via wire transfer.

We welcome the fact that a new paragraph 11 was added to Article 172 of the Code of Imprisonment stipulating that "a conjugal visit may be administered without payment of the fee, according to a procedure determined by the Minister." It should be noted that the current fee for conjugal visits often times becomes a barrier to maintaining a family contact. Against this background, the mentioned amendment in the law allowing free-of-charge visits should be evaluated as proactive approach.

Data on long-term visits in the Georgian penitentiary institutions

Table 1: Number of long-term visits

№	Name of the Penitentiary Institution	Number of long-term visits registered
1.	Institution No. 2[57]	188
2.	Institution No. 6	270
3.	Institution No. 11	18
4.	Institution No. 14	1342
5.	Institution No. 15	962
6.	Institution No. 16	57
7.	Institution No. 17	1346

The Institution No. 8 has no infrastructure for administering conjugal visits. With prior agreement with their families, life prisoners are taken once a month to the Institution No. 6 where they can receive such long-term visits.

As regards remand prisoners (accused persons), Article 17(10) of the Code of Imprisonment provides that they are entitled to only short-term visits pursuant to the rules and requirements established by the Georgian legislation. Remand prisoners may not receive long-term visits, which restricts their opportunity to maintain contact with their families. We believe that an outright prohibition of conjugal visits for remand prisoners is not justified.

This issue has been discussed by the European Court of Human Rights in its judgment in the case of Varnas v. Lithuania.[58] The case concerned a complaint lodged by Thomas Varnas, a Lithuanian national whose request for a conjugal visit was denied by the prison administration while he was kept in custody at a remand prison under the pretext that only sentenced prisoners had the right to such visits.

The European Court of Human Rights disagreed with the respondent Government's argument that remand prisoners had no right to conjugal visits due to the prevailing public interest of investigation. The Court stated that the applicant's wife was neither a witness nor a co-accused in the criminal cases against her husband, which removed the risk of collusion or other forms of obstructing the process of investigation. The Court eventually found that

57 In the Institution No. 2, the infrastructure for long-term visits became operational on 11 September 2013.

58 Varnas v. Lithuania, Judgment of 9 December 2013.

there was a violation of Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights. In deciding the case, the Court relied, inter alia, upon the views expressed by the European Committee for the Prevention of Torture (CPT) concerning the way conjugal visits were administered in Lithuania.

Under Article 99 of the European Prison Rules, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners, and shall additionally have access to other forms of communication.

With these circumstances in mind, we believe the Code of Imprisonment should be amended so that remand prisoners are allowed to receive conjugal visits.

As regards female sentenced prisoners, under Article 173 of the Code of Imprisonment, they have the right to a family visit. By virtue of this right, they may be visited by their children, adopted children, spouses, parents (adoptive parents), sisters and brothers. Family visits are administered in the territory of the penitentiary institutions, in rooms designed specifically for this purpose. Such a visit may last no more than 3 hours.

Pursuant to Rule 27 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("the Bangkok Rules"), where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Under the Georgian Code of Imprisonment, however, unlike male sentenced prisoners who are entitled to conjugal visits with the duration of up 24 hours, female sentenced prisoners may only receive 3-hour family visits. This provision from the Code of Imprisonment is therefore clearly contradicting the international standard set forth in the Bangkok Rules as well as the spirit of UN Convention on the Elimination of All Forms of Racial Discrimination against Women.[59]

Under Article 1241 of the Code of Imprisonment, with a view of facilitating the exercise of the right to conjugal visits, the Minister of Corrections is obligated to set up appropriate conditions and commence administering conjugal visits at women's institutions and closed institutions for sentenced prisoners not later than 31 December 2015. We believe all appropriate measures should be taken to provide women prisoners with proper conditions for exercising their right to conjugal visits.

Recommendations:

To the Parliament

- **with no detriment to investigation interest, to amend the Code of Imprisonment so that remand prisoners are allowed to avail themselves of long-term visits.**

To the Minister of Corrections

- **to provide infrastructure and arrangements for long-term visits in the penitentiary institutions nos. 5, 7, 8 and 12.**

Video visits

Pursuant to Article 171(1) of the Code of Imprisonment, sentenced prisoners in penitentiary institutions, except prisoners convicted of very serious crimes and individuals referred to in Article 50(1)(f) of the Code, have the right to video meetings (through direct audio and visual TV bridge) with anyone.

It is intended to amend the Code of Imprisonment with a view of re-framing Article 171(1). If the amendment is enacted, the new provision will read: "sentenced prisoners in institutions for sentenced prisoners, except prisoners in high risk institutions for convicted prisoners and individuals referred to in Article 50(1)(f) of the Code, have the

59 Ratified by Resolution of the Parliament of Georgia No. 561 dated 22 September 1994 .

right to video visits (through direct audio and visual TV bridge) with anyone.

Authorization of both conjugal visits and video visits for all categories of prisoners would be a positive change furthering the goal of prisoner resocialization. Moreover, video visits can be used not only by family members but friends and other close people. The prohibition under the Code of Imprisonment on the use of video visits by a certain category of prisoners seems to be an additional punishment and is therefore unjustified since any prohibition or restriction must be individual and duly substantiated in each specific case.

Table 2: Data concerning the use of video visits

№	Name of the Penitentiary Institution	Number of video visits
1.	Institution No. 5	1
2.	Institution No. 9	0
3.	Institution No. 11	4
4.	Institution No. 15	104
5.	Institution No. 16	73
6	Institution No. 17	77

According to Paragraph 2 of the Order of the Minister of Corrections and Legal Assistance No. 55 dated 5 April 2011, a video visit to a sentenced prisoner may be administered not more than once in any 10 calendar-day period, on workdays, from 10:00 till 18:00 hrs. Each video visit may not exceed 15 minutes.

Under Article 171(1)(4) of the Code of Imprisonment, there is an established fee for each video visit payable through wire transfer to the account of the National Probation Agency. Money collected through these payments are then used for implementing the purposes and functions of the Agency. The Minister of Corrections is entitled to release a prisoner from the duty of paying the fee for a video visit. Under paragraph 41 of the same provision, the fee is not payable also by individuals referred to in Article 17(2) of the Code of Imprisonment who are registered in the Unified Database of Socially Unprotected Families whose socio-economic score is less than the Government-determined marginal score of eligibility for receiving subsistence allowance. The fee for a video visit must be paid by a person who wishes to have such a visit or the prisoner's legal representative.

The Minister of Corrections determines a list of institutions for sentenced prisoners where video visits are allowed as well as the permitted number, duration and the procedure of administering video visits.

Recommendation to the Minister of Corrections:

- **To provide all of the penitentiary institutions with infrastructure required for administering video visits.**

Phone conversations

Under international norms and established standards, the right to a phone conversation is one of the important rights of prisoners in terms of maintaining contact with the outside world. Article 14 of the Code of Imprisonment recognizes the prisoners' right to have phone conversation. Prisoners may use a shared telephone if there is one in the institution. Under Article 19 of the Code, prisoners are responsible for paying for their phone conversations. Conversations are subject to the administration's control. A sentenced prisoner will be allowed to have a phone conversation after he/she files a written application in which he/she must indicate the addressee's telephone number and call duration.

Pursuant to Article 62(2)(c) of the Code of Imprisonment, sentenced prisoners in half-open institutions are entitled to 4 phone conversations during a month, at their own expense. Each conversation may not last more than 15 minutes. However, as an incentive measure, they may have an unlimited number of conversations at their own

expense, each conversation being limited to no more than 15 minutes. Article 65(1)(c) of the same Code states that prisoners serving their sentences in closed-type institutions are entitled to 3 phone conversations per month, at their expense, for no more than 15 minutes each. As an incentive measure, such prisoners may be allowed to have an unlimited number of conversations at own expense, for no more than 15 minutes each.

Normally, telephones are available for use in penitentiary institutions from 9am till 6pm. Prisoners working for the logistics unit may access a telephone till 10 o'clock in the evening. As regards life sentence prisoners, they may call until midnight. Prisoners have 2 days a week to make international calls.

Although prisoners are entitled to phone conversations under the applicable laws, in real life their exercise of this right is limited due to problems related to calling cards. In particular, if a prisoner does not exhaust the talk time on one card, the remaining talk time is blocked and he/she can no longer make a call to use the minutes remaining on the card. The only way is then to buy a new calling card, which is an additional cost for prisoners.

Calling cards are also blocked when a prisoner is unable to have conversation due to unrelated reasons such as network overloading, call interruption, incorrect number dialing, etc.

Some prisoners are serving their sentences in places remotely located from their regular places of residence or from where their family members live and the only way of communicating with the outside world is telephone conversation. The above-described problems with calling cards are a serious barrier to their ability to communicate with the outside society. The CPT has been advocating the need for some flexible approach as regards use of telephone contacts vis-à-vis prisoners whose families live far away. "For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.[60]"

Recommendation to the Minister of Corrections:

- **To provide prisoner in all of the penitentiary institutions with appropriate arrangements to be able to exercise their right to phone conversation in a full-fledged manner.**

Resocializing sentenced prisoners

The Public Defender has been reiterating in its reports that the conditions in penitentiary institutions must be such as to provide prisoner' resocialization and reintegration into the society. While serving their sentence, prisoners should be able to learn or deepen their knowledge of subjects and skills they wish to explore more and to participate in sports, art-related, intellectual and other activities. All of these are necessary for prisoners to return to the society as full-fledged citizens after serving their sentences.

Since 2013, the following vocational and crafting programmes have been offered to prisoners in penitentiary institutions: learning courses in computer office software, Internet and information technologies; vector graphics; bar-tending; graphical printing; hairdressing; enamel work; stone cutting; electricity repair; plasterboard installation; thick felt, quilt and batik work; beauty therapy (cosmetology); massage; floor and wall tiling; sculpting (making sketches using the soft parts of bread); sewing; wood engraving; church chanting; icon painting; dances (choreography).

For the purpose of facilitating to prisoners' resocialization, a series of activities were implemented in penitentiary institutions such as courses in English language, Georgian writing and speech, marketing, "Start your own business" and small-size hotel management. Prisoners were able to watch and participate in cultural, intellectual and religious events, various exhibitions, "The Pen" Competition in literature, presentation of poem collections, theatrical performances, movie shows, poetry evenings, and meetings with clergy members. Educational entertainment events such as "Etalon", "Who? What? Where?" and "The Smartest" were conducted. A methadone replacement program was implemented for drug-addicted prisoners. Various sporting events were held.

In the Institution No. 2, prisoners have the opportunity to engage in various learning courses such as church chanting, Georgian writing and speech, Microsoft Access software, electricity installation and repair, floor and wall

60 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, par. 51 see http://www.cpt.coe.int/en/annual/rep-02.htm [last accessed 14.03.2014].

tiling and trimming, and wood engraving. A project entitled "Read books with the blessing by the Patriarch" is being implemented. A meeting was held with Nana Gubeladze, Associated Professor at the Akaki Tsereteli Kutaisi State University. A tournament in table tennis and an intellectual game "What Where? When?" were conducted.

In the Institution No. 5, the non-governmental organization "Woman and Business" offered the following courses during 2013: hairdressing, therapeutic massage, cosmetology, doing small business, thick felt/batik/quilt work, computer office software and hotel business. Based on a memorandum of understanding between the Penitentiary Department and the Education Ministry, the Public Law Entity "Mermisi" Vocational School conducted a teaching course in sewing. The course was financed by the Penitentiary Department.

The "Apkhazeti" Humanitarian Charity Center provided vocational courses in icon-painting, wood engraving, clay work, embroidery, choreography, computer office software and enamel work. The project was financed by the Penitentiary Department.

NORLAG helped deliver training in civil education with the aim of fostering prisoners' rehabilitation. The "Woman and Business" Association, together with its partner organizations such as the Professional Psychologists' Association and the "PEONI" Women's Club, provided psychological and legal consultations to prisoners. The prison librarian provided English language lessons for beginners. In addition, the Institution was regularly holding other different cultural events directed at resocializing and rehabilitating the prisoners.

In 2013, no general educational or vocational programs were implemented **in the Institution No. 6**. Only the "Atlantis" program was operational aimed at anti-drug rehabilitation. Within the program, drug-addicted sentenced prisoners underwent a rehabilitation course.

In the Institution No. 7, no single prisoner has expressed a wish to receive any kind of training. Because of the categories of prisoners, no rehabilitation programs are offered.

In the Institution No. 8, a methadone programme is running for drug-addicted prisoners. In addition, a sculpting course (prisoners make the work pieces using soft parts of bread) is offered.

In the Institution No. 11, the following psycho-social rehabilitation programmes were running during the year of 2013: the "Equip" psycho-social rehabilitation programme, effective communication training, anger management, art therapy, psychology group "MythDrama", training in healthy way of life and training course in soccer and rugby.

According to official records, 76 adolescents were attending high schools within the Institution in 2013. Here are statistics of sentenced prisoners who took vocational training courses: enamel work – 13 prisoners; information technologies – 12 prisoners; Internet technologies – 13 prisoners; wood engraving – 100 prisoners; computer office software – 30 prisoners; decorative wood work and design – 31 prisoners.

In the Institution No. 12, with the Penitentiary Department's sponsorship, NORLAG is implementing a project entitled "Getting ready for release". Also, the prisoners have had the chance to watch the movie "A machine that causes everything to disappear" directed by Tinatin Gurchiani. After the movie was shown, the prisoners discussed the movie along with the movie director and the producer.

In the Institution No. 14, prisoners were provided with training in a computer awareness course entitled "Access". The Penitentiary Department financed and organized training in stone cutting implemented by the Abkhazia Center. A soccer tournament with prisoners participating was held.

In the Institution No. 15, prisoners can enroll in courses such as graphical printing, computer awareness course "Access" and a wood engraving course. The "Spectrum" College offers a practical course in plasterboard installation.

In the Institution No. 17, prisoners can attend Civic Education Training, a computer awareness course "Access", training in enamel work and wood engraving skills.

It goes without saying that we welcome the offering and implementation of above-described programmes and events at some penitentiary institutions; however, it is crucial that such programmes and events are provided on a continuous basis and in all of the penitentiary institutions. It is not justified that the Institution No. 7 does not offer any programmes for the simple reason that prisoners have not asked for one; for prisoners to wish to be enrolled in

a programme, they should first be told about the availability of such programmes. In other words, an initial needs assessment should be carried out to determine the needs of the prisoners.

Recommendation to the Minister of Corrections:

- **To introduce and implement various programmes aimed at prisoners' resocialization in the Institutions no. 6, 7 and 8.**

EMPLOYMENT OPPORTUNITIES FOR PRISONERS

In the period of January – December 2013, 506 sentenced prisoners were employed on paid jobs. Normally, inmate work duties were related to cleaning, tidying up, doing laundry, distributing food, etc.

Starting 2 October 2013, sixty sentenced prisoners were employed in the Institution No. 2, seventeen in the Institution No. 5, thirty-two prisoners were registered at the logistics unit in the Institution No. 6, only five in the Institution No. 7 of whom only four inmates are still having their jobs (two of them are cleaning stories and the two other prisoners are tasked with the same at the kitchen), one hundred thirty prisoners work in the Institution No. 8, five in the Institution No. 9, thirty-two inmates were employed in the Institution No. 12 in the period of 2 October – 31 December 2013, sixty-two in the Institution No. 14, up to fifty prisoners in the Institution No. 15 (of whom twelve individuals were employed at the bakery located inside the institution and were collecting wages accordingly), eight inmates had paid jobs at the local bakery in the Institution No. 16 in the period of 1 January – 31 December 2013, seventy-eight inmates had paid jobs at the logistics unit in the Institution No. 17, only two prisoners in the Institution No. 18 and 25 inmates in the Institution No. 19.

PRISONER ALLOCATION

Prisoners are accommodated according to the category and seriousness of the crime committed, by types of institutions operated by the Georgian Penitentiary Department.[61] Individuals convicted for less serious or serious crimes punishable with up to ten years of imprisonment will serve their sentence in half-open institutions. Those who have been convicted for particularly serious intentional crimes for the first time will have to serve their sentence in closed-type institutions.[62] In mixed-type institutions, remand prisoners must be isolated from the sentenced prisoners, at least by being accommodated in different residential spaces.[63]

The Public Defender is often times being approached by sentenced prisoners who have had problems with maintaining contact with the outside world due to their transfer to another institution. For them, it is important to maintain as much contact with their families and friends as possible within the applicable rules.

The Order of the Minister of Corrections and Legal Assistance No. 184 dated 27 December 2010 determines the types of institutions operated by the Georgian Penitentiary Department. However, the real situation in the prisons does not match the conditions described in the rules governing the relevant types of prisons. For example, the Order says that the Penitentiary Institution No. 6 is both a half-open and a closed-type institution for sentence prisoners but the actual conditions in the Institution No. 6 are not such as to allow the inmates to exercise the rights they are entitled to in a half-open regime.

The Public Defender is receiving numerous applications from prisoners and their family members requesting to be transferred to other institutions so that they are closer to their near people. Article 46 of the Code of Imprisonment stipulates that sentenced prisoners should serve their sentences in appropriate types of institutions that are closest by their location to their homes or where their close relatives live, except when such institution cannot accept the prisoner do to overcrowding. In exceptional circumstances, such as health condition, security considerations and/or at the prisoner's consent, a sentenced prisoner may be transferred to another institution. We would like to note the importance of prisoners' contact with their close relatives as one of the means of resocialization.

61 Code of Imprisonment, Article 61(1).

62 Code of Imprisonment, Article 64(1).

63 Code of Imprisonment, Article 9(2).

In exceptional cases, when it is impossible to accommodate a prisoner in an institution located close to his/her relatives, the European Committee for the Prevention of Torture (CPT) recommends adopting a somewhat flexible approach:

> "The CPT wishes to emphasize in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners hose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families."[64]

Through 1 January – 31 December 2013, 8,538 prisoners were transferred from one penitentiary institution to another. Pursuant to European Prison Rules, as far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.[65]

The Public Defender has been receiving applications from sentenced prisoners asking for their transfer from closed institutions to half-open institutions, taking into account their sentence. Under Article 61 of the Code of Imprisonment, convicted individuals will, by default, be allocated to half-open institutions if they have been convicted of less serious or serious crime and if the imposed sentence is no more than 10 years. Unfortunately, this requirement is ignored in quite a number of cases.

For example, N.Sh., a convicted prisoner, asked for his transfer from a closed to an open institution because his sentence was only 2 years and 6 months. The prisoner was also alleging that he had been subjected to ill-treatment and was at the material time allocated to a cell along with those who had participated in his beating. Accordingly, the prisoner was stating that he had to stay in a psychologically tensed and stressed environment all the time. The Office of the Public Defender addressed the Penitentiary Department in writing several times with the same request but with no avail.

Sometimes, in order to maintain order in the prison, prison administrations resort to transferring a prisoner to another institution if the prisoner is often violating the rules. However, the European Committee for the Prevention of Torture (CPT) has been stressing in this regard that the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical wellbeing. Moreover, a prisoner in such a position will have difficulty in maintaining appropriate contacts with his family and lawyer.[66] When a prisoner is transferred from one institution to another, the prison authorities do not take a prompt action to inform his family members and lawyer thereabout. Prison administrations are obligated to inform a close relative of a sentenced prisoner about his admission into a penitentiary institution no later than within 3 days after admission.[67] In addition, pursuant to the European Prison Rules,[68] upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner, or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.

Often times prisoners are unaware of the reasons of their transfer.[69] Moreover, the Penitentiary Department refuses to inform the Public Defender's Office about the reasons of transfer. Normally, a template letter from the Penitentiary Department will say that a prisoner has been transferred from one institution to another on the basis of a confidential letter of the institution's director. The European Court of Human Rights has explained that a decision to transfer a prisoner from one establishment to another must be reasoned and must serve a legitimate goal. The frequent moving of a prisoner from one institution to another, depending on the specific circumstances of the case, may result in violation of Article 3 of the European Convention on Human Rights.[70]

During monitoring, trustees of the Public Defender have found in a number of cases that both remand prisoners

64 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, par. 51 see http://www.cpt.coe.int/en/annual/rep-02.htm [last accessed 14.03.2014].

65 Rule 17.3.

66 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, par. 57.

67 Code of Imprisonment, article 34.

68 The European Prison Rules, Rule 24.9.

69 Only one prisoner challenged an order on the transfer of prisoners to another institution in 2013.

70 Khider v. France, Judgment of 9 July 2009.

and sentenced prisoners were alone in their cells.[71] Neither were they serving a disciplinary punishment nor was there any other circumstance to justify this fact. Unless it is in the interest of the individual sentenced prisoner's personal security or at his own initiative, placing him alone in a cell can have harmful effects on his psychological and physical wellbeing. The European Court of Human Rights has explained that keeping a sentenced prisoner isolated in a cell for a long period of time may amount to inhuman treatment.[72]

In the course of monitoring, trustees of the Public Defender have found that juvenile remand prisoners and adult sentenced prisoner were able to contact each other, in the Penitentiary Institutions Nos. 8 and 2. Pursuant to Article 8(d) of the UN Standard Minimum Rules for the Treatment of Prisoners, young prisoners shall be kept separate from adults. The same standard is enshrined in the Order of the Georgian Minister of Corrections and Legal Assistance No. 97.[73]

The monitoring also showed that nine inmates in the Institution No. 7 have had lung tuberculosis in the past and three inmates were undergoing treatment within the DOTS program. These individuals were accommodated together with other prisoners who were not infected with tuberculosis. This circumstance coupled with the existing improper conditions creates an unfavorable epidemiological situation.

Recommendations:

To the Minister of Corrections

- **When moving prisoners from one establishment to another, the prisoners should be made aware of the grounds and reasons of their transfer, which should be documented by drawing up a relevant protocol; they should also be informed about their right to challenge the transfer order.**

To the Chairperson of the Penitentiary Department

- **To completely separate juvenile prisoners from adult prisoners;**
- **To accommodate prisoners infected with tuberculosis separately, in any event;**
- **When allocating prisoners to penitentiary institutions, to take into consideration proximity of the institutions to their homes or their relatives' homes;**
- **To ensure that prisoners are allocated to the appropriate types of penitentiary institutions as required by law.**

71 For example, in the Institution No. 7.

72 Mathew v. The Netherlands, Judgment of 29 September 2005.

73 Article 19(16).

THE PENITENTIARY HEALTHCARE SYSTEM AND TORTURE PREVENTION MECHANISMS

PURPOSE AND METHODOLOGY OF MONITORING

During the monitoring carried out in 2013, we paid special attention to the effectiveness of the functioning of the penitentiary healthcare system and the existing challenges. In the course of the monitoring, we questioned the inmates and the medical personnel of penitentiary institutions. We also examined the existing situation in medical units of the penitentiary institutions and the infrastructure in the treatment facilities.

For the purposes of the research, we were using statistical reports and information provided by both the Medical Department of the Ministry of Corrections and individual penitentiary institutions.

The below analysis is based on the national laws and bylaws as well as international standards enshrined in hard law and soft law, in particular:

- The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997);
- The Optional Protocol to the above-mentioned Convention (2006);
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") (United Nations; New York and Geneva, 2001 – 2004);
- Principles and case-law of the European Court of Human Rights;
- 3rd General Report on the CPT's activities – healthcare services in prisons;
- The UN Minimum Standard Rules for the Treatment of Prisoners (1955);
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1989);
- The European Prison Rules (2006);
- Recommendation No. R (87) 3 of the Council of Europe Committee of Ministers (1987);
- Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison (Strasbourg, 1998);
- Consensus Statement on Mental Health Promotion in Prisons, WHO Regional Office for Europe Health in Prisons Project (The Hague, Netherlands, 18–21 November 1998)
- The UN international principles of medical ethics (1982)
- The World Medical Association: Declaration of Tokyo (1975), Declaration of Hamburg (1997),

Geneva Declaration (1948), Declaration of Malta (1991, 2006), Helsinki Resolution (2003, 2007);

- A Guide to International Instruments and Mechanisms against Torture, International Rehabilitation Council for Torture Victims (IRCT) (as of 4 July 2007)
- Health in Prisons, A WHO guide to the essentials in prison health;
- The Madrid recommendation: health protection in prisons as an essential part of public health (WHO, 2010).

ORGANIZATIONAL ASPECTS OF THE GEORGIAN PENITENTIARY HEALTHCARE SYSTEM AND REFORMS IMPLEMENTED

Pursuant to information received from the Ministry of Corrections, 2013 was a year of systemic overhaul of the penitentiary healthcare system. The Medical Department structure was made compatible with its basic functions and requirements of contemporary management standards: separate units were created to manage primary healthcare, specialized medical assistance, medical regulation, and healthcare economy and logistics. Primary healthcare and specialized institutions were subordinated to the relevant divisions.

Since 1 January 2013, the Ministry of Corrections has been implementing an 18-month-long reform, pursuant to the Reform Strategy and Action Plan. According to the information received from the Ministry, the following activities have been implemented within the reform:

- The penitentiary healthcare budget was increased;
- Salaries of the penitentiary medical personnel were increased;
- A program to prevent, diagnose and treat hepatitis C in the penitentiary system was developed;
- The Medical Department was reorganized;
- The Personal Electronic Health Record software (PEHR) was launched;
- Primary healthcare module was introduced in all penitentiary institutions;
- The penitentiary healthcare personnel was renewed through competitions;
- An intensive program for training nurses was developed;
- A basic list of medications was elaborated and approved;
- A new center for the treatment and rehabilitation of tuberculosis was opened;
- Repair and re-equipment of the Medical Institution for Accused and Convicted Persons started;
- A suicide prevention program was developed and launched;
- A joint commission composed of representatives from the Ministry of Labor, Health and Social Protection and the Ministry of Corrections was reformed;
- A new nutrition standard was elaborated and launched;
- An active campaign against drug addiction was commenced;
- An information material about available medical services was prepared for migrant prisoners in 10 different languages.

These changes deserve positive evaluation. However, a series of substantive problems remain in the penitentiary healthcare system, which will be discussed in detail below.

Funding of the medical services

Funding of the penitentiary healthcare services: a yearly breakdown

Table 3

Total penitentiary healthcare budget in 2012	7.587.000 Lari
Total penitentiary healthcare budget in2013	11.958.000 Lari
Medical personnel wages in 2012	Doctors: 650 Lari Nurses: 350 Lari
Medical personnel wages in 2013	Doctors: 1200 Lari Nurses: 650 Lari

We note with satisfaction the trend of increased funding of the prison healthcare services. We also welcome the fact that the salaries of the prison medical personnel have been raised. These positive changes have given rise to increased expectations of the beneficiaries and other interested parties towards the prison healthcare services. Naturally, with more effective administration methods and tools in place, one would reasonably expect a steep increase in the capacity and the quality of the penitentiary healthcare services compared to the previous years.

Provision with medications; pharmacy operation

In 2013, thirteen drug storage pharmacies and private pharmacies were functioning in penitentiary institutions. In the below table, we provide data about sums spent on medication supplies for the penitentiary institutions through 2012-2013:

Table 4

Penitentiary Institution No.	2012	2013	National TB program 2012	National TB program 2013
2	59182,39	145131,16		
5	105797,35	80859,96		
6	47423,15	91484,74		
7	5271,5	17831,54		
8	133578,84	220578,02		
9	52359,28	28075,45		
11	2953,78	9237,01		
12	28990,24	48431,36		
14	136132,54	173845,94		
15	99404,51	179667,21		
17	69069,1	227222,41		
18	374215,76	231375,68		
19	136601,34	216408,7	170428,37	74827,13
Total	1250979,78	1670149,18		

Pursuant to information received from the Ministry of Corrections, each drug storage facility has its responsible person. Penitentiary institutions are receiving medications according to an approved basic list of medications based on monthly or individual requests submitted by chief doctors of individual penitentiary institutions. These requests are drafted jointly by the institution's chief doctor, pharmacists and doctors. From the drug storage facilities, medications are given out based on doctor prescriptions, which must be signed under by the recipient and approved by the chief doctor.

There is a private pharmacy in the Center for the Treatment of Tuberculosis and Rehabilitation but it is not functioning. Also, prisoners in the Penitentiary Institution No. 14 are unhappy with the fact that the only pharmacy in

their institution is open only one day a week.

Prisoners have been complaining of unavailability of prescribed medications at their institutions. Prisoners are often irritated about the so-called generic drugs. Pursuant to Article 11(1) of the Georgian Law on Drugs and Pharmaceutical Activity, a generic drug is an international non-patented pharmaceutical product. Generic pharmaceutical products are used to replace patented (original) medications since they have the same treatment effect as their original counterparts. According to the World Health Organization (WHO) definition, a generic drug is a pharmaceutical product, intended to be interchangeable with an innovator product, that is manufactured with a license from the innovator company and marketed after the expiry date of the patent or other exclusive rights.[74]

The effectiveness of generic pharmaceutical products depends on their composition and equivalency. A generic pharmaceutical product, like to an original drug, contains an active agent and a supplement. It is the latter that is responsible for how fast and in what quantity the active agent is released from a pill or a capsule. Effectiveness of generic drugs depends on these factors. A minor change in the supplementing substance or the pill casing may greatly affect the drug quality. If the supplementing substance in a generic pharmaceutical product differs from the substance used in the original drug, the two drugs may not be interchangeable in terms of therapeutic effect or may have different therapeutic effects.

That said, prisoners must be provided with adequate information about generic pharmaceutical products. If prisoners are unhappy complaining about the treatment effect of generic drugs, these drugs must be examined clinically to determine their therapeutic equivalency.

During our routine and special monitoring visits, we found out that some medications listed as available were not actually available in the relevant institution. For example, in December 2012, when the trustees of the Public Defender were visiting the Center for the Treatment of Tuberculosis and Rehabilitation as well as the Penitentiary Institution No. 8 within the monitoring, the local personnel could not show the monitoring group some of the medications that were on the list of available medications; however, the medical personnel did explain they had replacement drugs.

To avoid any misunderstanding and disappointment amongst the prisoners, we suggest that all of the drugs formally listed as available in a particular penitentiary institution be actually available at all times. To this end, it would be appropriate that the medical personnel estimate potential consumption of drugs in advance and submit a request for sufficient quantity of drugs to make sure that their institution does not experience shortage until the requested drugs are delivered to the institution.

Medical referrals

The Ministry of Corrections offers prisoners healthcare services in 52 civilian clinics. These clinics are selected by a simplified rule, after a market research, taking into account geographic accessibility and the current need for medical services, on the basis of a Government resolution.[75]

Medical referral implies the redirecting of patients to specialized medical clinics both within and outside the penitentiary system. With a view of making the referrals effective, transparent and fairly managed, in May 2013, the Medical Department and the IT Department of the Ministry of Corrections jointly developed a special electronic software. On 1 September 2013, the Personal Electronic Health Record (PEHR) software was launched in penitentiary institutions. The software has automated implementation of standard procedures and data management. One of the modules of the software is responsible for the management of medical referrals.

A legal basis for medical referrals is the Code of Imprisonment (Article 121) and the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation and to the Institution for the Treatment of Remand and Sentenced Prisoners."

74 See http://www.who.int/trade/glossary/story034/en [last accessed 10.03.2014].

75 Resolution of the Government of Georgia No. 2163 dated 26 December 2013.

The medical referral procedure consists of the following stages: 1. Primary healthcare units (in the penitentiary institutions) decide on their own whether there is a need for specialized medical services and, if positive, submit a request for a patient's referral; the request may be registered in the system either directly by an institution's doctor or through an operator. 2. After the request is registered, it will be processed by the Ministry's Medical Department using the National Recommendations on Clinical Practices (Guidelines) and the State Standards of Disease Management (Protocols). If the request is well-founded, it will be accepted and assigned a serial number, which becomes known to the relevant primary healthcare unit and the beneficiary (the patient). 3. After the request is accepted, according to the number in the row, the patient's referral will be agreed with a medical service provider and the patient will then be referred to that provider.

It should be noted that if the request is rejected, the rejection will be registered in the system and the primary healthcare unit will be informed about the reasons of rejection. In the period of 1 September 2014 – 1 January 2014, 306 requests were deemed unfounded and rejected.

Patients will be put in electronic queue only if they have their medical services scheduled ahead of time. Patients who need urgent or emergency assistance will not be put on standby. There are two separate electronic queues – one in the western Georgia and the other in the eastern Georgia. Inpatient and outpatient referrals (queues) are also run separately. This is to eliminate obstacles linked with a geographical area or the type of services. Requests are processed by the principle of "first come – first served". A patient in an electronic queue may not be artificially moved forward or backward.

It should be noted that the functioning of the electronic database of medical referrals is not regulated by a separate order of the Minister of Corrections. The Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Institution for the Treatment of Remand and Sentenced Prisoners", does not contain any specific rules about the database. These Rules are not perfect, on their turn. In particular, under Article 1 of the Rules, remand and sentenced prisoners may be transferred to the Center for the Treatment of Tuberculosis and Rehabilitation based on a prison director's order; such orders are based on a recommendation sent from the Ministry's Medical Department to the prison director, which on its turn is based on a request made by a prison doctor. As regards transfers from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, Article 2 of the Rules says that such a transfer shall be based upon an order of the Penitentiary Department, which on its turn is based on a prison doctor's request to the Penitentiary Department and the latter's recommendation approving the request. When making a request for transfer, a prison doctor must furnish one copy of the request to the prison director. Both prison directors and the Chairperson of the Penitentiary Department may dismiss a request.

To summarize, a prisoner's access to medical services formally depends upon the decision of prison directors and the Chairperson of the Penitentiary Department. This contradicts the spirit with which the reform of the penitentiary system was carried out when the medical personnel were brought under the direction of the Ministry of Corrections Medical Department. The very aim of the reform was to increase the independence of penitentiary healthcare staff.

The launching of an electronic medical referral database is certainly an interesting novelty and should be evaluated as a positive change towards better regulation of the referrals. However, a problem with the referral system, which continues to be a concern, is the lack of individual approach to ensure timely provision of required healthcare services. In other words, it is axiomatic that the one who needs medical assistance the most must be the first to receive such assistance. This principle must be taken into account in any endeavor of perfecting organizational aspects of the penitentiary medical referrals.

The European Court of Human Rights has been constantly stating in its judgments that "the relevant domestic authorities shall ensure that diagnosis and care are prompt and accurate and that supervision by proficient medical personnel is regular and systematic and involve a comprehensive therapeutic strategy."[76] The electronic medical referral database is, in our view, an instrument to effectively manage medical referrals. Representatives of the Ministry of Corrections have stated that a major strength of the electronic database is that it ensures equal treatment of prisoners and a greater transparency of the referral procedure.

76 See, inter alia, Jashi v. Georgia, Judgment of 8 January 2013, par. 61.

Changing a queue number in the electronic database is impossible which makes it impossible, on its turn, to first serve the prisoners who need to be assisted the most. We believe this approach and the "first come – first served" principle will hinder timely provision of medical services to prisoners in need unless their medical condition falls within the urgent category.[77] Furthermore, the way the electronic database functions excludes any chance of changing a patient's number in a standby list, even if the patient's health gets aggravated. In other words, if the patient's condition does not qualify as urgency, the patient's number in the queue may not be changed and the patient cannot be transferred to a hospital in a speeded up manner. It is essential to provide patients in need with required medical assistance promptly where there is a risk of developing a chronic form of a disease.

With these reasons in mind, we think it is necessary to revise the current mechanism of the medical referral system for it to take into account the needs of individual prisoners. To this end, we would recommend splitting the electronic queue into two parts depending on whether the medical condition is acute or chronic. Alternatively, the way the electronic database functions has been functioning to date may remain unchanged but the Minster of Corrections may consider enacting a separate order about provision of urgent medical assistance to patients with acute forms of diseases. Acute diseases are characterized with clearly expressed symptoms and, therefore, local prison doctors could determine initial diagnosis by making locally available medical tests; with this diagnosis, the matter of medical referral can be decided thereafter. Another option is to categorize diseases by the degree of their impact upon vital human organs and by strength of pain after receipt of painkillers.

We should admit, in the interests of fairness, however, that implementing the above-described alternatives will not make the existing situation essentially better unless the actual opportunities of medical referral are increased. Pursuant to information received from the Ministry of Correction, 10 prisoners are transferred to various medical establishments in eastern Georgia per work day on average; of this figure, two prisoners are transferred to hospitals and eight to outpatient clinics. The actual opportunities of medical referral also depend on the availability of the required attending personnel and vehicles and the number of patient vacancies in civilian medical establishments. According to the representatives of the Ministry of Corrections, the electronic database conductivity is negatively affected by patient cases involving self-injuries and urgent medical assistance, since these cases usually require prisoners' transfer civilian medical establishments.

Recommendations to the Minister of Corrections:

- **To approve new rules of medical referral entitling only the Chief of the Medical Department of the Ministry of Corrections to decide on the transfer of prisoners to penitentiary and civilian healthcare establishments after consulting with the Chairperson of the Penitentiary Department on security issues. These Rules should also contained detailed guidelines about emergency, urgent and scheduled transfer as well as peculiarities related to the functioning of the electronic database.**
- **Taking into account how diseases develop in each individual case as well as the specific needs of individual prisoners, to ensure timely provision of medical services penitentiary and civilian healthcare establishments, on as needed basis;**
- **If a prisoner has not been examined completely at a civilian medical establishment or a prisoner needs additional medical examination in a short time period (several days) after his visit to such an establishment, to ensure that such prisoners are transferred to these establishment without having to wait for their turn in the queue.**

Medical infrastructure

The primary healthcare system within the penitentiary consists of 37 units. The medical units of penitentiary institutions offer electric cardiography, ultrasound examination, X-ray, and sample-taking for general and biochemical blood tests and for lab tests on tuberculosis, hepatitis and HIV/AIDS. Dental services are available as well.

77 Pursuant to Article 3(S1) of the Law of Georgia on Healthcare, urgent medical assistance means assistance without which it will be impossible to avoid the patient's death, disability or serious deterioration of health condition.

On 1 January 2013, a new Center for the Treatment and Rehabilitation of TB Patients was opened. A project of repairing and re-equipping the Treatment Facility for Remand and Sentenced Prisoners has been ongoing since September 2013 and its opening is scheduled by April or May 2014.

Record keeping; statistical data; reporting procedures

Outpatient record keeping is governed by the Order of the Minister of Labor, Health and Social Protection no. 01-41/N dated 15 August 2011 approving **"Rules of producing and maintaining outpatient medical documentation".** In addition, because of the special nature of the penitentiary system, outpatient medical cards for prisoners additionally include some more information as determined by the Order of the Minister of Corrections and Legal Assistance No. 82 dated 10 May 2011.

Inpatient record keeping is governed by the Order of the Minister of Labor, Health and Social Protection No. 108/N dated 19 March 2009 approving "Rules of producing and maintaining inpatient medical documentation in medical establishments".

Medical records of dental services provided to remand and sentenced prisoners are governed by the Order of the Minister of Labor, Health and Social Protection No. 01-55/N dated 25 November 2011 approving the "Rules of producing and maintaining dental medical documentation".

When required, the penitentiary healthcare personnel uses, for guidance, the Order of the Minister of Labor, Health and Social Protection No. 338/N dated 9 August 2007 approving "Rules of filling out a health certificate and a template for a health certificate".

Penitentiary statistical data are produced and maintained according to the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 approving "Rules of producing and reporting medical statistics".

The medical personnel of penitentiary institutions are producing and submitting their activity reports to the Medical Department every month. Each report covers 16 issues, which the medical staff of the institutions are required to elaborate on. Every report contains information about the medical personnel of the relevant penitentiary institution, number of inmates in the institution, number of inmates admitted during the month, number of primary medical check-ups conducted, and information about any medical services provided. The reporting template contains separate sections about dental services, services provided within the national programs for the treatment of tuberculosis and HIV/AIDS control, number of medical tests on hepatitis and sexually transmitted diseases, number of cases of infliction of self-injuries, number of suicide attempts, and number of prisoners transferred to various medical establishments for additional diagnostic tests or specialized treatment. The reporting template further includes information about monthly expenditure on medications and other medical supplies and data about prisoner deaths. It should be noted that the reporting template contains a separate section about any problems related to provision of inmates with medical services and a section for additional comments.

Each report is usually accompanied by the following forms: Form No. 1-9.1 (annual morbidity data in the penitentiary system) broken down into sections by months and another form – which has no number – about medical assistance provided during the year in the penitentiary system (with sections arranged by months); Form No. 1-9.2 (diseases revealed by medical specialists through medical consultations provided, broken down by sex and age; a form with no number about prisoner deaths in each penitentiary institution per annum (broken down into months); a form with no number, which is a TB Programme monthly report; Form No. IV-25 (for registering patients who have been diagnosed for the first time in Tbilisi outpatient clinics. Other than Form No. IV-25, the above-mentioned reporting forms are not envisaged by the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012.

The monthly reports contain only general data, which make full-fledged processing of statistical data impossible. The Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 approving "Rules on producing and reporting medical statistics" envisages Form No. IV-01 (medical establishments' reporting template). The reporting template requires entry of detailed information about medical services provided and consists of 78 issues. Having in mind the special nature of the penitentiary healthcare, we recommend using the

above-mentioned Form No. IV-01, with some relevant modifications, because it envisages entering more detailed information that will render making more accurate analysis of provided medical assistance possible.

Recommendation to the Minister of Corrections:

- **To elaborate and approve forms for producing and reporting statistical data using the Order of the Minister of Labor, Health and Social Protection No. 01-27/N dated 23 May 2012 as a guideline, with modifications relevant to the penitentiary system.**

ACCESS TO A PHYSICIAN

Access to a physician's consultation in the penitentiary system has improved. According to prisoners, compared to previous years, it is less difficult to arrange an appointment with the prison healthcare staff. However, access to medical practitioners specialized in specific areas remains a problem. Prisoners say they wish doctors were visiting penitentiary institutions more often; were this the case, they would not have to wait too long and would be able to arrange appointments to obtain medical consultation as soon as they needed it. The prisoners are also complaining about long intervals between the visits of psychiatrists and psychologists. It should be noted that such a specialized establishment as the Center for the Treatment of Tuberculosis and Rehabilitation where the demand for both psychologists' and psychiatrists' services is high does not have a psychologist at all.

The penitentiary healthcare system currently employs the following staff:

Table 5

Institution	Doctors	Nurses	Shift
№2	12	16	Full time
№3	6	6	Full time
№5	8	10	Full time
№6	12	16	Full time
№7	4	5	Full time
№8	30	36	Full time
№9	5	10	Full time
№11	4	5	Full time
№12	6	9	Full time
№14	10	12	Full time
№15	12	22	Full time
№17	13	22	Full time
№18	65	100	Full time
№19	38	55	Full time
Total:	225	321	

Medical services provided to prisoners:

Table 6

№	Description (preventative and treatment measures)	Total
1.	Initial medical check-up	16 554
2.	Outpatient visits (treatment)	22 4363
3.	Inpatient treatment:	1 293
	3.1. at the Medical Institution for Accused and Convicted Persons	677
	3.2. at the Center for the Treatment of Tuberculosis and Rehabilitation	516
4.	Medical tests and treatment in civilian specialized hospitals	5 199
5.	Emergency and scheduled surgeries	1 637
6.	Dental assistance (cases)	15 814
	6.1. Therapeutic assistance	10 359
	6.2. Surgical assistance	4 358
	6.3. Orthopedic assistance	1097
7.	Psychiatric assistance: consultation and treatment	10 752
8.	Wholesale screening to detect tuberculosis risk groups	65 130
	8.1. Examination of individual suspected of having been infected with tuberculosis	7 980
	8.2. „DOTS“	237
	8.3. „DOTS +“	57
	8.4. Number of patients who have accomplished the anti-tuberculosis treatment	260
9.	Number of individuals tested on HIV/AIDS	5 263
	9.1. Number of individuals newly enrolled in the anti-retrovirus programme	17
	9.2. Individuals already enrolled	431
10.	Number of individuals tested on hepatitis	4 701
11.	Number of individuals tested on sexually transmitted diseases	606
12.	Number of individuals enrolled in the methadone-based detoxication programme	311
13.	Number of individuals consulted by physicians specializing in different areas	33 929
14.	Number of individuals enrolled in the State Programme for the treatment and rehabilitation of diabetes mellitus and diabetes insipidus	7
	14.1. Insulin	7
	14.2. Desmopressin	0

EQUIVALENCY OF MEDICAL SERVICES

In 2012, prisoners were transferred to civilian medical establishments in 3,558 cases; in 2013, the same index increased up to 5,199. A serious increase in the number of prisoner transfers to civilian clinics against the background that the overall number of the prison population has drastically decreased should deserves a positive evaluation. However, a problem that remains a matter of concern is the equivalency of medical services provided to prisoners. We believe it is necessary to evaluate how equivalent were the medical services provided both in these 5,199 cases (Table 6, point 4) and locally at penitentiary institutions.

It seems at a glance that the equivalency principle has been followed in the above-mentioned 5,199 cases due to the fact that the prisoners received medical services in civilian medical establishments; however, for the sake of fairness, we should be critical in evaluating equivalency of the actually provided services. It should be noted that, in 2013, the number of outpatient visits and tests in civilian clinics reached 4,283, which amounts to 82% of the total number of cases (5,199). An overwhelming majority of outpatient visits to civilian clinics was aimed at conducting various medical tests. Prisoners complain that they are not examined in a complete manner during these visits and

they are apparently saying truth because not always is it possible to perform a comprehensive examination in only a day, in a medical establishment with a narrow profile of services offered and lack of required equipment. Unlike regular citizens who are able to visit a medical establishment several times on subsequent days, prisoners have to register again in the electronic database of medical referrals and to wait for some period of time. With this situation on the ground, prisoners may not be getting the needed medical service on time that may lead to deteriorated health condition, which eventually constitutes a violation of the equivalency principle.

In evaluating equivalency of the medical services provided locally at penitentiary institutions, one should take into account the existing medical infrastructure as well as the competence and expertise of the prison healthcare staff. We would like to welcome the changes effected at the Center for the Treatment of Tuberculosis and Rehabilitation. Although some problems remain in regard to both the Center and the National Center for Tuberculosis and Lung Diseases, it is safe to say that the medical services provided to TB patients within the penitentiary system are equivalent to (comparable with) those provided at civilian clinics. As regards the Medical Institution for Accused and Convicted Persons, its infrastructure and capabilities were deemed unsatisfactory and the institution has been under repair and re-equipment since September 2013. The repair was still ongoing by the end of the reporting period.

As regards pretrial detention facilities and institutions for sentenced prisoners, their medical units can offer only a limited number of services. Normally, penitentiary institutions can offer services such as electric cardiography, ultrasound examination, X-ray, and sample-taking for general and biochemical blood tests and for lab tests on tuberculosis, hepatitis and HIV/AIDS. Despite their limited capabilities, the medical units of penitentiary institutions function as if they were secondary healthcare units, offering inpatient services. It is therefore impossible to meet the equivalency requirement in these conditions.

To illustrate the existing medical needs within the penitentiary system, we are providing morbidity data in the below table.

Table 7

№	Morbidity	Total
1.	Cardiovascular diseases	859
2.	Diseases of the respirator system	1 536
3.	Digestive system diseases	1 708
4.	Urinary and genital system diseases	1 180
5.	Nervous system diseases	958
6.	Mental diseases	1 998
7.	Endocrine system diseases	185
8.	Hematologic diseases	19
9.	Diseases of sensory organs	1 349
10.	Infectious diseases	168
11.	Tuberculosis	294
12.	HIV/AIDS – newly detected	7
13.	Diseases of bones and joints; diseases of connecting tissues	416
14.	Skin diseases; sexually transmitted diseases	285
15.	Dental illnesses	15 807
16.	Acute surgical diseases	230
17.	Oncologic diseases	40
	Total	27 039

If we subtract dental cases (that can be dealt with locally in the penitentiary institutions) and TB cases (that can also be dealt with locally without taking prisoners to the National Center for Tuberculosis and Lung Diseases) from the total number of cases shown in the table, 11,064 will remain. Certainly, some of these cases may indeed be

diagnosed and treated within the limits of the penitentiary healthcare but it is evident that transfers of prisoners to civilian medical establishments in 5,199 cases are insufficient to fully satisfy their needs for medical assistance.

It is important to establish quality control over the medical services provided at penitentiary healthcare institutions, pretrial detention facilities and institutions for sentenced prisoners, and to perform patient safety assessment. In this regard, we would recommend that the Medical Regulatory Unit of the Ministry of Corrections enhance its activities and interact more effectively with the Public Law Entity "Agency for the State Regulation of Medical Activity".

Pursuant to information received from the Ministry of Corrections, a new Medical Regulatory Unit has been functioning within the Ministry since March 2013. The Unit is responsible for quality control of medical services provided. One of the key activities the Unit carries out to achieve its goals is that is conducts inspection of medical records with a view of verifying whether the relevant rules on producing and maintaining medical documentation are observed and whether the medical services provided are adequate.

In addition to pre-planned monitoring activities, the Unit is authorized to conduct unscheduled check-ups on the basis of complaints it receives. From the day it was founded until January 2014, the Unit looked into 73 cases of which planned monitoring was carried out in 18 cases. The Unit deals with cases through a panel of experts. Whenever necessary, medical specialists specializing in the required area are invited to assist the panel. If the panel detects a physician's error, the case will be forwarded to the Public Law Entity "Agency for the State Regulation of Medical Activity".

Recommendation to the Minister of Corrections:

- **To exercise quality control over the provision of medical services by strengthening the interaction between the Ministry's Medical Regulatory Unit and the Public Law Entity "Agency for the State Regulation of Medical Activity".**

CONFIDENTIALITY AND INFORMED CONSENT

Maintaining confidentiality of medical information remains a problem within the penitentiary system. Although the penitentiary healthcare personnel are answerable to only the Medical Department of the Ministry of Corrections, it is difficult to keep information about visits to a physician confidential. This is true about doctor consultation both within the relevant penitentiary institution and outside at a civilian medical establishment. Medical records are not protected in a manner they should be. Frequent contact between the prison healthcare staff and the prison administration as well as lack of knowledge of professional ethics norms often become reasons of unacceptable disclosure of medical information.

Pursuant to the Recommendation issued by the Council of Europe Committee of Minister to the Member States, medical confidentiality should be guaranteed and respected with the same rigor as in the population as a whole.[78] Under Article 72 of the Georgian Law on the Rights of the Patient, a medical service provider is obliged to keep information it possesses about the patient confidential both during the patient's life and after the death of the patient.

In this context of confidentiality of medical information, we would like to discuss compatibility of some of the provisions of the Order of the Minister of Corrections No. 38 dated 10 March 2011 with the ethical principle of confidentiality. Under the Rules approved by this Order, in order to transfer a prisoner from a penitentiary institution to penitentiary or civilian medical establishments, a doctor of the relevant penitentiary institution should apply to the Medical Department of the Ministry of Corrections with a request for transfer; the Medical Department will, on its turn, send its recommendation to the director of the penitentiary institution from where the request originated (if the request was to transfer the prisoner to a treatment facility within the penitentiary system) or to the Chairperson of the Penitentiary Department (if the request was to transfer the prisoner to a civilian medical establishment). It should be noted that when a request for an inmate's transfer to a civilian medical establishment is made, the doctor of the penitentiary institution forwards one copy of the request lodged with the Medical Department to the director of the same penitentiary institution.[79] We think this violates the confidentiality principle

78 Recommendation no. R (98) 7 of the Council of Europe Committee of Ministers to Member States concerning the Ethical and Organisational Aspects of Health Care in Prison, 20 April 1998, par. 13.

79 Article 2, the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "Rules of

because the requests lodged by prison doctors with the Medical Department contain information about medical condition and this information becomes disclosed to a third person such as the prison director. Accordingly, the above-described procedure needs to be changed.

That said, however, fairness demands to recognize that maintaining absolute confidentiality in regard to inmates' medical needs is practically impossible given a prison setting. In any event, the director of the relevant prison and the Chairperson of the Penitentiary Department will know about the need for having an inmate transferred to a medical establishment on account of the inmate's medical condition. However, all other information of medical nature is possible to keep and must be kept confidential. In addition, in time of provision of medical services, the role of e penitentiary officials and employees should be confined to only transportation of the inmates and taking necessary security measures.

Pursuant to information received from the Ministry of Corrections, it is planned to equip the penitentiary institutions with safes for storing medical documentation and to make the latter accessible by only duly authorized personnel.

Recommendation to the Minister of Corrections:

- **To provide the penitentiary healthcare personnel with advance training in professional ethics;**
- **To take disciplinary measures whenever information of medical nature is disclosed to unauthorized individuals;**
- **To repel the Order of the Minister of Corrections and Legal Assistance no. 38 dated 10 March 2011 approving the "Rules of transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation and to the Medical Institution for Accused and Convicted Persons"; to ensure that a new normative act on medical referral fully recognizes and protects confidentiality of medical information.**

The situation has improved in terms of informing the patients about medical services provided to them. However, it remains a matter of concern that, in a series of cases, when prisoners are transferred from one penitentiary institution to another, their medical documentation remains in the former institution and the recipient institution's healthcare staff does not get full information about individual prisoners' medical needs or any medical services provided to them.

Pursuant to a recommendation of the Committee of Ministers (CM) of the Council of Europe, the indication for any medication or medical interference should be explained to the inmates, together with any possible side effects likely to be experienced by them.[80] The problem of informing patients about side effects of anti-tuberculosis treatment and related medications is especially persistent at the Center for the Treatment of Tuberculosis and Rehabilitation.

The above-cited CM Recommendation also stresses that all transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality.[81]

transferring sick prisoners from pretrial detention facilities and institutions for sentenced prisoners to general hospitals, the Penitentiary Department's Center for the Treatment of Tuberculosis and Rehabilitation or to the Medical Institution for Accused and Convicted Persons."

80 Recommendation no. R (98) 7 of the Council of Europe Committee of Ministers to Member States concerning the Ethical and Organisational Aspects of Health Care in Prison, 20 April 1998, par. 14.

81 Ibid. par. 18.

HUMANITARIAN SUPPORT: SPECIAL CATEGORIES

Juvenile prisoners

During the reporting period, within the National Preventing Mechanism activities, we conducted a special (thematic) monitoring at juveniles' pretrial detention facilities and institutions for sentenced juveniles. The monitoring showed the conditions of juveniles at the Penitentiary Institution No. 8 are not satisfactory. It turned out that juveniles have contact with adult prisoners. In particular, this opportunity emerges either when the prisoners are transferred to the court or during their visits to the dentist when they have to go to the medical unit. Other problems are related to medical services, nutrition, and day planning. For detailed information on the monitoring results, please see the chapter concerning children's rights.

Women prisoners

Women prisoners are allocated in the Penitentiary Institution No. 5. There were 906 women prisoners at the Institution No. 5 by January 2013 and only 242 women prisoners by the end of the same year. We welcome the increasing practice of early release (parole) of women prisoners, which fits well into the requirement under Rule 63 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).[82] We positively evaluate also the fact that during the reporting period the inmates in the Institution No. 5 had the opportunity to enroll in various training courses, attend cultural events and access legal and psychological advice.

The general situation in the Institution No. 5 is satisfactory. However, a number of problems remain unresolved. There were 63 occurrences of hunger strike in the period of 1 January – 31 December 2013. A total of 141 inmates of the Institution announced hunger strike. Their protest was based on their claims related to medical services, revision of convicting judgments and fairness of early release practices. 10 attempts of suicide occurred in the Institution No. 5 during the reporting period.

Pursuant to information provided by the Institution's administration, 421 inmates were transferred to various medical establishments during the year of 2013. The Institution has two medical rooms, a shock room and a gynecologist's room. 4 cells are allocated for TB-infected prisoners. It is locally possible to take samples for TB and HIV/AIDS testing. The Institution's Division for Mothers and Children has 12 rooms and 1 children's entertainment room.

Since women prisoners are a special category of prisoners having special needs, these needs must be constantly assessed and handled through appropriate programmes. The best interests of children being in the Institution must be taken due account of. There should be gender-specific mental health and rehabilitation programmes.[83]

Women prisoners' contact with the outside world should be facilitated to the highest possible extent.[84] In this regard, it must be noted that women prisoners should be able to exercise the right to conjugal visits on equal basis with men. This issue is dealt with in detail in a chapter on conjugal visits.

Accused persons remanded to detention

Accused persons remanded to detention are a category of prisoners who are the most vulnerable to torture and ill-treatment.[85] Accordingly, for the purpose of preventing and combating torture, remand prisoners should be paid a special attention.

Pursuant to official data provided by the Ministry of Corrections, 1,403 accused persons with bodily injuries were

82 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 21 December 2010, Rule 63.

83 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 21 December 2010, Rule 12.

84 Ibid. Rules 26 – 28.

85 6th General Report of the European Committee for the Prevention of Torture, 1995, par. 15.

admitted to various penitentiary institutions in 2013. 82 of them stated that they had been injured during and/or following their arrest. Information about these incidents was forwarded to the relevant investigation authorities. It is now necessary that these authorities carry out independent and impartial investigation into these allegations and those responsible are punished.

Because the conditions in which accused persons are kept and their ability to actually exercise their legal rights may be manipulated to exert influence upon them, we deem it appropriate to evaluate these conditions and the actual exercise of these legal rights in practice. Under Article 95.1 of the European Prison Rules, the regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future. In its judgment in Varnas v. Lithuania, the European Court of Human Rights explained that Article 10 § 2 (a) of the International Covenant on Civil and Political Rights requires, inter alia, that accused persons should, save in exceptional circumstances, be subject to separate treatment appropriate to their status as unconvicted persons who enjoy the right to be presumed innocent.[86]

During the reporting period, untried prisoners were allocated in the penitentiary institutions nos. 2, 3, 4, 5, 6, 7, 8 and 9. Of these institutions, only the institutions nos. 2, 5, 7, 8 and 9 remained operational by December 2013. In these institutions, untried prisoners are in the same conditions as sentenced prisoners in closed institutions.

It should be noted that the Ministry of Corrections does not maintain statistical data about accused persons separately. Accordingly, it is impossible to separately deal with and analyze the medial needs of accused persons to help discern some general trends. The volume of medical services available to untried prisoners is limited as well. Thus, untried prisoners are not entitled to use the diagnostic and treatment services within the hepatitis programme. They have access to the programme's prevention component only.

Finally, accused prisoners are not entitled to conjugal visits while tried prisoners do have this right. Having the above-described facts in mind, it is safe to say that accused persons remanded to detention in Georgia are not provided with the rights and conditions appropriate to their status.

Recommendations:

To the Minister of Corrections

- **To start producing and maintaining statistical information about medical services provided to accused persons with a view of processing and analyzing these data thereafter;**
- **To assess the special needs of remand prisoners and to take measures to satisfy these needs.**

To the Minister of Labor, Health and Social Protection

- **To amend the "Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in pretrial detention facilities and institutions for sentenced prisoners" with a view of making accused persons eligible for appropriate medical services within the diagnosis and treatment component of the Programme.**

Persons with mental disorder and the problem of drug addiction in the Georgian penitentiary system

Pursuant to information received from the Ministry of Corrections, psychiatrists provided 10,752 prisoners with psychiatric consultation in 2013. 137 patients underwent a treatment course at the mental health department of the Medical Institution for Accused and Convicted Persons and 33 patients were treated at psychiatric divisions of civilian medical establishments. According to the same official information, outpatient psychiatric assistance was provided in 2,000 cases. In 2013, 76 prisoners were transferred to specialized civilian clinics for psychiatric treatment based on court decisions.

According to the data provided by the Ministry of Corrections, by the end of the first half of 2013, 1,322 prisoners

86 Varnas v. Lithuania, par. 119.

were registered as users of psychotropic substances. By the end of the year, this index decreased to 777 prisoners.

It should be noted that no information exists about the number of prisoners with mental health problems. The Ministry of Corrections cited lack of wholesale examination as a reason. Against this background, it is practically impossible to properly assess the existing needs and to develop a policy for combating this major problem of the penitentiary system.

Recommendation:

To the Minister of Corrections

- **To conduct a comprehensive mental health screening in penitentiary institutions with a view of collecting/analyzing the related statistical data and developing programmes to address the needs revealed.**

According to official data, 311 prisoners were involved in the methadone programme in 2013. In general, opioid addiction replacement therapy is governed by the Order of the Minister of Labor, Health and Social Protection No. 37/N dated 20 January 2009, which, on its turn, is issued based on Article 38(4) of the Law on Narcotic Drugs, Psychotropic Substances, Precursors and Narcologic Assistance. As regards the opioid addition replacement therapy within the penitentiary system, this issue is regulated by the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on "Rules of implementing replacement therapy programmes to deal with opioid addiction in penitentiary institutions".

It should be noted that, pursuant to Article 5(b.e) of the "Methodology of implementing replacement therapy programmes in opioid addiction cases" approved by the Order of the Minister of Labor, Health and Social Protection No. 37/N dated 20 January 2009, a person may be enrolled in a replacement therapy programme in exceptional circumstances such as existence of special medical and social indications. No such exception is envisaged by the "Rules of implementing replacement therapy programmes to deal with opioid addiction in the penitentiary institutions" (approved by the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008). We believe the Joint Order is therefore defective, since it makes enrollment of prisoners in a replacement therapy programme impossible even if there are exceptional circumstances such as special medical and social indications.

The only service available within the penitentiary system in this context is detoxication using a replacement drug but this service is incapable of fully handling the needs of drug-addicted prisoners. Accordingly, it is necessary to introduce a preservation-aimed replacement therapy.

Recommendations:

To the Minister of Labor, Health and Social Protection and the Minister of Justice

- **To revise the Joint Order of the Minister of Labor, Health and Social Protection and the Minister of Justice No. 266/N-298 dated 12-15 December 2008 on the "Rules of implementing replacement therapy programmes to deal with opioid addiction in the penitentiary institutions", including by adding rules of enrolling patients in the replacement therapy programme where there special clinical and social indications exist.**

To the Minister of Corrections and the Minister of Labor, Health and Social Protection

- **To take appropriate measures within their competence to introduce a preservation-aimed replacement therapy in the penitentiary system.**

Management and prevention of very dangerous contagious diseases

According to information provided by the Ministry of Corrections, screening on tuberculosis was conducted in 65,130 cases in 2013. A total of 294 prisoners infected with tuberculosis have been registered. In 2013, 107 bacteria-emissive prisoners underwent treatment. 57 prisoners are ill with multi-drug-resistant tuberculosis (MDR TB). 20 cases of terminated treatment were registered in 2013.

Pursuant to information received from the Ministry of Corrections, a sensitive form of tuberculosis grew into a resistant form in 44 cases. 4 TB-infected prisoners died. In 2013, prisoners were transferred to various civilian medical establishments for testing on or treatment of accompanying diseases in 202 cases.

A monitoring visit paid to the Center for the Treatment of Tuberculosis and Rehabilitation on 21 December 2013 showed that the conditions of living at the Center are satisfactory in general. However, infection control is a matter of concern. There is a ventilation system working with negative pressure installed in the cells but the prisoners say most times the system is switched off. The inmates are disturbed also by the noise caused by operation of the ventilation system. Prisoners move around inside the premises of the institution without wearing protective surgical masks. In their cells, they do not have containers/vessels for sputum. The division of extensive and multi-drug-resistant tuberculosis is located in another building. Prisoners suffering from tuberculosis are complaining of poor management of side effects of anti-TB medications and poor treatment of accompanying diseases. Pursuant to information received from the Ministry of Corrections, in 2013, anti-TB treatment was terminated in 20 cases. It should be noted that this figure does not accurately represent prisoner obedience in accomplishing treatment courses because, formally, under the TB Management Guidelines, an anti-TB treatment is considered terminated only if a patient refuses to follow the indicated treatment for two months or more in a row;[87] in reality, however, prisoners stop taking medications several times, for different time periods. Prisoners may stop taking drugs for various reasons such as side effects of the drug treatment or protest against inadequate medical assistance in handling the accompanying diseases. Be it this or other reasons, stopping treatment is dangerous as resistant form of tuberculosis may develop as a result. Unfortunately, of the 294 prisoners who became infected with tuberculosis in 2013, 57 prisoners have developed the multi-drug-resistant form (MDR TB). Sadly, moreover, in 44 cases a sensitive form of tuberculosis grew into a multi-drug resistant form, according to the information provided by the Ministry of Corrections.

The monitoring revealed that, by 21 December 2013, the Center for the Treatment of Tuberculosis and Rehabilitation was housing 187 prisoners, while it is designed to accommodate as many as 698 patients. TB-infected prisoners involved in the DOTS programme are accommodated also at the Penitentiary Institutions nos. 8, 6 and 17; women prisoners are undergoing their treatment in the Institution No. 5.

During its monitoring activities at the Penitentiary Institution No. 8 through 24 – 25 December 2013, the monitoring group found out that prisoners infected with TB are accommodated on the second floor of the "E" wing in the 1st Regime Building. Untried prisoners are accommodated in the same building. By 24-25 December, there were 3 smear positive, 18 smear negative, 4 extensive and 10 multi-drug-resistant TB-infected prisoners; 35 in total. Having talked to the healthcare staff of the Institution, we found out that the DOTS programme objectives were not being implemented properly since it was virtually impossible for the healthcare staff to observe whether and how the TB-infected prisoners were administering their drug treatment. The cells where TB patients were accommodated had no separate ventilation system to ensure negative pressure – something that is a violation of infection control requirements endangering other untried prisoners accommodated in the same building.

For these reasons, it is advisable to accommodate all the prisoners involved in the anti-tuberculosis treatment programme at the Center for the Treatment of Tuberculosis and Rehabilitation, which has a sufficient number of beds and appropriate infrastructure.

Recommendation to the Minister of Corrections:

- **To take all the infection-control measures according to the TB Management Guidelines at the Center for the Treatment of Tuberculosis and Rehabilitation;**

87 Guidelines for the Management of Tuberculosis approved by the Order of the Minister of Labor, Health and Social Protection No. 22 June 2013, available at http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=68&info_id=1486 [last accessed 15.03.2014].

- **To transfer all of the prisoners infected with tuberculosis to the Center for the Treatment of Tuberculosis and Rehabilitation for the purpose of duly managing TB cases;**
- **To examine every case where prisoners refuse to continue taking anti-tuberculosis drugs on account of negative side effects or because they be treated for accompanying diseases; if prisoners' claims are justified, they must be provided with treatment of accompanying diseases in a timely manner.**

According to the information received from the Ministry of Corrections, 4,701 prisoners were tested on hepatitis in 2013. Of these, 8 prisoners enrolled in an anti-virus treatment. In the reporting period, the Minister of Labor, Health and Social Protection issued its Order No.01-5/n dated 31 January 2014 approving the "Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in remand facilities and institutions for sentenced prisoners". Pursuant to Article2(2) of the Rules, the programme goals are to prevent virus hepatitis C from spreading, to make voluntary testing accessible for all and to provide anti-HCV positive patients with the appropriate clinical and lab examination opportunity. The programme is also aimed at treating patients with HCV infection to be selected by established criteria.

Under Article 7(2) of the Rules, a convicted person is eligible for anti-virus treatment if he has been diagnosed with hepatitis C and has liver fibrosis scoring at 2 or higher by the METAVIR scale; in addition, the convicted person must have been sentenced to imprisonment and whose actual sentence is more than 18 months. Any additional punishments for crimes committed while in prison after the anti-virus programme was launched will not be counted towards the above-mentioned 18 months. We think this sentence duration requirement contradicts Article 14 of the Code of Imprisonment, which entitles both remand prisoners and sentenced prisoners to be provided with medical services. We believe the Rules should be amended to allow prisoners sentenced to less than 18-month imprisonment and remand prisoners to enroll in the anti-virus treatment if they meet the other remaining criteria as described above. Alternatively, a separate set of eligibility criteria may be established for the latter category of sentenced and remand prisoners but, in any event, completely deprivation of anti-virus treatment opportunities within the programme is not justifiable since these prisoners are facing a realistic threat of their health being injured irreversibly.

Finally, the impugned Rules establish a discriminatory approach in contravention of the positive obligation of the State derived from the European Convention on Human Rights to secure health and wellbeing of prisoners.[88]

Recommendation to the Minister of Labor, Health and Social Protection:

- **To amend the Order of the Minister of Labor, Health and Social Protection No.01-5/n dated 31 January 2014 approving the "Rules of approving and implementing the programme for preventing, diagnosing and treating virus hepatitis C in pretrial detention facilities and institutions for sentenced prisoners" with a view of ensuring anti-virus treatment to any accused/convicted person where there is a medical indication that treatment is necessary.**

Prisoners who are unfit for long-term imprisonment

For many years, the prison population in Georgia included prisoners who were unfit for long-term imprisonment due to either medical condition or age. The Joint Steering Commission composed of representatives from the two Ministries (the Ministry of Corrections and the Ministry of Labor, Health and Social Protection) was not operational in reality. The procedure of postponing judgment enforcement was virtually unenforceable in real life.

We wish to commend the concrete steps made towards eradicating this problem. On 18 December 2012, the Minister of Corrections and Legal Assistance and the Minister of Labor, Health and Social Protection issued a Joint Order No. 181/01-72/N approving the Statute of a re-created Joint Steering Commission. Civil society organizations were actively involved in drafting the Statute. Furthermore, the Minister of Labor, Health and Social

88 Kudla v. Poland, par. 94.

Protection issued the Order No. 01-6/N dated 15 February 2013 approving a list of serious and incurable diseases mandating release of a diseased prisoner from serving the sentence. This change boosted the effectiveness of the Joint Steering Commission; in particular, during 2013, 95 prisoners were released from the obligation to serve their sentence of whom 60 inmates were released on account of health condition and 35 due to age.

As regards the postponement of judgment enforcement, this procedure was applied in relation to 10 prisoners in 2013. On 14 June 2013, the Code of Criminal Procedure was amended making it possible to postpone enforcement of convicting judgments based on alternative forensic medical reports.[89] With participation by civil society organizations, a new version of Article 283 of the Code of Criminal Procedure was drafted, which is fully compatible with the attitude of the European Court of Human Rights towards the matter of postponement of sentence execution. Under the new Article 283, enforcement of a convicting judgment against the convicted individual may be delayed by the court that had passed the convicting judgment, on the basis of a forensic medical report, if the individual is unfit for imprisonment on account of his/her medical condition, until the time he/she fully recovers from the illness or his/her condition improves substantially.

The draft law,[90] although submitted to the Georgian Parliament, was not yet adopted by the end of the reporting period.

The mentioned legal mechanism requires betterment and should be used more effectively in the future so that prisoners who are unfit for long-term imprisonment are not subjected to inhuman and degrading treatment.

Deceased prisoners

Pursuant to the data provided by the Ministry of Corrections, 25 prisoners died in 2013.

Table 8

№	Name and birthdate of the deceased	Institution	Medical condition	Place of death	Death reason
1.	S.G. 29/09/1965	N16	HIV/AIDS phase C3, pneumocystic pneumonia, HIV-associated wasting syndrome, terminal condition, chronic hepatitis C, tuberculosis on both lungs, smear negative, residual events following an ischemic stroke such as hemiparesis, acute respiratory insufficiency.	Medical Institution for Accused and Convicted Persons	Acute respiratory and cardiovascular insufficiency
2.	A.T. 30/06/1969	N18	Pneumonia on both lungs, acute respiratory inufficiency, bronchial asthma, lung tuberculosis in the past, subcutaneous hematoma in the area of arterial-venous fistula, virus hepatitis C, chronic liver insufficiency, hepatosplenomegaly, sepsis.	Academician O. Gudushauri National Medical Center	Acute respiratory and cardiovascular insufficiency developed as a result of sepsis.

89 Under Article 283(1) of the Code of Criminal Procedure, a trial court may postpone enforcement of a convicting judgment based on a forensic medical report if it is the first time the convicted person has been sentenced to imprisonment. The court may decide the postponement issue either within the convicting judgment or separately, in a court decision handed down after the convicting judgment is passed. The enforcement of a convicting judgment may be postponed for at least one of the following reasons: a) if the convicted person has a serious illness that obstructs his serving of the sentence, the enforcement may be postponed until the time he/she fully recovers from the illness or his/her condition improves substantially; or b) if the convicted person is pregnant by the time the convicting judgment is due to be enforced, the enforcement will be postponed until 1 year passes after delivery.

90 See the full text of the draft law and the appended explanatory note at
https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2083564&lang=ge [last accessed 14.03.2014].

3.	I.R. 11/08/1959	N18	Infiltrated tuberculosis of the right lung in the putrefying and seeding phase, smear positive, complicated exudative pleurisy on the right side, post-infarction cardio-sclerosis, 3rd degree lung and heart insufficiency, chronic virus hepatitis C, stones in the left kidney, asthenic syndrome, cachexia.	National Center of Tuberculosis an Lung Diseases	Growing respiratory and cardiovascular insufficiency developed as a result of tubercular intoxication.
4.	Ts.R. 15/12/1951	N14		Penitentiary Institution No. 14	Sudden death
5.	M.E. 16/07/1968	N2		Penitentiary Institution No. 2	Sudden death
6.	K.V. 10/03/1956	N8	Infiltrated tuberculosis of the left lung in the putrefaction and seeding phase, schizoid-type disorder, hallucinatory anxiety syndrome.	Medical Institution for Accused and Convicted Persons	Increasing respiratory and cardiovascular insufficiency
7.	E.N. 22/11/1951	N15	2nd degree arterial hypertension, acute bronchitis, left kidney cyst, scoliosis, paranoid syndrome.	Medical Institution for Accused and Convicted Persons	Acute cardiovascular insufficiency
8.	D.T. 05/02/1973	N17		Penitentiary Institution No. 17	Cardiac infarction, cardiovascular insufficiency
9.	Kh.D. 13/06/1976	N2		Penitentiary Institution No. 2	Sudden death
10.	A.K. 26/03/1974	N2		Penitentiary Institution No.	Suicide
11.	K.L. 15/10/1988	N14	Closed craniocerebral and craniofacial injury, bruised cerebral and facial soft tissues, hematomas and excoriations, linear fracture of nasal bones, acute subarachnoid hemorrhage.	Z. Tskhakaia National Intervention Medicine Center	Acute cardiovascular insufficiency
12.	T.Z. 04/06/1980	N18	Delirious organic disorder, epilepsy with generalized seizures, artificial heartbeat rhythm	Medical Institution for Accused and Convicted Persons	Acute cardiovascular insufficiency
13.	D.J. 25/12/1976	N8	Acute strangulated intestinal obstruction, acute diffusive peritonitis, acute sepsis, septic shock, fistula in the thin intestine, ulcerous and necrotic disseminated gastroenteritis with complicated bleeding.	Academician O. Gudushauri National Medical Center	Acute respiratory and cardiovascular insufficiency
14.	K.T. 05/10/1967	N17		Penitentiary Institution No. 17	Sudden death, Acute respiratory and cardiovascular insufficiency

15.	Q.V. 14/06/1951	N8	Large hematoma in the infrarenal section of the abdominal aorta, hematogenic shock, liver insufficiency, acute insufficiency of kidneys, virus hepatitis C, post-hypoxic toxic encephalopathy	Central Clinic of Tbilisi	Acute respiratory and cardiovascular insufficiency
16.	J.G. 17/01/1951	N6		Penitentiary Institution No. 6	Suicide
17.	K.D. 03/04/1975	N8		Penitentiary Institution No. 8	Chronic hepatitis C, hepatosis, myocarditis
18.	Dz.G. 14/03/1997	N2		Penitentiary Institution No. 2	Suicide
19.	B.V. 20/04/1967	N8		Penitentiary Institution No. 8	Sudden death
20	G.V. 19/02/1962	N19		The Center for the Treatment of Tuberculosis and Rehabilitation	Suicide
21.	K.G. 05/06/1980	N2		Penitentiary Institution No. 2	Sudden death
22.	I.S. 31/07/1966	N14		Penitentiary Institution No. 14	Sudden death
23.	Gh.F. 08/06/1959	N19		The Center for the Treatment of Tuberculosis and Rehabilitation	Disseminated lung tuberculosis, smear positive, multi-drug-resistant form; respiratory and cardiovascular insufficiency.
24.	B.D. 10/12/1980	N8		Penitentiary Institution No. 8	Suicide
25.	R.I. 14/04/1972	N19	Fibro-cavernous tuberculosis on the right lung, smear positive, multi-drug-resistant form, insomnia of non-organic origin, chronic prostatitis, myocardiodystrophy, straight hernia on the left groin, chronic hepatitis C without active pathological process	The Center for the Treatment of Tuberculosis and Rehabilitation	Suicide

The way the data are arranged in the above table shows that the death reasons are indicated differently in different cases. The most frequently indicated reason of death is "respiratory and cardiovascular insufficiency"; only in one case it is indicated thta death was caused by "chronic hepatitis C, hepatosis and myocarditis". It should also be noted that in 6 out of 25 cases the indicated reason of death is only "sudden death" with no further details are provided.

In 1967, the Twentieth World Health Assembly stated that a medical certificate of cause of death should indicate "all those diseases, morbid conditions or injuries which either resulted in or contributed to death and the circum-

stances of the accident or violence which produced any such injuries". The purpose of entering the mentioned information is to ensure that all the relevant data is recorded and that the certifier does not select some conditions for entry and reject others. The Assembly-provided explanation does not suggest inclusion of symptoms and signs accompanying the process of dying, such as heart failure or respiratory failure. To adhere to the above-mentioned purpose, the WHO developed an international form of medical certificate of cause of death[91] on which basis the Georgian Minister of Labor, Health and Social Protection and the Georgian Justice Minister issued a Joint Order No. 01-5/N-19 dated 31 January 2012 approving a form of medical certificate on death and the rules of filling in and forwarding the certificate. Accordingly, it is necessary to produce and maintain statistical data on causes of death according to the requirements of the template for medical certificate of death.

Unfortunately, there were 6 suicide cases within the Georgian penitentiary system in 2013 (amounting to 24% of all deaths in the penitentiary during that year), which is higher than the previous year index.[92] In one case, in Penitentiary Institution No. 14, a sentenced prisoner died as a result of violence he was subjected to by other prisoners. Notably, another prisoner died in the same institution on 4 March 2014 as a result of injuries inflicted by other individuals. These facts do raise concerns and we believe the Ministry of Corrections must, having assessed applicable risks, take all the reasonable measures with a view of preventing infringement of prisoners' lives and suicide occurrences in future.[93]

TORTURE AND INHUMAN TREATMENT; TORTURE PREVENTION STANDARDS

In the reporting period, ill-treatment was no longer a systemic issue but individual cases were recorded. Documenting injuries by the healthcare personnel remains a problem. Injuries found on prisoners' bodies are not registered in the injuries' journals and medical documents according to the rules prescribed in the Istanbul Protocol.

The healthcare personnel have a special role in combating ill-treatment. Documenting traces of ill-treatment by the medical staff is of crucial importance to making an effective investigation possible. Doctors have to respect the patients' best interests of the patient and maintain confidentiality. However, at the same time, doctors have strong moral grounds to openly denounce evident maltreatment. Where prisoners agree to disclose that they have been ill-treated, doctors are obliged to forward the information to investigative authorities. But if a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in preventing the perpetuation of abuse.[94]

Physicians examining an individual should be prepared to assess possible injury and abuse even in the absence of specific allegations by the patient. They should also be able to document physical and psychological evidence of injury or abuse and to correlate the degree of consistency between examination findings and specific allegations of abuse by the patient.[95] To describe the degree of consistency, physicians may use terms such as "not consistent", "consistent", "highly consistent" and "typical appearance".[96] Physicians should use a standardized medical report form for documenting purposes.[97] Examination must be carried out in private, with no third parties present in the examination room.[98]

Healthcare personnel of penitentiary institutions are enter information about bodily injuries into journals for registration of injuries indicating the origin of the injuries in brief. Information about the origin of injuries is entered under one of the following sections: "self-injury", "everyday life injury" or "injured by other person". Doctors are

91 The Order of the Minister of Labor, Health and Social Protection No. 01-10/N dated 11 March 2011 approving "Rules of using medical classificators in medical recordkeeping" added to the Order of the Minister of Labor, Health and Social Protection No. 92/N dated 12 April 2012 the following Annex 4: "Annex 4: International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Instruction Manual."

92 4 cases were recorded in 2012.

93 See, among others, Osman v. the United Kindgom, Judgment of 28 October 1998, par. 115-16; Ketreb v. France, Judgment of 19 July 2012.

94 Istanbul Protocol, par. 72.

95 Ibid., par. 122.

96 Ibid., par. 187.

97 Ibid., par. 125.

98 Ibid., par. 124.

not evaluating the consistency of prisoners reports about types of injuries and the way they occurred. In describing injuries, doctors are not following the Istanbul Protocol requirements. Pursuant to the official information received, 3,747 cases of bodily injuries were registered in 2013, including 2,529 self-injuries and 606 everyday life injuries.

For the purpose of properly documenting ill-treatment and facilitating investigation into allegations of ill-treatment, it is crucial that a relationship of trust is built between the doctor and the victim of ill-treatment. Unfortunately, in the previous years, the deep-rooted problem of wholesale ill-treatment within the Georgian penitentiary system undermined the confidence in the the penitentiary healthcare personnel.

The healthcare personnel must not partake in any activity unless the sole purpose of their intervention is patient care. In performing their professional duties, the medical personnel must be guided with ethical values, respect for human honor and dignity, fairness and compassion. Healthcare personnel must act only in the interests of the patient and must not use their knowledge and experience in contravention of humanity principles. In making professional decisions patients, health professionals must be free and independent, must not act with self-interest and must care for raising the prestige of the medical profession.[99] Adherence to the confidentiality principle is crucial for gaining the trust of prisoners but the monitoring revealed a different reality.[100]

Recommendation to the Minister of Corrections:

- **To develop and introduce a new form for registration of injuries in accordance with the Istanbul Protocol requirements allowing more information to be entered about the injuries;**
- **To provide the penitentiary healthcare personnel with advance training in documenting ill-treatment.**

99 Law of Georgia on Healthcare, Article 30.

100 See sub-chapter entitled "Confidentiality and informed consent".

HUMAN RIGHTS IN THE AGENCIES UNDER THE MINISTRY OF INTERNAL AFFAIRS

POLICE

This report describes the results of the monitoring carried out by the National Preventive Mechanism at police units and divisions under the Ministry of Internal Affairs of Georgia.

During the monitoring, the monitoring group examined journals for registration of detainees and journals for registration of individuals transferred to temporary detention isolators. It should be noted that these journals are filled out either incompletely or incorrectly. Thus, sometimes it is impossible to discern the time of arrest, the time and date of bringing the detainee to a district police unit or the subsequent fate of the detainee. Sometimes the numbering in the journals is messed up or there is no indication about where and how the impugned offence was committed. Relevant provisions from the Criminal Code are not referenced. Sometimes some sections are left empty.

When examining the journals at various facilities, the monitoring group found most of the violations in the police units of Keda, Batumi, Bolnisi, Dedoplistkaro, Lagodekhi and Kaspi. The least number of violations (2 in each case) were found in the journals kept at local district police units in Akhalkalaki, Gardabani and Khoni.

The Special Preventive Group's attention was captured by the fact that individuals were often times arrested and transferred to specialized institutions for testing on drug use.

For example, in the period of January – June, the Zugdidi division of the Samegrelo – Zemo Svaneti police arrested up to 1,600 individuals for alleged drug consumption but the actual consumption was proven only in 130 cases. These figures raise serious concerns since more than 90% of arrested individuals turned out to have been arrested on false suspicion. This leads us to conclude with a high probability that, in arresting these individuals, the police was acting not on the basis of a reasonable doubt test but arbitrarily.

The law enforcement officers we interviewed in the course of the monitoring confirmed that they were using such arrests as a preventative tool. In other words, the police wanted to make an impression that anyone may get arrested and tested regardless of whether the police have a reasonable doubt about a particular individual.

During the monitoring, members of the Public Defender's National Preventive Mechanism were allowed to enter without any difficulties and move freely in both the territories of penitentiary institutions and Interior Ministry's district units and temporary detention isolators. The only exception was the Sagarejo District Division of the Kakheti Chief Regional Division where the members of the Special Preventive Group denied the right to enter the police building. In particular, on 17 October 2013, the Public Defender's National Preventive Mechanism was visiting the Sagarejo District Division of the Ministry of Internal Affairs with a view of examining journals for registration of detainees and journals for registration of individuals transferred to temporary detention isolators.

On entering the duty officer's room, the trustees of the Public Defender explained the duty officer the reason of their visit. As they were talking to the officer, Giorgi Revazishvili, Deputy Chief of the Sagarejo District Division came into the duty room who insisted that the Public Defender's representatives leave the room. Although we explained the Public Defender's rights under the Organic Law of Georgia on the Public Defender, he behaved himself defiantly continuing to demand with a loud voice that the members of the Office of the Public Defender leave the duty room. Then, Giorgi Revazishvili used the help of another person dressed up in civilian clothes, al-

legedly a police officer, to force our representatives out from the room.

By his behavior, Giorgi Revazishvili hindered the Special Preventive Group from performing its functions and used physical violence against the group members. By doing so, Giorgi Revazishvili violated the requirements of the Organic Law of Georgia on the Public Defender of Georgia and exceeded his rights prescribed by law.

On this ground, on 18 October 2013, the Public Defender addressed the Minister of Internal Affairs with its Recommendation No. 771/03 advising the Minister to personally inquire into the obstruction of activities of the Public Defender's Special Preventive Group and the exceeding of official powers prescribed by the Georgian legislation by Giorgi Revazishvili, Deputy Chief of the Sagarejo Police Division. In his Recommendation, the Public Defender asked the Minister of Internal affairs to take appropriate measure to respond to this incident. The Ministry of Internal Affairs then informed by the Public Defender by its Letter No. 2446496 dated 29 November 2013 that employees of the Ministry of Internal Affairs – Giorgi Revazishvili, Manuchar Gabelia and Elguja Javakhishvili – were issued recommendatory letters on the basis of a report of the Ministry's Inspectorate-General.

Members of the Special Preventive Group have been monitoring police stations and divisions for years but they have never ever encountered such a problem before. Monitoring of both police units and temporary detention isolators was always going on smoothly without any artificial obstacles. Members of all of the police divisions and temporary isolators, including the employees of the Sagarejo temporary detention isolator, have fully cooperated with the Public Defender's representatives in the past helping them conduct their monitoring in a full-fledged manner. We hope that the incident at the Sagarejo police will stay an exception and will never be repeated so that members of the Public Defender's Office are not prevented from performing their duties.

TREATMENT

The Georgian Ministry of Internal Affairs truly plays a crucial role in protecting public safety and maintaining a good legal order in a democratic state. In implementing its functions, the police must respect the honor and dignity of citizens as members of the society and must not tolerate violation of human rights and freedoms. The extent to which human rights are protected in a given State depends much on how effective the police work is. In addition, the Georgian Ministry of Internal Affairs is responsible for each of its employee's operation with the human rights standards.

The Georgian legislation determines the forms, methods and means of how the police should implement their functions. Under the Law on Police, all police officers are obliged to firmly adhere to the principles of protection and respect for human rights and fundamental freedoms, lawfulness, prohibition of discrimination, proportionality, discharge of discretionary powers, political neutrality and transparency of the police activity. Forms, methods and means of police work must not be such as to encroach on the right to life, inviolability of person and property rights or other fundamental rights and freedoms. In performing their duties, police members must not be inflicting damage to the environment. Torture, inhuman or degrading treatment are never permissible in carrying out police measures.

It is unfortunate that police officers are not always adhering to these principles and causing violations of human rights to happen. This conclusion is based on the monitoring results and the analysis of citizens' complaints filed with the Public Defender's Office during the reporting period. Pursuant to the Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment,[101] all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

In the course of its monitoring activities, the Special Preventive Group examines the treatment of detainees by the police both during and after arrest. In the reporting period the Public Defender received complaints from citizens about ill-treatment administered by police at the time of arrest. The Public Defender's Office forwarded the materials about each of these allegations to the Chief Prosecution Office.[102] The replies received from the Chief Prosecution Office suggest that none of the law enforcement officials possibly involved in ill-treating the citizens were prosecuted or tried by courts. This situation raises some valid concerns about effectiveness of how authorities

101 Adopted by the Resolution of the UN General Assembly No. 43/173 dated 9 December 1988.

102 For more details about some these cases, please see a sub-chapter entitled "Alleged excessive use of force by law enforcement agents", p. 178.

are investigating these cases.

In 2013, 16,533 individuals had been detained in temporary detention isolators. 7,095 of these individuals had injuries of whom 359 alleged that they had been injured either during or after arrest. Only 111 individuals complained about how police treated them and their complaints were forwarded to the Prosecution Office for further action.

When monitoring the temporary detention isolators, the Special Preventive Group examined locally held protocols about external injuries found on the bodies of detainees. In some cases, the detainees were not complaining about the police behavior but indicated that they had been injured during their arrest. Sometimes the degree and the seriousness of injuries described were such as to reasonably lead to a conclusion that the individual had been subjected to ill-treatment. On a number of occasions, the detainees stated that they had been ill-treated by the police but refused to make any complaints either to the representatives of temporary detention isolators or on admission to the penitentiary institutions since, as they explained, they feared the proceedings in their case would go in an unfavorable direction if they'd start complaining about the authorities.

We would like to note a positive development that none of the individuals detained in temporary detention isolators and penitentiary institutions complained about any ill-treatment the employees of the isolators. As already mentioned, in some cases the prisoners alleged the police treated them violently but, when it comes to the staff of temporary detention isolators, the detainees said, they behaved correctly trying to take their needs into account as much as possible.

The monitoring showed that when an individual is brought to a temporary detention isolator with various injuries, the isolator administration will involve the prosecution office only if the detainee complains of the actions of the law enforcement bodies.

In terms of effectiveness of investigation into possible ill-treatment, the European Committee for the Prevention of Torture (CPT) has stated that when persons detained by law enforcement agencies are brought before prosecutorial and judicial authorities, this provides a valuable opportunity for such persons to indicate whether or not they have been ill-treated. Further, even in the absence of a clearly expressed complaint, these authorities will be in a position to take action in good time if there are other indicia (such as visible injuries, a person's general appearance or behavior) that ill-treatment might have occurred.[103]

The Public Defender has recommended many times that if the nature of the injuries on the detainee's body suggests that the person might have been ill-treated, the administration of the temporary detention isolator should, whether or not the detainee is complaining, notify a supervising prosecutor thereabout for the latter to examine the origin of the injuries. Unfortunately, the Public Defender's recommendation has not be fulfilled this far.

LIVING CONDITIONS IN TEMPORARY DETENTION ISOLATORS

We believe the living conditions of individuals detained in temporary detention isolators must be consistent with both national and international standards. Under Article 10 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, "all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting heating and ventilation."

Pursuant to the Order of Interior Minister No. 108 dated 1 February 2010 approving the "A model statute for temporary detention isolators, internal regulations of the isolators and additional instructions on the operation of the isolators", the floor space per each person detained under the administrative rule shall be no less than 3 square meters; the place of administrative detention shall have a window of such properties as to allow daylight in and provide natural ventilation; the place where administrative detainees are accommodated must also be provided with heating appropriate to seasonal requirements; individuals detained under the administrative rule must be provided with beds, matrasses, blankets and linen that are compatible with health requirements and are appropriate for normal sleep. Administrative detainees have the right to receive parcels, food and clothes. Individuals who have been sentenced to administrative detention for more than 7 days and nights as well as juveniles who have been sentenced to administrative detention for more than one day and night must be able to take a shower twice a week

103 14th General Report on the CPT's activities, 2004, par. 28.

and take a walk for at least one hour each day. In the isolators that have no special walking yard, the detainees may be taken out to take a walk outside the police division's administrative building or in the adjacent territory. Detainees must also be able to satisfy their natural needs in compliance with sanitary and hygienic norms, 24 hours a day. Toilets must be equipped with sanitation items. Individuals who have been sentenced to more than 30 days of administrative detention, upon their request, must be provided with hairdressing services. The administration of the place of enforcement of administrative detention does not have the right to force administrative detainees to shave their heads unless there is a medical indication or hygienic necessity to do so. Individuals who have been sentenced to administrative detention for more than 30 days as well as juveniles who have been sentenced to more than 15 days may be granted the right to receive two visits a month and have a ten-minute conversation once a month. Administrative detainees also have the right to subscribe for and/or receive any literature, magazines and newspapers at their own expense. They are entitled to send complaints, applications and letters. Pursuant to the above-cited ministerial order, administrative detainees may get registered as prospective students according to the rules established by the Georgian Ministry for Education and Science by applying for participation in the Unified National Examination. Furthermore, administrative detainees must be provided with all the conditions for not falling behind with the general education programme.

There are 37 operational temporary detention isolators in Georgia. Two of them are located in Tbilisi, and others are in the regions. In a majority of temporary detention isolators in the Georgian regions, ventilation systems are practically dysfunctional. Small-size windows are insufficient to provide natural ventilation and lighting. The cells are not heated properly. Walking yards are mostly out of order. For illustrative purposes, we provide some summaries of the situation existing in some of the temporary detention isolators.

The temporary detention isolator in Dusheti

The isolator does not have a walking yard. As the isolator staff explained, the detainees are taken out for walk to breathe in some fresh air outside the building but they have to sign an affidavit, which is a warning about the liability in case of fleeing. The cells are not ventilated. There is no sufficient natural or artificial lighting.

The temporary detention isolator in Mtskheta

The isolator has a walking yard which is unroofed and cannot therefore be used in rain or snow. There is no sufficient natural or artificial lighting in the cells. The toilets inside the cells are not isolated and it smells bad in the cells. The ventilation system does not ensure ventilation.

The temporary detention isolator in Gardabani

The isolator is located in the basement of the premises of the Gardabani District Police of the Kvemo Kartli Regional Division of the Ministry of Internal Affairs. The cells in the basement have no natural lighting or ventilation. No heating or artificial ventilation systems are functional. The shower room is unrepaired and unequipped. The cells do not have sufficient artificial lighting inside. The entire basement is humid. Instead of beds, the detainees have to sleep on wooden planks. The detainees in the cells have to wash their hands with water from a pipe that is designed to flush the toilet and is installed at the height of about 30 centimeters from the floor.

The temporary detention isolator in Marneuli

There are no tables and chairs in the cells. The floor is made of concrete. The natural and artificial lightings are insufficient. There are no water taps inside the cells and the detainees have to use water from the pipe designed for flushing the toilet; the pipe is located at about 25 centimeters above the floor. Detainees are provided with items of personal hygiene and linen by their family members.

The temporary detention isolator in Rustavi

The cells in the isolator have no tables and chairs. The natural and artificial lightings are insufficient. There is some specific odor in the cells due to insufficient ventilation. The detainees have to sleep on wooden planks. The water taps are regulated from outside the cells, by the isolator staff. The detainees are getting items of personal hygiene and linen from their families. There is no shower room in the isolator.

Detainees are not allowed to receive filter cigarettes through parcels even though there is no normative act preventing the detainees from doing so or governing this issue in any other way. We believe this limitation is unnecessary

and the current bad practice is simply a remnant of old regulations that were aimed at preventing any sharp objects getting in the hands of prisoners as it was believed that a cigarette filter could be used to make such an item. Nowadays, the current regulations allow prisoners to have plastic-made items that are way easier to transform into sharp objects. Accordingly, it is difficult to justify the current limitation on filter cigarettes as a matter of either the fact or the law.

The temporary detention isolator in Lentekhi

The isolator is located in the police building in Lentekhi. It is separated from the rest of the building with iron bars and a wooden door. The isolator consists of two cells only. Each cell is designed for two individuals. At the time of monitoring, the light bulb in the cell was fused and the only light reaching cell was in part was the one coming from the police building. Because the cell has no window, the daylight penetrates only through the holes in the wooden planks mounted on the bars on the top of the cell. At the time of monitoring, there was one detainee in the cell who stated that he had not been subjected to any physical or psychological pressure. After his arrest, an ambulance team was called up because the detainee felt bad.

According to the detainee, he was receiving food and items of hygiene from his relatives. Water was provided with a bottle. No food was available locally. The cell had no ventilation or heating system. The wooden door of the cell was always open; only the bars were locked. The door would never get shut even if the detainee wanted to change his clothes. A toilet was located outside the cells, in the police building. The shower room was dysfunctional as there was no hot water supply.

The temporary detention isolator in Lentekhi is incompatible for accommodating detainees and therefore should be shut down.

Nutrition is one of the major problems of temporary detention isolators. Pursuant to the information received from the Ministry of Internal Affairs and our interviews with the detainees, the detainees are served meals thrice a day. The meals consist of sugar, tea, pâté, dry soup, bread and canned meat. According to official information, detainees in the temporary detention isolator no. 1 in Tbilisi and the isolators in Mtskheta-Mtianeti are served bread, buckwheat, macaroni in oil, boiled potatoes, pea soup, borsch (beetroot soup), cutlet, goulash, beans, fish, mashed potatoes, vegetable salad, fried vegetables and tea. We believe that, at the temporary detention isolators, where people serve their administrative detention which may last for as long as 90 days, it is important that the detainees be provided with proper food ration because eating pâté, dry soup and canned meat all the time for a long time period may cause problems with digestive system.

Recommendations to the Minister of Internal Affairs:

- **To set up new institutions specially designed for administrative detainees and suitable for accommodating such detainees for long periods of time, with consideration paid to a geographical principle;**
- **To install central heating in the cells at all temporary detention isolators; to provide the cells with proper lighting and ventilation, including natural lighting and ventilation;**
- **To isolate toilets at all of the temporary detention isolators;**
- **To create conditions required for maintaining hygiene at all of the temporary detention isolators, including by installing washstands and taps in the cells so that detainees can use water independently;**
- **To ensure that detainees have the opportunity of taking a walk outside to breathe some fresh air, every day, in a specially designed area;**
- **To remove the wooden planks from the cells in all of the temporary detention isolators and to provide each detainee with a bed of his own;**
- **To ensure that detainees in all of the temporary detention isolators are provided with proper food ration.**

CONDITIONS OF DISABLED INDIVIDUALS IN PENITENTIARY INSTITUTIONS, THE INSTITUTION FOR INVOLUNTARY PSYCHIATRIC TREATMENT AND TEMPORARY DETENTION ISOLATORS

Through 21 October – 13 November 2013, with the financial support of the Open Society – Georgia Foundation, the National Preventive Mechanism monitored the performance by the Georgian Government of its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) in relation to disabled people in penitentiary institutions, the psychiatric institution and temporary detention isolators. It is for the first time in Georgia that the National Preventive Mechanism carried out such monitoring. Importance of this report is also mandated by the fact that on 26 December 2013 the Parliament of Georgia ratified the 2006 United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). This Chapter describes basic trends and recommendations revealed by the monitoring. The results of the monitoring are being prepared and will be published as a separate report in the near future.

The following institutions were selected for monitoring:

- Penitentiary Institution No. 5
- Penitentiary Institution No. 11
- Penitentiary Institution No. 12
- Penitentiary Institution No. 8
- Penitentiary Institution No. 2
- Penitentiary Institution No. 15
- Penitentiary Institution No. 17
- LLC "Academician B. Naneishvili National Center of Psychic Health"
- The temporary detention isolator of the Ministry of Internal Affairs in Gardabani
- The temporary detention isolator of the Ministry of Internal Affairs No. 1
- The regional temporary detention isolator of the Ministry of Internal Affairs in Kakheti

The actual monitoring was preceded by a several-month preparatory phase when we processed and analyzed all of the accessible academic and normative resources.

The monitoring showed that the needs of people with disabilities are not taken into account at pretrial detention facilities and institutions for sentenced prisoners, the institution for involuntary psychiatric treatment and temporary detention isolators. Problems revealed in each of these institutions will be discussed below in detail.

According to the monitoring results, statistical data about disabled individuals and their needs are not produced

and maintained. In none of the institutions monitored did the administration provide the Special Preventive Group members with a full list of disabled individuals at their respective institutions. In fact, none of the monitored institutions has established criteria to identify people with disabilities.

For this reason, it was difficult or, virtually impossible, to check whether the number of the staff members of these institutions was sufficient to support the existing number of disabled individuals – a requirement that must be complied with by any institution having persons with disabilities, according to the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. In particular, pursuant to Principle 14, a mental health facility shall have qualified medical and other appropriate professional staff in sufficient numbers (this requirement equally applies to penitentiary institutions having persons with mental health problems (Principle 20, par. 2).

During the monitoring, disabled prisoners (convicted and remand prisoners) have not reported about any ill-treatment by the personnel after the election in October 2012. However, the monitoring group received numerous reports about alleged torture and ill-treatment before 2012. According to the prisoners, the acts of torture and ill-treatment often resulted in severe deterioration of health or even disability.

Prisoners with disabilities may have special health care needs related to their status. If these needs are not satisfied, their condition may sharply deteriorate in short time period perhaps leading to more limitation of their ability to look after themselves, move and perform other important day-to-day functions. To satisfy these needs, in addition to standard medical assistance, they will need physiotherapy, regular eyesight and hearing examinations, occupational therapy, etc. They also need access to tools and services such as wheelchairs, hearing aids, canes, orthotics, prosthesis, etc.

Often times disabled individuals also need assistance with their mental health. Increased mental health care needs have been noted among prisoners who have sensory disabilities (such as visual or auditory impairment) or problems with communicating with other prisoners as these are conditions which are isolating in themselves and such individuals may become victims of psychological abuse and bullying. Medical assistance becomes even more necessary when prisoners with disabilities lack access to a psychologist's consultation. Ensuring easy access to healthcare services to disabled prisoners is one of the recommendations of the United Nations.[104]

Although recently the Georgian Ministry of Corrections and Legal Assistance has implemented a series of measures to provide prisoners with timely and effective medical services, the problem of medical assistance remains a major unresolved issue for convicted and accused prisoners with disabilities. The main source of the problem is that the Ministry has not yet identified the special needs of disabled prisoners, which are different from those of other prisoners. In none of the penitentiary institutions did the monitoring group find a single medical professional with updated and contemporary knowledge of how to handle medical problems of disabled individuals. There are no clear standards or guidelines to help these professionals correctly identify and satisfy the medical needs of such prisoners. Lack of these standards and approaches places disabled prisoners in a discriminated position.

Save few exceptions, no personal assistance services are available to disabled prisoners (both convicted and untried). In most institutions, bedfast patients (prisoners) are assisted only by and are fully dependent upon the good will of other inmates. Such policy places them in undesirable subordination making them vulnerable to improper manipulation, which may easily grow into oppression and violence.

Mental problems of prisoners are either identified by the prison staff belatedly or are not identified at all. Therefore, often times prisoners with mental disorders are punished for disobedience to the regime requirements.

Prisoners' manipulative behavior or protest reactions (such as injuring or poisoning themselves, swallowing different things, etc.) are regarded by the personnel as urgent psychiatric incidents. Because of the lack of professional training, they are unable to prevent auto- and hetero-aggressive behavior or locally assess/manage risks. For this reason, they simply call the ambulance to transfer such prisoners immediately to a psychiatric hospital were the prisoners refuse to receive treatment voluntarily, for various reasons. Because there is no established list of circumstances, in which case a patient must be provided with involuntary treatment, prisoners are then returned back to the institution – something that is heavily frowned at by the administration. Because of protracted diagnostic and legal procedures, convicted and remand prisoners with serious mental disorders are transferred to the National Center of Mental Health with a delay of 2-4 months on average, for involuntary inpatient psychiatric treatment.

104 United Nations Office of Drugs and Crime (2009). Criminal Justice Handbook Series, Handbook on Prisoners with disabilities. ISBN 978-92-1-130272-1.

Prison administrations are complaining that they have been experiencing serious difficulty in looking after prisoners with mental problems after the closure of the Medical Institution for Accused and Convicted Persons.

It has become especially difficult to provide necessary psychiatric aid to remand prisoners with mental illnesses. They seldom receive a psychiatrist's consultation and fulfillment of their treatment regime requirements usually depends upon the willingness of the prisoner itself or the support of his/her co-inmates.

The penitentiary system has no standards on initial psycho-physical assessment of prisoners and management of problems identified. Initial medical examination of prisoners in penitentiary institutions is performed by family doctors. A psychiatrist's consultation is provided only when it is already late, when patients actually show signs of acute psychosis demonstrating manifestly inadequate behavior. Mental problems generated by arrest as well as relatively mild psychic disorders remain unnoticed.

Analysis of prisoners' medical files showed that prisoners' psycho-physical health assessment on admission is formalistic; no multi-profile evaluation is performed. Somatic, psychological/psychiatric, social and legal needs remain unidentified. Accordingly, no actions are planned and implemented to deal with the problems revealed.

A serious problem in the penitentiary system is the established practice that beneficiaries demand excessive doses of psychotropic medications and, if denied, demonstrate aggressive and manipulative behavior. A majority of prisoners taking psychotropic medications are suffering from accompanying personality disorders and somatic problems.

Excessive use of psychotropic medications by prisoners is an abnormal practice connected with drug addiction and personality disorders. The penitentiary healthcare system does not provide prisoners having personality disorders with quality and effective mental health services. The imprisonment regime is not differentiated or adapted to needs of prisoners with personality problems; this results in deterioration of the patients' mental health restricting their psycho-social aptitude on the one hand and complicating the work of the medical personnel and the prison staff on the other hand.

The penitentiary system does not ensure beneficiaries with adequate psychiatric/narcologic assistance and appropriate psycho-social rehabilitation. No psycho-educational work is carried out and, despite the high risk that addiction to benzodiazepines either already exists or may develop soon, prisoners are not offered gradual reduction in the use of drugs and some replacement psycho-social measures.

The monitoring showed that, in the penitentiary institutions, prisoners are provided psychiatric assistance without their informed consent, which hinders the establishment of a positive therapeutic relationship between the doctor and the patient, which is especially important in a prison setting where a prisoner cannot freely choose his own doctor. "Patients should be provided with all relevant information (if necessary in the form of a medical report) concerning their condition, course of treatment and medications prescribed."[105]

In the course of monitoring, the monitoring group identified a series of cases where persons with mental problems were not receiving adequate treatment and their condition was most likely deteriorating.

The Committee for the Prevention of Torture (CPT) considers suicide prevention a matter falling within the purview of prison healthcare services and suggests that special attention be paid to training the personnel in recognizing indications of suicidal risk and following appropriate procedures. In this regard, the CPT notes, the periods immediately before and after trial and the pre-release period involve an increased risk of suicide. According to CPT, medical screening on arrival is important as this could relieve some of the anxiety experienced by newly admitted prisoners.[106]

When a prisoner is admitted to a penitentiary institution, the examining doctors are entering a note in the relevant section of the prisoner's medical card about post-self-injury scars found but the doctors are not interviewing the prisoners about the origin of these wounds. Nor are the prisoners questioned about having any suicidal thoughts or aspirations to help recognize the likelihood of suicidal behavior in the future. Suicides and para-suicides are not differentiated and, hence, no appropriate psychiatric/psychological assistance and observation are offered.

The healthcare personnel and the staff of the institutions are not equipped with algorithms for the management of aggressive behavior, depression or stress and have not had any professional training in these matters.

105 CPT's Third General Report, paras. 45-49.

106 CPT's Third General Report, paras. 57-59.

Lack of medical and psycho-social rehabilitation mechanisms for prisoners is the penitentiary's one of the major problems which entails severe implications for prisoners with disabilities, since their health and functioning ability directly depend on the availability of rehabilitation services. The same is true for disabled prisoners who have an after-stroke condition and need rehabilitation to retain mobility of their limbs and to avoid complete loss of independent movement ability. Disabled prisoners with amputated limbs or injured backbones are facing the same difficulties. Disabled prisoners' limited functioning (for example, the fact that they stay in beds for long periods of time and are unable to look after themselves) is a direct result of unavailability of rehabilitation programmes. Had rehabilitation services been provided even to a minimum extent, their illnesses would no longer have such destroying impact. As the UN Convention on the Rights of Persons with Disabilities mentions, disability results from not only illness or condition but also the difficulty of having to interact with an unadapted environment (where no rehabilitation services are provided) which gradually develops into more limitations.

The monitoring revealed that disabled prisoners' access to a complaints mechanism (that is, a box for complaints) is limited: in some cases, prisoners are not aware of the complaints procedure or, those who are aware of it, cannot physically write a complaint and place it in the box. The toilets and washstands in the cells are inappropriate for persons with disabilities (wheelchair users) to satisfy their physiological needs and maintain personal hygiene with due respect for human honor and dignity.

Disabled individuals are not involved in any handicrafts and other specific occupation learning courses offered in the penitentiary institutions. The existing educational/handicraft programmes do not take into account the needs of disabled people.

Within the monitoring, special attention was paid to the situation at the National Center of Mental Health. The Center provides involuntary inpatient psychiatric assistance within a State Programme for Mental Health. The inpatient services imply the following:

"Treatment and provision with additional services (such as protection and security) of patients who have been committed to placement in a hospital for involuntary psychiatric assistance by a court under Article 191 of the Code of Criminal Procedure; additionally, patients undergoing an inpatient treatment course will be provided with meals and items of hygiene as well as with urgent surgical services and therapeutic dental services."[107]

The monitoring revealed a series of problems at the National Center of Mental Health. The first group of problems relate to placement of individuals in the hospital for involuntary psychiatric assistance. In particular, based on a report of a panel of psychiatrists, the administration of a psychiatric institution will apply to the court with a template application the form of which is approved by the Order of the Minister of Labor, Health and Social Protection No. 89/N dated 20 March 2007. The only reasoning of the request contained in the application is the text of Article 18(1) of the Law on Psychiatric Assistance[108] cut and pasted from the Law verbatim; the author of the application is required to simply underline one of the criteria for committing an individual to involuntary psychiatric assistance. However, these criteria are too general allowing broad interpretation. Patients who have been subjected to this procedure are complaining of the fact that, when deciding whether to extend their stay at the hospital for involuntary psychiatric assistance, courts are not taking their views expressed at the court hearings into account. The above-described law and practice open up the possibility of both unlawfully placing individuals in mental hospitals for involuntary assistance and unlawfully extending their stay at the hospitals even when this is no longer necessary. Establishing a person's identity is another problem issue.

When patients are admitted to a mental hospital, no individual short- or long-term treatment plans are devised; the patient's strengths and weaknesses are not evaluated and, accordingly, no preventative measures are contemplated. Patients' aggressive behavior directed against themselves or others are usually prevented by subjecting them to physical restraints and injections of hypnotic anti-psychosis drugs.

The way psychiatric incidents are managed contravenes the requirements of contemporary psychiatry and the national standards of disease management. Treatment with psycho-drugs is carried out using high doses of old-generation psychotropic substances for long periods of time and in combination with not-recommended medications – a practice that contradicts modern standards accepted in psychiatry.

107 2013 State Healthcare Programmes, Annex 11: "Mental health" (Article 2, paragraph 2).

108 A person will be committed to involuntary inpatient psychiatric assistance if, because of his/her mental disorder, he/she is unable to make conscious decisions and it is impossible to provide him/her with psychiatric assistance unless he/she is placed in a hospital. In addition, one of the following requirements should be met: a) delayed assistance will endanger the life and/or health of either the patient or others; b) there is a risk of the patient inflicting serious pecuniary damage to himself/herself or others.

The mandatory lab and instrumental examination required for the management of side effects of psychotropic drugs-based treatment is not performed. Usually, a treatment course is nothing more than cramming patients with psychotropic drugs. Patients are not involved in psycho-social rehabilitation programmes, which would facilitate their going back to the society and re-adaptation.

The institution's administration does not have statistical data about disabled patients undergoing court-ordered psychiatric treatment courses. Patients' social status does not get identified; even if a patient is staying at the hospital for a long time period, no one gets interested in a patient's social status and whether the patient can enjoy any benefits associated with his social status.

Outpatient psychological clinics are unprepared for accepting patients with chronic psychiatric disorders and psycho-social abnormalities. Community-based psychiatric services, mobile psychiatric assistance and home care services are not available. There is a lack of social housing and the supporting system is undeveloped.

Such patients are social outcasts, completely isolated from the public. They get discriminated due to the fact that they have mental illnesses. They are not getting adequate psychiatric assistance and are not enjoying the benefits afforded to disabled people.

Recommendations:

To the Minister of Corrections

- **To ensure that statistical data about disabled prisoners are produced and maintained;**
- **To develop a mechanism for identifying disabled prisoners and assessing their needs;**
- **To ensure implementation of the minimum standards such as the principles of accessibility and reasonable accommodation in the penitentiary system;**
- **To ensure that eligible prisoners are granted disability statuses according to their condition;**
- **To ensure that the penitentiary healthcare staff responds to the special needs of disabled prisoners;**
- **To elaborate standards of care for disabled people adjusted to prison environment;**
- **To introduce disability-related specialized services;**
- **To implement a disabled prisoners' rehabilitation programme to prevent deterioration of their health, further reduction of their functioning ability and their turning into bedfast patients.**

To the Minister of Labor, Health and Social Protection

- **To provide disabled prisoners with adequate psychiatric assistance;**
- **To develop individual plans for working with disabled prisoners;**
- **To introduce psycho-social treatment and rehabilitation services that are structural, systemic and results-oriented;**
- **To revise the role and functions of the security department of the National Center for Mental Health;**
- **To take active steps to eliminate delayed stay of patients at the hospital for involuntary psychiatric treatment;**
- **To take active steps to extenuate the current strict regime at the National Center for Mental Health and to offer more open services.**

RIGHTS OF CHILDREN IN SMALL FAMILY-TYPE CHILDREN'S HOMES

According to the Resolution of the Parliament of Georgia No. 912 dated 30 July 2013 concerning the Report of the Public Defender about Human Rights and Freedoms in Georgia in 2012, the Georgian Parliament took note of the Report as of very important factual information about the wholesale violation of human rights in 2012. Also, the Parliament agreed with the recommendations of the Public Defender to the Minister of Labor, Health and Social Protection resolving:

- That, given the high number of children living in poverty, the Minister shall develop a unified, practically usable and real-life-adapted standard for improving the supervision over the growing and development as well as health of the beneficiaries of small family-type children's homes; to make the number of family-type homes proportionate to the overall number of the beneficiaries;
- That the Minister shall ensure that information about services provided to children is collected according to the requirements of the Childcare Standards, by way of elaborating internal regulations and other required components for the family-type children's homes; for the purpose of preventing violence and inhuman treatment against children subjected to State care, the Minister shall take effective measures to actively facilitate their reintegration into the families.

Results of the monitoring conducted by the Public Defender's Special Preventive Group in 2012 showed that, despite the correct systemic measures implemented by the State in the area of orphan care, the conditions of living at small family-type children's homes are not meeting the requirements under the Childcare Standards. The monitoring report states that

> "Especially noticeable is the lack of unified and clear State control mechanisms. It seems like after handing the management of small family-type children's homes over to private organizations the State has somewhat lost its interest in improving childcare standards for children in need of care."

Our representatives have discovered a series of problems in the course of their scheduled monitoring visits to children's homes. Further visits are necessary with a view of evaluating these problems and getting the relevant State authorities pay attention to them.

In February 2014, the Public Defender's Special Preventive Group monitored 30 small family-type children's homes, including those in Tbilisi (13 homes), Rustavi (2 homes), Dusheti (1 home), Akhmeta (1 home), Telavi (3 homes), Mtskheta (2 homes), Khashuri (4 homes), Gori (1 home), Kaspi (1 home), Gardabani (1 home) and Lagodekhi (1 home).

The monitoring was carried out by two groups each consisting of 5 experts. The groups were staffed with representatives of the Public Defender's Prevention and Monitoring Department and the Center for Children's Rights (4 employees in total) and 6 invited experts from the National Preventive Mechanism (psychologists, a psychiatrist, two general practitioners, a social worker and a lawyer).

In monitoring the small family-type children's homes, we used standards laid down in both international instruments and the national legislation to compare the existing situation against. In the course of monitoring, each group was using the Childcare Standards to evaluate the situation at the children's homes. In addition, our monitoring experts examined the quality of the services provided to and treatment of the children, their physical and mental health, the infrastructure and the sanitation/hygiene conditions at the children's homes. We also evaluated

the implementation of the Public Defender's recommendations issued after its monitoring of the small family-type children's homes in 2012.

The monitoring revealed systemic violations that can be mended only through zealous efforts and a method-based approach. We would like to stress the shortcomings that could not be eradicated during the reporting period. In particular, the educators' qualifications and the quality of psychologic/psychiatric services provided to children under State care remain a problem.

Problems existing in this area will be dealt with in detail in a separate comprehensive report about the monitoring of small family-type children's homes, which is scheduled to be published in 2014.

PHYSICAL ENVIRONMENT

Pursuant to the United Nations Convention on the Rights of the Child,[109] every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. States are therefore obligated to ensure adequate conditions to children to meet their obligation under the cited provision. For full-fledged development, children need to be raised in conditions that are close to a family environment.

After the children's educational institutions were replaced with small family-type children's homes, the beneficiaries' conditions of living have significantly improved. The way their individual needs are responded and the surrounding infrastructure are now near to family environment. The buildings and the yards are clean. The yards are fenced. Floor space per each beneficiary is 6 square meters. Almost all of the homes are equipped with central heating, furniture, household equipment, inventory, items of hygiene, telephone, natural and artificial lighting, bathrooms and toilets of acceptable standards, kitchens and dining rooms. Each child has his/her private space and drawers to keep their clothes and items. All windows are furnished with curtains. The bedrooms are equipped with modern wooden beds, linen, wardrobes, bedside tables, writing tables and chairs.

In some of the children's homes, however, our monitoring groups detected problems needing to be addressed in a timely manner. For example, the location of some of the children's homes makes it difficult for the children to access formal/informal education facilities and healthcare services; ceilings and walls are damaged because of leakage of precipitation through the roof; [110] [111] the windows and the doors are no longer fit for purpose and are unable to hold stabile temperature in the building, the vent hoods in the kitchen and the bathroom are dysfunctional, the inventory has not been renewed since 2007 and the children have to keep their personal items on chairs;[112] the light bulbs in the children's rooms are out of order and the children have to prepare their lessons under the light of table lamps.[113] No Internet connection is available. Since there is no 24-hour water supply, the administration collects water in a tank located in a 15 square-meter room where the ceiling and the walls are musty; the temperature in the building does not meet the established requirement; the exhaust from the natural gas combustion unit of the central heating system goes outside through the wall but the tube is so short that the exhaust penetrates into the rooms creating the danger of people getting intoxicated. For this reason, the children have to keep their windows shut.[114]

One of the children's homes in Tbilisi[115] is surrounded by a territory of a car repair shop. On the territory, there are cars parked awaiting repair, painting and other repair works are ongoing, engine parts are washed with oil, there is a specific strong odor around. Also, in the vicinity, in about 80 meters, there is a natural gas fuelling station.

In almost all of the small family-type children's homes toothbrushes are kept in shared cups without any signs on them to discern their owners.

During the monitoring it was found out that at many of the small family-type children's homes the children do not

109 Convention on the Rights of the Child, Article 27(1).

110 "My Home", Kipshidze Street No. 9, Tbilisi.

111 "Divine Child Georgia", Village Galavani, Mtskheta.

112 "Partnership for Children", Apt. 40/21, 7th Floor, Building 1, 11th Micro-rayon, Rustavi.

113 "Bres Georgia", G. Orbeliani Street No. 6, Telavi.

114 Association "Biliki", Shola Street No. 1, Khashuri.

115 The Beam of Hope, "Caritas Georgia", Eristavi Street No. 2, Tbilisi.

have their own towels; bathrooms[116] and toilets[117] are not ventilated; the same situation exists at all of the homes run by the "SOS Children's Villages Georgia" Association; the vent hoods are dysfunctional and the entire premises is filled up with food smell; [118] there is a strong odor of sweat and dirt in the rooms.[119]

There is a shared squat toilet in the yard without a flushing tank and a washstand.[120] There are no relevant items of hygiene in the toilet. The building does have a shared bathroom with showering equipment and a toilet with an area of 3.7 square meters inside the premises but, because of the existing conditions, an additional bathroom and a toilet are required.

In a majority of small family-type children's homes, the litter bins are not covered. This is true for the bins located both in the yards and inside the buildings. The beneficiaries do not have toys appropriate for their age. The children's homes do have sports equipment and storage places for such equipment.

Two of the children's homes in Tbilisi[121] are located on the second storey reachable by unroofed stairs from the outside. The stairs are furnished with ceramic tiles. Since the stairs are not roofed, the tiles are very slippery when it is snowing or raining.

The monitoring groups revealed that many of the children's homes do not have evacuation plans; those that do have such plans,[122] they are outdated. Firefighting equipment is usually located in scarcely visible areas. The educators and the beneficiaries are virtually unaware of threats posed by natural calamities or of the means and methods of minimizing or avoiding such threats.

No telephones are available at the children's homes in Gldani Village, [123] Gori[124] and Khashuri[125]. At the children's home in Rustavi, [126] a telephone is installed in the corridor, which cannot be used to call cellular service subscribers. Because of bad quality TV signal, the children are no longer watching the TV.[127]

Recommendations:

To the Social Services Agency of the Ministry of Labor, Health and Social Protection

- **To furnish the small family-type children's homes with all the necessary amenities to with a view of providing decent conditions of living for the children;**
- **To provide small family-type children's homes located in the regions with Internet access and properly working television signal;**
- **To establish constant supervision over maintenance of norms of hygiene;**
- **To train the educators in the management of natural calamity risks;**
- **To elaborate a unified evacuation plan for small family-type children's homes;**
- **To equip the small family-type children's homes with firefighting equipment.**

116 Association "Biliki", Tavzishvili Street No. 20, Gori.

117 Association "Biliki", Shola Street No. 1, Khashuri; Association "Biliki", Imereti Street No. 20, Khashuri.

118 The Beam of Hope, "Caritas Georgia", Eristavi Street No. 2, Tbilisi.

119 Shamanauri Street No. 94, Dusheti.

120 Telavi Education and Employement Center, 1st Lane, Vazha-Pshavela Street No. 1, Akhmeta.

121 The Beam of Hope, "Caritas Georgia", Eristavi Street No. 2, Tbilisi.

122 My Home, Kipshidze Street No. 9, Tbilisi.

123 "Caritas Georgia", 26 May Street No. 41B, Village Gldani1.

124 Association "Biliki", Tavzishvili Street No. 20, Gori.

125 Shola Street No. 1, Khashuri; Association "Biliki", Imereti Street No. 20, Khashuri.

126 "The Child and the Environment", Baratashvili Street NO. 19/30, Rustavi.

127 "The Child and The Environment", Baratashvili Street No. 19/30, Rustavi.

THE RIGHT OF THE BENEFICIARIES TO HEALTHCARE

According to Article 9(1) of the Childcare Standards,[128] beneficiaries should be raised in an environment where a healthy was of life is encouraged and due attention is paid to their health.

Provision of medical service to children at children's educational institutions is governed by Article 135 of the Law on Healthcare, which stipulates that the State shall ensure provision of medical services to orphan children, children in need of parental care and children with physical and mental defects.

Monitoring of the small family-type children's homes revealed both systemic problems with child healthcare and individual cases of lack of access to medical services.

MEDICAL DOCUMENTATION

When allocating a child (beneficiary) to a small family-type children's home, submission of medical documentation is mandatory. One of such documents to be submitted is a health certificate (Medical Documentation, Form No. IV-100/A).[129] Our monitoring groups detected a number of cases where beneficiaries had been admitted to children's homes without the mentioned document.[130] Some of the educators have explained the lack of the required medical document by the fact that the beneficiaries did not have their citizen's ID card. Often times the medical documentation about beneficiaries available at the children's homes are incomplete, contain scarce information and do not accurately reflect the actual health status of the beneficiaries.

Whenever children are moved from one children's home to another, their medical documentation is usually transferred with a delay, which makes provision of healthcare services to these children difficult.[131] In some cases, information about children's medical history and health status was not available at all.

Unlike the monitoring results in 2012, we think a positive development in the reporting period was that the small family-type children's homes did haveForms No. IV-100/A (a medical document which gets filled out when a beneficiary is admitted to an inpatient clinic for any reason). Although these forms did not always contain full information, it was still possible to discern consultation issued by the physicians.

The role of social workers in the management of children's healthcare issues remains a problem. In most cases, sections entitled "health status" in the Individual Development Plans drafted by social workers are filled out only formalistically.[132] Different plans use identical language to describe the beneficiaries' health conditions – a fact that most likely indicates that these descriptions are not an accurate representation of the real health status of the children. This leads to concluding that social workers and educators are not cooperating between each other.

As in the previous year, information about immunization was unavailable again. Pursuant to the Childcare Standards, a service provider shall facilitate the process of the beneficiaries' immunization and preventative medical check-up. We think that information about immunization must be part of the Individual Development Plans available at small family-type children's homes.

ACCESSIBILITY OF HEALTHCARE SERVICES

According to the Childcare Standards, a service provider shall ensure that beneficiaries have access to immunization and preventative medical check-ups.[133] It should be noted that, compared to the previous years, this obligation

128 Resolution of the Government of Georgia No. 66 dated 15 January 2014, Technical Regulations approving Childcare Standards.

129 Article 6, Order of the Minister of Labor, Health and Social Protection No. 52/N dated 26 February 2010 approving "Terms and conditions of admission to and discharge from specialized institutions".

130 The Way of Future, 6 beneficiaries; Khashuri, Shola Street No. 1, 2 beneficiaries; Caritas Georgia, Bezhanishvili Street No. 8, Caritas Georgia, Ati Mnati, 1 beneficiary.

131 Examples are Caritas Georgia, Bezhanishvili Street No. 8, two beneficiaries; "The Beam of Hope", one beneficiary; Village Gldani, two beneficiaries.

132 For example, the "Biliki" Association, Children's Home, Khashuri, Shola Street No. 1; Caritas Georgia, Children's Home "Beam of Hope".

133 Article 9(2)(a).

is better understood and accepted. Educators employed by the children's homes are more zealous and their endeavor to monitor the health of the beneficiaries and to have them undergo through preventative medical check-ups are appreciated.

Sometimes outpatient clinics where the beneficiaries of small family-type children's homes are registered are located far away making it difficult to monitor the health status of these children.[134] Furthermore, in some cases, beneficiaries have to wait in queue all day long to have an appointment with a physician.

Beneficiaries of children's homes are provided with outpatient services usually at primary healthcare centers, according to a geographical principle. Inpatient services are provided at children's hospitals in Tbilisi and medical centers in the regions.

Healthcare services provided to beneficiaries of small family-type children's homes are financed through State-issued insurance vouchers. However, similar to what we have been saying in our previous reports, the voucher-funded insurance does not cover or take into consideration the specific needs and peculiarities inherent in teenagers and adolescents; this is something that eventually affects the whole effectiveness of available medical services. The monitoring revealed that in some cases, when children needed medical assistance, the actual provision of the assistance was delayed due to the insurance-related problems.

In the period of adolescence, endocrine and puberty disorders are not uncommon. Sometimes eyesight correction and wearing of glasses become necessary. Medical tests are usually sponsored by provider organizations. The insurance does not cover dental and orthodontic services. There is a practice of providing dental services to beneficiaries at private dental clinics; such dental services are covered by the organizations running the children's homes on contractual basis.

We positively evaluate the fact that, thanks to the efforts of some providers, a number of beneficiaries are provided with expensive medical tests and surgeries.

MANAGEMENT OF INFECTIOUS DISEASES

Pursuant to the Childcare Standards, service providers shall make their internal regulations available to any interested person. The internal regulations, inter alia, must contain rules on how to avoid catching infectious diseases. Basic rules (to frequently vent the rooms, to wash hands, etc.) are sometimes posted in the educators' rooms but most times they are stored in binders. Some of the children's homes do not have internal regulations in writing at all.

If beneficiaries get infected with infectious diseases, the children's homes are unprepared to isolate the infected children from others to avoiding infection spreading. Only the children's homes run by "SOS Children's Villages Georgia" have additional rooms for purposes like this. Anti-flu immunization was carried out within the 2013 State Programme for the first time. A majority of children's homes population was immunized against influenza.

DRUG SUPPLY AND MONITORING OF MEDICAL TREATMENT

Access to medical services implies the ability to be consulted and treated by physicians. Effectiveness of treatment greatly depends on the patients' compliance with doctor-prescribed rules of drug administration. Small family-type children's homes have first aid medications and prescription drugs. A majority of educators does not have a clear understanding about when painkillers should be administered and their side effects.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- **To ensure that medical documentation is produced and maintained in a complete manner;**
- **To ensure that beneficiaries are timely provided with adequate medical services;**

134 Small Family-Type Children's Home "Virtue", Bezhanishvili Street No. 8, Caritas Georgia.

- **To verify the health status of beneficiaries of small family-type children's homes; to inspect whether the appropriate medical documentation (Form No. IV-100/A-S) is maintained and whether diagnosing and treatment are adequately carried out;**
- **To help increase physical activity of the beneficiaries and implement a healthy way of life in small family-type children's homes;**
- **To fully observe infection control requirements and to make educators and beneficiaries aware of contagious diseases;**
- **To ensure that small family-type children's homes store medications safely and document any sending or receiving of medications.**

NUTRITION AND DAILY RATION

Pursuant to the Childcare Standards, small family-type children's homes providing 24-hour services are obliged to feed the beneficiaries with healthy food four times a day. The monitoring revealed that the children's homes do not always fully observe nutrition norms. As in the previous year, there is a lack of information about healthy, safe and sufficient nutrition. A majority of educators say that they have no guidance or normative documents to follow to ensure that the children get sufficient and balanced nutrition, which should be age-sensitive and should include all the ingredients it should include.

According to the information we received from the Department for Social Protection of the Ministry of Labor, Health and Social Protection, the Government has not issued any nutrition-related guidance to the service providers because there are no established standards governing food rations. In fact, in determining children's daily food ration, the educators use their "family experience". At almost all of the children's homes, bread consumption is above the accepted norms. Usually, the children's homes' administrations simply do what children ask for feeding them mostly with sausages, frozen khinkali and sweets. This practice contravenes the principle of the best interest of the child, which is to live a healthy way of life.

Children under State care must be provided with sufficient amount of food taking into consideration their age requirements. The monitoring showed that food menus at a majority of small family-type children's homes are not meeting these requirements. Often times one may doubt whether some of these menus are truly an accurate representation of the actually offered nutrition. Usually the written menus provided by the children's homes are formalistic and uniform; the list of meals is long but does not match the actually served food. The ration is imbalanced. Three instead of four meals are provided. The meals are overly stuffed with sausages. The children's homes are not keeping records about food consumed/not consumed/replaced. It is hard to discern whether the "sufficient amount of food" requirement under the Childcare Standards was met. The menus are not adapted to the beneficiaries' schooling timetable. However, we want to mention some good practice applied by the "My Home" children's home: the nutrition system is well organized; the home employs a cook; meals are provided four times a day and the feeding hours are consonant with the beneficiaries' schooling timetable.

At one of the children's homes, food products were not proportionally distributed. The menus did not include fruits but we did find some fruits in the warehouse (apples, oranges and mandarins).

At another children's home we detected the following violation: during interviewing the beneficiaries, we found out that the educator's (foster father's) relatives were often times eating together with the beneficiaries, at the children's home; as a result, the beneficiaries were not getting sufficient amount of food.

According to the Childcare Standards, service providers (small family-type children's homes) shall not use restrict food as a measure of discipline. In this regard, we have detected various violations; for example, pursuant to the regulations at one of the children's homes, "If a child consciously skips the breakfast, we will not keep the meal for him/her, but they can always take a bite at the kitchen."

As the beneficiaries told us, "if a child does not wash his/her plate, he/she will be punished. The punished child will have to go u to his/her room on the second floor and stay there until he/she apologizes and agrees to wash his/her plate; sometimes the punishment will last until the evening and the punished children will remain without their supper."

Accessibility of food products and food safety

Food products for small family-type children's homes are purchased by the home administrators on the basis of contracts concluded with trade centers and individual groceries. Food products will be purchased only if an electronic waybill can be issued. But this is usually impossible in the regions. Only one shop in the entire local community may be able to issue electronic waybills. Wherever electronic waybills cannot be issued, the only solution is to confine the choice to the food products offered by such shops. This limits accessibility to and diversity of available food products. Further, the children's homes have no budget for miscellaneous items to spend at their discretion.

It turned out that the educators are not quite aware of the legally required information about the food products they are purchasing. Often times the educators do not know what information they should pay attention to when buying food products. They say they buy these products "in a regular way" or "the same way we'd buy them for the household".

At some of the small family-type children's homes, our monitoring groups detected that the shelf life of some the food products such as chicken and minced meat had been expired. No "best by" dates were shown on meat products, minced meat, chicken drumsticks, frankfurters and fish. In kitchen cupboards, cereals and beans are stored without expiration dates indicated. We also noticed that some leftovers from the previous meals were used to cook the dinner.

Water safety

Pursuant to the Convention on the Rights of the Child, the child must be provided with adequate amount of food and potable water. Under the Childcare Standards, service providers must provide beneficiaries with sufficient amount of safe water 24 hours a day. Persons running the children's homes do not know whether the water children are consuming is safe. In the regions, the children's homes get water from wells. Water is collected in reservoirs with special filters installed and are distributed throughout the premises from there. Representatives of children's homes usually cannot recall the last time these water tanks were cleaned. Some of the children's homes were not able to provide water safety certificates. At some of these homes our monitoring groups were explained that they were not using the tank water either for drinking or for cooking the meals. The water from the reservoirs is used systematically but no sanitation measures are implemented and the water quality is never checked. This practice endangers the good health of the children's homes' beneficiaries.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- **To add food regulatory norms to the Childcare Standards articulating the principles of healthy nutrition of children and adolescents and norms concerning balanced nutrition and food safety;**
- **To train the educators in children's upbringing and development, food safety and balanced nutrition; to train the children and the adolescents in healthy food issues; to elaborate and disseminate relevant guidebooks to children's homes with due consideration paid to the requirements of the Childcare Standards;**
- **To implement measures to make sure that food products are purchased without undue obstacles;**
- **To periodically check the water quality.**

CHILDREN'S MENTAL HEALTH

In the course of the monitoring we found out that individuals involved in the upbringing of children under the State care have low knowledge of and qualification in the area of children's psycho-social development. The State

is not ensuring that children's mental health be maintained in good order; the children's susceptibility to stress is not taken into account and no State programmes are run to provide the children with psychological/psychiatric assistance and appropriate psycho-social rehabilitation. Lack of these measures results in complicated adaptation to the existing social environment, emotional and behavioral disorders, difficult and violent behavior and, sometimes, even in the turning of these children into criminals.

Psychological assistance is confined to individual consultations of psychologists. The children's mental problems are identified with delay or remain unidentified at all. Psychiatric assistance is provided only after the situation has grown into an actual crisis.

The State is not providing the children under its care who have been victims of violence with psycho-social rehabilitation and legal protection. There are no State standards governing children's psychological assistance.

NEEDS IDENTIFIED AT INDIVIDUAL SMALL FAMILY-TYPE CHILDREN'S HOMES (MENTAL HEALTH)

The situation at the "Way of Future" (a charity home run by the Poverty Reduction and Urgent Assistance Foundation) is unfavorable for the beneficiaries' psycho-emotional and cognitive development. Children are not treated with individual approach. The staff lacks appropriate knowledge, experience and skills to manage the beneficiaries' behavior. No behavior management model exists and the upbringing process is chaotic. The monitoring group noticed the educators' violent attitude to the beneficiaries, in particular, the use of physical force against and disregard of the needs of the children. Discriminatory attitude has also been noticed. The educator we interview was unaware of any traumas experienced by the children under his/her care. The number of educators is disproportional to the number of children. No records are maintained to allow finding out what services are provided to the beneficiaries. The staff does not possess skills required for identifying mental health needs of the beneficiaries. Therefore, the children's situation in this regard is unfavorable. During the monitoring, we were unable to find out whether the children's home is served by a psychologist. According to the educator, a psychologist is visiting the children on a systematic basis but none of the children corroborated this was true.

The situation at a small family-type children's home run by the Association "The Child and the Environment" (located at Baratashvili Street No. 19-30, Rustavi) is unfavorable for the beneficiaries psycho-emotional and intellectual development. The children are not dealt with using an individual approach and the attitude to them is formalistic.

Although the educators have been trained in violence prevention and children's rights, they do not possess the knowledge, experience and skills to manage the beneficiaries' behavior. The institution does not have a clear model of behavior management. Some of the beneficiaries we interviewed feel being disregarded. Some of the children are happy with the conditions at the house and the staff's attitude towards them – something that may be indicating unequal treatment of the beneficiaries.

The system of punishments and rewards is completely based on either threats (that the staff will call the police) or limitation of access to the computer. This doubles the risk of children developing difficult behavior and computer addiction.

The staff does not have an understanding of general issues of mental health. Except in very serious urgent cases, they are unable to identify and timely respond to problems. We believe the children's right in this regard is being violated.

Based on the impression of our monitoring experts after they monitored a small family-type children's home located in Kurdgelauri (run by the Humanitarian Charity Center "Apkhazeti"), we think the situation calls for a deeper examination. The tensed relations inside the personnel and the demonstrated occurrences of emotional pressure upon the adolescents create unfavorable psychological environment for the beneficiaries.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- **To screen the children under State care on mental health; to provide the beneficiaries with adequate psychological/psychiatric assistance through psycho-social programmes;**
- **In order to timely identify children's psychological/psychiatric problems, to ensure that all staff involved in the upbringing of children receive continuous training;**
- **To develop and implement operational mechanisms to overcome violence against children.**

THE RIGHT OF THE CHILDREN AT SMALL FAMILY-TYPE CHILDREN'S HOMES TO EDUCATION

The right of the child to education is affirmed by both the international law and the domestic legislation. Under Article 28 of the United Nations Convention on the Rights of the Child, the child has the right to education and the State shall facilitate the implementation of this right on the basis of an equal opportunity.

The Georgian Law on General Education determines the State policy and goals in the area of general education. Among others, the Law lays down the principles of openness and equal access to general education, inclusive learning, etc. These obligations are especially important when it comes to children under the State care.

The monitoring of small family-type children's homes elucidated the trend that a majority of beneficiaries who are school pupils need additional preparation, especially in technical subjects and foreign languages. Some of the service providers are managing to satisfy these needs by offering additional classes through volunteering teachers. However, similar opportunities should be made available to all of the beneficiaries at other children's homes as well, wherever needed. The Association "SOS Children's Villages Georgia" handles this issue well enough.

It should be noted that small family-type children's homes are assisted by various organizations in terms of educational needs but despite this none of these homes are meeting all of the beneficiaries' requirements. Whether or not the beneficiaries' education needs are satisfied should not depend only upon individual organizations' charity and the State should develop a systemic approach to the matter.

The beneficiaries are usually focused on acquiring some vocational knowledge. They want to be more or less prepared for independent life when they attain their majority. On the one hand, we certainly welcome their eagerness, but, on the other hand, focusing only on employment, solely based on earning some own money, may result in disregarding the child's best interests and diminished motivation to continue to cognize the world. It should not be an end itself for the service providers and the beneficiaries to give/receive a mandatory and a vocational education, which is a commonly accepted trend at a majority of small family-type children's homes.

In the context of the right to education, another important obligation of the service providers is to connect beneficiaries having special learning needs with appropriate educational institutions or professionals.

The monitoring showed that children's homes' personnel usually unaware of inclusive learning methods. They do not know how to respond to the requirements of children with special needs.

In addition to identifying beneficiaries who need individual learning plans, it is important to actually implement these plans. To this end, the children's homes must cooperate with the relevant educational institutions and then oversee this process. The school also has its role to play. During the monitoring we noticed that schools were neglecting their duties in this regard.

Another duty of the service providers have is systematically keep an eye on the beneficiaries' attendance at the lessons at educational institutions. For example, there is a high level of truancy among the beneficiaries of the Gori and the Khashuri children's homes. It is also an obligation of the service providers to detect the beneficiaries' problems at school or college. This concerns both educational needs and the beneficiaries' social integration into the educational institution's community. Some educators are prepared to go ahead with this task, some are hesitant. As we found out, in some cases the educators did not know whether their beneficiaries had any problems their teachers or fellow students.

The monitoring showed that the absolute majority of the children's homes' beneficiaries is unaware of their rights under the United Nations Convention on the Rights of the Child. We believe it is necessary to raise the beneficiaries' and the educators' awareness of children's rights.

PREPARING THE JUVENILES FOR INDEPENDENT LIFE

According to the recommendation of the Council of Europe Committee of Ministers, the State must provide children leaving care with an assessment of their needs and appropriate after-care support in accordance with the aim to ensure the re-integration of the child in the family and society. [135] In its concluding observations concerning Georgia, the UN Committee of the Rights of the Child recommended Georgia to introduce measures to ensure and provide follow-up and after-care to young people leaving the care centers.[136]

In its 2012 Report to the Georgian Parliament, the Public Defender addressed the Minister of Labor, Health and Social Protections with a recommendation to draft an effective programme to support the beneficiaries who are leaving the small family-type children's homes due to attainment of their majority in starting their independent lives, including by providing them with a residential space and helping them in getting employed.

The monitoring has made it clear that Georgia has not implemented appropriate measures in this regard. The children's homes, unlike the previous years, have been more active in planning the beneficiaries' future. However, the State must make effective steps in this direction.

The service providers (the children's homes) are trying to give vocational education to the beneficiaries by using own resources and involving various charities. We welcome the fact that some of the children's homes have managed to find jobs for their beneficiaries and pay for their rent until they become fully independent. However, it would not be a surprise to say that, due to scarce funding, not all beneficiaries have access to such opportunities.

The Childcare Standards oblige service provider to prepare children for independent life and help them leave the care center. The Standards require social workers to also be involved in this process. The reality, however, is that the entire burden lies on the provider organizations and their fundraising efforts. Moreover, the provider organizations do not have clearly articulated programmes for preparing their beneficiaries for independent life. There are no specific structures or personnel to implement such programmes.

Pursuant to the Guidelines for the Alternative Care of Children adopted by the UN General Assembly, clear policies and rules should exist on how to ensure the beneficiaries with appropriate aftercare and follow-up. Young people leaving the care facilities should have access to social, legal and health services together with appropriate financial support.[137]

THE BENEFICIARIES' RIGHT TO LEISURE

The monitoring showed that leisure and recreational opportunities for the beneficiaries at small family-type children's homes vary depending on the service providers' resources on the one hand and the educators' involvement on the other hand. It should be noted the right to seasonal rest is ensured to all of the children's homes' beneficiaries, as required by the Childcare Standards.

The beneficiaries' ability to be involved in opportunities (sports and art activities) at their local community level, among other factors, depends on the location of their respective children's homes and the actually available opportunities. Therefore, in selecting places for stationing children's homes, especially in the regions, it is important to take into consideration whether the beneficiaries will have access to such opportunities. We noticed this is especially a problem with some of the children's homes, which will have to be fixe at some point in the future with a view of complying with the established standards.

135 Recommendation No. Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions, Basic Principles.

136 The Committee on the Rights of the Child, forty-eighth session, CRC/C/GEO/CO/3, recommendation no. 37.

137 Guidelines for the Alternative Care of Children, The UN General Assembly, 64/142, Rules 131, 136.

The monitoring revealed a trend that many educators use restriction of access to a computer as a "method" of punishment. For example, at a small family-type children's home run by the Caritas Georgia Charity Foundation, the children were banned from using the computer for one and a half month. At the children's home entitled "The way of future", the children reported that they were not allowed to use the computers because "only adults can work on a computer". At the children's home in Akhmeta, they have completely banned using computers because, according to the foster father's explanation, it was "harmful". Our monitoring also revealed that not all of the children's homes have Internet connection – something directly related to the educational needs of the beneficiaries.

Only the children's homes run by the Association "SOS Children's Villages Georgia" and the "My Home" Charity Foundation have libraries suitable for the beneficiaries age requirements and interests.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- **To actually fulfill its obligation in regard to planning and implementing games and events as well as to create physical conditions necessary for rest and recreation (toys, books) and to involve all of the children's homes' beneficiaries in informal education;**
- **In determining locations for small family-type children's home, to take into account the needs of the beneficiaries and the resources available in the local community;**
- **To train the staff of small family-type children's homes in drafting individual learning plans for beneficiaries with special educational needs and in seeing to implementation of these plans;**
- **To ensure that the service providers and the educational institutions cooperate with each other in identifying the beneficiaries educational needs;**
- **To provide the beneficiaries with the opportunity to attend more trainings in the subjects as necessary, making sure that the trainings are systemically organized and are qualified; to help raise the beneficiaries' motivation;**
- **To raise the beneficiaries' and the educators' awareness of the rights of the child and the mechanisms for the protection of these rights.**

To the Government of Georgia

- **To elaborate State-supported mechanisms to help juveniles who have left the State care system with getting employed as well as to assist them financially until they reach full independence; to educate the beneficiaries about planning their future and choosing their occupation.**

RECORD KEEPING

Article 3(3) of the United Nations Convention on the Rights of the Child stipulates that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities. The Childcare Standards determine a list of documents, which must be produced and maintained by the service providers and must be made available by them to any interested person.[138]

As a result of the monitoring conducted at small family-type children's homes, we detected the following problems related to record keeping:

Pursuant to the Childcare Standards, a small family-type children's home must have an upbringing/educational

138 Article 1, Techncial Regulations approved by the Resolution of the Government of Georgia No. 66 dated 15 January 2014 approving the Childcare Standard.

programme as a basic tool to be guided with.[139] Our monitoring showed that, in most cases, the children's homes do not have such programmes as a single document.

Some of the children's homes either do not have internal regulations or where they do have such regulations, they are defective.

With a view of receiving feedback, there are complaints boxes installed at children's homes. Both complaints boxes and comments boxes are usually empty. The children's homes are keeping journals to register any measures implemented in response to feedback or comments received. Where they do have such journals, they are kept formalistically or are empty. At some of the children's homes, journals on any measures taken in response to feedback received contain some entries but there is no indication as to when the measures were implemented or what the result was.

Accident registration journals are often times empty as well, which creates the impression that they are maintained only formalistically.

In some cases educators denied any occurrence of accidents but the documents maintained at their institutions (handover journals, personal files, Medical Form No. IV-100/A, notices about medical appointments) prove to the contrary.

For the most of time, the journals to register measures implemented in response to violence are empty as well.

The small family-type children's homes must be maintaining journals for the registration of admissions to and discharges from specialized institutions.[140] In contravention of the established standard, these journals are not always filled out in a complete manner.

Journals for registration of temporary leaves from the children's home are kept also in violation of the established rules.

Individual approach to services

Article 25 of the Convention on the Rights of the Child prescribes the need for a periodic review of the treatment provided to children under care and obliges the States Parties to protect the right of children placed under the care of competent authorities to have the care conditions evaluated periodically.

Within the monitoring, the Special Preventive Group examined the beneficiaries' personal files maintained by the children's homes. Although all of the files include decisions of local competent authorities admitting the children to a children's home or extending their stay at the children's home, the beneficiaries' documents are often times incomplete. In particular, the individual development plans and individual servicing plans are drafted formalistically containing scarce and incomplete information. The plans do not describe in detail objectives to be achieved, activities to achieve the objectives, achievement indicators and timetable. The plans do not envisage the beneficiaries' individual needs, objectives and activities. The language used in the plans is usually the same for all plans. Any results achieved or implementation progress are not indicated in the plans. The records do not provide information about the views of the children, their caregivers and the service provider about the plans and the progress of their implementation. Whether the beneficiaries' were consulted about their own plans cannot be discerned from the records.

We would like to note that that it is the obligation of social workers, before the child is actually allocated to a children's home, to inform the service provider as much as possible about the prospective beneficiary's case. As the educators say, normally, this does not happen in reality.

At children's homes run by the Association "SOS Children's Villages Georgia", we identified that State-employed social workers have delegated their rights and obligations to other social workers employed within the "Family Enhancement Project". Sometimes the social workers of the Association pay visits to the beneficiaries' biological families at their own initiative to study the children's family conditions despite the fact that they know they are not authorized to do so.

139 The Childcare Standards, Article 1(2)(a.b).

140 Annex 3, Order of the Minister of Labor, Health and Social Protection No. 52/N dated 26 February 2010 approving "Terms and conditions of admission to and discharge from specialized institutions".

Protection of confidentiality

Under the Childcare Standards, the beneficiaries' personal data must be protected. Normally, the small family-type children's homes have no rooms specially allocated for individual consultations. However, conversations and meetings with the beneficiaries take place in the beneficiaries' or the educators' rooms; these meetings are conducted in an environment respectful of the confidentiality principle.

Beneficiaries' personal files are properly stored by children's homes. Usually, the educators keep the beneficiaries' documentation in their rooms or in safes, locked. The documentation is kept away from children. After a beneficiary is no longer a beneficiary, his/her documents will be stored where archives are kept.

Requirements concerning the personnel

Pursuant to Article 16 of the Childcare Standards, there shall be sufficient number of personnel with appropriate qualifications involved in the upbringing of the beneficiaries.

Salaries and work conditions of individuals employed at children's homes remains a problem.[141] Because of hard work conditions, there are frequent changes in the personnel. Reportedly, one of the main reasons of people leaving jobs at children's home is the problem with taking a vacation. in particular, the voucher funding is insufficient to cover both the educator's vacation and the replacement staff's salary. As one of the educators told us, they are not offered any incentives, which negatively affects their motivation.

Inclusive service

According to the monitoring results, beneficiaries of children's homes are not discriminated against in any form in the course of provision of the services to them. However, they are badly influenced by the stereotypes existing in the broad public about children under State care.

Transportation is another problem. Senior children need to travel to the regional centers to access the required resources. Transportation becomes more complicated when it comes to junior age children. Educators, too, are unable to provide transportation to the center on their own since the available human resources at the children's homes are not usually enough for that.

Recommendations:

To the Ministry of Labor, Health and Social Protection

- **To train the personnel of small family-type children's homes in drafting individual service plans for beneficiaries in a complete manner and to ensure that the beneficiaries and the educators are consulted with during the drafting process;**
- **To supervise the fulfillment of obligations under the "Rules of allocating functions and duties of social workers and service providers at small family-type children's homes";**
- **With a view of better protection of confidentiality, to develop a template form of consent to be issued by persons authorized to issue personal information about the beneficiaries of small family-type children's homes;**
- **To provide the employees of children's homes with periodic qualification trainings and thematic courses;**
- **To provide the personnel of the children's homes with adequate salaries, vacation and insurance; to introduce an employment incentives system for them.**

141 For more information, see the Public Defender's report for the year of 2012, pages 253-4.

AMNESTY AND PAROLE

In the reporting period the Public Defender received numerous of applications from sentenced prisoners concerning a number of specific issues. One of the hot topics was the prisoners' demand to create a commission on miscarriages of justice. Prisoners were also writing about the work of the standing councils on parole issues. In some cases, the prisoners asked for interpretation of the Amnesty Law dated 28 December 2012. The Public Defender decided to look into these issues.

THE AMNESTY OF 28 DECEMBER 2012

Acting out of leniency, in response to public demands for restoration of justice, considering that it was appropriate to reduce the number of prisoners and conditionally sentenced individuals, the Georgian legislature decided to adopt the Amnesty Law dated 28 December 2012 as a one-off, temporary and special measure, on the condition that the State would remain in control of the crime situation in the country and apply appropriate preventative measures.

Pursuant to the information provided by the Ministry of Corrections, during 2013, 8,720 prisoners were released from the obligation to serve their imprisonment sentence. 175 of them have been recognized political prisoners.[142]

In the Amnesty Law dated 28 December 2012, the legislature expressed its intent to apply the amnesty to all convicted prisoners except lifers. The Public Defender received numerous applications and letters on this matter but the fact is that the referenced amnesty law is not intended to cover individuals who have been sentenced to life imprisonment. By 2013, 83 individuals are serving their life sentence in the Georgian penitentiary institutions.

The implementation of the amnesty law dated 28 December 2012 was marked with flaws.

Individuals convicted under Article 180 of the Criminal Code (fraud) in whose case the victim was the State found themselves in unequal terms with other individuals prosecuted and convicted under the same provision where the victim was anyone but the State.

Article 11(1) of the Amnesty Law of 28 December 2012 stipulates that individuals tried for and convicted of the crime under Article 180 of the Criminal Code (fraud) shall be released from both criminal liability and any sentence imposed, if all of the victims or their heirs/legal successors consent to application of the amnesty law to these individuals by making the relevant statement to the investigation authorities or the court in the course of implementation of this law.

The Office of the Public Defender examined materials of criminal cases concerning individuals convicted of the crime under Article 180 of the Criminal Code in whose cases the central or local authorities sustained pecuniary damages as a result of the crime. According to explanations and the convicting judgments studied by the Office of the Public Defender, in relation to individuals convicted under Article 180 whose conduct resulted in the infliction of damages to the State, the sentences were reduced by ¼ by virtue of the Amnesty Law, but based only on Article 16.

Analysis by the Public Defender's Office of concrete criminal cases showed that these case files did not contain

142 See http://mcla.gov.ge/index.php?action=page&p_id=1114&lang=geo [last accessed 28.03.2014].

any resolutions (official documents) finding anyone a victim; on the other hand, the prosecution offices, which are acting on behalf of the State, have not expressed their to extending the application of the Amnesty Law dated 28 December 2012 to individuals convicted under Article 11 of the same law.

According to the case files analyzed by the Public Defender's Office, the convicted persons did obtain the consent of local authorities that sustained damages as a result of their criminal conduct to having the amnesty law applied to them. But the courts refused to apply Article 11 of the Amnesty Law to these individuals under the pretext that prosecutors acting on behalf of the State have never expressed their consent for application of the amnesty law to these individuals.[143]

Pursuant to Article 32 of the Code of Criminal Procedure, the prosecution office has the competence to carry out criminal prosecution. Under Article 33(1) of the Code, prosecutors perform their functions on behalf of the State. In the court, a prosecutor is a State accuser and bears the burden of proof.

The cited provisions from the Code of Criminal Procedure suggest that a prosecutor is not a person who enjoys the status of a victim in criminal proceedings. Therefore, although the prosecutor advances accusations on behalf of the State during the trial, the Code of Criminal Procedure does not entitle him/her to participate in the proceedings as a representative of the victim's interests and/or to enjoy the rights of a victim.

Consequently, if the State sustained damages as a result of a crime, the prosecutor must issue a resolution finding the State a victim. It should be noted that the Code of Criminal Procedure does not contain rules per se on how the State should participate in the criminal proceedings (at pre-trial or trial stages) as the victim. It is unclear how a prosecutor may be granted the rights and obligations of a victim under the Code of Criminal Procedure.

Because in similar criminal cases the prosecution office has not found central and/or local authorities victims and the courts say the prosecutor's consent is the same as the victim's consent, the individuals convicted under Article 180 of the Criminal Code in criminal cases where the crime caused damages to the central or local authorities were treated differently from other persons convicted under the same article. The courts continue to apply this unequal approach despite the fact that the Georgian Supreme Court has stated that the only precondition for releasing persons convicted of the crime under Article 180 of the Criminal Code from criminal liability is the victim's consent and not the consent of the State accuser and/or prosecution body.

The court cases analyzed by the Office of the Public Defender also show that courts demonstrated inconsistency in applying the Amnesty Law to convicted persons whose sentence enforcement has been postponed until their recovery or substantial improvement of their health status.

According to Article 21 of the Amnesty Law dated 28 December 2012, the amnesty shall apply to convicted persons who are imprisoned, paroled or wanted.[144] The same law provides that everyone who falls within the scope of this law may exercise his/her right to a fair trial. [145] The Amnesty Law prescribes an exhaustive list of subjects authorized to address the court. In particular, the relevant penitentiary institution, parole bureau, military unit command or the prosecution office are entitled to file a motion for applying the Amnesty Law to concrete convicted persons whose case proceedings are already completed, with the district (city) court that initially tried the case (the initial trial court).

Accordingly, a convicted individual whose sentence enforcement was postponed until his/her recovery or substantial improvement of his/her health, is not, by literal understanding of the law, a subject authorized request that the Amnesty Law of 28 December 2012 be applied to himself/herself.

143 Various judgments in these cases read: "Pursuant to Article 11 of the Amnesty Law dated 28 December 2012, a person will be released from his/her sentence imposed under Article 180 of the Criminal Code if this is consented by a victim (or its legal successor) represented by the State accuser in this given case. On account of the fact that the prosecutor [the State accuser] has not given its consent to releasing the convict from serving his/her sentence under Article 180 of the Criminal Code, Article 11 of the Amnesty Law may not be applied to the convict."

144 "A district (city) that initially tried the case is authorized to decide whether the amnesty under Articles 1 to 21 of this Law is applicable to convicted individuals whose proceedings are over, who are imprisoned or paroled and whose personal files are received by the court, from the relevant penitentiary institution, parole bureau or military unit command, within 2 weeks after this Law enters into force, or, if the convicted individual is wanted, a motion from the prosecution office within the same term for applying the amnesty under this law." Article 23(3), Amnesty Law of 28 December 2012.

145 "Everyone who falls within the scope this Law shall have the right to exercise the right to have his/her criminal case tried by a fair court." Article 25, Amnesty Law of 28 December 2012.

The Office of the Public Defender studied the case of G.A., a convicted individual whose sentence enforcement was postponed by decision of the Kutaisi City Court of 5 September 2012, until his recovery or substantial improvement of his/her health. On this ground, G.A. was therefore released from the Medical Institution for Accused and Convicted Persons the same day.[146] According to the information received from the Penitentiary Department of the Ministry of Corrections, because G.A. was not imprisoned, the Penitentiary Department was unable to forward his personal file to the court to request application of the Amnesty Law to him.[147] On the other hand, the Kutaisi City Court informed Citizen G.A. with its latters dated 20 March 2013 and 17 May 2013 that he was not an authorized subject to request the court to apply the Amnesty Law of 28 December 2012 to his case. The Court continued to explain in the same letters that it could discuss applicability of the said Amnesty Law only if and when the postponed sentence would become enforceable.

Parole

In the reporting period of 2013, the Office of the Public Defender has been receiving numerous letters from convicted individuals complaining of decisions of local councils[148] of the Ministry of Corrections.

For the purpose of thoroughly analyzing the existing practice of use of parole, the Office of the Public Defender, based on both citizens' requests and on its own initiative, examined about 60 decisions rendered in the period of January – October 2013 by the Local Council for the Eastern Georgia without oral hearings. We studied full case files of convicted individuals whom we selected both randomly and individually. In particular, we analyzed the existing practice and problems related to decision-making by the councils from a legal perspective.[149] In addition, we obtained copies of decisions of the Administrative Cases Panel of the Tbilisi City Court indicating flaws in the party-submitted case materials (188 court decisions in total) and judgments of the same judicial panel (20 judgments in total) about challenged decisions of the local councils of Ministry of Corrections. The court decisions and judgments requested were all rendered in the period of January – October 2013.

Our analysis of these materials revealed problems with drafting reference letters for inmates by the penitentiary institutions[150] and reasoning of decisions and inconsistent approach to cases applied by the local councils. A procedural problem with challenging the local councils' parole decisions is that there is no rule expressly providing that convicted individuals are exempted from paying the State fee for having their case reviewed by courts; for this reason, many convicted individuals are unable to exercise their right to address courts as a matter of fact. Lack of consistent and well-reasoned court judgments in these cases is another problem.

These matters are dealt with in detail and the Public Defender's relevant recommendations are contained in the Public Defender's Special Report concerning the rights of convicts on parole, published in March 2014.

146 Letter of the Penitentiary Department of the Ministry of Corrections No. 72909/10 dated 15 July 2013.

147 Letter of the Penitentiary Department of the Ministry of Corrections No. 50592 dated 24 April 2013.

148 Presently the legal successor of these councils is the Ministry of Corrections.

149 The Public Defender's Office did not examine the local councils decisions concerning juveniles and female convicts.

150 It should be noted that the Order of the Minister of Corrections and Legal Assistance No. 82 dated 10 May 2011 approving "Rules of keeping registries and personal files of accused and sentenced persons" was amended and a new template of convicted persons' reference letters has been in force since 16 January 2014.

FAILURE TO FULFILL THE PUBLIC DEFENDER'S LAWFUL REQUESTS

Obstructing performance of its functions by the Public Defender is punishable by law.[151] Failure to comply with the Public Defender's lawful request is an administrative offence under the Code of Administrative Offences.[152]

According to the Organic Law of Georgia on the Public Defender:

> "In time of inspection, the Public Defender has the right to enter, without any obstacles, any agency, enterprise, organization or institution of central and local authorities, including military units, pretrial detention facilities and institutions for sentenced prisoners, detention centers and other places for limitation of personal liberty."[153]

The same law further stipulates:

> "The Deputy Public Defender, the members of the Office of the Public Defender, and the members of the Special Preventive Group shall exercise the powers under Articles 18 and 19 of this Law on the basis of a special power of attorney issued by the Public Defender."[154]

In performing its activities, the Office of the Public Defender acts on behalf of the Public Defender.[155]

During the reporting period, there were several occurrences of obstructing the performance of the Public Defender's activities and disobedience to the Public Defender's lawful requests.

The case concerning I.L.

On 13 September 2013, the media outlets reported that members of the Ministry of Internal Affairs arrested a citizen of Chechen nationality and other persons accompanying him who allegedly resisted the law enforcement officials during arrest, in Batumi. According to the same reports, as a result of exchange of fire, the ethnic Chechen, a police officer and a passer-by were wounded during arrest.

Through 14-15 September 2013, a trustee of the Public Defender met with the detainees at the temporary detention isolator for Achara and Guria regions and studied their personal case files to further examine their issue. On 15 September 2013, at 22:11 hours, the trustee of the Public Defender together with an expert from the Public Defender's National Preventive Mechanism arrived at the Batumi Republican Hospital LLC to talk to I.L., the ethnic Chechen citizen wounded during arrest. I.L. was placed in one of the surgery wards. L.J., a member of the Georgian Interior Ministry, who was dressed in civilian clothes, did not allow the Public Defender's trustee and the member of the National Preventive Mechanism to meet with I.L. The police official stated I.L. did not want to communicate with anyone.

The Public Defender's trustee and the member of the National Preventive Mechanism explained to the Interior Ministry's representative that they were performing their functions under the Organic Law of the Public Defender.

151 Article 43(2) of the Constitution of Georgia; Article 25(1) of the Organic Law on the Public Defender.

152 Article 1734 of the Code of Administrative Offences.

153 Article 18(a) of the Organic Law on the Public Defender.

154 Article 27(1) of the Organic Law on the Public Defender.

155 Article 26(1) of the Organic Law on the Public Defender.

Despite this, L.J. did not let them enter the ward. Moreover, L.J. did not answer our representatives' question on who was in the ward with the detainee.

The Public Defender's trustee drew up a relevant administrative offence protocol regarding this incident. According to the protocol, when the trustee of the Public Defender together with an expert from the Public Defender's National Preventive Mechanism arrived, the light was on in I.L.'s ward where the National Preventive Mechanism's representative noticed two more individuals in addition to the patient. These two individuals wore military uniform trousers and military coats over black T-shirts. They were talking loudly.

The same day, the trustee of the Public Defender and the expert from the National Preventive Mechanism met with Z.B., a doctor in charge of I.L., in the office of the head of the hospital's surgery division. The doctor stated that I.L.'s condition was stable and he could talk. The doctor said there was no medical reason not to talk to I.L. The Public Defender's trustee drew up another protocol documenting this meeting; the protocol is signed by the Public Defender's trustee, the expert from the National Preventive Mechanism, the head of the hospital's surgery division and I.L.'s attending physician.

Obstructing the activity of members of the Special Preventive Group at the Sagarejo District Police

On 17 October 2013, within the National Preventive Mechanism, the Public Defender's Special Preventive Group was on its scheduled monitoring visit to the Sagarejo District Police where its objective was to inspect the journals for the registration of detainees and of transfers to temporary detention isolators. On entering the duty room, the Public Defender's trustees submitted their Public Defender's power of attorney to the duty officer explaining the goal of their visit. As they were talking to the duty officer, G.R., Deputy Chief of the Sagarejo District Police came into the duty room and started to insistently demand that the Public Defender's representatives leave the room.

Although the Public Defender's trustees explained the Public Defender's rights under the Organic Law on the Public Defender to the Deputy Police Chief G.R., he behaved himself defiantly continuing to demand with a loud voice that the Public Defender's representatives leave the duty room. G.R. asked one of the Public Defender's representatives for his name, then went out of the room and had a conversation with someone through a cell phone. After the conversation, G.R. came back angry accompanied with another person dressed up in civilian clothes, allegedly a police officer, to force our representatives out of the room.

G.R., Deputy Chief of the Sagarejo District Police, obstructed the performance of their functions by the members of the Public Defender's Special Preventive Group using violence against them – conduct possibly containing elements of crime.

On this ground, the Public Defender addressed the Chief Prosecutor of Georgia, on the basis of Article 21(c) of the Organic Law on Public Defender, with a request for opening a criminal case against G.R., member of the Ministry of Internal Affairs, on account of existence of possible elements of crime in the latter's conduct. The Public Defender has not been informed about any measures taken by the Prosecution Office in response to its request.

Obstructing the activity of the Public Defender's trustee at the Ministry of Internal Affairs

Based on a request filed by Attorney E.Ch., the Public Defender's trustee paid a visit to the Ministry of Internal Affairs (Ortachala, Tbilisi) on 5 February 2014. According to the attorney, his client was arrested on 5 February 2014 at about 7:20 am and was taken to the Ministry of Internal Affairs for questioning but, despite the attorney's request, the Ministry's representative did not allow the attorney to meet with his client and attend the questioning process.

The same day, at about 2:00 pm, on his arrival, the Public Defender's trustee met with the attorney and the arrestee's parents. They explained that they had been trying to find out what was going on since 10:40 am; in particular, they wanted to know the current whereabouts of the arrested individual as well as reasons of his arrest or home search. In addition, the attorney said, he was not being allowed to meet with his client to provide legal assistance.

The Public Defender's trustee tried to find out what was happening but the Interior Ministry's representatives did

not let him effectively perform his functions under the Public Defender-issued power of attorney. During an hour or so, the Public Defender's representative was trying to contact anyone who would be a person in charge to provide the relatives and the lawyer with information about the detainee but with no avail.

It should be noted that, while the Public Defender's trustee was inside the Interior Ministry's building, the detainee's father received several phone calls to his cell phone supposedly from the members of the Interior Ministry telling him to ask the Public Defender's trustee to leave the Ministry's premises; in exchange, they were promising that they would release his son very soon. During one of such telephone calls, the Public Defender's trustee had nothing to do but to talk to the caller who was supposedly calling the detainee's father's cell phone. Only after this (about an hour after the PD's trustee arrived at the Ministry) did one of the Ministry's representatives meet with and talk to the PD's trustee, the attorney and the detainee's family members. The Ministry's representative explained that the individual they were looking for was in the Ministry's building but he was not detained; he was there only as a witness. The Ministry's representative was asserting that the individual they were keeping inside the building did not need a lawyer's assistance and himself did not wish to be assisted by a lawyer during his questioning. The Ministry's representative did not explain why exactly the Public Defender's trustee was made to face these obstacles.

During the reporting period, the Office of the Public Defender registered many incidents when the Public Defender's trustees and/or lawyers representing their clients encountered problems with communicating the investigative agencies of the Ministry of Internal Affairs, especially if an individual is detained and/or is being questioned as a witness. Another problem is finding out who the persons in charge are and communicating with them. The members of the Ministry of Internal Affairs must be educated in their obligation to inform the family members accordingly whenever they detain or question a person as a witness. They must allow lawyers to legally assist their clients detained or summoned as witnesses. Even if the detainee/witness refuses to be assisted by a lawyer, the lawyer must be allowed to directly communicate with his/her client so that the client can himself/herself refuse to be provided legal assistance; such approach would generate a less number of questions in the society and make the operation of the law enforcement bodies more transparent.

In a democratic, rule-of-law State, the ombudsman and its office is a major human rights defending State institution with high; obstructing the normal operation of this institution not only violates the laws enacted by the legislature, but diminishes the reputation and transparency of the relevant State agencies. In addition, preventing the Public Defender and its trustees from implementing their legally-mandated inspection activities undermines the legality and appropriateness of the operation of the relevant State agencies / public officials.

Recommendations:

To the Ministry of Internal Affairs

- **To educate the personnel of the Interior Ministry in the mandate and rights of the Office of the Public Defender;**
- **To ensure that the Public Defender's trustees as well as lawyers representing their clients are able to exercise their rights under law completely and without any barriers;**
- **To adequately respond to every single case of obstruction by the Interior Ministry's representatives of the activity of the Public Defender and its trustees.**

RIGHT TO LIFE

The right to life is a supreme legal value. The European Court of Human Rights has explained that the right to life ranks as one of the most fundamental provisions in the Convention.[156] Two obligations derive from Article 15 of the Georgian Constitution and Article 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms: a negative obligation (not to encroach on life) and a positive obligation (to protect life). The positive obligation, on its turn, implies procedural obligations of the State. If someone's life is infringed, the State is obliged to provide an effective investigation aimed at detecting those responsible and administering justice.

Although the positive obligation per se is not explicitly mentioned in the text of Article 2 of the European Convention on Human Rights, the European Court has established through its case-law that, bearing in mind the fundamental value safeguarded by the mentioned provision, the s Signatories to the Convention are under obligation to allow effective exercise of the rights under Article 2; in particular, pursuant to the European Court's jurisprudence, the State must

- Enact legislation effectively protecting the right to life;[157]
- Conduct prompt and effective investigation into infringements upon the right to life supposedly committed not only by State agents but also by non-State actors;[158]
- Provide victims and their near people with effective legal remedies and compensation.

The European Court of Human Rights notes that, due to the fundamental nature of the right to life, circumstances justifying deprivation of a person of his life must be narrowly construed. In particular,

> "Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means, amongst other things, that the State must ensure, by putting in place a system of adequate and effective safeguards against arbitrariness and abuse of force, that its agents duly understand the limits of their power and that, in their actions, they are guided not only by the letter of the relevant professional regulations but also pay due regard to the pre-eminence of respect for human life as a fundamental value."[159]

The European Court pays a considerable attention to the principles of independence and impartiality of law enforcement agencies/officials. This is particularly true where individual representatives of the State or even the entire law enforcement body is suspected of partaking in in the criminal conduct. In this regard, the Court has stated that:

> "The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility."[160]

156 McCann and others v. the United Kingdom, The European Court of Human Rights [1995], Application No. 18984/91.

157 Vo v. France, The European Court of Human Rights [2004], Application №53924/00.

158 Andronicou and Constantinou v. Cyprus, The European Court of Human Rights [1997], Application No.25052/94; McCann and others v. The United Kingdom, The European Court of Human Rights [1995], Application No.18984/91; Osman v. the United Kingdom, The European Court of Human Rights [1998], Application No.23452/94.

159 Enukidze and Girgvliani v. Georgia, The European Court of Human Rights [2011], Application No. 25091/07.

160 Enukidze and Girgvliani v. Georgia, The European Court of Human Rights [2011], Application No. 25091/07.

This Chapter of the Public Defender's report describes cases where the deprivation of life was supposedly administered by the representatives of State authorities; in this context, it will discuss the progress and achievements of criminal investigation carried out into these allegations.[161]

The case concerning Citizen Mamuka Mikautadze[162]

According to media reports, on 5 June 2013 citizen Mamuka Mikautadze was questioned at the Chief Police Division of the Ministry of Internal Affairs. After the questioning, the citizen allegedly killed himself. According to the same media reports, the Ministry of Internal Affairs opened criminal investigation under Article 115 of the Criminal Code (leading another person to suicide).

On 8 July 2013, the Public Defender's trustees met with and talked to Mamuka Mikautadze's wife and friends who alleged that the law enforcement officials administered a variety of ill-treatment against Mr. Mikautadze driving him to the decision to kill himself. On 25 September 2013, the Public Defender was again approached by late Mikautadze's mother who complained of ineffective and protracted investigation into her son's case.

According to information obtained by the Office of the Public Defender, on 5 July 2015, Citizen Mamuka Mikautadze was questioned as a witness by the Central Criminal Police Department of the MIA. The next day, Mamuka Mikautadze killed himself. The authorities opened criminal investigation under Article 115 of the Criminal Code (leading a person to suicide). Investigation activities were carried out but presently no one has been found a legal successor of the victim and no specific alleged perpetrator has been identified.[163]

The case concerning Citizen D.S.

On 15 April 2013, the Public Defender's Office received an application from citizen M.S. asking the Public Defender to look into effectiveness of the investigation carried out into death of her son and sister.[164]

According to the applicant, on 22 November 2003, her son D.S.'s car was hit by an armored personnel carrier (APC) heading from the Shavnabada Prompt Reaction Battalion. As a result of the accident, citizen M.S. lost his son D.S. and sister E.Ts. Citizen M.S. complained that the investigation into this case, which was still ongoing at the material time, has been protracted and ineffective.

Having examined the case, the Office of the Public Defender found out that on 23 November 2003, the Tbilisi Investigation Division of the MIA opened a criminal case in regard to the mentioned car accident under Article 276(5) of the Criminal Code. On 26 November 2003, the criminal case was taken over by the Tbilisi Military Prosecution Office. On 19 April 2004, by the Prosecutor General's resolution, the criminal case was stricken out from the jurisdiction of the prosecution office and was forwarded to the Investigation Department of the Ministry of State Security.

Preliminary investigation established that on 22 November 2003 a special Armored Personnel Carrier (APC) belonging to the Prompt Reaction Unit of the Special Operations Center of the Ministry of State Security was moving from the Rustavi to Tbilisi. AM., a driver-engineer from the armored vehicles group of the same Unit was driving the APC. At 6:25pm, the APC and a BMW coming from the opposite side collided with each other. The BMW passenger E.Ts. died immediately after she was brought into the hospital. The BMW driver, D.S. died two days after, on 24 November. Passengers S.Ts. and B.Ts. received injuries of various degrees.

By a resolution dated 10 February 2004, a criminal case was opened against the APC driver A.M. under paragraphs 1 and 2 of Article 400 of the Criminal Code. By a resolution dated 13 February 2004, A.M. was found suspect. Ac-

161 This Report discusses the flaws and analysis of law and practice concerning independent, impartial and effective investigation into alleged criminal conduct of representatives of State authorities/law enforcement officials.

162 The same case is discussed also in another chapter of this Report about independent, impartial and effective investigation.

163 Letter from the Ministry of Internal Affairs No. 1551077 dated 7 August 2013 and Letter from the Chief Prosecution Office No. 13/3515 dated 28 October 2013.

164 The case of citizen D.S. is about a story occurred in 2003 but because the applicant addressed the Public Defender's Office on 15 April 2013, the results of the case examination by the Office of the Public Defender are reported in this 2013 Report.

cording to the case file, witnesses, victims, the victim's legal successor, experts, and the suspect were interrogated. A number of forensic examinations (such as vehicle movement identification, vehicle's technical examination and medical examination) were performed. Inspection of the place of accident and other investigative measures were carried out.

On 28 April 2005, an investigator from the Interior Ministry's Unit for Investigation of Crimes against the State issued a resolution terminating criminal prosecution against A.M. and the criminal case under the pretext that the impugned conduct was not against the legal order (was not a crime).

According to the information obtained by the Office of the Public Defender,[165] the case is now being investigated by the 2nd Unit of Detectives' Division of the Tbilisi Police; however, no criminal prosecution has started against any specific individual.[166]

In its judgment Enukidze and Girgvliani v. Georgia, the European Court of Human Rights noted that, in assessing evidence, the Court generally applies the "beyond reasonable doubt" standard of proof (see Ireland v. the United Kingdom, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see Ertak v. Turkey, no. 20764/92, § 32, ECHR 2000-V).[167]

Because there are some legitimate questions about whether the State agents (members of the Ministry of Internal Affairs in the first case and a senior officer of the Ministry of State Security in the second case) committed crimes in both of the above-reported cases, the law enforcement agencies are obliged to conduct investigation with special zealousness and effectiveness with a view of thoroughly ascertaining the case circumstances and, if elements of crimes are found, hold the perpetrators responsible.

The SWAT operation carried out near Village Lapankuri in the Lopota Ravine

In its 2012 Report to the Georgian Parliament, the Public Defender thoroughly discussed the alleged violations of human rights (including the right to life and the right to liberty of person) by the special forces as a result of the SWAT operation conducted near Village Lapankuri in the Lopota Ravine on 28 August 2012 and the flaws related to investigation into these alleged violations.[168] In 2013, the Office of the Public Defender continued studying these issues.

Because of importance of the matter as well as having in mind that the victims' families and the broad society were unaware of the progress of the Interior Ministry's investigation, the Public Defender formed a public council on the basis of the Organic Law on the Public Defender on 22 October 2013.[169] The council's objective was to thoroughly study and document the alleged violations of human rights and freedoms during the SWAT operation near Village Lapankuri. The council was not an alternative investigation agency; on the contrary, its goal was to facilitate the thorough, effective and transparent investigation by the relevant authorities.[170] During several months of its work, the public council interview many individuals, including the victims' family members, who might have provided information about the events near Village Lapankuri on 28 August 2012. Initial results of these enquiries suggest that the questions raised in the Public Defender's 2012 Report remain legitimate to date and must be answered by the investigation. The council will publish its full report in the first half of 2014.

165 Letters of the Office of the Public Defender Nos. 1986/04-8/1069-13 and 4176/04-8/1069-13 dated 17 April 2013 and 21 August 2013 respectively.

166 Letters of the Chief Prosecution Office No. 13/53211 dated 23 May 2013 and No. 13/84767 dated 21 August 2013

167 Paragraph 285.

168 See the 2012 Report of the Public Defender, pages 289-92 and 296-98.

169 See the statement made by the Public Defender on 22 October 2013.

170 By decision of the Public Defender, the public council's composition is the following: Soso Tsiskarishvili, Lia Mukhashavria, Umar Idigov, Zaur Gumashvili, Khaso Khangoshvili, Murad Kavtarashvili, Vakhtang Maisaia, Kakha Kakhishvili, Mamuka Areshidze, Tamar Gabisonia and Gela Nikolaishvili.

The Public Defender's 2012 Report describes deficiencies in official investigation into the Lopota events in detail. Correct legal qualification of the conduct, institutional independence of the investigation and protection of the victims' procedural rights are the problems continuing up to the present day.

Currently, the criminal proceedings are conducted only under the paragraphs a, c and i of Article 144(2) of the Criminal Code (hostage taking); however, because the Government-mounted SWAT operation in the Lopota Ravine brought about deaths of the belligerents and the representatives of armed forces, it is necessary to pay due consideration to the necessity, legitimacy and proportionality of use of force by the law enforcement agents.

Pursuant to the case-law of the European Court of Human Rights, the Government is obligated to conduct effective and official investigation into loss of life as a consequence of use of force by the Government. That said, the European Convention on Human Rights requires that not only the conduct of the State agents who used the lethal force be subjected to scrutiny but also the way the SWAT operation was planned and implemented. In the given case, it means that proceedings only under Article 144 of the Criminal Code are insufficient; the Government must open a separate case in regard to infringement on the lives of the belligerents. Moreover, this separate investigation should be conducted by the prosecution office and not by the Interior Ministry's investigators.

Institutional independence is still a challenge. According to available information, the criminal proceedings under Article 144 of the Criminal Code are led by the Investigation Unit of the Interior Ministry's Counterintelligence Department. Also, pursuant to information received from the Department, whether the use of lethal force by law enforcement agents was appropriate will be dealt with as part of the same criminal case. Conducting investigation into these two separate issues under the umbrella of a single criminal case is a direct violation of the institutional independence principle because the SWAT operation in Lapankuri was carried out, inter alia, by the armed forced of the Ministry of Internal Affairs. Such cases, under the Georgian legislation, fall within the investigative jurisdiction of the Prosecution Office but numerous requests to forward the case to the Prosecution Office for investigation have been left unanswered this far. No regard has been shown to the Parliamentary Resolution of July 2013 too, which upholds the Public Defender's recommendation included in the PD's 2012 Report to have the Chief Prosecution Office investigate the case.[171]

Family members of the deceased individuals have not been officially recognized as victims' legal successors. That is the case despite the fact that the Government has to meet a very high standard of accountability and to inform the victims' legal successors about the progress of the investigation where the loss of victims' lives was a consequence of the actions of State agents. Since they are not officially recognized as victims, the family members of the deceased individuals are unable to exercise even the minimum rights envisaged by the Code of Criminal Procedure.

As a conclusion, in order to ensure effective, objective and independent investigation into the criminal case concerning the Lapankuri SWAT operation, we suggest implementing the following measures: a separate investigation should be launched to study legitimacy and proportionality of the use of lethal force by the law enforcement agents; circumstances of planning and implementation of the SWAT operation should be investigated; the Prosecution Office should conduct the investigation (including investigative measures that have crucial importance to untangling the case); the family members of the deceased individuals should officially be recognized as legal successors and their effective participation in the investigation process should be ensured.

Investigation of the crimes committed during the Russian-Georgian war in 2008

The bombing of villages and towns during the August 2008 war resulted in civilian casualties. With the help of the Georgian non-governmental organizations, more than a thousand internally displaced persons (IDPs) lodged applications with the European Court of Human Rights against the Russian Federation. The Georgian Government filed a second inter-State complaint with the European Court (Georgia v. Russia); the complaint was declared

171 Resolution of the Georgian Parliament No. 912-RS dated 30 July 2013 concerning the Public Defender's Report about the Status of Protection of Human Rights and Freedoms in 2012: "4. The Chief Prosecution Office shall […] c) conduct full-fledged impartial investigation into deaths of people deceased as a result of the SWAT opration near Village Lapankuri in the Lopota Ravine as well as into any unlawful pressure exerted upon the members of their families; deriving from the principles of impartiality and reliability, persons who were connected with the mentioned case in any form (investigators, prosecutors) shall not participate in carrying out the investigation; d) given the high public interest, the investigation authority must periodically inform the Parliament about the progress of the investigation into the August 2012 events in the Lopota Ravine near Village Lapankuri.

admissible as early as on 13 December 2011 but the case has not been dealt with on merits yet. [172] These complaints concern violations of fundamental rights such as the right to life, the freedom from torture and inhuman treatment, the right to respect for private and family life, the freedom from forced displacement, the freedom from discrimination on ethnic grounds, the right not to be unlawfully deprived of liberty, etc. [173] Complaints have been lodged with the European Court of Human Rights against Georgia too.[174] In November 2013, the Office of the Prosecutor of the International Criminal Court published its 3rd report on initial inquiry.[175] The report says that war crimes allegedly committed during the Russia-Georgia war in 2008 may fall within the jurisdiction of the International Criminal Court; these crimes supposedly include forced displacement of the Georgian population, attack on the peacekeeping forces, unlawful attack on the civilian population and civilian objects, property destruction, robbery and torture and inhuman treatment.[176]

The Georgian Chief Prosecution Office launched investigation into the crimes committed during the Russia-Georgia war in 2008 as early as in 2008. In March 2013, media outlets reported that the Georgian Chief Prosecutor formed a group of 8 people to investigate the criminal offences allegedly committed during the 2008 hostilities. However, according to information received by the Office of the Public Defender, the investigation has had no result so far.[177]

The Georgian investigation authorities are investigating the disappearance of ethnic Ossetians during and after the 2008 hostilities.[178] In particular, the Shida Kartli and Mskheta-Mtianeti Regional Prosecution Office is investigating Criminal Case No. 74098089 concerning the missing persons A.Kh., Akh. and S.P., and Criminal Case No. 011040113004 concerning missing T.K. In both cases, proceedings are run under Article 143 of the Criminal Code (unlawful deprivation of liberty). The Investigation Department of the Chief Prosecution Office is investigating Criminal Case No. 074088079 concerning missing R.I. However, no final court judgment has been delivered in any of these cases this far.[179]

According to the case-law of the European Court, where there is a prima facie case of a person having had disappeared while in the hands of the representatives of State authorities, the burden of proof will shift onto the Government even if no documents are served to that effect. The Government must provide credible evidence confirming that it did not violate Article 2. Also, in such cases, the Government has the obligation to conduct prompt and effective investigation.[180]

The flaws in the criminal cases related to persons gone missing during and after the Russian-Georgian war in 2008 were discussed as early as in the 2010 report published by the Council of Europe. However, as already mentioned,

172 Decision, Georgia v. Russia (2), Application no. 38263/08, European Court of Human Rights, 13.12.2011 http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"docname":["\"GEORGIAv.RUSSIA(II)\""],"documentcollectionid":["COMMITTEE","-CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-108097"]}.

173 See Georgia's Application to the European Court, Newspaper 24 Hours, 30.01.2012. http://24saati.ge/index.php/category/news/justice/2012-01-30/24670 See also The Strasbourg Court receives additional materials against Russia, Radio Liberty, 13.02.2009 http://www.radiotavisupleba.ge/content/article/1956622.html.

174 Of the complaints filed against Russia, the European Court commenced proceedings only in one case: Kobaladze and Others v. Russia, Case No. 50135/09. See Four Georgians versus Russia in Strasbourgh, Radio Liberty, 06.07.2011 http://www.radiotavisupleba.ge/content/article/24257205.html.

175 On 14 August 2008, Luis Moreno Ocampo, the Prosecutor of the International Criminal Court officially stated that preliminary inquiry into the Russia-Georgia situation had commenced.

176 Report on preliminary examination activities 2013, November 2013, The Office of Prosecutor, the ICCC, paras. 157-162 ; See also, Report on preliminary examination activities 2012, November 2012, The Office of the Prosecutor, The ICC.

177 Letter of the Public Defender No. 04-6/2685 dated 9 December 2013 and Letter of the Chief Prosecution Office No. 13/4748 dated 27 January 2014. Pursuant to the latter letter from the Prosecution Office, in regard to criminal offences allegedly committed during and after the hostilities on the Georgian territory in August 2008, the Chief Prosecution Office, the Defense Ministry and the Ministry of Internal Affairs have formed a joint investigation group to investigate the criminal case. The same Letter from the Prosecution Office suggests that the mentioned criminal case consists of multiple episodes and is very voluminous. A series of investigative activities have been conducted and the evidence-taking process continues; however, no criminal prosecution has started against any specific person.

178 See also Monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, Strasbourg, 29 September 2010.

179 Letter from the Chief Prosecution Office dated 10 October 2013.

180 See Togcu v Turkey, application. no. 27601/95, 31 May 2005, para. 95; Malika Alikhadzhiyeva v Russia, application no. 37193/08, 24 May 2011, para. 91.

investigation has not been completed into any of these cases yet.[181]

The Georgian legislation and, in particular, the Criminal Code must be made compatible with the international standards. It was for that purpose that the Public Defender addressed the President of Georgia on 30 August 2013 with a recommendation to initiate ratification of United Nations Convention on the Protection of All Persons from Enforced Disappearance dated 20 December 2006.[182] The President of Georgia, on its turn, forwarded his proposal to implement legally required steps to the Ministry of Foreign Affairs.[183]

Pursuant to information obtained by the Office of the Public Defender, investigation into some of the cases of missing persons is still ongoing. In all of these cases, investigations are conducted under Article 143 of the Criminal Code (unlawful deprivation of liberty).[184]

On 19 April 2013, M.M., a citizen of the Russian Federation, went missing. According to information we received, M.M. had been in Georgia since May 2012. He had filed an application for a refugee status with the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees. On 14 December 2012, M.M. was arrested on charges under Article 344(1) of the Criminal Code. On 15 December 2012, M.M. was committed to remanded to custody by the Tbilisi City Court. On 14 January 2013, criminal proceedings against M.M. were terminated based on the Amnesty Law of 28 December 2012.[185] M.M went missing on 19 April 2013. On 5 September 2013, the 7th Unit of the Gldani-Nadzaladevi Police of the Tbilisi Main Department of the Ministry of Internal Affairs opened criminal investigation under Article 143(1) of the Criminal Code in regard to unlawful deprivation of M.M.'s liberty.[186] The news channels reported that M.M. could have been detained in the Russian Federation. This raises questions about his disappearance and arrest in the Russian Federation because M.M.'s family members have been saying that M.M. was seeking a refugee status in Georgia to protect himself from being persecuted in Russia.

Recommendations:

To the Chief Prosecutor

- **To promptly and effectively investigate the deaths of Mamuka Mikautadze and D.S.;**
- **To conduct prompt, intensive and effective investigation into the cases of missing persons, including the Russian citizen M.M.;**
- **To ensure that investigation into criminal offences allegedly committed during and after the hostilities in August 2008, including into the cases of missing persons, be conducted effectively, in a short time period.**

To the Minister of Internal Affairs and the Chief Prosecutor

- **To ensure that investigation into the deaths occurred as a result of the SWAT operation on 28 August 2012 is conducted by the Chief Prosecution Office in observance of the principle of independent, impartial, prompt and effective investigation.**

To the Minister of Foreign Affairs and the Parliament

- **According to the Public Defender's recommendation of 2013, to commence ratification of the United Nations Convention on the Protection of All Persons from Enforced Disappearance of 20 December 2006.**

181 Monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, Strasbourg, 29 September 2010.

182 See the Public Defender's statement of 30 August 2013.

183 Letter from the Administration of the President of Georgia dated 11 September 2013.

184 In February 2007, D.S., an employee of the Abkhazian administration in Gali went missing; on 16 August 2008 and 27 August 2008, citizens D.Ts. and P.Q. disappeared on the territory of the western Georgia.

185 Letter from the Chief Prosecution Office dated 13 September 2013.

186 Letters from the Ministry of Internal Affairs dated 13 May and 14 September 2013.

PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

Prohibition of torture, inhuman and degrading treatment or punishment is an absolute human right. This right is inherent into every human being as a personality. It may not be limited under any pretext; no derogation from this right can be justified by any circumstance or seriousness of crime committed. The State has the obligation to refrain from administering torture, inhuman or degrading treatment, to prohibit such treatment at the legislative level and, whenever such treatment is administered, to promptly and effectively investigate and hold the perpetrators responsible.

Torture, threat of torture, and degrading or inhuman treatment are punishable as criminal offences under Articles 1441–1443 of Georgian Criminal Code. However, as the Public Defender has been stating in its reports, such actions are not given correct legal qualification in practice; in particular, instead of qualifying these crime under Articles 1441–1443, the alleged perpetrators are usually charged with abuse of official power or exceeding official power. Pursuant to official statistics, only a small number of criminal cases have been qualified under Articles 1441–1443 (torture, threat of torture, and degrading or inhuman treatment) in the recent years. In September 2012, the public learnt that torture and inhuman treatment had been a regular practice. In August 2013, the Ministry of Internal Affairs discovered numerous video recordings on both territories under its control and elsewhere indicating that the problem was a systemic one and was widespread also outside the penitentiary system.[187]

Based on the analysis of concrete cases by the Office of the Public Defender, this Chapter of the Report discusses violations of the freedom from torture, inhuman and degrading treatment. It also describes measures taken in response to alleged ill-treatment of detained persons administered by law enforcement officials.

In 2013, the Office of the Public Defender received numerous complaints from citizens concerning torture and inhuman or degrading treatment allegedly administered by police and penitentiary officials against detainees and other citizens before October 2012. The Office of the Public Defender forwarded all of these cases for follow-up to the Chief Prosecution Office. In a majority of the cases, the Prosecution Office commenced investigation under Articles 1441–1443 (torture, threat of torture, and degrading or inhuman treatment) and Article 333 (exceeding official power) of the Criminal Code. However, none of these cases, to the best of our knowledge has been forwarded to courts yet. It is important that the Chief Prosecution Office inform the public, without infringing upon the presumption of innocence and respect for private and family life, about the progress of investigation into allegations of torture and inhuman or degrading treatment.

Investigation of such cases requires the Georgian authorities to apply a great deal of effort to obtain evidence that is capable of proving the commission of crime beyond reasonable doubt. Evidence having such weight is physical evidence such as medical documents, which may be hard to extract depending on how much time has passed after crime commission. For these crimes to be investigated effectively, the Georgian Chief Prosecution Office should acquaint itself with the knowledge and expertise of other countries related to taking and analyzing evidence for investigating old cases.[188] It is necessary to take into consideration that the more investigation into such cases is

187 Georgia in Transition, Thomas Hammarberg, EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, 2013, pp. 30-32.

188 Defective practices of detecting and documenting indications of ill-treatment in the Georgian penitentiary institutions is discussed in a report entitled "Investigating ill-treatment – stocktaking report on Georgia" by Jim Murdoch, a long term consultant at the joint programme of the European Union and the Council of Europe "Reinforcing the fight against ill-treatment and

protracted the more difficult and perhaps impossible it becomes to take strong evidence, conduct full-fledged investigation, and detect and punish those responsible.

The Public Defender's Office studied two criminal cases in which the prosecution was conducted under Articles 1441–1443 of the Criminal Code (torture, threat of torture, and degrading or inhuman treatment). In these cases, the Akhaltsikhe District Court and the Gori District Court rendered acquitting judgments on 3 July 2013 and 8 January 2014 respectively. According to the case files, the prosecution's major evidence was the victims' testimonies, which the courts regarded insufficient to satisfy the "beyond the reasonable doubt" standard required for rendering convicting judgments. In its acquitting judgment, the Akhaltsikhe District Court stated that the "victim's testimony is refuted by the Prosecution's expert D.M. who has said [during witness examination at the trial] that, the circumstances described by victim V.G. must have resulted in leaving some objective traces of injury on his body […][189] The judgment of the Akhaltsikhe District Court was left unchanged by the judgment of the Tbilisi Court of Appeals dated 17 December 2013. The Gori District Court, on its turn, in its judgment of 8 January 2014, stated:

> "[…] One of the major types of evidence to corroborate occurrence of inhuman treatment and rape and to discern credibility of the victim's testimony is a scientifically-proven medical evidence produced as a result of a thorough examination, in other words, a forensic medical report. […] A report produced as a result of only a superficial observation from the outside is doubtful in terms of its credibility and does not provide a reliable explanation. The prosecution […] must have also ordered a forensic medical examination to examine whether O. [the victim] had internal injuries of the anus."[190]

Pursuant to information furnished by the Chief Prosecution Office, after the so-called "prison videos" were publicized in October 2012 until 31 August 2013, investigation was commenced under Article 1441 (torture) of the Criminal Code in 28 cases and under Article 1443 (degrading or inhuman treatment) in 118 cases. No single criminal case was opened under Article 1442 (threat of torture). Of these cases, on 25 June 2013, the Kutaisi City Court rendered judgments in relation to 6 defendants and, on 14 June 2013, the Tbilisi City Court passed judgments in relation to 17 defendants. All other cases, by 24 September 2013, had been under consideration in the city courts of Batumi, Zugdidi, Gori, Rustavi, Kutaisi and Tbilisi.[191] It should also be noted that because 9 defendants signed plea agreements and then the Amnesty Law of 28 December 2012 was applied to all of them, a maximum sentence imposed was 7 years of imprisonment and some of the convicted persons were eventually sentenced to only 6 months of imprisonment;[192] these punishments are manifestly disproportional to individuals convicted of torture and other ill-treatment.

Further, in the "prison videos" case, we identified that the Chief Prosecution Office and the common courts violated international principles by the way they imposed criminal liability and enforced judgments in relation to perpetrators of torture, inhuman and degrading treatment.

The case concerning Convicted V.B.

On 14 June 2013, Judge L.Ch. of the Criminal Cases Panel of the Tbilisi City Court approved a plea agreement between Archil Kbilashvili, Chief Prosecutor and V.B., the defendant. The defendant had been charged with crimes under paragraphs a, b, d, e and f of Article 1443(2),[193] paragraphs a, b, e and f of Article 1441(2) (four episodes),[194]

impunity", pp. 22-26

189 Judgment of the Akhaltsikhe District Court dated 3 July 2013, pages 68-69.

190 Judgment of the Gori District Court dated 8 January 2014, p. 11.

191 Letter from the Chief Prosecution Office dated 24 September 2013.

192 Ibid.

193 A crime under paragraphs a, b, d, e and f of Article 1443(2) is the following: humiliating or coercing an individual, placing him/her in conditions that infringe his/her honor and dignity, which caused strong physical or psychological pain or moral suffering to the victim, committed a) by a public official or other person having the equal status; b) using one's office; d) by two or more people; e) by a group; f) with the knowledge that the victim was a pregnant woman, a juvenile, a detained person or a person whose liberty was otherwise restricted, was in a helpless situation or was financially or otherwise dependent on the offender. This crime is punishable with imprisonment from 4 to 6 years with or without a fine or deprivation of the right to occupy a position or carry out an activity for up to 5 years.

194 Paragraphs a, b, e and f of Article 1441(2) make the following criminal offence: torturing an individual, that is, placing the individual, his/her close relatives or persons who financially or otherwise depend on him/her in a position or treating any of the

and paragraphs a, b, e and f Article 1443(2) (two episodes) of the Criminal Code. By virtue of the plea agreement, V.B. was completely released from criminal liability for the crimes listed above.

The Office of the Public Defender thoroughly examined the materials of the case concerning defendant V.B.

On 11 June 2013, the Chief Prosecutor lodged its motion for releasing defendant V.B. from criminal liability under Articles 1441 and 1443 of the Criminal Code for his special cooperation. The Chief Prosecutor asked for not holding the defendant liable at all on account of his special cooperation with the law enforcement authorities as a result of which he made it possible to investigate the crimes committed by the defendant himself and other persons. In particular, these crimes were committed in the period of March-June 2011 (the video recordings made by V.B. of how prisoners were being subjected to torture and inhuman treatment were distributed only in September 2012). The same motion reads that "by providing the video recordings, V.B. endangered not only his own office career but also security of own person and, for this reason, was forced to flee the country. The lives and health of V.B.'s family members also became endangered by V.B.'s publication of the video footages."

Having studied the case file, the Office of the Public Defender arrived at a conclusion that, contrary to what is asserted in the Chief Prosecutor's motion of 11 June 2013, lives and health of V.B. and his family members never became endangered by V.B.'s publication of the mentioned video recordings. The prosecution office's assertion as if the lives and health of V.B and his family members were endangered is not corroborated according to information furnished by the Chief Prosecution Office to the Office of the Public Defender either, which says that no investigation has commenced into alleged commission of offences, including threat of torture, against V.B. and/or his family members and no court judgment has been passed on this matter accordingly.[195]

The Code of Criminal Procedure prescribes procedures for concluding plea agreements between the Prosecution Office and defendant/convicted person and judicial approval of plea agreements thus concluded. Article 218 envisages the possibility of completely releasing accused persons from liability/punishment or releasing prisoners from serving their sentence and/or revision of their punishment based on a plea agreement about special cooperation between a prosecutor and the accused/convicted individual.

Under paragraph 8 of the said Article, "It is prohibited to fully release persons convicted of crimes under Articles 1441, 1442 and 1443 of the Criminal Code from punishment."

It is clear that the Code of Criminal Procedure expressly prohibits releasing persons convicted (but not accused) of crimes under Articles 1441, 1442 and 1443 of the Criminal Code from criminal liability. This means the Chief Prosecutor, formally, had the right to motion before the common courts for complete release of accused V.B. from criminal liability. However, the mentioned provision of the Georgian Code of Criminal Procedure, the Chief Prosecutor's motion and the judgment of the Tbilisi City Court dated 14 June 2013 – all contravene the internationally recognized principle requiring that torture and degrading treatment be investigated and the perpetrators be punished.

According to the established practice of and recommendations issued by international organizations, judges shall, acting within their competence, comply with the international obligation to investigate, bring to justice and punish the perpetrators of human torture. No one shall go unpunished on account of their official status. Amnesties and other measures shielding human rights perpetrators (such exposed perpetrators of torture) from trial, investigation and prosecution are incompatible with the State's obligation under the international human rights law to investigate, bring to justice and punish those who have committed heinous violations of human rights. Releasing perpetrators, including high-ranking officials, from liability or reducing charges brought against them is regarded unacceptable by the international jurisprudence.[196]

former in a way that the position or treatment by its nature, intensity or duration causes strong physical pain or mental or moral suffering and which is aimed at extracting information, evidence or confession, intimidating, coercing or punishing the individual for the conduct committed or allegedly committed by him/her or a third person, when committed a) by a public official or other person having an equal status; b) using one's office; d) by two or more people; e) by a group; f) with the knowledge that the victim was a pregnant woman, a juvenile, a detained person or a person whose liberty was otherwise restricted, was in a helpless situation or was financially or otherwise dependent on the offender. This crime is punishable with imprisonment from 9 to 15 years with deprivation of the right to occupy a position or carry out an activity for up to 5 years.

195 Letter of the Chief Prosecution Office No. 13/96619 dated4 October 2013.

196 The United Nations Human Rights Committee, General Comment 20 regarding Article 7 of the Interntioanl Covenant on Civil and Political Rights, paras. 8 and 15; the United Nations Human Rights Committee, concluding observations about Argentina, 5

Accordingly, to make the Georgian legislation congruent with the international norms, it is necessary to amend Article 218(8) in a way to establish an outright prohibition of concluding plea agreements with individuals either accused or convicted of crimes under Articles 1441, 1442 and 1443 of the Criminal Code.

ALLEGED EXCESSIVE USE OF FORCE BY THE LAW ENFORCEMENT AGENTS

In 2013 the Office of the Public Defender reviewed about 40 applications from citizens complaining of improper and degrading treatment administered against them by law enforcement agents in time of arrest (during 2013).

The study carried out by the Office of the Public Defender showed that, according to the statistical data from temporary detention isolators, a majority of claims of detainees relate to law enforcement officials of police stations in the following towns: Marneuli, Tbilisi, Gori, Zugdidi, Batumi, Mtskheta, Telavi and Kutaisi. In some cases, the detainees were also indicating the names of concrete police officers who ill-treated them in time of arrest with verbal and physical insults. According to the data from the Kutaisi temporary detention isolator, in 5 out of 17 such cases the detainees complained about the 4th division of the Kutaisi Main Police; in 5 other cases of the same 17, the detainees complained about the 2nd division of the Kutaisi Main Police; in the remaining cases, detainees complained about law enforcement officials from various police divisions as well as police officers from the patrol police and the regional police.

1. Citizen M.G. was arrested under Article 239 of the Code of Administrative Offences on 28 April 2013 at 21:45 hours. He was brought to the temporary detention isolator on 29 April 2013 at 00:35 hrs. Officials of the 2nd Division of the Kutaisi Main Police Department insulted him verbally and physically. M.G. had multiple injuries on his body: bruises and excoriations on his face and all over his body.

2. Citizen Ts.G. was arrested under Article 173 of the Code of Administrative Offences on 8 May 2013 at 01:10 hrs. He was brought to a temporary detention isolator at 07:25 hrs. Officials of the 4th Division of the Kutaisi Main Police verbally and physically insulted him. The detainee had general bruises on his body.

3. Citizen G.E. was arrested under Article 173 of the Code of Administrative Offences on 12 March 2013 at 23:00 hrs. He was brought to the temporary detention isolator on 13 March 2013 at 02:00 hrs. In the Bolnisi Police station, he was verbally and physically abused by police officers. He had excoriation on his upper and lower limbs and a red swelling in between his eyebrows.

4. Citizen M.Ch. was arrested under Articles 166 and 173 of the Code of Administrative Offences on 10 April 2013 at 19:00 hrs. He was brought to a temporary detention isolator at 22:00 hrs. He was physically insulted by M.Sh., a representative of the Sadakhlo Unit of the Marneuli Police. The detainee's right wrist joint was injured.

Because of the increasing number allegations of law enforcement officials' involvement in criminal offences, on 29 May 2013, the Public Defender addressed the Minister of Internal Affairs, the Justice Minister and the Chief Prosecutor with its recommendations[197] asking for both the taking of preventative measures to avoid commission of criminal conduct by law enforcement officials and the conducting of effective investigation into ill-treatment possibly administered by them.

Pursuant to information received from the Chief Prosecution Office, in 2 out of the 9 cases[198] referred to in the Recommendation dated 29 May 2013, commission of criminal conduct by law enforcement officials was not proven and criminal prosecution was thus terminated. As regards other cases, they are under investigation. On some of these cases, the investigating authorities were issued directions. However, no court judgments have been passed in any of these cases.[199]

April 1995, UN doc. CCPR/C/79/Add.46; A/50/40, paragraph 146.

197 In his recommendations of 29 May 2013, the Public Defender described ten specific cases of ill-treatment by law enforcement officials, which were being reviewed by the Office of the Public Defender.

198 Through its letter dated 27 June 2013, the Chief Prosecution Office replied that they did not find a case concerning citizen G.M. in their files.

199 Letter from the Chief Prosecution Office dated 27 June 2013.

The case concerning citizen M.G.

On 5 September 2013, the Public Defender was approached by Citizen M.G. who stated that, on 10 March 2013, based on the Amnesty Law of 28 December 2013, he was released from his imprisonment sentence. About 10 days after the release, he was called up the Deputy Chief of Tskaltubo Police and was told to leave Georgia, or else, the Deputy Chief of Police threatened to kill him. According to M.G., on 31 August 2013, he was arrested in the vicinity of his house by R.Q., Chief of Tskaltubo Police and S., his deputy (the applicant did not remember the deputy's last name). The Police Chief and his deputy implanted marijuana in the applicant's pocket and drew up a protocol as if they found the applicant carrying marijuana in his pocket. According to the applicant, these two men beat him in his head and legs. He was proposed to cooperate with the police; if he'd agreed, they promised to burn the protocol they had just drafted. According to the applicant, he was let by R.Q. go but was threatened that they would kill him and arrest his son unless he fulfilled their assignment.

Regarding this case, the Prosecution Office informed the Office of the Public Defender that on 28 January 2014 the Kutaisi District Prosecution Office opened investigation into Criminal Case No. 041280114802 concerning the exceeding of official powers by the members of the Tskhaltubo Police, under Article 333(1) of the Criminal Code.

The case concerning Citizen V.L.

As V.L. reported, on 27 October 2013, at about 9pm, he was at A.G.'s home located in Rustavi, Balanchivadze Street. In the same apartment was Z.A., chief of the Rustavi Division of the Ministry of Internal Affairs. Z.A. verbally insulted the applicant. Soon after that, the applicant left. As the applicant was leaving A.G.'s apartment, he was met by Z.A. near the residential multi-story building. Z.A. forced the applicant into his car. According to V.L., Z.A. starting beating him with his hands and some object which the applicant could not identify. Z.A. pointed with his gun towards the applicant's face and tried to strangle him with his another arm. The applicant was saved by his acquaintances and passers-by and was taken to one of his relatives' home. As the applicant was leaving the relative's home, he was again ambushed by Z.A. accompanied with 10-12 other police officers. According to the applicant, the police officers knocked him down and beat him mercilessly. V.L. became unconscious. When he came around, he found himself at the 2nd Unit of the Rustavi Police where the police officers continued beating him. That night, V.L. was transferred to a temporary detention isolator where it became necessary to call the ambulance to provide him medical assistance.

Pursuant to information the Office of the Public Defender received from the Chief Prosecution Office, the 2nd Unit of the Rustavi Town Police is investigating a criminal case against V.L. under Article 3531(1) of the Criminal Code (attacking a police officer or other representative of State authorities or a public institution).[200] On 24 January 2014, a separate criminal case was opened on alleged exceeding their official powers by the police officers in relation to V.L.; however, no specific individuals are being prosecuted within this latter criminal case.[201]

The case concerning Citizens Sh.K. and A.J.

In his application to the Office of the Public Defender, a lawyer for citizens Sh.K. and A.J. stated that, on 27 October 2013, at 2am, in the Roses Square in Tbilisi, police officers dressed up in civilian clothes beat up citizens Sh.K. and A.J. The citizens were then brought to Old Tbilisi District Police where police officers continued beating their beating all night long.

Pursuant to information we received from the Ministry of Internal Affairs, citizen Sh.K. arrested on 28 October 2013 was prosecuted for a crime under Article 260 of the Criminal Code. However, the amount marijuana extracted as a result of Sh.K.'s search was insufficient for continuing criminal prosecution. On this ground, the criminal case against Sh.K. was closed and Sh.K. was released. According to the Ministry's letter, citizen A.J. had not been arrested at all.[202]

200 Letter from the Chief Prosecution Office dated 27 January 2014.

201 Letter from the Chief Prosecution Office dated 7 March 2014.

202 Letter of the Ministry of Internal Affairs dated 11 February 2014.

The lawyer for Sh.K. furnish the Office of the Public Defender with a copy of a report about Sh.K.'s health status produced by the National Forensics Bureau based on a request dated 29 October 2013. The report said that Sh.K. had injuries (bruises) in the facial are that were consistent, by age, with the date indicated in the case file. On 21 March 2014, the Public Defender addressed the Chief Prosecutor with a recommendation to open investigation into alleged ill-treatment administered against Sh.K.

The case concerning Citizen Z.K.

The Public Defender's trustee took down citizen Z.K.'s statement. The applicant stated that, since 2012, he had been systematically subjected to psychological pressure and threatening by representatives of the Rustavi Police demanding that Z.K. cooperate with and act as an informant for law enforcement officers. According to Z.K.'s statement, on 6 February 2013, Z.K. was physically insulted by D.S., Chief of the Rustavi Police and about 15 law enforcement officers. It follows from Z.K.'s explanations that the police officers also breached his procedural rights envisaged by law.

Pursuant to information received by the Office of the Public Defender from the Chief Prosecution Office, on 22 February 2013, the Investigation Unit of the Kvemo Kartli Regional Prosecution Office opened criminal investigation into alleged exceeding of their official powers by police officers, under Article 333(c) of the Criminal Code. Citizen Z.K., his family members and neighbors as well as the police officers were interrogated as witnesses. Z.K. was examined by forensic medical specialists. Investigation is ongoing. However, Z.K. has not been granted a victim's status and no specific individuals are being prosecuted.

The case concerning Citizen V.B.

On 14 November 2013, the Office of the Public Defender was approached by Citizen V.B. The applicant stated that, on 12 November 2013, at 1:15pm in the afternoon, he was at an office to his brothers T.B. and R.B. located at Mazniashvili Street No. 23, Tbilisi. Two police officers dressed up in civilian clothes demanded G.M. who worked in the same office to provide his identification documents. To G.M.'s question who these individuals were, they replied they were police officers and showed their official IDs. Citizen V.B. intervened in the conversation stating the he knew G.M. well. According to V.B., immediately after he finished saying he knew G.M., one of the police officers first verbally insulted V.B. and then dropped him down on the floor. The police officers then pushed V.B. into a white Skoda Octavia. They continued beating V.B. in the car. According to V.B., he was brought to the Old Tbilisi District Police unconscious. At the police station, T.B., the applicant's brother, having seen the applicant's condition, asked the Chief of Police to have V.B. examined by a medical specialist. The request was denied and V.B. was transferred to the Tbilisi City Court.

On 28 November 2013, the Public Defender received a copy of the materials concerning V.B.'s administrative offence case. According to the case materials, on 22 November 2013, the Administrative Cases Panel of the Tbilisi City Court rendered a resolution about announcing a verbal admonishment to V.B. as a sanction for the commission of an administrative offence under Article 173 of the Code of Administrative Offences (disobedience to a legitimate order or demand).

On 20 November 2013, the Office of the Public Defender addressed the Chief Prosecution Office with a request to take action in regard to V.B.'s complaint. The Public Defender's letter was accompanied with a medical certificate and a forensic medical report about V.B.'s injuries produced by the Public Law Entity Levan Samkharauli National Forensics Bureau. The applicant stated he had been beaten up by police officers also before the Administrative Cases Panel of the Tbilisi City Court during his hearing, as recorded in the minutes of the hearing. Pursuant to information received from the Chief Prosecution Office, on 30 December 2013, the Old Tbilisi District Prosecution Office opened Criminal Case No. 006301213801 concerning the exceeding of official powers by law enforcement officials, under Article 333(1) of the Criminal Code.[203]

Results of our analysis of similar cases show that, according to the information furnished by the Chief Prosecution Office, no criminal prosecution has actually started and no court judgment has been rendered against any concrete

203 Letter from the Prosecution Office no. 13/201 dated 3 January 2014.

law enforcement officer, which raises legitimate questions about effectiveness of these investigations and credibility of investigation agencies. The fact that the Chief Prosecution Office only formally launches investigation into alleged ill-treatment or use of excessive force by law enforcement officers, unreasonably protracts investigation and fails to satisfactorily inform the interested parties about the investigation results does not fit into the Government's positive obligation to timely, effectively and impartially investigate such allegations. In addition, analysis of the above-referenced criminal cases shows that incorrect legal qualification of law enforcement officers' conduct is again a problem much like the way it has been for years: ill-treatment or excessive use of force by police officers is prosecuted under Article 333 of the Criminal Code (exceeding official powers).

THE GOVERNMENT'S POSITIVE OBLIGATIONS IN EXTRADITION PROCEEDINGS

When extradition of an individual from one country to another is contemplated, the extraditing Government has a positive obligation to protect lawful rights of the detainee subject to extradition.

Pursuant to the case-law of the European Court of Human Rights, a country that received a request for extradition must satisfy itself that, if extradited, the individual will not be subjected to the conduct prohibited by Article3 of the Convention.[204] In many of its judgments, the European Court has been consistently stating that

> "There is an obligation on Contracting States not to extradite or expel an alien, including an asylum-seeker, to another country where substantial grounds had been shown for believing that he or she, if expelled, faced a real risk of being subjected to treatment contrary to Article 3 of the Convention."[205]

The European Court has explained that

> "In determining whether such a risk exists, the assessment must be made primarily with reference to those circumstances which were known or ought to have been known to the extraditing State at the time of the extradition."[206]

As we see, in deciding whether to extradite an individual, the extraditing Government must look into international organizations' assessment of the human rights situation in the requesting country. The European Court goes on explaining that in determining whether such a risk exists, the assessment must be made primarily with reference to those circumstances which were known or ought to have been known to the extraditing State at the time of the extradition. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.[207]

In the reporting period, the Office of the Public Defender studied several cases concerning extradition of foreign citizens. Given the facts in each of these cases and the human rights situation in the requesting countries, the Office of the Public Defender deemed it appropriate to recommend relevant Georgian authorities to take due account of requirements established by international norms, including by the case-law of the European Court of Human Rights, when making their decisions to extradite these individuals.

With the human rights situation in the requesting countries in mind, the Office of the Public Defender applied

204 Shamayev and 12 others v. Georgia and Russia, Application number 36378/02.

205 Shamaev and 12 others v. Georgia and Russia, Application number 36378/02;

206 Shamayev and 12 others v. Georgia and Russia, Application number 36378/02.

207 Shamayev and 12 others v. Georgia and Russia, Application number 36378/02.

special diligence in examining the cases concerning M.K.[208] and I.L.[209], citizens of the Russian Federation, R.K.,[210] a citizen of Azerbaijan and M.F.,[211] a citizen of Uzbekistan.

The European Court of Human Rights has rendered numerous judgments against the Russian Federation for ill-treatment and violation of Article 3 of the European Convention on Human Rights by the Russian authorities. One of such cases was Shamayev and 12 others v. Georgia and Russia. It is therefore important that the Georgian authorities study the cases of M.K. and I.L. profoundly and with due care to make sure their rights are not violated. Pursuant to information we received from Georgia's Chief Prosecution Office, the Russian Federation has already applied the Georgian Chief Prosecution Office with a request for extraditing M.K. and I.L. to Russia. However, the extradition issue will be decided only after the criminal proceedings in regard to crimes committed by them on the territory of Georgia are over.[212] M.K. and I.L. have already requested the Georgian Ministry for IDPs from the Occupied Territories, Accommodation and Refugees to grant them asylum.[213]

The European Court of Human Rights, acting under Article 39 of the Rules of the Court, has indicated interim measures to many Members States requesting that they suspend their decisions to extradite detainees to the Republic of Uzbekistan.[214] Uzbekistan is a party to the United Nations Convention against Torture, Inhuman and Degrading Treatment or Punishment dated 10 December 1984 but many highly-qualified international organizations have reported wholesale violation of human rights in Uzbekistan even in the present day. Thus, in its 2011 Report, the Human Rights Watch states that torture remains rampant in Uzbekistan and continues to occur with near-total impunity.[215] In 2012, Amnesty International reported that despite assertions by the authorities that the practice of torture had significantly decreased, reports of torture or other ill-treatment of detainees and prisoners continued unabated. In most cases, the authorities failed to conduct prompt, thorough and impartial investigations into these allegations.[216]

On the issue of extradition to the Republic of Uzbekistan, an important judgment with a precedential value has been rendered by the Supreme Court of Georgia. In particular, by its judgment No. 71–10 dated 26 March 2010, the Supreme Court reversed the judgment of the Tbilisi Court of Appeals on extraditing N.S. to the Republic of Uzbekistan on the ground that all the possible obstacles to extradition envisaged in international treaties and the Georgian legislation were not examined thoroughly when the extradition decision was made. As the Georgian Su-

208 On 14 June 2013, members of the Ministry of Internal Affairs arrested M.K. and R.O., citizens of the Russian Federation, on charges of unlawful acquiry and storage of firearms and explosives. According to M.K. who is an ethnic Avar from the Republic of Dagestan, he arrived in Georgia about a year and a half ago as he had been persecuted in Russia for his human rights work, political beliefs and religion. Pursuant to information received from the Georgian Chief Prosecution Office, the Russian Federation's Prosecutor-General's Office requested Georgia to extradite M.K. to Russia. The extradition materials suggest that M.K. is being wanted for his alleged complicity in a murder committed in Moscow in 2009.

209 On 13 September 2013, the Prosecution Office of the Autonomous Republic of Achara commenced investigation into criminal case concerning I.L and others on charges of unlawful acquiry, storage and carriage of firearms as well as resisting and attacking a representative of State authorities. I.L. is an ethnic Chechen and a citizen of the Russian Federation. Pursuant to the information received from Georgia's Chief Prosecution Office on 7 March 2014, I.L.'s extradition proceedings are currently ongoing.

210 In June 2013, the Office of the Public Defender studied the case of R.K., a citizen of Azerbaijan, who has been arrested by the Georgian law enforcement agencies. Azerbaijan's Prosecutor-General's Office requested his extradition on the basis of charges of fraud brought against him. R.K. states that as an ethnic Kurd and a citizen of Azerbaijan, he is wanted by the Azerbaijanian security agency because one of his brothers is a member of the Armenian counter-intelligence agency. According to R.K., he left Azerbaijan in November 2011 and moved to the Russian Federation. Since then, he had been living in Russia. On 6 November 2012, he arrived and stayed in Georgia. R.K. says he has a family in Azerbaijan, in particular, mother, spouse and child. His family members are being pressured and threatened by the representatives of the Azerbaijanian security service.

211 M.F. was wanted by the Uzbek Bureau of Interpol. He was arrested in Georgia on 6 April 2013 at the Sarpi border checkpoint. On 9 April 2013, the Khelvachauri District Court ordered his 3-month pre-extradition detention as a preventative measure, which has been upheld by the Kutaisi Court of Appeals. M.F. states that, by the he had not departed from Uzbekistan yet, representatives of the Uzbek Ministry of Internal Affairs arrested four of his friends who were his business partners. According to M.F., the Uzbek militia brutally tortured his partners (ripped off their nails). As a result of systematic beating, the detainees were heavily injured. The applicant asserts that the Uzbek authorities have been keeping these individuals in inhuman conditions in an Uzbek detention facility up to present, in the hope that they will testify against M.F. Given these circumstances, M.F. asserts that, if extradited to Uzbekistan, he will necessarily be subjected to torture and ill-treatment.

212 Letters of the Chief Prosecution Office dated 13 February and 14 March 2014.

213 On 15 January 2014, M.K.'s request for asylum was rejected; he challenged the rejection in the Tbilisi City Court.

214 Mamatkulov and Askarov v. Turkey (Applications nos. 46827/99 and 46951/99).

215 http://www.hrw.org/world-report-2012/world-report-2012-uzbekistan.

216 http://www.amnesty.org/en/region/uzbekistan/report-2011.

preme Court put it, in that case, neither the acting Justice Minister nor the [lower] court have properly studied the current situation in the country requesting the extradition in terms of potential threats the detainee may be facing if extradited. The acting Justice Minister and the court should have evaluated the risk of violation of Article3 of the European Convention on Human Rights and Article 3 of the UN Convention against Torture, and the real nature of such risk.[217]

The need for conducting a comprehensive analysis of the human rights situation in Azerbaijan has been pointed out by the Georgian Public Defender in its recommendation of 9 September 2013 regarding the case of extradition of R.K.[218]

It is of crucial importance that Georgia's relevant authorities evaluate and decide foreign citizens' extradition issues in compliance with the international norms and the requirements established by the European Court of Human Rights through its case-law. Before a decision to extradite is made, the relevant agencies must thoroughly and comprehensively study the risk of torture and ill-treatment faced by an individual if extradited to the requesting country. If the decision to extradite is made anyway, the extraditing Government must obtain solid assurances from the requesting Government that the extradited individual will not be subjected to torture and/or other unlawful treatment and that, in the course of investigation and trial, the individual will be able to fully enjoy his/her rights under the European Convention on Human Rights, including the right to a fair trial.

Recommendations:

To the Chief Prosecutor

- **To form a special investigation team view a view of systemically investigating torture, inhuman and degrading treatment; to ensure that investigations into these allegations are carried out promptly and effectively leading to detection, prosecution and punishment of perpetrators.**

To the Parliament

- **To amend the Criminal Code with a view of proscribing complete release of individuals accused or convicted of crimes under Articles 1441, 1442 and 1443 from criminal liability.**

To the Ministry of Justice and the common courts

- **In making extradition decisions, to study and evaluate a human rights situation existing in the requesting country; also, to thoroughly study and analyze the risk of every specific individual whose extradition is contemplated becoming subjected to torture, ill-treatment or degrading treatment in the requesting country.**

To the Ministry of Internal Affairs, the Ministry of Corrections and the Prosecution Office

- **To ensure that, immediately after alleged commission of criminal conduct by law enforcement officials is reported, they launch a criminal investigation into these allegations instead of "internal examination". The carrying out of "internal examination" by the general inspectorates of government ministries should not be deemed as if it were a preliminary stage preceding investigation; also, to ensure that any such investigation is carried out thoroughly and promptly.**

217 The Supreme Court of Georgia, Judgment No. 71–10 dated 26 March 2010.

218 Recommendations of the Public Defender of Georgia of 3 September 2013 to the Chief Prosecutor and the Chief Justice.

INDEPENDENT, IMPARTIAL AND EFFECTIVE INVESTIGATION

The State must protect human beings from criminal conduct and ensure safety to its citizens. It goes without saying that crime must be combated by legal means and procedural activities conducted by the law enforcement authorities should be aimed at serving justice. The first step of response to alleged commission of criminal offence is the commencement of investigation, which should then be carried out effectively. An investigation will be effective if it meets several important criteria; in particular, an investigation must be independent and impartial, prompt, thorough, run by a competent body and, most importantly, must allow the victim's involvement.

Articles 2 (the right to life) and 3 (prohibition of torture, inhuman and degrading treatment) of the European Convention on Human Rights impose a procedural obligation upon the States to effectively investigate allegations of encroachment on the lives of human beings or of torture and inhuman treatment.

Prompt, adequate and effective response to potential criminal offences is a positive obligation of States. The European Convention on Human Rights posits that the Member States shall secure the protection of human rights and freedoms.[219] Under the same provision, States are obligated to not only refrain from violating human rights and freedoms (the negative obligation), but also to protect these rights and freedoms (the positive obligation). The States must ensure effective protection of infringed rights by taking active measures.

This chapter discusses shortcomings in law and practice in regard to independence and impartiality of investigation process in criminal proceedings. In this context, we will emphasize the flaws related to jurisdiction of investigation authorities. This chapter will further describe the improper practice of not launching criminal investigation into reported allegations of crime but conducting so the called "internal examination" instead. The Prosecution Office's inconsistent approach to granting the status of victims in criminal proceedings will be discussed as well. Finally, this chapter concludes with recommendations for investigating authorities and officials aimed at improving the effectiveness of investigations.

REFUSAL TO COMMENCE CRIMINAL INVESTIGATION

By refusing to launch criminal investigation, the law enforcement authorities are not adequately responding to reported allegations of crime.

The Code of Criminal Procedure clearly refers to the investigators' and prosecutors' obligation to commence investigation. In particular, the relevant provision says: "Having received information about a crime, an investigator/prosecutor is obliged to commence investigation."[220] Paragraphs 1 and 2 of Article 101 of the Code specify that the ground for launching investigation is any crime information that was furnished to the investigator/prosecutor, was revealed during criminal proceedings or was published by the media. Moreover, it matters not whether the information has become known in writing, verbally or in other form. Accordingly, the Georgian legislation does not require the victim or any other person to provide the investigating authorities with crime information in writing. Any information about potential criminal conduct aired by media outlets, furnished by the Office of the Public Defender and/or received by any other means is a mandatory ground for launching investigation.

The Georgian Code of Criminal Procedure does not prescribe any exception allowing law enforcement agencies to

219 The European Convention on Human Rights, Article 1.

220 The Code of Criminal Procedure of Georgia, Article 100.

refuse launching investigation into reported potential crime.[221]

The Georgian Code of Criminal Procedure envisages grounds only for terminating an ongoing investigation and/or non-commencing or terminating criminal prosecution.[222] It should also be noted that the legislation on criminal proceedings does not envisage any preliminary stage of launching criminal investigation. Any information about a possible crime creates the obligation of the prosecutor/investigator by default to launch investigation and to effectively study the facts by carrying out adequate investigative activities.

During the reporting period, the Office of the Public Defender detected numerous failures by investigation authorities to launch criminal investigation into allegations of criminal conduct.

Case concerning Citizen B.G.

On 16 January 2013, based on the media-reported information, acting on the basis of Article 12 of the Organic Law on the Public Defender, the Public Defender initiated an ex officio examination of alleged ill-treatment of juvenile B.G. by the members of the Ministry of Internal Affairs. Juvenile B.G. was blaming the representatives of the Vake-Saburtalo Unit of the Tbilisi Main Police Department in pressuring, threatening and verbally insulting him and his brother L.G. during their questioning as witnesses on 8 January 2013.

According to information obtained by the Office of the Public Defender, the Chief Prosecution Office has not launched investigation into this case.[223] No investigation has been carried out by the Ministry of Internal Affairs either. What has been conducted instead is only the so-called "internal examination" by the Inspectorate-General of the Ministry of Internal Affairs.[224]

Case concerning Citizen Z.J.

The Office of the Public Defender studied an application authored by Z.J., a convicted prisoner serving his sentence at the Penitentiary Institution No. 6. The prisoner alleged that he was convicted unlawfully because the conviction was based on his testimonies as well as testimonies of O.V., I.M.and G.J. which the law enforcement bodies obtained by means of ill-treatment, pressure and mental and physical violence administered against him and above-mentioned three other citizens. The Office of the Public Defender addressed the Chief Prosecution Office and the Inspectorate-General of the Ministry of Internal Affairs with a request to take appropriate measures. In addition to Z.J.'s application, we furnished the Prosecution Office and the Interior Ministry with statements by citizens O.V., I.M.and G.J. corroborating the unlawful actions committed by law enforcement officers against them for the purpose of extracting testimonies of their preference.

The Inspectorate-General of the Ministry of Internal Affairs forwarded the convicted prisoner Z.J.'s application to the Chief Prosecution Office according to investigative jurisdictional rules.

The Chief Prosecution Office then informed the Office of the Public Defender with its letter that, according to the convicting judgment of the Criminal Cases Panel of the Tbilisi City Court, Z.J. pleaded guilty of purchasing and storing narcotic drugs but denied sale of the drugs. The Prosecution Office's letter further reads: "Given these circumstances, Z.J.'s statement as if he did not have any drugs with him and the law enforcement officers implanted the drugs in his clothes simply lacks credibility and cannot be deemed a newly revealed circumstance. Moreover, this is true given the fact that the judgment of the Tbilisi City Court has been upheld by both the Tbilisi Court of Appeals and the Supreme Court."

In the course of its examination of the cases, the Office of the Public Defender identified a series of failures by the Chief Prosecution Office to fulfill their legal obligation to launch criminal investigation in cases where there were all the factual and legal preconditions for them to do so. The law of criminal procedure unequivocally requires that whenever any information about elements of crime become known to investigation authorities they shall respond

221 The Code of Criminal Procedure of Georgia, Article 100.

222 The Code of Criminal Procedure of Georgia, Article 105.

223 Letter from the Georgian Chief Prosecution Office dated 8 February 2013.

224 Letter from the Ministry of Internal Affairs dated 19 February 2013.

properly, that is, launch investigation. If no commission of crime can be established as a result of investigation, the Code of Criminal Procedure then provides grounds for terminating the investigation.[225] We would like to stress that the Code of Criminal Procedure does not regard the so-called "internal examination" a replacement for commencing investigation, which seems to be an established practice judging by the cases analyzed by the Office of the Public Defender.[226]

ANALYSIS OF PROBLEMS RELATED TO INVESTIGATIONAL JURISDICTION

Investigational jurisdiction is directly connected with key elements of effective investigation such as independence and impartiality.

In its judgment in Enukidze and Girgvliani v. Georgia, the European Court of the Human Rights stated: "For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence. The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. In all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests."[227]

The European Court has explained that independent and impartial investigation means not only lack of hierarchical or institutional connection with those implicated in the events but also practical independence. Ascertaining the existence of practical independence is more difficult and requires evaluation of connections among the relevant institutions and individuals. In evaluating independence, the European Court takes into consideration whether the investigative authority, the prosecution office or the courts straightforwardly endorse, without any verification, the case theory advanced by the impugned authorities or officials – a factor that might be an indication of lack of practical independence.[228]

Pursuant to the Georgian Constitution,[229] investigation in Georgia falls within the exclusive competence of only the highest Georgian State authorities.

The Georgian Code of Criminal Procedure provides a legislative definition of investigation[230] stipulating that investigation means a series of actions implemented by authorized persons pursuant to the procedures established by this Code for the purpose of collecting evidence in relation to a crime. The Code further explains[231] that an investigator is a public official who is authorized to conduct investigation within his/her competence. A prosecutor who personally conducts investigation enjoys the status of an investigator.

The Code of Criminal Procedure[232] provides an exhaustive list of investigative agencies and their investigators authorized to investigate criminal cases. The list is the following:

- Investigators from the Ministry of Justice;
- Investigators from the Ministry of Internal Affairs;
- Investigators from the Ministry of Defense;
- Investigators from the Ministry of Corrections;
- Investigators from the investigative units of the Ministry of Finance.

225 The Code of Criminal Procedure of Georgia, Article 105.

226 This matter is deal with in detail in the chapter entitled "Analysis of the problem related to investigational jurisdiction".

227 Enukidze and Girgvliani v Georgia, Application No. 25091/07, 26.04.2011, par. 243.

228 Gharibashvili v Georgia, Application No. 11830/03, 29.07.2008, par. 73, Mikiashvili v Georgia, Application No. 18996/06, 09.10.2012, par. 87, Tsintsabadze v Georgia, Application No. 35403/06, 15.02.2011, par. 78.

229 The Constitution of Georgia, Article 3(1)(q).

230 The Code of Criminal Procedure of Georgia, Article 3(10).

231 The Code of Criminal Procedure of Georgia, Article 37.

232 The Code of Criminal Procedure of Georgia, Article 34(1).

Unlike the Code of Criminal Procedure that was in force until 1 October 2010, the current Code of Criminal Procedure does not prescribe agency- and/or geography-based investigative jurisdictional rules. Instead, the Code merely says[233] that the investigative jurisdictional issues will be regulated by the Minster of Justice upon the Chief Prosecutor's recommendation.

Agency- and geography-based jurisdiction of investigative authorities is then governed by the Order of the Minister of Justice No. 34 dated 7 July 2013 determining the investigative jurisdiction in criminal cases by agency and geography principles.

Under paragraph 1 of the Annex to the mentioned Order, a criminal case shall be investigated by the Ministry of Internal Affairs unless otherwise prescribed by other paragraphs of this Annex. The Order does not envisage the possibility for an agency other than the Ministry of Internal Affairs to investigate conduct committed by an employee of the Ministry of Internal Affairs except for criminal offenses committed by police officers. Criminal offenses committed by police officers clearly fall within the investigational jurisdiction of the prosecution office, pursuant to the above-mentioned Order of the Justice Minister.

The Order of the Minister of Justice No. 34 dated 7 July 2013, in particular, paragraph 6 of its Annex, stipulates that investigators of the relevant unit of the Ministry of Justice have the jurisdiction to investigate official malfeasances committed by the servants of the Justice Ministry system (excluding prosecution office employees).

According to paragraph 2 of the Annex to the said Order, investigators of the Georgian Prosecution Office shall investigate crimes committed by employees of the Prosecution Office. In addition, Article 38 of the Law on Prosecution Office prescribes rules of imposing liability upon prosecution office employees. In particular, under Article 38(3), crimes committed by employees of the Prosecution Office shall be investigated by the Chief Prosecution Office according to the investigative jurisdictional rules.

Paragraph 8 of the Annex to the above-referenced Order states that investigators of the Ministry of Corrections and Legal Assistance shall investigate crimes under Articles 3421, 378, 3781, 3782, 379, 380 and 381 (in the part of failure to comply with a court judgment) of the Criminal Code as well crimes committed on the territory of institutions under the Penitentiary Department. The Investigation Department of the Ministry of Corrections is authorized to investigate other crimes too under the Criminal Code save the crimes under Articles 3421, 378, 3781, 3782, 379, 380 and 381.

As one can see, institutional independence of investigation may be a challenge in a whole series of cases, according to the above-cited provisions. One of the major principles of effective investigation is that it must be conducted by an independent and impartial body. Independence means both institutional and individual independence. Every time the Investigation Department of the Ministry of Corrections investigates a crime allegedly occurred in the territory of a penitentiary institution run the by the Ministry, there will always be legitimate questions about independence and impartiality of such investigation. The assertion as if the Investigation Department of the Ministry of Corrections is a separate unit and is capable of conducting independent investigation into crimes allegedly committed by members of other units of the same Ministry is less credible, since the Investigation Department is itself one of the units of the Ministry. The same reasoning equally applies to crimes possibly committed by members of the prosecution office.

In its judgment in the case of Tsintsabadze, the European Court of Human Rights noted: "Even setting aside any suppositions about the deliberate taking of the prisoner's life, in the particular circumstances of the present case one of the possible lines of inquiry, calling for a careful and impartial analysis, was whether his death could have resulted from the negligent functioning of the prison authorities. The Court further notes that all the main investigative measures were conducted by the Western Georgian investigation department of the very same ministry, and that department's findings were then straightforwardly endorsed by the public prosecutor, without any additional inquiries of his own, as the basis for dismissing the case […]. That institutional connection between the investigators of and those implicated in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted."[234]

Under Article 37(2) of the Code of Criminal Procedure, an investigator shall conduct investigation in a thorough, comprehensive and objective manner. The above citations from laws and bylaws make it clear that the current

233 The Code of Criminal Procedure of Georgia, Articles 35 and 36.

234 Judgment of the European Court of Human Rights in the case of Tsintsabadze v. Georgia, Application No. 35403/06, par. 78.

practice of the Georgian investigative authorities is disregarding one of the important elements of effective investigation – institutional independence and impartiality.

During the reporting period the Public Defender identified a number of cases involving potential crimes occurred on the territories of penitentiary institutions, which, in the view of the Public Defender, should have been investigated by the Chief Prosecution Office. On the other hand, however, sometimes prosecution office-led investigation may raise questions about independence and impartiality of the investigation because, according to detainees' reports, it is not uncommon for high-ranking officials of the Chief Prosecution Office to use pressure and violence in the course of investigation. The rules envisaged by the Georgian legislation, unfortunately, are not such as to eliminate valid suspicion of effectiveness, independence and impartiality of the investigations conducted.

The case concerning Goga Dzvelaia

On 8 October 2013, the Public Defender took on studying the death of juvenile Goga Dzvelaia occurred in the Penitentiary Institution No. 2 on 7 October. The Public Defender's representatives arrived in the Institution to examine the existing documentation and inspect the cell where the detainee's dead body was found.

Pursuant to information received from the Chief Prosecution Office, on 7 October 2013, the Western Georgia Division of the Ministry of Corrections Investigation Department launched investigation into Criminal Case No. 073071013001 concerning the allegation of leading accused Goga Dzvelaia to suicide (a crime under Article 115 of the Criminal Code).[235] The Ministry of Corrections stated preliminary information suggested that the defendant killed himself.[236]

In its judgment in the case of Tsintsabadze, the European Court noted that, in the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. […]

Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see Salman v. Turkey, [GC], no. 21986/93, § 100, and Ertak v. Turkey, no. 20764/92, § 32, ECHR 2000-V).

The obligation of States to protect the right to life under Article 2 of the Convention requires by implication that there should be an effective official investigation when individuals have been killed. The duty to conduct such an investigation arises in all cases of killing and other suspicious deaths, whether the perpetrators were private persons or State agents or are unknown (see Menson v. the United Kingdom (dec.), no. 47916/99, ECHR 2003-V, and Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII).[237]

The standard established by the European Court[238] will be best complied with if the Chief Prosecution Office conducts all investigations into deaths of prisoners inside the penitentiary system. There will always be legitimate questions about independence and impartiality of investigations conducted by the Investigation Department of the Ministry of Corrections, due to its institutional subordination to the same Ministry.

It should also be noted that unlike the approach applied in the case of death of G. Dzvelaia which the Ministry of Corrections investigated through its own Investigation Department, the Ministry acted properly in the case of Leval Kortava who died as a result of beating in the Penitentiary Institution No. 14 when it forwarded the case

235 Letter from the Chief Prosecution Office dated 22 October 2013.

236 See the position of the family of the juvenile who died while in prison and Sozar Subari's reply, TS Press.ge, 13.10.2013, http://www.tspress.ge/ka/site/articles/14836/.

237 Tsintsabadze v. Georgia, Application No. 35403/06, paras. 72–74.

238 "[…] all the main investigative measures were conducted by the Western Georgia Investigation Department of the very same ministry, and the Department's findings were then straightforwardly endorsed by the public prosecutor, without any additional inquiries of his own, as the basis for dismissing the case. That institutional connection between the investigators of and those implicated in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted." Tsintsabadze v. Georgia, Application No. 35403/06, paras. 78.

in the shortest time possible to the Chief Prosecution Office.[239] However, the applicable legislative acts as well as practical application of these acts should not be allowing the making of jurisdictional decisions completely up to the discretion of the Ministry of Corrections; investigation should be opened and conducted by an institutionally independent agency instead.

The case concerning Mamuka Ivaniadze[240]

On 10 July 2013, the Office of the Public Defender forwarded copies of statements provided by Mamuka Ivaniadze and Zaza Makharoblidze, accused persons, to the Chief Prosecution Office for further response. These individuals asserted that they had been ill-treated during their questioning at the temporary detention isolator No. 1 in Tbilisi by members of the law enforcement agencies and prosecution office. The Chief Prosecution Office then informed the Office of the Public Defender on 29 July 2013 that the Chief Prosecution Office's Unit for Prosecutorial Control and Procedural Supervision over Investigations within the Justice Ministry's Inspectorate-General reviewed the accused persons' statements but found no corroboration of any pressure exerted on them. The same letter stated that the case was forwarded to the Inspectorate-General of the Ministry of Internal Affairs for ascertaining whether any violation had been committed by the police officers.

On 11 July 2013, media reported and showed a video footage possibly displaying how the members of the Chief Prosecution Office ill-treated the accused person Mamuka Ivaniaze in the Penitentiary Institution No. 8.

On 22 July 2013, the Chief Prosecution Office reported that they conducted investigation into alleged commission of a crime under Article 335 of the Criminal Code (coercion to explain, testify or report) but the special investigative team did not find commission of any crime against Mamuka Ivaniadze. To support their case, the Chief Prosecution Office publicized a video footage of Ivaniadze testifying.[241]

It should be noted that, despite its statement of 22 July 2013, the Chief Prosecution Office informed the Office of the Public Defender[242] with its letters dated 14 September 2013 and 21 March 2014[243] that investigation in relation to M. Ivaniadze's statement was ongoing and the Prosecution Office was thus unable to fully share the investigation materials with the Public Defender's Office.

There are legitimate questions about the video recording of M. Ivaniadze's testimony distributed by the Chief Prosecution Office (for example, whether M. Ivaniadze knew he was being recorded, whether he consented to the videotaping, the time and place of the recording, etc.) that have not been reliably answered by the Prosecution Office's statement of 24 July 2013 in which they asserted that the recording was lawful.[244]

As we have already mentioned, under the Georgian legislation, criminal offences possibly committed by prosecution office employees fall within the investigational jurisdiction of the Chief Prosecution Office. However, legitimate questions arise about the level of independence and impartiality of these investigations.

The case concerning Ivane Merabishvili

On 17 December 2013, at his trial at the Kutaisi City Court, the accused Ivane Merabishvili stated that at night

239 According to the statement of the Ministry of Corrections dated 23 May 2013, investigation into L. Kortava's case was commenced by the Ministry's Investigation Department but the case was forwarded to the Chief Prosecution Office later. See the statement issued by the Chief Prosecution Office on 2 August 2013 entitled "Levan Kortava's case has been investigated".

240 One of the persons accused in the so-called "tractors' case".

241 See the statement of the Chief Prosecution Office dated 22 July 2013 at http://pog.gov.ge/geo/news?info_id=164.

242 On 29 July 2013, the Public Defender addressed the Chief Prosecution Office with a request to provide full copies of the materials of investigation conducted in relation to the M. Ivaniadze's statement dated 11 July. However, the Prosecution Office did not provide the materials informing the Public Defender's Office by its letter of 14 September 2013 that the investigation was ongoing.

243 By its letter of 21 March 2014, the Chief Prosecution Office informed the Office of the Public Defender they had conducted all the investigative actions under law in a criminal case concerning alleged coercion exerted against M. Ivaniadze and that the investigation was ongoing.

244 See the statement of the Chief Prosecution Office dated 24 July 2013 at http://pog.gov.ge/geo/news?info_id=165.

he had been taken away from the territory of the penitentiary institution in violation of law and that he had been subjected to psychological pressure by the Chief Prosecutor and other members of the Prosecution Office.

The same day, the Public Defender called for launching and conducting effective investigation in regard to Ivane Merabishvili's statement[245] but the Chief Prosecution Office failed to conduct any investigation.[246]

According to the information distributed by the Ministry of Corrections on 23 December 2013, "taking into consideration the high public interest and based on Attorney David Khazhalia's application, on 20 December 2013 the General-Inspectorate of the Ministry of Corrections, acting upon the request of Sozar Subari, the Minister of Corrections, opened internal examination into possible commission of official misconduct by the staff of the Penitentiary Institution No. 9 in relation to accused Ivane Merabishvili.[247] On 12 January 2014, the Ministry of Corrections reported that the Ministry's General-Inspectorate completed the examination launched on the basis of Attorney David Khazhalia's application and but found no proofs corroborating the allegations made by Ivane Merabishvili in his statement.[248]

Although crimes occurred on the territory of penitentiary institutions fall within the investigational jurisdiction of the Investigation Department of the Ministry of Corrections pursuant to Paragraph 8 of the Order of the Justice Minister No. 34 dated 7 July 2013, for the purpose of meeting the requirements of independence and impartiality, it was both the right and obligation of the Prosecution Office to commence and conduct investigation immediately after it received information from accused Ivane Merabishvili concerning potential criminal conduct. If investigation would not reveal elements of crime or the allegations made would not be proven, the Prosecution Office could terminate the investigation.

Furthermore, according to Article 14 of the Government Resolution approving the Statute of the Ministry of Corrections, the Ministry's Inspectorate-General shall examine legality and compatibility with the law of issues falling exclusively within the system of the Ministry[249] and therefore criminal offences potentially committed by members of the Prosecution Office as alleged by I. Merabishvili in his statement could not be a matter of Inspectorate-General's scrutiny. The Ministry confirmed this logic to be true when it stated that the Ministry's Inspectorate-General, based on Attorney David Khazhalia's application, opened internal examination into possible commission of official misconduct by the staff of Penitentiary Institution No. 9 in relation to accused Ivane Merabishvili.[250]

It should also be noted that, according to the results of the Inspectorate-General's examination, by the time the

245 On 25 December 2013, the Office of the Public Defender requested the Deputy Chief Prosecutor in writing to provide the following information: whether the prosecution office started investigating the allegations made by defendant Ivane Merabishvili in his statement at his hearing; if yes, we wanted to know the name of the investigating body, the number of the criminal case and the provisions of the Criminal Code on which basis the authorities were investigating the case; further, we asked for detailed information about any investigative activities conducted; finally, if no investigation had been commenced, the Office of the Public Defender was requesting to inform the reasons thereof.

246 The Chief Prosecution Office's statement of 17 December 2013 and letter of 3 January 2014.

247 See the Statement of the Ministry of Corrections and Legal Assistance of 23 December 2013 at http://mcla.gov.ge/?action=news&lang=geo&npid=1751.

248 As a result of the internal examination, based on the General Inspectorate's request, 377 gigabytes of video footage were extracted. The recordings were made by the 18 surveillance cameras located in between the Penitentiary Institution No. 9 and the Penitentiary Department from 12:00 hrs of 31 December 2013 till 12:00 hrs of 31 December 2014. The recording has been viewed but no factual materials relevant to the case were found. As regards the recordings made inside the Penitentiary Institution No. 9 and the Penitentiary Department, by the time Ivane Merabishili made his statement on 17 December 2013, the recordings of 13 and 14 December no longer existed because the video surveillance equipment was arranged in a way that after 24 hours of recording process the recorded material would be automatically overwritten and the old recording would thus be erased. During the internal examination, staff members of the Penitentiary Institution No. 9 were questioned who denied the allegation the leaving of the territory of the Penitentiary Institution No. 9 by Ivane Merabishvili the night of 14 December 2014. The Institution's journals for the registration of entry into and exit from the Institution as well as prisoners' admission to and discharge from the Institution were examined but no proofs have been found to corroborate Ivane Merabishvili's statements." See the Statement of the Ministry of Corrections and Legal Assistance of 23 December 2013 at http://mcla.gov.ge/?action=news&lang=geo&npid=1788.

249 The Ministry's Inspectorate-General is responsible for supervising compliance with Georgian law within the Ministry's system; detecting violations of citizens' constitutional rights and lawful interests, official misconduct or other extralegal conduct by the Ministry's servants; receiving and responding to applications and complaints related to the former; conducting internal examination into official misconduct by the Ministry's servants, drawing up relevant reports and submission of the reports to the Minister.

250 http://mcla.gov.ge/?action=news&lang=geo&npid=1751.

internal examination was launched, the recordings of surveillance cameras located inside the premises of the Penitentiary Institution No. 9 and the Penitentiary Department no longer existed, and the data recorded by cameras located in between the Penitentiary Institution No. 9 and the Penitentiary Department had been viewed but no factual material was found to be relevant to the case.[251]

Certainly, recordings made by the surveillance cameras inside the premises of the Institution No. 9 and the Penitentiary Department would constitute a major piece of evidence in the case. However, the Ministry failed to provide a trustworthy answer to questions such as how long the recordings of the surveillance cameras located in the penitentiary system or its individual buildings were stored or which legislative acts were governing this issue.[252]

In its judgment in the case of Tsintsabadze, the European Court of Human Rights stated:

> "The investigation's conclusions must be based on thorough, objective and impartial analysis of all the relevant elements. While the obligation to investigate relates only to the means to be employed and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness."[253]

It follows that legitimate questions arise as to independence and impartiality of the investigation or internal examination conducted by both investigative agencies – the Chief Prosecution Office and the General Inspectorate of the Ministry of Corrections – in the case of Ivane Merabishvili.

There is a problem with the institutional independence also when it comes to investigation by the Interior Ministry's Inspectorate-General of criminal offences allegedly committed by law enforcement officers.

As we have already mentioned, under the Order of the Minister of Justice No. 34 dated 7 July 2013 determining the investigative jurisdiction in criminal cases according to agency and geography principles, criminal offences committed by police officers shall be investigated by the Prosecution Office's investigators. It should be noted that, the same jurisdictional rule was prescribed by the Order of the Minister of Justice No. 178 dated 29 September 2010, which was in force before the Order No. 34 was adopted.

In contravention of this legal requirement, analysis of the cases carried out by the Office of the Public Defender in the reporting period confirms that criminal offences possibly committed by law enforcement officials are usually investigated by the Inspectorate-General of the Ministry of Internal Affairs.

The case concerning Citizen K.T.

On 25 November 2013, the Office of the Public Defender was approached by Citizen K.T. stating that, at 3pm in the afternoon of 24 November 2013, he was stopped by members of the Patrol Police and was taken to a narcology clinic to undergo a drug test. The applicant asserted that both on the way to and upon arrival at the clinic the police officers were verbally and physically insulting him. The applicant was asking for a lawyer during 10-15 hours but his request kept been rejected. According to the applicant, the police officers were treating him inhumanely during the entire period of his detention. The humiliation continued inside the ambulance car, which the police officers themselves videotaped using their mobile phone. The names of these police officers are unknown to K.T. except the last name of one of them, which K.T. did mention in his application to the Public Defender.

The Public Defender's Office forwarded the case to the Chief Prosecution Office for further response but the

251 See the statement of the Ministry of Corrections and Legal Assistance dated 12 January 2014.

252 On 24 January 2014, the Office of the Public Defender requested the Ministry of Corrections to provide copies of normative acts (bylaws), if any, governing the operation of surveillance cameras in the Ministry's Penitentiary Department and penitentiary institutions (including inside the Penitentiary Institution No. 9 proper) and information about duration and conditions of storage of the camera recordings. In the same request, we were also asking for full copies of the internal examination materials, including the 377 gigabytes of the video recordings made by the 18 surveillance cameras located in between the Penitentiary Institution No. 9 and the Penitentiary Department from 12:00 hrs of 31 December 2013 till 12:00 hrs of 31 December 2014. The Office of the Public Defender has not received the requested information this far.

253 Tsintsabadze v. Georgia, Application No. 35403/06, par. 78.

Chief Prosecution Office then forwarded the case to the Interior Ministry's Inspectorate-General.[254]

According to a letter from the Interior Ministry's Inspectorate-General, the Inspectorate-General conducted an internal examination on the basis of the Citizen K.T.'s application but found no proofs of commission of disciplinary misconduct by the members of the patrol police.[255]

The case concerning Mamuka Mikautadze

On 5 July 2013, Mamuka Mikautadze was questioned as a witness in a criminal case led by the Central Criminal Police Department of the Ministry of Internal Affairs. The next day, 6 July 2013, his dead body was found in the vicinity of the Tbilisi Sea. According to the reported information, he hung himself. His spouse and friends have been saying that police officers were verbally and physically insulting him during interrogation. The family asserts that Mamuka Mikautadze was subjected to psychological pressure, which led him to committing suicide.

The Office of the Public Defender studied the case finding that Criminal Case No. 001060713003 concerning the leading of Mamuka Mikautadze to commission of suicide was forwarded to the Inspectorate-General of the Ministry of Internal Affairs for investigation, based on the Deputy Chief Prosecutor's resolution.[256] However, sometime after, the Public Defender's recommendation of 13 September 2013 was taken into consideration and the case was returned to the Chief Prosecution Office for investigation.[257]

The case concerning an employee of the Georgian Young Lawyers' Association

The Office of the Public Defender studied the incident between Valerian Telia, Chief of Achara Main Division of the Ministry of Interior and R.F., employee of the Georgian Young Lawyers' Association, which occurred in Batumi on 28 April 2013. The Inspectorate-General of the Ministry of Interior conducted an internal examination into the case.

The materials of Case No. 615085 include a report produced as a result the internal examination conducted in relation to Police Captain G.S. The report is based on statements of police officers. According to the report, G.S. committed disciplinary misconduct described in Article 2(2)(a)-(b) of the Disciplinary Manual for the Employees of the Ministry of Internal Affairs (improper performance of official duties and negligent attitude to official duties). In particular, G.S. acted negligently when he copying the video recording made by the surveillance camera affixed to the premises of a commercial entity entitled "Batumi House" in Batumi, Gorgasali Street. According to the report, because of G.S.'s negligence, the video recording was destroyed during the copying process.

As regards Valerian Telia, Chief of the Achara Division of the Ministry of Internal Affairs, the internal examination report says nothing about possible commission of disciplinary misconduct by or any disciplinary liability imposed upon this high-ranking official.

The Office of the Defender studied many cases finding that, in a majority of them, criminal offences possibly committed by law enforcement officers were been investigated by the Inspectorate-General of the Ministry of Internal Affairs, which is a violation of the investigation jurisdiction rules prescribed by the Order of the Minister of Justice No. 34 dated 7 July 2013 determining the investigative jurisdiction in criminal cases according to agency and geography principles.

For this reason, on 13 September 2013, the Public Defender addressed the Minister of Internal Affairs with a recommendation in which the Public Defender referred to Articles 35 and 36 of the Code of Criminal Procedure and the Order of the Minister of Justice No. 34 dated 7 July 2013 adopted on the basis of the mentioned provisions. On this legal basis, the Public Defender requested the Minister of Internal Affairs to forward the case of deceased Mamuka Mikautadze and Citizen R.I. on alleged exceeding of official powers by the employees of the Adigeni District Police to the Chief Prosecution Office.

254 Letter from the Prosecution Office dated 30 December 2013.

255 Letter from the Ministry of Internal Affairs dated 27 January 2014.

256 Letters from the Ministry of Internal Affairs dated 7 August and 4 October 2013.

257 Letter from the Ministry of Internal Affairs dated 4 October 2013.

The letter dated 4 October 2013 we in response to the aforementioned recommendation describes the established practice of investigating criminal offences possibly committed by law enforcement officers. The letter reads: "The Ministry's Inspectorate-General does not independently launch investigation into criminal offences allegedly committed by the employees of the Ministry of Internal Affairs. Instead, information about possible elements of crime (such as applications, complaints or data obtained as a result of criminal intelligence activity) will be forwarded to the Chief Prosecution Office, which opens investigation into a case. Then, based on Article 33(6)(a) of the Code of Criminal Procedure, a criminal case against employees of the Ministry of Internal Affairs will be handed over to the Inspectorate-General for investigation (the Chief Prosecutor or a person acting under the authority delegated by the Chief Prosecutor has the right to override the rules of investigational jurisdiction and transfer a case from one agency to another for investigation)."[258]

Although the letter from the Ministry of Internal Affairs asserts that investigations into criminal cases are launched by the Chief Prosecution Office, handing these cases over to the Inspectorate-General of the Ministry of Internal Affairs is a violation of the requirements of the applicable Georgian law and of the principle of independent, impartial and effective investigation.

In regard to the issue of investigational jurisdiction and effective investigation, the Inspectorate-General of the Ministry of Internal Affairs should take into consideration the principle of checks and balances when interpreting and applying the rules governing criminal investigations and internal examinations.

SCOPE OF COMPETENCE OF THE INTERIOR MINISTRY'S INSPECTORATE-GENERAL

Under Article 10(c) of the Government Resolution No. 337 of 13 December 2013 approving the Statute of the Ministry of Internal Affairs, the Inspectorate-General of the Ministry of Internal Affairs is entitled, inter alia, to investigate criminal cases falling within its investigational jurisdiction on the one hand (with the right to apply preventative measures [measures of procedural coercion]) based on the Code of Criminal Procedure and to conduct internal examination into alleged violation of disciplinary norms on the other hand.[259]

258 By its letter of 4 October 2013, the Ministry of Internal Affairs informed the Public Defender as follows:

"The Chief Unit for Monitoring, Analysis and Coordination of the Inspectorate-General of the Ministry of Internal Affairs has an Investigation Unit, which investigates cases falling within the competence of the Inspectorate-General and applies preventative measures according to the grounds and rules prescribed by the Code of Criminal Procedure. Issues related to conducting preliminary investigation by the Inspectorate-General were previously regulated by the Statute of the Inspectorate-General approved by the Order of the Minister of Internal Affairs No. 023 dated 28 March 2005 and the amendments inserted therein by the Order No. 016 dated 14 July 2005 (classified as state secret). Now in force is the Statute of the Inspectorate-General approved by the Order of the Minister of Internal Affairs No. 1016 dated 25 December 2012. At the Inspectorate-General's Unit for Monitoring, Analysis and Coordination, persons responsible for conducting investigations are special cases investigators – see Annex 41 approved by the Order of the Minister of Internal Affairs No. 1016 dated 25 December 2012 on the Determination of salary rates (by positions and ranks) and addons within the system of the Ministry of Internal Affairs. Further, Article 5(i) of the Statute of the Chief Prosecution Office approved by the Order of the Justice Minister No. 38 dated 10 July 2013 stipulates that the Department for Procedural Supervision over Investigations Conducted by the Interior Ministry's Inspectorate-General, the Central Criminal Police Department and the Patrol Police Department is structurally part of the Chief Prosecution Office.

In dealing with criminal cases, the role of the Inspectorate-General's investigators is not limited to conducting investigative measures; they are actively involved also in criminal intelligence activities, which significantly increases the quality of investigation. In addition, due to the structure of the Ministry of Internal Affairs, investigation of cases falling within this category occasionally requires taking evidence from objects with special regime and classified objects or working with a special contingent.

As regards Criminal Case No. 084130713801 concerning the exceeding of official powers by some of the employees of the Adigeni District Police and the Criminal Case No. 001060713003 concerning the leading of Mamuka Mikautadze to commission of suicide, these cases have been forwarded to the Inspectorate-General of the Interior Ministry for investigation based on the Deputy Chief Prosecutor's resolution. It should be noted too that the Criminal Case No. 001060713003 has been forwarded to the Chief Prosecution Office by decision of the prosecutor in charge of the case." Letter from the Ministry of Internal Affairs No. 2004044 dated 4 October 2013.

259 "The Inspectorate-General (Department of) of the Ministry of Internal Affairs is responsible for detecting and responding to violations of ethical norms and norms of discipline, improper performance of official duties and individual offences; conducting criminal intelligence and counterintelligence activity according to the rules prescribed by law; applying procedural measures of coercion according to the grounds and rules prescribed by the Code of Criminal Procedure in cases falling within the Inspectorate-General's competence and investigation of criminal cases; implementing measures to prevent and suppress crimes and

Annex to the Order of the Justice Minister No. 34 dated 7 July 2013, which determines jurisdictional rules based on Articles 35 and 36 of the Code of Criminal Procedure, refers to the Ministry of Internal Affairs as an agency having the investigative jurisdiction.

Further, Article 5(i) of the Statute of the Chief Prosecution Office approved by the Order of the Justice Minister No. 38 dated 10 July 2013 stipulates that the Department for Procedural Supervision over Investigations Conducted by the Interior Ministry's Inspectorate-General, the Central Criminal Police Department and the Patrol Police Department is structurally part of the Chief Prosecution Office. In other words, it follows from the statutes of the Chief Prosecution Office and the Ministry of Internal Affairs that the Interior Ministry's Inspectorate-General is an authorized agency to conduct investigations.

With a view of thoroughly studying this matter, the Office of the Public Defender requested the Ministry of Internal Affairs to provide a copy of the statute of its Inspectorate-General. By letter of the Ministry of Internal Affairs dated 6 February 2014, we were informed that the Inspectorate-General's statute is a classified document.

Pursuant to the Georgian laws and bylaws, the Minister of Internal Affairs approves the statute of the Inspectorate-General, which is the Ministry's structural division.[260]

The Order of the Minister of Internal Affairs approving the Inspectorate-General's Statute is a normative act pursuant to Article 2(3) of the Law on Normative Acts as a legal act issued by a competent State agency for the purpose of establishing general rules of behavior for permanent or temporary multiple usage.

It should be noted that under Article 26(3) of the Law on Normative Acts it is allowed not to publish some provisions of a normative act or a bylaw only in the events described in the Law on State Secrets. However, the Law on Normative Acts prescribes a covenant that it is prohibited not to publish a normative act or any part thereof if the normative act restricts rights and freedoms or establishes a legal liability.

Pursuant to Article 1(1) of the Law on State Secrets, "a state secret" means information containing state secrets in the areas of defense, economy, foreign relations, intelligence, state security and legal order, which if disclosed or lost would harm the sovereignty, constitutional order or political or economic interests of Georgia or a party to international treaties and agreements, and which is recognized as state secret and is subject to protection by the state under this Law and/or an international treaty or agreement.

Article 12(1) of the Law on State Secret contains a list of principles on which basis a piece of information may be classified. These principles are legality, validity (reasonability) and timeliness.

Under Article 7(4)(a) of the Law, in the areas of intelligence, state security and legal order, the following data may be classified as state secret: intelligence, counter intelligence and crime detection action plans, their means of arrangement and logistical support as well as their forms, methods and results; funding of specific programs concerning the former; individuals who are or have been cooperating, on a confidential basis, in the afore-listed areas with the relevant Georgian authorities implementing such activities.

Pursuant to Article 13(5) of the Law on State Secrets, information titled as "classified" means information which, if divulged, might harm Georgia's interests in the areas of defense, state security, legal order, economics and politics and/or the interests of countries or organizations that are parties to international treaties and agreements.

---

other offences; detecting violations and flaws in the Ministry's system; inspecting the crime analysis, criminal intelligence and counterintelligence activities carried out by the Ministry's units and divisions; controlling the financial and economic activities of the units within the Ministry's system and inspecting the lawfulness and appropriateness of use of financial and tangible resources by these units; conducting financial inspection, including the checking of crime detection-related costs, and ensuring the security of the Ministry's communication systems."

260 According to Article 812(2) of the Georgian Constitution, a government ministry is headed by a minister who independently makes decisions on issues falling within its competence. Based on and in furtherance of laws, presidential normative acts or governmental resolutions, a minister issues orders. Pursuant to Article18(2) of the Law on Competences and Rules of Operation of the Government, competences of units subordinated to a Ministry shall be determined by a statute of the same Ministry and of the units proper, which shall be approved by the Minister.

Under Article 7(c) of the Government Resolution No. 337 approving the Statute of the Ministry of Internal Affairs dated 13 December 2013, the Inspectorate-General (the Department of) is part of the Ministry structure. Article 5(2)(m) of the Resolution stipulates that the Minister of Internal Affairs enacts orders according to the applicable laws. Under Article 5(2)(t), the Minister approves statutes of the Ministry's divisions and other agencies that are part of the Ministry's system.

As it is clear, the Law exhaustively lists types of data that may be classified but this exhaustive list says nothing about classifying investigation or rules of conducting investigation, except intelligence, counter intelligence and crime detection action plans. It follows from the above-cited provisions that documents restricting human rights and freedoms may not be classified. Acts governing internal activities of the Inspectorate-General of the Ministry of Internal Affairs may be classified documents from the criminal intelligence (crime detection) perspective, but a normative act governing the activity of an agency responsible for investigating criminal cases may not be classified. If the Inspectorate-General of the Ministry of Internal Affairs is an agency investigating criminal cases and applying the procedures laid down in the Code of Criminal Procedure, then completely classifying a normative act governing the activity of such investigative agency contradicts the requirement that provisions restricting human rights and freedoms must be transparent and foreseeable.

THE NEED FOR ESTABLISHING AN INDEPENDENT INVESTIGATIVE AGENCY

Under Article 33(6)(a) of the Code of Criminal Procedure, the Chief Prosecutor or a person acting under the authority delegated by the Chief Prosecutor has the right to override the rules of investigational jurisdiction and assign a case from one agency to another for investigation; the same persons are entitled to remove lower prosecutors from exercising procedural supervision and assign this task to other prosecutors.

This provision allows the Chief Prosecutor to task the Chief Prosecution Office with investigating criminal cases involving possible commission of criminal offenses by the employees of the Ministry of Internal Affairs or the Ministry of Justice or crimes occurred in the territory of penitentiary institutions, even when these ministries would normally have investigative jurisdiction over the cases. One purpose of this provision is to provide an additional guarantee of institutional independence of investigation when necessary. However, practice is different: by his resolution, the Deputy Chief Prosecutor tasked the Interior Ministry's Inspectorate-General with investigating Criminal Case No. 084130713801 concerning the exceeding of official powers by some of the employees of the Adigeni District Police and the Criminal Case No. 001060713003 concerning the leading of Mamuka Mikautadze to commission of suicide (see the chapter entitled "Analysis of problems related to investigational jurisdiction").

It should be noted that no similar guarantee of institutional independence exists in relation to human rights complaints concerning unlawful actions of the employees of the Chief Prosecution Office (see the chapter entitled "Analysis of problems related to investigational jurisdiction").

These reasons suggest that there is not only a lack of appropriate legal framework, but improper use of the existing legal mechanism aimed at ensuring effective investigation.

For the purpose of eliminating these issues, we would recommend creating an independent agency to be responsible for investigating allegations of crimes committed by the employees of the Ministry of Justice, the Prosecution Office, the Ministry of Internal Affairs and the Ministry of Corrections. This independent agency's only task should be to investigate crimes possibly committed by members of these agencies and crimes occurred on the territory of penitentiary institutions. This idea has been tested and the relevant experience already exists in a number of European countries.

PROBLEMS RELATED TO GRANTING A VICTIM STATUS

In its judgment in Perez v. France, the European Court of Human Rights stated: The perspective that the existing human rights protection mechanisms may leave a victim without any rights vis-à-vis an alleged offender in legal proceedings cannot be deemed satisfactory. The political bodies have already realized the need for address this issue. In particular, the Committee of Ministers of the Council of Europe has enacted a number of recommendations about provision of crime victims with legal assistance, informing them about the place and date of the hearing, and letting them know about the outcome of the case and their right to challenge a refusal to proceed with criminal prosecution.

In Georgia, victims have meager rights with only symbolic meaning in criminal proceedings. The Code of Criminal Procedure[261] provides an exhaustive list of the victim's rights. At the stage of investigation, the victim has virtually

261 Pursuant to Article 57 of the Code of Criminal Procedure, a victim is entitled to know the nature of the accusations brought up

no rights according to the current Georgian procedural law; victims have no access to case materials. They will simply be notified about the dates of first bringing of the defendant before the judge, pretrial hearing and trial. Victims will be served the judgment of the court and will have the right to bring a civil lawsuit for reimbursement of damages incurred as result of the defendant's criminal conduct.

It is safe to say that the Georgian Code of Criminal Procedure does not provide victim's with the right to participate at the investigation stage.

Many cases studied by the Office of the Public Defender showed that individuals whose suffered damages as a result of a crime were not granted a victim's status – something that already constitutes a systemic problem rather than a sporadic issue.

Judging from the responses we received from the Chief Prosecution Office about different cases we inquired into,[262] the Office of the Public Defender identified the following common reasons the investigating authorities use to deny the granting of a victim's status:

1. *At this point of criminal proceedings, no evidence has been obtained to indicate that a concrete individual committed an offence under the Criminal Code of Georgia;*

2. *At this point of criminal proceedings, no sufficient amount of evidence has been collected to find a person a victim.*

Denial to grant a victim's status to a victim simply because no concrete defendant has been identified or commission of a criminal offense under the Criminal Code has been established is an incorrect interpretation of the applicable legal provisions and incorrect attitude to the matter.

The Code of Criminal Procedure provides a legislative definition of a victim;[263] in particular, a victim may be the State, a natural person or a legal entity if any of the former has suffered direct moral, physical or property damages directly a result of a crime. Accordingly, if the conditions contained in the victim's definition are met, a prosecutor must find a person victim or a victim's legal successor.

Whether or not a crime has been committed is a matter to be decided by the court. At the investigation stage, however, there may only be a reasonable doubt that a concrete individual might have committed a crime. At that stage, phrases to use may be "a crime may have been committed" or "a crime may have been committed by a concrete individual". Only a court can produce a conclusion in an assertive mode where the reasonable doubt standard has been met. But none of the discussed issues mean that a crime victim be denied his/her actual status of a victim.

According to the Code of Criminal Procedure,[264] a prosecutor has the right to find a person a victim and explain him his rights and obligations. Under the same Code,[265] a prosecutor will find a person a victim or a victim's legal successor by passing a relevant resolution. In other words, not only a prosecutor has a right to pass a resolution finding a person victim or a victim's legal successor, but he/she is obligated to do so where there the relevant requirements are met as a matter of fact.

Certainly, a prosecutor can exercise this right both before and after a criminal prosecution commences. The law does not envisage any different rules in this case. It follows that it is incorrect to refuse finding a person a victim under the mere pretext that no sufficient evidence exist for finding a person victim or confirming crime commission by a concrete individual. It should be noted too that, unlike the Code of Criminal Procedure in force until 1

against the defendant; to testify about damages suffered as a result of criminal conduct at the trial on merits and the hearing for imposing punishment; to be served, free of charge, copies of resolutions (court decisions) terminating the criminal prosecution and/or investigation, judgments and other final decisions of a court; to be reimbursed expenses incurred by participating in the proceedings; to receive back the property confiscated temporarily for the purposes of investigation and trial; to ask for use of special measures if the lives, health and/or property of his own or his close relatives or family members are endangered; and to be informed about his rights and obligations. According to Article 106(1) of the Code of Criminal Procedure, a victim has the right to challenge a prosecutor's resolution terminating investigation and/or criminal prosecution, as a one-off measure, before a superior prosecutor.

262 Letters from the Chief Prosecution Office nos. 13/7545 and 13/34055 dated 13 November 2013 and 28 March 2013, respectively.

263 Code of Criminal Procedure, Article 3(22).

264 Code of Criminal Procedure, Article 33(6)(o).

265 Code of Criminal Procedure, Article 56(5).

October 2010, the current Code of Criminal Procedure does not allow a judge to grant a victim's status to a person; only the prosecutor is authorized to grant a victim's status.

Also, under the Code of Criminal Procedure,[266] if after finding a person a victim it becomes known that grounds for the person to retain a victim's status no longer exist, a prosecutor will cancel its resolution on granting the victim's status. In other words, the granting of a victim's status by a prosecutor to a person will not in any way adversely affect the progress of the investigation since immediately after it becomes known that the concrete person is no longer eligible for a victim's status he/she may be deprived of this status by the prosecutor again (through a new resolution).

Protection of the victim's rights and legal interests in the course of criminal proceedings is necessary and mandatory for the body in charge of proceedings. Of paramount importance is that crime victims are not obstructed in exercising their already meager and minimum rights under the the procedural law for the mere reason that a prosecutor does not wish to grant them or their legal successors an appropriate status.

For better illustration of the above discussion, we are hereby providing some examples of criminal cases studied by the Public Defender's Office in which victims were denied their status.

The case concerning Citizen D.G.

On 9 September 2013, the Public Defender was approached by Citizen D.G. who stated that on 21 March 2011 a criminal gang abducted her spouse N.G. from Tbilisi using D.G.'s car. According to the applicant, the wrongdoers beat and tortured her spouse. N.G.'s dead body was found in the Aragvi River later. The Office of the Public Defender requested the Chief Prosecution Office to provide detailed information about the progress of investigation into this criminal case, including information about whether N.G.'s spouse D.G. was granted the status of a victim's legal successor.

By its letter dated 13 November 2013, the Prosecution Office informed the Office of the Public Defender that the Mtskheta-Mtianeti Regional Police was investigating a criminal case concerning the leading of N.G. to suicide commission – a crime under Article 115 of the Criminal Code. Despite a series of investigative activities conducted (including the production of forensic reports such as complex, fingerprint, trace, biological, medical and graphical reports), no evidence had been obtained at the relevant time supporting the allegation that N.G. was led to committing suicide or any other allegation of crime under the Criminal Code. On this ground, no status of a victim's legal successor was granted to N.G.'s spouse D.G.

The case concerning Citizen G.Kh.

On 26 February 2013, the Public Defender's trustees wrote took down Citizen G.Kh.'s recital who stated that on 2 January 2013 he had been verbally and physically abused by V.D., assistant detective (investigator) of the Gurjaani Police. According to G.Kh., on 3 January 2013 he lodged a complaint with the Gurjaani District Prosecution Office asking the Prosecution Office to take appropriate measures.

On 28 March 2013, the Chief Prosecution Office informed the Public Defender that on 3 January 2013 the Gurjaani District Prosecution Office opened investigation into alleged exceeding of official powers by the members of Gurjaani Police under Article 333(1) of the Criminal Code. However, the Prosecution Office noted, there was insufficient amount of evidence at that point of investigation to grant G.Kh. the status of a victim.

The case concerning Citizen V.L.

On 13 December 2013, the Public Defender was approached Citizen V.L. who stated that, in the evening of 27 October 2013 he was verbally insulted by Z.A., chief of the Rustavi Division of the Ministry of Internal Affairs, at his friend's home located in Rustavi, Balanchivadze Street. Z.A. then ambushed him near the residential multi-story

266 Code of Criminal Procedure, Article56(6).

building and forced him into the car. V.L. asserts that Z.A. was beating him with his hands and some object which the applicant could not identify. Z.A. pointed with his gun towards the applicant's face and tried to strangle him with his other arm. The applicant was saved by his friend and passers-by and set free from Z.A.'s car. His friend then took him to one of his relatives' home. However, when the applicant was leaving the relative's home, he was again ambushed by Z.A. with 10-12 other police officers. According to the applicant, the police officers knocked him down and beat him mercilessly. V.L. became unconscious. When he came around, he found himself in the 2nd Unit of the Rustavi Police where the police officers continued beating him. That night, V.L. was transferred to a temporary detention isolator where it became necessary to call the ambulance to provide him with medical assistance.[267]

By its letter dated 27 January 2014, the Prosecution Office informed the Office of the Public Defender that, in Criminal Case No. 012271013004 led by the 2nd Unit of the Rustavi Police, charges were brought against Citizen V.L. under Article 3531(1) of the Criminal Code. At a pretrial hearing, Rustavi City Court remanded V.L. on bail as a preventative measure. Chief of Rustavi Police, Z.A. was granted the status of a victim.

During the reporting period, however, the Office of the Public Defender has encountered cases with a differently developed course of events. In particular, in some cases victims attended hearings on imposing preventative measures on defendants as witnesses and were granted the victims' statuses later..

The cases concerning Bachana Akhalaia, Gigi Kalandadze and Zurab Shamatava

In December 2012, acting on the basis of Article 12 of the Organic Law on the Public Defender, on its own initiative, the Public Defender commenced examination of criminal cases against Bachana Akhalaia, former Minister of Internal Affairs and Giorgi Kalandadze, Chief of United Staff of the Armed Forces.

Materials submitted to the Office of the Public Defender included resolutions on bringing charges against Bachana Akhalaia,[268] Giorgi Kalandadze[269] and Zurab Shamatava.[270]

The case materials showed that no one had a victim's status by the time charges were brought against Bachana Akhalaia, Zurab Shamatava and Giorgi Kalandadze or by the time the Tbilisi City Court received motions for applying preventative measures against these individuals or by the date these motions were tried and decided by the Tbilisi City Court. This has been the case against the background that the bill of charges brought against all of the three defendants said that Bachana Akhalaia, Giorgi Kalandadze and Zurab Shamatava committed "the exceeding of official powers that resulted in the material breach of the rights of a natural person and State interests, using violence[271] and through encroachment on the victim's human dignity."

When the defendants were first brought before a judge on 9 November 2012, the prosecutor confirmed in his answer to the lawyer's question during the hearing that, at that time, no resolutions existed granting anyone a victim's status. The prosecutor added, however, that the prosecution's witnesses stated in their testimonies that they had been subjected to physical and psychological pressure.

267 V.L.'s heavy sickness is confirmed by a forensic medical report, a protocol of external observation at the temporary detention isolator and other documents.

268 On 8 November 2012, Koba Nozadze, Prosecutor at the Anti-Corruption Department of the Chief Prosecution Office, enacted a resolution on bringing charges against Bachana Akhalaia in Criminal Case No. 74061112803. According to the resolution, the prosecutor deemed the evidence collected in the course of the investigation sufficient to have a founded presumption that Bachana Akhalaia committed the crimes under paragraphs b and c of Article 333(3), Article 143(2)(c) and paragraphs a and e of Article 143(3) of the Criminal Code.

269 On 8 November 2012, Thea Tsulukiani, the Minister of Justice, enacted a resolution on bringing charges against Giorgi Kalandadze in Criminal Case No. 074061112803. According to the resolution, the Justice Minister deemed the evidence collected in the course of the investigation sufficient to have a founded presumption that Giorgi Kalandadze committed a crime under paragraph b and c of Article 333(3) of the Criminal Code.

270 On 8 November 2012, Giorgi Shashiashvili, Senior Prosecutor at the Anti-Corruption Department of the Chief Prosecution Office, enacted a resolution on bringing charges against Zurab Shamatava in Criminal Case No. 74061112803. According to the resolution, the prosecutor deemed the evidence collected in the course of the investigation sufficient to have a founded presumption that Bachana Akhalaia committed a crime under paragraphs b and c of Article 333(3) of the Criminal Code.

271 The list of charges against Bachana Akhalaia included "use of a firearm" as an additional qualifying circumstance.

The above circumstances suggest that the individuals questioned by the prosecution as witnesses should have been recognized as victim. Had they been granting this status, they would become able to use the rights envisaged for victims by the procedural law.

Another reason why the prosecution office's above-described approach is inappropriate is that witnesses' testimonies may be weightier in the eyes of a judge than those of victims. The prosecution office must therefore follow the law and, where the relevant preconditions exists, grant the relevant individuals the victim's status; the prosecution office would then be forced to collect more and better evidence to be able to prove their case.

Recommendations:

To the Government and the Parliament

- **Draft and enact amendments to the relevant laws with a view of establishing an independent investigative agency to investigate crimes such as killings, torture, inhuman and degrading treatment allegedly committed by law enforcement officers (the employees of the Prosecution Office, the Ministry of Justice, the Ministry of Corrections and the Ministry of Internal Affairs – not only police officers) or committed on the territory of penitentiary institutions.**

To the Minister of Justice

- **In the period until the independent investigative agency is established, investigative jurisdictional issues must be clearly articulated prescribing that crimes committed by the members of the Ministry of Justice and the Ministry of Internal Affairs as well as crimes committed on the territory of penitentiary institutions fall within the Prosecution Office's investigational jurisdiction.**

To the Chief Prosecutor

- **To take over the ongoing investigation into cases of alleged commission of crimes by law enforcement officers and crimes committed on the territory of penitentiary institutions;**
- **The Chief Prosecution Office to refrain from forwarding cases possibly involving commission of crimes by law enforcement officers to the Interior Ministry's Inspectorate-General for investigation;**
- **To ensure that the status of a victim or a victim's legal successor is granted according to the rules prescribed by the Code of Criminal Procedure and based on reasonable interpretation of these rules.**

To the Minister of Internal Affairs

- **To de-classify provisions of the Statute of the Interior Ministry's Inspectorate-General, governing rules of conducting investigation by the Inspectorate-General as an investigative agency.**

RIGHT TO LIBERTY AND SECURITY OF PERSON

The European Convention on Human Rights guarantees the right to liberty and security of person to everyone.[272] The Georgian Constitution[273] stipulates that liberty of a human being shall be inviolable. Deprivation or any other form of limitation of liberty of person shall impermissible without a court decision.

The liberty of person is not an absolute right. It may be limited but only on the basis of a court decision and only in accordance with a procedure prescribed by law. Of special importance are the circumstances in which it is legally possible to interfere with this constitutional right when remanding an individual in custody as preventative measure in criminal proceedings. Custody should only be used as the last resort when use of a less strict measure would be insufficient to serve the aims of preventative measures. Accordingly, a court decision restricting the liberty of person should not only be rendered in accordance, on the basis and in furtherance of the aims of the law, but must also be well reasoned.

In 2013, the general trend of using of custody as a preventative measure has changed – a fact that should certainly be welcomed. Statistical data from the Kutaisi and Tbilisi City Courts show that these courts have been using preventative measures not involving imprisonment more frequently during the reporting year.

By 30 December 2013, of the cases dealt with by the Tbilisi City Court, preventative measures not involving imprisonment were used in 2,473 cases. A breakdown of this figure is as follows: bail was used in 2,462 cases, personal suretyship in 2 cases, placing a juvenile defendant under supervision in 2 cases and an agreement not to leave the area and to behave properly in 7 cases.[274] By 30 December 2013, the Tbilisi City Court did not use any preventative measures in relation to 85 individuals.[275]

In 2013, the Kutaisi City Court dealt with 625 criminal cases (against 725 individuals) not involving imprisonment, of which non-imprisonment preventative measures were used in relation to 623 individuals. In particular, bail was used in relation to 597 individuals, an agreement not to leave the area and to behave properly in relation to 25 individuals and placing a juvenile defendant under supervision in relation to 1 individual.[276] In 2013, the Kutaisi City Court did not use any preventative measure in relation to 104 defendants of whom 103 defendants signed and had their plea agreements approved before any preventative measure was used (no preventative measure was used in relation to one defendant).[277]

We also would like to welcome the trend shown in the Supreme Court statistical information. The 2013 was a year of relatively increased variety of preventative measures not involving imprisonment used. In particular, in addition to bail, courts have been using "agreements not to leave the area and to behave properly" more frequently. Further, we note with satisfaction that, according to the data provided by the Tbilisi and Kutaisi City Courts, in dozens of

272 The European Convention on Human Rights, Article 5(1).

273 The Constitution of Georgia, Article 18.

274 Letter from the Tbilisi City Court No. 2776 dated 31 December 2014.

275 Ibid.

276 Letter from the Kutaisi City Court No. 243 dated 6 January 2014.

277 Ibid.

cases the courts did not use any preventative measure in relation to defendants at all.[278]

We note the importance of changes made in the Code of Criminal Procedure on 14 June 2013 allowing the defense to challenge a trial court's decision on the application of preventative measures of procedural coercion before the investigative panel of a court of appeals regardless of whether there is a new circumstance which the magistrate/trial judge had not been aware of at the time the defendant was first brought before a judge.[279]

The above amendment to the Code of Criminal Procedure deserves positive evaluation. However, analysis of the court decisions examined by the Office of the Public Defender demonstrated defective implementation of the law in practice. For example, the Kutaisi Court of Appeals has been inconsistent in its admissibility decisions about complaints challenging court-ordered preventative measures in identical factual circumstances.

The Public Defender welcomes the establishment of a new special commission at the Supreme Court's initiative to work on improving reasoning of court decisions and judgments. According to information currently available, the commission is to elaborate, until 31 December 2014, proposals about the form, reasoning and style of judgments in criminal cases. Although well-founded judgments in criminal cases are important, of no less importance are court decisions imposing preventative measures of coercion and court explanation of why a lesser strict measure cannot ensure the achievement of the objectives of preventative measures or why there is no need to apply any preventative measure at all.

It would be both appropriate and necessary for the commission to work on improving the reasoning of court decisions on the use of preventative measures because the quality of reasoning of magistrate/trial court decisions falls short of meeting the requirements. There is a great difference in terms of reasoning between decisions of preventative measures rendered by courts in big towns (Tbilisi, Batumi) and those rendered by courts in the regions.

During the reporting period, the Office of the Public Defender encountered numerous ill-founded court decisions on the application of preventative measures of coercion. Another problem is protracted decision-making on whether to leave already-ordered preventative measures in force. In 2013, there were problems related to both judicial examination of cases of defendants who have been imposed non-imprisonment preventative measures and unlawful deprivations of liberty.

This chapter will therefore discuss the quality of reasoning of court decisions on the use of preventative measures, problems related to adjudication of cases not involving imprisonment and unlawful deprivations of liberty.

PROBLEMS RELATED TO REASONING OF COURT DECISIONS ON THE USE OF PREVENTATIVE MEASURES

In its 2012 Report to the Parliament, the Public Defender expressed concerns about insufficient reasoning of court decisions on the use of preventative measures of coercion. There have been some positive changes since then. In particular, decisions on the use of preventative measures authored by the Tbilisi and Batumi City Courts have been better substantiated and the judges have been more willing to explain the circumstances on which basis they

278 For example, we recall a decision rendered by the Tbilisi City Court on 25 February 2013 rejecting the Prosecution Office's motion for using a bail in amount of 1,000,000 Lari in relation to defendant Giorgi Ugulava, Mayor of Tbilisi. The decision reads: "The Court takes into account the defendant's [Giorgi Ugulava] personal traits and his cooperation with the investigation. There is therefore no threat that the defendant will flee, influence the participants of the proceedings or continue criminal conduct. None of these threats have been proven to a degree to justify use of any preventative measure in relation to defendant Giorgi Ugulava."

279 Article 207 of the Code of Criminal Procedure:

"1. A court decision imposing, altering or cancelling a preventative measure may be challenged as a one-off action, within 48 hours after it has been handed down, before an investigative panel of a court of appeals by the prosecutor, the defendant and/or the defendant's lawyer. A complaint shall be filed with the court that handed down the order, which shall then immediately forward the complaint and the case materials to the relevant court according to the jurisdictional rules. Challenging the decision will not suspend operation of that decision.

2. A complaint should indicate requirements that have allegedly not been met at the time the decision was rendered and reasons why the provisions of the impugned decision are wrong. A complaint concerning a preventative measure may also be referring to issues and evidence having material importance to the case that have allegedly not been explored by the trial court and that might have affected the legitimacy of imposing the particular preventative measure upon the individual."

imposed a particular preventative measure and/or why the use of a particular measure would be sufficient or insufficient to serve the goals of preventative measures described in Article 198[280] of the Code of Criminal Procedure.

However, decisions of courts located in the regions are still falling short of the required level of reasoning about why a particular preventative measure is the most appropriate in the given circumstances and why the use of a less strict measure would not achieve the goals of preventative measures stipulated in Article 198 of the Code of Criminal Procedure.

Our analysis of the decisions of the Gori and the Telavi District Courts and of the Tbilisi and Poti City Courts shows that judges are using a standard language to justify imposing a particular preventative measure saying that if the defendant is not remanded to custody, he/she may, fearing strict punishment, flee from the investigation authorities and the court, influence the witnesses or hinder the collection of evidence in the course of investigation. In some cases, courts have referred to a likelihood of commission of a new crime as a justification to use imprisonment as a preventative measure. Further, it follows from these decisions, that in remanding defendants to custody, judges have been taking into consideration their personal properties. However, the decisions say nothing about how the personality of the defendant has been studied, using what criteria, etc. It is also unclear from the decisions whether a person is charged with similar crimes or crimes of different nature, when discussing the defendant's criminal record.

Article 198 of the Code of Criminal Procedure obliges courts, in deciding whether to impose a particular preventative measure upon the defendant, to discuss what exactly makes the judge reasonably believe that, should the defendant not be placed in a penitentiary institution pending trial and thus his/her liberty be restricted, the defendant will hide from the investigation and the court, influence witnesses, hinder the collection of evidence during investigation or commit a new crime, or enforcement of the judgment will be rendered impossible.

It follows from our analysis of the copies of court decisions furnished to the Public Defender that courts merely enumerate the above listed formal grounds cut-and-pasted from the law, without adding flesh to explain which specific circumstances made them decide to impose a particular preventative measure. According to the court decisions analyzed by the Office of the Public Defender, courts almost never discuss whether there are any circumstances justifying use of a less strict preventative measure not involving imprisonment (whether the objectives of preventative measure can be achieved using less strict measures).

Some court decisions on the use of bail as a preventative measure are not sufficiently reasoned either. Although a bail is a lest strict preventative measure, it seems, judging from the court decisions analyzed, that courts have not been looking into the defendants' financial status at all or have been doing so superficially – a fact that should be attributed to lack of zealousness of the defense to provide information about the defendant's property status. Article 200 of the Code of Criminal Procedure does not oblige courts to investigate in detail the defendant's property status, but if the imposed bail is clearly disproportional to the defendant's property status, then it is not fit for achieving the purposes preventative measures are supposed to achieve.

280 Article 198. Goals and ground of applying preventative measures.

1. A preventative measure is used for the purpose of preventing the defendant's failure to appear before the court, precluding the defendant's continuation of criminal activity or ensuring enforcement of a judgment. A defendant may not be subjected to imprisonment or other preventative measure if the goals described in this paragraph can be achieved with other, less strict procedural measures of coercion.

2. The ground for applying a preventative measure is a reasonable doubt that the defendant will flee or fail to appear before the court, destroy information relevant to the case or commit a new crime.

3. When lodging a motion for imposing a preventative measure, a prosecutor shall provide substantiation of why the requested measure is appropriate and other, less strict measures would be inappropriate.

4. The court may remand a prisoner in custody as a form of preventative measure only if the goals described in paragraph 1 of this Article cannot be achieved with another, less strict preventative measure.

5. In deciding whether to apply a preventative measure and any particular form of it, a court shall take into account the defendant's personality, activities, age, health condition, family and financial status, any reimbursement of financial damages inflicted, whether or not the defendant had erred from any earlier-imposed preventative measure and other circumstances."

UNLAWFUL DEPRIVATIONS OF LIBERTY

Article 5 of the European Convention on Human Rights explicitly provides that no one shall be deprived of his liberty save in specific circumstances and in accordance with a procedure prescribed by law.

During the reporting period, the Office of the Public Defender detected a number of violations of the right to liberty and security of person guaranteed by the Georgian constitution and international instruments. The violations were authored by the prosecution office, common courts and the Investigative Service of the Ministry of Finance.

The case concerning the Ukrainian Citizen A.Ch.

The Georgian Prosecution Office and the courts applied detention pending extradition in relation to A.Ch., a Ukrainian citizen arrested on the territory of Georgia, despite the fact that no arrest warrant had beenissued by the competent Ukrainian authorities at the material time. According to the documents provided by A.Ch.'s lawyer, A.Ch. was arrested in Georgia on 11 December 2012 and was kept in extradition custody until June 2013.

According to the documentation provided by the Batumi City Court to the Office of the Public Defender, on 1 February 2011, a judge of the Pechersky District Court of Kyiv partly upheld a motion for apprehending A.Ch. and issued an arrest warrant for the purpose of bringing A.Ch. before the judge. Whether or not A.Ch. would be remanded to custody as a preventative measure would be decided only after he would be brought before the judge. In Georgia, A.Ch. was arrested and committed to detention pending extradition based on the very decision of the Pechersky District Court of Kyiv dated 1 February 2011.

On 19 December 2012, the Goloseevsky District Court of Kyiv issued a decision on remanding A.Ch. in custody and bringing him before Goloseevsky District Court within 48 hours after admission to the detention center, for the purpose of deciding whether to leave the custody as a preventative measure or to replace it with a less strict preventative measure. On 23 January 2013, the Criminal Cases Chamber of the Kyiv Court of Appeals cancelled the Goloseevsky District Court decision of 19 December 2012. In the same decision, the Kyiv Court of Appeals dismissed the motion of the Special Cases Investigator of the Kyiv Prosecution Office for applying imprisonment as a preventative measure to A.Ch. This information became known to the Georgian Chief Prosecution Office on 4 February 2013.[281]

Based on the decision of the Kyiv Court of Appeals dated 23 January 2013, on 5 February 2013, A.Ch.'s lawyer addressed Batumi City Court with a request to cancel the decision of the Batumi City Court of 14 December 2012 remanding A.Ch. in custody on account of the fact that the Kyiv Court of Appeals decision was a newly discovered circumstance. Both the Batumi City Court and the Kutaisi Court of Appeals, by their decisions dated 7 February 2013 and 16 February 2013 respectively, dismissed the request of A.Ch.'s lawyer stating that Kyiv Court of Appeals decision was not a newly discovered circumstance and A.Ch. therefore remained in custody awaiting extradition.

Having looked into A.Ch.'s case materials, the Office of the Public Defender found that, by the time the Batumi City Court was reviewing the case on 7 February 2013, the maximum term of 40 days envisaged in Article 16(4) of the European Convention on Extradition for furnishing the documentation required for a person's extradition had already been elapsed.[282] Extradition-related issues between Georgia and Ukraine are governed by multilateral and bilateral international treaties.[283] Under these treaties, Georgia has the obligation to extradite a defendant only if the requesting party furnishes all the required documentation to the Georgian authorities within the above-specified term, including an arrest warrant or other order having the same effect. If the required documentation is not provided within the established term, a person remanded in extradition custody must be released from custody.[284]

281 By its letter no. 14//1–32847–12 dated 1 February 2013 (the letter was registered on 4 February 2013 with the registration number 01/13–14062), the Ukraine's Office of the Prosecutor-General informed the Georgian Chief Prosecution Office that the Kiev Court of Appeals reversed the decision of the Goloseevsky District Court of 19 December 2012 by its decision of 23 January 2013.

282 "Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest."

283 The European Convention on Extradition; the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters; the Convention on Legal Aid and Legal Relations in Civil and Criminal Matters between Georgia and Ukraine.

284 Pursuant to Article 12(2) of the European Convention on Extradition, "the request shall be supported by the warrant of arrest

Since the Georgian side had not received documents required for A.Ch.'s extradition to Ukraine from the Ukrainian side, A.Ch.'s extradition custody could have been extended only for up to 40 days following his arrest (in other words, from 11 December 2012 until 20 January 2013). However, as one can see from the case materials, A.Ch.'s extradition custody continued beyond 20 January 2013 and the Georgian common courts did not pay attention to this evident violation of the international rules of extradition.

In connection with the violation of A.Ch.'s right to liberty and security of person, the Public Defender addressed the Chief Prosecution Office with a recommendation to lodge a motion with the court requesting A.Ch.'s release from the extradition custody.[285] The Public Defender also requested the Georgian Chief Prosecution Office to launch investigation into deliberate keeping of A.Ch. in unlawful detention – a crime under Article 147(2) of the Criminal Code.[286] However, the Chief Prosecution Office did not share the Public Defender's recommendation and request.[287]

However, by its decision of 8 June 2013, the Tbilisi City Court rejected the Chief Prosecution Office's assertion that A.Ch. could flee from the authorities and released A.Ch. from the courtroom under a bail of 150,000 Lari. The decision was stayed by a decision of the Tbilisi Court of Appeals dated 14 June 2013.

The case concerning Citizen Oleg Melnikov

During the reporting period the Tbilisi City Court violated defendant Oleg Melnikov's right to liberty and security of person.

According to the documents available to the Office of the Public Defender, on 22 September 2013, the Prosecution Office requested the Criminal Cases Panel of the Tbilisi City Court to confirm custody as a preventative measure for Olega Melnikov already ordered by the same judicial panel on 4 December 2012. The Court replied that because it had already conducted a pretrial hearing in Oleg Melnikov's case (two hearings had been held), examination of the Prosecution Office's motion was assigned to the pre-trial judge and the hearing on this issue was adjourned for 15 October. It should be noted that the adjournment was not requested by any of the parties.

Oleg Melnikov's preventative measure (in particular, its alteration, cancellation or stay) was discussed by a judge only on 29 October 2013, based on a defendant's lawyers' request. It follows that the Tbilisi City Court did not discuss the Prosecution Office's motion of 22 September for confirming (staying) the detention order at all.[288]

Article 206 of the Code of Criminal Procedure envisages rules of judicial decision-making on application, alteration and cancellation of preventative measures. Article 206(10) separately lays down rules for the prosecution office and the courts to follow when submitting and adjudicating motions for committing hiding defendants to detention as a form of a preventative measure:

---

or other order having the same effect issued in accordance with the procedure laid down in the law of the requesting Party." Also, according to Article 58(2) of the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters, "the request for extradition must be accompanied with a verified copy of detention warrant." Article 54(2) of the Convention on Legal Aid and Legal Relations in Civil and Criminal Matters between Georgia and Ukraine, "a request for extraditing a person must be appended with a copy of detention warrant containing description of the facts of the case."

285 Recommendation of the Public Defender dated 24 May 2013.

286 Request of the Public Defender dated 24 May 2013.

287 According to the letters received from the Georgian Chief Prosecution Office in June 2013, at none of the stages of the extradition proceedings against A.Ch. were there grounds for releasing A.Ch. from custody; A.Ch was not kept in unlawful detention deliberately; and no violation of the Georgian legislation or international treaties to which Georgia is a party has occurred in the case of A.Ch.

288 According to the copies of the hearing minutes and the hearing recording provided by the Tbilisi City Court to the Office of the Public Defender, on 15 October 2013, a pretrial judge stated the following: "As a matter of explanation, I would like to note that, after defendant Oleg Melnikov's extradition, the prosecution addressed this Court with a request to confirm the detention order. Article 206 of the Code of Criminal Procedure, which falls within Chapter 20 of the Code concerning the bringing of a defendant before a judge for the first time for decision-making on the use of a preventative measure, governs the bringing of a wanted defendant before a judge. By the time Oleg Melnikov was extradited to Georgia, investigation into the criminal case here had already been over and the case had already been received by the court for examination. Moreover, 2 courts hearings had been held and the next hearing had been adjourned to 15 October 2013. Accordingly, Article 206(10) was not applicable; it is not applicable to this specific situation at the current stage. However, as regards examination of the preventative measure – the defendant may exercise this right without limitation."

> "If a wanted defendant is arrested in abroad, within 48 hours after he/she is brought to an investigation authority in Georgia, he/she must be brought before a relevant court. The judge shall listen to the parties' explanations and decide on cancelling, altering or staying the preventative measure."

Article 206(10) of the Code of Criminal Procedure lays down an unconditional requirement without no exceptions. The aim of bringing a wanted defendant before a judge to ensure a judicial control over the use of custody, the strictest preventative measure, with the eventual goal of protecting the defendant against arbitrariness.

The fact referred to by the judge that, investigation was over by the time defendant Oleg Melnikov was extradited to Georgia and a pretrial hearing was ongoing was not a bar for the court to discuss the prosecution office's request for confirmation of custody as a preventative measure. In fact, the court was obligated to discuss the prosecution office's request because Article 206(10) of the Code of Criminal Procedure does not prescribe different rules depending on whether an extradited defendant is brought to a Georgian investigation authority at the investigation stage or at the trial stage; in either case, a defendant must be brought before a judge. In other words, bringing a defendant before a judge is a mandatory provision and judicial discretion in this case is excluded. Use of preventative measures, on the other hand, may be discussed both at the time the defendant is brought before a judge for the first time and during a trial on merits, as stipulated in Article 206(1) of the Code of Criminal Procedure.

Although Article 206(10) of the Code of Criminal Procedure does not expressly indicate a term in which a judge should discuss this matter, this should not be used as a pretext for unlawfully infringing the defendant's rights. Pursuant to Article 2(3) of the Code of Criminal Procedure, when a law is defective, a judge can apply procedural rules by analogy if such use would not cause limitation of the human rights and freedoms envisaged by the Georgian Constitution and international treaties to which Georgia is a party.

Pursuant to Article 206(3) of the Code of Criminal Procedure, a judge must examine a motion for application of preventative measures within 24 hours after the motion is lodged. Therefore, for the very reason that the law was defective in not determined the specific procedural term, the court should have applied a rule under Article 206(3) of the Code of Criminal Procedure and should have examined the prosecution office's motion within 24 hours after it was lodged with the court.

The law provides a defendant with a guarantee that the issue of restriction of his liberty will be examined by a competent court, which will consider the parties' arguments but without prejudice to the principle of prompt justice. This guarantee for defendants is prescribed in Article 206(10) of the Code of Criminal Procedure. Failure by the Tbilisi City Court to examine the Prosecution Office's motion was therefore a violation of the defendant's right to liberty and security guaranteed by the aforementioned provision and should be understood as arbitrary infringement upon the defendant's liberty of person.

Considering the right to liberty and security of person as provided for in Article 5 of the European Convention on Human Rights and as explained by the European Court of Human Rights through its jurisprudence, the Public Defender is of the view that defendant Oleg Melnikov's detention between the time he was extradited to Georgia (the Prosecution Office filed its motion with the Tbilisi City Court on 22 September 2013) and the time a judge of the Tbilisi City Court stayed the preventative measure in relation to the defendant by its decision of 29 October 2013, was unjustified.[289]

The case concerning employees of the Tbilisi Mayor's Office and the Tbilisi Legislature (Sakrebulo)

The Office of the Public Defender examined complaints filed by employees of the Tbilisi Mayor's Office and the Tbilisi Legislature (Sakrebulo). According to the complaints, in the morning of 27 June 2013, these individuals were detained by persons dressed in civilian clothes, without giving them any explanation, pushed into cars and brought to the premises of the Investigation Service of the Ministry of Finance. According to the complainants, in the moment of their arrest they were not allowed to make use of their procedural rights under law. They asserted that they were first arrested as accused persons and were handcuffed; however, later on, because the arresting persons received different instructions from their superior, the representatives of the Ministry of Finance Investigation Service tore up the arrest protocols they had drafted themselves, drafted new protocols as if they questioned the

289 Public Defender's proposal of 24 December 2013 to the High Council of Justice to launch disciplinary prosecution against a judge of the Tbilisi City Court.

complainants as witnesses and then released them. The complainants further alleged that the members of the Ministry of Finance Investigation Service were exerting psychological pressure on them.

In order to take action about the case, the Office of the Public Defender requested the Investigation Service of the Finance Ministry to provide information about the ongoing investigation into alleged unlawful misappropriation and embezzlement of State funds by and with the involvement of employees of the not-for-profit legal entity "Tbilisi Development Foundation", the Tbilisi Mayor's Office and the Tbilisi Legislature between November 2011 and October 2012.

With its letter, the Investigation Service of the Finance Ministry informed the Office of the Public Defender that, for investigation purposes, they summoned a group of individuals to question them as witnesses none of whom had been detained. The letter further stated that the witnesses were explained their rights and obligations and, after they testified as witnesses to the investigation authority, they left the administrative building of the Investigation Service.

The Code of Criminal Procedure envisages the obligation of commencing investigation; in particular, "Having received information about a crime, an investigator/prosecutor is obliged to commence investigation."[290] Paragraphs 1 and 2 of Article 101 of the Code specify that the ground for launching investigation is any crime information furnished to the investigator/prosecutor, revealed during criminal proceedings or published by the media. Moreover, it matters not whether the information has become known in writing, verbally or in other form.

The Georgian Code of Criminal Procedure does not prescribe any exception allowing law enforcement agencies to refuse to commence investigation into reported potential crime. Article 100 establishes a requirement with no exceptions that, once information about a possible crime becomes known to an investigator or a prosecutor, they are obliged to launch investigation. The Georgian Code of Criminal Procedure envisages grounds only for terminating ongoing investigations and/or non-commencing or terminating criminal prosecution[291] but it does not envisage any possibility of not commencing investigation.

It is crucially important to promptly and effectively respond to criminal offenses possibly committed by law enforcement officers is crucially important. Investigative bodies are obliged to apply all remedies available in order to effectively detect criminal conduct and properly respond to wrongdoing. The Investigation Service of the Finance Ministry denies commission of any misconduct by its representatives in relation to the employees of the Tbilisi Mayor's Office and the Tbilisi Legislature, while the latter are claiming that they have been subjected to unlawful treatment, including unlawful detention. To make sure that allegations of criminal offenses indicated in the complaints do not remain unresponded, the law enforcement authorities must launch investigation to ascertain whether these allegations are true.[292]

Recommendations:

To the common courts

- **To improve legal reasoning of court decisions on the use of preventative measures by explaining why exactly the purpose of preventative measures will be achieved only by a particular measure, why other less strict measures are inappropriate or why no preventative measure should be used at all.**
- **In imposing bail as a preventative measure, to conduct a more detailed analysis of the defendant's property status and to pay due regard to such analysis in determining a bail amount.**
- **Whenever defendants are extradited to Georgia, to actually ensure judicial examination of the prosecution office's motions for confirmation of preventative measures imposed upon the defendant, within 24 hours and in accordance with the procedures prescribed in the Code of Criminal Procedure.**

290 Code of Criminal Procedure, Article 100.

291 Code of Criminal Procedure, Article 105.

292 The Public Defender's proposal of 28 January 2014 to launch investigation.

To the Supreme Court

- **In addition to working on avenues of improving legal reasoning of judgments, the commission formed by the Supreme Court to elaborate standards for the Georgian judges to improve the legal reasoning of their decisions on preventative measures.**

To the Prosecution Office and common courts

- **In deciding on remanding a foreign citizen in custody pending his extradition, to examine with due diligence whether the country requesting extradition has produced and made available all the documents required by the European Convention on Extradition and other multilateral or bilateral treaties.**

To the Prosecution Office

- **To immediately launch and conduct investigation, within reasonable time period, whenever there are indications of possible infringement upon the right to liberty and security.**

RIGHT TO A FAIR TRIAL

The right to a fair trial is one of the fundamental human rights. In the Georgian Constitution, it is protected by provisions of Article 42. The right to a fair trial implies principles such as access to an independent and impartial court established by law, fair and public hearing of one's case within a reasonable time, equality of arms and adversarial process, enforceability of a final decision of the court, presumption of innocence and procedural rights guaranteed for all, including in criminal proceedings against self.

In its judgment in Delcourt v. Belgium, the European Court of Human Rights stated that, in a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that [its] restrictive interpretation would not correspond to the aim and the purpose of that provision.[293] In another case, the Court has stated that in order for the public to develop trust in courts in a democratic society, justice must not just be done but must be seen to be done.[294]

During the reporting period, one of the topical issues was a discussion about possible mechanisms to handle miscarriages of justice. The discussion was triggered by persistent requests from thousands of current and former prisoners, including individuals recognized as victims of political detention or persecution[295] by the Parliamentary Resolution of 19 November 2012.[296]

By the end of 2012, the Georgian Government representatives officially voiced the Government's intention to establish a Temporary State Commission on Miscarriages of Justice[297] to examine individual criminal cases.[298] The Ministry of Justice drafted and publicized a Draft Law on the Temporary State Commission on Miscarriages of Justice, which was later forwarded to the Venice Commission for their comments. The Venice Commission's opinion about the draft law was published on 23 May 2013 recommending the Georgian Government that, whichever model was chosen in the end, creation of a parallel justice system should have been avoided.[299] In November 2013, representatives of the Georgian Government officially announced that establishment of a Temporary State Commission on Miscarriages of Justice had been suspended, primarily due to lack of funds. These announcements were then followed by prisoner-arranged mass hunger strikes in the penitentiary institutions.[300]

293 Delcourt v. Belgium, Judgement of January 1970, par. 25.

294 Lisica v. Croatia, Judgment of 25 February 2010, No. 20100/0, par. 56.

295 See the Public Defender's statement of 3 July 2013 at

http://www.ombudsman.ge/ge/page/1845-saxalxo-damcveli-politikuri-nishnit-dapatimrebul-pirebs-shexvda.

296 Resolution of the Parliament No. 07–3/10 concerning individuals persecuted on account of their political beliefs, 19 November 2012.

297 In February 2013, the Ministry of Justice informed the Office of the Public Defender that a mechanism to revise unlawful judgments would become operational in several months.

298 The initial version of the draft law prepared by the Ministry of Justice envisaged that the Temporary State Commission could deal with alleged miscarriages of justice in not only criminal but also civil and administrative cases. However, the final draft was reshaped so that the applicability of the law would be confined to revision of judgments only in criminal cases.

299 Opinion 728/201, CDL-REF (2013)024, Draft law on temporary state commission on miscarriages of justice of Georgia, European Commission for democracy through law (Venice Commission), Council of Europe, 23 May 2013.

300 See the Public Defender's public statement dated 26 July 2013; see also "The Public Defender met with the prisoners in Geguti

During the reporting period, the Public Defender has been repeatedly indicating the need for establishing a Commission on Miscarriages of Justice.[301] According to official statistics of the European Court of Human Rights, of the 55 judgments handed down against Georgia in 2012, violation of the right to fair trial was found in 37 judgments. The high rate of violation of this fundamental right indicates the need for more reforms and more effective mechanisms of human rights protection at the domestic level in order for the Georgian common courts to be able to provide due process guarantees in administration of justice and, criminal justice, especially. Further, if established, such a revision mechanism must fit into the current constitutional legal system of Georgia. A mechanism for revision criminal cases must have sufficient constitutional legal legitimacy to guarantee its full independence and impartiality. This mechanism can be vested in the hands of the Constitutional Court. By expanding powers of the Constitution Court, the Government could create an effective mechanism of constitutional control over the administration of justice that would meet the requirements of both independence and impartiality.[302] In addition, any mechanism the Government comes up with should ensure full rehabilitation of victims of miscarriages of justice, including restoration of any damages inflicted as a result of the State's unlawful actions.

Despite the justice system reforms already implemented, the Public Defender has been indicating various defects of the judiciary apparatus in its reports. This report too describes general trends identified in 2013. Specifically, the report discusses flaws revealed as a result of trial monitoring, problems with judicial control over the legality of investigative activities conducted in cases of urgent necessity, lack of legal reasoning of court decisions, violations of the equality of arms and adversarial principles, protracted proceedings, violation of the presumption of innocence and problems with enforcing court decisions.

TRIAL MONITORING

The Office of the Public Defender has monitored trials for the third time already, with the financial support of the United Nations Development Programme (UNDP).[303] The monitoring was conducting with full respect for the principle of independence of the judiciary.

Common courts as bodies responsible for administration of justice play a key role in actually implementing the right to fair trial and the related rights into practice. Our monitoring was aimed at evaluating this process, identifying defects if any and elaborating recommendations to foster effective exercise of due process rights and raise the independence, impartiality and transparency of the court system.

In November 2013, representatives of the Office of the Public Defender monitored trials at the following courts: Gori District Court, Kutaisi City Court, Zugdidi District Court, Senaki District Court, Batumi City Court, Akhaltsikhe District Court, Tbilisi City Court, Telavi District Court, Gurjaani District Court and Bolnisi District Court. Our representatives personally attended trials to study the situation on the spot. During the monitoring, they were using questionnaires elaborated by the Office of the Public Defender. The questionnaires were designed in a way to pay attention, in addition to potential procedural violations, to problem issues identified by the Public Defender during its other monitoring projects. This report is based on our analysis of the questionnaires filled out by our trial monitors. It should be noted as well that this part of the report also discusses similar procedural violations, which the Office of the Public Defender while studying individual criminal cases as part of its other set of activities.

We would like to note in the very beginning the improved professional qualification of judges, which is an achievement of a whole series of reforms carried out within the Georgian courts of general jurisdiction (common courts). In a majority of cases, trials are conducted with respect for human rights. We note with satisfaction that, by amendments of 6 March 2013 to the Organic Law on Common Courts, photographing and videotaping have been allowed at trials. All of the hearings are audio-recorded. The amendments have made the process of administration of justice much more transparent, which on its turn positively affected the quality of the court work.

Penitentiary Institution No. 14", 7 February 2014.

301 See the Public Defender's public statements of 3 July, 12 August and 29 November 2013.

302 The Office of the Public Defender has elaborated a draft law, which envisages increase of the Constitutional Court's competence to include, inter alia, a mechanism for dealing with miscarriages of justice. The draft law, after it is discussed as necessary, will be submitted to the Georgian Parliament in Spring 2014.

303 The Public Defender monitored trials in 2011 and 2012; results of these monitoring activities are described in the Public Defender's annual reports of 2011 and 2012 respectiely.

Despite these positive trends, the trial monitoring revealed a number of defects in the judiciary that need to be addressed.

1. Access of people with disability to court

In its 2012 Report to the Parliament of Georgia, the Public Defender emphasized problems disabled individuals are experiencing in physically accessing courts.

Because individual court buildings are not equipped with ramps, people with disabilities have difficulty in entering such buildings. The infrastructure in the buildings too is not properly arranged for making impossible for disable people to move around inside court premises independently.

The right to a fair trial implies the ability of physical access by definition. Often times people go to court out of unavoidable necessity and, when they decide to do so, they must be guaranteed with the ability to physically access the court. Many courthouses are unadapted to the needs of people with disabilities but physical access is the first thing to be provided if the interests of disabled individuals are to be really protected.

2. Mandatory explanations to be provided by a judge in the beginning of a hearing

In the course of court proceedings, it is assumed that, if a law has been published, people affected by the law must get themselves acquainted with the law and make their conduct compatible with the established legal order. However, in certain circumstances, because of the special nature of legal relations and likelihood of being held legally liable, the law prescribes advance written or verbal warning. For example, although the Criminal Code expressly prohibits giving a false testimony by a witness, it obliges the judge to additionally warn witnesses in advance about the consequences of providing false information to the court. The obligation of advance warning exists also in relation to rules of behavior in the courtroom envisaged in Article 228(4) of the Code of Criminal Procedure, which reads:

"A presiding judge shall warn the participants to the proceedings and others attending a hearing that court's instructions about keeping order in the court are mandatory and measures envisaged by law may be applied to perpetrators of order in the courtroom."

During the trial monitoring conducted by the Office of the Public Defender, our representatives detected numerous instances when judges failed to warn the attendees about potential measures of liability for violation of order in the courtroom.

Because the individuals in a courtroom may be unaware of the applicable law, explaining these minimum rules to them is necessary. Otherwise, holding the perpetrators liable would be unfair and unlawful. If follows that, by failing to provide explanation of courtroom rules and corresponding measures of liability, judges not only endanger the proper functioning of the court but may actually be violating the rights of attending individuals.

The same problem was detected in an administrative case where a newly involved third party was not explained the right to request the judge's recusal. Especially susceptible to violation of their rights, in this regard, are individuals who are neither represented by a lawyer nor have legal education.

To conclude, judges must fulfill their obligation to explain these minimum rules to those in the courtroom.

3. Language of proceedings

In its 2012 report, the Public Defender indicated problems related to interpretation (translation) at court hearings. Unfortunately, the same issue has been a matter of concern during the reporting period too.

Under the European Convention on Human Rights, everyone who is arrested shall be informed promptly in a lan-

guage he understands of the reasons for his arrest and of any charge against him.[304] The European Convention also lays down the obligation to inform a person charged with a criminal offense of the nature and cause of accusations against him, promptly, in a language he understands and in detail.[305] The European Court deems the services of a qualified interpreter necessary when a party to the proceedings does not have sufficient knowledge of the language of proceedings. The right to interpretation in such cases is a material part of the right to a fair trial. The State's failure to ensure this right to those in need automatically results in violation of the defendant's procedural rights that are immanent in legal proceedings.

During the trial monitoring conducted, we identified instances when the interpreter was incompletely translating for the defendant and the defendant was virtually unable to participate in the hearing. In particular, the interpreter was translating only what the judge was saying but was not translating the defendant's statements (position) into the State language. Further, the judge did not explained to the defendant all of his rights and obligations for the interpreter to translate for the defendant. For example, the defendant was not explained in a language he understood the right to request the judge's recusal or self-recusal. Against this background, the defendant was unable to follow the progress of the hearing. The defendant was not admitting guilt while his lawyer was asking for a plea agreement. According to the law, no plea agreement can be made if there are no sufficient assurances that the guilt admission was truly voluntary.

Since justice is administered by courts, it is the obligation of the courts to conduct hearings in a way that is understandable for everyone involved.

With the monitoring results in mind, we deem it necessary that the law should oblige judges to ensure, during trial, translation services to individuals who are unaware of the language of proceedings. Such a legislative arrangement would make quality translation available. Translation services should not be provided by the parties to the proceedings – something that is practiced by some courts, as our monitoring showed. Courts should not be blindly trusting in the quality of translation services provided by the parties. The courts should be responsible for accuracy of translation. Provision of these services by one of the parties to the proceedings may amount to violation of the equality of arms and adversarial principles.

Further, the pace of the hearing should be such as to allow the interpreter to properly perform his job and enable the person who is provided with the translation services to be fully involved in the process.

Lack of proper translation for people with no knowledge of the language of proceedings was detected by the Office of the Public Defender in the criminal case against D.E. and his/her spouse V.S. These two individuals are both citizens of Georgia, but they are not fluent in Georgian. It is established by protocols of arrest and search that the arrest and search of citizen V.S. was happening the same time as D.E. was being questioned as witness. In spite of this fact, both protocols say that only interpreter (N.G.) was providing translation services during both investigative activities – something that naturally drives to a reasonable suspicion as to whether V.S. and D.E. were actually provided with translation.[306]

4. The right to examine witnesses in equal conditions

As a result of the monitoring, we revealed violations of the principle of equality of the parties. In one criminal case, because of many witnesses, the defense did not know who the witnesses were whom the prosecution was intending to call at the next trial.

Pursuant to Article 9 of the Code of Criminal Procedure, criminal proceedings are conducted on the basis of equality of the parties. This principle derives from Article 42 of the Georgian Constitution and Article 6 of the European Convention on Human Rights (the right to a fair trial). According to the referenced provisions, parties must have equal opportunities of proving their case; the same approach is embedded in the Georgian Code of Criminal Procedure. One of the fundamental elements of the right to a fair trial is the right to examine witnesses of the opposing party in equal conditions. Adversarial principle and equality of arms are universal and immanent canons of criminal proceedings.

304 The European Convention on Human Rights, Article 5(2).

305 The European Convention on Human Rights, Article 6(3)(a).

306 Public Defender's proposal no. 4582/04–8 dated 27 September 013 to the Minister of Internal Affairs.

The Georgian Code of Criminal Procedure does not specifically regulate how the other party should be informed about witnesses whose examination is contemplated at the hearing. If each party has no more than one or two witnesses to call and examine, the issue is easy to handle and the other party knows, as a matter of fact, who will be called as a witness. However, the issue becomes complicated when the defense or the prosecution have several witnesses to examine and the other party is not informed in advance about which of them will be call to testify at the hearing. This is a situation where there is a high likelihood of violation of such constituent element of the right to fair trial as the right to examine the other party's witnesses in equal conditions. This principle implies that the opposing party must have sufficient time and opportunity to prepare questions for the witnesses. For the opposing party to do so, it should be able to view the testimonies of witnesses who are supposed to be called to testify at the trial. If the opposing party becomes aware of who the witnesses are only after the hearing has already started, the right to defense will turn into an illusory right with a nominal effect.

Against the above-described background, it is desirable that the law stipulate the defense's right to receive information about the witnesses to be called within a reasonable time in advance. With explicit regulation, protection of this right will become more realistic.

In regard to rules of witness examination, we would like to note a defect revealed in the criminal cases concerning Bachana Akhalaia.

At the Public Defender's assignment, his trustee monitored trials concerning Bachana Akhalaia at the Tbilisi City Court. The monitoring revealed that the Tbilisi City Court was systematically violating Article 118(2) of the Code of Criminal Procedure. Article 118(2) of the Code of Criminal Procedure reads: "A witness must be examined separately from other witnesses. Moreover, the court shall take measures to ensure that witnesses called to testify in the same case have no possibility to communicate with each other until examination of witnesses is over."[307]

The above-cited provision serves to the goal of ensuring reliability of witnesses so that, in front of the judge, the witnesses speak of only the facts that are known to them and are not influenced by information and impressions received from other witnesses.

Contrary to this requirement, during a cross examination in the criminal case concerning Bachana Akhalaia, the prosecution's witnesses were answering the defense's question that, before their call, they were seated beside each other, in the so-called room for prosecutors, and could freely communicate with each other.

These are examples of a court failing to take measures envisaged by law to prevent witnesses in the same case from communicating with each other until witness examinations are completed.

5. Rules of examining physical evidence

In the course of trial monitoring, we identified problems related to examination of physical evidence. In some cases, parties (the prosecution and the defense) could not agree on rules of examination of covertly-made recordings (pieces of physical evidence) obtained through a criminal intelligence activity. This matter is not regulated by the Code of Criminal Procedure.

As a result of monitoring of several criminal cases, it turned out that judges' approach to examination of covert recordings obtained as a result of crime detection measures were not always consistent. In one case, a judge said the prosecution had to identify such evidence first and the defense could ask questions afterwards. However, the judge did not manage to abide this rule as the hearing progressed. In another case, a judge allowed the defense to ask questions while the evidence was being examined – both things happening at the same time. Such approach whereby examination of evidence and posing questions were allowed at the same time resulted in a chaos which both parties seemed to be unhappy about.

Based on the monitoring results, we believe the legislature should articulate rules of examination of evidence in a way that both parties' rights are protected on an equal footage and objective examination of evidence is made possible. Otherwise, we will constantly see inconsistent court practice likely to result in unreasonable protraction of trials and raise questions about equality of opportunities available to the parties.

307 The Code of Criminal Procedure, Article 118(2).

6. Protracted proceedings in administrative cases

In the course of monitoring trials related to administrative offenses, we found citizens were being waiting all day long in the courthouses because they did not know the time of their hearings.

This happened in several courts. Court administrations were explaining to the citizens that the judge was busy with other cases and was unable to hear their case at that time. Such practice undermines the courts' reputation and in some cases may lead to violation of the right to a fair trial. If this practice is a consequence of insufficient number of judges, it must be addressed by increasing the judicial staff of courts.

7. Technical defects in judicial administration

During the monitoring period, on several occasions, the electricity supply to courts was cut due to bad weather. Because court hearings are stenographed, it is necessary to provide courts with some alternative sources of electricity supply to avoid technical shortcomings similar to what has been described above. Otherwise, the progress of hearings may not be properly documented and higher courts may encounter difficulties in handling the cases on appeal.

8. Rules of assigning cases to judges of common courts

Rules of allocation of cases to judges are contained in Article 30 of the Organic Law on Courts of General Jurisdiction (common courts) and the Law on Allocation of Cases and Delegation of Judicial Authority to Other Judges in Common Courts. According to rules applicable during the reporting period, in district (city) courts and courts of appeal, cases are allocated according to the registration number of cases and the list number of judges. A list of judges is made up by a president of the court according to the names of the judges.[308]

Further, according to the legislation applicable by February 2014, a president of the court is authorized to task a judge with hearing a case despite the case registration/list number.[309] Presidents of courts justify use of this special power with reasons such as "case overload", "impossibility to deal with cases for other reasons" and "a judge's workload". These reasons are vague leaving room for arbitrary decisions and subjective approach in allocating cases.

We hereby note that, by decision of the Ministry of Justice, the second stage of the judiciary reform will deal with the need for improving the legal framework governing allocation of court cases.[310] On 4 October 2013, the Parliament enacted amendments to the Organic Law on Common Courts. Under the amendments, the 1998 Law on Allocation of Cases and Delegation of Judicial Authority to Other Judges in Common Courts is repealed effective 1 March 2014. Rules of allocation of court cases, as an issue related to the functioning of courts, have been moved into the Organic Law on Common Courts.

Allocation of cases is regulated differently by the new amendments. In particular, a new Article 581 has been inserted into the Law[311] stating that case allocation in district (city) courts and courts of appeals shall be effected by means of an automated electronic system based on a case registration number and the number of the judge in the list.

We welcome the introduction of a new electronic system for case allocation as this furthers the principle of objective and fair distribution of cases. However, even after the entry into force of these changes, Article 30(5) still remains in the Organic Law on Common Courts and the presidents of courts retain their power to unilaterally assign cases to judges. In particular, the referenced provision reads:

> "5. Where necessary, in order to avoid hindrance to administration of justice, a president of a court may task a judge with hearing a case in another specialized panel of the same court or performing the duties of

308 See the Law on Allocation of Cases and Delegation of Judicial Authority to Other Judges in Common Courts dated 26 June 1998, Chapter II: Case allocation.

309 Law on Courts of General Jurisdiction (common courts) dated 12 April 2009, Article 30(5).

310 The draft law became a law on 17 November 2013 – the date the President took an oath.

311 This provision will become effective on 1 March 2014.

a magistrate judge; likewise, a president of a court may task a magistrate judge with hearing a case outside its territorial jurisdiction, in a district court."

The above-cited provision grants presidents of courts too broad discretion, which does not exclude a subjective approach in allocation of court cases.

In 2008, the Venice Commission published Comments on the European Standards on Judicial Independence that discusses, inter alia, issues of allocation of cases among judges.[312] The Commission considers this issue from the perspective of the right of everyone to a lawful judge and states:

"Distribution of cases between judges should be done in accordance with the right of everyone to a lawful judge which presumes that judges cannot be allocated ad hoc and ad personam. The right to a lawful judge implies that no one can be deprived of the opportunity of his or her case resolution by a judge whose jurisdiction over this person and this dispute is established by law. The criteria of the allocation of cases should exclude the possibility that judges are chosen accordingly to subjective criteria rather than general objective criteria. Inadmissible is the allocation of cases on the basis of discretion of chairman of a court or other official. Such an allocation should me made either on the basis of the random sample (i.e., by means of a computer program or other technology) or using the objective criteria (i.e. category of cases, order of priority of resolution of cases, etc.), the use of which may prevent non-transparent or abusive distribution of cases. Even the mere possibility of manipulation infringes the constitutional right to a lawful judge."[313]

Under the European standards of judicial independence, judges or judicial panels entrusted with specific cases should not be selected ad hoc (individually, one-off for every single case) and/or ad personam (depending on personalities) but according to objective and transparent criteria. This rule, pursuant to the Venice Commission's Report on the Independence of the Judicial System, stems from both Article 6 of the European Convention on Human Rights (the right to a fair trial) and the jurisprudence of the Strasbourg Court.[314]

Many European constitutions contain a subjective right to a lawful judge (in doctrine often referred to as "natural judge pre-established by law"). For example, pursuant to Article 13 of the Constitution of Belgium: "No one can be separated, unwillingly, from the judge that the law has assigned to him."[315] The guarantee can be understood as having two aspects. One relates to the court as a whole. The other relates to the individual judge or judicial panel dealing with the case.[316] A similar guarantee is found in Article 42(2) of the Georgian Constitution, which stipulates that "Every person must be judged only by a court that has jurisdiction over his case"[317]

As regards the power of presidents of courts to allocate cases, the Venice Commission, in its Recommendation (94)12 (Principle I.2.e and f) stresses the principle that distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. In addition, "A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interests. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration."[318]

As it is clear, the European standards require that allocation of cases to judges be based on a as objective and transparent criteria pre-established by law as possible and that any exception be well-founded.

We have already stated that the existing legal rules on allocation of court cases within the Georgian judiciary are based on vague principles. The current legal framework therefore does not provide sufficient guarantees of independence of judges and does not ensure required transparency of internal processes. Against the background of

312 CDL-JD (2008) 008, 3 October 2008.

313 CDL-JD (2008) 008, 3 October 2008.

314 The Venice Commission Report on the Independence of the Judicial System, Part I: The Independence of Judges, 16 March 2010, CDL-AD (2010) 004, p.15.

315 The Venice Commission Report on the Independence of the Judicial System, Part I: The Independence of Judges, 16 March 2010, CDL-AD (2010) 004, p. 15.

316 The Venice Commission Report on the Independence of the Judicial System, Part I: The Independence of Judges, 16 March 2010, CDL-AD (2010) 004, p. 15.

317 The Constitution of Georgia, 24 August 1995, Article 42(2).

318 The Venice Commission Report on the Independence of the Judicial System, Part I: The Independence of Judges, 16 March 2010, CDL-AD (2010) 004, p.15.

inadequate independence of the judiciary, the existing legal rules on allocation of cases have been criticized on many occasions by various actors.

Criminal cases against Bachana Akhalaia

In this regard, it is interesting to look into the way the criminal cases against Bachana Akhalaia were allocated in 2013. In particular, all of the judges appointed to hear the three criminal cases against Bachana Akhalaia were assigned to the Tbilisi City Court one and the same day from various courts.

- Judge G.D. who rendered an acquitting judgment in relation to Bachana Akhalaia on 1 August 2013 was seconded to the Tbilisi City Court from one of the district courts by decision of the High Council of Justice dated 6 February 2013.[319] This very judge started hearing Bachana Akhalaia's case on merits on 18 March 2013. The next day, 19 March 2013, G.D. was appointed a judge at the Tbilisi City Court, also by decision of the High Council of Justice.[320]
- Judge D.M. who acquitted Bachana Akhalaia on 31 October 2013 in regard to charges concerning the period he occupied a ministerial position was also seconded to the Tbilisi City Court from one of the district courts[321] on 6 February 2013 by decision of the High Council of Justice. Again, the next day, 19 March, the High Council of Justice appointed D.M. a judge at the Tbilisi City Court.[322]
- As regards the third case concerning the so-called prison riot, the trial on merits was led by judge B.B. As a judge in reserve, B.B. was replaced with judge L.Ch. who was seconded from a district court to and appointed a judge at the Tbilisi City Court, as with the previously mentioned judges, by decision of the High Council of Justice dated 6 February 2013.[323]

As it is clear from the above-described facts, all of the judges who tried the criminal cases against B. Akhalaia were seconded by the High Council of Justice from various district courts to the Tbilisi City Court on 6 February 2013 and were later appointed judges to the Tbilisi City Court.

In light of the principles of respect for judicial independence and presumption of innocence, whatever considerations served as a basis for the way the criminal cases against Bachana Akhalaia were allocated to judges, the governing legal rules do not provide sufficient guarantees of transparency giving rise to legitimate questions about the process.

As already mentioned, we note with satisfaction the amendment to the Organic Law on Common Courts effective since 1 March 2014. However, Article 30(5) of the Law remains a problem because it entrusts presidents of courts with too broad discretion leaving them the room for making opaque and subjective decisions.

THE RIGHT TO ADDRESS A COURT

Pursuant to Article 42(1) of the Constitution of Georgia, everyone has the right to address courts in defense of his rights and freedoms.

319 Decision of the High Council of Justice of 6 February 2013 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202013/14-2013%20001.jpg.

320 Decision of the High Council of Justice of 19 March 2013 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202013/45-2013%20001.jpg.

321 Decision of the High Council of Justice of 6 February 2013 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202013/10-2013%20001.jpg.

322 Decision of the High Council of Justice of 19 March 2013 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202013/42-2013%20001.jpg.

323 Decision of the High Council of Justice of 6 February 2013 http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202013/16-2013%20001.jpg; In the "prison riot" case, the Tbilisi City Court acquitted B. Akhalaia on 28 October2013 only on charges in Mamardashvili's case but found guilty of other charges sentencing him to imprisonment for 3 years and 9 months.

In its judgment in Uniservice Ltd v. the Parliament of Georgia,[324] the Georgian Constitutional Court stated:

"Article 42 of the Georgian Constitution does not prescribe any exception and endows a human being with the right to address the court in any event. For this reason, the Code of Criminal Procedure may not introduce any exception to this general constitutional rule depriving individuals of their right to contest decisions permitting search, seizure or other investigative actions […]"

In the same judgment, the Constitutional Court stressed that the fact that the owner of a thing extracted by seizure cannot challenge the judicial warrant permitting the conducting of seizure contradicts Article 42, which grants everyone without exceptions the right to address a court. The Constitutional Court stated that investigative activities might affect not only those who are suspected or accused, but also third parties. The Court said these third parties were in fact deprived of a possibility to assert their interests before courts. The impugned provisions did not allow these individuals to have the courts verify the legality of investigative activities they had been affected by. The Constitutional Court said the legislature was obligated to establish an appeal mechanism that would be compatible with the principle enshrined in Article 42(2) of the Constitution. The legislature must determine and lay down a mechanism, which will not breach the basic principles of fair investigation and administration of justice on the one hand and will protect the rights and freedoms guaranteed in the Georgian Constitution to the highest possible extent on the other hand.

We welcome the changes effected to Article 156 of the Code of Criminal Procedure on 14 June 2013 as an important guarantee of protection of owners' rights in criminal proceedings.[325] Eliminating the previous flaw in the law, these changes entitle not only the parties to the proceedings, but also the owner of the property whose rights may have been infringed to challenge a judicial warrant on arresting a property in criminal proceedings.[326]

However, the Code of Criminal Procedure still contains a similar legal defect when it comes to judicial warrants permitting search and seizure. In particular, a person who is the owner of a thing that has been searched and seized on the basis of a judicial warrant but who might not necessarily be a party to the proceedings does not have the right to challenge the judicial warrant. Under Article 112(8) of the Code of Criminal Procedure, a judicial warrant on search and seizure may be challenged according to the rules set forth in Article 207;[327] it means that search/seizure warrants may be challenged only by the prosecutor, the defendant and/or the defendant's lawyer.

That said, however, despite the mentioned regulatory defect, in the case concerning citizen N.G. studied by the Office of the Public Defender,[328] the Tbilisi Court of Appeals did examine a complaint against a warrant issued by the Rustavi City Court. The Tbilisi Court of Appeals directly applied Article 42 of the Constitution as the supreme of the country and the rule of legal analogy. However, the Parliament should eliminate the existing legal defect by amending the relevant provision.

The constitutional right to address a court would be illusory and good for theory only if other normative acts were to render its operation impossible. A legal interest is a legally protected value. The right to property is a legally protected value guaranteed in Article 21 of the Georgian Constitution and Georgia's other laws. It is therefore

324 The Constitutional Court of Georgia, Judgment of 21 December 2004 No. 2/6/264 in Uniservice Ltd v. The Parliament of Georgia.

325 Article 156 of the Code of Criminal Procedure (A judicial warrant on property attachment): "A judicial warrant on the arrest of a property must be served to a person entitled to challenge the warrant within 48 hours after the warrant is issued. The warrant may be challenged according to the rules set forth in Article 207. The warrant may be challenged by the prosecutor, the defendant and/or the person whose property rights may be breached as a result of that warrant as well as by lawyers of any of the previously listed persons. The counting of the term for challenging such a warrant shall start from the moment it was served to the person having the right to challenge it."

326 See the Public Defender's Annual Report 2012, pp. 332-333.

327 Article 207(1) of the Code of Criminal Procedure: "A court decision imposing, altering or cancelling a preventative measure may be challenged as a one-off action within 48 hours after it is issued before the Investigative Panel of a Court of Appeals by the prosecutor, the defendant and/or the defendant's lawyer. Court decisions on the legality of investigative activities conducted without a judicial warrant in a situation of urgent necessity may be challenged under the same rules."

328 The Office of the Public defender studied the case concerning Citizen N.G. whose car – Mercedes Benz 350 – was seized on 5 November 2013 based on a judicial warrant issued by the Rustavi District Court on 12 October 2013. The applicant asserted that he bought this car on 9 September 2013. To support this statement, he provided a certificate issued by the Service Agency of the Ministry of Internal Affairs on 7 November 2013 confirming that the car was truly registered in the applicant's name and a transport registration certificate issued on 9 September 2013. N.G. was not a party to the criminal proceedings, he had not been questioned as a witness and had been unaware of the criminal case at all.

important and necessary that everyone's rights in criminal proceedings are protected and people whose property rights might have been infringed are able to exercise their constitutionally guaranteed right to address the court in defense of their allegedly breached rights. To translate this supposition into practical terms, it would be prudent to entitle property owners whose legal interest might have been infringed by an investigative agency's actions during criminal proceedings to challenge judicial warrants permitting these actions before courts.

THE RIGHT TO HAVE ONE'S CASE TRIED IN A REASONABLE TIME

Judicial examination of criminal cases in which defendants have been imposed preventative measures not involving imprisonment remains a painful issue in the Georgian criminal justice system.

The European Convention on Human Rights guarantees the right to be tried within "a reasonable time".[329] This right serves, first of all, to the interests of the parties protecting them from undue protraction of examination of their case. On the other hand, this principle is one of the unconditional elements of effective justice system that plays an important role in raising the public confidence in and respect for the judicial system of the country.

The rights envisaged in Article 6 of the European Convention on Human Rights are not absolute rights but any limitation of these rights must be based on the existence of predetermined preconditions. In determining whether there has been a violation of the principle of prompt justice, the European Court of Human Rights takes into account complexity of the case, number of witnesses and defendants, the applicant's behavior (whether the protraction of the case review was attributable to the applicant's improper behavior) and other specific aspects of the case that might justify delayed proceedings.

As the European Court has put it, the Convention places a duty on the Contracting States to organize their legal systems so as to allow the courts to comply with the requirements of Article 6 § 1 (art. 6-1) including that of trial within a "reasonable time".[330] In addition, the Strasbourg Court notes, national courts should create appropriate conditions for the parties to avoid unnecessary delay in hearing the case.[331] We would like to stress the European Court's stance on justifying violation of the "reasonable time" requirement by lack of court personnel. The Court disagrees with the possibility of justifying a failure to hear a case within "a reasonable time" on account of insufficient personnel or general administrative difficulties.[332] The European Court has established through its case-law that Contracting States must implement adequate measures to make their judicial system effective and responsive. Adequate measures include increasing the judicial corps and administrative personnel of courts.

The case concerning Citizen G.L.

On 24 April 2013, the Office of the Public Defender was approached by Citizen G.L. In his application, G.L. stated that he worked for the Ministry of Defense from 1989 till 2007. On 17 September 2007, he was arrested by representatives of the Investigation Unit of the Ministry of Defense's Military Police on charges under Article 332 (abuse of official power) and Article 341 (falsification by abusing official position) of the Criminal Code.

G.L. asserted that his criminal case was forwarded to the Tbilisi City Court in 2007 but the Court had not yet started examination of his case by the date he applied to the Office of the Public Defender on 24 April 2013.

M.G., Assistant to a judge at the Criminal Cases Panel of the Tbilisi City Court informed the Office of the Public Defender with a letter that a criminal case against G.L. and others has been allocated to Judge B.K. The case was registered as an incoming case by the Tbilisi City Court on 14 August 2008. The case was initially allocated to Judge M.Kh. but because M.Kh.'s judicial tenure expired, it was forwarded to Judge B.K. on 5 October 2012.

The letter from the Tbilisi City Court also says that judicial examination of the case, which did not involve imprisonment, has not been started even by 28 May 2013 because of the large number of criminal cases involving

329 The European Convention on Human Rights, Article 6(1).

330 Zimmermann and Steiner v. Switzerland, par. 29, The European Court of Human Rights, 1981.

331 Vernillo v. France, The European Court of Human Rights, 1991.

332 Guincho v. Portugal, The European Court of Human Rights, 1984.

imprisonment.

The Public Defender disagrees with the Court's stance and deems that the fact that the Court cannot manage to clear the docketed criminal cases involving imprisonment on time cannot be used as a reason to justify the Court's failure to deal with the criminal case against G.L. and others or at least to start is examination during a period of as long as five years. It is the obligation of the State to organize its legal system in a way to allow its courts to comply with the requirements under Article 6(1) of the European Convention on Human Rights, including the requirement of trying cases within "a reasonable time" so that violation of the prompt justice principle is avoided.

We hereby note that, despite our request, neither the Tbilisi City Court[333] nor the Kutaisi City Court[334] have provided the Office of the Public Defender with statistical data on the number of ongoing criminal cases in which defendants have been committed to preventative measures not involving imprisonment and the dates these preventative measures have been imposed. For this reason, for the 2013 report, the Office of the Public Defender has been unable, unlike the previous year, to analyze how systemic the problem of delaying judicial examination of criminal cases in which defendants were committed to non-imprisonment preventative measures was.

EQUALITY OF ARMS AND ADVERSARIAL NATURE OF PROCEEDINGS

The European Court has explained that equality of parties is one of the elements of the right to a fair trial. The principle of equality of parties (or equality of arms) requires striking a fair balance between the parties allowing each party a reasonable opportunity to make their case on terms that do not place them in manifestly unequal position vis-à-vis the opposing party.[335]

Equality of arms implies that the parties must be given equal and adequate opportunities to present their evidence and arguments and attempt to refute the opposing party's evidence. Also, the defendant must be informed about the charges against him in a way that he is made aware of which evidence and arguments the court may consider in determining his guilt. For the general principle of a fair court to be served, parties should have equal legal rights and practical capabilities. The European Court does not consider minor violation of equality of arms that has not affected the eventual fairness of the trial of a case a violation of this principle. The principle of equality of arms does not necessarily mean that there must be a comprehensive list of procedural rules ensuring equality. Whether or not equality of parties was ensured in a specific case will depend upon the properties of that case, including the nature of the case and the matter of dispute.

We welcome the change made to Article 111 of the Code of Criminal Procedure on 14 June 2013 as a step towards strengthening the principle of equality of parties and the adversarial principle. In particular, the amendment entitles the defense, subject to judicial approval, to conduct investigative activities, including search and seizure. The Public Defender hopes that this change will take effect since 1 September 2014, as prescribed by the current legislation.

We denounce the extension until 31 December 2015 of the temporary right of investigative agencies to interrogate people. In fact, this means bringing back the rules witness interrogation from the 1998 Code of Criminal Procedure.[336] The Public Defender reckons that, in the interests of furthering adversarial process and equality of parties, the rules of questioning witnesses envisaged by the 2009 Code of Criminal Procedure should be given effect so that witnesses are questioned only in front of a judge. Since 2009, the Government had enough time to take measures for ensuring full-fledged and effective functioning of the new mechanism of witness examination.[337]

A positive change towards upholding the equality of arms and the adversarial trial principles was the articulation on 9 October 2009 in the Code of Criminal Procedure[338] of the parties' obligation to exchange information about each other's evidence. Pursuant to the Code,[339] "no later than 5 days prior to a pretrial hearing, parties must provide

333 Letter from the Tbilisi City Court No. 2776 dated 31 December 2013.

334 Letter from the Kutaisi City Court No. 243 dated 6 January 2014.

335 Yvon v. France, Judgment of 24 April 2003, No. 44962/98, par.31.

336 The Code of Criminal Procedure, Article 332.

337 See the statements made by the Public Defender on 19 July and 23 December 2013.

338 The Code of Criminal Procedure, Article 83.

339 The Code of Criminal Procedure, Article 83(6).

each other and the court with all information they hold at that moment, which they are intending to submit as evidence in the court."

Also, according to the Code, "The terms envisaged by this Code shall be calculated by hours, days and nights, and months. The day and night or the hour from which the term starts shall not count into the term except in arrest and detention terms, which shall be counted by minutes."[340] Also, "A term that is counted by days and nights shall elapse at 24:00 hrs of the last day and night."[341]

However, in individual cases studied by the Office of the Public Defender during the reporting period, the prosecution has been providing its evidence to the defense in violation of the established rule – a bad practice that places the defense in unequal position with the prosecution.[342] The applicable law lays down a term for exchanging evidence primarily with the aim of securing the defendant's right to effective defense and the principle of adversarial trial system. The 5-day term established by law is a mandatory requirement, which cannot be derogated from. Violation of this term by the prosecution means neglecting the legislator's will. In addition, if the prosecution violates this 5 day term, a court must, when deciding admissibility of evidence at a pretrial hearing, discuss and provide reasoning why it thinks the prosecution's breach of the term does not violate the law. Should a court fail to do so, it will have improperly responded to violation of the principles of adversarial trial and equality of the parties, which would on its turn negatively affect public expectations about administration of justice.[343]

Georgia's Code of Criminal Procedure is based on the constitutional principles of equality of arms and purely adversarial system. It is crucial that this be guiding principles at all trials, even if the law endows judges with discretionary decision-making powers. In this regard, we note the importance of a decision of the Tbilisi City Court rendered in the criminal case against G. Ugulava, the Mayor of Tbilisi.

The case concerning Giorgi Ugulava[344]

The Office of the Public Defender studied the prosecution office's motions of 21 December 2013 for committing Giorgi Ugulava, Mayor of Tbilisi, to a preventative measure and removing him from office. We analyzed the Tbilisi City Court's decisions about these motions.

According to our findings, on 21 December 2013, at 11:42 hrs, the Criminal Cases Panel of the Tbilisi City Court received the Chief Prosecution Office's motion for committing Defendant Giorgi Ugulava to a preventative measure. In literally several minutes, at 11:55 hrs, the Panel received the Prosecution Office's another motion for removing Defendant Giorgi Ugulava from office.

The same day, 21 December 2013, the Tbilisi City Court rejected the Chief Prosecution Office's motion for remanding Giorgi Ugulava in custody as a preventative measure; instead the Court ordered his release under a bail of 50,000 (fifty thousand) Laris. The same judge of the Tbilisi City Court decided the Prosecution Office's another motion for removing the defendant from office without an oral hearing and, by its decision of 22 December 2013 delivered at 00:15 hrs, removed Giorgi Ugulava, Mayor of Tbilisi, from office until the handing down of a final judgment in the case by the Court. [345]

340 The Code of Criminal Procedure, Article 86(1).

341 The Code of Criminal Procedure, Article 86(3).

342 The Office of the Public Defender studied a possible violation of the principle of equality of arms in the case of accused I.P. In particular, a pretrial hearing was scheduled for 16 January 2013. The parties had to exchange information they were going to submit as evidence before the court 5 days before the scheduled date of hearing, that is, before 24:00 hrs of 10 January 2013. Our study of the case showed that the prosecution did not exchanges its information with the defense despite the defense's request for the information made to the prosecution. Further, the Signagi District Court rejected the defense's motion in which the defense requested the court to declare unlawfully submitted evidence inadmissible stating in its decision of 18 January 2013 that the prosecution did not violate the law.

343 See the Public Defender's proposal of 27 September 2013 for disciplining the judge of the Signagi District Court.

344 See a statement by the Public Defender dated 24 December 2013.

345 The court decision reads: "The facts and information provided by the prosecutor are such as to prove with a standard of high probability that Defendant Giorgi Ugulava will obstruct the investigation if he remains in office. In addition, the Court wishes to note that although the defendant has been released on bail, the term for challenging the bail decision of the Criminal Cases Panel of the Tbilisi City Court of 21 December 2013 has not yet elapsed and, if the bail decision is cancelled or even if it enters into final force, Defendant Giorgi Kukulava will hinder the investigation if he retains his office."

The Code of Criminal Procedure allows the courts to decide such motions without the parties' participation. However, because the matter was the one of high public interest and the case concerned a Mayor of Tbilisi elected by a direct ballot whose detention as a preventative measure was ordered by the same judge several hours before, it would be more appropriate for the court to discuss the motion for removing Giorgi Ugulava from office at an oral hearing, with participation of the parties allowing the defense to provide its arguments. It is further unclear why it was so necessary to review the Chief Prosecution Office's motion of removing the Tbilisi Mayor from office at 00:15 hrs

UNDERCOVER AGENTS IN CRIMINAL PROCEEDINGS AND THE RIGHT TO A FAIR TRIAL

During the reporting period, the Office of the Public Defender studied a number of cases in which the defense asserted that the defendant was incited by the law enforcement officers to commit criminal conduct. On this issue, based on Article 21(e) of the Organic Law on the Public Defender and Article 55 of the Code of Criminal Procedure, the Public Defender drafted a friend-of-court's (amicus curiae) opinion.

The European Court of Human Rights has stated in many of its judgments that use of undercover agents for investigation purposes does not contravene the guarantee prescribed in Article 6(1) of the European Convention (the right to a fair trial).[346] However, the Court has stressed that such use must be subject to certain limitations and sufficient guarantees be provided. The domestic law should be clear enough so that discern unequivocally for what purposes and in what conditions the authorities may use undercover investigation methods. Further, the States have a positive obligation to legislate to prevent excessive use or abuse of official power.[347]

The European Court of Human Rights realizes the seriousness of organized crime and the importance of combating it, however the Court stresses the importance of the principle of a fair court, which applies to everyone charged with criminal offense. Complexity of a crime should not outweigh the right to fair administration of justice, which is a fundamental right in a democratic society.[348]

According to the jurisprudence of the European Court of Human Rights, the first question to ask is what makes operations conducted with participation of undercover agents legal and whether evidence obtained as a result of such operations may be used against a person during at a trial. In general, incitement by an undercover agent of an individual does not exclude this individual's criminal liability.[349] In other words, crime provocation does not per se release the object of provocation from criminal liability in terms of substantive legal requirements.[350]

Based on the case-law of the European Court of Human Rights, it is possible to discern a test the Court uses in evaluating the legality of undercover agents' involvement.

The European Court's attitude to use of information and testimonies provided by undercover informers differs by stages of proceedings. It is permissible to receive information through informers at an early stage of proceedings but, when the case goes to court for trial, anonymous informers must be identified or sufficient guarantees be provided to ensure that the investigative actions are permitted, implemented and supervised according to legally established requirements.[351] The European Court's approach is that undercover agents' intervention in crime detection activity that incites an individual to committing a criminal offense should be allowed by courts only inasmuch as such intervention does not undermine the fairness of the trial.[352] In this regard, the European Court evaluates the undercover agents' role using various criteria.

346 The European Court of Human Rights, Judgment of 9 June 1998 in Teixeira de Castro v. Portugal, par. 36 (hereinafter "Teixeira").

347 The European Court of Human Rights, Judgment of 26 October 2006 in Khudobin v. Russia, par. 35 (hereinafter "Khudobin").

348 The European Court of Human Rights, Judgment of 5 February 2008 in Ramanauskas v. Lithuania, par. 53 (hereinafter, "Ramanauskas").

349 Tamar Ebralidze, Article 145, Commentary to criminal case-law: crimes against humans, 2008, Publishing House "Meridiani", p. 231.

350 Harwood [1989] Crimm.L.R. 285, cited in Richard May, „Criminal Evidence" (5th edn, Sweet & Maxwell, 2004) 10-15.

351 Khudobin, par. 135.

352 The European Court of Human Rights, Judgment of 15 December 2005 in Vanyan v. Russia, par. 47 (hereinafter, Vanyan).

The first thing to clarify is the role of an undercover agent in a specific crime detection activity. Breach of applicable legal limitations will turn an undercover agent into an agent provocateur. In Teixeira, the European Court of Human Rights draws a distinction between these two concepts using doctrinal sources.[353] In particular, if an agent involved in crime detection confines himself to passive actions such as gathering information, the Convention requirements are not violated. But if the agent actually incites people to commit a criminal offense, this translates into crime provocation and the person provoking crime is an agent provocateur.[354] An agent's involvement into criminal conduct that is ongoing (has already started) is regarded a passive action and is thus not considered incitement (crime provocation).[355]

The spirit expressed in the case-law of the European Court is that the Court is more inclined in favor of prohibition of instigating a person's criminal intent.[356] In one of its most famous judgments in Ramanauskas v. Lithuania, the European Court stated that police officers or persons acting under their instructions must not exert such an influence on the subject as to incite the commission of an offense that would otherwise not have been committed.[357] Undercover agents' role in criminal proceedings should be confined only to passive actions and should not go as far as inciting the defendant's intention to commit wrongdoing. Undercover agents' active involvement does not automatically result in violation of human rights. In particular, it should be ascertained whether there has been prior information about the individual's criminal conduct. In this context, the European Court of Human Rights examines two cumulative factors: a) legality of undercover agents' activity and b) existence of reasonable grounds to believe that the given individual is or has been involved in the past in a criminal offense.

Legality of undercover agents' activity should be looked into. The European Court of Human Rights pays attention to whether there was a legal basis for involving the agent in the crime detection activity, whether the activity was authorized according to the law and whether the relevant procedures were clearly and foreseeably articulated. In addition, the investigative body's actions must be supervised by an authorized agency. Pursuant to the European Court's jurisprudence, the crime detection method used must be clearly formulated in the relevant document (should contain a clear description of actions to be implemented indicating a reasoning for their use and the objectives and role of undercover agents).[358] It follows that a decision authorizing an undercover operation that does not contain the above-mentioned information is contrary to the Convention. At the investigation stage when investigative measures are carried out and later when they have to be authorized, the European Court's approach has been quite strict and the Court has found violation of Article 6(1) in many cases on this account.[359]

Another factor that should be looked into is whether the individual (the object of undercover operation) had an intention to commit a crime.[360] The Court will take on examining this factor if it finds that undercover agents had been actively involved in the commission of crime and the operation had lawfully been implemented. In that case, it is necessary to prove that the individual had the intention to commit the impugned crime; for example, he was actually committing the crime or had a criminal record involving a similar crime.[361] In Teixeira, the European Court found that police officers became aware of the defendant's unlawful conduct only when they requested him to obtain drugs for them from a third person. In that case the Government argued a difference between two different types of intent: creation of a criminal intent that had previously been absent and exposing a latent criminal intent by providing the individual with the opportunity of carrying it through.[362] The European Court disagreed with the Government's submission that police actions are justified if the individual incited by the police had a pre-existing intent of crime commission and the police simply facilitated to implementing this intent by the individual. The Court stated this approach was contrary to the standards established by its case-law. The authorities have to demonstrate a pre-existing reasonable indication about pre-existing plan to commit a crime, which can be ascertained by summarizing the facts of each specific case. Things to take into account when making such analysis are the

353 Teixeira, par. 27.

354 The European Court of Human Rights, Judgment of 1 July 2008 in Malininas v. Lithuania, par. 37 (hereinafter, Malininas).

355 The European Court of Human Rights, Judgment of 24 June 2008 in Miliniene v. Lithuania, par. 39.

356 The European Court of Human Rights, Judgment of 6 May 2003 in Sequeira v. Portugal (hereinafter, "Sequeira").

357 Ramanauskas, par. 55.

358 Khudobin, par. 135.

359 inter alia, Ramanauskas, par. 71.

360 Khudobin, par. 129.

361 Malininas, par. 36.

362 Teixeira, par. 32-9.

information provided by the informants, existence of criminal record and other relevant data. Information that is nothing more than rumors does not constitute a sufficient basis of involving undercover agents.[363]

In order for investigative authorities not to violate the requirements under the right to fair trial in using undercover agents, the Georgian courts should start evaluating every single case in which the law enforcement officers might have provoked commission of a crime using the European Court-established standards.

RIGHT TO A REASONED DECISION

As the European Court of Human Rights has explained, the effect of Article 6(1) is for the Contracting States to the Convention to place any "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision.[364] Derived from this obligation is one of the major components of the right to a fair trial – the right to a reasoned decision. In Van de Hurk, the Court stated that Article 6(1) obliges courts to give reasons for their decisions.[365] Later in a judgment against Finland, the European Court explained the importance of reasoned judicial decisions. According to the Court, its case-law reflects the principle of proper administration of justice, which implies that judgments of courts and tribunals should adequately state the reasons on which they are based. In the same judgment, the Court identified three functions of reasoned judicial decisions: to demonstrate that the court heard the parties; only a reasoned decision makes it possible for the parties to challenge it before a higher court; and the need for public control over the administration of justice by courts.[366]

Cases studied by the Public Defender in the reporting period showed that court decisions recognizing legality of investigative measures conducted in the mode of urgent necessity are so much unreasoned that it is unclear what factual or legal grounds they are based on.

Naturally, the activity of investigative agencies often implies interference with the citizens' private lives to various degrees such as trespassing their private residential apartment or working rooms, yards, auxiliary buildings or items. To obtain evidence having importance to a criminal case, investigating officials have to conduct search of people or things. The law stipulates that, to conduct a search for the purpose of extracting necessary evidence (a corpse, a wanted individual, an item, a substance, a document and/or other object), a prosecutor must first obtain a search warrant from a judge. However, where there is an urgent necessity because a delay may render the extracting of evidence relevant to a case impossible, the Georgian legislation vests the investigator with the right to conduct an investigative activity without a pre-issued judicial warrant. If an investigative measure is conducted without a judicial warrant, the prosecutor must address a court thereafter with a motion substantiating that there existed an urgent necessity warranting the conducting of investigative measures without a prior judicial control over the interference with human rights prescribed by the Constitution and international treaties.

According to statistical data received by the Office of the Public Defender, in the period of 1 January – 31 July 2013, the Tbilisi City Court received 3,768 motions concerning searches, of which the Court upheld 3,662 motions. However, the information supplied by the Tbilisi City Court does not allow discerning the number of cases in which the searches were conducted on the basis of pre-issued judicial warrants and the number of searches conducted in a state of urgent necessity.[367]

Investigative activities of law enforcement bodies based on sheer criminal intelligence information, under the pretext of a state of necessity, has been a serious problem for years in Georgia. During 2013, too, the Office of the Public Defender received many applications from citizens complaining of alleged violation of their rights in the course of investigative activities (search of the person or of an apartment) and crime detection measures conduct-

363 Ramanauskas, par. 67.

364 Kraska v. Switzerland, Judgment of 19 April 1993, par. 30.

365 Van de Hurk v. Netherlands, Judgment of 19 April 1994, par. 61.

366 Souminen v. Finland, Judgment of 1 July 2003, Application No. №37801/97, paras. 34, 36-37.

367 According to the Tbilisi City Court, they do not maintain statistical data separately about judicial authorizations of searches issued in advance and judicial legalization of searches after they have already been conducted in a state of urgent necessity. Because no such data are available, it is impossible to find out the number of motions for recognizing legality of searches conducted in a state of urgent necessity, without judicial authorizations issued in advance, of the entire number of search-related motions lodged with the Court.

ed purportedly in a state of urgent necessity, without a judicial warrant. All of these applicants have been asserted non-existence of the state of urgent necessity in their cases.

The cases studied by the Office of the Public Defender show that searches are often times conducted without a prior authorization by a judge and courts are requested to simply legalize (recognize legality of) these investigative measures post factum, after they have already been conducted. In this regard, we would like to refer especially to investigations into alleged carriage or storage of narcotic drugs and/or firearms. Searches without judicial warrant under the pretext that there was urgent necessity have become a usual practice in these cases. Normally, the basis for conduct investigative measures in this mode is police officers' reports claiming crime commission based on criminal intelligence information.

According to our analysis of materials of cases (investigation protocols and court decisions), existence of urgent necessity as a circumstance justifying the conducting of investigative measures without a judicial authorization is explained only formalistically; for example, a protocol will simply say that there was "a danger that evidence could be destroyed or the person could flee".

The Georgian Code of Criminal Procedure determines a procedure of judicial examination of legality of investigative measures conducted in a state of necessity, without a pre-issued judicial authorization.[368]

Article 112 of the Code allows a judge to choose whether to invite parties to the proceedings and/or the person who was the object of the investigative measure when deciding on recognition of the legality of the investigative measure/crime detection activity conducted. A judge can also call a person who was the object of the investigative measure to provide explanation. A judge can view all the relevant materials to examine legality and grounds of a investigative measure conducted. However, the prosecution office's requests for authorizing investigative measures or declaring already conducted investigative measures legal will be discussed by judges only in private, without an oral hearing.

With a view of gaining a deeper insight into practical examples of use of "urgent necessity" by law enforcement bodies, the Office of the Public Defender studied the criminal case concerning M.K. and R.O. and the criminal case concerning A.M.

Having studied materials of these criminal cases, we found that court decisions on the recognition of legality of investigative measures conducted in a state of urgent necessity were rendered without oral hearings. The court decisions contain the following standard passage:

"After viewing the materials, the court deems that the investigative measure conducted should be declared legal for the following circumstances: there was a danger that the factual data important for the purposes of investigation would be destroyed; therefore, there was a legal ground for conducting the investigative measure without a judicial warrant."[369]

However, in none of the above-mentioned criminal cases were minutes of the judicial hearings produced. Hence, it is impossible to tell whether the judges examined any materials other than the protocols on investigative measures conducted, police reports and prosecutors' motions.

368 Article 112(5) of the Code of Criminal Procedure: "Investigative measures envisaged by paragraph 1 of this Article [measures that result in limitation of the right to private property, possession or inviolability of private life] may be conducted without a judicial warrant in a state of urgent necessity if delayed conducting of the measure may entail destruction of factual data that are important to the investigation or render it impossible to obtain such data or if a thing, a document, a substance or other object containing information has been discovered during another investigative measure (if discovered only through a superficial visual observation) or where there is a realistic danger that someone's life or health may be injured. The prosecutor shall inform a judge who has territorial jurisdiction over the place where the investigative measure was conducted or a judge who has territorial jurisdiction over the place of investigation about the measure conducted, within 24 hours after the investigation measure was commenced. The prosecutor shall serve on the relevant judge criminal case materials (or copies thereof) confirming that there was a need for conducting the investigative measures as a matter of urgent necessity. No later than within 24 hours after the materials are received, the judge shall decide on such motion without an oral hearing. The judge is authorized to decide the motion in participation by the parties (if criminal prosecution is commenced) or the person who was the object of the investigative measure. In deciding the motion, the judge shall examine legality of the investigative measure conducted without a judicial warrant. The judge is authorized to summon a person who conducted the investigative measure without a judicial warrant to obtain his explanation. If this is the case, the rule described in Article 206 shall apply."

369 A criminal case concerning citizens Mikail Kadyev and Rivzan Omarov; a criminal case concerning Aidyn Musaev.

According to our analysis of the selected court decisions, hearing minutes are not produced because judges decide this matter without oral hearings. Since no hearings are held, no minutes are produced. On the other hand, the court decisions do not specify what materials of the case or information obtained through crime detection activities made the judge recognize the legality of the investigative measures conducted.

Because no hearing minutes are produced and the court decisions are unreasoned, it is impossible to tell, be it for the purpose of appeal or public control over administration of justice, why the court decided the way it decided.

We think it is necessary to involve the parties and/or the person who was the object of the investigative activity in discussing the legality of the investigative activity. On the other hand, judges should be able to view the criminal intelligence information or other material on which basis the investigative measure has been conducted as a matter of urgent necessity. It should be noted that, once investigative measures are conducted and the required information, item or other evidence is extracted, the defendant and/or the person who was the subject of the investigation measure can no longer obstruct collection of evidence. However, in the interests of investigation, only courts should be authorized to view materials containing criminal intelligence information but not the person who was the object of the investigative measure. The fact that the court viewed such material should be documented in a hearing minutes. Finally, it is prudent that courts produce minutes of their hearings fully explaining the circumstances examined by the courts.

Judicial decisions recognizing or refusing to recognize the legality of investigative measures conducted without a judicial warrant should be handed down only after the above-listed issues are fully examined at an oral hearing.

PRESUMPTION OF INNOCENCE

Presumption of innocence is guaranteed in Article 40 of the Georgian Constitution. In particular, paragraph 1 states that a person is considered innocent until his guilt is proven through a final convicting judgment of a court. Pursuant to paragraph 2, the burden of proof lies upon the accuser. [370]

Presumption of innocence is an important human rights protection guarantee. A person is innocent until convicted by a judgment of a court of law and it matters not what evidence have been obtained at the stage of investigation or what facts and circumstances have been ascertained. The only body authorized to find a person guilty is a court. Therefore, at the investigation stage, a person is an accused person who there is a reasonable suspicion about that he may have committed a crime. "Accordingly, on the one hand there is a supposition that a person committed a crime but on the other hand he has the right to be deemed innocent."[371] So, there is only a probability of commission of crime but only the court can say anything in the affirmative.

A judge on its turn is also bound by presumption of innocence. A judge is prohibited from violating the presumption innocence in any form until a judgment is handed down in the case; in other words, a judge cannot express views about the person's guilt. Even after a judgment is handed down and the defendant is acquitted or the proceedings have been terminated, the judgment should not contain any considerations or conclusions suggesting the defendant's guilt. In its judgment in Barberà, Messegué and Jabardo v. Spain, the European Court stated:

> "The presumption of innocence requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused."

The case-law of the European Court suggests that presumption of innocence binds not only the bodies investigating or examining accusations against a person, but also public officials who wish to make statements about ongoing criminal proceedings.[372] The European Court has stated that Article 6(2) does not prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary not to undermine the value protected by presumption of innocence.[373]

370 The Code of Criminal Procedure, Article 5(3).

371 See Stephan Trechsel, Human Rights in Criminal Proceedings, Tbilisi, 2009, p. 177.

372 Allenet de Ribemont v. France, Judgment of 10 February 1995, No. 15175/89, par. 41 and Daktaras v. Lithuania, Judgment of 10 October 2000, No. 42095/98, par. 41-43.

373 Allenet de Ribemont v. France, Judgment of 10 February 1995, No. 15175/89, § 38.

In this regard, the Court has consistently emphasized the importance of the choice of words by public officials in their statements and the context in which the statements are made before a person has been tried and found guilty of a particular criminal offence.[374]

It is crucial that the investigating agency respects and abides by the requirement of presumption of innocence. Following this principle is important to overcome any pre-determined view as if the person has committed a crime on the one hand and to protect the person's reputation and prevent the emergence of public opinion. A person who has not yet been found guilty may not be referred to or treated as if he had actually committed the crime. Even if the investigating authorities are confident in the defendant being guilty, they are prohibited from making any statement describing the defendant as the actual perpetrator of the impugned crime until a court judgment about the case becomes final.

In a judgment against France, the European Court explained that some of the highest-ranking officers in the French police referred to the applicant as one of the instigators of a murder and thus an accomplice in that murder; the European Court deemed this was a violation of presumption of innocence because the police made such statements without any qualification or reservation.[375]

The requirement of presumption of innocence applies to entire criminal proceedings irrespective of the outcome of prosecution. In Matijašević v. Serbia, the European Court stated that the fact that the applicant was ultimately found guilty and sentenced to imprisonment cannot negate the applicant's initial right to be presumed innocent until proved guilty according to law.[376]

In 2013, the Office of the Public Defender studied several cases in which the investigating bodies breached presumption of innocence in their public statements.

The case concerning G.I.

On 8 May 2013, the Office of the Public Defender was approached by Citizen G.I. who complained of a statement made by the Public Relations Department of the Ministry of Internal Affairs on 17 December 2012.[377]

The statement publicized by the Ministry of Internal Affairs titled "The MIA deciphered a plan aimed at forcing the Qartu Bank go bankrupt" read as follows:

"The Ministry of Internal Affairs investigated and deciphered a criminal plan involving individuals occupying political positions and other representatives of the executive and legislative branches of government. The plan was aimed at forcing the Qartu Bank to go bankrupt with a view of retaliating against Bidzina Ivanishvili, now Prime Minister. The criminal plan consisted of several phases […] For illustration, we are hereby providing a description of some of the facts: in the beginning of November 2011, Zurab Adeishvili, former Minister of Justice, summoned J.E., former Chief of the Revenue Service, to his working room to explain him a scheme of forcing the Qartu Bank to go bankrupt and tasked him with implementation of the plan. JE, in his turn, tasked ML, then Head of Audit at the Revenue Service and O.A., Deputy Head of Chief Unit at the Revenue Service, with the same. These two individuals contacted Government-allied businessmen whose companies had taken loans from the Qartu Bank. These companies are […] Logos Ltd and White House Partnership – enterprises belonging to G.I., Head of the Small and Medium Entrepreneurs' Association. All the companies, in agreement with high-ranking officials of the Revenue Service, fictitiously admitted as though they owed money to the bank. The National Enforcement Bureau conducted a bogus auction which purportedly failed to sell anything. The property was then transferred directly into the ownership of the Ministry of Economy and, based on a presidential individual order, was sold under the rule of sole-source contracting […]. The investigation continues and we will certainly inform the public about its progress."

In the statement authored by the Ministry of Internal Affairs, GI and his companies were referred to as accomplic-

374 Khuzhin and Others v. Russia, Judgment of 10 October 2000, No. 13470/02, par. 94; also, Butkevičius v. Lithuania, Judgment of 26 March 2002, No. 48297/99, par. 49.

375 Allenet de Ribemont v. France, Judgment of 10 February 1995, No. 15175/89.

376 Matijašević v. Serbia, Judgment of 19 September 2006, No. 23037/04, par. 49.

377 See at http://police.ge/ge/shss-m-quotbanki-qartusquot-gakotrebis-sqema-gashifra/4218

es in crime. Importantly, no prosecution had been launched against GI by the time the statement was published. He had not been even questioned as a witness. He was questioned as a witness at the Anti-Corruption Department of the Ministry of Internal Affairs only on 27 December 2012, 10 days after the statement was published.

The above-mentioned statement published by the Ministry of Internal Affairs containing a definitive and affirmative assertion that GI took part in the criminal plan constituted violation of the GI's right to be presumed innocent until proven guilty.

The case of Citizen A.F.

On 12 November 2013, Citizen A.F. approached the Office of the Public Defender with a request to assist in obtaining information about the ongoing investigation into unlawful detention of E.I., his underage grandchild. The Office of the Public Defender requested the Ministry of Internal Affairs to provide information about the investigation into a criminal case led by the 9th Unit of the Isani-Samgori Police.

Through its Letter No. 2413203 dated 25 November 2013, the Ministry of Internal Affairs replied:

> "Through investigative activities conducted, it was ascertained that, in the evening of 3 November 2013, O.A. who is a resident of Village Ponichala, Tbilisi, abducted E.I., his underage relative, a citizen of the Russian Federation, visiting her grandfather AF's family in Village Ponichala, Tbilisi, for the purpose of marrying her."

On 3 January 2014, Citizen A.F. approached the Office of the Public Defender again. The Ministry of Internal Affairs replied with an identical text by its Letter No. 239769 dated 6 February 2014:

"Through investigative activities conducted, it was ascertained that in the evening of 3 November 2013, O.A. who is a resident of Village Ponichala, Tbilisi, abducted E.I., his underage relative, a citizen of the Russian Federation, visiting her grandfather AF's family in Village Ponichala, Tbilisi, for the purpose of marrying her."

In its letters, the Ministry of Internal Affairs speaks of O.A.'s conduct in an affirmative mode declaring O.A. a perpetrator of a specific crime, which is a violation of O.A.'s right to be presumed innocent until proven guilty.

Analysis of cases studied by the Office of the Public Defender in the reporting period shows that law enforcement bodies have been frequently breaching citizens' presumption of innocence – conduct that contravenes a right affirmed by the Georgian legislation and international treaties.

ADMINISTRATIVE OFFENSE CASES

In its 2012 annual report to the Parliament, the Public Defender has mentioned the need for drafting and adopting a new normative act to replace the current Code of Administrative Offenses, which is an outdated document with a handful of systemic flaws. The current Code of Administrative Offenses, adopted in 1984 during the Soviet rule, does not meet the current requirements posed to normative acts. Some of the problems with judicial examination of administrative offense cases account for the same reason. We note our negative assessment of the fact that the 90-day detention as an administrative punishment has not been abolished this far.

In the reporting period, the Office of the Public Defender obtained copies of decisions rendered by the Tbilisi City Court (294 cases) and the Batumi City Court (262 cases) in administrative offense cases. Analysis of these decisions indicates a positive trend but problems that existed in the past have remained a matter of concern.

The positive trend is that judges have been increasingly using judicial discretion in examining and deciding cases concerning administrative offenses. In a number of cases, the courts went ahead with applying Article 22 of the Code of Administrative Offenses[378] releasing perpetrators of minor offenses from administrative liability and confining their measure of punishment to a simple oral warning. We note with satisfaction also the fact that judges

378 Article 22 of the Code of Administrative Offenses: "If the administrative offense committed is of minor significance, the body or the official authorized to decide the case is entitled to release the offender from administrative liability and satisfy itself only by issuing a verbal warning".

have been using administrative detention as a form of administrative punishment less frequently. According to a majority of cases studied by the Office of the Public Defender, the most frequently used form of administrative punishment is a fine.[379]

Despite this positive trend, lack of legal reasoned court decisions has remained a problem in 2012. Usually, court decisions imposing administrative punishment contain only dry information such as the data from the protocols (on the commission of administrative offenses and administrative arrests) and testimonies of the authors of the protocols. Evidence is adduced formalistically: all the pieces of evidence are those obtained by one and the same administrative body/official and the testimonies given by authors of protocols at court hearings match the contents of the protocols verbatim. In some cases, protocols of alcohol testing are adduced. No other types of evidence can be found in an overwhelming majority of administrative cases. As regards submission of evidence by perpetrators of administrative offences, in cases studied by the Office of the Public Defender, no single court decision was found referring to any evidence provided by alleged perpetrators. The decisions contain only the perpetrators' explanations usually corroborating and repenting the commission of offense.

In a majority of their decisions, courts are citing provisions from the Code of Administrative Offenses but are not discussing whether and why the conduct committed by the specific individual matches the conduct described in the cited provision. As an example, we decided to analyze the contents of court decisions on the commission of petty hooliganism by various individuals. Article 166 of the Code of Administrative Offenses requires a judge to provide some explanation: "Petty hooliganism means swearing and quarrelling in public places, abusively harassing citizens and other similar actions, which violate the order in the public and the peace of citizens." The court decisions studied do not describe how exactly the perpetrator committed the given administrative offense. Courts only describe the definition of the relevant offense in general, without showing how exactly it links up with the conduct actually committed. Such practice clearly neglects the requirement that court decisions must be legally reasoned.

Court decisions lack reasoning also in the parts imposing administrative punishment. In their decisions in administrative offense cases, judges do not discuss circumstances to be taken into account under Article 33 of the Code of Administrative Offenses[380] when imposing administrative punishment such as the nature of the offense perpetrated, the perpetrator's personality and his share in guilt, financial status, and any mitigating and aggravating factors in a given case.

The same is true about the courts' willingness to discuss mitigating and aggravating circumstances in their decisions. According to our analysis of some of the court decisions rendered in administrative offense cases, from the list of mitigating factors prescribed in Article 35 of the Code of Administrative Offenses, courts have used only "sincere repentance". Likewise, from the list of aggravating factors under Article 35, the courts have referred only to "commission of an offense while intoxicated".

The court decisions also do not discuss the reasons and grounds for imposing administrative punishment. This is true for both types of punishment – detention and fine.

Analysis of administrative offense cases revealed violation of the 12-hour administrative detention term envisaged by Article 247 of the Code.

We can summarize the above discussion by saying that court decisions in administrative offense cases are all stereotyped, following the same dry pattern, which is confined to simply re-stating the contents of protocols on administrative offenses, without providing reasons for using or not using a particular type of punishment and without providing legal grounds thereof.

For better illustration, we present a few exemplary cases below that have been studied by the Public Defender's Office.

379 According to our study of the resolution of the Tbilisi and Batumi City Courts, of 294 cases, the Tbilisi City Court imposed a fine in 217, detention in 16 and verbal warning in 61 instances. Of 262 cases, the Batumi City Court imposed a fine in 231, detention in 16 and verbal warning in 7 instances; in 8 cases, the case was terminated due to lack of administrative offense.

380 Article 33 of the Code of Administrative Offenses: "Punishment for an administrative offense committed shall be imposed within the limits established by a normative act that prescribes liability for the offense, in strict accordance with this Code, legal acts governing administrative offenses and other acts. In determining administrative punishment to be imposed, circumstances to be taken into account are the nature of the offense perpetrated, the perpetrator's personality and his share in guilt, financial status, and mitigating and aggravating factors existing in the given case."

The case concerning Citizen I.Sh.

On 1 March 2013, a judge of the Administrative Cases Panel of the Tbilisi City Court examined the materials adduced by the 6th Unit of the Vake-Saburtalo Police of the Tbilisi Main Department of the Ministry of Internal Affairs under Article 173 of the Code of Administrative Offenses.[381] The court decision reads:

"It has been ascertained by materials of the case and hearing in the court that I.Sh. was committed to administrative detention, which had to be served at the administrative building of the 6th Unit of the Vake-Saburtalo Police, in Tbilisi, Village Digomi. In this connection, a protocol on the commission of the administrative offense by I.Sh. has been drawn up under Article 173 of the Code of Administrative Offenses."

Although the decision does mention that the protocol on the commission of the offense has been drawn up and the person held liable under the administrative rules provided his explanations, it says nothing about how exactly I.Sh. breached Article 173 of the Code of Administrative Offenses; in other words, there is no description of the facts of the case other than the actions undertaken by the law enforcement authorities.

The case concerning Citizen L.K.

On 2 March 2013, the Administrative Cases Panel of the Tbilisi City Court examined the materials of an administrative offense case under Articles 166[382] and 173[383] of the Code of Administrative Offenses against L.K. adduced by the Tbilisi and Mtskheta-Mtianeti Patrol Police of the Interior Ministry's Patrol Police Department. The Court's decision reads:

"It has been ascertained by materials of the case and hearing in the court that L.K. was committed to administrative detention on account of the fact that he was breaching the order in the public while intoxicated. L.K. neglected the police officers' repeated lawful requests and continued committing the wrongdoing. During arrest, he rendered resistance to the police officers."

Breach of public order is a matter of judgment but, as we see from the above-cited extract from a court decision, the decision does not provide any explanation as to how exactly the public order was breached (description of the conduct).

The case concerning Citizen M.Kh.

On 15 March 2013, the Administrative Cases Panel of the Tbilisi City Court examined the request of a district police inspector/detective from the 1st Unit of the Gldani-Nadzaladevi Police of the Tbilisi Main Department of Interior for imposing administrative punishment upon Citizen M.Kh. who allegedly committed administrative offenses under Articles 166 and 173 of the Code of Administrative Offenses. A court decision in the case reads:

"It has been ascertained by materials of the case and hearing in the court that, on 11 March this year, M.Kh. was violating public order near the Building #39 located in Tbilisi, 2nd Microrayon in Gldani. He disobeyed repeated requests of police officers to stop the illegal conduct."

The court fined M.Kh. and released from the courtroom. However, it should be noted that M.Kh. was arrested on 11 March; the court received his case materials and the hearing was conducted on 15 March. M.Kh. spent 4 days in detention but court neglected this fact.

381 Article 173 of the Code of Administrative Offenses: "Disobeying a lawful order or request of a member of a law enforcement body, a military servant, a member of the Special Service of State Guard or an enforcement police officer or verbally insulting any of these persons and/or committing any other insulting conduct against them (physical insult excluded) when they are performing their official duties."

382 Article 166 of the Code of Administrative Offenses: "Petty hooliganism, that is, swearing and quarrelling in public places, abusively harassing citizens and committing other similar actions, which violate the order in the public and the peace of citizens."

383 Article 173 of the Code of Administrative Offenses: "Disobeying a lawful order or request of a member of a law enforcement body, a military servant, a member of the Special Service of State Guard or an enforcement police officer or verbally insulting any of these persons and/or committing any other insulting conduct against them (physical insult excluded)".

In some of administrative offense cases examined by us, we found out that court decisions were referring to perpetrators with incorrect names because courts are often using a standard text to write their decisions, which explains the existence of these mechanical mistakes.

The cases concerning citizens Z.L., N.B. and N.Q.

On 3 March 2013, a judge of the Administrative Cases Panel of the Tbilisi City Court examined the request of the 3rd Unit of the Isani-Samgori Police (Tbilisi and Mtskheta-Mtianeti Patrol Police Department of the Ministry of Internal Affairs) for imposing administrative punishment upon Citizen Z.L. under Article 173 of the Code of Administrative Offenses. The Court's decision reads as follows:

> "It has been ascertained by materials of the case and hearing in the court that, on 03.03.2013 at about 6 o'clock citizen Z.L. was arrested under the administrative rule in the vicinity of Tsuladze Street No. 1 in Tbilisi. ZL was under alcoholic intoxication. He disobeyed the police officers' lawful request and resisted them during arrest.
>
> On 03.03.2013, K.G., a district police inspector/detective from the 3rd Unit of the Isani-Samgori Police of the Tbilisi and Mtskheta-Mtianeti Patrol Police Department drafted a protocol on the commission of an administrative offense. […] Statement by a representative of the body on whose behalf the protocol on administrative offense was drafted: […] Police inspector/detective G.B. agreed with the protocol drafted on 03.03.2013 and requested fining of G.I."

G.I. mentioned in the above passage is the same name mentioned in the case of N.B. A decision of the Administrative Cases Panel of the Tbilisi City Court dated 3 March 2013 reads:

"Statement by a representative of the body on whose behalf the protocol on administrative offense was drafted: […] Police inspector/detective G.B. agreed with the protocol drafted on 03.03.2013 and requested fining of G.I."

Citizen G.I. is mentioned in another case too, the one concerning N.Q. In particular, a decision of the Administrative Cases Panel of the Tbilisi City Court dated 3 March 2013 in the administrative case concerning Citizen N.Q. reads:

> "Police inspector/detective G.B. from the 3rd Unit of the Isani-Samgori Police of the Tbilisi and Mtskheta-Mtianeti Patrol Police Department agreed with the protocol drafted on 03.03.2013 and requested fining of G.I."

The case concerning Citizen Z.G.

The same problem was found in an administrative case against Z.G. The case was decided by the Batumi City Court. According to the Batumi City Court decision of 13 November 2013, the perpetrator of the impugned offense is Z.G., but the same decision reads:

"It has been ascertained by materials of the case and hearing in the court that, on 12 November 2013 O.Ch. was brought to a narcology center for drug testing. According to the narcologic report, O.Ch. had administered drugs without a doctor's prescription, which is an offense under Article 45 of the Code of Administrative Offenses […] Z.G. appeared at the court hearing and admitted he had committed the offense."

UNENFORCED COURT DECISIONS

During 2013, many citizens have been approaching the Office of the Public Defender complaining of the fact that they could not get their court decisions enforced.

In its previous reports to the Parliament, the Public Defender has been mentioning various problems related to enforcement of court decisions. One of the problems was lack of legislative regulation of terms and procedures for forced collection of outstanding payments from the State Treasury accounts by enforcers. Another issue was

the need for prescribing rules to ensure release of information by State-funded debtor organizations required for enforcement as well as the need for specifying how an individual should be searched for in the event under Article 30 of the Law on Enforcement Proceedings, in particular, procedures for making a person appear, how long such person may be required to stay, etc.[384] In its report, the Public Defender has also been indicating problems with enforcement of decisions adopted by the Human Rights Committee.[385] We will therefore not deal with these issues in the 2013 Report. However, we note that our recommendations about enforcement of judicial decisions as outlined in our 2012 Report are still applicable.

According to our analysis of cases in the reporting period of 2013, unenforced courts decisions are often times a result of the debtor's failure to perform an action which only the debtor is obliged to perform.

Owing to their specific nature, such decisions are difficult to enforce. Enforcement officers do not really possess any levers to make the person perform an action when its performance depends on the debtor's willingness to comply with the court decision. Enforcement officers, in these cases, can do nothing more but to write a letter offering the debtor to voluntarily comply with the court decision and the enforcement paper.

In such cases, the only legal mechanism to confront the failure to comply with a judgment is to try to hold the person liable under the Criminal Code. Article 87 of the Law on Enforcement Proceedings prescribes the possibility of holding a debtor liable under criminal law if he does not perform an action the enforcement of which solely depends upon his good will.[386]

Chapter XIV of the Criminal Code prescribes crimes against enforcement of judicial acts. Article 3772 criminalizes failure to perform an action ordered by a court if the action can only be performed by the debtor. Article 381 is about failure to comply or obstructing compliance with a judgment or other court decision.

However, these provisions from the Criminal Code cannot ensure actual performance of the obligation itself; instead, they only punish the failure to comply with a court decision. Additionally, Article 3772 is not a frequently used provision in practice.

According to the information provided by the Supreme Court, in 2012 – 2013, the Georgian courts did not deal with a single case under Article 3772 (failure to perform an action ordered by a court). The Chief Prosecution Office informed us, on the other hand, that in 2012, criminal investigation into alleged commission of the crime under Article 3772 was opened in 6 cases, of which investigation was discontinued in 1 case. In 2013, criminal cases were opened in 2 cases under the same Article.[387]

The Georgian courts have abundant practice, however, concerning the use of the provision criminalizing failure to comply or obstruction of compliance with a judgment or other court decision (Article 381 of the Criminal Code). First instance courts rendered convicting judgments in 112 cases in 2012 and 78 cases in 2013. Courts of Appeals handed down convicting judgments under the same Article in 4 cases in 2012 and 4 cases in 2013. According to information provided by the Chief Prosecution Office, criminal investigation was launched under Article 381 in 197 cases in 2012, of which the investigation was discontinued only in 6 cases. In 2013, investigation started in 298 cases under the same provision of which investigation was terminated in 55 cases.[388]

The rules prescribed by the Law on Enforcement Proceedings and the actual practice of application of Article 3772 of the Criminal Code indicate that there is no realistic lever to ensure enforcement of final decisions of courts if the action ordered by a court can be performed solely by the debtor. An example is the case examined by the Office of the Public Defender in the reporting period in which a final decision of a court has been unenforced since November 2011. Investigation authorities, on their turn, are not performing their function properly to open investigation under the relevant provision of the Criminal Code.[389] These reasons altogether lead to violation of right to a fair trial.

384 See the Report of the Public Defender on the Status of Protection of Human Rights and Freedoms in Georgia 2010, p. 202.

385 See the Report of the Public Defender on the Status of Protection of Human Rights and Freedoms in Georgia 2012, p. 474.

386 If an action cannot be performed by a third person because its performance depends solely upon the willingness of the debtor who is not performing the action, the debtor can then be held liable under the Criminal Code of Georgia.

387 Letter from the Chief Prosecution Office dated 4 March 2014.

388 Ibid.

389 The case of J.Sh.

Recommendations:

To the Government and the Parliament

- **To develop a mechanism for reviewing criminal cases on allegations of miscarriage of justice, which will also ensure full rehabilitation of victims of such cases, including their provision with reimbursement of damages inflicted as a result of the State's unlawful actions;**
- **To take measures to secure access to court to disabled people; to eradicate technical problems experienced by courts and to increase the number of judicial corps;**

To the Parliament and the Ministry of Justice

- **To amend the Organic Law on Courts of General Jurisdiction and rules of allocation of cases in courts of general jurisdiction, with a special focus on the current power of presidents of courts in this regard, with a view of completely excluding subjectivity in allocation of cases and ensuring independence and transparency of the judiciary;**

To the Minister of Internal Affairs and the Chief Prosecutor

- **When informing the public about the progress of individual investigations, to respect the right of relevant individuals to be presumed innocent until proven guilty;**

To the Chief Prosecutor

- **To ensure that the existing rules about exchanging evidence are adhered with so that the principles of equality of arms and adversarial process are respected;**

To the Public Law Entity "National Enforcement Bureau" and the Chief Prosecution Office

- **With a view of ensuring enforcement of final decisions of courts, to take all the measures envisaged by applicable laws; to ensure the commencement of criminal investigation under Article 3772 of the Criminal Code whenever a debtor fails to perform actions that can only be performed by them, as ordered by a court;**

To the Parliament

- **To amend the Code of Criminal Procedure with a view of legally obliging a judge, in deciding whether to recognize legality of investigative activities conducted as in a state of urgent necessity, to fully study the materials of criminal cases, including documents containing criminal intelligence information; also, to oblige judges to question individuals who have conducted or participated in investigative actions or crime detection measures about how these actions and measures were conducted;**
- **To enact amendments to the applicable laws with a view of ensuring equality of parties in the process of examination of evidence and quality translation at court hearings;**
- **To draft a new Code of Administrative Offenses and to repeal the 90-day detention as a form of administrative punishment;**
- **To amend the Code of Criminal Procedure with a view of entitling, along with the parties to proceedings, the legal owners of items seized during search and seizure operations to challenge the legality of judicial warrants that authorized such operations;**

To the courts of general jurisdiction

- **To deliver legally reasoned decisions on the legality of investigative actions/crime detection measures conducted so that later it is possible to check the factual and legal grounds on which the decisions are based;**
- **In examining cases of administrative offenses, to fully adhere to the principles implied by the right to a fair trial, including the requirements of equality of the parties, adversarial process and the right to a reasoned decision;**

- **In the course of criminal proceedings, to examine and evaluate the role of so-called agents provocateurs in the commission of crimes under the Criminal Code bearing in mind the rules established by the case-law of the European Court of Human Rights;**
- **To ensure that cases of individuals who have been imposed preventative measures not involving detention are decided in a reasonable time, without undue delay.**

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

After the so-called "prison videos" were publicized in 2012, the right to respect for private and family life and the State's obligation to take measures securing the protection of this fundamental right were one of the frequently discussed issues in 2013.

A positive event in this regard in 2013 was the appointment of a Personal Data Protection Inspector.[390] The Law on Personal Data Protection entered into force on 1 Mary 2012 but a provision of the Law introducing the post of a Personal Data Protection Inspector was not practically implemented until June 2013.

Article 20 of the Georgian Constitution guarantees the right to inviolability of private and family life.

Private life implies the private part of an individual's life and development. The right to private life means the ability of an individual to create and develop own life independently, according to his views, on the one hand, and to be safeguarded against interference with his private area of life by both the State and any other person, on the other hand. As the European Court of Human Rights has explained, "private life" is a broad concept which is not susceptible to exhaustive definition. However, it should imply an individual's right to choose his own life and to establish and develop relationships with other human beings.[391]

As the Georgian Constitutional Court has stated:

> "The right to inviolability of private life is secured by the corresponding obligations of the State described in the same article: on the one hand, there is a positive obligation of the State to ensure respect for private life and effective exercise of this right, which on its turn implies eradication of circumstances, barriers obstructing the free development of a person. On the other hand, the State has a negative obligation not to interfere with the enjoyment of the rights under Article 20 of the Constitution and, accordingly, safeguard individuals against any arbitrary interference by the State authorities or public officials with their private lives."[392] Furthermore, according to the European Court of Human Rights, Article 8 of the European Convention on Human Rights (the right to respect for private and family life) not only obliges the States to refrain from imposing limitation upon this right, but may imply a positive obligation of the States to effectively respect private and family lives of individuals.[393]

In 2013 the public learned about thousands of unlawfully obtained undercover recordings that either had been stored at the Ministry of Internal Affairs or, as the law enforcement bodies stated, were discovered in various caches.

By its Resolution No. 206 of 15 August 2013, the Georgian Government established an Interim Commission to work on the issue of unlawful eavesdropping and undercover recordings. The Public Defender was invited to serve as a member of the Commission. Pursuant to a report of the Commission dated 31 January 2014, there were a total

390 Order of the Prime Minister No. 132 dated 28 June 2013 appointing T. Kaldani a Personal Data Protecton Inspector.

391 Costello-Roberts v. the United Kingdom, the European Court of Human Rights [1993]; Niemietz v. Germany, the European Court of Human Rights [1992].

392 The Constitutional Court of Georgia, Judgment No. 1/3/407 dated 26 December 2007 in The Georgian Young Lawyers' Association and Ekaterine Lomtatidze v. the Parliament of Georgia.

393 X and Y v. the Netherlands, the Euopean Court of Human Rights [1985].

of 28,687 undercover recordings (files). We note with satisfaction that, by decision of the Commission, video materials depicting episodes of private lives, including intimate relationships, were destroyed on 5 September 2013 (45 data mediums in total). On 29 January 2014, the Interim Commission completed its work and forwarded a number of unlawful recordings (590 data mediums in total) to the Chief Prosecution Office for investigation. During its work, the Commission also prepared draft amendments to the Criminal Code suggesting toughening punishment for interference with the right to private life.[394]

The existence of such a great amount of unlawful recordings about private lives of individuals indicates a systematic violation by the State authorities of the right to respect for private and family life. It is necessary to effectively investigate these violations of the mentioned fundamental human right and to hold liable those responsible. Failure to investigate this crime and letting the perpetrators go unpunished will strengthen the impunity syndrome that has been one of the serious problems for years in the area of human rights protection. In addition, it is important to identify and hold liable not only low-ranking officials but also those who have ordered and organized these violations of the fundamental human right.[395]

Relations protected by the right to respect for private life are very broad and international supervisory bodies regard it impossible or unnecessary to provide an exhaustive definition of the notion of private life.[396]

The right to respect for private life and correspondence applies to various aspects of private life that make a person identifiable such as monitoring of means of communication,[397] photos and videos,[398] sounds,[399] DNA and fingerprints,[400] health information,[401] and collection and storage of information about human beings.[402]

Closely associated with the right to respect for private life is the right to respect for correspondence. Although correspondence normally means mail, the European Court has stated that it also includes telephone conversations[403] and notifications transmitted by telex.[404] Given the fact that means of communication have become much more sophisticated in the 21st century and are still being quickly developed, the international supervisory bodies deemed it appropriate to interpret this concept in a way to catch up with the technological developments and the notion of means of communication now implies electronic mail, social networking, etc. However, the level of legal protection against interference may differ by types of communication.

In the context of the need for striking a balance between public and private interests, we would like to briefly mention some of the defects of the Law of Georgia on Crime Detection Activities that should be eliminated to ensure protection of the right to respect for private life.

The Law on Crime Detection Activities contains a number of significant flaws. It should be noted that the Georgian legislation does not determine a list of crimes or persons that may be subjected to surveillance or eavesdropping.[405] The Georgian legislation does not envisage informing the person who had been subjected to undercover surveillance or eavesdropping about the fact that he had been observed or eavesdropped, even after these activities are over. It means that such persons are deprived of the chance to challenge the legality of the interference with their private lives in the court. The Georgian legislation does not establish sufficient guarantees the investigating authorities should be meeting whenever they wish to obtain a judicial warrant authorizing a crime detection activ-

394 Report of the Interim Commission on unlawful eavesdropping and undercover recordings dated 31 January 2014.

395 See the Public Defender's statement of 29 January 2014.

396 Costello-Roberts v. the United Kingdom, Judgment of 25 March 1993, par. 36.

397 Malone v. the United Kingdom, Klass v. Germany, Iordachi v. Moldova.

398 Von Hannover v. Germany, Perry v. the United Kingdom,no. 63737/00, § 36, Kinnunen v. Finland, no. 24950/94, Commission decision of 15 May 1996, Friedlv. Austria, judgment of 31 January 1995, Series A no. 305-B, opinion of the Commission, p. 20, § 45, Peck v. the United Kingdom,no. 44647/98, § 57.

399 P.G. and J.H. v. the United Kingdom, no. 44787/98, § 59-60, ECHR 2001IX.

400 S. and Marper v. the United Kingdom (Applications nos. 30562/04 and 30566/04) December 2008.

401 Z. v. Finland, 25 February 1997, § 71, Reports of Judgments and Decisions 1997I.

402 Leander v. Sweden, 26 March 1987, § 48.

403 Klass v. Germany, Judgment of 6 September 1978, par. 41.

404 Campbell Christie v. the United Kingdom, №21482/93, 27 June 1994, DR 78A, p. 119.

405 The European standards require that the national legislation clearly determine a list of crimes which may be detected and investigated by applying crime detection measures to persons suspected of commission of these crimes.

ity.[406] The legislation now in force in Georgia does not prescribe proper standards of use, storage, accessibility and transferability of information thus extracted.

Another issue is that the current legislation allows only investigative agencies to access criminal intelligence information which makes it impossible for a judge to assure himself, before authorizing a crime detection activity, of the credibility of information and to eliminate any arbitrariness on the part of the investigator or any opportunistic behavior of informants.

Pursuant to Article 5 of the Law on Crime Detection Activities, such activities are strictly classified and only the persons directly named in the Law have the right to access data, documents and sources containing such information, in accordance with the procedure established by Law. Under Article 12 of the Law, the following agencies are authorized to conduct crime detection activities within their respective competence:

a. Crime detection and investigative units of the Ministry of Internal Affairs;

b. Crime detection units of the Special Service of State Guard;

c. Crime detection and investigative units of the Ministry of Finance;

d. Investigators of investigative units of the Ministry of Corrections and the Security Service of detention centers and penitentiary institutions;

e. Crime detection, investigative and intelligence units of the Ministry of Defense;

f. Crime detection units of the intelligence service;

g. Prosecution Office investigators;

h. Investigators of the investigative unit and members of the crime detection unit of the Ministry of Justice.

Further, Article 9 of the Law specifies that lists of concrete officials of these bodies authorized to access such information should be determined by normative acts of the respective agencies. The role of judges is not mentioned anywhere in the Law.

It follows that, under the legislation now in force, investigators enjoy a much higher degree of trust when it comes to the right to access criminal intelligence information and sources than judges. Therefore, in making decision about undercover surveillance or eavesdropping, judges have to decide 1) without having the opportunity to check whether the source of the criminal intelligence information actually exists, 2) whether the source actually provided the relevant agency with the information in question and whether the information is true, and 3) whether or not the information was provided on any improper motives. The current system allows the investigative bodies virtually unlimited margin of arbitrariness, which the courts are unable to curb.

It should be noted, in addition, that there is no effective mechanism whatsoever to verify the legality of the actual activities conducted after a judge issues a warrant authorizing undercover eavesdropping. The judges themselves have no powers in this regard.

The Law on Crime Detection Activities does not properly specify the circumstances, which, if present, would warrant destruction of information obtained as a result of undercover eavesdropping. This becomes particularly relevant when a person who has been the object of eavesdropping is no longer within the interest of the investigation authorities and is no longer eavesdropped or the person gets acquitted by a court. Although the actual practice, in such cases, of how this discretion is used by investigation agencies may not seem to be a problem in Georgia, the lack of appropriate legal regulations and legislative control as well as the lack of related jurisprudence are themselves a problem contradicting international standards. During the reporting period, the Office of the Public Defender identified many violations of the right to private and family life when video materials depicting private lives of concrete individuals were published in both the media and on the Internet. Of special interest is the fact that State bodies and public officials played a role in publicizing these materials.

406 The Law on Crime Detection Activities and its Article 8 do not determine the events in which a judge may reject investigative bodies' request for authorizing a crime detection activity. It is therefore safe to infer that the judges' role is merely formalistic and they can do nothing but to simply uphold such requests without any reservation. Their role is therefore confined to legalizing investigative bodies' decisions to watch or eavesdrop people.

DISSEMINATION OF VIDEO FOOTAGES DEPICTING PRIVATE LIVES BY THE CHIEF PROSECUTION OFFICE

We negatively evaluate the fact that on 14 January 2013 the Prosecution Office disseminated, through media outlets, video footages depicting private (intimate) lives obtained as a result of covert surveillance.[407] The same day, the Chief Prosecution Office stated that they opened criminal investigation into alleged abuse of power accompanied with use of violence and degrading treatment against the victims by former high-ranking officials of the Defense Ministry's Military Police Department. According to the official information spread by the investigation authorities, members of the Military Police Department, acting on the instructions of the former head of the Department, were collecting information about male representatives of sexual minorities (including by deliberately videotaping, in a hidden manner, their sexual lives) to then blackmail them into covert cooperation with the special services under the threat of disclosing the compromising information.[408] Although the video footages aired through the media were crosshatched, it was still possible, in some cases, to identify the persons on the footages; in particular, one could discern the concrete individuals through their hair color, clothes, and the constitution of body. Dissemination of the video footages by the State through media outlets was a violation of the due diligence principle required for the protection of the right to respect for private life notwithstanding the high public interest into the ongoing investigation. On the other hand, the dissemination of these recordings depicting private lives of individuals in the form they were disseminated also violates the ethics rules for journalists who are obligated to respect private lives of individuals.

The case concerning G.F.

The dissemination of a covertly-made video recording of individuals' intimate lives on the Internet on 3 May 2013 involving journalist G.F. is a fact that deserves reproach. Especially worrying is that charges of disseminating the recording were brought against Gela Khvedelidze, former First Deputy Minister of Interior under Article 157(3) (d) of the Criminal Code (rude interference with private life using official position). It should be noted as well that, according to journalist G.F., the video recording was disseminated because the journalist was trying to uncover a corrupt transaction involving former and current members of the Government. The journalist on its turn disseminated an audio recording and requested the Prosecution Office to launch investigation into these allegations.[409]

During the reporting period, the Office of the Public Defender studied some of the below described cases involving violation of a defendant's right to inviolability of private life and the divulgence, by a public official, of private information.

The criminal case concerning D.E. and V.S.

The Office of the Public Defender studied the materials of a criminal case concerning D.E. and V.S. based on their request.

According to a protocol of observation dated 4 June 2012, investigator M.M. viewed electronic mails of citizens D.E. and V.S. using his office computer and printed off 33 images. The investigation file did not include either a written document containing the consent of D.E. and V.S. to view their emails nor a judicial warrant authorizing this activity. The protocol of 4 June 2012 also says nothing about whether the investigative activity (the observation) was carried out in a state of urgent necessity and there is no court decision on recognition of legality of the observation carried out.

In addition, according to the protocol of observation drafted by the investigator M.M., the 33 photos were printed off on 4 June 2012 between 13:30 and 14:20 hrs, while a date shown on 9 (nine) of these 33 photos is 31 May

407 The prosecution office publishes a scandalous video recording, Info 9, 14 January 2013, http://info9.ge/?l=G&m=1000&id=12010.

408 See the prosecution office's statement and undercover video recordings, Presa.ge, 14 January 2013, http://presa.ge/new/?m=politics&AID=20249.

409 The Chief Prosecution Office launched investigation against Gela Khvedelidze, former First Deputy Minister of Internal Affairs under Article 157(3)(d) of the Criminal Code. Presently, the case is being examined by the Tbilisi City Court. The Office of the Public Defender continues to follow the case.

2012. This information suggests that Investigator M.M. viewed the emails of D.E. and V.S. on 31 May 2012 too and extracted the information without a relevant legal basis. The investigator has never drafted a protocol about the observation he conducted on 31 May 2012 and has never taken down its results in writing. In a protocol he drafted later, on 4 June 2012, he incorrectly indicated as if the 9 photos had been taken on 4 June 2012 instead of 31 May 2012.[410]

Although the right to inviolability of private life is not an absolute right and it may be restricted, any such restriction must only be based on the law and must be necessary to achieve a legitimate purpose in a democratic society.

In the above-described case, by neglecting a legally established procedure for restricting an individual's private life, the investigator violated the requirements of the Code of Criminal Procedure and the right of Citizens D.E. and V.S. to inviolability of their private lives.

Disclosure of private information by Oleg Iadze, Governor of Kaspi

The Office of the Public Defender examined the cases of Citizens G.Ts. and Z.B. concerning disclosure by Oleg Iadze, Governor of Kaspi, of private information about Citizen G.Ts. and Citizen Z.B. during a live broadcast on TV Company Trialeti on 14 March 2013. In particular, the Governor stated these citizens had been imposed administrative punishment for drug consumption and showed the media outlets corresponding data from the database of a relevant State agency.

Article 41(2) of the Constitution lists types of secret information and reads: "Information contained in official records related to the health, finances or other private issues of an individual shall not be accessible to anyone without this individual's consent save in the events prescribed by law when this is necessary for ensuring security of the State or the public, health or others' rights and freedoms."

Under Article 44(1) of the General Administrative Code, "A public institution is obliged not to divulge private information save on the basis of the relevant person's consent or in the events prescribed by law based on a court decision."

Pursuant to Article 2(a) of the Personal Data Protection Law, personal data means any information related to an identified or an identifiable natural person. Paragraph (b) of the same provision stipulates that special data are those related to a person's racial or ethnic belonging, political views, religious or philosophical beliefs, membership into professional organizations, health condition, sexual life or criminal record.

Of particular interest in this case was the fact that the information that Citizens G.Ts. and Z.B. had been punished under administrative rule for the consumption of drugs or other wrongdoing is private information and the official records kept by State agencies containing such information must not be accessible to anyone, public officials included, save according to a legally established procedure. The fact that private information has been divulged, as described above, must be looked into by the relevant State agencies.

Recommendations:

To the Chief Prosecution Office

- **To investigate cases in which materials have been obtained as a result of covert eavesdropping and observation and to bring those responsible to liability; to ensure that, in the course of conducting investigative activities, any restriction of the right to respect for private and family life is only in accordance with a legally established procedure; to protect private information against illegal disclosure;**

To the authorized officials of public institutions

- **To protect private information from disclosure according to rules established by the Geor-**

410 See the Public Defender's proposal of 18 December 2013 to launch investigation into a crime possibly committed by a law enforcement official against citizens D.W. and V.S. On 31 January 2014, the Chief Prosecution Office replied that they disagreed with the Public Defender's proposal under the pretext that no elements of crime were found in the investigator's actions.

gian legislation;

To the Parliament

- **To discuss, as soon as practicable, the Draft Law on Crime Detection Activities and to ensure involvement of the Public Defender, non-governmental organizations, experts and interested persons from the civil society in the discussion process.**

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The present chapter describes the trends in the protection of freedom of religion and the development of a tolerant environment in Georgia in 2013. The Report focuses on the issues that prevent a tolerant environment and civic integration from developing in Georgia. The trends that emerged in the reporting period with regard to freedom of religion, rule of law and equality are covered as well.

The exemption of Jehovah's Witnesses – being religious ministers and conscripted for alternative military service - from military duties following the recommendation of the Public Defender of Georgia[411] should be positively evaluated. This issue has persisted as a problem for years.[412]

Unlike in the previous years, the more proactive approach taken towards the protection of the religious minorities' rights by some of the NGOs and media outlets, which were active in the protection, advocacy and broadcasting the rights of Muslims and religious entities, was a positive development. The Council Religions functioning by the Public Defender of Georgia traditionally carried out important tasks in this regard.

The initiated draft amendments to the Code on Administrative Violations are noteworthy. By the draft amendments' initial and subsequent readings, offending religious feelings and offending on religious grounds are made an administrative violation. At this stage, parliamentary deliberations on the draft amendments have been adjourned. It is, however, to be pointed out that the adoption of such regulations may entail incorrect interpretation of a law, violation of various rights and introduction of religious censorship. These regulations were unanimously dismissed as negative by the Public Defender of Georgia and up to twenty religious entities, which are members of the Council of Religions functioning by the Public Defender, in their special statements.[413]

In another similarly positive development, the government's decision, adopted in January 2014, provides for the symbolic compensation from the State Budget for the damages sustained by the religious entities existing in Georgia, apart from the Georgian Apostolic Autocephalous Orthodox Church, during the Soviet totalitarian rule. It should be noted in this context that it is necessary to continue further activities towards fair allocation of funds to other religious entities; the representatives of other religious entities should be included in this process as much as possible.

Freedom of religion is one of the fundamental rights without which a democratic state based on the rule of law cannot exist.

Freedom of religion is guaranteed both by the Constitution of Georgia and international instruments. This freedom includes an individual's right to practice his/her religion or belief, in worship, teaching, and observance, either

411 Recommendation no. 4605/04-11/2549-12 of the Public Defender of Georgia, dated 1 October 2013 was addressed to the Ministry of Labour, Health Care and Social Security of Georgia.

412 In the reporting period, the Public Defender's Office studied the applications lodged by Jehovah's Witnesses: A.Ch. M.N. I.M. G.G. and T.Ts. on premature exemption from non-military, alternative service. The Commission hearing of 1 October 2013 was attended by the representative of the Public Defender of Georgia as well. The Commission, bearing in mind the recommendation of the Public Defender of Georgia decided to exempt from non-military, alternative service before the expiry of the term A.CH. M.N. I.M. G.G. and T.Ts.

413 Statement of the Public Defender of Georgia of 6 November 2013 concerning prevention of worship and practice to be passed as an administrative violation.

alone or in community with others and in public or private.

Freedom to practice one's religion or beliefs shall be subject only to those limitations which are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.[414] However, when securing this right, a state should be able to strike a reasonable balance between individual and public interests.

Only the freedom to manifest one's religion and beliefs should be subject to limitations. Religion and beliefs can be manifested in worship, teaching, practice and observance.[415] Limitations on the freedom of religion ensure balance between an individual's freedom and public interests when they clash with each other. Thus, in a democratic society, if more than one religious group exists within the same population, it may be necessary to subject this freedom to restrictions in order to ensure the interests of various groups are harmonious with each other and everyone's beliefs are respected.[416]

The grounds and terms of limitation of freedom of religion and belief should be interpreted in the light of the principles established in the jurisprudence of the European Convention under which interference is permissible if it has a legal basis, aims at attaining a legitimate interest, is necessary in a democratic society and is proportional vis-à-vis the legitimate interest.[417]

Effective realisation of the freedom of religion is not limited to the state's negative obligation not to interfere. A state also has a positive obligation to ensure the effective realisation of freedom of religion. This obligation bears particular significance for those belonging to a religious minority. Positive obligation implies implementing all necessary measures by the authorities in order to avert the breach of the right or the threat thereof; intolerance and violence should not be encouraged through inaction and legally inadequate reaction.

INCIDENTS OF VIOLATION OF MUSLIMS' RIGHTS

Incidents of religious intolerance and violence were a major topic in 2013 in terms of protection of freedom of religion.

The acts against Muslims' rights started to emerge in the end of 2012 first in the village of Nigvziani, Lanchkhuti municipality, and later in the village of Tsintskaro, Tetritskaro municipality. These acts continued to take place in 2013, in the village of Tsikhisdziri, Kobuleti municipality, and in the village of Samtatskaro, Dedoplistskaro municipality. This chain of intolerance came to a conclusion with the dismantling of a mosque in the village of Chela, Adigeni municipality, through the decision taken by the Revenue Service.

Apart from these incidents, according to Muslim organisations, there have been several attempts to restrict the rights of Muslims, especially in terms of freedom of movement. According to the information provided by these organisations, the practice of illegal interference in the activities of the "Administration of Muslims of All Georgia" and the attempts to control the organisation that started during the previous government still continued. Likewise, according to certain NGOs, anti-Muslim attitudes were instigated in some public schools, especially in those villages where the rights of Muslims are frequently breached.[418]

The four major incidents that took place against Muslims in 2012-2013 were based on identical motivations that it is unacceptable to establish Islam and its symbols in public spaces. The Orthodox Christian population of Nigvziani, Tsintskaro and Samtatskaro objected to the functioning of a mosque in the village and prevented Muslims from gathering in the mosque and praying on Fridays by using compulsion, threats, verbal assaults, and sometimes resorting to physical force.

The problem related to prayers in Nigvziani and Tsintskaro has mostly been solved due to the interference from the authorities, and through the negotiations and agreements between the leaders of religious majority and minority. In

414 Article 9.2 of the ECHR.

415 ECtHR Case law, Tbilisi, 2004.

416 International Human Rights Law under the ECHR, Tbilisi, 2004;

417 Commentaries to the Constitution of Georgia, Tbilisi, 2013.

418 EMC, Crisis of Secularism and Loyalty towards Dominant Groups, p.24,Tbilisi, 2013.

2013, prayers were unhindered in these villages. However, the "conniving" attitude of the authorities towards the acts penalised by the Criminal Code of Georgia, failure to take appropriate measures, the impunity and, sometimes, bias of the majority could be the reasons why the problem of intolerance towards Muslims was manifested at its fullest in Samtatskaro and Chela in 2013.

TSIKHISDZIRI

On the night of 14 April 2013, it was reported that O. Kh. Head of the 2nd Unit of the Regional Division (Samegrelo-Svaneti) of the Military Police Department of the Unified Headquarters of the Armed Forces of the Ministry of Defence of Georgia, P. G. and M. M. Inspectors of the same unit, in an act of religious intolerance, physically and verbally assaulted several Muslim inhabitants of the village of Tsikhisdziri, Kobuleti municipality and fired several times in the air to scare them.

The immediate institution of an investigation by the Chief Prosecutor's Office of Georgia in the aforementioned incident, which resulted in the conviction of the offenders, should be positively evaluated. According to the information received by the Public Defender's Office of Georgia from the Chief Prosecutor's Office[419] on the progress of the criminal investigation,[420] in the trial before Batumi City Court[421], M. M. was found guilty of committing the crimes penalised by Article 160.2.a)[422], Article 160.3.a)-b), and Article 239.2.a) of the Criminal Code of Georgia;[423] whereas P. G. and M. M. were found guilty under Article 160.2.a) and Article 160.3 of the Criminal Code of Georgia.[424] The judgment was upheld by the Kutaisi Court of Appeal.

SAMTATSKARO

The acts against Muslims in the village of Samtatskaro, Dedoplistskaro municipality, acquired a permanent nature. These acts that persisted for two months resulted in the local Muslims' spiritual leader's temporary departure from the village and suspension of traditional Friday prayers. Apart from the locals, Muslims were actively persecuted by G.N. the Village Rtsmunebuli, as well. The public statement of I.Sh. Dedoplistskaro's Gamgebeli, on the mosque issue should be considered as discriminatory. According to the Gamgebeli, it was up to the majority to decide on the functioning of a mosque in the village.[425] According to a Khoja, officers of the Ministry of Internal Affairs from Tbilisi also took part in the intimidation of Muslims.

The representatives of the Public Defender of Georgia monitored the above-mentioned events during May-June, 2013. It was revealed during conversations with Muslim population of the village of Samtatskaro that the families, being the victims of ecological calamities, have relocated from Ajara in 1978 and settled down in the village of Samtatskaro, Dedoplistskaro municipality. There were both Muslims and Orthodox Christians among those families. The Muslim families have been practicing their religious rites for years without any problems. However, until 2013 they have not had a separate place of worship.

In 2013, "Administration of Muslims of All Georgia", acting on the request of the Muslim population of the village of Samtatskaro, bought a private house to enable them to pray. This act caused indignation among the Orthodox Christian population of Samtatskaro and other villages of the Dedoplistskaro municipality. This was manifested in preventing Muslims from praying on Friday and in verbal and physical assaults directed at the family members of the village Muslims' spiritual leader - S.Kh.

The representatives of the Muslim population of the village of Samtatskaro and "Administration of Muslims of

419 Letter No. 13/16287 of the Chief Prosecutor's Office of Georgia dated 14 March 2014.

420 Letter No. 04-9/5028 of the Public Defender's Staff of 10 March 2014.

421 Judgment of Batumi City Court of 30 August 2013.

422 The violation of the title to a residence or other title resorting to the use of force or the threat of the use of force.

423 Premeditated hooliganism by a group.

424 The violation of the title to a residence or other title resorting to the use of force or the threat of the use of force.

425 https://www.youtube.com/watch?feature=player_embedded&v=j3rTwKgYW4s[last visited on14.03.2014].

All Georgia" complained to the officials of the Public Defender of Georgia.[426] According to the complaint, on 14 May 2013, village Rtsmunebuli – G.N. objected to the functioning of the place of worship, as it was unacceptable for the majority of the population.

On 24 May 2013, when the Muslims gathered at the place of worship in Samtatskaro for the traditional Friday prayers, the Orthodox Christian population of Samtatskaro and neighbouring villages prevented them from conducting their prayers. At this time Samtatskaro Rtsmunebuli – G.N. was with the Orthodox Christian population too. During the incident, a copy of Quran, a table and carpet were thrown out of the place of worship and the Muslims were subjected to physical and verbal assault. According to the local Muslims, G.N. did nothing to prevent these violent acts.

The Friday prayers of the Muslims of Samtatskaro were again disrupted by the Orthodox Christian population on 31 May and 7 June 2013. On 31 May, the Orthodox Christian population of Samtatskaro and neighbouring villages blocked the road and did not allow the Kvemo Kartli Mufti – J.A. and accompanying persons to enter the village. According to the Mufti and the accompanying persons, they were subjected to verbal and physical assault.

On 7 May 2013, the Orthodox Christian population of Samtatskaro gathered at the mosque and tried to disrupt the prayers. According to the spiritual leader of the Muslim population of Samtatskaro, Khoja S.Kh. on 7 June 2013, he was visited by two strangers in a car. They introduced themselves as officers of the Ministry of Internal Affairs and accused him of creating religious tensions in the village and taking money for opening the place of worship. According to the Khoja, he was threatened with arrest. Approximately one hour later, S.Kh. was driven to the place of worship but while leaving the car he became unwell and could not enter the mosque.

According to S.Kh. on 6 June 2013, he was visited by G.N. and a person who introduced himself as G.L. and told him that he was Telavi regional representative of the Public Defender of Georgia.[427] In his conversation with S.Kh. G.L. alleged that he knew about the Khoja taking money for opening the mosque. He told the Khoja that there was no point in continuing the Friday prayers and if someone was arrested as the result of religious confrontation he would not be allowed to live in the village anymore.

On 14 June 2013, in the village of Samtatskaro, the representatives of "Administration of Muslims of ALL Georgia" and Muslims visiting from various regions participated in the Muslims' traditional Friday prayer. S.Kh. could not attend the prayers due to deteriorated health and recent intimidation and threats. Other Muslims residing in the village did not attend the prayers too in order to avoid confrontation. On that day, there were the representatives of the US Embassy, the Public Defender of Georgia and the State Minister of Reconciliation and Civic Equality were present in Samtatskaro.

On 21 June 2013, the staff of the Public Defender of Georgia learned about the intimidation of the family of S.Kh. According to him, on that day, the Deputy Mufti of All Georgia – A.Sh. S.Kh. and his children attended the Friday prayer. According to S.Kh. there were no incidents during the prayers. However, after the prayers were over and the guests left, approximately hundred inhabitants of Samtatskaro and neighbouring villages gathered around his house. They objected in extremely aggressive manner to holding the Friday prayers and verbal and physical assaults took place. Samtatskaro Rtsmunebuli – G.N. too was among the villagers.

The Public Defender of Georgia suggested to the Minister of Internal Affairs to institute an investigation into the above-mentioned incident.[428] According to the information provided by the Minister of Internal Affairs[429], the investigation was instituted by the Major Regional Division of Kakheti regarding the allegations of illegal prevention of the exercise of religious rites in the village of Samtatskaro, Dedoplistskaro municipality (an act criminalised by Article 155.1 of the Criminal Code of Georgia) and the threats issued by the inhabitants of Samtatskaro, Dedoplistskaro municipality, to E.Kh.'s family (S.Kh.'s son) (an act punishable by Article 151 of the Criminal Code of Georgia). The Public Defender's office[430] requested the information regarding the progress of investigation into

426 The minutes of interviews with S.Kh. on 29 May 2013, 29 May 2013, 31 May 2013, 7 June 2013, Comments by T.B. N.P. A.M. J.A. and N.K. on 31 May 2013.

427 It is noteworthy that there are no regional representatives of the Public Defender in Telavi. Furthermore, there is no one named G.L. working for the Public Defender's Office.

428 Public Defender's suggestion No. 578/04-9of 2 July 2013.

429 Letter no. 1432688 of 22 July 2013 of the Inspectorate General of the Ministry of Internal Affairs Georgia.

430 Letter No. 845/04-9of 29 November 2013of the Public Defender's Office.

these incidents from the Ministry of Internal Affairs of Georgia. However, during the reporting period, the Ministry of Internal Affairs have not notified the Public Defender's office about any measures taken by the investigative bodies with regard to these criminal cases.

The Public Defender of Georgia similarly suggested to the Gamgebeli of Dedoplistskaro municipality to initiate a disciplinary measure against Samtatskaro's Rtsmunebuli – G.N.[431] Through the correspondence from Dedoplistskaro municipality[432], the Public Defender of Georgia was notified that on the account of a disciplinary violation a warning was issued to G.N. – the acting Rtsmunebuli of the local self-government unit of the village of Samtatskaro, Dedoplistskaro municipality.

According to the documentation in the case file, as well the reports from the local Muslim population, the patrol police failed to safeguard the freedom of religion of the Muslims living in Samtatskaro. While the patrol police took adequate measures to avert physical confrontation, they failed to ensure freedom of religion of the Muslim population as they were prevented from performing their religious rites.

The Public Defender of Georgia considers that on this occasion the representatives of the Ministry of Internal Affairs failed to react adequately with regard to the above-mentioned incidents. Namely, in none of the above-mentioned cases, the law-enforcement officers fulfilled the positive obligations undertaken by the state to protect the religious group of Muslims from the manifestation of religious hatred and violence.

In the case of 97Members of the Gldani Congregation of Jehovah's Witnesses and 4 others v. Georgia (application no. 71156/01), the European Court of Human Rights criticised the Georgian authorities for the failure to fulfil this very obligation. In the judgment of 3 May 2007, the Court observed that the Georgian authorities through their inactivity and failure to protect Jehovah's Witnesses from the attack by the group of Orthodox extremists "opened the doors to a generalisation of religious violence".

TCHELA

Similar incidents of restricting the freedom of religion were reported in the village of Tchela, Adigeni municipality, as well.

On 25 July 2013, the Georgian media circulated information about the erection of a minaret in the village of Tchela, Adigeni municipality.[433] According to the news, the minaret construction was opposed by the Orthodox Christians residing in various villages of Adigeni municipality. The representatives of the Public Defender of Georgia visited the village of Tchela with the view of studying the issue in detail. From the conversations with the Muslims and Muslim ministers residing in the village of Tchela, it was revealed that the local Muslims purchased a metal minaret from a private company in Turkey with their own funds. They declared the goods to the customs authorities on 15 July 2012, and on 20 July 2013, the minaret was erected on the territory adjacent to the village mosque. According to the local practising Muslims, there was no history of religious confrontation between Orthodox Christians and Muslims. It was, however, pointed out that after the erection of the minaret, the officers of Akhaltsikhe District Division of the Ministry of Internal Affairs questioned the Mufti of Samtskhe-Javakheti – M.V. and the head of the mosque of the village of Tchela, Adigeni municipality – J.A. The officers of the Ministry of Internal Affairs expressed their interest in the expenditure incurred for the acquisition of the minaret. According to M.V. the Muslim population had not sought the permit for the construction of the minaret from the Gamgeoba of Adigeni municipality.

It is noteworthy that on 6 August 2013, a notification was sent to the Public Defender by G.E. the head of the local self-government unit of Adigeni municipality.[434] The Applicant notified the Public Defender about the illegal construction of a minaret in the village of Tchela, Adigeni municipality. The indignation expressed by the Orthodox Christians residing in various villages of Adigeni municipality at the construction of a minaret in the village of Tchela was also pointed out.

431 Public Defender's suggestion No. 577/04-9of 2 July 2013.

432 Letter No. 914 of 29 July 2013 of the Gamgeoba of Dedoplistskaro's municipality.

433 See,http://sknews.ge/index.php?newsid=2028№.Uyr995bsZyE.

434 G.E.'s statement No. 1091/1 of 6 August2013.

On 26 August 2013, the Legal Entity of Public Law (LEPL) – the Revenue Service of the Ministry of Finance of Georgia dismantled the minaret in the village of Tchela, Adigeni municipality.

The representatives of the Public defender talked with the local Muslims in Adigeni municipality on 27 August 2013. According to the latter, the Muslim community gathered in the village of Tchela to express their protest about dismantling the minaret. The road to the minaret was blocked by the officers of the Ministry of Internal Affairs. The protest and objections of the local Muslims, who were unable to approach the minaret, was followed by a physical confrontation. 22 demonstrators were arrested by the officers of the Ministry of Internal Affairs; later, 13 persons were released after questioning.[435]

Administrative responsibility was imposed on six persons who were arrested by the officers of the Ministry of Internal Affairs and three persons were charged with criminal offences. However, the charges were dropped after a few months.[436]

According to the persons arrested on 26 August 2013, the officers of the Ministry of Internal Affairs were aggressive towards them during the arrest. The local Muslims requested the officers of the Ministry of Internal Affairs to explain to them the grounds for dismantling the minaret. According to them, no explanation was provided, and instead they were verbally abused.[437]

After the dismantling of the minaret, a part of the Christian Orthodox population of Akhaltsikhe blocked the main road in order to prevent returning the minaret to the village. Also, in Batumi, Muslims and their supporters held demonstrators requesting returning of the minaret and release of the arrested Muslims.[438]

On 27 November 2013, after the documentation for the minaret in compliance with the Georgian legislation in force was submitted, the Sakrebulo of Adigeni municipality issued permission for the ready-made minaret to be assembled in the village of Tchela, Adigeni municipality, which was positively evaluated by the Public Defender of Georgia.

The office of the Public Defender of Georgia studied the legality of dismantling the minaret by the LEPL Revenue Service of the Ministry of Finance of Georgia. It has been consequently concluded that the post-clearance by the LEPL Revenue Service of the goods declared at customs by I.M. and J.A. on 14 July 2013 was not expedient. During the declaration of the goods at customs, the authorised personnel of the Revenue Service categorised the goods under a particular commodity code, which exempted the minaret from import duty. The need for the verification of the accuracy of this very code became the formal ground for dismantling the minaret. It needs to be pointed out in the first place that it was the obligation of the Revenue Service personnel to examine the goods in detail and order its experts to establish its respective code, which was not done in this particular case. Moreover, as the result of the assessment carried out after the dismantling, the minaret was given the code that exempted it from import duty, because goods "Made in Turkey" are exempted from import duty under Articles 4 and 16 of the International Agreement on Free Trade concluded between Georgia and the Republic of Turkey on 21 November 2007. This would exclude I.M. and J.A. from being at fault.

Furthermore, Article 115.5 of the Instructions on Movement and Clearance of Goods in the Customs Territory of Georgia exhaustively determines the list of those powers vested in the competent authority in case of post-clearance audit. These are the following powers:

a) requesting a declarant or another person of interest to present documentation related to import and/or export of declared goods, inventory accounting information, and/or other information;

b) receiving written and verbal explanations from a declarant or another person of interest or their representatives (provided they have the necessary documentation and/or information) about the issues raised during post-clearance examination;

435 Minutes of interview of the officers of Akhaltsikhe District Division of the Ministry of Internal Affairs and Muslim population of the village of Tchela, Adigeni municipality, on 26 August 2013.

436 Minutes of interview of the Muslim population of the village of Tchela, Adigeni municipality, on 29 November 2013.

437 Public Defenders' statement of 27 August 2013 regarding the events in the village Tchela.

438 Public Defenders' statement of 29 August 2013: The Public Defender of Georgia hopes that the events unfolded in the village of Tchela will remain within the legal boundaries.

c) to monitor the activities of a declarant or a person of interest, audit goods, take tests and/or other samples.

Accordingly, LEPL Revenue Service had no legal authority to dismantle the minaret. It is noteworthy that the minaret was located not on the land owned by I.M. and J.A. but by D.Ch. who resides in the village of Tchela, Adigeni district. The Tax authorities have been informed about this fact but they still interfered with the right to property enjoyed by D.Ch. without any legal basis.

After the analysis of the factual and legal circumstances of the above-mentioned events, it is concluded that dismantling of the minaret in the village of Tchela, Adigeni district, by the LEPL Revenue Service had no legal basis and was in breach of the Georgian legislation.

The Constitutional Court of Georgia has pronounced itself on freedom of expression:

> "Freedom of belief implies internal freedom of an individual to determine freely the directions of his/her religious, ideological or moral and ethical development, priorities, develop his/her personality accordingly, live through the possibility of individual self-realisation in a society and find him/herself through these feelings. In this regard, freedom of belief is the ground of a person's opinions, feelings and life in accordance with." [439]

> "Freedom of belief is in some way ideological freedom, as one's possibility to live and develop in accordance with one's own interests, desire, taste, ideas, opinions, as well as possibilities, creates the "I" of a person, his/her substance, personality, defines his/her purpose in either private surroundings or a society, gives him/her directions to his/her life. That is why unnecessary interference in this freedom, such treatment that changes the mentality of an individual, may cause his/her mental suffering."[440]

Thus, the Constitutional Court of Georgia linked freedom of religion with an individual's internal freedom, interference in which may entail moral suffering of a person.

In case of Manoussakis v. Greece, the ECtHR held that the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the state to determine whether religious beliefs or the means used to express such beliefs are legitimate. The Court recognises that the states are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities that are harmful to the population. However, the states cannot review whether religious beliefs or the means used to express such beliefs are legitimate.

In the given case, the erection of the minaret by the practising Muslims in the village of Tchela, Adigeni municipality, did not fall under Article 19.3 of the Constitution of Georgia[441], i.e., "the rights of others" were not breached. Therefore, the interference of the authorities in the realm protected by freedom of religion through dismantling the minaret is not justified. Hence, there was a breach of freedom of religion of the practising Muslims residing in the village of Tchela, Adigeni municipality.

It is also noteworthy that after the documentation of the minaret was brought in compliance with the Georgian legislation in force, the Sakrebulo of Adigeni municipality issued permission for the ready-made minaret to be assembled in the village of Tchela, Adigeni municipality, which was carried out on 27 November 2013.

The case of T.B. and P.Ts.

On 23 August 2013, the representative of the Public Defender of Georgia received a complaint from T.B. and P.Ts. on the alleged persecution on religious grounds. Twice the European champion, T.B. has been training wrestlers since 2011 and P.Ts. was one of them. According to his complaint, on 10 August 2013, the national team of Georgia was to leave for a championship competition in Bulgaria. The officials of Tbilisi International Airport did not allow P.Ts. to depart, as a result of which he could not take part in the world championship.

T.B. maintained that he was subjected to restrictions on religious grounds. He was requested to shave before the

439 Constitutional Court of Georgia, judgment No.1/1/477, 22 December 2011,II.para.5.

440 Ibid. II.para.6.

441 Interference in freedom of religion shall be impermissible unless its manifestation infringes the rights of others.

tournaments. T.B. disobeyed. The officers of the Ministry of Internal Affairs allegedly prohibited him from discussing religious topics with his students. T.B. pointed out, however, that all of his students were Muslims and there were no problems in this regard. Moreover, according to T.B. the students of his class and their parents were summoned by the Ministry of Internal Affairs and requested them to discontinue trainings with T.B. The latter links this issue with his religious beliefs.

The Public Defender's Office requested information from the National Federation of Wrestling concerning P.Ts.' participation in the world championship held in Bulgaria.[442] Likewise, the Public Defender's Office requested information from the Ministry of Internal Affairs.[443] The Public Defender's Office was interested in the legal and factual grounds based on which P.Ts. was prevented from departing for Bulgaria to take part in the world championship.

We learned through correspondence[444] that P.Ts' participation in the world championship in Bulgaria was planned. However, when crossing the border at Tbilisi International Airport, Border-Immigration Control Unit stopped P.Ts. due to the technical problem created in the automated database of the Ministry of Internal Affairs.

The Public Defender's Office also addressed the Ministry of Internal Affairs[445] and requested information about the technical problem created in the automated database on 10 August 2013. There has been no reply from the Ministry of Internal Affairs during the reporting period.

It is noteworthy that on 13 September 2013, P.Ts. and T.B. were arrested together with a Russian national I.L.. They were charged under Article 353.2 of the Criminal Code of Georgia. [446]

On 14 September 2013, the Public Defender's Office started to study the above-mentioned incident. On 14 and 15 September 2013, the representative of the Public Defender of Georgia visited P.Ts. and T.B. Multiple injuries were seen on the bodies of both men, which, according to them, were sustained during the arrest. There is also a notice in the personal files of the temporary detention facility of Ajara and Guria.[447]

During the reporting period, the President of the Georgian Muslims' Union – Z.Ts. also applied to the Public Defender of Georgia concerning the restrictions imposed on him at the crossing points of the Georgian Customs.[448] According to the applicant, he constantly faced problems created at the customs crossing points when entering Georgia. In particular, he would be stopped and questioned in an isolated room by law-enforcement officers. The officers never explained the reasons for stopping him. The applicant links such incidents to his religious affiliation.

The Public Defender's Office addressed the Ministry of Internal Affairs[449] and requested the information about the legal and factual circumstances based on which Z.Ts. would be stopped at the border. However, the Ministry of the Internal Affairs notified[450] the Public Defender's Office that no restrictions were used against Z.Ts. when crossing the Georgian border.

During the reporting period, in the private conversations with the Public Defender and his representatives, the Muslim citizens alleged about similar systematic problems at the crossing points of the Georgian border. These individuals, however, are not willing to reveal their identity and publicly discuss these complaints. As it was mentioned above, the Ministry of Internal Affairs does not confirm the existence of such a problem. However, numerous incidents studied by the Public Defender's Office show that there is a problem that necessitates adequate reaction from the competent agencies.[451]

Thomas Hammarberg, in his capacity as the EU Special Adviser on Constitutional and Legal Reform and Human

442 Letter no. 04-9/1063 of the Public Defender's Office dated 3 September 2013.

443 Letter no. 04-9/1333 of the Public Defender's Office dated 17 September 2013.

444 Letter no. 194 of the National Federation of Wrestling dated 9 September 2014; Letter no. 188854 of the Ministry of Internal Affairs dated 24 September 2013.

445 Letter no. 04-9/3460 of the Public Defender's Office dated 14 September 2013.

446 Resistance of, threats or violence against the public order enforcer or other representative of authorities.

447 The minutes of interviews with P.Ts. and T.B. on 14 and 15 September.

448 Application no. 2648 dated 30 September 2013.

449 Letter no. 04-9/1986 of the Public Defender's Office dated 25 October 2013.

450 Letter no. 2496089 of the Ministry of Internal Affairs dated 6 December 2013.

451 See also, in the present Report of the Public Defender of Georgia, the chapter on freedom of movement.

Rights in Georgia, states in his report that it is necessary that Georgia transforms its attitude towards the Muslim population in order to ensure their rights and freedoms, their safe and peaceful living environment and equality before the law.[452]

OTHER VIOLENT ACTIONS ON THE GROUNDS OF RELIGIOUS INTOLERANCE

During the reporting period, the number of applications lodged with the Public Defender's Office on the alleged violations of freedom of religion was rather high. It is noteworthy that 11 applications were lodged with the Office in 2012 out of which only two applications concerned violence motivated by religious grounds.[453] Whereas in 2013, 17 applications concerning alleged religious discrimination and violence against Jehovah's Witnesses were received.

Earlier the crime committed on religious grounds was not categorised under the articles of the Criminal Code, which penalise religiously motivated acts. There is a positive tendency to be discerned in this regard in the reporting period. Except for a few episodes, investigations have been instituted under those articles of the Criminal Code, which imply religious motivation.[454] However, in none of these cases, the Courts considered discrimination to be an aggravating circumstance[455].

In 2013, the Public Defender was addressed by the religious organisation of Jehovah's Witnesses on 17 occasions. Out of these applications, eight concerned the allegations of physical and verbal assault; one concerned threat; six concerned damaging the premises of Jehovah's Witnesses; and two concerned the suspension of alternative military service and dismissal of religious ministers. Out of eight cases, investigation was instituted in six cases under the following articles of the Criminal Code: Article 156 (persecution), Article 155 (illegal impediment of religious rites), and Article 125 (battery). In two cases, the accused were found guilty; in the cases of battery and persecution fines were imposed. Investigation is still undergoing in three cases of damaging buildings; one case was discontinued due to the criminal act prohibited by the criminal legislation not being found; and two cases were discontinued due to the non-existence of the elements of crime.

VIOLENCE AGAINST JEHOVAH'S WITNESSES

On 12 June 2013, in Gardabani municipality, Jehovah's Witness K.K. was physically and verbally assaulted. K.K. has been given a victim's status in the criminal proceedings and the investigation is pending to date.

On 13 August 2013, during a religious service in Tbilisi, Jehovah's Witnesses N.S. and L.M. were assaulted physically and verbally. N.S. has been given a victim's status in the criminal proceedings and the hearing on the merits is pending before Tbilisi City Court.

On 16 August 2013, Jehovah's Witnesses D.Q. and G.J. were verbally and physically assaulted by an unidentified person in Tbilisi. D.Q. has been given a victim's status. On 20 December 2013, Tbilisi City Court found D.P. guilty of the crime criminalised under Article 125.1 of the Criminal Code and imposed a fine.

On 30 September 2013, during a religious service in the village of Kizilqilisa, Tsalka municipality, Jehovah's Witnesses K.P. and L.T. were physically and verbally assaulted by the Kizilqilisa Rtsmunebuli. The latter prohibited the Jehovah's Witnesses from pursuing religious service in the village. On 1 November 2013, the District Court of Tetritskaro found S.G. guilty in the criminal proceedings of the crime under Article 156.1 and Article 156.1.a) of the Criminal Code of Georgia.

On 6 October 2013, during a religious service in the village of Akhalkalaki, Kaspi municipality, Jehovah's Witnesses O.K. and I.Ts. were assaulted physically and verbally. In the incident, the village clergyman was involved as well. A criminal case was instituted under Article 156.1 of the Criminal Code and the investigation is pending to date.

452 See http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf [last visited 14.03.2014].

453 The Parliamentary Report of the Public Defender of Georgia, 2012, p. 523.

454 The Criminal Code of Georgia, Articles 155 and 156.

455 Based on the Criminal Code of Georgia, Article 53.

On 25 October 2013, Jehovah's Witnesses K.K. G.Ts. M.M. and N.Ch. were physically and verbally assaulted by unidentified persons in Batumi,. M.M. suffered concussion as a result of the assault. Criminal proceedings were instituted under Article 155.1 of the Criminal Code. No persons of interest have been identified and investigation is pending to date.

FREEDOM OF RELIGION IN PUBLIC SCHOOLS

The protection of freedom of religion in public schools still remains problematic. It can be said that the school children who follow different religions are subjected to either psychological or physical violence.

The discriminatory and closed atmosphere in schools that exists in religious context raises fears among the representatives of religious minorities when it comes to bringing this problem into light. This must be the reason why there are a low number of applications lodged with the Public Defender's Office concerning religious discrimination in public schools.[456] Parents and pupils avoid public discussion of discriminatory treatment towards them.

Public school of Chumlaki

During the reporting period, G.M. applied to the Public Defender of Georgia concerning the discriminatory treatment of his son M.M. in Chumlaki public school. The representatives of the Public Defender of Georgia collected comments from the minor student M.M.'s parents, teachers and the headmaster of Chumlaki public school.

According to M.M.'s mother, her family follows Evangelical-Baptist beliefs. G.M. and T.M. maintained that the head of their son's class, L.U. often verbally and physically abused their son. The family related the teacher's treatment of their son to their religious beliefs. The teacher often told the pupil to get baptised as an Orthodox Christian. According to the mother, she had no complaints against other teachers of the school. She maintained that on 16 October 2013, M.M. was physically assaulted by the music teacher M.S. after which M.M. did not go to school for two weeks. After this incident, the minor student was transferred to another class.

In their conversation with the representatives of the Public Defender of Georgia, teachers L.U. and M.S. denied the physical abuse of the pupil. However, the School Principal referred to the family as "sect followers". Both teachers maintained that they do not discriminate against children based on their religious beliefs. According to them, they have other pupils who are not Orthodox Christian and this does not affect their relationship with teachers.

The Public Defender's Office submitted the information at their hand to the Ministry of Education and Science of Georgia and requested for an adequate reaction.[457] The Office was notified through correspondence[458] that the Department of Internal Audit of the Ministry of Education and Science of Georgia issued orders to Chumlaki public school to eradicate the violations referred to in the report of the Department of Internal Audit.

RESTITUTION OF THE DAMAGE SUSTAINED BY RELIGIOUS ORGANISATIONS DURING THE SOVIET PERIOD

Despite the fact that the representatives of the Ministry of Culture and Monument Protection of Georgia and the Ministry of Economy and Sustainable Development have been vocal for years about the solution of this problem, the issue of returning the contested places of worship to religious organisations still remains unsolved.

At this stage, the Diocese of Armenian Apostolic Orthodox Holy Church in Georgia is demanding the return of five churches located in Tbilisi and one church in Akhaltsikhe. Catholic and Christian Orthodox churches dispute the title to five temples which are presently owned by the Christian Orthodox Church. The Catholic Church demands the fair solution of this dispute. The return of two Evangelical Lutheran churches, tens of mosques and one synagogue is also on the agenda. All these places of worship are the monuments of cultural heritage of Georgia.

456 Only one application was studied by the Staff of the Public Defender of Georgia in the reporting period.

457 Letter no. 04-9/2425 of the Public Defender's Office dated 21 November 2013.

458 Letters of the Ministry of Education and Science of Georgia dated 31 January and 14 March 2014.

Due to years of disputes about ownership, these buildings have not undergone any refurbishment and reconstruction works which made their state deplorable.

The issue of the so-called contested temples is very important in terms of the freedom of religion and cultural heritage and necessitates the mobilisation of various state agencies in finding ways of discussion and solutions of the problem which will not infringe upon the fundamental freedoms of the followers of various religions, while bearing in mind the prohibition of discrimination.

RELIGIOUS ORGANISATIONS' RIGHT TO PROPERTY

Providing various types of services to religious organisation in central and local self-government units still remains a problem in the reporting period. The representatives of religious organisations applied to the Public Defender in 2013 contesting the issue of permits for the construction of religious buildings and transfer of title to land and buildings.

Construction permits

B.TCh. head of the Public Relations and Freedom of Religion Unit of Trans-Caucasus Union Mission of the Seventh-Day Adventists Church, filed an application with the Public Defender of Georgia concerning construction permits of religious buildings.[459] The said religious organisation owned a plot of land in Tetritskaro municipality and sought a permit from the local Gamgeoba to construct a residential house, sports hall and heating unit.

It is noteworthy that the local residents challenged the construction before the Tetritskaro municipality. It is mentioned in the respective application that the population opposes the construction based on religious motives.

According to the head of the Public Relations and Freedom of Religion Unit of Trans-Caucasus Union Mission of the Seventh-Day Adventists Church, they faced obstacles in the Gamgeoba and had to seek discontinuation of proceedings regarding the construction permit.

The Public Defender's Office requested information from the Gamgeoba of Tetritskaro municipality about the complaint.[460] The latter notified the Public Defender that the proceedings regarding the construction permit were discontinued due to the motion of the Seventh-Day Adventists Church.[461]

Transfer of the title to a church

During the reporting period, G.Ch. - Chief Pastor of the Georgian Evangelical-Protestant Church, applied to the Public Defender as well. According to the applicant, the Evangelical-Protestant Church located in Gori was not owned by the said religious organisation. Therefore, the organisation was unable to put a fence around the property on which the Church was located. According to the applicant, due to this obstacle, the Evangelical-Protestant Church was frequently damaged and robbed. The Office of the Public Defender of Georgia requested information from the Ministry of Economy and Sustainable Development of Georgia regarding the transfer of the title to the Georgian Evangelical-Protestant Church.

The Office was notified by the Ministry about Article 3 of the Law of Georgia on State Property, which reads as follows:

> "State property may be acquired by (except the cases of privatisation of agricultural land owned by state) by the following subjects: a Georgian or a foreign citizen or a Legal Entity of Private Law or an association in which the share of the Georgian state or that of a local self-government body is less than 25%; as well as by non-commercial legal entity established by either the state, or other subject, or jointly by the state and other subject; by the National Bank of Georgia, and in case of the direct sale based on a decision of the Government of Georgia – by the Georgian Apostolic Autocephalous Orthodox Church as well."

459 Application no. 1885/1 of B.Tch. dated 6 September 2013.

460 Letters nos. 04-9/1334 and 04-9/1698 of the Public Defender's Office dated 17 September and 7 October 2013.

461 Letters nos. 784-1/19 and 814-1/19 of Tetritskaro municipality Gamgeoba dated 25 September and 16 October 2013.

The said religious organisation has the legal status of a Legal Entity of Private Law (LEPL) and Article 3 of the Law of Georgia on State Property does not provide for the direct sale of state property to an LEPL. Therefore, the National Agency of State Property considered that it had no authority to allow the direct sale in this case; it, however, expressed its readiness to discuss the transfer of the church with the right of use to the Georgian Evangelical-Protestant Church.

As the result of the amendment of the Civil Code of Georgia in 2011, religious entities are allowed to register as LEPL. Under Article 1509.5 of the Civil Code, "the Law of Georgia on a Legal Entity of Public Law shall not apply to the religious organisations registered as LEPL." Under Article 1509.6 of the Code, "… the rule of registration of non-commercial legal entities shall apply to the registration of religious entities. The respective authority shall be determined by Chapter Two, Section One of the Civil Code of Georgia."[462]

It stems from the analysis of the said legal provisions that the clause of the Civil Code regarding the application of the Law of Georgia on a Legal Entity of Public Law to religious organisations should not be interpreted as extending those regulations that are enacted for the legal entities of private law to the religious organisations.

It is noteworthy that Article 3 of the Law of Georgia on State Property singles out the Georgian Apostolic Autocephalous Orthodox Church, which does have the LEPL status and links the direct sale of state property to it with a decision of the Government of Georgia.

In the light of the foregoing, in order to entitle religious organisations with the same right as the Georgian Apostolic Autocephalous Orthodox Church under Article 3 of the Law of Georgia on State Property, it is necessary to amend this provision.

HATE SPEECH

In 2013, as in previous years, one of the acute problems was hate speech, which is still actively used by some media outlets. One part of printed media is particularly keen on circulating hate-laden statements. It is alarming that such media productions enjoy the highest ratings. On the other hand, it is unacceptable to introduce state regulations of any kind on the use of hate speech. This would entail a great risk of arbitrary restriction of freedom of expression, religious censorship for minorities and their supporters, who are often the victims of verbal assaults.

CONGRATULATIONS ON RELIGIOUS CELEBRATIONS

High-ranking officials regularly congratulated religious minorities on key religious celebrations both by issuing statements and attending their religious rituals. This was critically assessed by a group of religious majority. The participation of the President in the Jewish holiday Hanukkah even served as a pretext to express extremism.

CELEBRATION OF HANUKKAH

On 4 December 2013, media circulated information that the President of Georgia congratulated a Jewish priest on Hanukkah celebration. A group of practising Orthodox Christians held a demonstration to oppose the gesture. According to the news, two demonstrators damaged the stand erected on the Liberty Square and torn the posters. Later it was reported that D.L. and G.P. were imposed an administrative penalty. The Public Defender of Georgia started the proceedings on his own initiative.

According to the case-file requested by the Public Defender's Office from Tbilisi City Court, on 5 December 2013, the Court found G.P. and D.L. guilty in administrative violations under Article 166 of the Code of Administrative Violations of Georgia[463] and ordered them to pay a fine of 100 GEL each.

462 Section I, Chapter Two of the Criminal Code of Georgia gives the definition of a legal entity. The said Chapter deals with both legal entities of private law as well as legal entities of public law.

463 Minor hooliganism.

Recommendations:

To the Minister of Internal Affairs of Georgia

- **To conduct an effective investigation into the acts, which contain the elements of crimes under the Criminal Code of Georgia, committed in 2012-2013 against the Muslim population in the villages of Nigvziani, Tsintskaro, and Samtatskaro.**

To the Chief Prosecutor's Office of Georgia

- **To conduct investigations into the dismantling of the Minaret on 26 August 2013 in the village of Tchela and into the acts of the respective officials.**
- **To pay particular attention to the investigation into the alleged violations committed on religious grounds in 2009-2012 and to the investigation of the cases instituted this year.**

To the Ministry of Internal Affairs of Georgia; To the Chief Prosecutor's Office of Georgia

- **To conduct investigations under those particular articles, which are related to religious discrimination, persecution, and impeding religious services. In the cases where religious intolerance was allegedly a motive of the crime, to consider this to be an aggravating circumstance.**
- **To conduct skilled training sessions on freedom of religion and equality for the officials of the Ministry of Internal Affairs and prosecutors with the participation of international organisations and the Public Defender.**

To the Government of Georgia

- **to take measures for enhancing the culture of religious tolerance in Georgia, especially by raising awareness among public officials and decision-makers. To ensure training sessions of police officers and prosecutors on non-discrimination and the rights of national minorities, and**
- **to set up the so-called Commission on Restitution with the participation of the Public Defender and NGOs.**

To the Ministry of Education and Science of Georgia

- **to set up within the Ministry of Education and Science the group of special monitoring and reaction with the participation of the Public Defender's Office and concerned NGOs. This group should monitor the implementation of the Law of Georgia in public schools and in case of finding a violation should react adequately.**
- **to elaborate an Extraordinary Action Plan with the participation of the Public Defender and NGOs in order to eradicate discriminatory environment and establish the culture of tolerance in public schools.**

To the Government of Georgia and the Parliament of Georgia

- **to ensure the fulfilment of the Recommendation of 2012 issued by the Council of Religions functioning by the Public Defender of Georgia, and**[464]
- **to continue discussions on fair and non-discriminatory budgeting of religious organisations, bearing in mind international experience and existing best practices. To ensure the participation of the experts of the relevant sphere and the representatives of religious organisations.**
- **to eradicate the unequal tax order under which the taxation of the religious organisations differs from that of the Orthodox Church.**

To the Parliament of Georgia

- **to amend Article 3 of the Law of Georgia on State Property to the effect of enabling religious organisations having LEPL status to directly purchase state property like the Georgian Apostolic Autocephalous Orthodox Church.**

464 See http://tolerantoba.ge/index.php?id=1281619877&sub_id=1345202134 > [last visited 17.03.2014].

THE STATE OF PROTECTION OF NATIONAL MINORITIES' RIGHTS

During 2013, the situation in terms of civic integration and the protection of national minorities' rights mostly remained unchanged. The governmental agencies carried out the programmes provided by the National Concept of Tolerance and Civic Integration and the Action Plan in different spheres.

In terms of civic integration and the protection of minorities' rights, the issue of full participation of ethnic minorities in political, cultural, and social spheres is still unresolved. Minorities are represented on a small scale at the national government level as well as at the management level of various political parties. The issue of alienation between the majority and minorities and overcoming negative stereotypes is still problematic and topical.

EDUCATION

The major part of the challenges related to education of national minorities, which were discussed in the Parliamentary Report - 2012 of the Public Defender of Georgia[465], still remains problematic. Quality translation of Georgian manuals in minorities' languages in the schools that provide teaching in national minorities' mother tongue is still not achieved. Moreover, the issue of training new generations of teachers is problematic due to the lack of interest among youth in the pedagogical vocation. The reason for the deficit of teachers at non-Georgian schools is due to the fact that Georgian Universities do not train teachers for the schools teaching in national minorities' languages. The situation gradually increases the dearth of teachers in the schools teaching in national minorities' languages.

In many areas, especially in the region of Kvemo Kartli, the national minorities are keen on enrolling their children in Georgian schools in order to benefit from easier teaching process and study basic Georgian for communication. Despite the great demand, there is a dearth of pre-school education institutions, school inventory, curricula and manuals in the regions.

The use of bilingual textbooks in the schools teaching in national minorities' languages still remains problematic. Considering the concept of bilingual study, 30% of the material in the manuals is available in Georgian, and the remaining 70% is given in the respective language of a national minority. However, not only the minority schoolchildren but most of the teachers also fail to understand the Georgian part of the manuals. This complicates the learning of both the language and the discipline itself. The majority of teachers are either completely unable or unwilling to teach using the bilingual manuals (according to parents and some teachers, the teachers only teach those parts that they comprehend; the Georgian parts of the manuals are either badly translated during lessons or are completely discarded). This impedes the study of various disciplines taught in the national minorities' languages.

In terms of bilingual education, the problems of bilingual teachers, manuals and the methods of bilingual teaching persist throughout the country. Therefore, the programmes of bilingual education need further improvement and training of teachers.

465 The Parliamentary Report of the Public Defender of Georgia, 2012, p. 531.

PASSING NATIONAL ADMISSION EXAMS IN HIGHER INSTITUTIONS BASED ON TESTS IN THE OSSETIAN LANGUAGE

In terms of the protection of the rights of Ossetian community in Georgia, and furthering its civic integration, it is important to carry out appropriate measures in all spheres. All the resources available to the government and the society should be used towards this end. In this regard, the realisation of the right to education by the Ossetian youth in the Georgian educational realm is noteworthy.

On 17 November 2009, the Law of Georgia on Higher Education was amended. Under Article 51 of the Law, the higher educational institutions "within the frames of the unified national exams shall admit students only based on the results of the general skills tests conducted in Azerbaijani, Armenian, Abkhazian and Ossetian languages." The same amendment to the law determined the quotas of the students to be admitted: 5.5% of the students are to be admitted based on the results of general skills tests conducted in Azerbaijani and Armenian; 1.1% of the students are to be admitted based on the results of general skills tests conducted in Abkhazian and Ossetian.

In the application of the above provision, there are hundreds of Azerbaijani and Armenian speaking youth studying in the higher institutions of Georgia. While this is a positive development in terms of civic integration, the provisions are never applied to the Ossetian speaking youth who are willing to pursue higher education. They were not given the opportunity to pass tests in Ossetian in 2010-2013. The Law of Georgia on Higher Education has been amended several times extending the statutory term to ensure conducting exams based on tests in Ossetian. Under the present wording of the Law (concluding provisions, Article 90.23), the above-mentioned provision is bound to be enforced from 2015:

> "Starting from 2015−2016 academic year, the Ministry of Education and Science of Georgia shall ensure the enrolment of the citizens of Georgia in the higher educational institutions based only on the results of general skills tests conducted in Abkhazian and Ossetian."

According to the representatives of the Ossetian community, due to the absence of relevant preconditions, those willing to pursue university education were not able to take part in exams in the last few years.

Representatives of the Ossetian community and the Council of National Minorities functioning under the Public Defender of Georgia have been vocal for years about the enforcement of the above-mentioned provision of the Law of Georgia on Higher Education.

DEVELOPMENT OF CULTURE AND MAINTENANCE OF IDENTITY

With the view of protecting the cultural heritage of national minorities, there are legislative provisions and special programmes in place. In particular, under the Constitution, the state is obliged to further the development of culture and to deepen cultural relations (Article 34.1). This constitutional provision is naturally applicable to all citizens of Georgia on an equal basis, including national minorities which is also stipulated by the Constitution:

> "1. Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognised principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public." (Article 38.1)

In 2005, Georgia ratified the Framework Convention for the Protection of National Minorities. Accordingly, all the provisions of the Framework Convention governing the protection and furthering cultural heritage of national minorities are applicable in Georgia. In particular, Article 5.1 of the Framework Convention reads as follows:

> "1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage."

Under the second paragraph of the same Article,

> "2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against

their will and shall protect these persons from any action aimed at such assimilation."

It follows from the above that vis-à-vis minorities the state is under the obligation of both maintaining their identity and their protection against assimilation.

Article 15 of the Framework Convention imposes an obligation on a state "to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them."

In 2009, the Government of Georgia approved "The National Concept of Tolerance and Civic Integration and the Action Plan for 2009-2014". This document has a separate chapter on "Maintenance of Culture and Identity". According to the document, the objective and the purpose of the document is to maintain cultural identity of national minorities; to protect cultural heritage of national minorities; to support the spirit of tolerance; to further intercultural dialogue and contacts; to facilitate the participation of national minorities in the cultural life of Georgia; to increase the awareness of national minorities' culture, history, language, and religion in society and to present them as cultural values of the country.

The above statutory provisions constitute the legal basis for the protection of national minorities' cultural heritage and for the policies on culture. These provisions must be manifested in the particular programmes that are carried out by respective state agencies.

The programmes that have been implemented and those that are to be carried out in the cultural sphere have great importance for the preservation of both cultural identity and civic integration of a particular ethnicity. In this regard, in 2013, the Ministry of Culture and Protection of Monuments and other organisations carried out numerous programmes but some issues still remain that necessitate special approach and generate special interest due to their significance.

With regard to the protection of national minorities' cultural heritage and identity, the Armenian State Theatre, named after Petros Adamian, and the Azerbaijani State Theatre, named after Heydar Aliyev, are particularly important. However, the buildings of these theatres have been in a deplorable state for years. It is noteworthy that these theatres are among the oldest in the South Caucasus. There are fairly popular companies of actors in both the theatres. Still, the possibilities of these theatres in terms of civic integration are exploited to minimum extent as, due to the disastrous state the buildings are in; spectators practically do not attend the performances. In this case, the effective realisation of the right guaranteed by Article 5.1 and Article 15 of the Framework Convention is impeded.

THE HOUSES OF CULTURE IN THE REGIONS

In the regions, the houses of culture that exist in villages used to play a significant role in the cultural life of villagers. Most of the houses of culture in Kvemo Kartli and Samtskhe-Javakheti (as well as those in other regions) are in a terrible state. The buildings are dilapidated and useless. In the villages that are remote from district centres, these very houses of culture may contribute to the civic integration. It is of course very important that programmes are underway in the capital and in regional centres, however, the population of remote villages are more isolated from the cultural and educational programmes aimed at furthering civic integration. The support for integration programmes in the remote areas should become a priority.

CULTURAL AND CREATIVE CONTACTS WITH OTHER COUNTRIES AND REGIONS

To preserve its own cultural identity and further cultural life, it is important for any national minority of Georgia to be able to maintain close contacts with their respective states, state units and communities. The Azeri and Armenian communities of Georgia have established these relations in the cultural spheres, whereas the ethnic communities of North Caucasus origin, despite the demand for establishing such relations, lack enough opportunities. With the support of the Ministry of Culture, Cherkez House was opened in Tbilisi, which was supposed to encourage cultural relations between Georgia and the people of the North Caucasus. However, it is deplorable that these relations unfolded under the prevailing political tones of the previous years, which considerably impeded the response

from the North Caucasus. There is a demand among the ethnic North Caucasian citizens of Georgia for furthering cultural cooperation among Chechens, Dagestanis and other Caucasian ethnicities residing in Georgia and the respective republics of the North Caucasus. There is also a desire for furthering Georgian and North Caucasus cultural cooperation. The necessity for such cooperation is often pointed out by the Chechen, Ingush, Dagestan and other ethnic groups residing in Georgia. There is also a keen interest for widening cultural relations among different groups of the Georgian society. This process is impeded from time to time, despite the fact that Georgia undertook the respective obligations. In particular, under Article 17.1 of the Framework Convention states:

> "1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage."

Furthermore, under Article 18.2 of the same Convention, "where relevant, the Parties shall take measures to encourage trans-frontier co-operation."

REHABILITATION OF OSSETIAN HOUSE OF TBILISI ETHNOGRAPHICAL MUSEUM

There is an Ossetian House in the Tbilisi Ethnographical Museum named after Giorgi Chitaia. This house contained significant ethnographic material describing the life of Ossetian ethnos. Nowadays the Ossetian House finds itself in a deplorable state, closed for visitors and needs renovation. It is our concern that the issue has not been paid any attention for years. If renovated, the Ossetian House will most likely contribute significantly to the development of cultural developments between Georgians and Ossetians.

ACCESSIBILITY OF MEDIA AND INFORMATION

Since 2013, the Public Broadcaster renewed daily news programmes in the languages of the national minorities. These programmes are prepared in an improved format, which is more appealing to viewers. The programmes in the languages of minorities are broadcast by the Second Channel and telecast by regional Televisions.

Despite the activities of the Public Broadcaster, there are still problems in terms of informing national minorities about current news. Most of the population of Kvemo Kartli and Samtskhe-Javakheti is not well informed by the Georgian news channels about current events of the country, which has ramifications for civic integration. The programmes prepared by the Public Broadcaster fail to cover all the regions populated by national minorities. The measures taken by the Public Broadcaster in terms of ensuring information dissemination to the national minorities are very important. However, these efforts fail to comprehensively inform the national minorities about the currents events of the country. The lack of information hinders civic integration.

The Georgian media seldom covers the issues of national minorities in the context of furthering civic integration. It is obvious that the media takes these issues very superficially. The issue of national minorities surfaces in Georgian media only when there are conflicts, crimes, scandals of some kind or a high-ranking official visits the regions densely populated by national minorities. There is a lack of well-developed and consistent policy in terms of furthering civic integration. It is deplorable that the media resources in terms of facilitating civic integration have not been effectively used for years.

SMALL NATIONAL MINORITY GROUPS

In terms of furthering civic integration and protection of national minorities' rights, larger national minority groups in Georgia have been paid the most attention by the authorities and international organisations in the past few years, which was both important and necessary.

However, it should be noted that less attention has been afforded to those national minorities who are smaller in

number; in particular, the protection of their identity, language, culture, traditions and other ethnic specifications.

We believe that furthering civic integration and support of national minorities in the protection of their identity are of equal value and should be afforded similar significance. Activities in this regard should commence and in some cases continue.

Enabling small national minority groups to study their respective mother tongues within the national secondary education system still remains problematic. Despite numerous requests and promises in the past few years, this problem is still unsolved. There are demands for the study of Ossetian, Ukrainian, Greek, Chechen, Dagestani, Udi, Assyrian, Kurdish and other languages within the secondary education system. In this regard, the study of Ossetian is noteworthy. Though learning of Ossetian existed for years, study of this language in several schools stopped in the past few years, including those schools where this tradition, relevant staff and demand from pupils and parents existed.

It may be concluded that the languages of some numerically small minority groups will disappear in our cities and villages and it is happening in before us, e.g., the above-mentioned Udi language which is spoken only by tens of people in Georgia. There are fewer people in big cities that speak Kurdish, Assyrian and other languages of small minority groups. The competent authorities should pay attention to this issue in time.

ROMAS

According to various data, there are approximately 1500-2500 Romas in Georgia. However, their number could be more. Due to the lifestyle of the Roma, it is difficult to carry out accurate census of the Roma community. Kakheti, Tbilisi, Kobuleti, Akhalkalaki, Kutaisi and Gardabani are densely populated by Romas. Most of the Romas living in Georgia are illiterate. The Romas face many challenges in terms of education, human rights protection, civic integration and other spheres of life. Most of the Romas have no idea about their rights.

The Romas mostly live in extreme poverty. However, only a small part of them receives social benefits allocated for those below the extreme poverty threshold. In case of illness, they very seldom or only in case of extreme situations use a doctor's help. It is also noteworthy that the Romas usually give birth in their private houses, which is explained by their traditions, small income and lack of trust in others. Most of the Romas do not have pension or any other social benefits.

The Romas do not have trust in the public agencies and try to avoid any contacts with them. Some of the Romas acquired I.D.s with the help of NGOs. However, this is not sufficient for their integration.

Most of the Roma community is in a hard social condition and lives in extreme poverty. Only a small part of the community receives social benefits from the state. The major sources of income for other families are small trade, fortune telling, and help from various private individuals. They are not employed in either private or public sector. There has been no precedent that a Roma worked in any public agency.

A great part of Roma children does not go to school. During meetings with them, the Roma children say that they would go to school and learn reading and writing. However, due to the lack of the appropriate documents, the prices of study materials and dire social conditions they are unable to receive education.

There are many negative attitudes and stereotypes towards the Roma. They receive little trust and benevolence from others. The state has so far not implemented any programmes specifically s aimed at supporting the Roma community. It is, however, noteworthy that the authorities positively evaluate the activities carried out by NGOs in this regard. Several organisations implemented support programmes for the Roma Community but it is, however, not sufficient. The Roma community faces the toughest challenges in Georgia and needs to be afforded special care. All spheres of life are problematic for the Roma community.

ETHNOS ON THE VERGE OF EXTINCTION – UDIS

In Georgia, the Udis live in the village of Zinobiani, Kvareli District. Presently, there are approximately 350 Udi in

Georgia. A small group of Udis live in Azerbaijan. Udis believe they are an aboriginal ethnic group of Caucasus and consider themselves to be Albanians.

Presently, the Udis are facing the threat of extinction. The number of Udi speakers gradually decreases. There is an ethnographic museum of Udis and Udi language is taught as an option by a volunteer teacher. This is, however, not enough for the preservation of the language. The language is already seldom spoken even among the Udi families and if this trend persists the Udi language will practically disappear.

We believe that the state should pay attention to this issue and use both its own resources and those of international and donor organisations. It can be said that one of the most ancient languages is disappearing before our very eyes; adequate measures should be taken in order to preserve it.

FREEDOM OF MOVEMENT OF KISTI AND CHECHEN CITIZENS OF GEORGIA

The Chechen and Kisti citizens of Georgia and the Chechen refugees legally residing in the country have been complaining about the problems they face when crossing the Georgian border. According to them, the problems start from the minute a border official enters the data of a Chechen or a Kisti citizen in a computer. They are stopped for hours at the border crossing points, which creates discomfort both for those citizens and other passengers. It is noteworthy that after waiting for a few hours at Tbilisi Airport, M.M. a resident of the village of Duisi, Pankisi Ravine, who was in critical medical condition, fell ill. The passenger was returning home together with relatives after treatment in Belorussia. According to the relatives, they were not offered any explanation for stopping them at the border. As the result of such attitude, the Kisti citizens feel discriminated against on the grounds of their ethnicity and religion; they feel there is a lack of trust in them on the part of the state.

According to the information provided, the Dagestani, Kisti and other citizens of Georgia face problems when their relatives and friends living in the North Caucasus visit them. Many of them are denied entry to Georgia. The border officials cite national security as the reason for the refusal. It is noteworthy that there has been an increase in the number of applications with regards to such allegations.

These incidents are in violation of the constitutional rights of Chechen and Kisti citizens of Georgia. Under Article 22.2 of the Constitution of Georgia, "everyone legally within the territory of Georgia shall be free to leave Georgia". Under Article 22.4, "a citizen of Georgia may freely enter Georgia".

It is desirable in this regard to review the approach of the respective state agencies and the decisions on the restriction of freedom of movement at the Georgian borders to be well reasoned and in compliance with Georgian legislation.

COOPERATION WITH STATE AGENCIES ON THE ISSUES OF NATIONAL MINORITIES

During the reporting period, the Council of National Minorities functioning under the Public Defender held working meetings with the Minister of Reconciliation and Civic Equality, the Minister of Regional Development and Infrastructure, the Minister of Sport, Youth, and the Minister of Culture and Protection of Monuments. It is noteworthy that the meetings of this kind facilitated the exchange of information between the state agencies and national minorities. During such meetings, the national minorities are able to discuss issues that are important for them with high-ranking officials of the ministries and obtain useful information.

The meetings with the Council assist various agencies to receive information about the problems national minorities face, which later becomes the ground for the solution of these problems.

Unfortunately, despite the numerous requests of the Council, no meetings were held with the agencies during the reporting year.

The Council concluded a memorandum with the Ministry of Sport and Youth, which aims at enhancing cooperation between the Council and the ministry.

The Council concluded such memorandums with almost all the ministries. This is a basis for consolidating trust between state agencies and national minorities and enhancing mutually useful cooperation between them. Moreover, close cooperation with state agencies enhances the protection of national minorities' rights and their participation in decision-making process. Under the memorandum, the Ministries undertake the obligation to hold meetings regularly with the Council members and furnish information regarding their activities in the context of tolerance, National Concept and Action Plan of Civic Integration and other programmes planned and implemented by the ministries related to national minorities in general.

***

It should be noted that the inclusion of national minorities and their participation in decision-making processes should be considered to be one of the indicators of civic integration. Furthermore, according to our observations, the full-fledged participation of national minorities in the discussions of issues of national significance for the past ten years and earlier, as well as their participation in decision-making process, is mostly confined to the discussions on the issues of national minorities. The representatives of national minorities seldom participate in the development of the future of the country or current events. The media, authorities, and experts express their interest in the opinions of national minorities only when the subject is related to the minorities themselves. On the other hand, most of the representatives of national minorities volunteer to participate in discussions on minorities only when the subject is related to the particular community. The reasons for this trend are the superficial attitude of our society, media and state agencies and the passive attitude of the most representatives of the national minorities. This type of attitude towards the issue results in low degree of inclusion and lack of realistic forms of integration. Comprehensive civic integration can only be feasible if national minorities fully participate in all processes concerning the entire country. Problems that national minorities face must be acknowledged and accepted by the state and the society as not just the challenges of particular ethnic groups but as those of the entire society, which should be solved with unified efforts. Only in such conditions civic integration will be realistic and efficient.

Recommendations:

To the Ministry of Education and Science

- **to ensure that, in accordance with the Law of Georgia on Higher Education, those who pass Unified National Exams based on general skills tests taken in Abkhazian/Ossetian language are admitted to higher educational institutions, starting from 2015;**
- **It is desirable that various manuals of secondary and higher educational institutions contain information describing the cultural and spiritual heritage of various ethnicities;**
- **to introduce the teaching of the languages of small ethnic minority groups (Ossetian, Ukrainian, Greek, Chechen, Dagestani, Udi, Assyrian, Kurdish, and other languages) in those schools that are located in the cities and regions populated by small national minority groups, and where there is demand from pupils and parents; and**
- **to publish textbooks, lexicons, and conversation booklets in Udi in order to preserve the language.**

To the Ministry of Culture and Protection of Monuments

- **to solve the problem of renovation of the Armenian State Theatre named after Petros Adamian and the Azerbaijani State Theatre named after Heydar Aliyev and support to the respective companies of actors;**
- **to support the renovation of Houses of Culture in the villages densely populated by national minorities and the implementation of the projects aimed at civic integration;**
- **in case of respective proposals and requests, to support the cultural cooperation of the representatives of Chechen, Dagestani and other Caucasus ethnic groups residing in Georgia with the cultural and educational organisations of the respective republics of the North Caucasus and to implement programmes enhancing this cooperation;**

- to restore the House of Ossetia at the Ethnographic Museum named after Giorgi Chitaia and restore its functioning;
- with the purpose of preserving the cultural diversity of Georgia, to implement programmes oriented towards the preservation of small national minority groups' identity; and
- in order to preserve the Udi language, culture and traditions, the Georgian authorities – the Ministry of Education and the Ministry of Culture - should allocate necessary resources and facilitate the inclusion of international organisations and donors in the solution of this problem.

To State Representative – Governor in Kvemo Kartli and Samtskhe-Javakheti

- to support the renovation of the Houses of Culture in the villages densely populated by national minorities and the implementation of projects aimed at civic integration.

To the Government of Georgia

- to have additional programmes in place to ensure news on the events of Georgia is broadcast with adequate scale, duration and contents in the regions populated with national minorities; and
- to elaborate and implement a special programme to support the Roma community in various areas (literacy and skill-training, increase of access to healthcare and social security, facilitation of employment, support to maintaining cultural traditions and awareness raising).

To the Ministry of Internal Affairs

- To ensure that the residents of North Caucasus who have either relatives or business relations in Georgia are refused entry into Georgia only based on well-founded legal reasoning and accurate and confirmed information related to national security; and
- To ensure that the citizens of Georgia of Kisti or Chechen origin or other ethnicities are stopped at the Georgia border only based on well-founded legal reasoning and accurate and confirmed information related to national security and to eradicate any kind of differential treatment.

FREEDOM OF EXPRESSION

Freedom of expression, which encompasses the right to receive and impart information, similar to the previous years, remained one of the priorities of the Public Defender's activities.

Freedom of expression is guaranteed by the Georgian legislation and numerous international instruments, including the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and the International Covenant on Civil and Political Rights of 1966.

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."[466]

The significance of freedom of expression, including unimpaired activity of journalists and the role of internet media, is, inter alia, highlighted in the political declaration and resolutions adopted by the Council of Europe's Committee of Ministers on 7-8 November, at Belgrade Conference.

The Committee of Ministers pointed out two important issues, viz. discussion on collecting and processing individuals' electronic communication data by security bodies and affording bloggers and other media actors the same guarantees of Article 10 of the ECHR as conventional journalists when they act in public interest. [467]

The present report discusses the media environment and the public authorities' efforts to ensure the right of the public to receive information as guaranteed by Georgian legislation.

MEDIA ENVIRONMENT

Free and independent media is indispensable for the efficient functioning of a democratic society. Democratic governance is based on the ability of individuals to take rational decisions, which also necessitates imparting accurate information by media. Media not only facilitates communication, but also reveals problems and raises the issue of the responsibility of public officials. Media is a decisive factor for economic growth as well, as it is responsible for imparting information and facilitates transparency.[468]

It is to be borne in mind that media activities are not unlimited. The European Court of Human Rights maintains that press must not overstep the bounds set, inter alia, for "the protection of the reputation of ... others". It is nevertheless incumbent on the media to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".[469]

The index of free media in terms of freedom of expression was traditionally assessed by NGOs. The establishment of Temporary Investigative Commission by the Parliament of Georgia to study the activities of National Commis-

466 Article 10.1 of ECHR.

467 Freedom of Expression and Democracy in the Digital Age, Opportunities, rights, responsibilities, Committee of Ministers, Council of Europe, Belgrade, 7-8 November 2013, Belgrade.

468 See. http://globopress.wordpress.com [Last visited on 2011.07.02.] The Role of Media in Developing Countries, Conclusion of the working group of International Media Development Centre.

469 Thorgeir Thorgeirson v. Iceland, para. 63.

sion of Communications of Georgia is a positive development. This commission was set up by the resolution of the parliamentary bureau dated 1 May 2 2013. The objective of the commission is to study the alleged violations by the members of the National Commission of Communications of Georgia and prepare draft conclusions and decisions, recommendations and proposals for the parliamentary bureau and plenary sessions. It is also important to ensure that the future activities of the National Commission of Communications of Georgia are in compliance with Georgian legislation and secure the right to freedom of expression to the respective subjects of this right.

According to the 2012 Parliamentary Report of the Public Defender of Georgia, unprecedented number of violations of the rights of media outlets occurred that year, especially during the pre-election period.[470] One of the most significant elements of freedom of expression is the investigation of obstruction of journalists' activities and punishment of the guilty. Therefore, in the reporting period, the Office of the Public Defender of Georgia still focused on the progress of the investigations into alleged violations reported in 2012.

Article 154 of the Criminal Code of Georgia penalises obstruction of activities of a journalist.[471] The existence of such an Article constitutes a high standard for the protection of journalists' rights.

The problem that always persisted in the reports of the Public Defender of Georgia was incorrect categorisation of journalists' rights and ineffective investigation of violations of their rights. In 2013, according to the results of the case-study by the Public Defender's Office, illegal obstruction of journalists' activities in 2012 (including the pre-elections period) were mostly correctly categorised by investigative bodies; proceedings were instituted under Article 154 of the criminal Code of Georgia, which is a positive development.[472]

However, there are still cases where the investigative bodies avoid categorisation of alleged obstruction of journalists' activities under Article 154.[473] Instead such acts are categorised as minor injury to health, or battery,[474] or minor hooliganism[475], etc. In 2012, some of the cases studied by the Office of the Public Defender of Georgia were discontinued due to the elements that constitute a crime not being found, and in other instances investigation is still ongoing.

Unlike 2012, 2013 was not characterised by multiple violations of the rights of media outlets. This is certainly a positive development. However, during the reporting period, the Office of the Public Defender of Georgia studied a few incidents based on the applications filed by journalists or on its own initiative.

The case of Gela Mtivlishvili

Based on the application of Gela Mtivlishvili, Editor of Kakheti News Centre, the Office of the Public Defender of Georgia studied the incident that took place on 27 October 2013, during the presidential elections at Kvareli Municipality, election precinct no. 14. According to Gela Mtivlishvili and the circulated video recording,[476] the head and members of election precinct no. 14, Kvareli Municipality, did not allow G. Mtivlishvili to record the elections and forced him to leave the territory of the election precinct.

The Public Defender of Georgia forwarded the materials available to him to the Chief Prosecutor's Office of Georgia to act upon.[477] According to the correspondence received from the Chief Prosecutor's Office,[478] Gela Mtivlishvili was summoned to the Kvareli District Unit of Kakheti Major Department of the Ministry of Internal

470 Report of the Public Defender of Georgia, 2012.

471 „1. Criminal Code of Georgia, Article 154, reads as follows: Illegal obstruction of a journalist's professional activity, which is forcing him/her to impart information or refrain from doing so. 2. The same act committed while threatening violence or abusing official position.

472 An illegal obstruction of a journalist's professional activity.

473 According to the information provided by the Supreme Court of Georgia, the first instance courts of Georgia found four persons guilty under Article 154 of the Criminal Code of Georgia in two cases in 2013; neither the Court of Appeal nor the Supreme Court examined any cases under Article 154 in 2013.

474 The Criminal Code of Georgia, Article 120 and Article 125.

475 The Code of Administrative Violations of Georgia, Article 166.

476 http://www.youtube.com/watch?v=uzHUIc5JuQY.

477 Letter no. 11/2049 of the Office of the Public Defender of Georgia dated 29 October 2013.

478 Letter no. 13/11030 of the Chief Prosecutor's Office dated 29 November.

Affairs of Georgia on 27 and 31 October 2013 to clarify the allegations in his application.

The case of Saba Tsitsikashvili

During the reporting period, Saba Tsitsikashvili, journalist of Shida Kartli News Centre, applied to the Public Defender of Georgia, accusing the officials of Sakrebulo of Kaspi Municipality of illegally preventing him from performing his work as a journalist.

According to the statement and the video recording given by Saba Tsitsikashvili to the Public Defender of Georgia, on 15 November 2013, the journalists from the News Agency www.qartli.ge were not admitted to the session of Kaspi Municipality's Sakrebulo. R.T. official of Sakrebulo with the help of the security guard tried to expel the journalists from the building. According to Saba Tsitsikashvili, he was not either allowed to enter the building and or later to be admitted to the session.

The Public Defender of Georgia, under Article 21.c) of the Organic Law of Georgia on Public Defender of Georgia, addressed the Chief Prosecutor's Office with a suggestion to investigate[479]. According to the letter of the Chief Prosecutor's Office, dated 1 December 2013, having studied the Public Defender's suggestion and submitted materials, it was concluded that there was evidence of a crime having been committed under the Criminal Code of Georgia. Due to the above-mentioned, it was considered to be inexpedient to institute an investigation on account of the allegations in question.[480]

The European Court has observed on multiple occasions that the most careful scrutiny on the part of the Court is called for when the measures taken by the national authority are capable of discouraging the participation of the press in the public debate on matters of legitimate public concern, or even the measures that make access to information more cumbersome.[481] In a judgment against Hungary, the European Court held that obstacles created in order to hinder access to information of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play their vital role as "public watchdogs" and their ability to provide accurate and reliable information may be adversely affected.[482]

Considering the above-mentioned, it is of utmost importance to ensure that journalists are able to carry out their activities without hindrance and the incidents described above do not take place anymore, especially when it comes to access to information on matters of public interest stored in public agencies.

The case of Radio Hereti

On 21 June 2013, the National Commission of Communications of Georgia announced a tender[483] for obtaining a licence for private radio broadcasting in Tbilisi.[484] Five broadcasting companies took part in this tender; LTD Broadcasting Company Hereti and LTD Energy Group were among them. The National Commission of Communications of Georgia awarded the license to LTD Energy Group.[485]

The Office of the Public Defender of Georgia studied the legality of the tender for issuing a licence for private broadcasting announced by the National Commission of Communications of Georgia on 21 June 2013, and the results thereof. Upon a closer scrutiny of the case file, it was revealed that the requirement of the Law of Georgia on Broadcasting was violated when awarding the licence to LTD Energy Group. In particular, the Director of LTD Energy Group, Kakha Baindurashvili, was also the President of LEPL Chamber of Trade at the same time, which was a violation of the legislation.[486] Therefore, the Public Defender of Georgia requested the annulment of the

479 Suggestion no. 11/2385 of the Public Defender of Georgia dated 20 November 2013.

480 Letter no. 13/11341 of the Chief Prosecutor's Office dated 1 December 2013.

481 See Bladet Tromsø and Stensaas v. Norway, application no. 21980/93, § 64 and Jersild v. Denmark, 23 September 1994, § 35.

482 Tarsasag a szabadsagjogokert v. Hungary, application no. 37374/05, para. 38.

483 Decision no. 403/10 of the National Commission of Communications of Georgia dated 21 June 2013.

484 http://gncc.ge/index.php?lang_id=GEO&sec_id=7070&info_id=114225.

485 Decision no. 529/10 of the National Commission of Communications of Georgia dated 26 August 2013.

486 Article 601 of the General Administrative Code of Georgia.

decision of the National Commission of Communications of Georgia. [487]

In accordance with the decision of the National Commission of Communications of Georgia, dated 15 January 2014, the decision of 26 August 2013 was invalidated.[488] The Section of Administrative Cases of Tbilisi City Court, based on the application of Radio Hereti, announced the decision of the National Commission of Communications of Georgia, dated 26 August 2013, as null and void by its decision of 27 January 2014.[489]

Events unfolded around the Public Broadcaster

When evaluating media environment in the reporting period, the events unfolded around the Public Broadcaster are noteworthy.

On 4 March 2013, the Board of Trustees of the Public Broadcaster conducted a vote of no confidence against the Director General Giorgi Baratashvili, and dismissed from the position. According to the documents published on the official website of the Public Broadcaster, 12 members of the Council attended the session of the Board of Trustees of LEPL Public Broadcaster, which was held on 4 March 2013. [490] One of the members, Zaza Korinteli, participated in the sessions through electronic communication. On 6 March 2013, Zaza Korinteli gave his consent through a notary via electronic communication and declared his vote of no confidence to Giorgi Baratashvili. [491]

The decision of the Board of Trustees was challenged by Giorgi Baratashvili in Tbilisi City Court. On 15 April 2013, the Section of Administrative Cases of Tbilisi City Court upheld the claim of Giorgi Baratashvili and restored him to the position of the General Director.[492]

On 30 August 2013, the Board of Trustees of LEPL Public Broadcaster raised the issue of the vote of no confidence against Giorgi Baratashvili again and declared the vote of no confidence on 6 September 2013.[493]

According to the documents published on the official website of the Public Broadcaster, two members of the Council, Nino Danelia and Natalie Dvali, did not attend the session. They were represented by a former member Levan Gakheladze and a present member Mamuka Pachuashvili through notary certified power of attorney. Mamuka Pachuashvili signed the adopted decision twice in his capacity as the representative of Natalie Dvali and in his own capacity.[494]

It is noteworthy that the Law of Georgia on Public Broadcasting does not provide for participation and voting through proxy at the sessions of Board of Trustees of the Public Broadcaster. The Public Broadcaster is a LEPL, which carries out public authority and enjoys a special legal capacity. This, unlike the legal entities of private law, implies that it is not entitled to carry out activities that are not directly provided for by the legislation governing it. No member of the Board of Trustees of the Public Broadcaster has been authorised by any normative acts to take decisions through proxy.

Moreover, under Article 321.5 of the Law of Georgia on Broadcasting, if a vote of no-confidence in the General Director is not passed by the Board of Trustees, a similar motion shall not be raised for the next six months. As it was mentioned above, the Section of Administrative Cases of Tbilisi City Court, by its judgement of 15 April 2013, held null and void the decision, dated 4 March 2013, of the Board of Trustees of LEPL Public Broadcaster to declare its vote of no confidence to Giorgi Baratashvili. Therefore it should be presumed that the vote of no confidence was declared to the Director General of LEPL Public Broadcaster. Stemming from the aforementioned,

487 Recommendation no. 04-9/3209 of the Public Defender of Georgia dated 30 December 2013.

488 Letter no. 03/101-14 of the National Commission of Communications of Georgia dated 17 January 2014.

489 Judgment of Tbilisi City Court of 27 January 2014 is not final since the statutory term for appeal has not expired.

490 Minutes no. 229 of the hearing of the Board of Trustees of the LEPL Public Broadcaster dated 4 March 2013 and Decision no. 247 of the Board of Trustees of the LEPL Public Broadcaster dated 4 March 2013.

491 Notary Act of 6 March 2013.

492 Minutes no. 235 of the hearing of the Board of Trustees of the LEPL Public Broadcaster dated 29 April 2013 and Decision no. 255 of the Board of Trustees of the LEPL Public Broadcaster dated 29 April 2013.

493 Minutes no. 255 of the hearing of the Board of Trustees of the LEPL Public Broadcaster dated 6 September 2013 and Decision no. 247 of the Board of Trustees of the LEPL Public Broadcaster dated 4 March 2013.

494 Notary Act of 4 July 2011 and Notary Act of 29 August 2013.

the second vote of no confidence conducted on 30 August 2013 amounts to the violation of Article 321.5, which prohibits conducting a vote of no confidence within 6 months of the previous vote.

Based on the above, on 20 December 2013, the Section of Administrative Cases of Tbilisi City Court invalidated the decision by the Board of Trustees of LEPL Public Broadcaster to pass a vote of no-confidence, dated 6 September 2013, against Giorgi Baratashvili. Giorgi Baratashvili was accordingly restored to his position of the Director General of LEPL Public Broadcaster.

During the reporting period, the Law of Georgia on Public Broadcaster was amended. The amendment changed the rule for the formation of the Board of Trustees of LEPL Public Broadcaster. The composition of the Board of Trustees was decreased from 15 to 9 members and new eligibility criteria were added. The amendment concerns the inclusion of the civil society and participation of the Parliamentary Minority party, Parliamentary Majority party, Public Defender and Higher Council of Autonomous Republic of Ajara in the formation of the Board of Trustees. Under the Law of Georgia on Public Broadcaster,[495] two candidates are nominated by the Public Defender, one by Ajara Higher Council, three by the Parliamentary Majority party , and three by the Parliamentary Minority party. However, there have been certain difficulties in the implementation of the aforementioned amendment and the formation of the Board of Trustees is delayed to date.

Under the Law of Georgia on Broadcasting, a member of the Board of Trustees shall be selected through an open competition.[496] Based on the competition, the Special Parliamentary Commission selected 27 candidates out of 68 applicants and presented them to the Parliament, Higher Council of Ajara and the Public Defender of Georgia. The candidates were selected based on a televised public discussion on their professional experience and their t concept of development for the Public Broadcaster.

The Public Defender of Georgia and the Higher Council of Ajara nominated the candidates for the membership of the Board of Trustees to the Parliament of Georgia in accordance with law. As regards the Parliamentary Minority party and Parliamentary majority party, the United National Movement nominated two candidates and the Georgian Dream nominated one candidate instead of three candidates each.

Under the decision of the Parliament of Georgia, dated 27 December 2013, the following became the Members of the Board of Trustees: Ketevan Mskhiladze – candidate nominated by the Parliamentary Minority party; Natela Sakhokia – candidate nominated by the Parliamentary Majority party; Marina Muskhelishvili – candidate nominated by the Public Defender. The following failed to obtain the necessary number of votes: Genadi Geladze – candidate nominated by the Higher Council of Ajara; Ninia Kakabadze – candidate of the Parliamentary Minority party and Lela Gaprindashvili – candidate of the Public Defender. The aforementioned candidates were submitted to the Parliament for approval again on 6 January 2014 and the Parliament approved the Public Defender's second candidate, i.e., Lela Gaprindashvili.

Under the Law of Georgia on Broadcasting, if the Board of Trustees was not formed fully, the competition should be announced again: in case none of the candidates could obtain at least one third of the votes of the full list of the Members of the Parliament and the Board of the Trustees of the Public Broadcaster could not be staffed by nine members, the competition for the vacant positions should be announced again.[497]

It is noteworthy that the Law of Georgia on Broadcasting does not provide for the cases, where the Public Defender of Georgia, Parliamentary Majority and Parliamentary Minority parties and the Higher Council of the Autonomous Republic of Ajara fail to submit the statutory number of candidates for the membership of Board of Trustees. The Law of Georgia on Broadcasting envisages the announcement of an additional round of competition in those cases, where out of nine candidates nominated by the competent authorities, the Parliament of Georgia fails twice to form the Board of Trustees of the Public Broadcaster. Therefore, failure of the Parliamentary Majority and Minority parties to nominate candidates according to their respective quotas was not regulated by law. Under the Law of Georgia on Broadcasting, out of the applicants selected by the Competition Commission, the Public Defender of Georgia, Higher Council of Ajara, and the Parliamentary Majority Minority parties must have selected the statutory number of candidates for the membership of the Board of Trustees; these candidates must have been submitted to the Parliament for approval. Both the Parliamentary Majority and Minority parties failed to follow

495 The Law of Georgia on Broadcasting, Article 24.2.

496 Ibid. Article 25.1.

497 Ibid. Article 26.9.

this statutory requirement. Today's situation is that the existing composition of the Public Broadcaster's Board of Trustees is not capable to reach decisions on the issues falling under its competence.

Furthermore, on 19 February 2014, the Constitutional Court of Georgia admitted the constitutional complaint, lodged by the members of the Board of Trustees of LEPL Public Broadcaster, for the consideration of merits. The Court suspended the application of the provisions of the Law of Georgia on Broadcasting, which governs the new rules of formation, selection and acknowledgement of the authority of the members of the Board of Trustees.[498]

The vote of no confidence in the Director General of the Public Broadcaster and the situation unfolded around the setting up of the Board of Trustees adversely affect the media environment in the country. It may be perceived by people as an attempt of political powers to gain control over the Public Broadcaster. It is, therefore, necessary that everyone involved in the formation of the Board of Trustees should take measures to end the violation of the Law of Georgia on Broadcasting.

FREEDOM OF INFORMATION

The principles of freedom of information and access to information are safeguarded by the Basic Law. i.e., the Constitution, legislative acts and international instruments legally binding Georgia. Despite the aforementioned, there have been numerous incidents of violations of the principle of access to information by the competent officials of the public agencies.

In the reporting period, the Office of the Public Defender of Georgia studied the right to access to public information in two directions: how the right to access to information stored in public agencies is realised; and how the statutory obligation of the public agencies is fulfilled in terms of submitting a report on access to information to the President, the Parliament and the Prime Minister, as well as to publish it in the Legislative Herald of Georgia on 10 December each year.

ACCESS TO PUBLIC INFORMATION

Under Article 41.1 of the Constitution of Georgia, every citizen of Georgia shall have the right to access, in accordance with the procedure prescribed by law, the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secrets. At the same time the constitutional provisions impose a positive obligation on the state to impart information available to it.

Under Article 10.1 of the General Administrative Code of Georgia, everyone may have access to public information available at the administrative body, as well as receive copies unless the information contains state, professional, or commercial secrets or personal data. The provisions governing freedom of information are elaborated in Chapter Three of the General Administrative Code of Georgia.

It is noteworthy that Article 41.1 of the Constitution of Georgia stipulates in express terms that "every citizen of Georgia" is entitled to request information from public agencies. However, the Constitutional Court of Georgia, in its judgment no. 2/3/264, dated 14 July 2006, maintained that "[…] the said provision considers the official information stored in state agencies to be open and entitles every individual and legal entity to become acquainted with it […]."

The analysis of the cases studied by the Public Defender of Georgia in 2013 reveals that citizens were often unable to have access to the public information stored with administrative bodies. During the reporting periods, there were incidents when individuals obtained information stored in public agencies through the Office of the Public Defender; in numerous cases, the state agencies did not respond to the citizens' applications and would reply to the Office of the Public Defender of Georgia that such acts were to be deemed as refusal to provide public information. The cases of wrong interpretation of the legislative provisions in this regard were identified in previous

498 See admissibility decision no.1/1/569 of the Constitutional Court of Georgia dated 19 February 2014, official website of the Constitutional Court of Georgia: http://constcourt.ge/index.php?lang_id=GEO&sec_id=6&info_id=1256.

reporting periods too.[499] It is, therefore, expedient to present a legislative analysis of this situation.

Under Article 177.2 of the General Administrative Code of Georgia, violation of the timeframe for issuing an administrative act by an administrative body shall be considered a refusal to issue the act. The refusal shall be appealed in the manner provided for by this chapter. This provision determines the results of the actions of an administrative agency, where a citizen requests the issue of an administrative act. As regards the cases where a citizen applies to an administrative agency requesting public information, they are governed by Chapter Three of the General Administrative Code and are different from the procedure for requesting an administrative act. Article 41.1 of the General Administrative Code obligates an administrative agency to immediately notify an applicant about the refusal to issue public information. It is noteworthy that the obligation in cases of refusal to issue public information is not limited to notification. Under Article 41.2 of the Code, "if a public agency refuses to issue public information, it shall be obliged, within three days from making the decision, to explain to the applicant in writing his/her rights and appeal procedure, […]."

The case of L.J.

The Public Defender of Georgia found the violation of the right to access to public information in the case of citizen L.J. On 26 June 2013, L.J. applied to the Agency of Management of Agricultural Projects, a non-commercial legal entity, and requested the following information: the number of staff member positions registered with the non-commercial legal entity, viz. Foundation of Agricultural Development as on 1 February 2013; and the number of staff members and contractors registered at the time of filing the application. On 28 June 2013, the agency notified L.J. that the requested information was internal information of the Agency of Management of Agricultural projects and the latter was under no obligation to issue it. Later, based on the application, the Deputy Minister of Agriculture of Georgia requested the agency's director, through written correspondence, to issue the information concerned. However, this request was not upheld by the agency.

Having studied the circumstances of the case, the Public Defender of Georgia found that the Director of the Agency of Management of Agricultural Projects was under an obligation to issue the information requested by L.J. according to the following considerations: the agency is established by the state and one of the sources of its funding is the state budget;[500] its public purpose is to contribute to the development of agriculture in Georgia; and the information was not classified as either personal data, state or commercial information of a confidential nature.

The Public Defender of Georgia established that the non-commercial legal entity, i.e., the Agency of Management of Agricultural Projects, being a public institution and in charge of public authority, in the given case, violated the requirements of the law.[501] In particular, the director of the agency neglected the right to access to public information guaranteed by the Constitution of Georgia and the General Administrative Code of Georgia.[502]

Furthermore, one of the problems pointed out during the reporting period was the failure of public agencies to comply with Article 20 of the General Administrative Code of Georgia. Under the said provision, an administrative body may certify copies of administrative acts or other documents issued by it or its subordinate bodies if the contents of the copy are identical to the original. The Public Defender's Office studied cases, where the public

499 See Report of the Public Defender of Georgia on the State of Human Rights and Fundamental Freedoms Protection in Georgia, 2012, p. 365.

500 Under Article 1.a) of Order no. 2144 of the Government of Georgia on Transfer of Funds into the Account of the Non-Commercial Legal Entity - Agency of Management of Agricultural Projects dated 23 December 2013, the Ministry of Agriculture of Georgia shall transfer into the account of the Non-Commercial Legal Entity - Agency of Management of Agricultural Projects funds that have not been expended within the following programmes approved in accordance with the Law of Georgia on State Budget of Georgia of 2013: Renovation of Agricultural Equipment (programme code: 37 01 03) and Intensification of Agricultural Production (programme code: 37 01 04). The sum of GEL 6,586,300.00 (six million five hundred eighty-six thousand) shall be used for preferential agricultural credit; the sum of GEL 22,400,000.00 (twenty-two million four hundred) shall be used for the co-funding of the companies recycling agricultural products.

501 Under Article 20.5 of the General Administrative Code of Georgia, an administrative body may not carry out an activity that contradicts the requirements of the law.

502 On 11 February 2014, the Public Defender of Georgia, in application of Article 21.e) of the Organic Law of Georgia on Public Defender of Georgia, suggested to the Minister of Agriculture an examination of L.J.'s case and institution of disciplinary proceedings against the Director of non-commercial legal entity, viz., Agency Managing Agricultural Projects that neglected the legal rights of L.J.

information issued by administrative bodies was drafted in violation of the requirements of the General Administrative Code of Georgia.[503]

COMPLIANCE OF 10 DECEMBER REPORTS WITH GEORGIAN LEGISLATION

On 20 September 2013, Article 49 of the General Administrative Code of Georgia was amended to the effect to demand public agencies, except for the President of Georgia and the Parliament of Georgia, to submit annual reports to the Prime-Minister of Georgia, and to publish the said reports in the Legislative Herald of Georgia as well.

Most of the public agencies published their reports on public information on the official website of the Legislative Herald of Georgia as required by the above provision. The Office of the Public Defender of Georgia studied thoroughly the reports of 16 ministries and 15 legal entities of public law submitted to the President of Georgia, the Parliament of Georgia, and the Prime Minister of Georgia. Upon the study of the reports it was revealed that most of them failed to comply with the statutory requirements of Article 49 of the General Administrative Code of Georgia.[504]In particular:

- the reports drafted by administrative agencies, in most of the cases, contain incomprehensive, chaotic information or fails altogether to comply with the requirements of Article 49 of the General Administrative Code of Georgia;
- administrative agencies, in some cases, fail to understand the gist of the requirements of Article 49 of the General Administrative Code of Georgia as well as the principles of freedom of information and access to information:
- in most cases, the reports submitted under the above Article fail to incorporate information about gathering, processing, storing and transferring of personal data to others and public data stored with public agencies;
- in most cases, the reports do not identify those officials of public agencies that took decisions on either upholding or rejecting applications on imparting information;

503 Under Article 20 of the General Administrative Code of Georgia,

3. A document may not be certified when its contents are altered or its wholeness is affected.

4. While certifying a document, a paper of certification shall be drawn up to include:

a) exact name of the document

b) evidence of identity of the copy with the original

c) date and place of certification

d) signature of the responsible official, and official seal.

5. The official seal and signature of the responsible official must be affixed to each page of a certified copy.

6. A duly certified administrative act or other document must be registered with the administrative body.

504 Under Article 49 of the General Administrative Code of Georgia, on December 10 of each year, a public institution shall be obliged to submit a report to the Parliament of Georgia, the President of Georgia and the Prime Minister of Georgia, and publish the same in the Legislative Herald of Georgia on:

a) the number of applications submitted to a public institution to access public information and making amendments to public information, as well as the number of decisions on rejecting such applications;

b) the number of decisions on granting or rejecting applications, the name of the public servant making the decisions, as well as the decisions on closing its own session by a collegial public institution;

c) the public databases, and collecting, processing, storing and transferring of personal data by public institutions to others;

d) the number of violations of the requirements of this Code by public servants, and imposing disciplinary fines on the responsible persons;

e) the legislative acts used by a public institution as bases for refusing to issue public information, or when closing the session of a collegial public institution;

f) appealing decisions to refuse issuing public information; and

g) the costs, including the amounts paid in favour of a party, related to processing and issuing information by a public institution, as well as to appealing decisions to refuse to issue public information or to close the session of a collegial public institution.

- in most cases, the reports fail to refer to those legislative acts that served as basis for the public agencies to reject an application on imparting information; to decide about processing and imparting information; in most cases, the reports do not contain the information about the expenditure of appeals of the decisions about refusal to release public information, holding a session of a public collegial agency in camera. The reports do not incorporate information about the expenditure borne to the benefit of a party either.

It is clear from the analysis of the reports by the Office of the Public Defender of Georgia that most of the public agencies fail to adequately comply with the requirements of Article 49 of the General Administrative Code of Georgia and to fulfil the obligations the said provision imposes.

Recommendations:

To the Chief Prosecutor's Office of Georgia and to the Ministry of Internal Affairs of Georgia

- **to duly classify the cases of obstructing a journalist's activities under Article 154 of the Criminal Code of Georgia; to institute investigation into each case of obstruction of a journalist's activity, and ensure timely and effective investigation.**

To the Parliament of Georgia

- **to form the Board of Trustees of LEPL Public Broadcaster in accordance with requirements of the Law of Georgia on Broadcasting;**
- **to carry out the necessary measures to ensure that, under Georgian legislation, administrative responsibility is imposed on account of illegal refusal to provide public information; and**
- **to carry out legislative amendments to force the public agencies to provide, comprehensive reports on 10 December every year on the implementation of the regulations governed by Chapter 3 of the General Administrative Code of Georgia to the President of Georgia, the Parliament of Georgia, and the Prime Minister of Georgia, in accordance with Article 49 of the General Administrative Code of Georgia.**

To the competent agencies

- **to carry out the necessary measures for the ratification of the Council of Europe Convention of 18 June 2009 on Access to Official Documents in order to ensure that the standards introduced in the Convention act as an additional legal requirement for public agencies in terms of providing an access to official documents.**

FREEDOM OF ASSEMBLY AND DEMONSTRATIONS

Freedom of assembly and demonstration is guaranteed by national legislation: the Constitution of Georgia, the Law of Georgia on "Assemblies and Demonstrations" and numerous international instruments, inter alia, by Article 11 of the European Convention on Human Rights, and Article 21 of the International Covenant of Civil and Political Rights.

The state has not only a negative obligation not to interfere with the exercise of the right to assembly and demonstration but also a positive obligation to ensure its full realisation. The state is obliged, inter alia, to protect the participants of peaceful assembly from any other individual or a group of individuals attempting to disrupt the demonstration.

There were no amendments made to the national legislation governing assemblies and demonstration in 2013. Therefore, the recommendations given to the authorities in the Parliamentary Reports of the Public Defender of Georgia of 2011-2012 are still on the agenda. The fulfilment of these recommendations will contribute to the harmonisation of the Georgian legislation with international standards. The shortcomings of the Law of Georgia on the Assemblies and Demonstrations are given in detail in the Report of the Public Defender of Georgia of 2011 and these shortcomings remain to be topical.

The rules for holding spontaneous assemblies still remain beyond regulation of the Law of Georgia on Assemblies and Demonstrations. In those cases, where it is impossible for the participants of assemblies to give prior warning to the relevant authorities, the state is still obliged to protect the participants of such gatherings.[505] The necessity for the regulation of spontaneous assemblies is pointed out in the Opinion of the Venice Commission, dated 14-15 October 2011, prepared on the amendment of the Law of Georgia on Assemblies and Demonstrations.[506]

During the reporting period, several large-scale assemblies were held, most of which were conducted without violations. Unlike in the previous years, no incidents became known to the Public Defender of Georgia in 2013 about use of disproportionate force and/or unlawful disruption of assemblies by authorities. This is certainly a positive development.

There have been, however, incidents when the authorities failed to effectively react to protect the freedom of assembly and demonstration. The Office of the Public Defender of Georgia studied several cases revealing the failure of the authorities to fulfil their positive obligation when counter demonstrators behaved aggressively towards the participants of a peaceful assembly, and/or police officers allegedly committed disciplinary violations.

On 1 May 2013, some students organised a peaceful demonstration to celebrate the International Day of Workers. There is a video footage of this assembly[507] showing that students started a peaceful procession from the yard of the first building of Tbilisi State University. The procession moved to Marjanishvili Square and later to Rustaveli Avenue. In the end of the procession, due to the number of the participants, some demonstrators stepped onto the road. The policemen requested the students to return to the pavement. Some of the demonstrators did not obey

505 Guidelines on Freedom of Peaceful Assembly - Strasbourg- Warsaw, 9 July 2010, Study no. 581/2010, CDL-AD(2010)020 – European Commission for Democracy Through Law (Venice Commission), OSCE/ODIHR p.15.

506 Final Opinion on the Amendments to the Law On Assemblies And Manifestations Of Georgia, Adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), CDL-AD(2011)029, Strasbourg, 17 October 2011.

507 http://www.youtube.com/watch?v=X9y3dtmKX2Q.

the police officers' requests. Video and photo coverage circulated by media confirms[508] that this was followed by use of disproportionate physical force by the police. 37 demonstrators were arrested.[509] The circulated video and photographic material also confirms that some persons clad in civilian clothing took part in arrests. It is obvious from the footage that the law enforcement officers failed to give warning to the demonstrators to stop the gathering in due time.[510]

The European Court of Human Rights reiterated numerous times that any demonstration in a public place may cause certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.[511]

The temporary and partial occupation of some part of the road at the end part of the demonstration held on 1 May 2013, which possibly caused some traffic disruption, could not serve as the ground for the use of force and the disruption of the demonstration. Even if some of the demonstrators failed to follow the law, it could not justify the disruption of the assembly. It is noteworthy that a warning was not given to the demonstrators despite the statutory requirement to do so.[512] The police did not react to the aggression displayed by the persons in civilian clothing towards the demonstrators and their participation in the arrests. This can be evaluated as the continuation of the deplorable practice that existed for years.

On 17 May 2013,[513] NGOs Identoba and Women's Initiatives Support Group planned to dedicate a demonstration to the international day against homophobia and transphobia in Tbilisi, on Rustaveli Avenue. The NGOs notified Tbilisi City Hall and the Ministry of Internal Affairs in advance.[514] A few days prior to 17 May, counter-demonstrators, including clergymen, announced to hold a demonstration on Rustaveli Avenue. According to the video footage circulated by media[515] and the demonstrators' comments,[516] there were law enforcement officials and patrol police deployed on Rustaveli Avenue. The law enforcement bodies had arranged cordons to separate the demonstrators and counter-demonstrators. The law enforcement officers were not armed or carrying special equipment. Supporters of Identoba and LGBT group gathered on Liberty Square. However, the demonstration did not even start when the counter-demonstrators mostly using force disrupted the police lines and charged the demonstrators.[517]

The LGBT activists and their supporters were removed for safety reasons by the representatives of the Ministry of Internal Affairs using minibuses and buses. The video recording shows that several demonstrators sustained injuries, as did some patrol police officers. Among the victims was a journalist of Radio "Fortuna". It is evident from the circulated video that[518] the counter-demonstrators, among whom some were clergymen, were particularly aggressive towards the demonstrators. In some cases, extremism and hate speech took place. The Counter-demonstrators were chasing the minibuses by which police tried to remove the demonstrators. After 17 May, the Office of the Public Defender of Georgia was informed by the representatives of NGOs, Women's Initiatives Support Group and Identoba and other participants of the demonstration, of the violence they were subjected to.[519]

508 http://www.youtube.com/watch?v=HhiWeY2cit4.

509 On 13 June 2013, Tbilisi City Court finalised the examination of the cases of the persons arrested in administrative proceedings on 1 May 2013. Under the Court's ruling, an administrative fine of GEL 400 was imposed on six demonstrators, GEL 100 on 9 demonstrators and 18 demonstrators were exempted from administrative responsibility and were given a verbal notice instead; the proceedings were discontinued with regard to four persons due to the absence of a violation.

510 http://www.youtube.com/watch?v=-O8N-OwYMKs.

511 Balcik v. Turkey, judgment of the European Court of Human Rights, dated 29 November 2007, para. 52; Ashughyan v. Armenia, judgment of the European Court of Human Rights, dated 17 July 2008, para. 90.

512 The Law of Georgia on Assemblies and Demonstrations, Article 13.

513 With regard to the events on 17 May 2013 and thereafter see in detail in the chapter on sexual minorities.

514 http://identoba.com/17may/.

515 http://www.youtube.com/watch?v=zn8PHSCncSU.

516 Comments of citizen T.S. given on 28 May 2013.

517 The following representatives of the Public Defender of Georgia monitored the demonstration: A. Abashidze, A. Arganashvili, G. Garsevanishvili and N. Tsintsadze.

518 http://www.youtube.com/watch?v=bF8VZs3cFQY.

519 Comments of citizens: N.G., dated 8 July 2013; M.K., dated 20 May 2013; S.A., dated 22 May 2013; M.J., dated 20 May 2013.

In the case of Arzte fur das Leben v. Austria, the European Court of Human Rights held that, "a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate (para. 32). In this case, the Court opined that Genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be."[520]

Positive obligation does not imply that a state is supposed to attain a particular outcome. It means taking all necessary measures by authorities in order to avoid the violation of a right or the threat thereof. Therefore, the state must employ all available means in order to ensure that several demonstrations held at the same place and time, and contradict each other in substance, are conducted peacefully and without recourse to violence. Article 3 of the Law of Georgia on Policing reads as follows:

> "Police of Georgia (hereinafter the "police") is the executive body of law enforcement within the ministry, carrying out the measures of preventing and reacting to violations within the competences laid down by the Georgian legislation with the view of maintaining public order and safety."

The above provision determines in express terms the role and major functions of the police being a body of the executive. In the given case, the very officials of the patrol police, as the representatives of the executive, had a positive obligation to maintain the peaceful nature of the assembly and prevent any violations.

It is positively evaluated that with the active involvement of the law enforcement officers, on many occasions, numerous demonstrators were protected against the aggression of counter-demonstrators. However, the Ministry of Internal Affairs of Georgia, despite its attempts, still failed to ensure necessary measures to enable LGBTs and their supporting NGOs to exercise their constitutional right to assembly and to hold a demonstration.

It is noteworthy that the demonstrations on 18 May 2013[521] in Tbilisi, in the area adjacent to the Parliament, and on 24 May 2013[522] in the garden of Dedaena, were peacefully conducted. These demonstrations were held in protest to the violence displayed on 17 May. In both occasions, slight verbal confrontations took place between opposing groups, which were effectively controlled by law enforcement officers.[523]

The right to assembly and demonstration implies the positive obligation of the state to investigate every incident of violence that took place on 17 May and during the subsequent events. These obligations will be fulfilled and similar occasions will be prevented only in the case of due qualification of the actions. Furthermore, it is part of the state's obligations to determine and punish culprits. According to the information available to the Office of the Public Defender of Georgia, criminal investigation was instituted regarding the events of 17 May under Article 161 of the Criminal Code of Georgia (infringement of the right to assembly and demonstration).[524] However, the video and photo footage of the 17 May events, the comments obtained from victims and the information of the representatives of the Public Defender of Georgia confirm that the events unfolded on 17 May 2013 and later amounted to the crimes against a person as defined by the Criminal Code of Georgia.

520 X and Y v. The Netherlands, judgment of the European Court of Human Rights, dated 26 March 1985, para. 23.

521 Demonstration against violence, Netgazeti, 18.05.2013,
http://www.youtube.com/watch?v=Wd2SwwmqR0Q.

522 Demonstration – "No to Theocracy" in the garden of Dedaena, Netgazeti, 24.05.2013.
http://www.youtube.com/watch?v=CjEmbJdv3g0; two demonstrations in the garden of Dedaena, TV-Maestro coverage, 24.05.2013 http://www.youtube.com/watch?v=EdXxkuPn0Hs.

523 Two demonstration in the garden of Dedaena, TV-Imedi coverage, 24.05.2013 http://www.youtube.com/watch?v=K3LirhCSqZ8; Two demonstration in the garden of Dedaena, TV-Maestro coverage, [Last seen on 24.05.2013]; http://www.youtube.com/watch?v=EdXxkuPn0Hs.

524 Charges were brought against five counter-demonstrators, including two clergymen. The charges against one of the clergymen were dropped during a court hearing on 1 August 2013. The examination of the merits at Tbilisi City Court started on 15 August 2013. However, the trial is not finalised to date. The proceedings at Tbilisi City Court are monitored by the representatives of the Public Defender of Georgia.

It needs to be mentioned in this regard that no investigation was conducted and no sanctions were imposed on those responsible for the disruption of the demonstration and display of aggression, hatred and physical abuse towards peaceful demonstrators on 17 May 2013.[525]

Insufficient protection measures were taken by the law enforcement bodies on 20 July 2013 in Zugdidi. The political party United National Movement held a primer in Shalva Dadiani Theatre. Hundreds of demonstrators gathered in front of the theatre to express their protest. According to the information obtained by the Office of the Public Defender of Georgia,[526] the NGO Protect Georgia applied to Zugdidi Municipality Gamgeoba on 19 July 2013 and notified about their desire to conduct a demonstration on the area adjacent to Shalva Dadiani Theatre protesting the primer of United National Movement. On 20 July, the law enforcement officials were mobilised on the spot.

The Law of Georgia on Assemblies and Demonstrations provides for the obligation to notify local self-government executive bodies if a demonstration is planned on a road or is going to impede traffic. Under Article 8.1 of the Law, "the prior notification on organising and holding of an assembly or demonstration shall be filed with a local self-government executive body no later than five days before the intended date of demonstration." The same Article determines the circumstances, which need to be referred to in the prior notification. From the study of the documentation submitted, it is concluded that NGO Protect Georgia in its letter of 19 July 2013 failed to mention the relevant statutory circumstances.[527] As the counter-demonstration was planned to be conducted on a road, the letter of notification should have been sent to the Zugdidi Municipality five days in advance of holding the demonstration.

The circulated video and photographic materials[528] confirm that the demonstrators physically abused the members of political party United National Movement. The demonstrators pelted the primer's participants with stones and bottles and damaged the vehicles of the representatives of the United National Movement.

The law enforcement officials arrested 12 demonstrators. Zugdidi District Court imposed a fine of GEL 100 on each of these individuals for the commission of an administrative violation under Article 166 of the Code of Administrative Violations.[529] According to the Ministry of Internal Affairs of Georgia,[530] investigation has been instituted into the incident of damaging the vehicles of the representatives of the political unity United National Movement. [531]

Despite the fact that the Ministry of Internal Affairs of Georgia was informed about the number, demands and disposition of the demonstrators to gather in front of the theatre in Zugdidi, the concentration of the law enforcement officers and the measures taken by them on the spot were not enough to ensure the safety of those gathered in the theatre. The video coverage shows that the police failed to separate the members of the United National Movement and their supporters from their opponents so as to avoid physical confrontation.

On 8 January 2014, some citizens gathered in the adjacent area of the Patriarch's residence to express their protest regarding the part of the Christmas epistle read out by the Patriarch of Georgia on children born through surrogacy and in-vitro conception.[532] To oppose these demonstrators, another group of citizens gathered at the same place. Physical altercations broke out between the supporters of the Patriarch's opinions read out in the epistle and the opponents of these ideas. The videos circulated through media and the comments taken by the representatives of the Public Defender of Georgia from the demonstrators confirm that the law enforcement officers were active only in case of physical altercation and tried to separate opponents. However, they have not taken the necessary measures to prevent the confrontation.[533]

525 See the Parliamentary Report of the Public Defender of Georgia, 2012, p. 347.

526 Letter no. 05-1/1668 of Zugdidi Municipality Gamgeoba, dated 20 August 2013.

527 Idem.

528 Scandalous Primer in Zugdidi, http://www.youtube.com/watch?v=j-RmU9PK2gk.

529 №Letter no. 1853873 of the Ministry of Internal Affairs of Georgia, dated 18 September 2013.

530 Idem.

531 Idem.

532 Despite the fact the demonstration was held in 2014, considering the importance of the issue, the Public Defender of Georgia deemed it necessary to point it out in the report of 2013.

533 Two demonstrations and an incident at Patriarch's Residence. First Channel, Moambe, 08.01.2014, http://www.youtube.com/watch?v=6T9gvfecxvI; Representatives of the Public Defender of Georgia: M. Liparteliani and E. Skhiladze monitored the

The patrol police arrested four counter-demonstrators under Article 166 of the Code of Administrative Violations. As the result of the examination of the merits by Tbilisi City Court, on 9 January 2014, a fine of GEL 100 was imposed on three arrestees and one individual was issued with a warning. In conclusion, the police failed on 8 January too to take appropriate measures to separate counter-demonstrators and to prevent physical altercation.

On 17 May 2013, 20 July 2013, and 8 January 2014, the respective two groups engaging in physical confrontation had opposing ideas. The positive obligations of the state in such cases are to take adequate measures to ensure that both groups have the possibility to express their opinions without resorting to violence. The European Court of Human Rights has held numerous times that the effective exercise of the right to assembly is not confined to the duty of the state to not interfere. The state has a positive obligation too to ensure effective freedom of peaceful assembly.[534] This obligation is of particular importance for those having a different opinion or belonging to minority groups. However, during the events unfolded on 17 May 2013, 20 July 2013, and 8 January 2014, the state failed to adequately fulfil this obligation.

In the reporting period, there were several incidents where the officials of the Ministry of Internal Affairs of Georgia violated the provisions of the Ethics of the Police of Georgia with regard to the participants of peaceful assemblies.

On 7 July 2013, a few hours ahead of the friendly football match between Tbilisi's Dynamo and Moscow's Dynamo members of the NGO Club Free Zone, it was learned through information channels that some Members of Russia's Duma were attending this game as honourable guests. Half an hour before the end of the game, up to 30 members of Free Zone assembled at the VIP exit of Dynamo Arena, on Tsabadze Street, to protest. They were holding placards which had the slogans – "Samachablo and Abkhazia Are Georgia!" and "Occupant MPs, Leave Georgia!"

According to the demonstrators, traffic was stopped during the game. Therefore, the youths took to the sidewalk and held up their placards. The law enforcement officers were located right in front of them. At that time, there was no tension between the demonstrators and the policemen. Tension started to mount after the end of the game between the demonstrators and the police officers. By this time a rather large group of policemen had been mobilised on the spot. The video footage circulated by the media[535] shows that the law enforcement officers called upon the demonstrators to move to sidewalk and they obeyed. However, the policemen took away the placards from the demonstrators and tore them.[536] The documented material obtained by the Office of the Public Defender of Georgia shows[537] that the officers of the Ministry of Internal Affairs of Georgia arrested three demonstrators under Article 166 of the Code of Administrative Violations of Georgia; on 9 January 2014, Tbilisi City Court imposed on each of them a fine of GEL 100.

The Public Defender of Georgia referred to the Ministry of Internal Affairs of Georgia[538] regarding the alleged breach of the ethics provisions by police and submitted the available video footage. [539]

The officials of the Ministry of Internal Affairs of Georgia violated the rules of ethics with regard to the demonstrators on 30 November 2013 as well, when NGO Club Free Zone held a demonstration with the slogan "Vano has built this". The assembly was held next to the District Units of Tbilisi Police. The video footage shows that Head of Krtsanisi District Unit of the Ministry of Internal Affairs of Georgia did not allow the demonstrators to paint the slogan on the place assigned for them and tore their placard. Based on the referral of the Public Defender of Georgia regarding this incident,[540] according to the information received from the Ministry of Internal Affairs of Georgia, the relevant officials have not been disciplined; however, they were given strong warning to strictly

demonstration and interviewed the demonstrators on the spot.

534 Wilson and the National Union of Journalists and Others v. the United Kingdom, judgment of the European Court of Human Rights, dated 2 July 2002, para. 41 and Ouranio Toxo v. Greece, judgment of the European Court of Human Rights, dated 20 October 2005, para. 37.

535 See http://www.youtube.com/watch?v=u7AkNa9d-hQ.

536 See http://www.youtube.com/watch?v=Pb4ct6rrXHs.

537 Letter no. №3-0214/282492 of Tbilisi City Court, dated 29 July 2013.

538 Letter no. 04-9/2752 of the Office of the Public Defender of Georgia, dated 11 December 2013.

539 According to the letter of Inspectorate General of the Ministry of Internal Affairs of Georgia, dated 27 February 2014, the inspectorate is in the process of conducting internal review.

540 Letter no. 04-9/2751 of the Office of the Public Defender of Georgia, dated 11 December 2013.

follow the requirements stipulated by the Police Ethics Code of Georgia when dealing with citizens.[541]

The representatives of the Public Defender of Georgia monitored the peaceful assemblies that were held numerous times during the reporting period, protesting against the construction of Khudoni Hydro Plant. All of these demonstrations were conducted without breaching the right to assembly and unnecessary escalations. The officials of the Ministry of Internal Affairs of Georgia efficiently ensured the realisation of the right to assembly by the demonstrators.

The cases examined by the Public Defender of Georgia during the reporting period reveal that the situation in terms of freedom of assemblies and demonstrations has considerably improved in the country, which is positively evaluated. However, in isolated cases, the law enforcement bodies failed to take appropriate and adequate measures for the protection of demonstrators or in some cases the police used disproportionate force or violated the rules of ethics.

To date, the cases have not been finalised or judgments have not become final regarding mass violations of human rights during assemblies and demonstrations held on the following dates: 7 November 2007,[542] 15 June 2009,[543] 3 January 2010[544], and 26 May 2011.[545]

According to the information submitted to the Office of the Public Defender of Georgia by the Office of the Chief Prosecutor of Georgia on 4 March 2014, there is a criminal investigation undergoing regarding the events unfolded on 15 June 2009 in the area adjacent to the Major Unit of the Ministry of Internal Affairs of Georgia; this investigation had been launched regarding the events of 26 May 2009 under Article 226 of the Criminal Code of Georgia (conspiring a group action breaching public order or active participation therein), based on the incidents of altercations between demonstrators and police officers. The crime defined by Article 226 of the Criminal Code of Georgia implies conspiring a group action that breaches public order or is related to the express failure to obey legal requests of a representative of the authorities; or disrupts transport, a company, an establishment or an institution; as well as participation in any of these actions.

Numerous pieces of evidence in the form of photo and video footages show that a peaceful assembly was disrupted with the use of force and demonstrators were subjected to violence on the part of law enforcement officers.

The Report of the Public Defender of Georgia of the first half of 2009 addresses the alleged commission of crimes by law enforcement officers under Article 333 (abuse of official power) and Article 144 (inhuman or degrading treatment) of the Criminal Code of Georgia.[546]

It is a negative fact that in the course of this period the Office of the Chief Prosecutor of Georgia has been unable to duly qualify these events under the Criminal Code of Georgia and criminal investigation has been delayed to date.

541 Letter no. 2631613 of the Ministry of Internal Affairs of Georgia, dated 26 December 2013.

542 According to the letter of the Chief Prosecutor's Office, dated 4 March 2014, the investigative unit of the Chief Prosecutor's Office is conducting criminal investigation into case no. 0607835 on the incident of inflicting bodily injury to the demonstrators protesting on 7 November 2007, in Tbilisi, on Rustaveli Avenue and Riké area, under Article 118.3 of the Criminal Code of Georgia.

543 Letter of the Chief Prosecutor's Office, dated 4 Mach 2014.

544 According to the letter of the Chief Prosecutor's Office, dated 4 Mach 2014, the investigative unit of the Chief Prosecutor's Office is conducting criminal investigation into case no. 074118003 on the incident of disruption of war veterans' demonstration, under Article 147 (premeditated illegal arrest or detention); Article 333 (abuse of official power), Article 125 (battery), Article 341 (official forgery) of the Criminal Code of Georgia.

545 According to the letter of the Chief Prosecutor's Office, dated 11 December 2013, the investigative unit of the Chief Prosecutor's Office is conducting criminal investigation into three cases: the incidents of abuse of official power by officials of the Ministry of Internal Affairs of Georgia, under Article 333.1 (abuse of official power), the facts of abuse of official power by policemen during the arrest of a demonstrator Nika Samkharadze on Rustaveli Avenue, under Article 333.1 (abuse of official power); and on the death of Nikoloz Kvintradze and Suliko Asatiani on Rustaveli avenue, under Article 115 of the Criminal Code of Georgia (compelling to commit suicide). Moreover, on 28 May 2013, former Minister of Internal Affairs of Georgia, Ivane Merabishvili was charged with Article 333.3b)-c) (abuse of official power). The consideration of the merits is pending to date before Tbilisi City Court.

546 See the Report of the Public Defender of Georgia, 2009, First Part, and pp. 132–136.

Recommendations:

To the Parliament of Georgia

- **to amend the Law of Georgia on Assemblies and Demonstrations to the effect of bringing it in compliance with recommendations given in the Parliamentary Report of the Public Defender of 2011.**

To the Ministry of Internal Affairs of Georgia

- **to provide training sessions for the staff of the Ministry of Internal Affairs of Georgia on skills of crowd management and crowd control.**

To the Chief Prosecutor's Office of Georgia

- **to conduct effective investigation into the alleged violations of the right to assembly and demonstration and into any alleged violence against participants of peaceful assemblies;**
- **to ensure correct classification of all crimes committed involving either discrimination or persecution on any grounds; and**
- **to ensure timely investigation of the mass violations of human rights on 7 November 2007, 15 June 2009, 3 January 2011, and 26 May 2011.**

FREEDOM OF MOVEMENT

Freedom of movement is an indispensable condition for the free development of a person[547] and it is guaranteed by the legislation of Georgia and international instruments.

Under Article 22 of the Constitution of Georgia:

> "1. Everyone legally within the territory of Georgia shall have the right to liberty of movement and freedom to choose his/her residence.
>
> 2. Everyone legally within the territory of Georgia shall be free to leave Georgia.
>
> 3. These rights may be restricted only in accordance with law, in the interests of national security or public safety, protection of health, prevention of crime or administration of justice that is necessary for maintaining a democratic society.
>
> 4. A citizen of Georgia may freely enter Georgia."

During the reporting period, the Office of the Public Defender of Georgia studied numerous alleged violations of the freedom of movement, or consequent alleged violations of the right to respect for private and family life with regard to both Georgian citizens and foreign nationals.

REGARDING THE RIGHT OF FOREIGN NATIONALS TO ENTER GEORGIA

It can be concluded, based on the analysis of the provisions of the Law of Georgia on Legal Status of Aliens and Stateless Persons and the relevant jurisprudence of the European Court of Human Rights, that there is no such right as to enter a particular country and the refusal of entry by a country does not amount to the violation of freedom of movement per se.

The situation changes, however, when a person concerned has family ties within the respective country and the refusal of entry amounts to interference with either private and/or family life. Furthermore, human rights standards limit the authorities when the refusal of entry is followed by the deprivation of liberty with the deportation of the respective alien.[548]

When the refusal of entry is followed by the restriction of basic human rights, the authorities are under the obligation to observe more detailed procedures to ensure that those rights are respected. The European Court recognises that the use of confidential material may be unavoidable where national security is at stake. This does not mean, however, that the national authorities can be free from effective control by the domestic courts whenever the national authorities choose to assert that national security and terrorism are involved. There are techniques that can be employed which both accommodate legitimate security concerns about the nature and sources of intelligence information and yet accord the individual a substantial measure of procedural justice.[549]

Article 13 of the Law of Georgia on Legal Status of Aliens and Stateless Persons governs the procedures for entering Georgia and Article 14 provides for the grounds for refusing entry into Georgia

547 General Comment no. 27 to the International Covenant on Civil and Political Rights.

548 Liu v. Russia, application no. 42086/05, judgment of the European Court of Human Rights of 16 December 2007; Dalea v. France, application no. 964/07, decision of the European Court of Human Rights of 2 February 2010.

549 Idem.

Under Article 14.1.e) of the Law of Georgia on Legal Status of Aliens and Stateless Persons, an alien may be refused entry into Georgia,

> "if his/her stay in Georgia poses a threat to the public order and state security of Georgia, the protection of the health, rights, and legitimate interests of citizens of Georgia and other persons residing in Georgia".

Article 3 of the Law provides for the general principles and contains two relevant provisions. Under Article 3.e),

"An alien who has been refused leave to cross the state border of Georgia may appeal such a decision."

Under Article 3.1.g), the Georgian legislation on aliens respects and protects the principle of family unity.[550] It is noteworthy that the Law does not further elaborate this principle.

Article 58 of the Law concerns the adoption of a decision to expel an alien. Under Article 58, the following circumstances must be taken into account:

the duration of an alien's lawful residence in Georgia, and his/her ties with Georgia; and

possible implications for an alien's family or for individuals residing with him/her.

It would only be natural that the same circumstances – ties with Georgia or implications for the family - should be taken into consideration in case of those aliens seeking the leave to enter Georgia. However, the Law does not obligate a competent body of the Ministry of Internal Affairs of Georgia (unlike the expulsion procedure) in express terms to assess an alien's ties with Georgia before refusing him/her to cross the border.

In the case of Liu v. Russia,[551] the European Court reiterated that no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention. As a matter of well-established international law and subject to its treaty obligations, a state has the right to control the entry of non-nationals into its territory. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention.[552]

In the case of Dalea v. France, the European Court held that if an applicant has professional ties and interests in the country, the refusal of entry may amount to the interference with the right to respect for private life.[553]

It is clear from the jurisprudence of the European Court of Human Rights[554] that authorities should bear in mind the following circumstances when deciding entry into country by aliens and stateless persons:

if a person concerned has professional ties and interests in the country, refusal of entry may amount to the interference in private life. However, the applicant must show the ramification of interference in private life;

domestic law must afford a measure of legal protection against arbitrary interference by public authorities with the rights guaranteed by the Convention. However, the states enjoy wider margin of appreciation when it comes to the decision on the measures of protecting an individual against arbitrariness;

the use of confidential material may be unavoidable where national security is at stake. This does not mean, however, that the national authorities can be free from effective control by the domestic courts whenever the national authorities choose to assert that national security and terrorism are involved. This may imply examination of the confidential information by the courts;

there must be a mechanism in place, which will enable national courts to scrutinize the facts underlying a decision of the executive and at the same time will safeguard the interests of national security.

The Office of the Public Defender of Georgia studied the applications of citizen of the Russian Federation Kh.I.

550 The Law of Georgia on Legal Status of Aliens and Stateless Persons, Article 3.1.g).

551 Liu v. Russia, application no. 42086/05, judgment of the European Court of Human Rights of 16 December 2007.

552 Ibid. para. 49.

553 Dalea v. France, application no. 964/07, decision of the European Court of Human Rights of 2 February 2010.

554 Liu v. Russia, application no. 42086/05, judgment of the European Court of Human Rights of 16 December 2007, paras. 56–57 and 63.

and of the citizen of UAE Kh.S. On numerous occasions, invoking Article 14.e) of the Law of Georgia on Legal Status of Aliens and Stateless Persons, the officials of the Ministry of Internal Affairs of Georgia refused both individuals the leave to enter Georgia.[555] It is noteworthy that both the applicants' family members reside in Georgia and Kh.I. has a permanent residence card. Despite numerous requests[556], the Ministry of Internal Affairs never provided detailed information about the legal and factual grounds for refusal to allow those individuals to enter Georgia.[557]

The cases studied by the Office of the Public Defender show that when reaching a decision on refusing entry into Georgia, the authorities do not take into consideration an alien's ties with Georgia. This practice is probably reinforced by the failure of the legislation to impose an obligation in express terms to check this information in such cases.[558] It is, however, noteworhty that under Article 3.1.g), the Georgian legislation on aliens respects and protects the principle of family unity. This provision is binding on the representatives of the relevant authorities and must be applied in the cases of examining and deciding about granting a leave to enter Georgia. It is also important that while aliens do have a right to appeal a decision of refusal to allow entry into Georgia, according to the information obtained by the Office of the Public Defender of Georgia, there is no jurisprudence on these appeals.[559]

Stemming from the above-mentioned, it is unclear how comprehensively aliens are protected by the judiciary against the arbitrariness of the executive. There are particular misgivings against the background of those cases (similar to the cases of Kh.I. and Kh.S.) where a refusal is based on the interests of national security and the authorities enjoying excessively wide discretion.

REGARDING THE RIGHT OF THE CITIZENS OF GEORGIA TO LEAVE GEORGIA

As it was mentioned above, under Article 22.3 of the Constitution of Georgia, the right to freely leave Georgia may be restricted, "…only in accordance with law, in the interests of securing national security or public safety, protection of health, prevention of crime or administration of justice that is necessary for maintaining a democratic society."

Under Article 10 of the Law of Georgia on the Rules of Leaving Georgia and Entering Georgia by Citizens of Georgia,

> "A Georgian citizen may be refused a passport of Georgia or extension of the validity of a passport for the purpose of preventing that person from leaving Georgia temporarily; as well to be refused to cross the border if 1) he or she is wanted by law-enforcement bodes or 2) he or she presents forged or invalid documents."

The Georgian legislation does not provide for other limitations on citizens of Georgia in terms of restriction of

555 Under Article 14.1.e) of the Law of Georgia on Legal Status of Aliens and Stateless Persons, an alien may be refused entry into Georgia, "if his/her stay in Georgia poses a threat to the public order and state security of Georgia, the protection of the health, rights, and legitimate interests of citizens of Georgia and other persons residing in Georgia".

556 Letters nos. 04–11/1235 and 04–11/1540 of the Office of the Public Defender of Georgia, dated 10 September 2013 and 26 September 2013.

557 Letters nos. 1963201 and 1989601 of the Ministry of Internal Affairs of Georgia, dated 4 October 2013 and 7 October 2013. It is noteworthy that according to the information available to the Office of the Public Defender of Georgia, there have been no applications lodged with the courts of general jurisdiction requesting consideration of the merits in this regard.

558 Article 58 of the Law of Georgia on Legal Status of Aliens and Stateless Persons.

559 It is noteworthy that the Public Defender's Office requested information through letters nos. №04-11/2666 (06.12.2013), №04-11/2664 (06.12.2013), №04-11/2663 (06.12.2013), №04-11/2661 (06.12.2013), №04-11/2659 (06.12.2013), №04-11/2658 (06.12.2013), №04-11/2657 (06.12.2013), №04-11/2656 (06.12.2013), №04-11/2655 (06.12.2013), №04-11/2654 (06.12.2013), №04-11/2652 (06.12.2013), №04-11/2650 (06.12.2013), №04-11/2799 (12.12.2013) from the following courts:

Kutaisi Court of Appeal, Tbilisi Court of Appeal, Tbilisi City Court, Kutaisi City Court, Batumi City Court, Gurjaani District Court, Mtskheta District Court, Signagi District Court, Akhalkalaki District Court, Akhaltsikhe District Court, Poti City Court, and the Supreme Court of Georgia. From the Courts, the Public Defender' Office received letters nos. 6781, dated 16.12.2013; №547-2/10, dated 13.12.2013; №91, dated 13.12.2013; №4848/1, dated 13.12.2013; №29536/13-1075G/K, dated 12.12.2013; №418, dated 13.12.2013; 6254, dated 11.12.2013; №2085, dated 12.12.2013; №265, dated 12.12.2013; №9951, dated 16.12.2013; №V-1323-13, dated 23.12.2013. According to the correspondence the courts have not examined decisions of refusal to allow entry into Georgia.

the right to leave Georgia.

In accordance with Comment no. 27 of the UN Human Rights Committee on freedom of movement guaranteed by Article 12 of International Covenant on Civil and Political Rights of 1966, law has to establish the conditions under which the rights may be limited. According to the Committee, in adopting laws providing for restrictions permitted by article 12, paragraph 3, states should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution. According to the Committee, it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instruments amongst those, which might achieve the desired result; and they must be proportionate to the interest to be protected. The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.

During the reporting period, the Office of the Public Defender of Georgia studied incidents where citizens of Georgia were restricted in the exercise of their right to freely leave Georgia without being given any explanation.

The documents submitted by a citizen of Georgia, Z.L. to the Office of the Public Defender of Georgia confirm the fact that Z.L. twice attempted to leave for Germany in June and August 2013 but the officials of Border Protection Department at Tbilisi International Airport did not allow him to do so. The Public Defender's Office requested information about the legal and factual circumstances of this restriction. However, the aforementioned incident was denied by the Ministry of Internal Affairs.[560]

A citizen of Georgia named S.M. also submitted documents to the Public Defender's Office confirming that he attempted four times to leave for Great Britain in January and February 2014. However, the officials of Border Protection Department did not allow him to cross the border without giving any explanations. The Public Defender of Georgia was unable to obtain any comments from the Ministry of Internal Affairs of Georgia regarding this incident.[561]

The Public Defender appreciates the withdrawal of a draft law initiated by the Members of the Parliament of Georgia on 19 September 2013. The draft law aimed at amending Article 10 of the Law of Georgia on the Rule of Leaving Georgia and Entering Georgia by Citizens of Georgia. In particular, the draft law envisaged the introduction of restriction of temporary departure from Georgia and crossing the border by a citizen of Georgia by refusing them a passport of Georgia or extension of the validity of a passport on the grounds of "the interests of protecting state and/or public safety."

"A Georgian citizen may be refused a passport of a citizen of Georgia or extension the validity of a passport for the purpose of preventing leaving Georgia temporarily; as well to be refused to cross the border if 1) he or she is wanted by law-enforcement bodes or 2) he or she presents forged or invalid documents."

Despite the fact that national security, public safety and fight against terrorism are major functions of the state, the wording of the draft law was so vague that it afforded unlimited discretion to the relevant authorities; it also enabled authorities to implement the provision in various ways in breach of the principle of foreseeability of law and the essence of freedom of movement[562]

However, the applications filed with the Office of the Public Defender of Georgia show that in some instances, there are illegal interferences in the exercise of the freedom of movement by the citizens of Georgia in terms of their inability to leave the country.

560 Letter no.1876454 of the Ministry of Internal Affairs dated 23 September 2013.

561 Public statement of the Public Defender of Georgia dated 16 January 2014. See www.ombudsman.ge.

562 Public Statement of the Public Defender of Georgia, dated 1 October 2013. See www.ombudsman.ge.

Recommendations:

To the Ministry of Internal Affairs of Georgia

- **to ensure its agencies respect the principle of family unity as guaranteed by the Law of Georgia on Legal Status of Aliens and Stateless Persons when deciding entering and leaving Georgia by aliens and/or stateless persons; and**
- **not to allow the violation of citizens' constitutional right to freely leave Georgia by officials of the Border Department of Georgia.**

To the Parliament of Georgia

- **to amend the Law of Georgia on Legal Status of Aliens and Stateless Persons and the Law of Georgia on the Rules of Leaving Georgia and Entering Georgia by Citizens of Georgia to the effect of guaranteeing the right to appeal a decision of refusal to allow entry and leaving Georgia; and**
- **to enable courts, through legislative changes, to review the grounds of national security and public safety by checking the documents containing confidential information in order to protect every individual from the arbitrariness of the executive.**

RIGHT TO PROPERTY

The right to property is recognised and guaranteed by Article 21 of the Constitution of Georgia: "The right to property and the right to inherit shall be recognised and guaranteed. The abolition of the universal right to property, the right to acquire, alienate and inherit property shall be impermissible."

However, the right to property is not an absolute right. It is possible to limit it and the Constitution of Georgia stipulates the ground and purpose for the limitation:

> "Article 21 [of the Constitution] allows the legislature to limit the right to property during pressing social need, i.e., in such a case, the legislature is unhindered in terms of limiting the right to property and determining its contents. Therefore, the possibility of limiting the constitutional right to property in case of pressing social need is in the integral structure of the constitutional right itself.[563]"

> "Article 21 of the Constitution does not protect an individual's right to property in isolation. An individual is a part of society. The constitutional nature of property is preconditioned by public limitation, which is in public interest. Therefore, the statutory interference in property is an integral element of property."[564]

According to the Global Competitiveness Report of 2013-2014, in 2013-2014, Georgia took 72nd position, its ranking score is 4,15 (middle indicator); A move up by five points from the previous ranking of 77th in the world.[565]

The World Economic Forum annually assesses the competitiveness landscape of economies, providing insight into the drivers of their productivity and prosperity. The report series remains the most comprehensive worldwide assessment of national competitiveness. 12 pillars of competitiveness are grouped into 3 factor groups, which encompass 114 components. The Global Competitiveness Report is based on the following indicators: institutions, infrastructure, macroeconomic environment, healthcare and basic education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication, and R&D innovations.

Advancement of Georgia in rankings was achieved by the improvement of the following factors:

In basic requirements – Georgia moved to 57th position from 64th position with the score of 4.74 (improved by 7 places):

- Microeconomic environment – moved from 88th position to 61st position (improved by 27 places);
- Efficiency enhancers - moved from 87th position to 86th position (improved by one place);
- Technological readiness – moved from 76th position to 68th position (improved by 8 places);
- Financial market development – moved from 93rd position to 75th (improved by 18 places);
- Goods market efficiency – moved from 82nd position to 67th (improved by 15 places);
- Higher education and training – moved from 93rd position to 92nd position (improved by 1 place).

563 Commentaries to the Constitution, Board of Authors, Meridiani Publishers, 2005, p. 148.

564 Ibid. p. 149.

565 The Global Competitiveness Report, see, http://www3.weforum.org/docs/GCR2013-14/GCR_Rankings_2013-14.pdf.

In the Global Competitiveness Report 2013/2014, Georgia remains in the classification of efficiency-driven. [566]

In terms of ratings of global competitiveness, Georgia is ahead of counties such as Croatia (75th rank), Romania (76th ranking), Armenia (79th rank), Ukraine (84th rank), Moldova (89th rank), etc. According to the report, Switzerland has the first rank and Chad the last. The report covered 148 countries.

It was pointed out in the Report of the Public Defender of Georgia of 2012 that, in the course of past few years, hundreds of violations of the right to property were revealed. It was particularly true with regard to the violation of individuals' right to property by the state. The Public Defender expressed his hope that the relevant authorities would investigate these incidents and restore the breached rights. [567] However, in 2013, no significant measures were taken by the state in this regard. The state also failed to set up the commission on miscarriage of justice that, in the end of 2012 and in the beginning of 2013, was intended to be instrumental in restoring the right to property in cases of violation. Therefore, hundreds of people still await the consideration of the complaints filed with the Chief Prosecutor's Office of Georgia. [568]

The Law of Georgia on Amnesty adopted by the Parliament of Georgia on 29 December 2012 likewise failed to establish a mechanism for restoring the right to property allegedly breached in criminal proceedings.

On 5 December 2012, the Parliament of Georgia adopted Resolution no. 76–IS on Persons Deprived of Liberty on Political Grounds and Politically Persecuted. Through the Resolution, the Parliamentary Committee of Human Rights Protection and Civic Integration, at its session of 30 November 2012 (minutes no.8), approved the list of convicts as deprived of their liberty on political grounds (annex no.1); at the same session (minutes no.8), the Committee approved the list of persons as politically persecuted (annex no.2).

Under para. 3 of the Resolution of the Parliament of Georgia, the Parliament has the obligation to set up fair mechanisms for exempting the persons deprived of their liberty on political grounds and politically persecuted from criminal responsibility and punishment and/or realisation of their right to a fair trial.

Article 22 of the Law of Georgia on Amnesty, dated 28 December 2012, was such a mechanism. Under Article 22, everyone who is granted the status of a political prisoner or of a victim of political persecution by the Parliament of Georgia must be exempted from criminal responsibility and punishment.

The Law on Amnesty applied to all criminal sanctions except fines and property confiscations. Moreover, under Article 20, the Law does not apply either to imposed or already enforced criminal fines and property confiscations.

Through the Resolution of 5 December 2012, the Parliament of Georgia deemed it established that the persons listed in annexes 1 and 2 of the Resolution were prosecuted and convicted on political grounds. Justice should and must be administered based on the law only. Provided that the prosecution and conviction of these persons were based on political grounds, it is only natural to assume that no fines were imposed based on the law.

Resolution no. 76–IS of the Parliament of Georgia, dated 5 December 2012, acknowledges the conviction of these persons by the state on political motives on the one hand, due to which fact they were exempted from punishment (except for fines and property confiscations); on the other hand, the enforcement of the cases involving a fine and property confiscations continued. It is especially noteworthy that the application of the Law of Georgia on Amnesty is not confined to those finalised cases, with the imposition of fine and property confiscation enforced; the law extends to those cases as well, where these sanctions have not been enforced yet. If it is established that a person's criminal prosecution was politically motivated and he or she is exempted from other types of penalties, it would be logical to exempt from a fine, especially, if it is not enforced yet. It is expedient that at this stage, at least these two cases are separated and before the adoption of the final decision to suspend the proceedings involving unenforced fine and property confiscation penalties.

The Office of the Public Defender of Georgia studied the case of citizen Z.Zh. who with the application of Article 22 of the Law of Georgia on Amnesty was exempted from criminal responsibility and punishment as a person deemed to be deprived of liberty on political grounds. However, the enforcement proceedings of the

566 The main stages of country development contain three sub-indexes: factor-driven, efficiency-driven, and innovation driven.

567 Report of the Public Defender of Georgia, 2012, pp. 546-547.

568 However, the final draft law prepared by the Ministry of Justice of Georgia concerning the establishment of a commission on miscarriage of justice was confined to the review mechanism of criminal cases only.

civil suit based on the sanction against Z.Zh. continued. In the civil proceedings, respondent Z.Zh. had to pay 402,827.00 GEL to civil party – JSC "Saknavtobproducti"; the auctioning of immovable property, the residential house, owned by Z.Zh. was pending. On 31 December 2013, the Public Defender of Georgia applied to the acting Head of the National Enforcement Bureau and requested the exercise of discretion. The discretion granted under Article 36.2.g) of the Law of Georgia on Enforcement Proceedings would allow the President of the National Enforcement Bureau to apply appropriate measures with regard to Z.Zh. as a person deprived of liberty on political grounds. However, LEPL National Enforcement Bureau rejected the Public Defender's motion.[569]

During the reporting period, the Office of the Public Defender of Georgia studied the changes in the field of protection of the right to property and/or alleged violations of this right from various perspectives.

Stemming from the systematic nature of the violations, the present report discusses the cases of the alleged violations of the right to property during the procedures of registration and recognition of the right and during criminal proceedings. These alleged violations are due to the shortcomings of either legislation or administrative practice. The report also discusses the changes in the social security.

TITLE TO IMMOVABLE PROPERTY

During the reporting period, the Office of the Public Defender of Georgia studied numerous applications of individuals and legal entities concerning alleged violations of title to immovable property. As the result of this study, systemic problems were revealed, as in 2012, in the following directions: the activities of permanent commissions, the so-called problem of merging; registration of the title to property and the limitation of the right to use property. While these issues (except for the limitation of the right to use property) were covered in the Public Defender's Report of 2012, in the light of the topicality of the issues, it is expedient to revisit them. It is also noteworthy that all the three issues need complex approach from various authorities, including the judiciary.

RECOGNITION OF THE TITLE TO PROPERTY

The performance of the permanent commissions on the issue of title to property has been the subject of the Office of the Public Defender's scrutiny. One of the sub-chapters of the 2012 report addressed the violations of the right to property as the result of the work of these permanent commissions.[570]

Most incidents of the violations of the statutory requirements by the permanent commissions are related to unreasoned decisions.

The Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law, dated 11 July 2007, and Ordinance no. 525 of the President of Georgia, dated 15 September 2007, approved the Rules for Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law. The activities of the Permanent Commissions on Recognition of the Title to Property are governed by the Rules approved by Presidential Ordinance no. 525 of 15 September 2007. According to the rules, a Commission, within its competence, takes a decision, which represents an administrative-legal act.[571]

Therefore, the permanent commissions are imperatively prohibited under the administrative legislation of Georgia to ground an individual administrative-legal act on those circumstances or provisions, which have not been studied by the administrative body in accordance with the procedure established by law.[572] These individual acts may concern decisions about allowing or rejecting the motions of an interested person on the recognition of the title to a property when the plot of land has been occupied arbitrarily. A permanent commission on recognition of the title to property, when examining a written application of an interested person in formal administrative proceedings, is obliged to study all circumstances relevant to the case and take an appropriate decision, having evaluated and

569 Letter of the acting Head of LEPL National Bureau of Enforcement, dated 16 January 2014.

570 Report of the Public Defender of Georgia, 2012, pp. 387–390.

571 Article 10.1 of the Rules for Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law approved by the Presidential Ordinance no. 525, dated 15 September 2007.

572 The General Administrative Code of Georgia of 25 June 1999, Article 96.2.

juxtaposed all the pertinent facts.[573] It is also noteworthy that an individual administrative-legal act (about allowing or rejecting the motions of an interested person on the recognition of the title to a property when the plot of land has been occupied arbitrarily) should comply with the grounds of its adoption in terms of its contents.

In the reporting period of 2013, the Public Defender of Georgia issued numerous recommendations to the notice of the permanent commissions on recognition of the title to property.[574] The Public Defender called upon the commissions to study the legality of the decisions adopted by them with regard to particular citizens.[575] These cases, inter alia, concerned the violation of statutory terms of the examination of citizens' applications; and the failure to study pertinent circumstances of the cases and ignoring them.

The case of citizen V.B.

The Office of the Public Defender of Georgia studied the legality of decision no. 81 of Tbilisi Sakrebulo Commission on Recognition of the Title to Plots of Lands Owned (Used) by Individuals and Legal Entities of Private Law. The decision is dated 14 January 2009.

As the result of the case study, it was revealed that the Tbilisi Sakrebulo Commission on Recognition of the Title to Plots of Lands Owned (Used) by Individuals and Legal Entities of Private Law failed to examine citizen V.B.'s application within the statutory one-month term after its registration. The application was filed on 13 March 2008 and the decision was taken on 14 January 2009. The Commission thus violated Article 14 of the Rules for Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law approved by the Presidential Ordinance no. 525, dated 15 September 2007[576], and Article 5.4-8 of the Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law.

The breach of the examination term by the Commission gave rise to the ground for rejecting a citizen's request to recognise the title to a particular plot of land. In particular, the Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law was amended on 23 October 2008.[577] Under the amendment the definition of the arbitrary occupation of land plots have been changed. Therefore, by the time the commission reached the decision on the application of V.B. (after 10 months since the submission of the application), the plot of land arbitrarily occupied by V.B. did not meet the statutory requirements. The statutory requirements now implied the existence, on a plot of land arbitrarily occupied, of a residential house (either built or demolished) for the purposes of recognition of the title to such plot of land.[578]

573 Ibid. Article 96.1.

574 Recommendations no. 3371/04-5/0183-13 and 4835/04-15/0930-11,0930-11/1 of the Public Defender of Georgia, dated 19 June 2013 and 32 December 2013 respectively.

575 It is noteworthy that in 20013, the Office of the Public Defender of Georgia examined the legality of judgments by the Commission on recognition of title to property adopted in 2008-2012. The legality of the judgments adopted in 2013 has not been reviewed.

576 Under Article 14.1 of the Rules for Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law approved by the Presidential Ordinance no. 525 dated 15 September 2007, as of 19 February 2008, the commission had to adopt a decision within one month after the registration of an application. Due to the necessity to establish pertinent circumstances for the recognition of a title in more than one month, the commission was entitled to extend the term of examination for another month. In such cases, the total term of examination of the merits could not exceed three months.

577 On 23 October 2008, the Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law was amended. As the result, Article 2.c) reads as follows: "the following shall be considered to be an arbitrarily occupied plot of land before enforcement of this law: arbitrarily occupied plot of land being either agricultural or non-agricultural, owned by state with a residential house (either built or dilapidated) or a non-residential house (built) on it; an arbitrarily occupied plot of land, adjacent to a plot of land owned or lawfully possessed by a concerned individual (with or without a building on it), the area of which is less than that of the plot of land adjacent to the concerned individual's owned or lawfully possessed plot of land; an arbitrarily occupied plot of land adjacent to the plot of land either owned or lawfully possessed by a legal entity of private law, with a non-residential house (built) on it, the area of which is less than the plot of land owned or lawfully possessed by a legal entity of private law, the area of which is less than that of the plot of land owned or lawfully possessed and which has not been disposed by the state at the moment of lodging a claim to recognise title except the cases provided by Article 2.a)."

578 Recommendation of the Public Defender, dated 19 June 2013.

The Case of Citizen Z.G.

The Office of the Public Defender of Georgia studied the legality of the invalidation of the certificate of the title to property issued for citizen Z.G.

Having studied the case file, the Office found that the Kobuleti Municipality Commission on Recognition of the Title to Property issued citizen Z.G. with a certificate on the title to property on 19 November 2008; this certificate was invalidated by the same commission on 30 September 2009 on the ground that the fact of occupying the plot of land by the citizen could not be established. This invalidation decision was appealed by Z.G. before a court. The appeal was partially upheld and on 6 October 2011, and the case was returned for fresh examination to Kobuleti Municipality Commission on Recognition of the Title to Property. Finally, on 20 October 2011, the case was referred to Batumi permanent commission since by that time the plot of land claimed by Z.G. already belonged to Batumi. Under the decision of Batumi permanent commission, Z.G.'s case was not qualified as arbitrary occupation of the plot of land and the claim was not allowed. According to the commission's decision, Z.G.'s application failed to meet the requirements stipulated by the Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law. This decision was challenged by Z.G. before a court. His claim was partially allowed by Kutaisi Court of Appeal on 18 October 2012. The Court of Appeal referred the case back to Batumi permanent commission. On 4 March 2012, an execution writ was issued. By the time the Office of the Public Defender studied the case, there had been no decision adopted by Batumi permanent commission.

The case study reveals that by the time Z.G. applied to Kobuleti Commission on Recognition of Title (1 May 2008 and 5 November 2008), his application was in full compliance with the then in force requirement of the Law of Georgia on Recognition of the Title to the Plots of Land Possessed (Used) by Individuals and Legal Entities of Private Law. The decisions adopted by Kobuleti and Batumi permanent commissions and the omission of Batumi commission since 4 March 2013 constituted an unjustified interference in the applicant's right to property.[579]

MERGED/DUPLICATED REGISTRATIONS[580]

One of the systemic problems that persisted for years is merged/duplicated registration. In 2013, the Office of the Public Defender of Georgia studied numerous cases where either individuals or legal entities registered in Public Registry as owners of a plot of land found out later that the state or another individual or a legal entity (fully or partially) was registered with the title to the same plot of land.

It is noteworthy that the revelation of the above-mentioned problem is related to the introduction of land survey measurements drawings in the digital cadastre.

Until 2006, the cadastre measuring drawings of a plot of land used to be prepared on paper. On 13 December 2006, by the Order no. 800 of the Minister of Justice of Georgia on Instructions Concerning Registration of the Title to Immovable Property[581], the system of geodesic coordinates was introduced.[582] However, making a digital drawing in the system of state geodesic coordinates and its registration does not prevent from registering a title on paper. Furthermore, there is no statutory obligation to digitalise the paper based cadastre data. Therefore, the drawings made by old method have not been digitalised either.

The complications are related to the fact that in Georgia, especially in the regions, the title to land is registered in accordance with law only in some rare cases. Therefore, LEPL National Agency of Public Registry does not have complete information about the titles to property (in this case to land). In some cases, the documents establishing title to immovable property (komli books, tax lists, gardener's records etc.) either cannot be found or incompletely presented in various agencies. It could be a case that the existing records (in documents proving the title to property, acts of delivery and acceptance, etc.) are either inaccurate or defective.

579 Recommendation of the Public Defender of Georgia, dated 31 December 2013, regarding the violation of Z.G.'s right to property.

580 Report of the Public Defender of Georgia, 2012, pp. 395–396.

581 Order no. 800 of the Ministry of Justice, dated 13 December 2006.

582 Ibid. Article 2.i). – "System of State Geodesic Coordinates" – the system of geodesic coordinates determined by Ordinance no. 206 of the President of Georgia, dated 29 April 1999 (WGS 84 system of coordinates and UTM projection)".

It has been an established practice for the courts of general jurisdiction for years, in merging and duplicate registrations related disputes, to rule against the party (an individual or a legal entity), whose property was registered based on inaccurate data (cadastral measurements processed on paper).[583] It is paradoxical that after the end of the dispute, the Public Registry's entry on the title to immovable property based on incorrect data would remain valid. However, in accordance with the acts adopted by LEPL National Agency of Public Registry, and later by the courts, it was impossible to establish the whereabouts of this immovable property. Under such conditions, the right to property was certainly illusory.

The jurisprudence of the courts of general jurisdiction was changed by virtue of several judgments passed by the Supreme Court of Georgia.[584]

The Section of Administrative Cases of the Supreme Court of Georgia repealed the decision of Tbilisi Court of Appeal regarding registration of property based on inaccurate data[585] and ruled against V.M. who had applied to the Court of Cassation:

> "[...]Property is a fact and it cannot exist in nature in its abstract form without those elements that make property stand out from other civil law institutions. The Court of Cassation observes that fiction is not the property that a person owns based on registration but instead fiction is the accuracy of registration data and accordingly it is impermissible that the registration data and the reality did not correspond to each other."

In the same judgment,[586] the Supreme Court of Georgia observed with regard to the judgment of the Tbilisi Court of Appeal:

> "Stemming from the factual circumstances found in the case, the present solution of the dispute allows for the very possibility that V.M. will have a title to non-existent property, which shall be impermissible considering the proprietor's rights and the interest of stability of civil turnover...."

The Section of Administrative Cases of the Supreme Court of Georgia pointed out the obligations of the Public Register in the case of Kh.M. v. LEPL National Agency of Public Register[587] and observed:

> "[...] the primary incorrect registration does not have reference value only. Its importance should not be downgraded as seeing it as factual registration only as such a registration does not result in any legal effect for the object of registration. The registration data have a legal bearing and the formality of registration is preconditioned by the Public Registry. The registration procedure is resulted in issuing a document establishing a title. This document confirms the legality of legal facts. The registration has prejudgment bearing. It is a precondition for the realisation of rights and legal interests; through registration, the state confirms legal facts of arising/altering a title to immovable property; and through registration the person concerned undertakes the set of legal obligations. The state registration is aimed at the overall stability of civil turnover as the formal precondition of state protection of the title to property."

The Court of Cassation held in the same judgment:

> "[...] Legislation does not rule out registration based on inaccurate data. Accordingly, checking the existence of registration only through a digital drawing does not mean that the administrative body took a decision based on enquiry into and evaluation of pertinent circumstances. This just renders an inaccurate registration purposeless."

The clarifications of the Supreme Court of Georgia are entirely based on the existing legislation and statutory obligations of the administrative bodies.

The Instructions about Public Registry determines the rights and obligations of participants of registration pro-

583 See, inter alia, the judgment of Zugdidi District Court of 4 October 2010; Judgment of Kutaisi Court of Appeal of 22 December 2010 and Judgment of the Supreme Court of Georgia of 7 March 2011 on the administrative case of S.A.

584 See, judgment no. BS-1732-1701 (K-11) of the Supreme Court of Georgia, dated 27 November 2012; and judgment no. BS-367-363 (K-12) of the Supreme Court of Georgia, dated 28 February 2013, on the cases of V.M. and Kh.M.

585 See, judgment no. BS-1732-1701 (K-11) of the Supreme Court of Georgia, dated 27 November 2012.

586 Idem.

587 See, judgment no. BS-367-363 (K-12) of the Supreme Court of Georgia, dated 28 February 2013.

ceedings. Therefore, under Article 3.6 of the Law of Georgia on Public Registry, neither the registering body nor its officials are responsible for the authenticity of the submitted documentation. However, the same provision holds the registering body and its officials responsible for the compatibility and security of the registered data and attached registration or other documents.[588]

Under the General Administrative Code of Georgia, during administrative proceedings, an administrative body is obliged to adopt a decision having studied into all pertinent circumstances.

Accordingly, the National Agency of Public Registry and its registration offices are obliged under legislation to fulfil the requirements of the General Administrative Code of Georgia in each particular case with due diligence. This means, they need to study pertinent circumstances in order not to allow restriction of concerned persons' legal interests.

The work involving examination of applications on merging done by LEPL National Agency of State Property[589] and Commissions set up within the Ministry of Finance and Economy of the Autonomous Republic of Ajara needs to be positively evaluated.

According to the information furnished by the Ministry of Finance and Economy of the Autonomous Republic of Ajara, based on various orders of the minister, since 2010, there has been a commission functioning in the region - Commission Considering the Applications Concerning Merging of Immovable Property (according to the cadastre data) Requested for Registration by Individuals and Legal Entities with the Plots of Land Owned by the State and by the Autonomous Republic of Ajara on the Territory of the Autonomous Republic of Ajara.[590]

According to the same information, the commission, since its establishment, has registered 422 applications on merging, out of which the commission has managed to examine 291 and administrative proceedings are underway concerning 131 applications. Out of 291 applications, 109 applications were examined by the commission set up under the Order of 9 August 2013.[591] According to the results of the study into the minutes of the commission's deliberations, submitted by the Ministry, in 2013, the commission examined the applications of individuals whose immovable property (plots of land) had been registered based on inaccurate data in LEPL National Agency of Public Registry, and later was found to be merged with the property registered as either the property of the Autonomous Republic of Ajara or that of local municipalities.[592]

According to the information of the ministry, decisions adopted by the commission are only recommendatory. However, the ministry usually upholds these decisions.[593] It is positively evaluated that based on the Order of the Ministry of Finance and Economy of the Autonomous Republic of Ajara, dated 9 August 2013, there are representatives of NGOs participating in the Commission's work.[594] This can be a significant safeguard for the transparency of the process. The transparency of the Commission's work is highly important and so is the full observance of the statutory requirements of the administrative proceedings under the General Administrative Code of Georgia.

The Public Defender of Georgia welcomes the change of the court's jurisprudence in 2013 regarding the property registered based on digital and unidentified data, and the acknowledgement that the unidentified data bears the same legal effect as registration based on digital drawings. However, the realisation of this change in practice still remains a problem.[595] As mentioned above, this has been caused due to various systemic shortcomings (inaccurate and incomplete data, the title documents drafted and issued defectively, etc). In this regard, it is expedient to have a

588 Article 3.6 of the Law of Georgia on Public Registry, dated 19 December 2008.

589 Detailed information could not be obtained by submitting the present report from LEPL National Agency of State Property. Letter of the Office of the Public Defender of Georgia, dated 14 March 2014.

590 Letter of the Ministry of Finance and Economy of Georgia of the Autonomous Republic of Ajara, dated 13 March 2014.

591 Order no. S–234 of the Ministry of Finance and Economy of Georgia of the Autonomous Republic of Ajara, dated 9 August 2013, invalidated the Order of the Minister, dated 12 November 2012, on setting up the Commission and established a new Commission.

592 Annex to the letter of the Ministry of Finance and Economy of Georgia of the Autonomous Republic of Ajara, dated 13 March 2014.

593 Letter of the Ministry of Finance and Economy of Georgia of the Autonomous Republic of Ajara, dated 13 March 2014.

594 Order no. S–234 of the Ministry of Finance and Economy of Georgia of the Autonomous Republic of Ajara, dated 9 August 2013, Article 2.

595 Among others, the judgment of the Supreme Court of Georgia, dated 28 February 2013, in the case of Kh.M. has not been enforced to date.

remedy in place, set up with the cooperation of various state authorities, including the local self-government bodies, which will be aimed at realising the right to property and addressing the systemic problem at stake.

A separate problem is raised by those cases, where based on the courts' practice existing until 2013, against the background of a court's final judgment, the right to property of both individuals and legal entities is violated.[596]

The case of citizen S.A.

The Office of the Public Defender of Georgia examined the case of S.A. regarding the alleged violation of the right to property by the state authorities.

On 6 December 2009, the National Agency of Public Registry registered the title of the Ministry of Economy and Sustainable Development of Georgia to a plot of land (area: 489 552.00m2) in Anaklia. Within this area, the plot of land (area: 47.92ha) registered in the ownership of citizen S.A. since 29 November 2007 was merged.

The case was unsuccessfully brought by S.A. before the courts of general jurisdiction. Zugdidi District Court in its judgment, dated 4 October 2010, upheld the observation adduced by LEPL National Agency of Public Registry that cadastre drawing submitted without digital version is to be deemed unidentified by all means and does not allow for full identification of immovable property; therefore it is impossible to compare the data submitted through (verified) digital cadastre drawing with non-digital (unverified) data.

The Court also observed that the first registration of the plot of land by S.A. was based on the paper version of a cadastre drawing. Therefore, the Court did not uphold S.A.'s argument that the plot of land registered in his name in the Public Registry and the immovable property on the digital cadastre drawing submitted by him during the dispute was one and the same, and this was the property registered by the state on 6 December 2009.[597] This decision was fully upheld by Kutaisi Court of Appeal in its ruling of 22 December 2010. The Supreme Court of Georgia did not admit the cassation appeal of S.A. by its ruling of 7 March 2011.

On 5 May 2010, the Ministry of Economy of Georgia issued LTD Anaklia Porti with the documents certifying its title to the plot of lands on the territory of Khobi and Zugdidi Municipalities. The plot of land with the area of 47.92ha, owned by S.A. was merged within this territory.

Later, due to the breach of obligations undertaken with LTD Anaklia Porti, the contract on the sale of the immovable property at stake was repealed. The plots of land were re-registered under the title of the state based on letter no. 05/7757 of the Ministry of Economy and Sustainable Development of Georgia, dated 18 April 2011. Despite numerous applications filed by S.A. his property was not returned. There is no judicial remedy in this case.

In such cases, when a property is still registered in the name of either the Ministry of Economy and Sustainable Development of Georgia, or the Ministry of Economy and Finance of the Autonomous Republic of Ajara, it is necessary to allow the individual study of the circumstances and restoration of the right to property in accordance with law.

REGISTRATION OF THE TITLE TO PROPERTY

In 2013, numerous citizens applied to the Public Defender of Georgia alleging that, in the process of registration of their title to cellar/storage spaces, LEPL National Agency of Public Registry's decisions violated their legal right to property.

After the examination of the applications, numerous considerable violations were revealed. These violations took place during the registration of titles to cellars/storage space by LEPL National Agency of Public Registry.

On 12 April 2013, Government of Georgia adopted Resolution no. 81,which amended Resolution no. 57 of the Government of Georgia, dated 24 March 2009, on Terms of Construction Permits and Rules of Issuing Construc-

596 See, e.g., the case of S.A.

597 See, judgment of the Zugdidi District Court, dated 4 October 2010, in the case of A.S.

tion Permits. This amendment changed the definition of a cellar given in Article 3.68 of Resolution no. 57. Under the amendment, a cellar is a storage space located on an underground level/floor, the average height of which should not be above 07.m measured from the ground. Until the amendment, Article 3.68 of Resolution no. 57 of the Government of Georgia, dated 24 March 2009, referred to a cellar as a storage space located on an incomplete underground level/floor.

Furthermore, Order no. 4 of the Minister of Justice of Georgia, dated 15 January 2010, on Approving Instruction on Public Registry was modified on 4 July 2013. Under the amended Article 29, cadastre drawing of a cellar must meet the requirement stipulated by Article 3.68 of Resolution no. 57 of the Government of Georgia, dated 24 March 2009, on Terms of Construction Permits and Rules of Issuing Construction Permits. According to this requirement, the height of an underground level/floor must not exceed 0.7m.

According to the announcements made by the Director of LEPL National Agency of Public Registry and Deputy Director of LEPL National Agency of State Property, the amendment was aimed at eradicating the systemic problem existing since 2008 and ensuring due registration of cellars.

However, the case study by the Office of the Public Defender reveals that the amendment does not solve the problem related to the registration of storage spaces/cellars. This is due to the fact that the ground for the refusal for registration has never been related to the notion of a storage space as defined by law. Instead, it has been related to the wrong practice of LEPL National Agency of Public Law.

According to the results of the case study of the Office of the Public Defender (including the results following the amendment of 12 April 2013), proceedings regarding applications on registration of storage facilities still are suspended in Tbilisi Registration Office. Under the decision on suspending registration proceedings, along with other documents establishing the title to a property (certificate from the bureau of technical inventarisation, minutes of a session held by a partnership of apartment owners, etc.), an applicant is usually requested to submit additional documentation confirming that the immovable property to be registered (a cellar) is not a state property, as, according to LEPL National Agency of Public Registry, the state may have a legal standing to request the registration of property.

Similar approach in almost all decisions is adopted by registering authorities in relation to the suspension of proceedings of registration of storages/floors.

As the result of the case study by the Public Defender of Georgia, such references with similar contents directed by citizens to the National Agency of Property Management used to be left unanswered as a rule.

After the amendment made on 12 April 2013 to Resolution no. 81 of the Government of Georgia, the problems regarding registration of storage facilities sill persist. This is confirmed by correspondence between Tbilisi Registration Office and National Agency of Property Management. The National Agency of Public Registry still directs citizens to National Agency of State Management and the latter's reply both to citizens and to the Office of Public Defender of Georgia usually reads as follows:

"In accordance with Resolution no. 81 of the Government of Georgia, dated 12 April 2013, Tbilisi Registration Office of LEPL National Agency of Public Registry effects registration of the title to cellars used by individuals without the consent of LEPL National Agency of State Property, based on the documents submitted by individuals."

Despite such an answer, LEPL National Agency of Public Registry still refuses to register storage facilities now based on the amendment of 12 April 2013, and indicating that the height of a facility concerned is above 0.7 metres.

Indeed, in the cases studied by the Office of the Public Defender of Georgia, citizens requested the registration of cellars that began to be used years back. The average height of these cellars is way above 0.7 m. These facilities, until the amendment of 12 April 2013, fully met the definition of a cellar, i.e. a storage facility located underground was considered to be a cellar notwithstanding the height of its ceiling.

The amendments to Resolution no. 57 of the Government of Georgia, dated 24 March 2009, and Order no. 4 of the Ministry of Justice of Georgia, dated 15 January 2010, instead of solving the existing problems, introduced more legal ambiguities. Therefore, for LEPL National Agency of Public Registry there is a ground, which is only

seemingly legal, to turn down the requests for the registration of cellars the height of which exceed 0.7m.

It is noteworthy that the amendment was moved into Resolution no. 57 of the Government of Georgia, dated 24 March 2009, governing construction relations and the legal term referred to in it (cellar/storage facility) should be interpreted in accordance with the objective of that legislative act, which established the right of a member of a partnership to register the facility at stake. Furthermore, other documents can also be the ground for the registration of the right to property over a cellar/storage facility, apart from the minutes of a session of a partnership. However, in this report only the registration within a partnership is covered.

Under Article 4 of the Law of Georgia on a Partnership of Apartment-Owners, the individual property of each member of the partnership includes the respective apartment owned by them as well as the storage space of multiappartment residential blocks (cellars, attics, etc.). Article 5.4 of the Law lists the category of properties that represent shared property of a partnership. None of these lists of either individual or shared property is exhaustive. Despite the fact that Article 4 of the Law refers to the term "cellar," the position taken by LEPL National Agency of Public Registry is devoid of legal sense when rejecting the applications on registration of cellars on the ground that the height of the property is above 0.7m and hence it is not a cellar.

In this case, LEPL National Agency of Public Law does not opine whether the term "cellar" in Article 4 also implies those properties the average height of which is above 0.7m from the ground level and if there is a mere legal shortcoming to be addressed through legislative amendment or interpretation (unfortunately, to date there is no judicial practice available on this issue).

The existence of a legislative lacuna is also proved by the fact that on 10 September 2013, Resolution no. 57 of the Government of Georgia, dated 24 March 2009, was amended. New Paragraph 681 introduced a new term 'half-cellar,' which implies a room/storage facility below ground level the height of which is more than 0.7m and less than 1.6m. Since such a term did not exist during the adoption of the Law of Georgia on A Partnership of Apartment-Owners, it has not been provided by the Law to date.

It is not clear why the concerned persons should still be facing problems in the registration of underground facilities, provided the legislation has been changed to simplify the procedure.

Stemming from the above-mentioned, it should be observed that before the amendment of sub-legislative acts, through incorrect interpretation of legal provisions, LEPL National Agency of Public Registry artificially created impediments in the registration of title to immovable property; this deplorable practice still continues to date under the conditions of the legal reality in force.

In the context of Article 1 of Additional Protocol to the European Convention on Human Rights, the European Court reiterates that the concept of "possessions" is not limited to "existing possessions" but may also cover assets, including claims, in respect of which the applicant can argue that he or she has at least a reasonable and "legitimate expectation" of obtaining effective enjoyment of a property right.[598] Therefore, in such a case, an applicant can be not only a person having the status of an owner, but also a person who has an enforceable property claim.[599] An "expectation" is "legitimate" if it is based on either a legislative provision or a legal act bearing on the property interest in question.[600] In the opinion of the European Court, legitimate expectation exists with regard to Article 1 of the Additional Protocol only in case the property claim can be enforced based on domestic legislation or well-established jurisprudence of national courts confirming the existence of such right.[601]

In the cases studied by the Office of the Public Defender of Georgia, the applicants show their legitimate expectation that the documents submitted by them for registration before 12 April 2013 fully met the requirements of the statutory requirements effective at the material time, viz., Resolution no. 57 of the Government of Georgia on Terms of Construction Permits and Rules of Issuing Construction Permits; their facilities fell under the definition of a cellar and they had the documents establishing the title to the property (certificate from the archive of technical registration bureau, session minutes of a partnership of apartment owners, etc). Therefore, there is no ground for suspending the registration of these facilities.

598 Gratzinger and Eva Gratzingerova v. Czech Republic, Application no. 39794/98, Grand Chamber, Decision dated 10 July 2002, para. 69.

599 Ibid., para. 71.

600 Kopecky v. Slovakia, application no. 44912/98, judgment dated 28 September 2004, para. 47.

601 Ibid., para. 52.

The amendment of Order no. 4 of the Minister of Justice of Georgia, dated 15 January 2010, on Approving Instructions on Public Registry may become the basis for the violation of the right to property because, without the proper interpretation of legislative provisions, it renders it impossible to register a property owned by a person in accordance with law, when this property is located underground and its height exceeds 0.7 or 1.6m. Such properties, as the result of changes effected on 12 April 2013, 4 July and 10 September 2014, are no more qualified as a cellar/half cellar. There is no other definition of a cellar or a half-cellar in the legislation

Therefore, the citizens who have applied to Tbilisi Registration Office of LEPL National Agency of Public Registry, requesting the registration of cellars owned by them, are still waiting for the registration of title as the amendment moved into Resolution no. 57 of the Government of Georgia would not be a basis for the change of practice.

VIOLATION OF THE RIGHT TO USE PROPERTY

In the reporting year of 2013, citizens actively lodged applications with the Public Defender of Georgia on alleged violations of their right to use property. As the result of the examination of these allegations, certain problems were revealed and they are analysed in the present chapter.

Article 172 of the Civil Code of Georgia establishes legal remedies for the cases of illegal interference in the right to property. Article 172.3 reads as follows:

> "If immovable property is infringed or otherwise violated, an owner may request the violator to stop such actions. If the infringement still continues, an owner may request stopping such actions without a court's judgment, from the competent law enforcement bodies, by presenting the document certifying the title to the property, except where an alleged violator presents a written document certifying his/her legal right to own, use or possess the property."

This provision imposes an obligation on law enforcement bodies to protect an owner from violations of his/her property.

Particular procedures, terms, and rights of the parties in the prevention of violation of property are determined in Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, on Preventing Interference with or Otherwise Violation of Immovable Property. This document is instrumental in protecting property from illegal interference and it provides for particular measures for attaining the legitimate aim.

The cases examined by the Office of the Public Defender of Georgia revealed a problem with regard to the preventing measures aimed at protecting property, viz., due to the absence of a full-fledged legal remedy, there have been incidents where law enforcement bodies delayed preventive measures against offenders. E.g., due to deterioration of the health of an offender (or his/her family member), a law enforcement agency may suspend the measures aimed at preventing violation or other interference with property.

Article 7 of Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, provides for three grounds to suspend the measures. One of the grounds is a doctor's report establishing that in case of continuation of preventive measure, the health of an offender may deteriorate or have a grave outcome.[602] However, the Order does not specify for how long and how many times this ground can be invoked.

The Office of the Public Defender of Georgia enquired about the practical regulation of this issue omitted from Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007. According to the information provided by the administrative body, in practice there is no definitive term for the application of the ground under Article 7.c) of Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007; a competent official, in his/her own capacity, based on particular circumstances of the case, determines a reasonable term. Furthermore, in case of the existence of any other grounds under Article 7 of the Order, the provision may be applied multiple times.[603]

Another aspect of the administrative practice is noteworthy; the protocol on suspension of preventive measures

602 Order no. 747 of the Ministry of Internal Affairs of Georgia, dated 24 May 2007, on Approving Rules of Preventing the Violation of Private Immovable Property or its Infringement Otherwise, Article 8.c).

603 Letter no. 2637374 of the Minister of Internal Affairs of Georgia, dated 24 December 2013.

under the grounds at stake, no particular extension of deadline is indicated. Under such conditions of legislative and practical regulation of the issue, an owner is left without any knowledge as to the reasonable term of suspension of the measures preventing further violation of his/her property. Accordingly, on the one hand an owner has no control over the measure to be renewed by a law enforcement body after the expiry of the reasonable term, and on the other hand, if the measure is not renewed, an owner cannot request for the fulfilment of the obligation imposed by Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007. The delay of preventive measures in the cases examined by the Office of the Public Defender of Georgia is explained by this reason, causing an owner to be deprived of his/her right to peaceful enjoyment of his/her property.

The case of citizen. E.G.

Citizen E.G. applied to the Office of the Public Defender of Georgia regarding the violation of his property right

The study into the case file by the Office of the Public Defender of Georgia revealed that E.G. had immovable property registered in Tbilisi, at Ketevan Tsamebuli#12. The property had not been vacated by the former owner and E.G. has not been able to use the property to date.

On 17 April 2013, E.G. applied to the First Division of Old Tbilisi Department of the Ministry of Internal Affairs of Georgia requesting for preventive measures to be taken for securing E.G.'s right to property. On 21 May 2013, the law enforcement body warned the former owner about the application of preventive measures.

Due to the failure to obey the request of the law enforcement body, on 12 June 2013, preventive measures for securing the property were planned. On this day, the officers of the law enforcement body and the representatives of the owner were present at the address where E.G.'s property was registered. It was established on the spot that in case of taking preventive measures to secure the illegally occupied property, the health of a family member of the offender could deteriorate and have a grave outcome.

Taking this circumstance into account, based on Article 7.c) of Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, the law enforcement body took a decision to suspend the statutory measure and, as the Office of the Public Defender of Georgia found out, did not determine the term of the suspension.

It is evident in this case that there are two conflicting interests. The rights of the legal owner must be protected and at the same time the life and health of the offender must not be endangered as the result of the use of preventive measures. It is necessary to strike a fair balance between these important interests.

Unlike Order no. 747 of the Ministry of Internal Affairs of Georgia, dated 24 May 2007, the Law of Georgia on Enforcement Proceedings provides for a comprehensive regulation of the issue at stake. Due to the illness of a debtor or his/her family member, on the motion of a debtor, the National Bureau of Enforcement bureau is entitled to suspend a measure of forced enforcement for no more than six months. The National Enforcement Bureau is entitled to a single extension of the term for another six months.[604] Also, the Bureau follows an established practice of indicating the term of suspension.

Such regulation of the legal relation is a better instrument for the protection of an owner from illegal interference. In this given case, along with legitimate grounds for the suspension of preventing measures, an owner is informed about the period for which the suspension will be valid.

It is expedient that Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, provides for a mechanism similar to the one provided by the Law of Georgia on Enforcement Proceedings for the suspension of preventive measures on the ground of an offender's illness.

In the reporting period of 2013, another problem regarding interferences with the right to use immovable property was revealed when a preventive measure aimed at securing the right to use immovable property is discontinued due to criminal investigation instituted with regard to impugned property.

Article 8 of Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, provides for the grounds for discontinuing the preventive measures aimed at securing the right to use immovable property.

604 The Law of Georgia on Enforcement Proceedings, dated 16 April 1999, Article 31.1.

On 5 July 2013, the above-mentioned Article was amended by Order no. 508 of the Minister of Internal Affairs of Georgia. The amendment provided for an additional ground for the discontinuation of preventive measures aimed at securing the right to property, viz., ongoing criminal investigation regarding immovable property until the adoption of a final decision.

According to the outcomes of the case study of the Office of the Public Defender of Georgia, the regulation offered by the legislation for the discontinuation of a preventive measure aimed at securing property rights on the account of ongoing investigation with regard to the impugned provision may give rise to unlawful interference with the right to peaceful enjoyment of property as an owner's rights may be restricted for the period of statutory limitation of criminal possession.

There are two conflicting interests in this case as well; on the one hand the interests of investigation and on the other hand the interest of protecting an owner's right to peaceful enjoyment of his/her property. However, based on the above amendment of the Order of the Minister of Internal Affairs of Georgia and the Criminal Procedure Code, an owner's right to property may be restricted for a long period, which runs counter to the legal interests of an owner and may go beyond the reasonable scope of limiting property rights. Under the Criminal Procedure Code of Georgia, "investigation should be conducted within reasonable terms but no longer than the statutory limitation for criminal prosecution of a respective crime as established by the Criminal Code of Georgia."[605]

Furthermore, in practice, when a preventive measure aimed at securing property rights is discontinued, the administrative proceedings pending with the Ministry of Internal Affairs of Georgia on the account of interference or other violation of property are stopped, and the case is signed off to archives. An owner, with the view of preventing further infringement of his/her property rights, has to re-apply to law enforcement bodies after the end of investigation of the criminal case.

The case of citizen E.Sh.

The Public Defender of Georgia received citizen E.Sh.'s application on illegal interference with the right to use immovable property. .

According to the case study by the Office of the Public Defender of Georgia, on 31 August 2005, E.Sh. bought immovable property in the village of Manavi, Sagarejo Region. E.Sh. concluded a contract with the previous owner, however, the property purchased by E.Sh. is illegally used by another person.

On 17 June 2013, E.Sh. applied to Sagarejo Regional Unit of the Ministry of Internal Affairs of Georgia, and requested the prevention of further interference with the property rights. The request was based on Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007.

According to the information requested on the issue by the Office of the Public Defender of Georgia, the preventing measure aimed at securing E.Sh.'s property rights was discontinued due to ongoing investigation of case no. 033150813001 by Sagarejo Regional Unit . The investigation was instituted regarding E.Sh.'s property under Article 362 of the Criminal Code of Georgia (forgery of documents). Allegedly, the documents issued by Manavi Gamgeoba in the name of the previous owner were forged. However, according to the case file, the impugned documents do not certify either the previous or the subsequent owner's title to the immovable property. Despite the fact, the Ministry of Internal Affairs of Georgia discontinued preventive measures aimed at securing the property rights of E.Sh. indicating the ongoing investigation as the legal ground.[606]

Accordingly, the amendment of the Minister's Order on 5 July 2013, based on which a preventive measure aimed at securing property rights may be discontinued for the period of statutory limitation of an ongoing investigation instituted with regard to immovable property at stake, may give rise to the violation of the right to property. The issue needs a different regulation. It is also noteworthy that no reasoning can be found in the cases studied by the Office of the Public Defender of Georgia about the possible adverse impact of enforcement of preventive measures on ongoing criminal investigation.

605 The Criminal Procedure Code of Georgia, Article 103.

606 In response to the communications by the Office of the Public Defender of Georgia, dated 8 October, 5 November and 3 December 2013, as well as 10 March 2014, letter of the Head of Sagarejo Regional Unit of the Ministry of Internal Affairs of Georgia, dated 17 March 2014, notified the Office of the Public Defender of Georgia about the adoption of the final judgment – resolution on discontinuation of criminal investigation in case no.№033150813001 on 15 March 2014.

The parliamentary report of the Public Defender of Georgia of 2010 addressed the cases of interfering with the right to property, the right to use property or otherwise violating property rights, and, in particular, arbitrary occupation of immovable property of individuals by IDPs. The problem in such cases is that the competent law enforcement bodies and the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia fail agree in a timely fashion on the eviction of IDPs from private properties. In some cases, this process would linger for years, which amounted to the breach of owners' rights.

Article 1.4 of Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, on Preventing Interference with or Other Violation of Immovable Property[607] provides for special safeguards for IDPs due to their status and particular situation. When applying a preventive measure aimed at securing property rights against IDPs, the Ministry of Internal Affairs of Georgia is obligated to address in writing each particular case of eviction of IDPs to the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, and seek advice about the expediency of eviction. The final judgment cannot be adopted until the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia gives the response.

In the reporting period, this problem was revealed in a modified form. E.g. the property of a legal entity of private law (company) is occupied by IDPs and despite the fact that this company does not operate, the owner is annually billed with land and income taxes; under the Tax Code in force, the measures to secure outstanding payment are applied against the company.

In the opinion of the Ministry of Finance, the Tax Code does not provide for the exemption of the company from income tax with regard to the property occupied by IDPs. Again in the opinion of the Ministry, it would not be expedient to exempt such companies from income tax as it would be unfeasible for a tax body to establish in which part of the calendar year the property is occupied by IDPs and accordingly what should be the scope of exemption.[608]

It is evident that securing the right of a company to use property, in this case, is dependant on timely and long-term resettlement of IDPs by the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia; and the latter is unable to do so. Under such conditions, the violation of the right to property is attributed to the state. Furthermore, it is impermissible to consider that it is legitimate to infringe the right to property of a company through the protection of the rights of IDPs due to the failure of the state to fulfil its obligations. Moreover, under Article 30.2 of the Constitution, the state must promote the development of free entrepreneurship.[609]

RIGHT TO PROPERTY IN CRIMINAL PROCEEDINGS

Protection of a person from criminal violation, and in case of commission of a crime, investigation and administration of justice are in public interests. Restriction of the right to property in criminal proceedings may be necessary during an investigation, and investigative actions such as searches and seizures, as well as during procedural action of impounding.

Seizure, search and impounding in criminal proceedings should be understood as the restriction of the right to property allowed by Article 21.2 of the Constitution of Georgia. The rules laid down by the Criminal Procedure Code should be the procedure established by law as referred to in the same constitutional provision.

Any interference in the right to property must be in accordance with law, and based on law; the legitimacy of this interference, proportionality of and fair balance between public and individual interests are noteworthy.

607 In each particular case of application of a preventive measure against an IDP, aimed at securing property rights, the measure must be agreed with the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia. Before obtaining a written consent from the ministry, the enforcement of a preventive measure aimed at securing property rights must be suspended.

608 See Recommendation of the Public Defender of Georgia, dated 2 April 2013, and letter of the Ministry of Finance of Georgia, dated 14 February 2014.

609 The State shall be bound to promote the development of free entrepreneurial activity and competition. Monopolistic activity shall be prohibited except for the cases permitted by law. The rights of consumers shall be protected by law.

The numerous cases studied by the Office of the Public Defender of Georgia for years show that the likelihood of the violation of the right to property in criminal proceedings is high. The report of the Public Defender of 2012 examines the legislative and administrative problems in several directions.[610]

The cases studied by the Office of the Public Defender of Georgia in the reporting period reveals the breaches of the right to property in criminal proceedings in two directions: freezing bank accounts, when no criminal proceedings have been initiated against a person, and seizure as an investigative action based on an unjustified ruling of a court.

ILLEGAL SEIZURE OF BANK ACCOUNTS

The Criminal Procedure Code of Georgia,[611] based on a party's motion, with the view of securing a procedural measure, provides for the potential deprivation of property; a court may seize the property, including bank accounts of: 1) the accused; 2) the person who bears pecuniary responsible for the actions of the accused; and/or 3) related person.

The Code further also specifies the cases of property seizure and stipulates that seizure is also allowed in other instances if there is information that the property will be hidden, expended, or is obtained through illegal means. Thus, Article 151.1 of the Criminal Procedure Code links property in express terms with a particular subject. This subject, under the law, is the accused; the person who bears pecuniary responsible for the actions of the accused; and/or related person. Whereas, Article 151 of the Criminal Procedure Code of Georgia implies property of either of these subjects, including bank accounts. The Law only allows the seizure of this property if there is information that the property will be hidden, expended, or is obtained through illegal means.

The case of citizen E.Sh.

In the reporting period, the Office of the Public Defender of Georgia examined the case of E.Sh. which involved freezing of company V.H.C's assets, the accounts of the company's director, V.M.A.P. and founder, – E.Sh. On 19 March 2012, the Unit of Prosecution of Illegal Proceeds at the Office of the Chief Prosecutor of Georgia instituted criminal investigation into the case under Article 194.3.c) of the Criminal Code of Georgia (legalisation of illegal proceeds/money laundering).

According to the letter of the Chief Prosecutor's Office of 7 August 2013, the accounts of E.Sh. and Company V.H.C. at TBC Bank were frozen in order to avert transferring money allegedly obtained through fraud, and to prevent legalisation of illegal proceeds. On 20 March 2013, Tbilisi City Court ruled that the investigative act of seizure was legal.

There needs to be an appropriate legitimate ground for the limitation of the right to property. In the given case, freezing bank accounts should also have had a legal basis.

As it is revealed from the letter of Chief Prosecutor's Office, dated 7 August 2013, in the criminal case at stake, none of the persons concerned were formally prosecuted. Therefore, there was no accused person in this criminal case. This automatically rules out any persons who would be supposed to bear substantive criminal responsibility. Accordingly, the freezing of accounts of E.Sh. and V.H.C. at TBC Bank ran counter to the requirement of the Criminal Procedure Code of Georgia.[612]

Under the motion of the Chief Prosecutor's Office on 30 March 2012, the Prosecutor's Office had a reasonable doubt that V.H.C, its director V.M.A.P, and its founder E.Sh. would commit a crime. When there is a reasonable doubt that a particular person committed an act penalised by the Criminal Code of Georgia, it forms the ground for recognising that person as an accused. Moreover, the law obliges the Prosecutor's Office to institute prose-

610 Report of the Public Defender of Georgia, 2012, pp. 560–571;

611 Criminal Procedure Code of Georgia, Article 151.1.

612 Idem.

cution where there are appropriate grounds. Furthermore, the Criminal Procedure Code of Georgia[613] provides for the possibility for a court, in case the prosecution is deliberately delayed, to uphold the appeal of the person concerned and dismiss all the evidence obtained from the moment there was a ground for criminal prosecution, through investigation, as inadmissible.

The status of an accused gives a person a range of rights as well as imposing relevant obligations. With this status, the person becomes a party to the proceedings, which automatically triggers the principles of adversary proceedings and equality of arms. Accordingly, the prosecution is obliged to give this status to the concerned persons so that they could benefit from the safeguards laid down by the procedural legislation, including the right to study the case file, the right to conduct an investigation , and right to an effective defence.

The legitimacy of interference with the right to property, proportionality and balance between public and private interests are noteworthy in this case. While the right to property does not fall under the category of absolute rights and the state may restrict the right through a prescriptive decision in the public interests; however, such restriction must be provided by law, which is proportional and necessary. The proportionality aspect implies limitation in reasonable terms.

In the case of E.Sh. examined by the Office of the Public Defender, the above-mentioned persons were not given the status of an accused and at the same time had their assets frozen so that they cannot study the case file, and are deprived of the right to an effective defence. Moreover, under the Criminal Procedure Code of Georgia, "an investigation should be run within reasonable terms but no more than the statutory limit of prosecution set for a particular crime by the Criminal Code of Georgia."[614] This means that the TBC bank accounts of V.H.C, and its founder E.Sh.[615], can be frozen for a long period, which may exceed the reasonable limits of the restriction of the right to property.

This case is even more sensitive against the background of the interpretation given by Tbilisi City Court in its ruling on 20 March 2012. According to this interpretation, despite the fact that the owner of identified property, inter alia, bank account, is established, based on a reasonable doubt, the possible involvement of the person concerned in the commission of a crime (that has not been given a status in contravention of a law) is established – that the property, inter alia, bank account – has been obtained through illegal means allowing for the seizure of the property, including the bank account.

However, due to the fact that there is no accused in the proceedings, there is no person who could carry a substantive responsibility, or anyone linked with the proceedings. Therefore, the bank accounts cannot be independently seized within the requirements of the Criminal Procedure Code of Georgia.[616] This approach allows wrong and dangerous practice of seizure of property, including bank accounts, which places any citizen under the threat of violation of the right to property.

The practice applied by the Chief Prosecutor's Office and the courts of general jurisdiction with regard to V.H.C. and its founder E.Sh. on seizure of bank amounts to the unjustified interference in the right to property guaranteed by Article 21 of the Constitution of Georgia, and Article 1 of Additional Protocol no. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This practice needs to be changed.

INTERFERENCE WITH THE RIGHT TO PROPERTY UNDER AN UNJUSTIFIED COURT'S ACT

Under Article 7.1 of the Criminal Procedure Code of Georgia, the integrity of private property and that of lawful possession shall be secured by law. Under Article 112.1 of the same Code, an investigative act that interferes with private property, possession, right to respect for private life, shall be conducted under a court ruling, based on a

613 Ibid. Article 169.9.

614 Ibid. Article 103.

615 Despite the fact that the ruling of the Tbilisi City Court of 20 March 2012 legalised the investigative act conducted as an emergency involving freezing the TBC Bank accounts of V.H.C, its director and its founder, as it is revealed from the motion of Tbilisi Prosecutor's Office of 30 March 2012, in reality only the accounts of the company were frozen, there were no accounts of V.M.A.P. and E.Sh. opened with the TBC Bank.

616 Code of Criminal Procedure of Georgia, Article 151.1.

party's motion.

Allowing the seizure of private property, i.e., adopting a ruling on interfering with the right to property by a court must be strictly in accordance with law. Article 84.1 of the Supreme Law of Georgia, the Constitution, provides that a judge shall be independent in his/her activities and only subject to the Constitution and law. The constitutional principle of statutory scopes of a judge's activities is also recognised by Article 194.2 of the Criminal Procedure Code of Georgia, according to which a court act shall be reasoned. This prescriptive provision ensures that the administration of justice is based on the principle of legality; a judge must take decisions with full compliance with law, and based on law. This requirement concerns any judge of any instances; the requirement of a reasoned court act stands at any stage, be it the consideration of the merits, or permission of an investigative act with or without an oral hearing.

The case of citizen N.G.

The Office of the Public Defender of Georgia examined the case of citizen N.G.[617] Under the ruling of Rustavi City Court, dated 12 October 2013, on authorising investigative act, the vehicle (Mercedes Benz 350) owned by N.G. was seized. The vehicle had been bought by N.G. on 9 September 2013, in accordance with law.

Citizen N.G. has not been given any status in the criminal case, within which his vehicle was seized.

According to the case study done by the Office of the Public Defender, the decisions adopted by Rustavi City Court, and Tbilisi Court of Appeal are superficial documents and fail to comply with the reasoning requirement laid down by Article 194.2 of the Criminal Procedure Code of Georgia. These acts allowed the impoundment of the vehicle owned by N.G. in the first and appeal proceedings. There is no reasoning to be found either in the first or the appeal court's ruling on which the judges based the permission for conducting an investigative act. The ruling of the first instance court does not contain any observation, reasoning or argumentation to make it clear what was the basis for upholding the prosecution's motion; what was the information or fact to give rise to a reasonable doubt for conducting the investigative act, which is necessary under Article 119.1, and Article 3.11 of the Criminal Procedure Code of Georgia. There is no indication whether there was any ground or objective of seizure; what was the relation of the seized object for the criminal case; what was the relation between factual circumstances of the case and the particular object to be seized. The judge confined the observations to stating that the prosecutor's motion was reasoned without going into any further details.

Further in regard to the ruling of Tbilisi Appeal Court of 12 November 2013, it should be pointed out that the act basically repeated the statements of the first instance court's ruling without any particular argumentations, discussion or reasoning. Moreover, the judge, apart from failing to respond to the appeal points, neither ruled on the legality of the challenged act nor reviewed its reasoning and justification.

In the present case, the courts of general jurisdiction interfered with the right to property of citizen N.G. through unjustified rulings on seizure. These acts impart no information about the ground, purpose, and necessity of an investigative act, about the information/facts/evidence confirming the need to conduct the seizure.[618]

The problem of interference with the right to property through unreasoned court rulings has been a problem for years. This practice of the courts of general jurisdiction calls for a change.

SUSPENSION OF PENSION ASSIGNED DUE TO AGE

In the course of 2013, citizens frequently applied to the Public Defender of Georgia regarding suspension of pension.

It was revealed from the examined applications that the state old age pensions of the beneficiaries employed by JSC Telasi, LTD Georgian Water and Power, LTD Tbilisi Transport Company, and LTD Kazgaztrans-Tbilisi or LTD

617 See, the statement of the Public Defender of Georgia of 20 December 2013.

618 See, the recommendation of the Public Defender of Georgia of 20 December 2013 concerning disciplinary proceedings against the judges of the High Council of Justice of Georgia.

Tbilisi Railway were suspended based on the ground that these persons carried out public activity.

Under Article 5.3 of the Law of Georgia on State Pension, the right to state pension is not generated in the period of carrying out public activity. Article 4.c) of the same Law defines public activity as paid activity carried out in an administrative body or other budgetary agency, except pedagogical and educational activities.

Due to the wrong interpretation of Article 4.c) of the Law of Georgia on State Pension[619] rendered by LEPL Agency of Social Services in the beginning of 2013, citizens' state pensions have been suspended. The Agency considered that the above-mentioned agencies had been delegated statutory public authority and represented administrative bodies and working for them amounted to public activity.

Based on the above-mentioned provisions, LEPL Agency of Social Services considered that not only state or local self-government bodies and legal entities of public law (except political and religious entities) are administrative agencies, but also any person (either an individual or legal entity) being entrusted with a function not requiring the consent of the other party and enforced through state compulsion.

It needs to be explained that delegation of a particular public function to a legal entity of a private law does not give rise to considering that person to be an administrative body and the activity of its employees as public activity. Therefore, these employees' state old age pension should not be suspended on this ground.

Legal entities of private law are entrusted with public authority only for the purpose of a particular activity (e.g., regarding offences under the Code of Administrative Violations of Georgia). These legal entities are considered to be administrative bodies within the meaning of Article 2.a) of the General Administrative Code of Georgia, only within the scopes of carrying out these particular activities.[620] Therefore, the respective companies act as administrative bodies only within that particular legal activity. In all other cases they function as legal entities of private law, without exercising public authority, or funding from state budget. Entities of private law are not delegated with public authorities that would limit the right to state pension for those employed in them since this activity does not fall under the category of public activity within the meaning of the Law of Georgia on State Pension.

The examination of the applications filed with the Office of the Public Defender of Georgia revealed that the beneficiaries, whose state pension was suspended, applied to courts demanding the invalidation of administrative decisions of LEPL Agency of Social Services, and adoption of new administrative acts.

The court jurisprudence on these issues[621] interprets the limitations under Article 5.3 and Article 5.4.c) of the Law of Georgia on State Pension.

The court observes that Article 4.c) of the Law of Georgia on State Pension covers in a single legal regulation an administrative body as a budgetary organisation, and other organisations if the state budget is their source of funding and therefore are considered to be budgetary organisations. The Court of Appeal points out that the provision at stake introduces prohibition of old age state pension only for the persons employed in budgetary organisations in order to avoid simultaneous payment of pensions and work remuneration from the state budget, unless otherwise expressly provided for by law (e.g., scientific and pedagogical activity). Furthermore, the prohibition of old age state pension by Article 4.c) and Article 5.2 of the Law of Georgia on State Pension[622] is based on the fact that a person concerned works in a budgetary organisation and therefore the source of his/her income is the state budget. Accordingly, the state pension is denied due to the fact that the activity is carried out in a budgetary body and is paid from the budget, not distinguishing the differences of whether this budgetary organisation is an administrative body or a private company with delegated functions or other budgetary organisation.

In the light of the above-mentioned, under the established practice of the courts of general jurisdiction, an order adopted by LEPL Agency of Social Services is null and void from the moment of suspension of beneficiaries' state pension and the latter is restored.

619 Public Activity – a remunerated activity in an administrative body or other budgetary agency except educational and scientific activity.

620 Under Article 2.1.a) of the General Administrative Code of Georgia, an administrative body implies all state or local self-government bodies or institutions, legal entities under public law (other than political and religious associations), and any other person exercising authority under public law in accordance with the legislation of Georgia.

621 Judgment of Tbilisi Court of Appeal on case no. 3B/595-13, dated 12 June 2013.

622 "If the right to the statutory benefit under this Law and the Law of Georgia on State Compensation, and State Academic Scholarship is generated at the same time he/she shall be entitled to only one statutory benefit of his/her choice."

A step towards the solution of the problem at stake was the amendment of definition of "public activity" under the Law of Georgia on State Pension on 1 December 2013. The terms "administrative body" and "other budgetary agency" were removed. The new wording reads as follows: public activity shall imply paid civil service or paid work for a legal entity of public law (except political and religious organisations, establishments of general, professional, and higher educational institutions, scientific and research institutions, National Academy of Science of Georgia, Academy of Agricultural Science of Georgia, museums, libraries, schools and institutions, pre-school upbringing, and other school and instruction institutions), about which information to a competent authority is furnished by the Ministry of Finance of Georgia in the agreed format.

However, those beneficiaries, who applied to the Public Defender of Georgia, had not requested courts to invalidate the decision of LEPL Agency of Social Services. Accordingly, they have not been parties to the legal relation that arises along with the invalidation of an individual legal act – restoration of property from the moment of invalidation. The Agency explained it to the beneficiaries that after the submission of the relevant documentation, their pensions would be restored starting from the next month. It was also explained that until the amendment of the Law of Georgia on State Pension and the alteration of the definition of civil service, beneficiaries working for a legal entity of private law could not serve as the basis for receiving state pension.

Accordingly, LEPL Agency of Social Services believes that the limitation of the rights of the beneficiaries until amendment of the Law of Georgia on State Pension is legitimate. Therefore, the Agency does not consider having an obligation to pay outstanding pensions for the period of six months.[623] The opinion of the Agency runs counter to the ruling of the courts of general jurisdiction and established practice and amounts to the violation of the right to property. It is noteworthy that despite the fact that particular persons did not appeal the discontinuation of their pensions, an administrative body is entitled to invalidate its act.[624]

Recommendations:

To the Government of Georgia, the Parliament of Georgia

- **to elaborate a mechanism for the full, including pecuniary, rehabilitation of the victims of political persecutions, the list of which was approved by the Resolution of the Parliament of Georgia, dated 5 December 2012, on Persons Deprived of Liberty and Politically Persecuted.**

To the permanent commissions on the recognition of the title to Property

- **to adopt decisions as the result of the examination of concerned individuals' applications (regarding recognition or waiver of the title to property) based on law, justifying with reference to pertaining circumstances.**

To the Ministry of Justice of Georgia; to LEPL National Agency of Public Registry; Local Self-Government Bodies; the Ministry of Economy and Sustainable Development of Georgia

- **to set up a mechanism to study the incidents of merged and duplicate registration, the causes of these incidents and to proactively ensure the identification of these cases and find solutions, and to study relevant cases; and**
- **to elaborate remedies which will examine the cases of merging, their causes and proactively ensure the identification of such cases and seek their solution; to study the cases, where the courts adopted decisions that infringe upon individuals' right to property, and have their rights fully restored in case of merged ownership by either state or local self-government bodies.**

To the Ministry of Justice of Georgia; to LEPL National Agency of Public Registry

- **to elaborate the ways of solution, including legislative amendment, of the problems related to the registration of storage spaces/cellars in order to protect citizens' right to property.**

623 Letter no. 04/19435 of the Director of LEPL Agency of Social Services, dated 10 March 2014.

624 The General Administrative Code of Georgia, Article 601.3.

To the Ministry of Internal Affairs of Georgia

- **to amend Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007 and to determine the term of suspending preventive measures aimed at securing property rights due to offender's illness and on the account of ongoing investigation.**

To the Ministry of IDPs from the Occupied Territories of Georgia, Accommodation and Refugees

- **to provide IDPs squatting in private properties with alternative accommodation with the view of protecting the owners' right to property.**

To the Ministry of Finance of Georgia, to the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia

- **to study individually and within their competencies all incidents of occupying private property by IDPs and take measures to eradicate the breach of private property.**

To the Courts of General Jurisdiction

- **to ensure the full observance of law and adoption of reasoned decisions when limiting the right to property in criminal proceedings, and during examination of motions on search and seizure and impounding.**

To the LEPL Agency of Social Services of the Ministry of Labour, Health Care and Social Security

- **to declare null and void the individual legal acts that stopped old age pensions in the cases reviewed in the report and to compensate the losses incurred.**

RIGHT TO WORK

The right to work is one of the basic rights among socio-economic rights. The work related rights are declared in international instruments, [625] the Constitution of Georgia, [626] the Organic Law of Georgia on the Labour Code of Georgia, the Law of Georgia on Civil Service, and other legislative and sub-legislative normative acts.

Article 30 of the Constitution of Georgia safeguards an individual's right to work; Article 13 of the Basic Law provides for the positive obligation of the state to protect its citizens regardless of their location.[627] This obligation should be manifested in the proactive actions of the state. The positive obligations are not confined to affording legal guarantees to workers; the state should fulfil the obligations committed under the above instruments. Since 3 August 1994, Georgia is a party to the UN Covenant on Economic, Social and Cultural Rights. Having ratified the Covenant, Georgia undertook an obligation to ensure the respect for the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[628]

Labour and pre-contractual relations shall prohibit any type of discrimination due to race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, and public, political or other affiliation, including affiliation to trade unions, political or other opinions.[629]

Under the Organic Law on the Labour Code of Georgia, employers shall be obliged to provide a working environment that is maximally safe for the life and health of the employees.[630] Furthermore, employers shall be obliged to fully compensate employees for work related injury caused by deteriorating employees' health and for necessary costs of treatment.[631]

Despite the above legislative clauses, the work related rights fall under the most problematic area of economic, social and cultural rights. This is confirmed by the number of applications lodged with the Public Defender during the reporting period in relation to the right to work. The present report of the Public Defender of Georgia discusses the state of the realisation of the right to work in Civil Service; the results of the activities of the commission studying the dismissal of workers from the system of education; and work-safety issues and the state of those who sustained damages during work.

Due to its importance, the amendment made to the Law of Georgia on Civil Service on 5 February 2014 is noteworthy. The new Article 1344 may affect hundreds of individuals' right to work.

Under Article 1344, after the elections for local self-government bodies in 2014, every official of local self-government bodies will be considered to be acting ad interim. They will perform their duties until the vacancies are filled through competition, which should be finalised within 120 days after the results of the elections are officially

625 UN Covenant on Economic, Social and Cultural Rights of 16 December 1966; European Social Charter of 3 May 1996; and Conventions of International Labour Organisation.

626 Constitution of Georgia, Article 30.

627 Ibid. Article 13.1.

628 UN International Covenant on Economic, Social and Cultural Rights, Article 6.1.

629 The Labour Code of Georgia, Article 2.3.

630 Ibid. Article 35.1.

631 Ibid. Article 35.6.

declared. Due to this change, those officials who were employed for undefined terms and had legitimate expectation for staying employed for unlimited term will be dismissed without any explanation and possibility to appeal.

Under Article 23.1 of the Law of Georgia on Civil Service, the general rule of employing an official implies indefinite tenure. Only those acting ad interim are employed for definite term.

Article 29 of the Constitution of Georgia recognises the right of the citizens of Georgia to take up any state position. According to the well established jurisprudence of the Constitutional Court of Georgia, this provision applies to the citizens of Georgia not only in the process of employment and carrying out of their duties, but in the process of dismissal from Civil Service as well (among other authorities, see, Avtandil Tchatchua v. the Parliament of Georgia, judgment no. 2/80–9, dated 3 November 1998; The Public Defender of Georgia and citizen of Georgia Ketevan Bakhtadze v. the Parliament of Georgia, judgment no. №1/3/209,276, dated 28 June 2004). Accordingly, during dismissals from work, the Parliament of Georgia is bound by the constitutional requirement to restrict the right to work in Civil Service only in exceptional cases and based on adequate justification.

The similar requirement is incorporated in Article 25.c) of the International Covenant on Civil and Political Rights, under which every citizen shall have the right and the opportunity to have access, on general terms of equality, to Civil Service in his/her country. Article 30 of the Charter of Fundamental Rights of the European Union also prohibits unjustified dismissal.

Under the established case law of the European Court of Human Rights, the right of a civil servant is a "civil right", which can be invoked before a court (see, Vilho Eskelinen and others v. Finland, application no. №63235/00). However, in the case of K.M.C. v. Hungary (application no. 19554/11, judgment of 10 July 2012) this standard was even widened. The Court held that the law which allowed unjustified dismissal of civil servants was in breach of Article 6 of the European Convention [right to a fair trial], since the employer was under no obligation to give any reasons for that dismissal. The Court took the view that it was inconceivable for the applicant to have brought a meaningful action for want of any known position of the respondent employer (para. 34). The impugned legal act allowing unjustified dismissal from civil service had been declared unconstitutional by the Constitutional Court of Hungary as well.

Stemming from the above-mentioned, the 5 February 2014 amendment of the Law of Georgia on Civil Service may become the basis for the violation of the constitutional right of hundreds of people. This necessitates timely reaction from the competent authorities.

RIGHT TO WORK IN CIVIL SERVICE

Labour relations of civil servants in Georgia are governed by the Law of Georgia on Civil Service. This Law gives civil servants public authority and defines their rights and guarantees.

Within the authority given to the Public Defender of Georgia by Article 12 of the Law of Georgia on the Public Defender of Georgia, and based on the applications filed by former civil servants, the Public Defender studied the cases in the reporting period of 2013. The analysis of this study shows that there have been unjustified and illegal dismissals of civil servants in state and local self-government bodies.

DISMISSAL DURING REORGANISATION OF AN AGENCY, THROUGH STAFF BEING MADE REDUNDANT

Chapter 10 of the Law of Georgia on Civil Service provides for the grounds for dismissal from Civil Service; making staff redundant is among one of them.[632]

The study into the applications of former civil servants filed with the Office of the Public Defender of Georgia in 2013 revealed numerous violations on the part of the state and local self-government bodies when dismissing officials based on Article 97 of the Law of Georgia on Civil Service. E.g., in accordance with the orders of state and local self-government bodies, structural units have been reorganised which was followed by staff being made

632 Law of Georgia on Civil Service, Article 97.1.

redundant. This served as the basis for the dismissal of civil servants from their positions. However, the comparison of the list of positions before and after reorganisation shows that the position held by an official dismissed after reorganisation was not made redundant.

Under Article 96 of the Law of Georgia on Civil Service, "reorganisation of an agency shall not create a ground for the dismissal of a civil servant. When the reorganisation of an agency is followed by staff being made redundant, an official may be dismissed from office on the bases of Article 97".

Under Article 97.1 of the same Law, an official may be dismissed when staff is made redundant from the positions list of the agency.

State and local self-government bodies are administrative bodies under the General Administrative Code of Georgia.[633] Therefore, the orders regarding the dismissal of civil servants fall under the category of individual administrative legal acts.[634] These acts, accordingly, must comply with the statutory requirements of Chapter Four of the General Administrative Code of Georgia.

Under the General Administrative Code of Georgia, discretionary power implies the power of granting the freedom to an administrative body or official to choose the most acceptable decision out of possible decisions under the legislation, to protect public or private interests.[635] Under Article 53 of the Code, if an administrative body was acting within discretionary powers when issuing an administrative legal act, the written substantiation shall contain all relevant factual circumstances having importance at the time of its issuance.[636] Furthermore, an administrative body may not base its decision on circumstances, facts, evidence or arguments not examined or studied during the course of its administrative proceedings.[637] The Supreme Court of Georgia, held in one of its judgments that "despite the fact Article 97 of the Law of Georgia on Civil Service does not mention discretionary power in express terms, the contents of the provision confirms granting an administrative body such power."[638]

According to the results of a case study by the Public Defender's Office, when dismissing officials based on Article 97 of the Law of Georgia on Civil Service, administrative bodies do not study the skills of the officials and compatibility in terms of their personal qualities with the positions held. Furthermore, there are no justifications provided about the preferences given to those other specialists of the same grades and working on similar positions that were not dismissed from Civil Service. Moreover, often the changes in many cases affect only the title of a position and the number of staff members remains the same or is increased. This must not serve as a basis for the dismissal of civil servants. With such practice, administrative bodies are in breach of the principle of rule of law established by the General Administrative Code of Georgia,[639] under which an administrative body may not carry out an activity that contradicts the requirements of the law.

As the result of the case study conducted by the Office of the Public Defender of Georgia in 2013, it was revealed that unjustified dismissals of public officers in application of Article 97 of the Law of Georgia on Civil Service took place in the following administrative bodies: the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia; the territorial body of the Ministry of Education and Science – the Resource Centre of the town of Signagi; LEPL Revenue Service; Kareli Municipality Gamgeoba; Mestia Municipality Gamgeoba; Tbilisi Mayor's office; and Tbilisi Sakrebulo's Office.

633 Under Article 2.1.a) of the General Administrative Code of Georgia, an administrative body implies all state or local self-government bodies or institutions, legal entities under public law (other than political and religious associations), and any other person exercising authority under public law in accordance with the legislation of Georgia.

634 Under Article 2.1.d) of the General Administrative Code of Georgia, an individual administrative legal act implies an individual legal act issued by an administrative body under the administrative law establishing, modifying, terminating, or confirming the rights and obligations of a person or a limited group of persons. The decision of an administrative body to refuse to address an applicant's issue within its competence, as well as any document issued or confirmed by an administrative body that may have legal consequences for a person or a limited group of persons, shall also be deemed an individual administrative legal act.

635 The General Administrative Code of Georgia, Article 2.1.k).

636 Ibid. Article 53.4.

637 Ibid. Article 53.5.

638 Ruling no. BS-342-331(K-10) of the Chamber of Administrative Cases of the Supreme Court of Georgia, dated 20 October 2010.

639 The General Administrative Code of Georgia, Article 5.1.

DISMISSAL FROM OFFICE DUE TO DISCIPLINARY BREACHES

Article 99 of the Law of Georgia on Civil Service provides for the possibility of dismissal of a civil servant due to a disciplinary violation. The Law of Georgia on Civil Service gives a list of both disciplinary violations[640] and disciplinary sanctions[641] the use of which expressly falls within the discretion of a competent administrative body.

In case of realisation of this discretion, the competent official of either state or local self-government body must take into account the obligation stipulated in Article 2.1.k) and Article 53.4 of the General Administrative Code, that is to strike a fair balance between public and individual interests and based on law to adopt the best decision out of several options available. It is also an obligation of a competent official of the state and local self-government bodies to indicate all pertinent factual circumstances in the individual legal act on the dismissal of a civil servant due to disciplinary violation.[642] Unfortunately, some administrative bodies ignore the above regulations of the General Administrative Code when dismissing civil servants. Namely, these bodies adopted unjustified decisions without studying the relevant circumstances and without referring them in respective individual administrative acts. This amounted to the violation of the legal rights of civil servants.

In 2013, the Office of the Public Defender of Georgia studied the decisions on dismissal of civil servants. It was revealed that those acts adopted by the Ministry of Internal Affairs of Georgia, the Ministry of Labour, Health Care and Social Security of Georgia and the Gamgeoba of Gori Municipality fail to meet the statutory requirements. The individual administrative acts were not justified. Regarding this problem, the Public Defender of Georgia issued recommendations for the notice of these authorities under Article 21.b of the Organic Law of Georgia on the Public Defender of Georgia and requested them to study the issue at stake and ensure the adoption of their decisions in compliance with the requirements of the General Administrative Code of Georgia.

DISMISSAL FROM OFFICE BASED ON THE OFFICIALS' OWN MOTION

The Annual Report of the Public Defender of Georgia, 2012, points out the negative practice in administrative bodies; the competent officials request civil servants to write letters of resignation, which subsequently serve as the formal basis for their dismissal from office. Article 95 of the Law of Georgia on Civil Service provides for dismissal from office based on a civil servant's application.

In 2013, numerous former civil servants - previously employed by the Ministry of Internal Affairs, Office of the Chief Prosecutor of Georgia and the Ministry of Defence of Georgia - applied to the Public Defender of Georgia. They alleged that their supervisors had requested them to write letters of resignation. Particular officials are named in some of these applications who allegedly exerted psychological compulsion to force them to leave their positions. The facts alleged in the applications may contain elements of crime under the Criminal Code of Georgia. Therefore, the Office of the Public Defender of Georgia forwarded these applications with annexes to the Office of the Chief Prosecutor of Georgia for follow-up in accordance with the Organic Law of Georgia on the Public Defender of Georgia.

In 2013, the Public Defender of Georgia received applications from those civil servants as well those who despite the pressure from their supervisors had not applied for resignation from office. Such cases took place in Gamgeobas of Marneuli and Aspindza Municipalities. Such applications were forwarded to the Office of the Chief Prosecutor of Georgia for further follow-up. It is noteworthy that the Chief Prosecutor's Office instituted investigation into the cases of several officials based on the alleged abuse of official capacities, persecution[643] and breach of labour legislation.[644]

Based on the analysis of the study into the cases within the competence given to the Public Defender of Georgia by Article 12 of the Organic Law of Georgia on the Public Defender of Georgia, it was revealed that in the second half of 2012 and in the course of 2013, there have been large scale dismissals from state and local self-government

640 Law of Georgia on Civil Service, Article 78.

641 Ibid. Article 79.

642 The General Administrative Code of Georgia, Article 53.4.

643 Criminal Code of Georgia, Article 156.2.b).

644 Ibid. Article 169.

bodies based on resignation applications. The fact that high level of unemployment is one of the major challenges in Georgia is not news. Therefore, the huge number of resignation applications in budgetary organisations certainly gives rise to misgivings.

The following trend has been noticed in the bodies of state and local self-government bodies:

- 47 officials were dismissed based on their resignation letters from Kaspi Municipality Gamgeoba between December 2012 and January 2013;
- 33 officials were dismissed from Marneuli Municipality Gamgeoba between January-February 2013;
- 47 officials were dismissed from Dedoplistskaro Municipality Gamgeoba in December 2012;
- 13 officials were dismissed from the Mayor's Office of the self-governing city of Poti in 2013;
- 44 officials were dismissed based on their own letters of resignation from Gori Municipality Gamgeoba between January-February 2013;
- 17 officials were dismissed based on their own letters of resignation from the Civil Office of the Ministry of Defence of Georgia in November 2012;
- total number of officials dismissed from the United Headquarters of the Armed Forces of the Ministry of Defence of Georgia amounts to 91 in 2013, among them 42 officials were dismissed in January;
- 41 officials were dismissed based on their own letters of resignation from the Chief Prosecutor's Office of Georgia from 20 November 2012 to 14 January 2013;
- 30 officials were dismissed, based on their own letters of resignation and regarding transfer to another office, from the Central Staff of the Ministry of Finance, from November, 2012 until 1 September 2013; in the same period, 157 (one hundred and fifty-seven) officials were dismissed based on their own letters of resignation from the Investigative Office of the Ministry of Finance;
- 47 officials were dismissed based on their own letters of resignation from Ozurgeti Municipality Gamgeoba in 2013, among them 18 officials were dismissed in February, 13 in March and 9 in April;
- 19 officials were dismissed based on their own letters of resignation from Gurjaani Municipality Gamgeoba in February, 2013;
- 17 officials were dismissed based on their own letters of resignation from Aspindza Municipality Gamgeoba in August, 2013, among them 13 officials were dismissed on 7 August.

Considering the problem of unemployment in the country, the analysis of this information above raises questions about the resignation applications filed by civil servants, how genuine was their will to leave the office on their own initiative, and therefore about the legitimacy of the individual administrative acts on dismissals.

Therefore, it can be concluded that, in 2013, the state and local self-government authorities often failed to fulfil their obligations under international and national law in respecting one of the most important socio-economic rights – the right to work.

The activities of the Commission studying dismissals from the territorial bodies of the Ministry of Education and Science of Georgia – Educational Resource-Centre and Public Schools on the account of political opinions

Following the parliamentary elections of 1 October 2012 and the change of government in Georgia, 830 persons applied to the Ministry of education and Science of Georgia.[645] They had been employed in the education sphere and believed that they had been dismissed from office on account of their political opinions. Majority of them allege that after the dismissal, they have not applied to the court as they had no expectation of restoration of justice by the judiciary. There have been cases where the applications that were filed with the courts of general jurisdiction were not allowed.

645 587 former teachers, 220 – former school principles.

By the order of 14 December 2014,[646] the Minister of Education and Science of Georgia set up the commission to study the dismissals from the educational resource centre and public schools on the account of civil servants' political opinions. The Statute of the Commission was approved by the Order of the Minister of Education and Science of Georgia.[647]

There are representatives of seven NGOs[648] and the Public Defender of Georgia in the composition of the Commission.[649]

The major tasks of the commission are the following: to establish, study and evaluate the facts related to the dismissal of civil servants on the account of their political opinions from the ministry's territorial bodies – Educational Resource-Centre and Public Schools from 1 January 2006 until the setting of the commission. Furthermore, the commission elaborates recommendations for the Minister of Education and Science of Georgia.[650]

The Commission examines applications alleging dismissal from office due to political opinions. If needs be, stemming from the particular facts, it holds meetings with the officials of the Ministry and its territorial bodies – Educational Resource-Centre, public school directors, councils of trustees, teachers and parents, and any persons concerned. The Commission hears observations from applicants and third parties about the reasons of the applicants' dismissal from the office.[651]

The Commission works through sessions. A session is competent to make a decision if the session is attended by more than half of its members and a decision is adopted through consensus.[652] The Commission may decide:

- that there is a reasonable doubt that a person was dismissed from the office due to political opinions, and to make a recommendation to the respective minister; or
- that there is no reasonable doubt that a person was dismissed from the office due to political opinions.[653]

The Commission fully examined 830 applications filed with the Ministry of Education and Science of Georgia and adopted neutral decisions at the initial stage of consideration:

- legal shortcomings were established with regard to 565 applications;
- 236 applications were redirected to the competent department of the Ministry of Education and Science of Georgia for consideration;
- 29 applications were admitted for the consideration of the merits;
- by 5 February 2014, the Commission completed the examination of the applications filed from the regions and considered 175 applications on the merits, out of which:

646 Order no. 1375 of the Ministry of Education and Science of Georgia, dated 14 December 2012, on Setting up the Commission to Study Dismissal of Staff Members from Territorial Agencies of the Ministry of Education and Science of Georgia – Educational Resource-Centres and Public Schools – Based on their Political Opinions.

647 Order no. 1374 of the Ministry of Education and Science of Georgia, dated 14 December 2012, on Approving the Statute of the Commission to Study Dismissal of Staff Members from Territorial Agencies of the Ministry of Education and Science of Georgia – Educational Resource-Centres and Public Schools – Based on their Political Opinions.

648 Non-commercial legal entities: "International Institute Planning and Management of Educational Policies"; "School-Family-Society"; "Human Rights as the Priority"; "International Society – Georgia"; "Georgian Young Lawyers' Association"; "International Institute of Fair Elections and Democracy"; and "Association of Civic Initiatives and Protection of Employees".

649 At the initial stage, there were also the representatives of the Ministry of Education and Science of Georgia in the composition of the commission. However, based on the Order of the Minister of Education and Science, dated 9 September 2013 (Order no. 756 of the Minister of Education and Science of Georgia, dated 9 September 2013 on amending Order no. 1375 of the Minister of Education and Science of Georgia, dated 14 December 2012, on Setting up Commission to Study Dismissal from Territorial Bodies - Educational Resource-Centre and Public Schools on the Account of Civil Servants' Political Opinions), the composition of the commission was altered and it only has the Public Defender of Georgia and representatives of NGOs as its members.

650 Article 3.1 of the Statute of the Commission to Study Dismissal of Staff Members from Territorial Agencies of the Ministry of Education and Science of Georgia – Educational Resource-Centres and Public Schools – Based on their Political Opinions.

651 Ibid. Article 3.2.

652 Ibid. Article 9.5.

653 Ibid. Article 9.4.

- reasonable suspicion with regard to dismissals based on political opinions was found in 19 cases;
- breaches of law in dismissals was found in 36 cases; and
- reasonable suspicion with regard to dismissals based on political opinions was not found on 120 cases.

The Commission continues its activities and the consideration of 118 applications of teachers and school directors of Tbilisi Public Schools is on its agenda.

Out of the applicants whose claims were upheld and it was established by the Commission that they had been dismissed on account of their political opinions, the Ministry of Education and Science of Georgia offered appointments to 13 persons to similar or equivalent positions from which they were dismissed. Six persons were appointed and seven turned down the offer due to various reasons.

WORK SAFETY

It is an integral part of the right to work that employees are provided with safe and healthy working surroundings as much as possible. This right is guaranteed by numerous legislative acts. "The protection of labour rights, fair remuneration of labour and safe, healthy working conditions and the working conditions of minors and women shall be determined by the Organic Law."[654]

Under international instruments, the states recognise "the right of everyone to the enjoyment of just and favourable conditions of work, in particular, safe and healthy working conditions."[655]

Under the Organic Law of Georgia on Labour Code of Georgia, "an employer shall be obliged to ensure an employee with as safe a working environment as possible."[656] This provision, however, is declaratory only as there are no sanctions specified for its breach in the Georgian legislation.

Civil rights usually impose negative obligations on the state, whereas economic, social and cultural rights necessitate positive actions on the part of the state.

There are challenges in terms of work safety in Georgia both on institutional and legislative levels. There is no consistent national policy on work health care and working environment, and no instruments to monitor the safety standards of working environment. In 2006, the introduction of the new Labour Code caused the abolition of the then Labour Inspectorate, which supervised safe working conditions in companies, establishments and organisations on the territory of Georgia. To date, due to the absence of an agency with similar supervisory functions, there is no control on industries, which usually ignore the safety standards at workplaces. This puts the employees' health under particular threat. As regards the standards of working safety, the absolute majority of industries are bound by the standards of 1970s and '80s.[657] These standards naturally fail to address the challenges relevant to present times.

Against this background, the results of the study into safety at workplace in Georgian industries are alarming despite the fact that the unemployment rate is rather high in the country and the number of employed persons in the labour market is not considerable.

There has been a sudden increase in the number of fatalities and injuries since 2007. The statistics of 2010-2011 are particularly alarming. During this period, the number of industrial casualties reached its highest point.

According to the Ministry of Internal Affairs of Georgia,[658] 102 workers got injured in 2010 and 42 died. In 2011, 137 workers were injured and 54 died.

654 The Constitution of Georgia, Article 30.4.

655 International Covenant on Economic, Social and Cultural Rights, Article 7.b).

656 The Organic Law of Georgia on Labour Code of Georgia, Article 35.1.

657 Order of The Minister of Economy and Sustainable Development of Georgia, dated 18 February 2011, on the Use of Provisions, Rules and other Documents of Technical Regulation in the Construction Field Governing Technical Supervision on the Territory of Georgia before 1992.

658 Letter no. 808787 of the Ministry of Internal Affairs of Georgia, dated 30 April 2013.

In order to ensure safe working conditions in Georgia, it is necessary to amend the legislation. Georgia has neither ratified the relevant international instruments, viz., ILO Conventions nos. 81, 129 and 155.

Georgian is yet to ratify Article 3 of the European Social Charter, which provides the right to safe and healthy working conditions:

> "With a view to ensure the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:
>
> 1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health, and prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
> 2. to issue safety and health regulations;
> 3. to provide for the enforcement of such regulations by measures of supervision; and
> 4. to promote the progressive development of occupational health services for all workers with essential preventive and advisory functions."

The positive amendments to the Labour Code entered into force on 12 June 2013[659] and brought the labour legislation closer to the European standards. However, there have been no changes or additions in terms of the monitoring of safe working conditions.

In the reporting period, the Office of the Public Defender of Georgia was particularly concerned about the creation of safe working environment and called upon the competent national authorities urging them to undertake the relevant obligations.[660]

Despite the overall unfavourable situation, there have been some positive initiatives on the part of the Ministry of Labour, Health Care and Social Security of Georgia. The Office of the Public Defender of Georgia obtained information that[661] the ministry is in the process of elaboration of draft law on Employment, Work Safety-State Supervision over Working Conditions. The purpose of the latter is, inter alia, to determine general rules in the field of work safety, which will address the present practical issues existing in the industries. The draft law also envisages setting up a sub-agency within the ministry, which will have the similar functions to those of the Labour Inspectorate abolished in 2006. The ministry also upheld the recommendation of the Public Defender of Georgia on ratifying ILO Conventions nos. 81 (Convention concerning Labour Inspection in Industry and Commerce), 129 (Convention concerning Labour Inspection in Agriculture), and 155 (Convention concerning Occupational Safety and Health and the Working Environment); and Article 3 of the European Social Charter.

RIGHTS OF THOSE WHO SUSTAINED INJURIES WHILE WORKING

The Office of the Public Defender of Georgia is often seized by the citizens alleging to have suffered work related injuries. According to them, their situations had deteriorated as the result of the adoption of Resolution no. 53 of the Government of Georgia, dated 25 March 2007. The Resolution replaced Ordinance no. 48 of the President of Georgia, dated 9 February 1999, on the Rules of Compensation for Work Related injuries of a Worker.

Against this background, the present chapter reviews and evaluates those normative acts that previously regulated the relations at stake vis-à-vis the normative acts in force to date and govern the entitlements of those who sus-

659 Organic Law of Georgia on Amending the Organic Law of Georgia on Labour Code of Georgia, 729-IIS – web-site, 4 July 2013.

660 See the Recommendation of the Public Defender of Georgia to the Government of Georgia, dated 2 July 2013; also see the Statement of the Public Defender of Georgia, dated 29 January 2014, regarding the events at Tkibuli Mine.

661 The Ministry of Labour, Health Care and Social Security of Georgia, Letters nos.: №01/73357 (09.08.2013), №01/83107 (16.09.2013), and №01/96050 (25.10.2013).

tained work related injuries.

Ordinance no. 48 of the President of Georgia, dated 9 February 1999, on the Rules of Compensation of Work Related of a Worker compared to the later normative acts provided for more detailed terms of compensation of work related injuries. Presidential Ordinance no. 93 of the Government of Georgia adopted on 6 February 2007 invalidated Ordinance no. 48. On 24 March 2007, the Government of Georgia adopted no. 53 Resolution. This resolution introduced new rules for compensation of work related injuries. The damages suffered through bodily injuries and adverse effect on health would be compensated in the form of non-contractual (tort) liability.

Under Article 992 of the Civil Code of Georgia, a party having inflicted damage to other either with intent or without intent is obligated to compensate the damage. Under Article 408.1 of the Civil Code, the party inflicting the damage is responsible for restitutio in integrum. Under Article 408.2 of the Code, if the injured party is deprived of the ability to work or this ability has been affected, the liability of the other party is increased. The victim must be compensated for the damage through monthly allowance. Resolution no. 53 of the Government of Georgia, dated 24 March 2007, refers in general terms to the mode of compensation under the Civil Code of Georgia. However, the court jurisprudence on the Resolution fully maintained the amount of compensation the injured parties received based on Presidential Ordinance no. 48.

An important change which was introduced by Resolution no. 53 of 24 March 2007, adversely affected the rights of victims of work related injuries; it was related to the monthly allowance in case of absence of an employer's successor. Under Resolution no. 53, starting from 1 March 2007, in case of bankruptcy or liquidation of a company, the obligation to provide monthly allowance ceases to exist and a successor would not be appointed later. Based on this wording of Resolution no. 53, the payment of the compensation was stopped for those persons who sustained work related injuries and received the monthly allowance from the state after the liquidation of the employer.

Resolution no. 53 of the Government of Georgia, dated 24 March 2007, was invalidated by Resolution no. 45 of the Government of Georgia, dated 1 March 2013. The Resolution on Approving Rules of Appointment and Giving Allowance for Compensating Work related Injuries to Health provides for social safeguards. This assistance is handed out to certain categories whose monthly allowances were discontinued due to the liquidation of their employer.

Under Resolution 45 of 1 March 2013, allowance may be granted to a citizen of Georgia, whose employer's (a company created by the state on Georgia's territory) 100% shares were owned by the state[662] and had no successor, if the citizen's injury was related to the work for this particular employer or the injury was caused by the culpable action of the employer and was established before 1 January 2007 and a) the citizen has a right to receive compensation according to the final court's decision; and b) the agency handed out a single allowance in 2007-2008 or covered outstanding expenses.

It is noteworthy that the Resolution of 1 March 2013 provides an exception for the possibility of handing out allowances for the persons working for JSC "Tchiaturmanganumi" or "Saknakhshiri", whose work related disease due the culpable action of the employer was established before 1 January 2007.

While ordinance no. 45 determines the rule of granting allowance for work related injuries, it is noteworthy that Presidential Ordinance no. 48, dated 9 February 1999, provided for the compensation of injuries sustained in the companies where the state owns 100% of shares and which have not been succeeded by other companies.

Ordinance of 1 March 2013 also regulates the rule of calculation of monthly allowance, whereas the decision on granting allowance is taken by the inter-agency commission.

Resolution no. 45 does not mention the relation between an employer and an employee who sustained a work related injury. This relation was the subject matter of Presidential Ordinance no. 48 of 9 February 1999, was at stake during Resolution no. 53 of the Government of Georgia, dated 24 March 2007 and still is relevant. Such relations are regulated by the provisions of the Civil Code of Georgia on tort law.

The adoption of resolution no. 45 of the Government of Georgia, dated 1 March 2013, is undoubtedly a pro-

662 Despite the absence of an express reference in the Resolution, if the 100% ownership of shares is a condition sine qua non for the grant of allowance during the liquidation of a company, the Office of the Public Defender of Georgia was given an explanation in letter no. 7160 of the Government of Georgia, dated 26 February 2014, that at the moment of liquidating the company, the state has to be the owner of 100% of the shares in order to be responsible for handing out the allowance.

gressive development, as certain groups of those persons who sustained work related damages will still be able to receive allowances after 1 March 2007, the allowances they used to receive in the form of monthly compensation for injuries. However, it is also important that those who sustained health injuries in the companies where the state did not own 100% of shares but was a partner or a shareholder are also eligible for social guaranties.

Recommendations:

To the Parliament of Georgia

- **to amend Article 1344 of the Law of Georgia on Pubic Service to the effect of avoiding the violation of hundreds' of self-government bodies' civil servants' right to work.**

To the state and self-government bodies and institutions

- **to diligently study the relevant facts when deciding about dismissal of an official from Civil Service, and state in a relevant document those legal and factual preconditions that served as a basis for the dismissal; the same recommendation is given with regard to those cases where an official motions his/her own dismissal.**

To the Ministry of Education and Science

- **to ensure, within its statutory competence, the restoration of the rights of those persons whose rights have been found in violation according to the Commission studying the dismissal of workers at educational resource-centres and public schools, due to their political opinions.**

To competent agencies

- **to speed up the ratification of ILO Conventions nos. 81, 129 and 155, Article 3 of the European Social Charter, with the view of ensuring healthy and safe working environments.**

To the Government of Georgia

- **take appropriate steps for setting up a public agency in charge of monitoring safe working environment (e.g., labour inspection agency), which will ensure workers with safe working environment and will bring the Legislation of Georgia in compliance with EU standards.**

RIGHT TO LIVE IN AN ENVIRONMENT ADEQUATE FOR LIFE AND HEALTH

In 2013, the Office of the Public Defender of Georgia started working on the right to living in an environment harmless for life and health. The present report is the first occasion a separate chapter is dedicated to the discussion on the realisation of this right in an annual parliamentary report. The Public Defender of Georgia plans to be more proactive in this regard in 2014.

The right to live in healthy and safe environment is one of the basic socio-economic rights. The related rights are safeguarded both by international instruments,[663] and the Constitution of Georgia,[664] the Law of Georgia on Protection of Environment, and other legislative and sub-legislative acts.

Article 37.3 of the Constitution of Georgia guarantees everyone's right to live in a healthy environment and enjoy natural and cultural environment. Everyone shall be obliged to care for natural and cultural environment. Article 37.4 of the Constitution imposes an obligation on the state to guarantee the protection of environment and the rational use of nature with the view of ensuring a safe environment, in accordance with ecological and economic interests of society, with due regard to the interests of the current and future generations.

Under the Universal Declaration of Human Rights, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.[665]

The International Covenant on Economic, Social and Cultural Rights imposes an obligation on the states to improve all aspects of environmental and industrial hygiene.[666]

To date it is undisputed that there is a direct link between the protection of environment and protection and furthering human rights. Environmental issues, the adverse human impact on the environment, are one of the major problems of the contemporary life. Degraded environment adversely affects human life and health. The demographic and industrial dynamics made the protection of environment necessary not only for particular societies but also for the entire mankind.[667]

It is necessary that the mankind becomes aware of the real threat posed to health as the result of the pollution of environment and need to progressively solve this problem. Moreover, the instruments for the protection of following rights must be globally reinforced: right to live in healthy environment, right to due compensation, and right to receive comprehensive, timely and objective information.[668]

Protection of environment is a major public function of the state. It stems from Article 37, Article 3.1.i), and Article 3.1.r) of the Constitution. The following shall fall within the exclusive competence of high State bodies of

663 International Covenant on Economic, Social and Cultural Rights.

664 The Constitution of Georgia, Article 37.3.

665 Universal Declaration of Human Rights, Article 25.1.

666 International Covenant on Economic, Social and Cultural Rights, Article12.2.b).

667 Levan Izoria, Contemporary State – Contemporary Administration, Siesta Publishers, 2009, p. 60.

668 Maia Bitadze, European Standards of Human Rights and their Impact on the Legislation and Practice of Georgia in Collection of Articles, GIZ Publishers, 2006, p. 8.

Georgia: environmental observation system (Article 3.1.i)), and legislation on land, subsoil and natural resources (Article 3.1.r)).

The state must use the natural resources so that to strike a fair balance between economic interests, sustainable development of the country and maintain environment that is safe for health and life.

Along with industrial development, the issues with regard to the protection of environment acquire increased significance. The threat to life and health is mostly caused by excessive leniency towards the industries operating in the country, which is explained by economic interest trumping population's interest to the respect of the right to live in a safe environment.

In the reporting period, the Office of the Public Defender of Georgia obtained information about several large industries, the activities of which frequently give rise to legitimate questions in terms of environmental and health hazards. These industries are on the list of the stationary objects recorded and identified in the pollution of atmospheric air. This list is approved by Order no. 29 of the Ministry of Environment and Natural Resources Protection of Georgia, dated 2 August 2010.

JSC Madneuli

To date, one of the largest copper mining companies in Georgia is JSC Madneuli. It has been operating since 1996 in Bolnisi district. The mineral is extracted through the method of digging and burrowing in a copper mine. The copper excavated from the quarry is transported to a factory for enriching, whereas ballast components are dumped at special trash sites. The mineral is broken, made to erupt and copper is separated through the use of floatation method. This activity adversely affects environment. JSC Madneuli carries out excavating activities near River Kazretula, which is a tributary of river Mashavera on the right side. River Poladauri is also a tributary of River Mashavera. All three rivers are used for everyday life and agriculture; they are polluted as the result of Madneuli's mining activity. The outcomes of research conducted in 2006 showed that cumulative components of copper, zinc, cadmium and sulphates considerably exceed the minimum level for surface waters.

The fact that all three rivers are used for everyday life and irrigation caused heavy metal pollution of soil as well. This in its turn causes the risk that the agricultural product grown on this soil is also polluted.

Back in 2000, high indicators of diseases were identified in Kazreti community, Bolnisi district, where the company operates. Researches in the state of health of the region's population were only sporadic and no researches were conducted in the past few years at all. Considering that the Ministry of Environment and Natural Resources Protection of Georgia has not conducted any monitoring on the fulfilment of obligations by the company on affecting environment in accordance with law and special permit (issued by the Ministry of Environment and Natural Resources Protection in 2009 for indefinite term), it can be concluded that the problems at stake remains relevant to date.

JSC "Kvartsiti"

The situation regarding the activities of JSC "Kvartsiti" is similar. In the process of copper extraction, the company extracts gold from minerals containing gold particles. The only difference is that the activities of JSC "Kvartsiti" pose even more danger to the environment. The company in the process of gold extraction actively uses cyanide, which is a toxic agent.

Tkibuli coalmines

Tkibuli region is also topical in terms of ecological problems. There are several coalmines in the region. They are owned by LTD "Kvanakhshiri". Apart from unsafe working conditions endangering employees,[669] the coal remains dumped near the residential areas create problems for the population. The dumped coal remains are diffused in the

669 See Right to Work Safety, sub-chapter in the present report.

air and also finds their way into the nearby river. According to the local population, these problems contribute to the increase of oncological diseases. However, there is no research finding which would in express terms confirm the causal link between these circumstances.

Zestaponi Ferroalloy Plant

Zestaponi Ferroalloy Plant raises serious questions in terms of environmental pollution in its functioning. This company is owned by LTD "Georgian Manganese". According to unconfirmed information, due to periodic shut down of gas filters, poisonous agents systematically diffuse in the air and local population complains about dramatic increase of cardiovascular diseases.

LTD Georgian Manganese

During 5-15 July 2013, the Office of Integrated Control of Environment, a body of the Department of Environment Protection under the Ministry of Environment and Natural Resources Protection of Georgia, conducted a selective (unplanned) examination of compliance of LTD Georgia Manganese with the terms of the mining license issued to it, and the statutory requirements of the environment legislation (in the villages of Perevi and Rgani of Tchiatura Municipality).

The examination revealed numerous violations, among them, the damage to the environment amounted to 2,079,582.34 (two million seventy-nine thousand five hundred and eighty-two GEL).[670] The case was referred to the Chief Prosecutor's Office of Georgia.[671] The magistrate judge of Tchiatura, by the resolution of 16 October 2013, fined LTD Georgian Manganese with GEL500 under Article 573 of the Code of Administrative Violations of Georgia (use of land resources with the violation of license terms).

The above list makes it clear that there are numerous companies on the territory of Georgia, whose activities that are possibly damaging human life and health. They need to be the subjects of permanent examination by the competent authorities.

ACCESS TO INFORMATION ON THE STATE OF ENVIRONMENT PROTECTION

According to Article 37.5 of the Constitution of Georgia, "Everyone shall have the right to receive complete, objective and timely information as to the state of his/her working and living environment."

Under Article 1 of Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, in order to contribute to the protection of the right of every person of present and future generation to live in an environment adequate to his or her health and well-being, the state is obligated to ensure the right of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of the Convention.[672]

The aim of the Law of Georgia on Environment Protection is "to protect the basic human rights in the field of environment protection – to live in an environment that is adequate to health and to use natural and cultural environment. "[673]

Under Article 35.1 of the Law of Georgia on Environment Protection, "for the purpose of considering the eco-

670 Letter of the Ministry of Protection of Environment and Natural Resources of Georgia, dated 28 January 2014, and attached materials.

671 According to the letter of the Office of the Chief Prosecutor's Office of Georgia, dated 13 March 2014, on 23 October 2013, the Office of Sachkhere District Prosecutor instituted investigation in the criminal case no. 062231013801, on the fact of the violation of the rules for exploitation of mines by LTD Georgian Manganese under Article 298 of the Criminal Code of Georgia (violation of the rules of exploitation or protection of a mine).

672 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 1.

673 The Law of Georgia on Protection of Environment, Article 3.1.b).

logical, social and economic interests of the society and the state, and for the protection of human health, natural environment, as well as cultural and material values, for conducting activities on the territory of Georgia, it shall be necessary to obtain licence for affecting the environment."

However, the system of evaluation of effects on environment is inefficient in terms of the possibility of either imparting information to the public or allowing it to be involved, as well as decision making of competent authorities; it also fails to conform with the requirements of Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Moreover, there is a risk of pressure on a competent decision-making body,[674] which may result in the adoption of a partial decision.

This conclusion is consolidated by the examination of the legality of Khudoni Hydro Power Plant construction by the Office of the Public Defender of Georgia. The Office of the Public Defender of Georgia, inter alia, studied into the process of adoption of the decision on the Khudoni Hydro Power Plant.

The case of Khudoni Hydro Power Plant[675]

The Office of the Public Defender of Georgia studied the legality of Khudoni Hydro Power Plant, inter alia, through the prism of the right to live in an environment adequate to human life and health.

First and foremost, it needs to be pointed out that for any country, including Georgia, energy development is very important. This is particularly true under the increasing demand for energy and the irreversible process of dwindling of conventional energy sources.

It is a fact that Georgia has abundant hydro resources. It is necessary to use these resources reasonably, which will contribute to the development of the energy system and sustainable economy of the country. However, it is paramount that this process should not violate the vital right of an individual to live in an environment adequate to life and health.[676]

The study by the Public Defender of Georgia into the construction of Khudoni Hydro Power Plant revealed several problems related to statutory regulations existing in Georgia. Particularly noteworthy is that during the implementation of projects of such scale and substance, it is of vital importance to have the impact, which may affect the population's life and health and the environment itself, on environment studied and analysed. In this case, according to the primary outcomes of the study conducted by the Office of the Public Defender of Georgia, there are logical questions about this process. It also needs to be pointed out that involvement of the public in decision-making was delayed.

ON 29 June 2007, a Memorandum of Understanding was concluded between the Government of Georgia and Continental Energy LTD[677] on the construction of "Khudoni" Hydro Power Plant[678] on river Enguri. The MoU comprised the scheme "construction-possession-exploitation", according which a 702MW hydropower plant will be constructed on river Enguri.

Under Article 4.1.l) of the Law of Georgia on "Permitting Impact on an Environment," placing a power plant (of 2MW and above) is subject to ecological expert report. Moreover, under the Law of Georgia on Licences and Permissions, a construction permit is obligatory.[679] The legislation in force allows the competent authority to issue permission[680] or deny the licence

674 The Ministry of Environment and Protection of Natural Resources is implied.

675 Case no. 2031/1.

676 Moreover, the Georgian legislation provides for administrative (the Code of Georgia on Administrative Violations, Chapter 7) and criminal (the Criminal Code of Georgia, Section 10) responsibility for violations of the rules of protection of environment and exploitation of natural resources.

677 On 14 May 2010, the Government of Georgia and Continental Energy LTD and Trans Electrica Limited (BVI) concluded an agreement, according to which Continental Energy LTD transferred its rights, duties and liabilities fully and unaltered to Trans Electrica Limited.

678 Amended on 23 December 2009.

679 Resolution no. 57 of the Government of Georgia, on Construction Terms and Rules of Issuing Construction Permission, Article 79,2.e); Law of Georgia on Licences and Permissions, Article 25.1.

680 The Ministry of Environment and Natural Resources Protection of Georgia, Ministry of Economy and Sustainable Develop-

In accordance with the existing[681] and previous[682] rules approved by the Government of Georgia, an investor, in order to obtain the permission to impact environment, positive ecological expertise and a construction permit, is obliged to prepare a report on impact on environment only after the conclusion of a Memorandum of Understanding with the state on the construction of a particular hydro power plant.

In this regard, one clause is noteworthy that features in the contract concluded between the investor and the Government of Georgia on the construction of Khudoni Hydro Power Plant.[683] According to this clause, "the Government" will assist "the company in charge of the project" to obtain the necessary licences and permits. Furthermore, in case a permit/licence in accordance with the legislation of Georgia and the permit/licence applied for by "the company" is not issued by a competent state authority in statutory terms, the Government of Georgia is obligated to afford additional time for the "company in charge of the project" to fulfil the contractual obligations.

It should be noted in this regard that the contract of 28 April 2011 does not govern the situations where the company in charge of the project fails to receive statutory licences despite the fulfilment of the contractual obligations by the parties. To the contrary, in such case, the Government of Georgia gives the investor time to manage obtaining all necessary permissions.

The amending of the contract on 28 May 2013 is also noteworthy.[684] Under the amendment, in accordance with the licence to impact environment and the findings of ecological experts, the parties review technical specifications laid down by the Contract.[685] However, under the same contract, the Government of Georgia is obligated not to initiate and not to approve such projects, which, in the investor's opinion, will adversely affect technical specifications of the object.[686]

The analysis of the above statutory provisions and clauses of the contract concluded between the Government of Georgia and the investor on the construction of Khudoni Hydro Power Plant makes it clear that the statutory requirements on the construction of a hydro power plant, and the procedure for obtaining permissions in this case are of only formal character for the investor. There is no such case envisaged that the investor can be denied to be issued with a permit of any kind.

The above statutory procedure on taking a decision on the construction of a hydro power plant deprives the evaluation of impact on environment of any sense. As mentioned above, originally a memorandum is concluded between the state and an investor on the construction of a hydro power plant by which the state takes up obligations with regard to a private company. Only after this the impact of the project is evaluated on vital interests such as ecological, social and economic interests and human health, natural environment, as well as cultural and material values of the people and the state.

The shortcoming of the procedure at stake is evident in the given case as well; despite the absence of a positive report by the Ministry of Environment and Natural Resources Protection of Georgia based on the evaluation of impact on environment, the high-ranking officials (Prime-Minister, Ministry of Energy) make public announcements[687] about the construction of Khudoni Hydro Power Plant. This is even more illogical against the background, as of 1 March 2014, when there is not even an application lodged with LEPL Agency of Technical and Construction Supervision to start administrative proceedings for obtaining permission of construction of Khudoni Hydro Power Plant.[688]

ment of Georgia, and LEPL Agency for Technical and Construction Supervision.

681 Resolution no. 214 of the Government of Georgia, dated 21 August 2013, on the Rules of Express of Interest for Technical and Economic Research of Construction, Possession and Operation of Hydro Power Plants in Georgia.

682 Resolution no. 107 of the Government of Georgia, dated 18 April 2008, on State Programme "Renewable Energy – 2008" on Providing Construction of New Sources of Renewable Energy was in force by the time of conclusion of MoU on the construction of Khudoni Hydro Power Plant.

683 Contract, dated 28 April 2011, Article 4.12.a),d).

684 Contract, dated 28 May 2013, para. 1.5.

685 Contract, dated 28 April 2011, Article 3.4.

686 Ibid. Article 8.1.

687 http://www.youtube.com/watch?v=JUGFHHu6MZs; http://www.youtube.com/watch?v=xg-ciahC2Ak; http://www.youtube.com/watch?v=o4TtZae31ng; http://www.youtube.com/watch?v=1fWvvP3ff-o, [last seen on 4.03.2014].

688 Letter no. 11/7398 of the Minister of Economy and Sustainable Development of Georgia, dated 15 November 2013.

Such public announcements by the high-ranking political officials can be considered to be pressure exerted on the relevant administrative body that is competent to make a decision.

The legislation in force[689] makes it clear that the decision on permission[690] must be taken by the administrative body, which is competent to issue licences. Accordingly, it must be the competent body that takes the decision on the continuation of administrative proceedings (in statutory cases if necessary) or on denial of a permit. In this case, the Government of Georgia (in particular, the Ministry of Energy of Georgia) is not competent to extend the statutory term for obtaining permissions.

It is concluded based on the above-mentioned that the notion of public's involvement goes beyond the narrow context of evaluation of the impact on environment, and it comprises general obligations of the states. Moreover, it will be reasonable to assume that the requirement of public's involvement in environmental matters is in compliance with the recognised human right.[691]

OBSERVANCE OF CONSTRUCTION PROVISIONS AND RULES

Under the Law of Georgia on Protection of Environment, "environment" implies the unity of "natural environment" and the "man-affected cultural environment".[692] The "man-affected cultural environment" is a part of natural environment, which also comprises man affected ecological systems, affected interdependent natural elements, and anthropogenic landscapes established by them.[693]

Against the background of multiple construction projects being implemented in Georgia, particularly in the capital, it is important that the relevant state authorities ensure the creation of an environment adequate to human life and health. The case study by the Public Defender of Georgia revealed that the Georgian legislation in terms of providing construction standards and rules is far from perfect. Moreover, in some cases, the relevant state authorities fail to apply even existing legislative regulations.

Order no. 3/26 of the Minister of Urbanisation and Construction of Georgia, dated 5 February 2001, on Extending the Term of Application of the Construction Standards and Rules as well as other Normative Acts on the Territory of Georgia was invalidated by Order no. 1-1/1839 of the Minister of Economy and Sustainable Development of Georgia on 22 November 2010.

However, on 18 February 2011, the same ministry adopted Order no. 1-1/251, under which the use of the standards and rules and other documents of technical regulation existing in the field of technical supervision and construction field on the territory of Georgia until 1992 became mandatory. The annexure of the said Order has in Russian language the list of numerous construction standards and rules adopted in the Soviet period. This list does not have a systematic alternative in Georgian language in the Georgian legislation to date. The majority of these construction standards contradict the relatively new standards adopted in this field. Moreover, the approach of the public agencies is inconsistent with use of the standards in various cases.[694] Such inconsistency results in working and living in the buildings constructed in breach of construction standards dangerous to the life and health of people.

It is necessary to adopt a unified and systematised normative act that regulates design, construction standards and rules, exploitation and supervision, and technical regulation of the construction field on the territory of Georgia. This normative act would ensure the creation of an environment adequate to human life and health. It is expedient that the relevant state authorities would be bound to following the statutory requirements and bear responsibility in case of failure to do so.

689 General Administrative Code of Georgia, Article 5.1 and Article 12.2.

690 License for affecting environment, conducting of expertise, construction permit.

691 Günther Handl, Human Rights and Protection of the Environment (Manual of Economic, Social and Cultural Rights, 2nd revised edition), p. 376.

692 The Law of Georgia on Protection of Environment, Article 4.a).

693 Ibid., Article 4.c).

694 Recommendation of the Public Defender of Georgia, dated 20 January 2014, issued for the notice of LEPL Architecture Office of Tbilisi.

Recommendations:

To the Ministry of Environment and Natural Resources Protection of Georgia

- **to ensure regular statutory examination of those companies whose activity may pose danger to human life and health.**

To the Ministry of Energy of Georgia, the Ministry of Economy and Sustainable Development of Georgia, and the Ministry of Environment and Natural Resources Protection of Georgia

- **to ensure fulfilment of obligations under international law about access to information on environment protection and involvement of the public in decision-making at all stages of adopting a decision on constructing hydro power plants; and to ensure the elaboration of detailed statutory procedures for the fulfilment of this right.**

To the Ministry of Energy of Georgia, the Ministry of Economy and Sustainable Development of Georgia, and the Ministry of Environment and Natural Resources Protection of Georgia

- **to ensure the observance of the procedure established by the General Administrative Code for the preparation and adoption of a decision when issuing construction permits on hydro power plants.**

To the Ministry of Economy and Sustainable Development of Georgia

- **to elaborate and approve relevant construction provisions and rules on the territory of Georgia, which will be in full compliance with the exercise of the right to live in an environment adequate to human life and health.**

To the Office of Tbilisi Architecture

- **to take into account, when issuing construction permits,, Order no. 1-1/251 of the Minister of Economy and Sustainable Development of Georgia, dated 18 February 2011, on the Use of Provisions, Rules and Technical Regulation Documents in Force until 1992 related to Technical Supervision and Construction field on the Territory of Georgia.**

RIGHT TO HEALTH CARE

Article 37 of the Constitution of Georgia acknowledges and safeguards the right to health care, which principally implies the state's obligation to ensure the realisation of this right through positive measures. The aforementioned Article is one of the provisions with the widest scope and application. The full realisation of this right depends on state activities, in particular, on the fulfilment of obligations provided by state-funded medical programmes in health care.

One of the indicators of the importance of health care for a country is the overall sum expended in the field. Under Article 14 of the Law of Georgia on State Budget of Georgia in 2014, health care and social security are two of the priorities of the state. This approach is confirmed by the health care budget defined in Article 15 of the Law; the health care budget, which is on the increase, amounts to GEL 2,658,000.00. While this is GEL 313,000.00 higher than the budget in 2013, its share in the GDP (2011-1.7%) and the state budget (2010-4.8%) is still rather low and the same as the indicators of the poorest countries in Europe.[695]

It is worth mentioning that monitoring over the effective realisation of the right to health care will be one of the priorities of the Office of the Public Defender of Georgia in next year. Among other activities, with the support of the Georgian representation of the international organisation Oxfam, the Office of the Public Defender of Georgia plans to monitor the realisation of the right to health care. The main objective of the monitoring is to identify the problems within the state's Universal Health Care programme. The eradication of the problems will improve the quality of health care management and financial access to medical services as well as improve the protection of patients' rights in the future.

The present report, similar to the previous years' reports of the Public Defender of Georgia, analyses the challenges existed in 2013 in terms of protection of the right to health care; the fulfilment of the obligations the state undertaken by the state with regard to the protection of the right to health care.

UNIVERSAL HEALTH CARE AND STATE INSURANCE PROGRAMMES

Health insurance is guaranteed by the Constitution as the means of access to health care. Nowadays, there are two state programmes in operation in Georgia: 1) the programme defined by Resolution no. 218 of the Government, dated 9 December 2009, on the measures to be taken towards the population's health insurance and defining the terms of the insurance voucher within state programmes; and 2) the programme approved by Resolution no. 165 of the Government of Georgia, dated 6 May 2012, on the actions to be carried out with regards to health insurance and defining the terms of insurance within the state health insurance programmes for the following categories: from 0 to 5 year-old children; 60 year-old women and above; 65 year-old men and above (population eligible for retirement); students; disabled children; and persons with acute disabilities.

In the reporting year of 2013, the Government of Georgia changed its approach to the health care system. In parallel to the state insurance programmes, there is the Universal Health Care Programme defined by Resolution no. 36 of the Government of Georgia, dated 21 February 2013. The users of this programme are those persons with a Georgian citizen's ID, a neutral ID, a neutral travel document that has no private or public health insurance; as well as foreigners having a status in Georgia, those having either a refugee or humanitarian status.

695 Brief statistical review, the Centre of Disease control and Public Health, the Ministry of Labour, Health Care and Social Security of Georgia, 2013.

The first phase of the Universal Health Care programme was in operation from 28 February 2013 to 1 July 2013. This phase included the services of a GP and management of emergency cases, both at clinics and ambulances . More than 450 diagnostics of emergency medical cases were financed during this period. While the Ministry of Health Care offered the citizens 3 categories of medical services, the second stage of the Universal Health Care programme incorporates the following 6 main categories of medical services: 1) extended service of primary health care; 2) emergency ambulance aid; 3) extended emergency inpatient medical aid. At the same time, the scopes of primary health care and emergency services considerably increased, e.g., consultations with specialist doctors were added to GP's visits; and the list of laboratory and diagnostic services was lengthened.[696]

The previous reports prepared within the Public Defender's Office also highlighted the shortcomings of the existing state insurance programmes in terms of covering medication expenditure. There seems to be no improvement in this regard in the Universal Health Care Programme either. The annual limit of GEL 50, with 50% co-funding of medication costs remained the same.[697]

Considering the increasing prices of medicines, the above-mentioned contribution, is lower than minimum standards. Those with insufficient funds and chronic diseases, who have to administer drugs on a daily basis, will not benefit from the health care programme due to the lack of necessary medicines. This is true even if those patients are enabled to apply to the primary health care institutions and medical establishments. Therefore, it is vital that the list of subsidised medicines is enlarged and the limit of contribution towards medicines prices is increased. In the initial stage, the list of medicines may cover the indispensable medicines of those patients who suffer from chronic diseases and find themselves below the poverty threshold.

The previous reports of the Public Defender also mentioned the problem related with high prices of medicines. The situation has not improved in this reporting year either. The problem related to the accessibility of medicines due to high prices considerably affects the budgetary expenditure of the state programmes and the users of these programmes.

Despite the fact that, within the state programmes, citizens may receive primary health care by spending less, there are frequent cases where individuals do not have enough money to purchase prescribed medicines. Therefore, quite a lot of patients avoid treatment as outpatients, which often results in deteriorating conditions and hospitalisation. This observation is consolidated by the high indicator of inpatient treatment provided within the Universal Health Care Programme.[698] Such cases require far more state expenditure as funding outpatient treatment and emergency aid, and surgical intervention becomes necessary. This, in its turn, causes patients' expenditure.

Apart from the financial aspect, geographical accessibility of medical services is also to be ensured so that the state medical programmes are comprehensively fulfilled. In this regard, the population of mountainous regions faces certain challenges. They have limited access to local comprehensive medical services. The population of mountainous regions have to resort to distant medical establishments as the private companies managing local medical establishments cannot provide them with comprehensive medical services due to low work-load and difficulty in maintaining highly qualified personnel.

Those companies, which were handed over medical establishments as the result of privatisation of hospital sector, have no obligations undertaken before the state in terms of ensuring particular medical services. They are under a general obligation to maintain the existing profile of a medical establishment for a certain period of time. This obligation is more or less being fulfilled. Considering the existing reality, the Ministry of Labour, Health Care and Social Security is not entitled to directly interfere with the management of a private company. This gives rise to the necessity of the elaboration of a certain strategy, which would solve similar problems.[699]

It is planned in 2014 to bring together those persons covered by the state insurance under the state Universal Health Care Programme. Due to the bankruptcy of the insurance company Archimedes Global Georgia, all the

696 Ministry of Labour, Health Care and Social Security of Georgia, Report, 2013, p.7.

697 Resolution no. 36 of the Government of Georgia, dated 21 February 2013, on Certain Activities to be carried out with the view of introducing Universal Health Care.

698 Ministry of Labour, Health Care and Social Security of Georgia, 2013, p. 9.

699 In terms of geographical accessibility of medical services, the Office of the Public Defender of Georgia reviewed case no. 887/1 of Tetritskaro municipality population and case no. 1129/1 of citizen K.G. in the reporting period of 2013.

persons insured with it have already been integrated in the Universal Health Care Programme under Resolution no. 36 of the Government of Georgia, dated 21 February 2013. Therefore, insurance companies will have no space to operate in the state programmes.

The fulfilment of this plan will slightly affect the following categories: from 0 to 5 year-old children; 60 year-old women and above; 65 year-old men and above (population eligible for retirement); students; disabled children; and persons with acute disabilities. The aforementioned categories are the users of the state programme approved by Resolution no. 165 of the Government of Georgia, dated 6 May 2012. The fulfilment of the plan will considerably affect those using the state programme defined by Resolution no. 218 of the Government of Georgia, dated 9 December 2009. This Resolution concerns the measures to be taken with regards to health insurance and defines the terms of insurance voucher within state programmes.

During the introduction of the new system, it is necessary, at the least, to maintain the terms of medical services for the users insured within the state programmes. The users of the state Universal Health Care Programme and the two above-mentioned programmes have different terms of co-funding medical services. The beneficiaries of the state programme defined by Resolution no. 218 of the Government of Georgia, dated 9 December 2009, have most of their medical services fully funded. The beneficiaries of the state programme defined by Resolution no. 165 of the Government of Georgia, dated 6 May 2012, have 20% co-funding and the users of the Universal Health Care Programme have 30% co-funding.

For the efficient fulfilment of Universal Health Care Programme, it is necessary to have an impartial and independent mechanism in charge of examination of the beneficiaries' claims and applications in place. Presently, there is no such remedy available. In the light of the existing legislative regulations, a court of general jurisdiction can be the only remedy. Application to a court, considering the fees and terms of examination, turns out to be inefficient in most of the cases. LEPL Medical Mediation Service is not a competent authority to examine the disputes arising within the Universal Health Care Programme.[700] Instead, this agency is authorised to review disputes within the state insurance programmes and act as a mediator. When the beneficiaries of state insurance programmes are integrated with the Universal Health Care Programme, LEPL Medical Mediation Service will be stripped of its statutory functions.

It is vital to have an independent and impartial agency, which will be competent to examine the concerned persons' claims related to the Universal Health Care Programme. This function can be given to LEPL Medical Mediation Service, as the result of relevant legislative changes. However, in such case, it is important that the accountability and institutional independence of the administrative body of Universal Health Care Programme – LEPL Agency of Social Services and LEPL Medical Mediation Service- are clearly separated. It is vital to maintain the independence of these agencies both in terms of formal appearances and substantially since both these agencies are legal entities of public law under the Ministry of Labour, Health Care and Social Security of Georgia.

THE QUALITY OF HEALTH CARE SERVICES

The right to relevant medical services in accordance with the professional and service standards that have been acknowledged and established in the country is guaranteed by the Law of Georgia on the Rights of a Patient.[701] Along with the role of medical personnel in ensuring the quality of medical services, the positive obligations of the state are also important. In particular, the state must ensure the environment (both legislative and organisational), where medical personnel will be motivated and at the same time able to fully undertake responsibility for the quality of medical service.

The elaboration of the guidelines of clinical practice and introduction can be instrumental in the improvement of the quality of medical service and clinical outcomes. This obligation is imposed on the state under the Law of Georgia on Health Care.[702]

The Parliamentary Report of 2012 also pointed out the necessity of the use of protocols and guidelines approved by the Ministry of Labour, Health Care and Social Security of Georgia as a significant component in the quality

700 Order no. 18 of the Ministry of Labour, Health Care and Social Security of Georgia, dated 4 April 2012.

701 Law of Georgia on the Rights of a Patient, Article 5.

702 Article 16.1.c) of the Law of Georgia on Health Care.

management.

Similar to the previous years, to date, there are 124 protocols and guidelines published on the website of the Ministry of Labour, Health Care and Social Security of Georgia. This is a very small number compared to international standards. The process of elaboration of guidelines and protocols is a sketchy process and most importantly, there is no system for either facilitation of their implementation or periodical update. As a result, there is no unified practice in the country and not even a minimum level of quality is ensured.[703]

The state's continued support to professional development is vital for improving the quality of medical services. This support should be aimed at ensuring the compatibility of medical workers' theoretical knowledge and practical skills with the achievements of modern medicine and technologies. Despite the existing legislative safeguards, it is important that the Ministry of Labour, Health Care and Social Security of Georgia should be more actively involved in this regard.

Compared to 2012, it is also noteworthy that more cases involving doctors' responsibility were revealed in the current reporting period. The State Regulation Agency for Medical Activities applied different disciplinary actions against 269 doctors, i.e.,[704] 130 cases more than the previous year.

SEVERAL INDICATORS OF HEALTH CARE

One of the universally recognised indicators of the efficiency of health care system is child mortality (infant mortality, neonatal and mortality under age five) rates.

The neonatal mortality is affected by factors such as lifestyle, quality of nutrition, prenatal care, qualifications of gynaecologists and reanimatologists, orderly functioning of prenatal services, and many more. Therefore this indicator is "collective" in nature and indicates the quality of medical services.

From 1990 to 2011, the mortality rate of children under age five in Georgia decreased by 44.3% according to the official statistics, and by 56% according to evaluative calculations. In comparison with 2011, the mortality rate of children under age five increased by 4.3% in 2012. The mortality rate of children under age five is still high in Georgia in comparison to European, as well as former Soviet Union countries.[705]

As regards maternal mortality rate, according to the official statistical data of the National Centre of Disease Control, the situation slightly improved in comparison to the year 2011 year and amounts to 22.9, which is very high for European standards. Considering the indicators, there has been a considerable progress since 2000. However, the target indicators of Millennium Development Goals for 2015 have not been attained yet.[706] Therefore, we believe that the Ministry of Labour, Health Care and Social Security of Georgia should take more proactive approach in this regard.

HEPATITIS C

In the beginning of the reporting year of 2013, problems related to the treatment of hepatitis C constituted a particular concern for the Public Defender. In that period, a recommendation was drafted[707] concerning the accessibility of diagnostics and treatment of this disease.

At the end of 2013, the state carried out some positive measures regarding the treatment of hepatitis C.

703 Report on Efficiency of Health Care System, the Ministry of Labour, Health Care and Social Security of Georgia, 2013, p. 69.

704 Letter no. 02/16917 of the Medical Activities Regulation Agency, dated 28 February 2014.

705 Brief statistical review, the Centre of Disease control and Public Health, the Ministry of Labour, Health Care and Social Security of Georgia, 2013, http://www.ncdc.ge/index.php?do=fullmod&mid=681.

706 Report on Efficiency of Health Care System, the Ministry of Labour, Health Care and Social Security of Georgia, 2013.

707 Recommendation no. 3366/04-13/1588-13 of the Public Defender of Georgia, dated 19 June 2013.

To date, the Ministry of Health Care has completed the procurement procedures for hepatitis C medication. The medication will be provided to the penitentiary system. Moreover, an agreement is signed to provide civil sector beneficiaries with the medication at a discount for two years. As the result of the above-mentioned, by 2014-2015, the state will provide diagnostics and treatment (including antiviral medication) to 1000 inmates at the prisons and penitentiaries; 10, 000 beneficiaries in the civil sector will be able to purchase hepatitis C medication at a discount. The Ministry of Health Care will purchase 180 mkg/1ml bottles of pegylated interferon (Pegferon) for 1000 inmates at the cost of GEL 158.67, which is 60% lower than the price in Georgian market.

A similar discount will be available for 10, 000 patients in public sector who will be able to buy 180mkg/1ml bottles of Pegferon at a fixed price – equivalent of no more than USD 92.88 in Georgian currency (at an official exchange rate operating on the payment day)

Hepatitis C is an acute problem in terms of public health care, and the latter presupposes the fulfilment of certain positive obligation by the state, in order to ensure that the population is protected against contagious and non-contagious diseases. Stemming from the particularity of the spread of this disease and high risk of infection to other persons, it is imperative that the treatment of hepatitis C is accessible for everyone concerned and to ensure within practicality that it is possible to obtain the necessary medication at a reasonable price.

Recommendations:

- **to improve the existing state subsidised health care programmes in terms of covering medication costs and funding;**
- **to take measures to improve physical/geographical access to health care by the Ministry of Labour, Health Care and Social Security of Georgia;**
- **to ensure that the users of state insurance programmes still benefit from the insurance terms when the terms of Universal Health Care State Programme applies to them; and**
- **to amend the legislation to ensure the examination of claims and applications of the users of Universal Health Care Programme in reasonably short terms by an independent and impartial agency.**

RIGHTS OF THE CHILD

In 2013, the state made certain steps towards improving the quality of protection of the rights of the child, child-care, and honouring the obligations undertaken both at international and national levels.

In the reporting period, the Parliamentary Committee on Protection of Human Rights and Civic Integration announced 2014 as the year of protection of the rights of the child.[708] The Parliament adopted the concept of announcing 2014 as the year of protection of the rights of the child and approved an action plan. The action plan aims at elaborating particular draft laws and influencing politics with the view of providing for and safeguarding all the rights of the child by law.

The authorities plan the following important legislative initiatives: the Code of Juvenile Justice, Prohibition of Corporal Punishment, Law on Pre-School Education, and amendments to the Law on Prophylactics for Diseases Caused by the Deficiencies of Iodine, other Microelements and Vitamins, as well as amendments to the Law on Social Assistance.

The Parliamentary Committee on Protection of Human Rights and Civic Integration supported the beginning of signing and ratifying procedures of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

Since 2013, the Georgian Government has been working on the national action plan for human rights protection of 2014-2016. The action plan, inter alia, provides for the package of the activities aimed at the protection of the rights of the child. Through these activities, the principle of genuine interests of the child should be integrated in the state programmes, process of policy determination, legal and administrative procedures, and action plans.

In 2013, the Ministry of Labour, Health Care and Social Security of Georgia, in partnership with UNICEF, launched the implementation of the project "Care for the Most Vulnerable Children in Georgia". It is planed within the project to set up an effective state mechanism for the assistance of the children living and/or working on the streets.

The following functions have been added to the competences of LEPL Office of Bailiffs of Educational Institutions under the Ministry of Education and Science of Georgia: psychological and social services to address psychological problems and social disorders of the pupils, psychological and social services for family members and teachers as well as various psychological and social researches related to the children and teenagers.[709]

Despite certain positive changes, the significant challenges in terms of protection of the rights of the child still persist.

Harmonisation of the legislation on the rights of the child with international standards is one such challenge. It implies that legislative lacuna should be consistently addressed.

The need to elaborate a general act on the rights of the child was pointed out by the UN Committee on the Rights

708 http://www.parliament.ge/index.php?option=com_content&view=article&id=5333%3A-q2014-q-&catid=2%3Anews&Itemid= 433&lang=ge.

709 Order no. 74/N of the Ministry of Education and Science of Georgia, dated 20 August 2010, on Approving the Statute of the Office of Bailifs of Educational Instiutions, Article 2.2.o)-p).

of the Child as early as in the concluding observations on the second report of Georgia.[710]

The obligation to submit the fourth report on the implementation of the Convention on the Rights of the Child to the UN Committee on the Rights of the Child is still outstanding. The committee review of this report was planned for 2013.

There are no coordination mechanisms in place for protection and realisation of the rights of the child. This mechanism would enhance the coordinated activities of various actors working in the field of the rights of the child.

The monitoring revealed the shortcomings in the programmes of foster care and reintegration as well as in small family type homes for children. They create obstacles for the sustainability of deinstitutionalisation process.

Biological parents involved in the reintegration process needs more support. They do not receive sufficient financial assistance from the state.

There is a trend in the process of deinstitutionalisation that shows that the motivation of the foster family to care for a child is not always in the best interests of a child.

The social service needs further enhancement, inter alia, in terms of capacity building and motivation boosting.

The mountainous regions need the state's particular attention to ensure the well being of the child. It is noteworthy that in the reporting period, the Public Defender encountered the children related problems that were identified in the previous years. This proves that there is a need for systemic approach to the problem at stake and establishment of high responsibility for the fulfilment of those activates aimed at redeeming the existing shortcomings.

POVERTY AND CHILD MORTALITY

"The situation of children in Georgia is alarming, in terms of poverty and particularly regarding the high mortality index below the age of five (20.5 of every 1000 children)".[711]

According to UNICEF, as of 2013, the indicator for the children living in Georgia below the poverty threshold amounts to 27%. This indicator is 2% higher than the 2011 indicator.

Case of G.A.

In March 2013, the media reported the death of one year-old G.A. due to the complications caused by malnutrition. The Public Defender of Georgia studied this case[712] and found that the infant's death was caused by the dire economic situation of the family. The negligence of the competent state authorities, namely social and medical workers' negligence, was also revealed. The parents' lack of skills to bring up an infant also contributed to the tragic outcome. The family's social benefits had been discontinued for certain period; the family doctor failed to administer the scheduled vaccinations and treatment, and did not sufficiently attempt to ensure proper nutrition of the infant.

Apart from the above case, the Office of the Public Defender of Georgia studied other cases too and concluded that many parents lack means to ensure full nutrition of their children. Therefore, child mortality in Georgia is caused by extreme poverty of families in addition to other negative factors.

Article 24 of the UN Convention on the Rights of the Child obligates the state to recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health; to strive to ensure that no child is deprived of his or her right of access to such health care services; to pursue full implementation of this right and, in particular, to take appropriate measures to diminish infant and child mortality.

710 UN Committee on the Rights of the Child. Concluding Observations: Georgia,CRC/C/15/Add.222. 27.10. 2003.

711 Thomas Hammarberg, Georgia in transition - Report on the human rights dimension: background, steps taken and remaining challenges, Chapter 7.3, Rights of the Child, September, 2013, p. 57.

712 Leters nos. 1383/08-2/0830-13 and №1893/08-2/0830-13 of LEPL Agency of Social Services and LEPL Agency of State Regulation of Medical Activity.

The UN Committee on the Rights of the Child observes that the state authorities are required to adopt all appropriate legislative, administrative and other measures for the implementation of children's right to health without discrimination.[713]

The Government of Georgia annually approves the state programme of social rehabilitation and childcare. One of the objectives of this programme is the improvement of social security and social integration of socially vulnerable children (children in socially vulnerable families).[714] The programme has sub-programmes. One of the sub-programmes aims at ensuring nutrition of the children under the risk of abandonment. The sub-programme is also concerned with the early development of the children and their rehabilitation.[715] However, the service provided by the State does not meet the existing demand.

One of the factors contributing to the under-five mortality is low awareness of some parents. They do not have necessary information about the vital needs of a child and have no parental skills.

The state is obligated to raise awareness among parents, to elaborate and implement appropriate programmes and provide services aimed at educating parents.

VIOLENCE AGAINST THE CHILD

The problems of prevention of violence against the child, the protection and assistance of victims still remain acute in Georgia.

High indicators of violence in family and in educational, instructional or specialised institutions are caused by the society's tolerance towards chastisement on the one hand and the professionals' inadequate attention to the child.

All actions should be qualified as violence that are directed against the child through physical, psychological, sexual, or economic violence or force, which aim at breaching the child's constitutional and international rights and freedoms.

Particular significance in fighting violence against the child is attached to the proactive involvement and participation of the state and the society

Under Article 19.1 of the Right to the Child:

> "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."[716]

The Order of 2010 jointly issued by the Minister of Labour, Health Care and Social Security of Georgia, the Minister of Internal Affairs of Georgia, and the Minister of Education of Science of Georgia reflects the above-mentioned. The Order on Approving the Referral System for the Protection of the Child against all forms of violence in and outside the family provides for the coordinated activities between the three agencies.

The Law of Georgia on Preventing Domestic Violence, Protecting and Assisting the Victims of Domestic Violence provides the measures to be taken to protect and help the children in case of domestic violence.[717]

Despite the above legal remedies, the indicator of violence against the child is still high. According to the research conducted by the UNICEF in 2013, "45% of the society considers the violence against the child to be allowed.

713 See Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN, CRC, p. 20.

714 See Resolution of the Government of Georgia, dated 28 March 2013, on Approving State Programme on Social Rehabilitation and Childcare, Annex no. 1, Article 1.

715 Ibid., Article 2.a),b),c).

716 The Convention on the Right of the Child, Article 19

717 The Law of Georgia on Preventing Domestic Violence, Protecting and Assisting the Victims of Domestic Violence, Articles 14-15.

60% of respondents believe that strict chastisement in a family is more efficient than non-violent methods of upbringing."[718] This shows that violence is believed by the society to be a successful method of upbringing.

The practice shows that violence does not begin and end in the family. The children often fall victims to ill treatment in educational and specialised establishments. The research showed that 60% of professionals working in the field of children protection agree with the society in believing internal affairs within a family being personal matter of that family only and others should not be interfering. 22% of social workers think that it is not their responsibility to react to physical violence. Those working in schools have little idea about their role in the referral systems. According to 46% of schoolteachers and bailiffs, they are only obligated to report violence whenever this takes aggravated forms and is repeated several times.[719] This shows that the professionals working with children, who are supposed to have particularly important role in identifying violence against the children, protect them and help them, are not aware of this function. It is alarming that violence against the child is socially "contagious" and often becomes acceptable even for the children.

The practice of the educational institutions differs from the legal regulations. The Law of Georgia on General Education provides for the state's obligation to eradicate violence in public schools.[720] Under Article 20 of the same Law, it is impermissible to subject a pupil to physical or psychological violence, abuse or degrading treatment on the pretext of defiance of a child.

This approach is consolidated by General Comment no. 1 of the UN Committee on the Rights of the Child, under which "children do not lose their human rights by virtue of passing through the school gates."[721] Violation of the physical and moral integrity of a child mounts to the denial of the right to education. Educational institutions must fully consider the dignity of the child and fully respect it.

The UN Committee on the Rights of the Child issued General Comment no. 8 to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children.[722] The Committee calls upon the states to outline the legislative, educational and other awareness-raising measures that states must take.

In 2013, there was a considerable increase, compared to the previous years, in the number of applications, alleging physical and psychological violence against the children in public schools, filed with the Public Defender of Georgia. Most of the applications concern subjecting pupils to ill treatment by school professionals. The increase incidence in pupils' physical and psychological abuse by school administration or teachers still remains one of the major concerns in the educational system of Georgia, along with the similarly high indicator of violence among the children, especially in the form of bullying.

It is noteworthy that the allegations of violence against the child are mainly received from Tbilisi public schools. The reason for this could be the low awareness of legal remedies in the regions. Physical abuse of a pupil is an established practice in the schools of regions. Only an extreme situation may call for reaction to this violation. This conclusion is consolidated by the findings of the survey conducted in the mountainous regions by the Children's Centre of the Public Defender of Georgia. According to these findings, the incidents of violence only go beyond the relations between a teacher and a pupil in exceptional cases. Violence is considered to be allowed in children's education and development both by teachers and by parents.

The measures taken by the Internal Audit of the Ministry of Education and Science of Georgia in the follow-up to the referrals of the Public Defender of Georgia are noteworthy. These referrals concern the incidents of violence in schools. The disciplinary measures taken against the teachers by the school administration are also worth mentioning. In one occasion, a teacher beat several pupils and one of them was hospitalised with concussion. A Criminal case was lodged against this individual.

The analysis of the existing situation shows that in order to solve the problems at stake, it is particularly important to raise awareness among the professionals working with children; to enhance their skills in fighting violence

718 Violence against the Child, UNICEF, 2013.

719 Violence against the Child, UNICEF, 2013.

720 The Law of Georgia on General Education, Article 3.

721 The Committee on the Rights of the Child, General Comment no. 1, 2001, para. 8.

722 The Committee on the Rights of the Child, General Comment no. 8, 2006, para. 2.

against the child, and in identifying such cases and helping and protecting the victim. In the light of the reality, with the view of preventing violence against the child in educational institutions, it is important to elaborate documented strategy and in cases of allegations to react in a timely manner and effectively.

It is particularly important to enhance the involvement of social workers and psychologists in the referral systems of the child protection; to develop the consultation services and make them accessible especially in the regions.

Raising awareness in the society about the issues of child violence would considerably contribute to zero tolerance towards such occurrences. It is likewise important to educate minors about their rights and entitlements.

The case of N.L.

On 8 October, the Public Defender of Georgia received an application by N.L. – a pupil of Tbilisi Public School. According to N.L. the applicant was subjected to psychological and physical abuse by the School Principal for wearing a T-shirt with the logo of a political party.

Regarding the above-mentioned incident, the Public Defender of Georgia addressed LEPL Agency of Social Services under the Ministry of Labour, Health Care and Social Security of Georgia. According to the agency, the School Principal did violate the principles of the Convention on the Right of the Child. However, in the light of the minor's interests, the follow-up to the incident was not considered to be expedient.[723] The investigation was discontinued due to the fact that the allegation of battery was not established.[724] According to the letter from the Internal Audit Department of the Ministry of Education and Science of Georgia, as the result of the enquiry into the incident, the Public School was warned in writing.[725]

In the given case, the principles of the Convention on the Right of the Child were violated and the rights of the child not respected. The right of the child to freedom of expression was violated.[726]

The child is protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse from any person.[727] Accordingly, the state has a positive obligation to adequately react to a violation. Follow-up in the child's interest would be the identification of the culprit and prevention of further violence. Whenever violence against a child becomes public, the state is obligated to protect him/her from further violence. This cannot serve as the basis for violence of any kind against the child or his/her discriminatory treatment.

THE RIGHT OF THE CHILD TO LIVE WITH PARENTS

Every child has the right to live and be brought up in a family. Parents shall be entitled and obligated to bring up their children, care for their physical, mental, spiritual and social development, and bring them up as appropriate members of the society, giving the priority to their interests.[728]

The state is on its part obligated to take all necessary measures not to allow separating a minor from his/her parents, except in the cases where competent authorities, under a court ruling, in accordance with the law and in the procedure determined, establish that it is in the best interest of a child to remove him/her from parents.

There are particular circumstances when a child is removed from parents: in cases of ill treatment and neglect; and where parents live separately and it is necessary to decide on a child's place of residence, etc. In all cases, the competent authorities must take decision in the best interests of a child. When deciding, the competent authorities

723 Letter no. 04/24291 of LEPL Agency of Social Services, dated 25 March 2013.

724 Letter no. 147485 of Isani-Samgori Unit of Tbilisi Major Department, dated 26 January 2013.

725 Order no. 1127 of the Ministry of Education and Science of Georgia, dated 5 November 2012.

726 Convention on the Rights of the Child. Article 13.

727 Ibid. Article 19.

728 Civil Code of Georgia, Articles 1197-1198.

must also take into account the possible impact of the measures on a minor.[729]

The Public Defender of Georgia in the report of 2012 pointed out the importance of the role LEPL Agency of Social Services play in deciding a child's place of residence in the process of enforcement of a court' ruling, as well as what the genuine interests of a child can be. In 2013, the implementation of the best practices of enforcement of courts' rulings and the protection of the genuine interests of a child still constituted a problem.

A territorial body of LEPL Agency of Social Services is obligated to enforce a court's ruling on a minor's place of residence after the divorce of parents.[730] According to the official statistics, in 2013, Agency of Social Services as a body of custody and care was involved in 74 cases of enforcement of court's rulings adopted on family disputes.[731] However, often the genuine interests of a child are not at stake and are failed to be safeguarded in the enforcement process.

There are two major problems related to the enforcement of a court's ruling: taking into account a child's opinion and interests when deciding on his/her place of residence; and faulty format of enforcement mechanism of a court's ruling.

In the first case, the state is obligated to bring to minimum the failure of foreseeing the best interests of a child and possible adverse impact. For this purpose, it is necessary to build judges' capacities in this field.

This issue is raised in Opinion no. 4 of the Consultative Council of European Judges on appropriate initial and in-service training for judges.[732]

There have been no special capacity building measures for judges of the courts of general jurisdiction carried out either by the Supreme Court of Georgia or High School of Justice on deciding on custody of a minor during parents' divorce.[733]

On the other hand, even in those cases, when a court does its best to take into account the best interests of a minor, there is a risk that the parent who lost the custody and was restricted in visitation rights will try to impede the enforcement process and create obstacles for the competent authorities.

The practice shows that this problem often serves as a reason for subjecting a minor to violence and pressure, and a proactive involvement of a social worker, a psychologist and law enforcement bodies, if need be, must be in place.

LEPL Agency of Social Services which plays primary role in this kind of enforcements lacks highly qualified social workers and psychologists, the main function of whom must be identification of possible psychological pressure exerted on a minor, identification of traces of violence and smooth enforcement of a court's ruling. In this regard particular problems are registered in the regions of Georgia.

The case of S.SH.

On 4 March 2012, citizen S.Sh. applied to the Public Defender of Georgia and requested the return of her underage child from her former husband. The court's final ruling in favour of the applicant had not been enforced. According to the ruling, the father was awarded visitation rights for two days in a week. The rest of the week the child was supposed to spend with the mother, who was awarded the custody. According to S.Sh. her former husband and his brother exerted psychological and physical violence on the child, as the result of which the child refused to go back to the mother. S.Sh also alleged that during the enforcement of the court's ruling, the child's father pressurised the enforcement officials as well which prevented from enforcing the court's ruling.

729 UNICEF, FACT SHEET: A Summary of the Rights Under the Convention on the Rights of the Child, Article 3.

730 Order no. 01-16/N of the Ministry of Labour, Health Care and Social Security of Georgia, dated 18 April 2011, on Approving Procedure for Enforcement of the Rulings on Custody and/or Exercising Visitation Rights by Another Parent of Family Member.

731 Letter no. 04/21042 of LEPL Agency of Social Services.

732 Opinion no. 4 of the Consultative Council of European Judges to the Committee of Ministers on appropriate initial and in-service training for judges, para. 32.

733 Letter no. A–783–14 of the Supreme Court of Georgia.

After having thoroughly studied the case, the Office of the Public Defender of Georgia addressed LEPL Agency of Social Services and the Ministry of Internal Affairs. According to the Agency, there have been 15 attempts to enforce the decision. However, due to the rigorous resistance of the child the ruling could not be enforced. As it was later revealed in the conclusion of a juvenile psychologist, the child even refused to have short-term meetings with the mother due to the pressure from the father.

It should be noted that the mother took into account the genuine interests of the child and the fact that the minor was already traumatised. The mother was against the involvement of a psychologist in the matter. According to her, it was better for the child to have one trauma during the enforcement of the court's ruling rather than to leave him under the long-term pressure from the father.

THE RIGHTS OF THE CHILD IN IDPS RESETTLEMENTS

The representatives of the Public Defender of Georgia, with the financial support of the Council of Europe, together with the special consultant[734] for the monitoring purposes in the reporting period visited IDP resettlements. Field trips were made to Tsinamdzgvriantkari, Tsilkani, Skra, Tserovani, Zugdidi, Maltakva and Batumi Settlements.

Living conditions

As the result of the monitoring, it was confirmed that the inhabitants of IDP settlements do not have adequate living conditions. In Tsinamdzgvriantkari, the IDPs live in half-dilapidated apartments and cottages.

Particularly dire living conditions were found in Zugdidi settlements, where 19 minors live. There are no water and plumbing in the half-dilapidated building with damaged roof and windows; electricity is out of order.

It must be pointed out regarding Zugdidi settlement that in particular cases the conditions are not only inadequate but also generally dangerous in terms of life and health.

The living conditions in the settlements of Tserovani and Batumi are considerably different. The representatives of the Public Defender of Georgia visited two settlements in Batumi. One of them is a modern village with high standards of living and community representation. The living conditions in Maltakva settlement are also satisfactory.

Under the Georgian legislation, the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, the competent authorities of the executive agencies and local self government bodies are obligated to assist IDPs in the solution of their social and everyday life issues.[735]

UN Guiding Principles on IDPs is an international instrument governing the above problems. Under its Article 18, all internally displaced persons have the right to adequate living conditions.

Article 27.1 of the Convention on the Rights of the Child provides for the obligation to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. This obligation is particularly highlighted in UNHCR Guidelines on Determining the Best Interests of the Child[736] and General Comment no. 14 of the UN Committee on the Rights of the Child on the right of the child to have his or her best interests taken as a primary consideration.[737]

The violations revealed within the monitoring of the Public Defender of Georgia were followed up: Zugdidi settlement was roofed and the interior was refurbished; IDPs living there were provided with the necessary furniture and everyday life items; single monetary allowance was handed out.

734 Norwegian Children's Ombudsman in 2004-2014, Reidar Hjermann. See at: http://www.crin.org/en/library/organisations/ombudsman-children-norway.

735 The Law of Georgia on IDPs from the Occupied Territories, Article 54.

736 UNHCR Guidelines on Determining the Best Interests of the Child, 2008, p. 75.

737 Committee on the Rights of the Children, General Comment No. 14, 2013, para. 30.

The child and traumas of the war, intervention and care

War and armed conflicts can cause grave traumas to a person, especially on a child's mental state.

The necessity to provide persons affected by conflict with access to psychological assistance is highlighted by UNHCR Guidelines calling upon the states to take appropriate measures to reveal and eliminate psychological harm sustained by minors.[738]

In the reality of our country, internally displaced persons, including children from Abkhazia and Samachablo due to armed conflicts escalated in these regions clearly need psychological assistance. However, such services are not accessible for them.

One of the effective methods of addressing psychological problems of minors is their involvement in various artistic groups. The Public Defender of Georgia welcomes the fact that in some IDP settlements there are artistic schools where they teach children drawing, music and choreography.

In 2013, based on the letter of the Public Defender of Georgia,[739] the Ministry of Culture and protection of Monuments of Georgia restored funding to the arts schools in 12 settlements that had been stopped in 2012.[740]

Integration

The integration of citizens living in settlements with local population is very important. In some cases (Large settlement in Tserovani), long distance from the villages serves as the reason for physical and hence social isolation of these settlements.

As opposed to such cases referred to above, population of Batumi and Skra settlements are fully integrated with the local community.

One of the impediments of the IDPs integration is the fact that children receive education not in the educational institutions of a nearest town or village, but instead in the schools located in the settlements. E.g., the children living in Tsilkani settlement go by bus to school in their own settlement and not to Tsilkani public school.

A Different situation exists in Skra and Batumi. The internally displaced children receive education in the educational institutions that are close to their respective settlements.

Integration is treated as a priority by the State Strategy towards IDPs[741] and the Action Plan of Implementing the 2012-2014 State Strategy for IDPs from the Occupied Territories of Georgia.[742]

The different approach towards educating children in settlements revealed the absence of systemic and consistent approach of state authorities, and lack of efficiency of the activities towards enhancing communities.

STATE OF PROTECTION OF CHILDREN'S RIGHTS IN MOUNTAINOUS REGIONS OF GEORGIA

The education, health care and social protection of the children living in the mountainous regions of Georgia necessitates particular attention. The environment and low accessibility to IT technologies greatly affect their upbringing and development, as well as opportunities of receiving education.

In 2013, the Office of the Public Defender of Georgia with the support of UNICEF studied the state of protection of children's rights in mountainous regions. Within the study, the quality of childcare and its compatibility

738 UNHCR Guidelines on Determining the Best Interests of the Child, 2008, p. 52.

739 Letter no. 10/14 of the Public Defender of Georgia, dated 20 June 2013.

740 Letter no. 05/07-3514 of the Ministry of Culture and Protection of Monuments, dated 23 August 2013.

741 Ordinance no. 47 of the Government of Georgia on Approving State Strategy for IDPs, 2007, chapter 5.

742 Action Plan of Implementing the 2012-2014 State Strategy for IDPs from the Occupied Territories of Georgia, paras. 1.3, 3.2, 5.2.

with international standards was surveyed. The geographical density of the survey covered mountainous regions of Ajara, Kazbegi and Akhmeta regions. The survey revealed a range of issues in terms of protecting the rights of the child.

The major problem of the children in mountainous regions is the low accessibility of education, which in turn consists of the problems in terms of infrastructural and territorial accessibility and low quality of education. The children face particular challenges in terms of health care and social protection. The indicators for leaving school at an early age, and early marriages are high.

Infrastructure of educational institutions

Infrastructural problems are relevant for all schools in mountainous regions. The damaged buildings, the need for refurbishment, heating and water supply are problematic. The schools also need to be provided with display items necessary for natural sciences and laboratory equipment. Absence of gyms or their deplorable condition prevents children from pursuing sports activities.

It is obvious that the objectives of general education declared by the Law of Georgia on General Education cannot be attained without the realisation of the right to education in adequate surroundings. Therefore, improvement of infrastructure of educational institutions falls within the category of acute and urgent problems. Also, the absence of adequate technical equipment to meet the accreditation standard set for an institution of general education is a problem.[743]

The Survey revealed the infrastructural problems in the following educational institutions:

- **Akhmeta's public school no.1 and public school of Duisi** – heating needs to be solved;
- **public school of Duisi, Zemo Alvani's public school no, 1 and public school of the village of Jokoli** – there is no sports playing field and display items for natural sciences;
- **public school of the village of Dumasturi** – it is necessary to change the school equipment, and desks in classrooms;
- **public schools of the village of Ozhio and the village of Kvemo Alvani** – the metal constructions scattered on the school territory is hazardous for life and health the children;
- **the school of the village Dzirkvadzeebi in Khulo Region** – the building is dilapidated, needs reinforcement and refurbishment;
- **public school no. 1 of Stepantsminda** – part of the building is dilapidated; part of the wall is demolished; gym needs refurbishment; there is no internet and a qualified teacher, hence the IT room does not function;
- **basic school of the village Osiauri** – the main building had been dilapidated for years and was hazardous. Therefore, the school moved to the old club building of the village of Akhasheni, which does not have any adequate school infrastructure and surroundings. There is no gym and other school facilities necessary for teaching in various disciplines. According to the information provided, the school building cannot be rehabilitated. The school cannot function in the building of a village club either;
- **School/institution of Shuakhevi** – the building is dilapidated and the need for the school/institution is clear; however, stemming from the state of the building, children should be transferred to another school/institution.

The existing infrastructural problems are to a certain degree linked with the funding issue. The lack of funding is a big problem for schools in mountainous regions. Some schools do not even have funding for the basic school furniture, has no sufficient voucher funding and needs additional funding from the Ministry of Education and Science

743 Order no. 65/ნ of the Minister of Education and Science of Georgia, dated 4 May 2011, on the Statute and Frees of Accreditation of Curricula of Educational Institutions, Article 6.b).

of Georgia for the solution of various considerable problems. In these cases, it is necessary to provide additional funding within target programmes or to elaborate new programmes in accordance with the Law of Georgia on General Education.[744]

QUALITY OF EDUCATION AND ITS ACCESSIBILITY

Several significant problems were revealed in the education field. Parts of these problems are related to the quality and some to the accessibility of education, including territorial accessibility and the realisation of the right to education of children with disabilities.

The outcomes of the survey showed that the majority of public school pupils have to take private classes. The education received in public schools is considered to be inadequate for passing the school final and national admission examinations. All schools cite the problem of attitude of those who failed qualification exams towards the teachers. This fact adversely affects the motivation of the respective teachers and changes pupils' attitude towards them. This in turn affects the schooling process and quality of education received.

The representatives of the Public Defender of Georgia were told about the risk of basic schools in the mountainous regions being closed down. This risk exists in every region of the mountainous part of the country. Particular attention was brought to the remote villages where it is necessary for such schools to exist.

Both the Georgian legislation and international legal instruments acknowledge equal opportunities to receive education. The mandatory character of the general secondary education and its accessibility are interrelated aspects. The right to education intrinsically comprises of its accessibility. Each child must have a possibility to study in a secondary school, close to his/her place of residence. The state must ensure the exercise of this right and carry out positive activities towards this purpose. Under Article 7 of the Law of Georgia on General Education, the state ensures the right to education close to the place of residence of each pupil.

Under Article 28 of the Convention on the Rights of the Child, States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. Stemming from the interests of the child, the right to education should be construed extensively and imply those cases where this right should not be impeded due to the inaccessible location of educational institutions, which lowers the accessibility of education.

Therefore, in case of optimisation of schools, the principle of territorial accessibility of schools should be taken into account, which will have a great impact on the quality of education received.

The right to access to inclusive education is recognised by the UN Convention on the Rights of the Child (Article 23), the UN Convention on the Rights of Persons with Disabilities (Article 24), as well as by the Law of Georgia on General Education (Article 3), and the Law of Georgia on Social Security of Persons with Disabilities (Articles 17 and 18).

The survey revealed that teachers need capacity building in terms of working with disabled children. The majority of teachers were not retrained within special programmes to work with children with disabilities.

The disabled children in mountainous regions are usually home schooled. In some cases, the reason for this is the geographic location of the region (e.g., Khulo), which does not allow a disabled pupil to move in a wheelchair; in other cases, the reason for home schooling is the socio-economic situation of families.

The Public Defender of Georgia welcomes the fact that public school no. 2 of Akhmeta affords inclusive education and a psychologist works with children within a special programme. Such an approach was not registered in any other schools. It is worth mentioning though that school administrations are fully aware of the importance of a psychologist's services for children with disabilities in fully meeting their needs.

744 The Law of Georgia on General Education, Article 7.3. and Article 22.6.

SAFE SURROUNDINGS, LEISURE TIME MANAGEMENT AND PROTECTION OF MINORS FROM ADVERSE INFLUENCES

The Law of Georgia on General Education obliges an educational institution to create surroundings that is safe for life, health and property. This obligation is extended to the school, school premises and adjacent area. The schools must effectively protect the basic rights and freedoms of pupils. However, there is no bailiffs' service in the school of Akhmeta. Accordingly, the schoolteachers have to supervise order and safety in the school that is particularly difficult during the teaching process.

Management of leisure time is a problem in all public schools. There are very few arts, sports and other groups in the regions. In this regard, particular concerns were voiced by the pupils in Kazbegi region. Access to Internet is a problem in the village schools. It was revealed in the discussions with the senior pupils that they would wish to have more information about career prospects, in order to make right and informed decisions.

It is alarming that the provisions of the Law of Georgia on Protecting Minors from Adverse Influence are violated on permanent basis. There is no control over selling alcohol and tobacco to minors. This problem has been pointed out by all schools in the mountainous regions. According to the information submitted, Article 17 of the Law of Georgia on Protecting Minors from Adverse Influence is not practically enforced. Under this provision selling alcohol and tobacco to minors incurs civil and/or administrative responsibility.

HEALTH CARE AND SOCIAL PROTECTION OF THE CHILD

Under Article 24.1 of the Convention on the Rights of the Child, "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such healthcare services."

The importance of continuous and quality medical assistance is pointed out in General Comment no. 4 of the UN Committee on the Rights of the Child, as well as Article 30.c) of the Law of Georgia on General Education, which imposes an obligation on local self-government bodies to ensure coordinated medical assistance to pupils.

Despite this legislative framework, ambulances cannot reach remote villages in the mountainous regions in time. It is necessary to provide permanent medical support for schools in the regions like Khulo, Keda and Shuakhevi.

The problem of quality of drinking water remains a problem in Akhmeta region. Despite the incidents of poisoning by drinking water were registered, the quality of water has not been checked. This concerns both public schools as well as villages. The problem endangers health of children and of entire population. Article 24 of the UN Convention on the Rights of the Child is ignored in such situations. Under Article 24, the state authorities must take appropriate measures, inter alia, to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and the provision of adequate nutritious food and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

Schools are often misinformed about the state of health of the children. It happens often that when enrolling a child in a school, the health certificate states that the child is healthy, whereas he/she may have serious health problems. E.g., thyroid related diseases pose serious problems in Khulo region. It was revealed that local clinics issue health certificates without proper medical examination of children.

There are serious challenges in the social security sphere. Regional centres of LEPL Agency of Social Services do not have a service car, which prevents them to carry out their functions fully and promptly. E.g., of the 79 villages of Khulo region, the majority of them cannot be accessed with regular vehicles. Therefore, the visits of social workers are affected by practical difficulties.

The lack of adequate transportation impedes the social workers in providing services in a timely manner. In special cases, Khulo Unit of the Ministry of Internal Affairs of Georgia assists Khulo Social Services Centre with transportation. Social workers are almost unable to visit villages in winter. The same problem is relevant for foster care. E.g., in mountainous Ajara, there are no applicants willing to register as foster families. There are applicants in distant villages; however, social workers are unable to provide supervision due to the problems related to geo-

graphical location and transportation.

Considering the fact that the major purpose of LEPL Agency of Social Services is to support the most vulnerable groups of population and in certain situations to provide child care, it is necessary to render high quality services for citizens, improve services, streamline, simplify and expedite the remedies available. The situation in regional centres shows that with the present resources it is impossible to fully attain these objectives and fulfil the duties.

In 2013, the Public Defender of Georgia issued a recommendation for the notice of the Ministry of Labour, Health Care and Social Security of Georgia to ensure the equipment of regional centres of LEPL Agency of Social Services in mountains regions with adequate means of transportation in order to enable them to fulfil their statutory obligations.

In the centres of Social Services, there is a need for professional psychologists. It is expedient to have them as staff members.

Dropout and early marriage rates

The problem of leaving school is particularly acute in the region of Akhmeta. Boys often leave for the mountains to tend to sheep. As the work is paid, minors in most cases do not return to school at all. In such cases, the interest in continuing studies is trumped by the interest in having a paid job and improving social security.

The number of early marriages is still high in girls. Despite domestic and international regulation of this issue, there are often cases of leaving school to get married. Especially high indicators were identified in the regions and in territorial units populated with ethnic minorities (see in detail in the chapter on gender equality).

Juvenile delinquents

Within the Reform of Criminal Justice System, since 2009 numerous reformative measures have been accomplished and positive outcomes were attained juvenile justice. Notwithstanding the progress made, it is necessary that the authorities continue their endeavours in this regard. Particular emphasis should be made on the prevention of juvenile delinquency, psychological and social rehabilitation, and reintegration of juvenile delinquents.

Juvenile justice system must be based on important principles such as the best interests of the child,[745] prohibition of discrimination, the right to life and healthy development, and the right to be heard. The juvenile justice system should emphasize the well-being of the juvenile and must ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.[746]

Under the Convention on the Rights of the Child,[747] no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Public Defender of Georgia welcomes the fact that the annual statistics on imposing the sanction of deprivation of liberty on juveniles show a decline: in 2010 - 348 juveniles; 2011 - 190 juveniles; 2012 - 105 juveniles; and 2013 - 72 juveniles. It is important to have effective prevention policies in place together with liberal policies.

The efforts initiated on the elaboration of the Code of Juvenile Justice are a step forward.[748] This act will bring together the provisions governing juvenile responsibility, administrative and criminal procedures, penitentiary and related issues. The renewed strategy on juvenile justice reform is based on the policy recommendations elaborated as the result of consultations of UNICEF and EU with the Government of Georgia.

The coordinated and active work of various state agencies is necessary for the effective functioning of the juvenile

745 Convention on the Rights of the Child. Articles 3, 2, 6, and 12.

746 UN Standard Minimum Rules for the Administration of Juvenile Justice. (Beijing Rules), Rule 5.

747 Convention on the Rights of the Child, Article 37.b).

748 With the support of EU and UNICEF and the decision of the Minister of Justice, in 2013, works started on the elaboration of the Code of Juvenile Justice.

justice system. It is expedient that all professionals working with minors have access to trainings on the needs of minors. The risk evaluation and penalty planning are of utmost importance.

In the reporting period, within National Preventive Mechanism, planned and unplanned monitoring visits were made to the penitentiary institutions and temporary detention facilities in order to study the situation of minors. The visits were made to special institution no. 11 for minors, as well as to detention and closed facilities of deprivation of liberty - penitentiary institutions no. 8 (in Tbilisi) and no. 2 (in Kutaisi). In each institution, three planned visits have been made (nine visits in total) and four unplanned visits to institutions no. 8 and 11. Two planned visits were made to Kutaisi temporary detention facility and one planned visit was made to Tbilisi temporary detention facility (in total 16 visits). Monitoring was conducted with the financial support of UNICEF.

The monitoring revealed a range of problems, inter alia, related to the accommodation, health care, feeding as well as the work of re-socialisation programmes and qualification of the relevant professionals.

ACCOMMODATION CONDITIONS FOR MINORS

1. Infrastructure

Under the European Prison Rules,[749] "prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.[750]" "The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.[751]" "The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation."[752] Under the Prison Code of Georgia,[753] "minors shall have better accommodation conditions in comparison to other accused/convicted persons."

The monitoring revealed that there is no adequate ventilation, artificial lighting or heating in minors' cells and water closets. Infrastructure and sanitary and hygiene conditions are particularly bad in institution no. 8. Minors have to wash their clothes in institution no. 2. According to the administration, this is caused due to refurbishment works in the washroom; according to washing staff, they are supposed to wash the inmates' bedding only and not clothing; and according to the inmates, majority of them did not know anything about the existence of the washroom in the institution.

2. Provision with toiletries and clothing

Despite the requirements of international[754] and domestic law,[755] juvenile inmates are not provided with toiletries and adequate and suitable clothing. The monitoring revealed the lack of information among juvenile inmates. The majority is not aware of the administration's obligation to provide them with toiletries and clothing. According to the established practice, administration provides juvenile inmates with toiletries only once upon the entry into the institution. After that, they have to buy them with their own means.

18 out of 20 juvenile inmates interviewed in institution no. 11 stated that their families provided them with clothing; 15 inmates stated that both their clothing and toiletries were provided by their families. Two juvenile inmates said that their families could not provide them with either clothing or toiletries. Three inmates did not answer the question about toiletries. The institution's doctor confirmed that on frequent occasions the lack of suitable clothing is the reason for infections of upper respiratory tract. Some staff members of the institution try to help such

749 Council of Europe Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, [hereinafter European Prison Rules].

750 Rule 19.5.

751 Rule 19.6.

752 Rule 18.1.

753 Prison Code of Georgia, Article 15.5 5.

754 European Prison Rules, Rules 19.5; 19.6; and 21.

755 Prison Code of Georgia, Articles 21 and 22.

vulnerable minors, however, this cannot be deemed as the fulfilment of the state's obligations.

During the monitoring, no problems were identified regarding barber's services.

3. The right to fresh air

Under the recommendation of the Council of Europe's Committee of Ministers, the state shall allow all juveniles to spend as many hours a day outside their sleeping accommodation as are necessary for an adequate level of social interaction. Such a period shall be preferably at least eight hours a day.[756] The Georgian legislation permits inmates to spend one hour outside in a day.[757]

Although, every inmate inquired stated that they have the right to spend one hour a day outside, the majority practically does not use this right. This is because of the fact that the outside area does not allow proper exercise of this right. Institutions nos. 8 and 2 use small cells without a roof as a walking area, which is not in compliance with the statute of the penitentiary institution and international standards.

4. Health care

Under international standards, medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.[758]

The monitoring revealed that minors in institution no. 2 have neither a separate medical unit nor a doctor. Approximately 300 prisoners are served by one doctor and minors cannot have prompt medical care. Moreover, the underage and adult prisoners can get in touch in the medical unit.

The dentist's unit in institution no. 8 is located in the wing of adult prisoners. For this reason, those underage prisoners that visit the unit can come in contact with adult prisoners working in either corridors or in the prison yard.

The monitoring revealed that institution no. 2 could not ensure adequate medical service. Both institutions fail to isolate underage prisoners from adult inmates during medical services, which is a violation of the strict international standard in this regard.

Institutions no. 8 and 2 lack resources to provide psychiatric services. Adequate provision of this kind of service is sometimes decisive for the future development and preservation of the mental health of minors. Presently, one psychiatrist works in each institution and this resource cannot meet the existing needs (there are approximately 2000 inmates in each institution).

5. Feeding

Under Rule 22.1 of the European Prison Rules, "prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work." Under Article 23.4 of the Prison Code, minors must have the appropriate conditions in terms of food supply.

Institutions no. 11 and 2 provide for a separate diet for minors. There are satisfactory sanitary, hygiene and infrastructural conditions in the kitchen and the dining hall. In accordance with the Order jointly issued by the Minister of Corrections and Probation of Georgia, and the Ministry of Labour, Health Care and Social Security of Georgia,[759] diet selected for minors is provided by special institution for minors no. 11. The prisoners in this institution did not have any complaints about food, unlike the prison population of institution no. 8. Here a similar diet is

756 Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states, Rule 80.1.

757 Prison Code of Georgia, Article 14.g).

758 European Prison Rules, Rules 40.4 and 40.5.

759 Order No. 366/№01–50/N of 26 December 2013 on Standards of Food Ratio and Sanitation and Hygien of the Accused and Convicted Persons.

available both for adults and minors and the food is prepared together. Prisoners in institution no. 8, as revealed during enquiries, give a rather low evaluation about the food quality. According to the institution's doctor, the diet is not as nutritious as it should be considering the minors' needs and should be improved. It is important to have the similar statutory standard for the underage accused as is for the convicted minors.

6. Promotion and disciplinary responsibility

National legislation provides for both promotional and disciplinary measures for underage prisoners. Under the European Prison Rules, "disciplinary procedures shall be mechanisms of last resort"[760] and "the severity of any punishment shall be proportionate to the offence. "[761]

According to the Penitentiary Department of the Ministry of Corrections and Probation of Georgia, in institutions nos. 8 and 2, in 2012–2013, the measures of either promotion or discipline were not taken against the underage accused/convicted; in 2012, in special institution for minors no. 11, 6 promotional measures and 13 disciplinary measures were registered; in 2013, 69 promotional and 24 disciplinary measures were registers; one such measure was transfer to a cell-type facility.

As for access to information, the majority of inmates interviewed in institution no. 11 confirmed that the measures of disciplinary responsibility had been explained to them. In institution no. 2, out of 16 inmates, nine stated that no information was given to them regarding disciplinary responsibility. It is noteworthy that the administration of institution no. 8, only after the enquiries of the representatives of the Public Defender, put up the statutory clauses on disciplinary responsibility on a visible spot.

7. Contacts with the outside

Under the Prison Code of Georgia, underage convicts have the right to receive long-term and short-term visits, as well as the right to video meetings, telephone conversations and correspondence. "A minor shall have four short-term visits per month. In the form of promotion, may have one more short-term visit."[762]

It is a positive change that during the monitoring no incidents of limitation of the right to short-term visit, video meeting, and telephone conversation and/or restriction of sending/receiving parcels and money transfers were registered. Furthermore, the meeting room in establishment no. 11 is not divided by windowpane that enables underage prisoners to have physical contact with their family members. However, the room needs to be provided with amenities and heating/ventilation.

Long-term visits are the best way for re-socialisation and maintenance of close relationship with relatives, especially in the context of a minor. Under the Prison Code, a minor shall have the right to annually receive three long-term visits and as a form of promotion, two more additional long-term visits.

As a result of the monitoring, it was revealed that underage prisoners do not quite frequently use the right to receive long-term visits. The charge for a visits room (GEL 60) is cited as the reason for this.

Under the Prison Code, a person convicted of a particularly grave crime does not have the right to use video meetings.[763] This clause is discriminatory.[764] Express statutory denial of some communication means to any category of convicts is neither necessary nor proportional. Under the European Prison Rules, a restriction should be introduced in each particular case and it should not be a general principle or approach.[765]

Out of the above rights, under the Prison Code of Georgia, an underage accused may only have the right to short-

760 European Prison Rules, Rule 56.1.

761 Ibid., Rule 60.2.

762 Prison Code of Georgia, Article 70.2.a).

763 Ibid., Article 171.1.

764 Report of the Public Defender of Georgia, 2012, p. 84.

765 European Prison Rules, Rule 24.2.

term visits, correspondence, and telephone conversation. Under the Code,[766] these rights of the accused may be restricted by a reasoned decision of either an investigator or a prosecutor.

The monitoring revealed that in practice, by either an investigator's or a prosecutor's reasoned decision, all the above rights of the accused persons are restricted. In such cases, in accordance with legislation in force, an accused may motion before a prosecutor for the right to telephone conversation, etc. However, despite a desire to do so, the underage accused refrain from pursuing this procedure.

One of the important rights of a prisoner is to be kept abreast of news through press and other means of media.[767]

There are TV sets in all cells of institution no. 11. Minors use them without restriction. Access to printed media is problematic. There is no possibility of buying papers and magazines from the institution's shop. Minors expressed their desire to have such possibility when filling in the questionnaires and in interviews. There is no such problem in institutions nos. 2 and 8. In these institutions, underage prisoners, similar to adult prisoners, may buy papers and magazines in institutions' shops.

There is only one TV set in the minors' wing of institution no. 8. At the beginning of monitoring, a TV set was placed in one of the cells. According to the administration, other prisoners could watch it in this cell. By the visit of the monitoring team, the TV set had been moved into the classroom. One of the desires of the prisoners is to have a TV set in each cell. Only through this measure it will be possible to ensure realistic and equal exercise of the right to access to mass information.

There was only on TV set in institution no. 2, at the beginning of the monitoring process. The cellmates used it in turn. By the last visit, the minors in this institution had four TV sets. Only one cell did not have a television.

The monitoring did not reveal any violations regarding receiving and sending parcels and money transfers.

8. Re-socialisation

Under the Convention of the Right of the Child, it is necessary to plan the leisure time of the child and his/her involvement in cultural life; this is especially true with regard to a minor kept in a legal regime. In such cases, it is necessary in the best interest of a minor to plan educational, cultural and recreational activities aimed at their re-socialisation.

Prison administration should motivate healthy lifestyle, education, and involvement in cultural/sports activities. "The administration of deprivation of liberty facility shall be obligated to create conditions for receiving general and professional education by the accused/convicted."[768] "The accused/convicted shall be able to receive complete general education."[769] "It shall be obligatory to give the accused/convicted basic and secondary education."[770]

In all three institutions, social services are rather actively involved in the process of re-socialisation of minors. There is an individual plan of serving a punishment for each minor. It should be also mentioned that often these plans are more formal than real. Moreover, the social services have rather meagre resources for re-socialisation, especially in institutions nos. 2 and 8. There is practically no systematic and unified programme of re-socialisation, and no planning of leisure time. As the result, the minors spend most of their time in their cells. According to the questionnaires filled during the monitoring process, the majority of underage prisoners are keen to be involved in re-socialisation programmes.

In institution no. 11, the educational progress is conducted in accordance with the standards of the civil sector. The institution's school is linked to Tbilisi Public School no. №123. This ensures distance learning of the regular school curriculum by underage prisoners and the possibility for them to move to another step in the educational system. Also, this arrangement enables underage prisoners to receive school certificate.

766 Prison Code, Article 77.1, Article 79.2.

767 Prison Code, Article 20.1,4; European Prison Rules, Rule 24.10.

768 Prison Code, Article 113.1.

769 Ibid., Article 114.1.

770 Ibid., Article 114.2.

Since the second half of 2012, institution no. 8 of Tbilisi and institution no. 2 of Kutaisi have been offering learning opportunities for the underage accused.[771] It is, however, a negative fact that neither the general nor compete education received during the stay at the institutions can serve as a basis for issuing a school certificate.[772] In practice, the accused minors often have to stay in institutions for nine months (maximum term).[773] Furthermore, there are cases where minors need to be transferred from institution no. 11 to institution no. 8 or no.2 for convicted persons. As the result, minors are deprived of the possibility to receive education for a long period. Apart from the fact that the present curriculum does not equally ensure receiving education for the accused and the convicted minors, the implementation of even this programme is problematic due to the lack of interest and motivation on the part of the prisoners. In order to support continuous education, it is necessary that the state takes adequate measures for offering comprehensive education to underage prisoners.

It is also important to mention that while the prisoners take the national exams, their right to education cannot be exercised further. In accordance with the recommendation of the Committee of Ministers of the Council of Europe, "education for prisoners should be like the education provided for similar age groups in the outside world, and the range of learning opportunities for prisoners should be as wide as possible."[774] The Prison Code of Georgia no more provides for the right to higher education, which was negatively evaluated as early as in 2011 by the Public Defender of Georgia.[775] The convicted persons should be able to receive or expand their respective education and obtain professional skills.

9. Training of staff working with juvenile delinquents

There have been some positive steps made towards capacity building of the relevant professionals. However, the problem still persists and needs to be addressed.

The existence of development strategy of the Penitentiary and Probation Training Centre for 2012-2015 is a positive fact. The document provides for a detailed list of those teaching and training activities that the ministry's employees need to undergo. The Public Defender of Georgia hopes that this practice will have a positive impact on the penitentiary personnel.

The case of L.Ch.

In September 2013, the representatives of the Public Defender of Georgia interviewed L.Ch., a 15 year-old accused, placed in prison no. 8. The prisoner was absentminded during the conversation, was confused about the months, could not recall the time and place of when arrested for the first time, where he was taken to and placed. L.Ch. claimed to have a particular interest in cars and that had stolen them multiple times.

The representatives of the Public Defender of Georgia discussed the minor's state with the institution's psychologist. The latter observed that L.Ch. could have had medium retardation or some other problem, identification of which necessitated special medical examination of the minor. On 15 October 2013, the Office of the Public Defender of Georgia requested detailed information about L.Ch. from the Office of Chief Prosecutor of Georgia. The similar request was sent on 4 November 2013 as well. On 21 November 2013, the Office of the Public Defender of Georgia was notified by the Office of the Chief Prosecutor of Georgia by letter no. 13/9603 that L.Ch. during investigation had not undergone psychiatric examination. On 20 November 2013, the plea bargain reached between the accused and the prosecution was approved by Tbilisi City Court' judgment. L.Ch. was found guilty of offences penalised by Article 177.3.b)-d) of the Criminal Code of Georgia and the penalty was imposed in the form of deprivation of liberty up to three months.

For the further study of the case and to find out if the Court had studied L.Ch.'s mental state during the exam-

771 The Parliamentary Report of the Public Defender of Georgia, 2011, pp.325 and 359.

772 Response Letter no. 463428 of the Ministry of Education and Science of Georgia, dated 11 October 2013.

773 On similar issues, see the Parliamentary Report of the Public Defender of Georgia, 2011, p. 359.

774 Education in Prison, Recommendation R (89) para. 12.2.

775 „..no more provides for the right to education, is a step back – the state has to support those prisoners, who have potential for the exercise of the right at stake." Report of the Public Defender of Georgia, 2011, p.327.

ination of the pertinent circumstances, the Office of the Public Defender of Georgia requested the case file from Tbilisi City Court. It was found out that for the same offence – stealing a car – (Article 177of the Criminal Code), L.Ch. had been tried in August 2013 and had been imposed suspended penalty for up to two years. Within two months, on 9 September 2013, L.Ch. was again arrested and put on remand.

According to the report of a patrolling inspector, on the account of violation of traffic rules, he stopped a car, where he found L.Ch. According to the latter, he had come across a car with an open door and the ignition key in. He used the opportunity and stole the car.

L.Ch.'s age-inappropriate behaviour is easily noticeable from the very first encounter. However, due to official negligence or lack of necessary qualification, this condition remained untraced throughout the criminal proceedings.

The determination of the mental state of an accused is of essential importance for establishing guilt and determining penalty in a criminal case. Even in case of absence of justifiable circumstances, the state of mental development of a minor should be taken into account when imposing a penalty.[776]

In order to ensure adequate re-socialisation of a minor and prevention of re-offending, it is necessary to study all circumstances that has driven a minor to commit a crime

10. Complaints and applications

The right to lodge complaints and application is very important in terms of protection of the rights of the underage accused/convicted. "The box of complaints should be placed on the territory of the institution and be accessible for each accused/convicted."[777]

A box of complaints is installed in all those penitentiary institutions, where minors are placed. However, similar to previous years, the credibility of these mechanisms among prisoners seems to be problematic. In 2012–2013, no inmate of institutions nos. 8 and 2 ever used the right to complaint or to file an application. In special institution no. 11, two complaints were taken from the box and one complaint was given to a social worker in person.

While, during the monitoring underage prisoners expressed their indignation with regard to various issues, in their opinion, the solution of these problems cannot be managed through the procedures of complaints and applications.

11. Temporary detention facilities

During the deprivation of the liberty of minors, their particular vulnerability should be taken into account and from the very beginning they need to be treated with respect with due regard for their dignity and personal integrity.[778] Accordingly, it is necessary to have temporary detention facilities with adequate infrastructure in place.

The arrested persons should be sufficiently provided with nutritious food prepared in accordance with hygiene norms. They should be able to keep their person clean with due regard for their honour and dignity. There should be medical services available on spot so that an ambulance does not need to be called in.

There were no minors in Tbilisi temporary detention facility no. 1 during the monitoring. According to the administration, arrested minors are placed according to the principle of a free cell. The Chief Inspector explained that an arrested person can use toilet at any time and if requested, shower can also be used. The existing seven cells have central heating. Light in the cells can be switched on and off only from the outside. An arrested person is provided with three meals and there is an everyday menu to that end. The kitchen meets hygiene norms. There are three doctors working in the facility, but there is no psychologist available. According to the administration, the doctors provide psychological help if needed.

The living conditions of the temporary detention facility of Kutaisi do not comply with the international standards.

776 Criminal Code of Georgia, Article 89.

777 European Prison Rules, Article 100.

778 Council of Europe, Committee of Ministers, Recommendation CM/Rec(2008)11, Rule 109.

There is no adequate lighting and ventilation in the cells. The cell toilets are not partitioned.[779] The Public Defender of Georgia issued a recommendation for the notice of the Ministry of Internal Affairs of Georgia regarding partitioning the toilets in all temporary detention facilities as early as in 2012.[780] Poor standards of hygiene were registered when providing food in disposable plates to the arrested persons. There is no doctor available in the temporary detention facilities and in case of need for medical services an ambulance has to be called in.

12. Separation of minors

The analysis of the problems revealed through monitoring makes it clear that most of them are caused due to the fact that the underage accused are placed in the prison facilities designed for adults. The practice shows that such approach is not expedient. It is impossible to ensure complete separation of prisoners in these facilities. The minors cannot be isolated from adults while providing medical services, transportation to a court, and outdoor time. The existing infrastructure is not suited for minors, which makes the full realisation of re-socialisation programmes, including education, impossible.

It needs to be taken into account that the accused minors are considered to be innocent until the final guilty judgment. The approach to them, as to the innocent, must be different. All detained juvenile offenders whose guilt has not been determined by a court shall be presumed innocent of an offence and the regime to which they are subject shall not be influenced by the possibility that they may be convicted of an offence in the future. [781] The need and the importance of their complete separation are highlighted by numerous international instruments.[782]. Under General Comment no. 10 of the UN Committee of the Rights of the Child:

> "Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, "unless it is considered in the child's best interests not to do so", should be interpreted narrowly; the child's best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices."[783]

Stemming from this, it is unacceptable to allow any kinds of contacts between underage accused persons and adult convicts.

THE RIGHT TO ACCESS TO QUALITY GENERAL EDUCATION

Under Article 3 of the Law of Georgia on General Education, one of the major objectives of the state policies in the field of education is to ensure a pupil is imparted with necessary knowledge. For attaining this objective, the state should provide openness of general education and its equal accessibility for everyone throughout the life time, inclusion of Georgia's educational system in international educational realm, elaboration of national assessment, national educational plan and accreditation system, which implies planning and management of the process of general education through determining and evaluating the quality of teaching process.

In 2013, the Centre of the Rights of the Child under the Office of the Public Defender of Georgia studied the accessibility of quality general education in public schools on the territory of Georgia. Meetings were held with school principals, teachers, pupils and their parents. In Tbilisi schools randomly selected pupils of 11th and 12th

779 European Prison Rules, Rule 19.3.

780 Report of the Public Defender of Georgia, 2012, p. 144.

781 The Standard Minimum Rules for the Treatment of Prisoners, Rule 84.2; Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, Rule 108.

782 The Standard Minimum Rules for the Treatment of Prisoners, Rule 85; Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, Rule 59.1; Convention on the Rights of the Child, para. 37.c)

783 General Comment no. 10 (2007) Children's rights in juvenile justice, para. 85.

forms were interviewed.

Under the Law of Georgia on General Education, receiving full general education implies passing the school final examination. However, the study into the teaching process revealed that the degree of education in public schools does not necessarily enable pupils to pass the exams.

The quality indicator of general education is addressed in the report on human rights dimension - "Georgia in Transition" by EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, Thomas Hammarberg. The author points out that the country's performance in terms of granting access to quality education to its children is very poor.[784]

The low access to quality general education is an acute problem for the minors from families with limited economic means.

The fundamental principle of the National Educational Plan is result orientation. Under the plan, a pupil is placed in the centre of the person oriented teaching process, his/her development process and the attained result; whereas result orientation implies not only rote learning by a pupil, but also processing this information as long-lasting, dynamic and functional knowledge. According to this plan, the main objectives of the secondary stage of general education are the following: to create preconditions for a pupil for obtaining comprehensive education in accordance with modern standards; to assist a pupil in making future choices (continuation of studies or starting work); to give a pupil full and quality general education.[785]

It is important that the standards of the National Educational Plan were fully displayed in school manuals; and the teachers of respective disciplines were providing a pupil with necessary knowledge to pass the respective stage of education.

Recommendations:

With regard to poverty and child mortality
To the Government of Georgia

- **to pay due attention to the reduction of child poverty and to the violations of the rights of the child caused by child poverty; and**
- **to take into account the real necessities existing in the country when approving state programmes for social rehabilitation and childcare; to pay particular attention to the component of providing food for children in this regard.**

To the Ministry of Labour, Health Care and Social Security of Georgia

- **to take measures for raising awareness of young families in child care issues, with special emphasis on the regions.**

With regard to violence against the child
To the Ministry of Labour, Health Care and Social Security of Georgia, the Ministry of Internal Affairs of Georgia, and the Ministry of Education and Science of Georgia

- **to ensure capacity building measures on violence against the child for teachers, LEPL Bailiffs' Office of Educational Institutions and other professionals working with children; to promote enhancing their skills in identifying the cases of violence against the child;**
- **to promote elaboration of a document on the policies of overcoming violence in public schools;**
- **to provide the knowledge of issues related to the protection of the child from violence in**

784 Thomas Hammarberg, Georgia in transition - Report on the human rights dimension: background, steps taken and remaining challenges, Chapter 7.3, Rights of the Child, September, 2013, p. 74.

785 Order no. 36/N of the Minister of Education and Science of Georgia, dated 11 March 2011, on Approving National Instruction Plan.

the qualification standards of professionals working with children and curricula;

- to enhance the mechanisms of follow-up of violence against the child; to ensure active involvement of psychologists and social workers;
- to implement consultative and other services for the victims of violence against children; to pay particular attention to the protection of the children under threats and to the implementation of the measures aimed at their protection;
- to promote raising awareness of the society and establishment of zero tolerance towards violence against the child; and
- to enhance measures raising awareness among children about their entitlements and available remedies.

With regard to the right of the child to live with parents
To the Ministry of Labour, Health Care and Social Security of Georgia

- to ensure the involvement of a psychologist in the process of preparation for enforcement and actual enforcement of a court ruling. A psychologist should be responsible for the state of a child before, during and after the enforcement of a court ruling;
- in cases of complications, to ensure the outcome without the involvement of law enforcement bodies; and
- to improve enforcement procedures, to introduce individual approach and to ensure that the enforcement is conducted in the best interests of the child.

To the High Council of Justice

- to ensure capacity building measures on the topic of the rights of the child, violence against the child, protection of the rights of the minors, and on the best interests of the child in court proceedings.

With regard to the state of protection of the rights of the children in IDP settlements
To the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia

- to ensure timely measures for providing IDPs with adequate accommodation.

To the Ministry of Labour, Health Care and Social Security of Georgia

- to conduct universal epidemiology research for establishing the degree of vulnerability of the children; and
- to ensure access to psychological assistance to IDPs.

To the Ministry of Education and Science of Georgia

- to examine the possibilities for minors at Tsilkani IDP settlements to renew studies in the public school of the local village.

With regard to the state of the rights of the child in mountainous regions
To the Ministry of Education and Science of Georgia

- to refurbish the infrastructure of the schools in mountainous regions and to start the evaluation of the state of the school buildings; to solve the existing problems and to ensure water supply and heating of public schools;
- to provide schools with the demonstration items necessary for the study of natural sciences, and laboratory equipment; to ensure access to communication technologies and functioning of computer clusters with the involvement of specialists;

- to review funding of the schools in mountainous regions, and to plan allocation of additional funding to the educational institutions with special needs;
- to pay particular attention to the introduction of healthy lifestyle in the educational system and for this purpose to support functioning of gyms and sports activities of the youths;
- to promote improvement of the quality of education through professional retraining;
- to ensure capacity building of teachers in working with disabled children and to retrain them in inclusive education;
- to retrain teachers in teaching complex classes; and
- in cooperation with other agencies, to supervise and prevent drop-out rates and early marriages.

To the Ministry of Internal Affairs of Georgia

- to promote implementation of the Law of Georgia on Protecting Minors from Adverse Influence; and to determine responsibility of those selling alcohol and tobacco to minors.

To the Ministry of Labour, Health Care and Social Security of Georgia

- to equip the Regional Centres of LEPL Agency of Social Services with adequate transportation means;
- to ensure creating the position of a psychologist with the emphasis on working with disabled children;
- to study the state of drinking water in Akhmeta region and to take measures for the safety of the use of drinking water; and
- to pay attention to the timely treatment of thyroid related problems in the mountainous region of Ajara.

To the Gamgeoba of Akhmeta Municipality

- to ensure safety of pupils and to clean the areas of the schools in the village of Ozhio and Kvemo Alvani from dangerous remains of construction material.

To the Ministry of Sport and Youth of Georgia, Ministry of Culture and Protection of Monuments of Georgia, and Ministry of Education and Science of Georgia

- to conduct information meetings/seminars in regions on the rationale and functions of school self-government;
- to plan and implement training sessions on professional orientation for senior pupils;
- to promote planning of cultural activities, starting artistic groups and their functioning in mountainous regions.

With regard to the rights of juvenile delinquents
To the Ministry of Corrections and Probation of Georgia

- to ensure the placement of the underage accused in their own separate establishment with the view of protecting the rights of all inmates of this category;
- to ensure adequate artificial and natural lighting, ventilation and heating of all facilities;
- to ensure access to media for underage inmates;
- to provide all underage inmates with appropriate clothing for each season throughout the

period of their deprivation of liberty;

- to ensure the existence of infrastructure in all above-mentioned establishments, in compliance with international and domestic law;
- to provide establishments nos. 2 and 8 with outdoor space for underage inmates with appropriate infrastructure, taking into consideration of the climate;
- to ensure adequate medical services in accordance with the standards for underage inmates in establishments nos. 8 and 2;
- similar to underage convicts, to ensure statutory standards of food ratio for underage detainees, taking into account their age and peculiarities;
- to ensure unified and systemic programmes for re-socialisation, maintenance of physical and mental health of the underage accused in establishments no. 8 and 2; and
- to ensure quality education and its continuation in establishments nos. 2 and 8.

To the Chief Prosecutor of Georgia, the Ministry of Internal Affairs of Georgia, and the Ministry of Correction and Probation of Georgia:

- to ensure qualifications and capacity building of all professionals working with underage delinquents.

To the Ministry of Internal Affairs of Georgia:

- to bring the conditions of temporary detention facilities closer with international and domestic standards; and
- to ensure timely medical services in temporary detention facilities and their unimpeded accessibility.

Proposal to the Parliament of Georgia:

- to make relevant amendments to the Prison Code with the view of ensuring the realisation of the right to video visit for the convicted persons of all categories; and
- to amend the Prison Code to ensure receiving higher education by convicted persons.

With regard to the right to access to quality general education
To the Ministry of Education and Science of Georgia:

- to study the preconditions of quality education in educational institutions;
- to support regular professional retraining of teachers; and
- to enhance preparatory groups in public schools for senior pupils for passing school final examinations.

GENDER EQUALITY AND WOMEN'S RIGHTS

On the pathway of democratic development of Georgia, achievement of gender equality still remains a problem. Despite of number of positive changes and activities carried out on legislative, institutional and civil society levels in 2013, the index of gender inequality in Georgia is still high. Part of the recommendations presented in the Parliamentary Report of Public Defender for 2012 have been taken into consideration, but some issues still remain unsolved. Despite of taken measures, women's discrimination index at workplace, domestic violence, gender-based violence, violence per gender identity and sexual orientation, cases of early marriages are still high.

WOMEN'S PARTICIPATION IN POLITICS

Key challenge for gender equality is low rate of women's involvement into political life of the country. According to the date of Global Gender Gap Report[786] for 2013, Georgia holds 97th position among 136 in rating of women's engagement in politics. Women's share in the parliament is 11 %, 21 % - in the Cabinet of Ministers and 10 % - in local self-government bodies.

According to "Gender Gap Index", by the index of women's share in parliament Georgia holds 102nd position, and on the basis of the data of Inter-Parliamentary Union, as of December 1, 2013, Georgia holds 105th position by the statistical data of political participation of women in national parliament.[787] Despite of the fact that after the Parliamentary Elections of 2012 women's representation in the legislative body increase by 5%, Georgia still remains in the list of the countries where women's representation on a decision-making level is still low.

Women's representation in executive government is still low. According to the data for the last three years, number of women ministers in the Cabinet of Ministers is almost unchanged. From 2011 through 2012 their number did not exceed 16% (three women ministers), and in 2013 number of women ministers made 21%; as of today, there are 4 women minsters in the Cabinet. By the above-mentioned data, in the rating of women's representation in executive government, Georgia holds 63rd position among 136 countries.

Women's participation in execution of local self-government is decreasing during the last decade. As a result of the elections of 1998, women made 14% of local self-government bodies, and after the elections of 2010 – only 10%. The index of women's participation is particularly low in the self-government bodies of the municipalities settled with ethnic minorities. Out of 148 MPs elected in Akhalkalaki, Ninotsminda, Gardabani, Marneuli and Tsalka Sakrebulos, only 4 are women, which make only 2.7% of total deputation and legs behind the total index (10%).

The legal arrangement measures taken in 2013 for facilitation of women's political participation are worth mentioning. On July 29, 2013 paragraph 71 was added to article 30 of organic law of Georgian on political unions of citizens, which provided for additional 30% on party funding in case if in the party list submitted by the party, 30% of every ten members would be opposite sex.

In 2013, as a result of interagency cooperation, 2014-2016 Action Plan of the activities for implementation of gender equality policy has been elaborated; one of the key objectives of this action plan is to facilitate women's political participation. The action plan was adopted by the resolution of the Parliament of Georgia for January 24, 2014.[788]

An important step towards gender mainstreaming was introduction of the position of the advisor on gender equal-

786 see http://www.weforum.org/reports/global-gender-gap-report-2013 [last seen in 1.02.2014].

787 see http://www.ipu.org/wmn-e/classif.htm> [last seen in 1.02.2014].

788 See: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2235622&lang=ge [last seen in 1.02.2014].

ity issues at the institutional level. In 2013, the assistant to the Prime Minister on the issues of human rights and gender equality, and the advisor to the Minister of Regional Development and Infrastructure in gender issues were appointed. Though, it must be mentioned that there still is need for further enhancement and facilitation of future of gender mainstreaming on the executive level.

In 2013, the department of gender equality was established at the Office of Public Defender; it will ensure integration of gender equality issues into regular rights defense activity of public defender. This initiative makes the Office of Public Defender number one state institute, which established a structural unit dedicated to gender equality. It is important to share the experience between the state institutes and establish a special unit for gender mainstreaming. In the same 2013, with support of UN Women, the Public Defender's Gender Equality Strategy and Action Plan for 2013-2015 have been elaborated. The strategy includes guidelines for gender mainstreaming in Public Defender's Office, and the Action Plan sets specific activities for actual achievement of gender equality. The Office of Public Defender pays special attention to integration of gender equality issues into their regular operation, and the Office is one of the leaders by the index of women' career promotion.

It must be noted that 2013 was marked with enhanced civil society initiatives aimed at empowerment of women in the regions and their preparation for 2014 local self-government elections. In this regard, operation of Gender Equality Network, established for this particular purpose, Coalition for Women's Political Engagement and women's clubs of USAID Democratic Engagement Centers is very important.

With the initiative of Gender Equality Network and with support of International Foundation for Electoral Systems the database of women leaders was created; the database will be available to all interested persons, as well as to political parties which support political engagement of women and plant to assist participation of women candidates in 2014 local self-government elections.

In 2013, with joint effort of Non-Government Organization "Women's Information Center" and the Coalition for Women's Political Engagement and with support of British Charity Organization Oxfam, 49 advisors on gender issues were appointed by different local self-government bodies. It is important to mention that the above-mentioned initiative will facilitate consideration of gender equality issue in the process of execution of self-government by the citizens.

Despite of the above-said measures, women's engagement into political and decision-making processes is till minimal.

WOMEN'S LABOR RIGHTS

As of 2013, women's economic activity and participation in economic life of the country is very low. According to the data of "Global Gender Gap Index" Georgia holds 64th position among 136 countries. According to the same source, instead of progressing, Georgia is regressing in comparison to the previous years; according to the data for 2012, the country was on 157th position and in 2011 – on 54th position.

According to the data from the same source, according to the index of equal pay for equal work, Georgia holds 14th position, and according to the ratio between annual income of women and men – 114th position. Also the ratio of average index between the incomes of different gender is not similar. Woman's esteemed income in USD is 3,442, and man's – USD 8,660.[789]

Women's economic activity is directly linked to the index of their employment. Despite of number of positive steps made towards legislative regulation, the issues of women's promotion, their equal participation in economic development and proper pay are still problematic. Feminization of poverty and high rate of violence against women caused low economic activity of women. Despite of the fact that more women are employed, their average pay differs from average pay of men, which is caused by employment of women on low pay positions and so called "glass ceiling" in job places, which prevents their career promotion.

Legislative initiatives of 2013, aimed at improvement of women's labor rights are worth welcoming. In particular, in September 27, 2013 the amendments were entered into the Labor Code; according to these amendments, the

789 See: <http://www.weforum.org/reports/global-gender-gap-report-2013> [last seen in 1.02.2014].

term of leave and remuneration for pregnancy, maternity and child care increased; namely, since January 1, 2014, at employees' request, they shall be granted of 730 calendar days. 183 calendar days of maternity and child care leaves of absence maternity and child care leaves of absence shall be paid, and in case of complicated delivery or twins – 200 calendar days, which the employee can distribute on pregnancy and post-delivery periods, according to her discretion.[790] Employees, who adopted an infant under 12 months, shall be granted newborn adoption leaves of absence of 550 calendar days. 90 calendar days of the leave shall be paid.[791]

Cash allowance for the period of paid maternity or child care leaves of absence, shall be covered from the state budget. Cash allowance for the period of paid leave absence shall be maximum of GEL 1000. Employers and employees may agree on extra pays.[792]

It must be noted that in 2013 the Ministry of Justice prepared the draft law on "entering the amendments and additions into the Labor Code of Georgia", which directly applies to the rights of employed women. The members of civil society were involved in discussion of the draft, though it was not yet submitted to the Parliament.

Despite of the above-mentioned implemented or planned changes, there are still number of problems, which have not yet been regulated and still require approximation to international standards.

Special attention must be paid to employed women with families, in order for them to maintain competitiveness after short leave of absence from labor market, due to pregnancy or child care, and be involved into labor market.

In 2013 the Public Defender of Georgia found out about the facts of dismissal of pregnant women from local self-government bodies. They mostly resigned by their own applications, but as a result of investigation of the cases by the public defender; it became obvious that the applications were written as a result of cheating. Because of the facts of covert discrimination, the dismissed had no evidence and therefore it was impossible to find legal solutions to the problems. Public defender applied to Telavi and Kareli municipalities with recommendation, though it was not taken into account by the local authorities.

Consideration of the recommendation provided in the 2012 Parliamentary Report of the Public Defender on ratification of 183 convention of the International Labor Organization on "Protection of Maternity" is of inevitable importance, for this convention regulates the issue in question. In particular, article 8 of № 191 recommendation adopted on the basis of the Convention provides a provision about retention of job position and non-discrimination, and according to this provision dismissal of a woman by the employer during maternity and child care leaves of absence or after her return to job is illegal. In such a case the employee carries the burden of proof and needs to justify that dismissal is not related with pregnancy or child care.

Presence of such regulation would have been the legal grounds for detection of possible discriminations, as often times the employees are deprived of the ability to obtain the evidence, and discrimination is often invisible.

In 2013, the office of Public Defender, with financial support of British charity organization Oxfam, started working on the special report dedicated to identification of discriminative attitudes towards women on job places.[793] The findings of the survey made it clear that there are frequent cases of discrimination against women in pre-contractual relations, when women are refused to be employed because of their marital status, in order to avoid their possible leaves for pregnancy, delivery and child care. The survey identified that in order to prevent discrimination at pre-contractual stage, it is appropriate to enter the norm into the Labor Code, which will define the employer's responsibility to obtain from the candidate only the information which relates to fulfilment of the functions, which are established by the job description of that vacancy.

According to the findings of the survey, there are frequent cases of sexual harassment at jobs, though this issue is

790 Until the amendments of September 27, 2013, at employees' request, they were granted maternity and child care leaves of absence of 477 calendar days. 126 calendar days of maternity and child care leaves of absence were paid, and in case of complicated delivery or twins – 140 calendar days.

791 Until the amendments of September 27, 2013, employees, who adopted an infant under 12 months, were granted newborn adoption leaves of absence of 365 calendar days. 70 calendar days of the leave was paid.

792 Until the amendments of September 27, 2013, cash allowance for the period of paid maternity or child care was maximum GEL 600.

793 The survey was conducted by organization "Care International" and independent expert Raisa Liparteliani; final findings of the survey will be published in April of 2014.

still tabooed; it is not discussed and not addressed. That is why it is important to develop the definition of sexual harassment as one of the types of discrimination, in consideration of current international statutes, cultural/traditional values and applicable legal tools. Sexual harassment must be prohibited and system of adequate sanctions must be developed.

GENDER-BASED VIOLENCE

Human Trafficking

Human trafficking is a modern form of slavery, the chains of which are invisible. Millions of people annually become victims of trafficking. In line with labor trafficking, such form of female trafficking as sex trafficking are quite widespread.

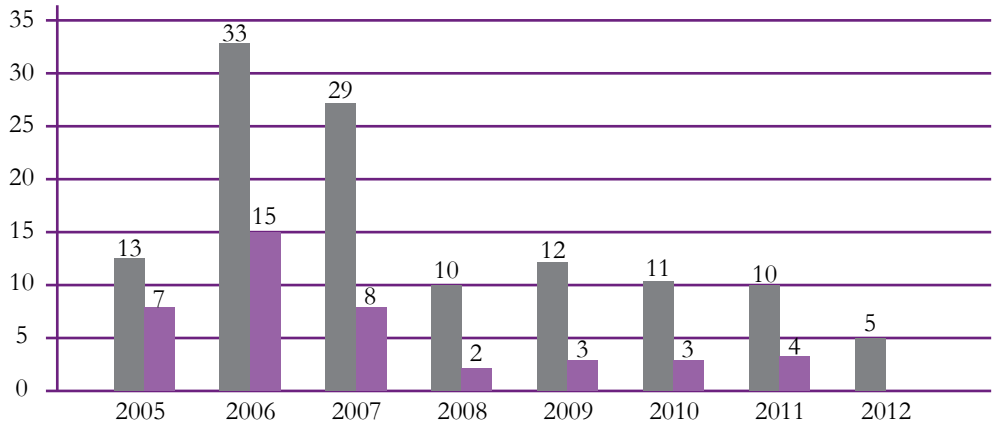
Human trafficking is viewed as one of the forms of gender-based violence. Beijing Action Platform looks at trafficking and forced prostitution together with other forms of gender-based violence and calls upon the States to pay special attention to vulnerable groups of females, such as migrant workers and women with disabilities.

Since 2003 trafficking is punishable according to the Criminal Code of Georgia[794]. The law on human trafficking is elaborated; the action plan on fight against human trafficking, protection of victims and assistance measures is in place and the State Foundation for protection and assistance of the victims of human trafficking is institutionalized and operating.

"State Foundation for protection and assistance of the victims of human trafficking" offers different services to the victims of human trafficking. Such services include: hotline, legal consultations, medical assistance, and providing shelter. In 2013, 34 beneficiaries used the services of the Foundation. Among them 30 have the status of victim of trafficking and 4 are victims. 5 beneficiaries used the service of shelter; medical service was used by 2, and compensation was issued to 21 beneficiaries.[795]

On the basis of the statistics provided to the Public Defender of Georgia by the Ministry of Internal Affairs, 5 cases of human trafficking were identified in 2013; all of these cases were successfully investigated. If we look at the statistics of identification and follow-up response of the cases of human trafficking in previous years, we will have the following graph:

Trafficking offenses, unit



gray – registered; blue- opened;

It is important to note that unlike previous years, in 2013 all identified cases were resolved, though other surveys and reports advise the State to enhance identification of cases and support measures.

794 Criminal Code of Georgia, articles 1431 and 1432;

795 State Foundation for protection and assistance of the victims of human trafficking, letter №07/1587 dated December 23.2013.

In the Report of US Department of State for 2013, trafficking issues are focused on in three directions: investigation, protection and prevention; Georgian authorities are advised on the obstacles and challenges the State is facing. According to the report, girls and women from Georgia are victims of trafficking in the country as well as in Turkey, United Arab Emirates, and in small numbers – in Egypt, Greece, Russia, Germany and Austria. Women from Uzbekistan are forcedly involved in prostitution and sex industry in Georgia, in particular in tourist areas such as Batumi and Gonio.[796]

Domestic Violence

Cases of Domestic violence are found in all types of communities. 2013 was again loaded with the cases of domestic violence. Despite number of awareness campaigns, legislative and institutional safeguards, and criminalization of domestic violence, people still live in the world of stereotypes, where in most cases domestic violence against women is justified. There still is a widespread opinion that domestic violence does not tolerate intervention of the outsiders and that such issue must be solved in closed social circle – family.

In August-September of 2013, with support of UN Women, the Institute for Policy Studies conducted the survey – "Perception of violence against women and domestic violence in Tbilisi, Kakheti and Zemo Svaneti." According to the findings 77,8% of the respondents believe that domestic violence is very frequent or quite frequent case; 9,6% of respondents have some fear that their relatives may become victims of violence; 14% justifies violence against wives in cases when wives fail to pay attention to children.

According to the data of the Ministry of Internal Affairs, total number of domestic conflict calls/reports received by the operational management center of LEPL "112" emergency assistance during the period 01.01.2013-30.12.2013 is 5 447; among them, 358 cases were identified as domestic violence, and Restraining Order was issued on 212 cases.[797] Among the registered cases, following indicators of violence were registered: physical - 139; psychological - 188; economic – 18 and coercive - 13. There were no facts of sexual violence.

Special notice must be given to particularly cruel form of violence – Femicide. According to the data of the ministry of Internal Affairs, 21 cases of female murder were registered in 2013 in Georgia; among these cases, 8 were committed by husbands against wives, 1- by a child against the mother.

In 2013, the group establishing the status of the victim of domestic violence, under the Interagency Council, examined 30 cases. 27 cases (25 women and 2 men) were granted the status of the victim of domestic violence.

State Foundation for protection and assistance of the victims of human trafficking runs the shelters for the victims of domestic violence (Tbilisi, Gori and Kutaisi) and provides other services. According to the information provided by the Foundation, [798] in 2013, the shelter was used by 34 adults and 53 juveniles. In Kutaisi, equipping of new, 17-bed shelter was finalized. Besides the shelter, the victims received the following type of services: medical - 13 adults, 18 juveniles; psychological - 32 adults; legal - 25 adults; individual consultation – 50 persons.

Domestic violence hotline was used by 776 persons. It is notable that up until now, hotline service is free for Silknet subscribers. The process of providing free hotline service is in progress and it is important to resolve the issue as soon as possible.

Important steps were made in terms of development of guidelines and principles on issues of domestic violence. With support of UNFPA, a multidisciplinary working group elaborated "minimal standards for doctors on identification, referral and recording of physical, sexual and psychological violence against women and children". With support of UN Women, Georgian Association of Social Worker established a working group, which aims to develop the concept of social worker in the context of fighting against domestic violence. .

In 2013, the Office of Public Defender of Georgia conducted the survey with support of UN Women – monitoring over enforcement of Restraining and Protective Orders issued by law enforcement / judicial authorities. Final results of the monitoring will shortly be made publicly available.

796 See: <http://www.state.gov/documents/organization/210739.pdf> [last seen in 1.02.2014].

797 Letter №138331, 22.01.2014 of the Ministry of Internal Affairs of Georgia.

798 State Foundation for protection and assistance of the victims of human trafficking, letter №07/1587, dated December 23.2013.

Dspite of the above-mentioned positive steps, interagency coordination of domestic violence issues and implementation of effective measures for protection of victims of domestic violence are still very problematic. Special importance is given to coordinated operation of the Ministry of Internal Affairs and social workers from the Social Service Agency dedicated to identification of domestic violence and monitoring over enforcement of Restraining and Protective Orders, among such vulnerable groups as people with disabilities, people of old age and below the poverty line.

The case of E.M.

In 2013, E.M. – a person with disability applied to the office of Public Defender. According to the applicant, she was systematically subjected to physical and psychological violence of the brother, husband and nephews/nieces. She was locked up into the room with no adequate conditions for living. In particular, she was not provided with water, power and the staircase steps were damaged. The Protective order was issued on these facts of violence; though, according to the applicant, the members of the family violated the conditions of protective order and she did not feel safe. The Office of Public Defender applied to the Ministry of Internal Affairs and Social Service Center and asked for their response acts. According to the information of the Ministry of Internal Affairs, they visited E.M. in December and there was no fact of violence against her. According to the information provided by the Social Service Center, during their visit in December, it was difficult to approach E.M. because of domestic conflict. Social workers could enter the place only after they called patrol police. In this case, two bits of information provided in the same period of time give different picture. It indicates to poorly coordinated operation of the service providers. The Public Defender issued a proposal on further monitoring of protective orders granted on the facts of domestic violence.

The case of I.G.

In 2013, citizen I.G. applied to the office of Public Defender. According to the application, since 2011, I.G. is systematically subjected to psychological and physical violence from her former husband. There were number of physical offenses in the street. Restraining and Protective Orders were issued, but because of continuous intimidations and violence, I.G. does not feel safe. In order to study the case in a comprehensive manner, the office of Public Defender applied to the Ministry of Internal Affairs. Provided information confirmed the facts mentioned in the application, and it continues for several years. In all cases of domestic violence police applied the tools of administrative-legal protection (Restraining and Protective Orders). The abuser violated the conditions of order in many occasions, but only once the administrative detention was executed; obviously, it cannot ensure effective protection of the victim. The Office of Public Defender applied to the Ministry of Internal Affairs and asked for application of defective measures, in order for I.G. to be able to live in violence-free, protected environment.

The case of T.L.

In 2013 T.L. applied to the office of Public Defender and reported about the acts of violence committed by her factual cohabitant partner; according to the applicant, P S kept her in a house near the wood where T.L. used to tend to domestic animals. During this time she multiple times became the victim of psychological and physical violence. According to T.L., in October of 2013 she was granted the status of the victim of domestic violence; this fact was confirmed by the Interagency Council in charge of implementation of domestic violence measures. The Office of Public Defender applied to the Ministry of Internal Affairs and asked for adequate response. According to the information, "T.L. has psychic disorder and during the past few years is showing interest towards P.S. For the above reason, she is making telephone calls of romantic nature". Public Defenders request - to provide the Psychiatric Examination Report of T.L. and evidence of telephone calls, was not satisfied by the Ministry of Internal Affairs. The above-mentioned proves that despite of fact that the status of the victim of domestic violence was granted by the interagency council, for which purpose T.L. has undergone all necessary procedures (including interviews with social worker and psychologist, discussion of issues together with the representatives of different agencies), the information of the Ministry of Internal Affairs does not confirm presence of violence, which challenges the process of granting the status and/or the accuracy of the information.

HARASSMENT OF WOMEN

Public awareness on issues of women's harassment is still very low. It results in low public activism for identification and elimination of harassment. Often times, such forms of harassment as: harassment in street, offensive behavior in public transport – are not considered to be violence and people may not exactly "appreciate" such conduct but they still don't think it is illegal. Public often demonstrates no tolerance against the victims of harassment and such person suffers from double discrimination. In number of cases, the victim fails to perceive the violence executed against her or decides to endure it in order to avoid public blaming.

In 2013 Public Defender found out about the facts of harassment of women in public places, which was demonstrated in degrading acts against them; though, during examination of this issue, proper attention was not paid to the issue of gender equality. It is important to discuss such violations as gender-based violence demonstrated in forms of harassment against women together with violation of public order, at all stages of investigation and case management.

There are reports about the cases of sexual harassment, but absence of sufficient amount or content of documentation and surveys prevents development of effective strategies. Public opinions impede identification of such facts and adequate legal response.

It is important that the state authorities take all necessary measures to eliminate women's harassment and provide protection of victims. In particular, measures protection in public and civil areas must be enhanced. Special attention must be paid to protection of safety and security in public spaces, transport and streets.

EARLY MARRIAGE

According to the data of UNFPA, approximately 14 million women under the age of 18 is getting married in the course of one year; 38 000 –per day and 13 – per second. The situation in Georgia is also complicated. There are different situations in different regions of Georgia. The statistics is also different. Though, the outcome is the same – early marriage of girls is a well-established practice. Compelled marriages as a result of abduction or deal between the parents represent greater concern.

In the parliamentary report for 2012 the Public Defender of Georgia presented local and international practice of early marriage. According to the information provided in the report, as per the data of the Ministry of Education and Science of Georgia, 7 367 girls from public and private schools ceased basic education course during the period of October 2012-January 2013; in most cases the reason was early marriage. The rate of terminated education is especially higher in Kvemo Kartli Region. Despite of the recommendations provided in the report, the issue of early marriage is still very urgent and unfortunately, no effective steps have been yet taken.

One of the directions of the Department of Gender Equality of the Office of Public Defender is implementation of informational-educational and preventive measures on issues of early marriage. In 12013, special attention was paid to the region of Kvemo Kartli, because most of the cases of termination of school studies were registered in this region. Several public discussions, visits in villages and informational meetings with the youth were held.

Studies show that the main reason for termination of the school by girls is early marriages, which in some cases is a minor's and in some cases - her parents' decision. Among the reasons cited by young people, the most urgent is socio - economic condition. According to one girl, " My friend lived in poverty, had to go out to earn food. She got married and knows that her future is secured; at least she will not be hungry anymore." It is alarming that in number of cases, if it improves her social status, public opinion justifies early marriage, although in most cases they just do not know about the risks of early marriage.

The situation is especially difficult in Lagodekhi region, Kabali community. According to the results of the recent study of the Public Defender's Office, more than 20 early marriage cases were registered recently; cases of forced marriage, abduction of girls and marriage deals are especially frequent.

According to the information received during the informational meeting in Kabali public school №1 we learned that the girls cease to attend the graduating classes and decide not to go to school because of greater risk of abduction. During January 2014 - February there were 3 cases of abduction. The same is confirmed by the school

director. According to one girl: "a girl from our village was sold to a 45-year-old man by her father, in exchange of 10 cows. This girl did not want to marry the man, and escaped with other". The second girl said: "I tell my parents, if they force me to marry, I will kill myself. I repeat it every day, so that they do not force me to get married".

Main problem is lack of attention of the relevant authorities. In Kabali community people do not know who to apply to in cases of violation of child rights. Alienation of young girls in exchange of domestic animals and money is an established practice in this community, which is necessary to combat by means of interagency coordination. It is important to activate the social service, police and educational institutions.

Despite of the existing legal regulations, practice gives different outcome. The problem is that in case of termination of school education, the reason is not indicated, which complicates counting of real statistics on early marriage. School abandonment is not always caused by marriage, but practice corroborates the accuracy of this opinion.

Early marriage, when it is related to ceased education and getting no profession, creates a range of problems in cases of domestic violence, because these girls are deprived of opportunities for employment and independent living.

That is why it is important to strengthen the awareness raising activities, and special attention must be given to raising the awareness of teachers, parents and law enforcement agencies about the problems caused by early marriage and legal regulations in the country.

LEGAL STATE OF VULNERABLE GROUPS OF WOMEN

As of 2013, the women's economic activity and participation in economic life of the country is very low. According to Global Gender Gap Report,[799] Georgia holds 64th position among 136 countries. Access to healthcare is still low; in this ranking, the country is on 126th position. In the context of such environment, socio-economic conditions of women from vulnerable groups, including single mothers and mothers with many children, are becoming more difficult.

Single mothers are especially vulnerable. Georgian law does not give a definition of a status of a single mother, and therefore, there are no state programs to support them. Uncertainty of a status, in its turn, leads to the absence of official statistics. Conventionally, if we consider a single mother to be a woman whose child's birth record does not indicate the father, according to the data of the Ministry of Justice, birth records of 1382 infants born in 2013 do not provide the data on the father, which means that 1382 single mothers are added to current data.[800]

The term "single mother" can be found in the order of the Minister of Labor, Health and Social Affairs on "adoption of the rule of assessment of socio-economic conditions of socially disadvantaged families", according to which a single mother is a person who has never had a husband or is a widow and has a child (children) up to the age of 18. It is necessary to have marriage and husband's death certificates, and in case of husband's* death, the child's birth certificate.[801] The above definition regulates legal relations related to the rule of provision of social assistance; thus, the competence does not apply to other types of legal relations.

Such a narrow definition of competence is provided in the Tax Code. In particular, according to article 82, list of persons exempted from income tax under includes single mother: taxable income of up to 3000 earned by a single mother during the calendar year is exempted from income tax.[802] It should be noted that according to the reservation of the Tax Code, from January 1, 2014 the quantitative limit was abolished and single mother's income will not be taxed at all.

799 Information is available on web page: <http://www.weforum.org/reports/global-gender-gap-report-2013> [last see in 01.02.2014].

800 Letter # 7, 03.01.2014 of the Ministry of Justice of Georgia;

801 Order 141/n of the Minister of Labor, Health and Social Affairs of Georgia (article 7, subparagraph „'v");

802 Tax Code of Georgia, article 82, part 2

The problem of general nature is that single motherhood in Georgia is linked not only to paternal ignorance of a child and evasion of responsibility, but also social and state's indifference. On the one hand, society' stereotypical attitude and on the other hand - the government's lack of assistance programs result in extremely severe material and legal condition of single mothers.

According to article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, participating states shall take all appropriate measures to ensure that family education include proper understanding of maternity as social function, and recognition of men's and women's joint responsibility in child's upbringing and development, in consideration of child's best interests. According to the same Convention, upbringing of children requires distribution of the responsibility among men and women, as well as the community.

Despite of the above-mentioned, women often have to assume the sole responsibility for raising their children.

Problem is fulfilment of recommendation issued to a participating country by the United Nations Committee on Elimination of All Forms of Discrimination Against Women in August 15, 2006, during review of the second and third periodic report of Georgia, which states: "The Committee urges to include gender issue into all state programs and strategies dedicated to reduction / elimination of poverty, and to pay special attention to vulnerable groups of women, and inter alia to single mothers and women supporting the families".

It should be noted within the scope of the project "facilitation of systemic changes for single mothers, for the purpose of ensuring social and legal guarantees" funded by USAID and Open Society – Georgia Foundation, the National Network of Protection, in cooperation with other NGOs and state authorities, prepared a package of legislative amendments that refers to reflection of legal status of "a single mother" into the legislation, and provision of social and legal guarantees for persons belonging to similar categories. The draft law will be soon submitted to the Parliament.

Mothers of many children also face serious problems. According to statistics provided by the Ministry of Justice, 9453 acts of birth were registered in 2013, wherein it is at least the third child for the mother.[803] According to the data of National Statistical Office, this index in 2011 was 863, and in 2012 - 8923.[804]

It is important for the government to implement appropriate measures to support single mothers and mothers of many children in social and economic fields. First of all it is necessary to define the legal status, which will contribute to the official statistics on these issues and provision of state aid programs.

The case of I.G.

In January 8, 2014, I.G. applied to the office of Public Defender; she is a single mother of many children. According to the results of a study, the Public Defender's Office, the mother lives with 5 underage children in Rustavi and is at her 19th week pregnancy on her 6th child. She lives in extremely difficult socio-economic conditions and in the near future she will have no accommodation.

Three out of five children three have health problems. Children get medical treatment and require constant care. I.G. divorced her husband because of multiple cases of domestic violence; the husband does not participate in upbringing of children. As she is raising the children alone, and children need constant care and attention, she is not able to get job and financially support the family.

In January 16, 2014, the Public Defender applied to the Mayor of Rustavi with a recommendation to consider I.G.'s severe socio-economic conditions and provide shelter for her. In the letter of the Deputy Mayor of Rustavi for February 10, 2014, it is said that the recommendation cannot be granted due to absence of accommodation resource.

803 Letter # 7, 03.01.2014 of the Ministry of Justice of Georgia.

804 See <http://www.geostat.ge/cms/site_images/_files/georgian/health/qali%20da%20kaci-2013.pdf> [last seen in 1.02.2014].

LEGAL STATE OF LGBT PERSONS

Homosexual conduct was decriminalized in 2000 in Georgia. This process has been accompanied by elimination of the discriminatory approaches in the legislation and enhancement of legal rights guarantees of LGBT persons, but there still remain the issues, which establish certain stigmas on a legislative level. Current situation demonstrates the need for the changes and facilitation of implementation of the issues regulated by the law.

Article 14 of the Constitution of Georgia affirms prohibition of discrimination. The list provided in this article does not include sexual orientation and gender identity, but the Constitutional Court explained that the list is not exhaustive and includes such grounds for non-discrimination, which are not expressly mentioned in it.[805]

Sexual orientation as a basis for non-discrimination can be found in health care and labor rights. In particular, according to article 6, paragraph 1of the Law of Georgia on "Health Care", the grounds excluding any discrimination against patient include non-discrimination because of sexual orientation; According to article 2, paragraph 3 of the Labor Code of Georgia, in labor and pre-contractual relations one of the grounds for non-discrimination is sexual orientation.

It should be noted that in March 27, 2012, article 53, paragraph 31 was added to the Sentencing art of the Criminal Code of Georgia, which among other circumstances, list sexual orientation and gender identity as aggravating circumstances for the crime committed with the motive of intolerance.

On March 31 of 2010, the European Council of Ministers adopted a Recommendation to Member States on "measures to combat discrimination based on sexual orientation and gender identity" (CM / REC (2010) 5). Georgia is one of the recipients of the recommendation and in 2013 received a relevant report on fulfillment of the obligations set forth in the Recommendation.[806]

Shadow report on implementation of the recommendations was prepared by the NGO "Women's Initiatives Supporting Group"[807]. The report contains detailed descriptions of discriminatory approaches, facts and incidents based on gender identity and sexual orientation. It also provides recommendations on improvement of legislative basis and enhancement of civil society.

Despite of the fact that Georgian legislation is not discriminatory towards LGBT persons, its practical enforcement does not ensure adequate legal guarantees. The incidents of discrimination of LGBT persons in labor, health, social and economic relations are quite frequent. They suffer violence and unequal treatment in different areas of life, in families and communities. In most cases they do not apply to law enforcement for restoration of infringed rights, as they have no trusts and believe that if they apply to police, they will become victims of homophobic treatment.

The quantitative survey conducted in 2013 by a non-government organization "Identoba" - "social being of gay, bisexual and transgender men", represents the way of establishing forms and levels of discrimination among gay, bisexual and transgender men living in Georgia. According to the survey, 48 respondents out of 109 give positive reply to a question "have you been victim of physical violence because of your sexual orientation or gender identity"; among them, 36 never reported to the police.[808]

It must be noted that by the decision of February 4 of 2014, the Constitutional Court of Georgia satisfied the constitutional suit of the citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze and found the disputable parts of the appendix №241/ნ №1, 05.12.2000, article 24 of Minister of Labor, Health and Social Affairs and Order №282/ნ, 27.09.2007, appendix №1, article 18, paragraph 2 to be non-constitutional

The above-mentioned orders of the Minister of Labor, Health and Social Affairs of Georgia regulate the issues of

805 Judgment №2/1–392 of the Constitutional Court of Georgia for March 31, 2008 on case "Georgian citizen Shota Beridze and others vs Parliament of Georgia", http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=460&action=show.

806 See http://www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/lgbt/Questionnaire/LGBT_Georgia.pdf> [last seen in 1.02.2014].

807 See <http://women.ge/wp-content/uploads/2012/12/CM_REC20105GEORGIA_GEO_www.pdf> [last seen in 1.02.2014].

808 Social being of Gay, bisexual and transgender men; Identity; 2013 See: <http://identoba.files.wordpress.com/2014/01/e18392e18391e183a2-e18399e18390e183aae18394e18391e18398e183a1-e1839be18393e18392e1839de1839be18390e-183a0e18394e1839de18391e18390-2012-201.pdf> [last seen in 1.02.2014].

establishing the indications against donorship of blood and its component. The norms challenged by the claimant referred to "homosexuality" as the indicator against donorship of blood and its component; thus, homosexuals were forbidden to donate blood.[809]

Homophobic attitudes among public still remain challenge, which result in hate crimes and other discriminatory activities. No awareness raising measures are carried out, which would support destruction of current stereotypical approaches.

There are frequent cases of domestic violence against LGBT persons. It forces them to conceal their gender identity and sexual orientation. Community finds public demonstration of heterosexual relations admissible, but in case of LGBT, such demonstration becomes reason of violence against them. Jobs, friends, families – these are the places where have to hide their identity. The attitude of family members is often negative and there are forceful attempts aimed at change of their identity and orientation. Studies show that the members of LGBT groups often become victims of both physical and psychological violence from their family members. Quite often family members apply to psychologist or sexologist and ask them to "cure" the patient from "wrong" orientation or developed gender identity.[810]

FREEDOM OF ASSEMBLY AND EXPRESSION: DEMONSTRATION OF MAY 17 AND ITS CONSEQUENCES

In 2013 there were many incidents of hate crimes and other cases against LGBT persons and organizations protecting LGBT rights. The above acts were aggressive by nature and posed danger to the above persons' life and health.

On May 17, the international day of fight against homophobia and transphobia, non-government organizations "Women's Initiatives Supporting Group" and "Identoba" planned a silent rally, which aimed at attracting people's attention to the problem of homophobia in Georgia.,

The rally was attacked and dispersed by the participants of parallel rally, including members of church; their aim was not to impede the rally but rather to physically attack and punish the participants. On the one hand, LGBT persons and their supporters were not allowed to exercise the right granted by the constitution - right to assembly and on the other hand, hate-based physical violence was executed.

Despite of the fact that the Ministry of Internal Affairs of Georgia was given several-days prior notice about the parallel rallies planned to be held in one and the same area, and was warned about possible threats that might have occurred, LGBT persons and their supporters were not allowed to exercise the right granted by the constitution - right to assembly. At the outset of the rally patrol police was mobilized in the area; the cordon was arranged, but police could not maintain the cordon.

During the rally, members of counter-rally forcedly broke the police cordon with the aim to physically abuse the members of the rally. Once the situation went out of control, police began to evacuate members of the rally. One evacuation bus and one minibus were sieged by the members of counter-rally on Leselidze and Vachnadze streets. Members of counter-rally broke windows of the minibus and attempted to get inside. They threw stones and other items at the people sitting in the minibus, used offensive language and verbally and physically abused them. The minibus was taken away from the area with the help of patrol police. In the same period, there were several incidents when members of counter-rally bet up people who, they believed, were LGBT persons. Violence continued during the following days –both, "Women's Initiatives Supporting Group" and "Identoba" registered increasing number of violence against LGBT persons.

According to the information, 17 members of rally were injured; among them were 3 patrol police officers. Among

809 The judgment of the Constitutional Court of Georgia on case "citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze vs the Minister of Labor, Health and Social Affairs of Georgia" February 4, 2014 http://constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=824&action=show.

810 CEDAW Shadow report on the state of LGBT women; http://women.ge/wp-content/uploads/2012/05/WISG-LBT-CEDAW-shadow-report_geo.pdf.

the injured was a reporter from radio station ""Fortuna". The participants of the rally also attempted to raid the office of non-governmental organization "Identoba".

4 participants of parallel rally were imposed administrative penalty in amount of GEL 100 each. Criminal charges were brought against 5 persons, including two clergymen (charges against one clergyman were dropped). The case is now being tries in the court. The representative of the Public Defender is monitoring the trial.

Gender equality department of the Office of Public Defender documented the 32 incidents of May 17 and sequential days and is studying these cases.

TRANSGENDER PERSONS IN GEORGIA

All surveys and reports on the situation of LGBT persons in Georgia[811] unanimously recognize that the needs of transgender persons are inadequately covered by the legislation, which in some cases ends up with violation of fundamental rights.

On the basis of the Recommendation of the European Council of Ministers on "measures to combat discrimination based on sexual orientation and gender identity", the requirements of re-designation of gender and legal recognition are established; in particular:

"Member states should take necessary measures in order to ensure full legal recognition of person's changed gender in all aspects of life; in particular, member states should ensure change of name and gender in official documents in an expedient, transparent and easily available manner; member states should also ensure, if necessary, relevant recognition of changed gender by non-state subjects and recognize other changes adopted in basic documents such as education diploma and employment record."[812]

The situation in Georgia does not correspond to the requirements established by the recommendation. As per paragraph 36 of the recommendation, the states must regulate insurance policy in order to cover the above expenses. In Georgia, transgender people are forced to cover the expenses. Necessary medical service, required for re-designation of gender is not affordable to majority of transgender persons, due to socio-economic conditions.[813] It is also important that procedural side of this service is not regulated. In particular, there is no standard rule for the procedure which would be a uniform rule for the medical facilities providing such service. The sequence/order of the procedures for rey-designation of gender is not established as well.

Transgender persons face problems when making the entry into the Civil Acts Registry on changed gender, which is an impediment for education and employment processes. The law of Georgia "on Civil Acts" (article 78) sets forth the list of circumstances, which may serve as the grounds for entering amendment into the civil act record. One of such circumstances is the following:

> "change of gender – if a person is willing to change name and/or last name in relation to changed gender". Though, there is no list of documents the person must submit for entering the amendment into the civil act. There is no definition of "change of gender", for the purpose of this law.

On the basis of established practice, for legal change of gender it is necessary to undergo full procedure of re-designation of gender, including surgery. From January 2011 till now there has been no application requesting change of gender.[814]

The report "situation of LGBT persons in Georgia", prepared by non-government organizations "Women's Initiatives Supporting Group" refers to the problems faced by transgender persons in relation to procedure of change of gender. According to the report: art of transgender persons is not willing to undergo gender correction operation; many adopt desirable social role and adjust their appearance (without surgical intervention); transgender

811 Situation of LGBT persons in Georgia; WISG; Tbilisi, 2012. See: <http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_GEO-www.pdf> [last seen in 1.02.2014].

812 Recommendation of the European Council of Ministers on "measures to combat discrimination based on sexual orientation and gender identity", - CM/REC(2010)5. paragraph 21.

813 Materials for study of transgender persons' needs in healthcare sector, organization "Identoba", 2012.

814 Letter №1246, 11.02.014 of the Ministry of Justice of Georgia.

persons, who are willing to be operated on, often times do not have necessary funds; gender-related operation may not be recommended due to person's health condition.[815]

Recommendations:

With regards to women's participation in politics
Government of Georgia

- **To support gender mainstreaming on executive government level, through appointing persons responsible for gender equality issues and establishing structural unit;**

Local self-government bodies

- **To support promotion of leader women on local self-government level to plan for the programs in support to women; to pay special attention to engagement of women from ethnic minorities and rural areas;**
- **To support enhancement/empowerment of the advisors on gender equality issues appointed on local self-government level; to establish their mandate and to inform community about their activity in the area of gender equality;**

With regards to labor rights of women
Government of Georgia

- **To establish interagency workgroup with participants from the government, trade union, employers and civil society; the workgroup will develop labor legislation and introduction of women's labor rights in accordance with current international standards;**
- **To take all measures, including professional development and trainings, which will allow employed women with families to engage into and stay on labor market;**
- **In order to ensure equal opportunities for women – to implement transparent procedures for positional promotion, career growth and incentives.**

Parliament of Georgia

- **To initiate relevant procedures for ratification of the International Labor Organization 1983 Convention on Protection of Maternity and to ensure full participation of all stakeholders in discussions;**

With regards to gender-based violence
Government of Georgia

- **To integrate gender issues into the materials (including educational materials) on human trafficking;**
- **To facilitate enhancement of informational-educational activities on human trafficking issues with vulnerable groups of women (including victims of domestic violence, IDPs, women living in rural areas, ethnic minorities);**
- **To develop interagency informational strategy on human trafficking in consideration of specifics and needs of risk groups;**
- **To support interagency coordination in protection and assistance to the victims of domestic violence, especially in cases of violence against vulnerable groups (aged and disabled persons);**

815 Situation of LGBT persons in Georgia; WISG. Tbilisi, 2012.
http://women.ge/wp-content/uploads/2012/12/WISG_situation-of-lgbt-persons-in-Georgia_GEO-www.pdf.

- To implement effective and case-by-case measures of legal protection on repeated cases of domestic violence; to develop guidelines in case if needed;
- To enhance monitoring over enforcement of Restraining and Protective Orders; to determine the role of social workers in response to cases of domestic violence;
- To pay attention to implementation of control measures in public transport and public areas in order to prevent incidents of harassment of women;
- To define sexual harassment as one of the types of discrimination, in consideration of international provisions, cultural / traditional values and applicable legal mechanisms;
- To consider restriction of sexual harassment and to develop adequate system of sanctions;
- In case of early marriage, to protect minors from abuse of rights by the parents or other legal representatives; to activate legal sanctions against violators of minors' rights;
- To facilitate raising of public awareness on the issues of early marriage by conducting educational activities for professionals working with minors, parents and youth;
- To support educational facilities to inform relevant authorities about the facts of early marriages;
- To determine indication of reasons in case of termination of school study, which would allow to keep statistics and quickly respond to the case of violation;

Parliament of Georgia

- To ratify Council of Europe 2011 Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as soon as possible;

With regards to legal state of women belonging to vulnerable groups
Government of Georgia

- To pay special attention to healthcare of women from vulnerable groups, including mothers of many children, single mothers and supporters of the family;
- To ensure keeping official statistics after the status of single mother is defined, and to activate state protection and facilitation programs;

Local self-government bodies

- To consider the needs of single mothers and mothers of many children in the programs planned on local self-government level.

Parliament of Georgia

- To determine the status of a single mother at a legislative level, in order to keep official statistics and to plan/implement state protection and assistance programs.

With regards to legal state of LGBT persons
Government of Georgia

- To carry out timely, effective and accountable investigation of hate crimes and other incidents motivated by hatred;
- To resolve the issue of providing shelter to LGBT persons in emergency situations, when diversion is necessary for protection of life and health;
- To enhance collaboration with the community for elimination and prevention of current homophobic practices;

- **Too support establishment of a specialized group within police, which will work on investigation of hate crimes;**
- **To establish expedient, transparent and easily available procedure of registration of the gender of transgender persons in all documents issued by public and private institutions though implementation of new administrative practice, on the basis of the diagnosis of gender dysphoria;**
- **To support regulation of gender re-designation process in a way that transgender persons have easy access to recognized medical services, in compliance with international standards.**

GENERAL REVIEW OF THE PROTECTION OF PERSONS WITH DISABILITIES

The year 2013 was distinguished with certain positive changes with regard to the protection of the rights of persons with disabilities.

The most positive event in the reporting period was the ratification of the UN Convention on the Rights of Persons with Disabilities by the Parliament of Georgia on 26 December 2013.[816] This should undoubtedly have a positive impact on the protection of persons with disabilities.

Last year was announced as the year of the rights of persons with disabilities by a Presidential Ordinance.[817]

In December 2013, the President of Georgia announced in his public speech made on the international day of persons with disabilities that he would appoint a Personal Advisor to the President on the issues of persons with disabilities.[818]

According to the state budget of 2013, hand in hand with health care, social safeguards for the population were one of the most important priorities of the state.

From February 2013, with the introduction of the universal Health Care programme, the terms of insurance for disabled persons were more or less improved. Until then, only some disabled persons were insured, which was characterised with the signs of discriminatory selection. The Programme covered that category of disabled persons who previously were not beneficiaries of state medical insurance.

The composition of the State Coordination Council working on the issues of disabled persons was changed in the reporting period[819], and the working meetings of this consultative body were also held. The Office of the Public Defender of Georgia participates in the work of the Coordination Council with observer's status.

In 2013, during the presidential elections, the Central Election Commission of Georgia introduced a few changes for persons with disabilities related to vision, hearing and mobility in order to make the electoral process more simplified and accessible for them[820].

A representative of the Office of the Public Defender of Georgia is a member of the working group on disability issues functioning under the Central Election Commission.[821] At this stage, efforts are underway to introduce changes to the Organic Law of Georgia on Elections Code of Georgia.[822] The amendment of the Elections Code will facilitate the creation of an electoral environment adapted for the constituents with disabilities and help them take part independently in the elections.

816 Resolution no. 1888-RS of the Parliament of Georgia, dated 26 December 2013, https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2164946&lang=ge.

817 Ordinance no. 139 of the President of Georgia, dated 4 March 2013, https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1862160&lang=ge.

818 https://www.president.gov.ge/ge/PressOffice/News?p=8572&i=5.

819 See https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1944089&lang=ge.

820 The report on the activities for simplified and more accessible electoral process for disabled persons, http://cec.gov.ge/uploads/other/16/16850.pdf.

821 Order no. 01-09 of the President of the Central Electoral Commission, dated 19 February 2013.

822 http://www.parliament.ge/files/Draft_Bills/2014/12.02.14/306.pdf.

Last year, the Ministry of Education and Science started working on supporting the independent lifestyle of persons with disabilities, and their inclusion in educational and professional programmes. An ordinance of the Prime Minister of Georgia approved the strategy of professional education reform for 2013-2020[823].

The Ministry of Labour, Health Care and Social Security of Georgia created the council that will determine policies on psychiatric health.[824] The Public Defender of Georgia is a part of this council. The council elaborated the national concept of psychiatric health care[825] and started working on the action plan for 2014-2020. In the beginning of 2014, technical rules on the standards of psychiatric and social rehabilitation were approved.[826]

In the reporting period, the Public Defender of Georgia issued a recommendation for the notice of the Minister of Labour, Health Care and Social Security of Georgia to amend the instructions on determining disability status. The recommendation requested that persons with autistic disorders and Down syndrome are given the same access to state programmes. This was partially allowed; the funding of the social programme and the group of beneficiaries were increased. The programmes however still fail to meet the needs.

Out of the legislative changes effected in 2013, the amendment of Article 82 of the Tax Code of Georgia is noteworthy. Under the new wording of the Article, income up to GEL 6,000.00, received within a civil year, which is subject to taxation, shall be exempted from income tax if it is gained by a person having a disability since childhood, and a person having an acute/clear disability.[827] It is desirable that the Code provided the exemption for persons with moderate disabilities.

The Ministry of Sports and Youth of Georgia was actively involved in the organisation of sports and recreational activities for persons with disabilities. The ministry supports the development of the Para-Olympic Committee and plans certain activities. In December, last year, Para-Friends Club was established.[828] It unites the supporters of disabled-sports. In 2013, the Memorandum on Cooperation was signed by the Para-Olympic Committee of Georgia and the Ministry of Defence of Georgia. Within the memorandum, the soldiers wounded in the peace mission in Afghanistan will be able to fully participate in para-Olympic activities.

There are more frequent discussions in the society about the challenges of persons with disabilities. The number of organisations advocating the rights of the disabled is higher both on national and regional levels.

Media was active in the reporting period in broadcasting the challenges faced by persons with disabilities.

During the implementation of the activities supporting the ratification of the UN Convention on the Rights of Persons with Disabilities, the proactive involvement and consolidation was obvious among persons with disabilities, the NGOs advocating the rights of persons with disabilities, civil sector, state authorities, and the Public Defender of Georgia.

Under the UN Convention of 2006 on the Rights of Persons with Disabilities, "States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability."[829]

Following the ratification of the Convention, the country faces considerable challenges. Honouring the obligations undertaken necessitate practical and effective measures, legislative, budgetary, institutional and other changes.

The Convention provides for the monitoring at national level. Under Article 33, "States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels."

The Public Defender of Georgia welcomes one more time the positive fact of ratification of the Convention and expresses readiness to provide monitoring of the implementation of obligations undertaken by Georgia, protect-

823 http://mes.gov.ge/uploads/300.pdf.

824 Order no. 01-141/o of the Ministry of Labour, Social Health Care and Social Security of Georgia, dated 17 July 2013.

825 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2157098&lang=ge.

826 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2198173&lang=ge.

827 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1984990&lang=ge.

828 http://msy.gov.ge/index.php?lang_id=GEO&sec_id=196&info_id=10057.

829 UN Convention on the Rights of Persons with Disabilities, Article 4.1.

ing and raising awareness about the rights of persons with disabilities, with the involvement and joint efforts of civil society and persons with disabilities so as to make it possible that the Convention is successfully realised in Georgia . The Public Defender of Georgia made a public announcement in this regard.[830]

It is noteworthy that the UN Convention on the Rights of Persons with Disabilities was ratified without the optional protocol, which is a negative fact. The Optional Protocol enables persons with disabilities to apply to the relevant committee of the UN concerning alleged violations of substantive rights. Persons with disabilities living in Georgia will be unable to exercise this right until the ratification of the optional protocol by the state.

The reporting period, together with the positive measures taken towards the protection of the rights of persons with disabilities, was also punctuated with certain irregularities.

Considering the announcement of 2013 having been declared as the year of persons with disabilities, the civil society expected substantial improvement of situation, which unfortunately did not come true.

Despite active efforts on the Action Plan for 2013-2016, aimed at ensuring equal opportunities for persons with disabilities, it was not approved in 2013. In the beginning of 2014, the Government of Georgia adopted a resolution on approving the Action Plan for 2014-2016 aimed at ensuring equal opportunities for persons with disabilities.[831]

As mentioned above, with the introduction of Universal Health Care Programme, the existing insurance scheme covered persons with disabilities. However, their particular needs are still not covered. The problem of providing these persons with medication still persists.

The list of diseases provided by Order no. 1 of the Ministry of Labour, Health Care and Social Security of Georgia, dated 13 January 2003, on Approving Instructions on the Rules of Determining the Status of Disability needs to be reviewed. There must be changes and additions made in order to take into consideration the objective reality and to enable equal access of disabled persons to social security.

Based on the reform accomplished by the state for the presidential elections in 2013, only a small number of electoral districts were adapted; most of them are still inaccessible for persons with disabilities.

Inclusive education remains to be one of the major challenges in Georgia. According to the Ministry of Education and Science of Georgia, 3, 366 pupils with special educational needs are involved in inclusive education system.[832] Despite the introduction of inclusive education in professional and general educational institutions, pre-school and higher education are not part of the system. It is noteworthy that there is still a need for raising awareness in the society, including parents, regarding this issue.

Notwithstanding the employment of some persons with disabilities in state sector, the realisation of the right to work still remains an insurmountable problem. In the reporting period, two persons with disabilities were selected as experts for the National Prevention Mechanism of the Public Defender of Georgia. They are involved in the monitoring process of the Public Defender.

In 2013, despite certain positive trends in terms of protection of the rights of persons with disabilities, there are still challenges in place, the solution of which requires systemic and timely approach.

ACCESSIBILITY

In terms of protection of the rights of persons with disabilities, accessibility remains to be one of the most important and acute problems in the country. Without the resolution of this problem, the full-fledged involvement and participation of disabled persons in the society will be unfeasible.

According to the guiding principles of the UN Convention on the Rights of Persons with Disabilities (Article 3), accessibility is one of the most important aspects.

830 See http://www.ombudsman.ge/index.php?page=1001&lang=0&id=1900.

831 http://government.gov.ge/index.php?lang_id=GEO&sec_id=381&info_id=40157.
http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=377.

832 Correspondence received from the Ministry of Education and Science of Georgia.

Under Article 9 of the Convention (accessibility), in order to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure the accessibility of persons with disabilities, on an equal basis with others, to the physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services that are open or provided to the public, both in urban and in rural areas.

It is obvious from the above provision that accessibility implies access to physical environment, buildings and premises, transport means, etc., as wells to information and technologies.

ACCESS TO PHYSICAL ENVIRONMENT

When discussing access to physical environment, it is necessary to interpret two principles: reasonable accommodation and universal design. These principles are elaborated by Article 2 of the UN Convention of 2006 on the Rights of Persons with Disabilities.

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure the enjoyment or exercise of all human rights and fundamental freedoms of persons with disabilities on an equal basis with others.

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Reasonable accommodation would imply, e.g., introducing changes in working environments, educational institutions, health care establishments or transportation in order to remove those obstacles that prevent persons with disabilities from being actively involved in an event or receive services on an equal basis with others. The denial of reasonable accommodation amounts to discriminatory treatment on e account of disability.[833]

Public transport, residential houses, medical and educational institutions, offices of state agencies, public buildings, streets, parks, interiors and exteriors of buildings, etc., in Georgia are not adapted to the needs of persons with disabilities. The needs of persons with disabilities are not taken into account when designing and constructing buildings. This concerns old, as well as renovated, and newly constructed infrastructure. Because of the obstacles they face, persons with disabilities, except for some of them, are unable to independently leave their residences.

The infrastructure of educational institutions (primary and secondary education, as well as professional and higher education) fails to meet the needs of persons with disabilities, which is one of the obstacles to the full implementation of inclusive education.

The same situation is found in most medical establishments. Therefore, persons with disabilities are unable to move independently and receive necessary medical services.

Providing the capital's transport network with necessary means of transport has been delayed. In this regard the situation is even harder in the regions.

The problem of access to physical environment is one of the major obstacles in the way the positive realisation of the right to work and employment by persons with disabilities to.

As mentioned above, un-adapted election facilities (infrastructure of electoral precincts) on the national scale is a stumbling block for persons with disabilities in the realisation of the important political right – right to participate in elections.

It is a well-known fact that for years persons with disabilities have been deprived of realising their political right, viz., to take part in elections, which is acknowledged by the Constitution and various international instruments due to the reason that most of the electoral precincts in Georgia fail to accommodate the needs of persons with disabilities

833 http://www.ipu.org/PDF/publications/disabilities-ru.pdf, From Exclusion to Equality: Realizing the Rights of Persons with Disabilities.

Under the Organic Law of Georgia on the Code of Elections, the realisation of the right for this category of voters is mostly possible by mobile polling booths. The participation of persons with disabilities in the elections only through this method can be considered to be discriminatory treatment on the part of the state.

It is particularly important to promptly address this problem in order to enable persons with disabilities to vote independently, equal to other persons in the local self-government elections in 2014.

In 2013, the Office of the Public Defender of Georgia enquired if statutory responsibility was imposed in practice for the failure to create appropriate conditions for persons with disabilities. The responsibility is determined by the Code of Administrative Violations of Georgia. It provides for the obligation to create appropriate conditions for persons with disabilities, to design constructions with due respect for the needs of persons with disabilities, and determines responsibility for the failure to do so. Under Article 239.45 of the Code of Administrative Violations of Georgia, the protocol of this offence must be drafted by the competent authorities of the Ministry of Labour, Health Care and Social Security of Georgia (this provision will remain in force as of February 2014). Therefore, information was requested from the Ministry of Labour, Health Care and Social Security of Georgia.[834] The request particularly concerned the competent body and the statistics of the protocols drafted on the basis of the aforementioned provisions of the Code.

The reply received from the ministry, shed light on the existing reality. According to the correspondence of the Ministry of Labour, Health Care and Social Security of Georgia: "(...) due to objective circumstances – absence of the respective function and resources, as well as the lacuna in the Code (there is no competent administrative body defined by the Code) the provisions could not be implemented in practice. However, generally, the complex discussion on the issues at stake and systemic efforts in this regard took place during the elaboration of the new draft Code of Administrative Violations of Georgia. It was then planned to determine that agency as competent to deal with this issue, which is best equipped with control mechanisms, the relevant authorities and resources (the involvement of the Ministry of Economy and Sustainable Development of Georgia and local self-government bodies was implied)."[835]

After further study into the matter (information was additionally requested from the Ministry of Economy and Sustainable Development of Georgia[836]), it was confirmed once again that the provisions stipulated in Articles 1781, and 1782 of the Code of Administrative Violations of Georgia are not implemented in practice[837].

With regard to this fact, the Public Defender of Georgia, within the statutory competences, issued a recommendation for the notice of the Government of Georgia. The Public Defender of Georgia recommended the revision of the relevant legislative and administrative regulations, their streamlining and makeover in order to enable persons with disabilities to fully benefit from all aspects of independent lifestyle, through their access to physical environment, transportation, information and communication, including IT systems, as well as other objects openly available for the public both in the cities and in the countryside[838].

On 4 January 2014, the Government of Georgia adopted a resolution on Approving the Technical Statute for Setting up Areas and Architectural and Planning Elements for Persons with Disabilities.[839] The principle objective of the technical statute is to support adaptation, individual development and involvement of persons with disabilities in public life. According to the statute, it is obligatory to take into account the standards accessibility of physical environment to disabled persons during designing and constructing. These standards are obligatory for all organisations.

We hope that these regulations will not remain only declaratory and will be successfully implemented in practice. The Office of the Public Defender of Georgia will in its turn continue in the future to study and monitor the situation in this area.

834 Correspondence no. 296/09-05.03.13.

835 Correspondence no. 01/20649–14.03.2013 of the Ministry of Labour, Health Care and Social Security of Georgia.

836 Correspondence nos. 346/09-1-22.03.2013, and 399/09-05.04.2013.

837 Correspondence nos. 11/2290-28.03.2013, and11/2730-12.04.2013 of the Ministry of Economy and Sustainable Development of Georgia.

838 Recommendation no. 452/09 of the Public Defender of Georgia, dated 30 April 2013.

839 Resolution no. 41 of the Government of Georgia, dated 6 June 2014.
https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2186893&lang=ge.

FREEDOM OF INFORMATION AND ITS ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The Office of the Public Defender of Georgia, with the support of the United Nations Development Programme, conducted a small-scale survey on freedom of information and its accessibility based on Article 21 of the UN Convention of 2006 on the Rights of Persons with Disabilities (freedom of expression and opinion, and access to information).

It is acknowledge that the quality of freedom of information and its accessibility is directly linked with the degree of democracy of the state and is an important indicator to describe the state of human rights protection in any country.

Under Article 21 of the UN Convention of 2006 on the Rights of Persons with Disabilities, "[S]tates Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice…"

Based on the UN Convention of 2006 on the Rights of Persons with Disabilities, the realisation of the right to freedom of information and its accessibility is particularly important in the context of persons with disabilities. The realisation of this right is often a precondition for the exercise of other rights: e.g., the right to access to a fair court and other remedies of human rights protection. It should be allowed for persons with impaired vision or hearing to present a claim in Braille or sign language (e.g., Equality Act in England provides for the obligation of adaptation for this purpose). The legislation should impose an obligation for public agencies to make information accessible in relevant formats. The Convention provision mentioned above also implies that persons with disabilities should not have to wait longer than others to receive information.[840]

The provision of accessibility of information, according to international best practices, is not an expensive intervention but it improves the life of persons with disabilities on many levels (it is easier to read a product's prices, to enter a meeting room, to learn about bus schedule, to browse web pages, etc).

Media is acknowledged as the major source of information and the means to access information on cultural and sports events. The state, in cooperation with media industry, should contribute to the full accessibility of the information imparted by media. TV programmes should be accessible through subtitles or alternative means for persons with impaired hearing impairing and the elderly. This practice already exists in more than 30 countries.

Internet has lots of opportunities for everyone. For persons with disabilities, it can be particularly useful. By the end of 2006, 100 web pages of state agencies in ten countries (Belgium, Croatia, Finland, Germany, Greece, Italy, Poland, Spain, and United Kingdom) were evaluated according to the international standards of Accessibility of World Network Consortium.[841] Among them were the web pages of agencies such as Ministry of Economy, Ministry of Internal Affairs, Ministry of Foreign Relations, Ministry of Labour, Health Care and Social Security, Ministry of Culture, Ministry of Environment Protection, Ministry of Justice, and Ministry of Education. The results of the survey showed that most of the web pages generally met the standards of accessibility for average users. However, it was revealed that most of the sites (70%) did not take into account the special needs of persons with visual and hearing disabilities, despite the fact that modernisation of certain web pages in terms of accessibility for persons with disabilities could be easily managed. However, modernisation of most of the pages needs lots of efforts. For persons with disabilities, Internet is the channel that connects them with the information about education, employment, current events, health care, and means for opening up and maintaining contacts through civic integration and social networks. Individuals deprived of access to Internet are to some extent distanced from public affairs.

Accessibility of information is also important during emergencies. During the calamitous events that occur across the globe, persons with disabilities do not get the same support as other persons.[842]

840 http://www.equalityhumanrights.com/uploaded_files/publications/uncrpdguide.pdf.

841 Ataloglou M.P., Economides A.A., (2009), Evaluating European Ministries' Website, International Journal of Public Information Systems, vol. 3.

842 From Exclusion to Equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. OHCHR/IPU, Geneva, 2007.

The Centre of Persons with Disabilities under the Public Defender of Georgia researched the quality of accessibility of information provided by public agencies. It was revealed that persons with disabilities had not requested most of the ministries in writing to furnish public information.

The analysis of information received from public agencies showed that the degree of involvement of persons with disabilities in requests for public information is considerably low. Such passivity could be explained by several factors: low awareness of persons with disabilities about their constitutional rights on the one hand; and the inactivity of the ministries themselves in terms of proactively imparting information and raising awareness of population on the other hand. The data obtained through focus groups once again confirmed the facts of low accessibility of information for persons with disabilities.

The survey clearly showed the indifference of state agencies towards this issue. The passivity of persons with disabilities underlines the lack of positive activities aimed at providing access to information to this vulnerable category of population. It seems that there have been no questions asked before the survey as to why 15% of population is so passive in terms of requesting public information. There have been no discussions about the modes of providing state services in terms of access to information to persons with special needs for communication .

The conducted survey shows particularly alarming results about the limited possibilities for communication with emergency services, police, fire brigades, and social services. The failure of these services to render help due to impeded communication could have lethal outcome for persons with disabilities.

The Public Defender of Georgia, as early as in the beginning of the last year, brought this issue to the attention of LEPL "112" under the Ministry of Internal Affairs of Georgia and requested the agency to immediately consider it as a priority and resolve it in the shortest time possible. However, the situation has not since changed. There are no modalities of communication for persons with visual and hearing disabilities when calling in emergency services (medical ambulance, fire brigade, patrol police, etc.).

The survey also shows the necessity of enhancing the private sector in terms of accessibility of information for persons with disabilities. It is necessary that the NGOs working on this issue pay attention in their surveys to the analysis of the special needs of persons with disabilities. This will in turn serve as a basis for providing services fitted to the needs of the vulnerable population by these organisations.

The Public Defender of Georgia will continue statutory supervision in this regard and will endeavour to have the constitutional and international rights of persons with disabilities realised.

Finally, it is worth mentioning that the above survey, along with the abridged version of the parliamentary report of the Public Defender of Georgia of 2012 were published with the support of EU in Braille and distributed among organisations working on the rights of persons with visual disabilities, and persons with disabilities.

RIGHTS OF INTERNALLY DISPLACED WOMEN WITH DISABILITIES

Furthering gender equality and enhancing the rights and opportunities of women can be of vital importance for the development goals agreed at international level, including Millennium Development Goals.

Women with disabilities face considerable challenges both in public and private sectors. Some of these challenges are the impediments in terms of realisation of the rights to adequate accommodation, health care, education, professional training, employment, as well as high likelihood of ending up in residential care facilities.[843]

Disabled women suffer from discriminatory treatment when applying for a job, career promotion, equal pay, and training and retraining; they are rarely involved in making economic decisions.[844]

Disabled women (girls) frequently fall victims to double discrimination; the risk of their sexual abuse, exploitation and neglect is particularly high.

843 Women and Adequate Housing, Study by the Special Rapporteur on adequate housing as a component of the right to adequate standard of living, Miloon Kothari, E/CN.4/2005/43, para. 64.

844 "Employment Barriers for Women with Disabilities", Arthur O'Reilly, The Right to Decent Work of Persons with Disabilities, Skills Working Paper No. 14, Geneva, International Labour Organization, 2003.

Internally displaced women with disabilities are particularly vulnerable. In this case they can be victims of triple discrimination.

Multifaceted discrimination of disabled women (girls) is discussed in the UN Convention of 2006 on the Rights of Persons with Disabilities. The Convention dedicates one separate Article to the rights of women and girls with disabilities. Under Article 6.1 of the Convention, States Parties recognize that women and girls with disabilities are subjected to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by them.

In 2013, within the joint programme of the UN "For Promoting Gender Equality in Georgia," the UNDP project of Enhancing the Office of the Public Defender of Georgia supported conducting a survey on the rights of internally displaced women with disabilities. The objective of the survey was to identify problems in terms of realisation of the rights of internally displaced women (girls) (right to adequate living conditions, right to be provided with accommodation within long-term state programmes of resettlement when implementing state strategy towards IDPs, and right to access to health care, education and employment). The survey assisted the Public Defender of Georgia to elaborate, within his statutory competences, relevant recommendations for the notice of the respective public authorities on the problems revealed.

The survey was conducted within seven focus groups in the regions densely populated with IDPs: Gori, Tskaltubo, Poti, Zugdidi, Mestia, and Telavi. Individual meetings were held at the places of residence of those persons who could not move due to poor health.

Discussions and individual meetings revealed the major challenges faced by persons with disabilities in terms of realisation of the rights which were the subject matter of the survey: inadequate accommodation and dire socio-economic conditions, un-adapted surroundings, insufficient space, no access to employment, adequate medical service, inclusive education, absence of means of aid, etc.

The right of the majority of internally displaced women (girls) to adequate living conditions, right to be provided with long-term accommodation within state programmes of resettlement when implementing state strategy towards IDPs, right to access to health care, education, and employment have not been realised to date.

The majority of internally displaced women (girls) are not informed about the standards of renovation, reconstruction and construction of collective centres, about privatisation of residential premises and other procedures related to providing them with residences within the long-term accommodation programme. They are not familiar with the relevant legislation; they are not informed about the adoption of the standards of renovation, reconstruction and construction of collective centres by the Council Supervising the Implementation of the State Strategy Action Plan with regard to IDPs. According to these standards, the design of accommodation should ensure the use of accommodation by persons with disabilities so that the beneficiaries do not demand the provision of the special needs of disabled persons within the long-term accommodation programme.

The new constructions fail to accommodate the needs of disabled persons; there are no ramps, no elevators or internal infrastructure. Visits to IDP collective centres confirmed the assumption that the majority has to live in inadequate conditions. Some of settlements are not supplied with drinking water; there are no water closets installed in residential blocks or they are out of order; not a single settlement is supplied with hot water. Water is often hauled from yards. Hygiene in residential blocks is maintained through great efforts and hard physical labour of internally displaced women, including those with disabilities. Space is not sufficient for adequate living in either old or newly constructed residential blocks. In bad weather, most of the residential premises are not covered. Persons with disabilities do not have means of transport . Most IDPs including women (girls) with disabilities are not provided with food.

Despite the fact that most IDPs with disabilities are beneficiaries of various packages of state insurance programme (socially vulnerable, having the status of a person with disabilities, universal insurance, etc.) they do not have access to medical service. Those who participated in the survey claimed that the lack of information was one of the reasons thereof; they are not informed about the types of services they are eligible for within the existing medical insurance programme. Apart from this, they point out the indifferent attitude of medical workers.

The major income source of most of the IDPs is the state social package, IDP allowance and/or indigence allowance. Therefore, they are unable to purchase required medicines that further deteriorate the state of their health.

The internally displaced families of persons with disabilities settled in private sector face considerable problems. The majority lives in old properties owned by relatives that have not been refurbished for a long time. In this regard the IDPs living in mountainous regions (Upper Svaneti) have particular needs. Apart from the problem of accommodation, they lack access to medical services, inclusive education, employment, transportation, etc.

The realisation of the right to education by internally displaced children with disabilities is problematic. The majority of them are deprived of inclusive education. There are numerous factors that deprive internally displaced children with disabilities of full-fledged social life: there are no institutions with the possibilities of inclusive education in most of the regions where the survey was conducted; no adapted transportation; the infrastructure of educational institutions does not meet the requirements of the children with special needs, such as impaired vision and/or hearing; there are no school manuals available in either Braille or audio format, etc.

Considerable problems were identified with regard to retraining and employment of IDPs. Internally displaced women, including those with disabilities, are seeking self-employment and sometimes they have to take up jobs that are dangerous for their health. Moreover their pay is mostly inadequate (all day work in greenhouses for meagre remuneration).

As regards internally displaced disabled women's title to immovable property, when transferring renovated and newly constructed residences into the ownership of IDPs, the title was mostly registered in the name of other family members and not in the name of disabled women. There are exceptions to this situation when an internally displaced woman is single.

Notwithstanding the national legislative instruments, the quality of realisation of the rights of internally displaced women (girls) is low. The competent state authorities fail to fulfil their statutory obligations.

The state strategy acknowledges problems of IDPs such as lack of funds, lack of land and other immovable property; high rate of unemployment and therefore low level of economic indicators in the regions densely populated with IDPs; inadequate and sometimes dangerous accommodation conditions, lack of access to quality medical services and to education; low degree of social security, benefits dependence syndrome, and lack of initiative. However, there have been no effective steps made towards the resolution of these problems.

The survey clearly showed the deplorable neglectful attitude of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia. This agency does not maintain the statistics of providing internally displaced disabled persons, in which the statistics of disabled displaced women are included, with accommodation (either renovated or newly constructed) within the long-term accommodation programme during the implementation of the state strategy. The ministry does not have any information on whether the needs of disabled persons were met when providing them with accommodation. The ministry does not have any data on whether any property was registered in the name of disabled women. This very information was requested by the Office of the Public Defender of Georgia from the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia.

The correspondence received from the Ministry read as follows: "Unfortunately, we are not in the position to impart this information as the data requested by you is not registered. Within long-term resettlement of IDPs, accommodation is provided to internally displaced families according to the number of the family members."[845]

Order no. 320 of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, dated 9 August 2013[846], is noteworthy in this context. Under Article 3.13 of the Order, with the view of organising resettlement of IDPs, the Commission for the IDPs Issues, considering the state of health of a disabled person, taking into the account the special needs, may give an accommodation to an internally displaced family without casting a vote. The Order also approved the "social criterion" of evaluating a family, under which rating score is awarded in accordance with the status of a person with disability.

The problems of IDPs revealed within the survey had been pointed out by the Public Defender of Georgia in the parliamentary report of 2012 as well. Despite some progress and positive steps made, the situation of IDPs still remains hard.[847]

845 Correspondence no. 05/02-12/43380, dated 8 August, 2013.

846 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1980225&lang=ge.

847 http://www.ombudsman.ge/files/downloads/ge/iicsizmorgdfkahkdqvc.pdf.

Case of Q.K. – to prevent a disabled person's ill-treatment and neglecting her medical needs

Within the survey on the rights of internally displaced women (girls) with disabilities, during the field meetings, the representatives of the Public Defender of Georgia in Zugdidi were informed about the alleged violation of the rights of a woman– Q.K. living in an IDP settlement. She suffered from mental health problems. A representative of the Public Defender of Georgia visited Q.K. in order to verify the information. Q.K. lives with her mother – Ts.K. and the brother – Kh.K. The representative talked with the family members and their neighbours. According to the information obtained, Q.K. has a severe mental disorder and is not sociable. According to the family members, she receives disability benefit. For years, the mother has been against medical intervention and she keeps her daughter in an isolated room. Q.K. is deprived of any contact with the outside world.

During the visit of the Public Defender's representative, Q.K. was kept in a dark room, the only window of which was covered with planks and a piece of cloth. There was the smell of faeces and other decaying organic waste; Q.K. did not use a toilet and answered the calls of nature on her room. There was a bed made of metal and covered with dirty cloths, no bedding, a long chair made of metal and an open electric heater. Q.K. is not able to make active moves independently, to get up from the floor, or to move around the room. She has difficulty in swallowing and processing food. The state of hygiene and feeding is extremely bad. The room is locked from outside, and Q.K. has been restricted from moving freely for years. She does not have adequate treatment and medical supervision.

The state in which Q.K. was found was evaluated by the representatives of the Public Defender as extremely difficult and the conditions as inhuman and degrading.

At the meeting of the representatives of the Public Defender with the local officials of LEPL Agency of Social Services of the Ministry of Labour, Health Care and Social Security of Georgia, it was revealed that Q.K. has had the status of a disabled person since 2004. Since 1 July 2007, she has been given the status of a person with an acute disability for indefinite term.

Due to her state of health, Q.K. was recognised non compos mentis by the decision of Gali-Gulriphsi and Ochamchire-Tkvarcheli district court, dated 24 April 2013. Based on this decision, Zugdidi Centre of Social Services of LEPL Agency of Social Services gave the custody over Q.K. to her mother – Ts.K. by decision no. 04-09-01/2018, dated 7 May 2013.[848]

The local office of LEPL Agency of Social Services, as the competent public authority, would have been aware of the situation of Q.K. since 2005, as she was given the status of a person with acute disability in 2005.

According to Zugdidi Centre of Social Services, despite the fact they were informed about Q.K.'s situation, they did not follow-up due to several reasons: they had not been formally requested by family members (the mother) to assist; and the mother resisted Q.K.'s transfer to the specialised hospital.

The violation of the rights of Q.K. was found as the result of the analysis of the circumstances described above.

The internally displaced disabled woman has been a victim of domestic violence by her mother. Under Article 3 of the Law of Georgia on Preventing Domestic Violence, Assistance and Protecting the Victims of Domestic Violence, "domestic violence shall imply the violation of an individual's constitutional rights and freedoms by his/her family members by means of either physical, psychological, economic, sexual violence or compulsion." It implies, inter alia, "battery, torture, damaging health, illegal deprivation of liberty, other action of a parent that causes physical pain or suffering; and denying medical treatment that causes damage to health or death."

In application of national legislation and international instruments on human rights, the Public Defender of Georgia issued a recommendation for the notice of the Minister of Labour, Health Care and Social Security of Georgia to immediately provide appropriate medical treatment for Q.K. and ensure the protection of Q.K.'s rights under the Constitution of Georgia and international agreements on human rights.[849].

Report of the Public Defender of Georgia, 2012, pp. 618-660.

848 Decision no. 04-09-01/2018, dated 7 May 2013.

849 Recommendation no. 3181/09/1718-13 of the Public Defender of Georgia, dated 13 June 2013.

DISABLED PERSONS' RIGHT TO RESPECT FOR HOME AND FAMILY

In the reporting period, under the joint programme of the UN "For Promoting Gender Equality in Georgia," based on the UN Convention of 2006, within the UNDP project "Enhancing the Office of the Public Defender of Georgia" the report on compatibility of Georgian legislation in the light of disabled women's rights was conducted. The compatibility report addressed the right to respect for home and family of persons with disabilities, as recognised by Article 23 of the UN Convention of 2006 on the Rights of Persons with Disabilities. Under this provision, States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others.

The Convention recognises the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses.

The Convention guarantees the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education, and the state should provide them with means necessary to enable them to exercise these rights.

Persons with disabilities, including children, should be able to retain their fertility on an equal basis with others.

The relevant authorities must ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their parenting responsibilities.

The state must ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

The state is under the obligation to ensure that a child is not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

The Convention imperatively states that where the immediate family is unable to care for a child with disabilities, every effort shall be made to provide alternative care within the wider family, and failing that, within the community in a family setting.

In the course of legal analysis, the national legislation was examined together with the review of international regulations.

Under the Georgian legislation, family relations are governed by the Civil Code of Georgia. Articles 1106-1120 of the Civil Code provide for the rule of marriage and diriment impediment, one of which is the recognition of a person as non compos mentis due to mental disability. This provision virtually prohibits mentally disabled persons to have a private life, which is in contradiction of the approach of the UN Convention on the Rights of Persons with Disabilities.

The proscriptive provision about non-discrimination in marriage and family relations is contained in Article 1153 of the Civil Code of Georgia, under which, it shall be impermissible to restrict rights either directly or indirectly, to give priority whether directly or indirectly on account of origin, social and financial situation, race and ethnic origin, sex, education, language, religious affiliation, kind or nature of occupation, residence, and other circumstances. The list does not feature the prohibition of discrimination on account of disability in express terms, but it should be necessarily implied under "other circumstances".

The Civil Code of Georgia establishes equality of parents with regard to their children (Article 1197); the Code also determines the rules of limiting (Article 1205), suspension (Article 12051), and deprivation (Article 1206) of parental rights and duties.[850]

850 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=31702.

Parental rights and duties may only be restricted based on a court's judgment unless otherwise established by the Code. A court may restrict one or more parental right/duty independently from other rights and duties.

The original wording of the Civil Code of Georgia (Article 1205) only stipulated the deprivation of parental rights. The change effected in December 2007 introduced the concept of "restriction of a parental right". This new concept heavily affected persons (parents) with disabilities and the socially vulnerable. Some of the individuals falling under either category were virtually deprived of the right to bring up their children. Instead of supporting a family, these persons have been denied of their parental authorities; their children are placed in foster families, who discharge their duties – care for and bring up the children- for rather high remuneration.

Another amendment of the Civil Code of Georgia made through Law of Georgia no. 6494, dated 19 June 2012, also adversely affected the parental rights of persons with disabilities and socially vulnerable persons. Paragraph 5 was added to Article 12051 under which, "parental rights and duties shall be deemed suspended when a parent abandons his/her child through an express act (action or omission), and when a child is placed in 24-hour state care. In such case, parental rights shall be suspended until the ground for suspension exists."

Under the said amendment, parents with disabilities placed in a residential care facility for disabled persons, where they cannot keep their children and are forced to place them in 24-hour state care have their parental rights suspended. The "action" and "omission" of such persons are displayed in their inability of having either permanent or temporary accommodation (apart from an institution) where they would live with and bring up their children; therefore they "abandon" their children. Under such conditions, they may have their parental rights permanently suspended.

Hand in hand with the provisions governing marriage and parental rights, the compatibility report covered the rules of adoption. These provisions are contained in the Civil Code of Georgia and the Law of Georgia on Adoption and Foster Care.

Under Article 1245 of the Civil Code of Georgia, any adult with full legal capacity can adopt except for persons who have been deprived of or limited in their parental rights and duties due to their failure to fulfil their parental responsibilities or to fulfil them adequately

A person cannot adopt, who, due to state of health or moral characteristics, is unable to fulfil parental responsibilities. A person willing to adopt files an application with a court according to the place of residence, after the finding of the competent agency is taken (Article 1242).

Similar to the provision of the Civil Code of Georgia, Article 5 of the Law of Georgia on Adoption and Foster Care determines who can adopt and who cannot. It is deplorable that those persons who suffer from a disease out of the list approved by the ministry are found in this category.

Article 6 of Order no. 50/N of the Minister of Labour, Health Care and Social Security of Georgia, dated 26 February 2010, on Approving Procedures and Modalities of Adoption contains the list of disease. If a person suffers from any of these diseases he/she cannot adopt. Under Article 6.c) of the Order, these are the following diseases:

- c.a) tuberculosis (active and chronic) of any location in the body;
- c.b) diseases of internal organs at the stage of decompensation;
- c.c) considerable and express injuries of nervous system, motor-cortex system and diseases that causes significant disorder of movement and coordination;
- c.d) malignant cancerous diseases of any location of the body;
- c.e) drug-abuse, substance-abuse, and alcoholism;
- c.f) infectious diseases from their registration at the dispensary until dismissal;
- c.g) mental diseases, which served as the basis for recognition of a person as non compos mentis or for limitation his/her legal capacity; and
- c.h) all diseases and injuries, which served as the basis for awarding the status of a disabled person

and which affects full-fledged development and upbringing of a child.

Based on the list above, the majority of persons with disabilities are virtually deprived of the right to adopt, the right to be a parent. We would like to emphasise it one more time that this provision is discriminatory and runs counter to the principles of the UN Convention 2006 on the Rights of Persons with Disabilities. Under these principles, persons with disabilities must have their intrinsic personal dignity, individual autonomy and independence, including the freedom to make their own choices respected; they must be protected against discrimination; the state must ensure respect for difference and acceptance of persons with disabilities as part of human diversity and humanity as well as equal opportunities

Under the Convention, state authorities must render appropriate assistance to persons with disabilities in the performance of their parenting responsibilities (Article 23.2).

In reality, the cases of supporting the families of persons with disabilities are rare. Unfortunately, the state chooses often the opposite, "simpler" alternatives, and places disabled children in foster care. This, as already mentioned, restricts the parental rights.

The separation of disabled persons from their parents is a considerable problem. Under the Convention, States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities, subject to judicial review, determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents (Article 23.4) States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting (Article 23.5).

In Georgia, the realisation of the priority right of bringing up a child in family surroundings is usually ignored.

The aim of the present report discussing the legislation governing restriction/suspension of parental rights is to point out the shortcomings and problems that occur in foster care, but not to discredit or deny the importance of either the legislation or the institution itself in general.

In order to solve the problems at stake, the Georgian legislation needs to be brought in compliance with the requirements of the UN Convention of 2006 on the Rights of Persons with Disabilities.

THE RIGHTS OF CHILDREN WITH DISABILITIES

There was no considerable change in the state of protection of the rights of disabled children in the reporting period.

Below is the list of some of the major tasks to be fulfilled by the state authorities in the field:

a) elaboration of unified complex governmental social policies in the country;

b) creation of a unified system of services for disabled children from birth until the age of 18;

c) provision of services to those families caring for children with disabilities;

d) implementation of inclusive education for children with special needs;

e) improvement of early diagnostics and treatment; and

f) transformation of attitudes and behaviour that contribute to the stigmatisation of children with disabilities .

Within child welfare reform, the deinstitutionalisation of children's residential care facilities was supposed to be finalised by the end of 2013. This process, however, has yet to reach the institutions for children with disabilities. For the implementation of further activities within the reform, the 2012-2015 Action Plan for child welfare and protection has been elaborated and approved.[851] One of the priorities of this action plan is the care for the 0-6

851 http://www.atipfund.gov.ge/images/stories/pdf/samoqmedo/bavshvta_gegma12.pdf.

year olds; and setting up the modalities of alternative care for disabled children and their development. This will contribute to the successful deinstitutionalisation and the closing down of residential care facilities for the children with disabilities. Presently, there are 55 0-6 year old children at the Home for Newborns in Tbilisi.[852] 99% of them have certain kind of a disability. There are 26 children with disabilities in Senaki Home and 23 beneficiaries in Kojori Home. Under the UN Guidelines for the Alternative Care for Children, the authorities must plan for "progressive elimination" of residential care facilities.[853]

The authorities are obligated to progressively reduce the number of beneficiaries of the residential facilities for disabled children with the view of ultimate closing them down and to ensure immediate foster care, early intervention services, strong medical support (palliative care) and expansion of shelters for mothers and newborns as more expedient response measures.

Within the child welfare reform, in 2010-2013, six schools/institutions under the Ministry of Education and Science of Georgia were also closed down.[854] The majority of children that have special needs from these schools/institutions are reintegrated in families; some of them benefit from alternative services. To date there are nine schools/institutions[855] where 625 children with special needs receive education.

The results of the three year survey, "Left Behind: The Exclusion of Children and Adults with Disabilities - from Reform and Rights Protection in the Republic of Georgia," conducted by an international organisation working on protection of the rights of persons with disabilities (Disability Rights International) was published in the reporting period. This report caused huge outcry in the society. According to the report, "within Georgia's residential institutions, children with disabilities are subjected to physical and emotional neglect and abuse and many children are denied life-saving medical treatment simply because they have a disability."[856]

Within the child welfare reform, it is necessary to develop the family support services such as Day Centres and early intervention services.

With the view of providing timely diagnostics of disabilities and intervention into hampered development of infants, in 2009, the Centre for Early Development of Children was created for the first time. This service aims at developing social cognitive self-care and communication skills in children for the purpose of the integration of persons with mental and physical disabilities with the society .[857]

There are 33-day centres for disabled children in Georgia.[858] They are managed by NGOs and funded by the Ministry of Labour, Health Care and Social Security of Georgia. Presently, 462 children receive state vouchers for the use of day centres.[859] The Ministry of Labour, Health Care and Social Security of Georgia acknowledged the positive impact of day centres on disabled children and it plans to increase their number with the help of state funding. According to the information available to the Office of the Public Defender of Georgia, in 2011, the Government of Georgia approved the standards of services rendered by day centres.[860] The Office of the Public Defender of Georgia is informed that the day centres funded by local municipalities in regions do not implement these standards.[861] This practice needs to be changed and the standards need to be applied by all day centres irrespective of the source of funding. Wrong diagnostics at birth and the regulations on awarding disability status continue to hamper adequate and timely follow-up. The existing system does not allow awarding the status to 0-3 year-old infants. This is a considerable challenge to the policies and practice and prevents the children (and their carers) in this age category to benefit from the status related state allowances. The early diagnosis of autistic disorders and Down syndrome and awarding the status remains a problem to date. In this regard, the Public Defender of Georgia issued

852 Information no.04/12503 received from LEPL Agency of Social Services.

853 Guidelines for the Alternative Care of Children, G.A Resolution adopted at 64th Session, U.N. A/RES/64/142, para. 22, dated 20 November 1989, http://www.refworld.org/docid/4c3acd162.html.

854 Information received from the Ministry of Education and Science of Georgia.

855 Idem.

856 http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/Left-Behind-final-report1.pdf.

857 http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=613.

858 Information no. 04/12503 received from LEPL Agency of Social Services.

859 Idem.

860 https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1282864&lang=ge

861 Received correspondence no. 5754/1, dated 17 January 2014.

a recommendation for the Minister of Labour, Health Care and Social Security of Georgia, last year.[862]

The Public Defender of Georgia will further continue working towards the realisation of the rights of children with disabilities, and revealing the existing systemic shortcomings. For this purpose, it is planned to conduct monitoring of children's residential facilities, schools and shelters, and Day Centres in 2014.

Recommendations:

To the Parliament of Georgia

- **to ensure harmonisation of the Georgian legislation with the standards of the UN Convention on the Rights of Persons with Disabilities;**
- **to ensure the ratification of the optional protocol to the UN Convention on the Rights of Persons with Disabilities;**
- **to amend the legislation with the effect of enabling persons with mental and other disabilities to realise their rights to home and family (marriage, family, parental rights and right to private life); and**
- **to review legislative amendments in terms of parental rights through a proxy.**

To the Government of Georgia

- **to ensure the enhancement of the Office of the Public Defender of Georgia for the purpose of monitoring the implementation of the UN Convention on the Rights of Persons with disabilities;**
- **to make positive steps towards the realisation of the rights of persons with disabilities under the UN Convention and to elaborate an action plan for their implementation;**
- **to ensure that disabled children and their families are fully informed, served and assisted for the purpose of preventing hiding, abandoning, and rejecting or segregating disabled children;**
- **to ensure the use of the sign language, Braille print, enhanced and alternative communication means and other methods accessible for persons with disabilities in formal interaction with state agencies; and**
- **in case of request for public information by persons with disabilities, as well as during dissemination of information about state programmes, to ensure imparting this information in the appropriate format and the use of the relevant technology (Braille script, bold script, audio means, etc.**

To the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia

- **to ensure mainstreaming of the special needs of persons with disabilities with regard to all aspects of the state strategy towards IDPs and of the action plan of its implementation;**
- **to take into account the needs of persons with disabilities when providing accommodation for IDPs within the long-term resettlement programmes in terms of accessibility of both interior and exterior; to maintain the same standards and requirements in contracts concluded with legal entities working on renovation and construction of residential buildings;**
- **to pay particular attention to internally displaced persons with disabilities living in extreme poverty in mountainous regions, who require long-term accommodation;**
- **to maintain statistics of IDPs with disabilities for the purpose of researching the state of**

862 Letter no. 293/09, dated 4 March 2013.

health, profile of diseases, risks ,and with the view of elaborating programmes for medical, psychological, social assistance and rehabilitation within state strategy; and

- to determine the needs of persons with disabilities in a timely manner and ensure their participation in existing programmes of humanitarian aid, social care, home care or other target care projects, or if needs be to elaborate special programmes with an emphasis on gender aspects.

To the Ministry of Education and Science of Georgia

- to ensure activities for supporting inclusive education for children with disabilities in regions (inter alia, in mountainous regions) with the view of realising their right to primary and basic education;
- to further IDPs' motivation for professional instruction, increase accessibility with the view of supporting IDPs professional education and to ensure their involvement in state programmes;
- to adapt the infrastructure of educational institutions taking into account the needs of persons with disabilities;
- to promptly increase the capacities of local schools with the view of improving primary and secondary inclusive education of disabled children with special needs;
- to support professional inclusive education;
- to involve higher education in the inclusive system and to support it;
- active cooperation between the system of inclusive education and day centres in order to enable transfer of children from one system to another based on their faculties;
- to strengthen civil society and its involvement in providing service as well as in fight against stigma in local communities; and
- to elaborate and implement strategy for parental education.

To the Ministry of Labour, Health Care and Social Security

- to ensure access of IDPs with disabilities to quality medical services and, for this purpose, to adapt interiors and exteriors of medical establishments implementing state programmes for the needs of these persons;
- to take into account the special needs of persons with disabilities in medical insurance programmes, with an emphasis on gender issues;
- to review the issue of providing IDPs with disabilities with medicines needed for their health in a timely fashion;
- to elaborate the relevant social programmes to support single mothers of children with disabilities;
- to provide social accommodation to persons with disabilities under the state care that found a family and need to live with their children in family surroundings;
- to ensure the realisation of the rights of persons with disabilities and to render relevant support for them in fulfilling their parental obligations in bringing-up their children;
- to set up a unified service system for minors with disabilities from birth until the age of 18;
- to increase the number of quality day centres/closing down of the day centres providing inadequate services;

- to differentiate the sub-programme of specialised day centres for children with serious mental disabilities and behavioural disorders;
- to develop a state programme for home care/home service;
- to ensure the provision of relevant services for all children with disabilities irrespective of the poverty status of their families;
- to ensure diagnosis of disabilities in children of 0-3 year age and giving them relevant status;
- to increase geographical accessibility of development centres, in order to enable early diagnostics of disabilities and to assist mothers of disabled children in a timely fashion with the view of early intervention;
- to introduce a unified state referral system which will improve the cooperation among the medical staff, LEPL Agency of Social Services and service providers for the purpose of providing timely service for disabled newborns and infants and preventing their abandonment;
- to increase the number of beneficiaries using vouchers of family support services (day-centres and sub-programme of early intervention) and to increase funding of this projects;
- to ensure that family support programmes are linked to the needs of the child and not only to the poverty status;
- to continue childcare reform to ensure that disabled children are not neglected in the process of closing down the remaining large children establishments; and
- to ensure more cooperation between national and local authorities for the elaboration of programmes for disabled persons and their coordination.

To the Ministry of Justice of Georgia

- to ensure accessibility for persons with visual disabilities to the website of LEPL Legislative Herald under the Ministry of Justice of Georgia; and
- in case of publishing the Legislative Herald in print, to take into account the needs of persons with disabilities, namely, printing text in Braille.

To the Ministry of Internal Affairs of Georgia

- to ensure, by LEPL "112" under the Ministry of Internal Affairs of Georgia, communication through text messages or other adequate means with persons with visual or hearing disabilities when calling in emergency services (emergency medical service, fire and other emergency service, patrol police).

To the Bodies of Local Self-Government

- to inform persons with disabilities in a timely fashion and accessible form about the programmes being implemented by the local municipalities.

RIGHT TO ADEQUATE HOUSING

The right of homeless persons to be provided with a shelter is one of the major values of socio-economic rights. Homeless persons are a socially vulnerable group of the society. Adequate and effective support on the part of the state is needed for ensuring the necessary conditions for their dignified life. Despite the fact that the state recognises the right to housing both on international and national level, the breach of the aforementioned right is of a systemic nature.

In 2013, similar to previous years, the Office of the Public Defender of Georgia received numerous applications concerning absence of either a shelter or adequate housing conditions. As the result of the case study, it was revealed that the existing situation in this regard is alarming. The human rights violations in this sphere are not of individual nature and they have become a systemic problem.

Like the previous years, the absence of a unified database of homeless persons still remains a problem in 2013. Due to the failure of fulfilling this obligation, the number of persons needing shelter is unknown. Under such conditions, where there is no information about the scale of the beneficiaries, it is impossible to mobilise the necessary funds or to elaborate an effective and permanent action plan for the solution of the problem.

The absence of housing resources still remains a problem, as are the budgetary constraints, and, sometimes, absence of funds. According the Ministry of Finance of Georgia, there have been no budgetary assignments to set up housing resources with the view of meeting the accommodation needs of the homeless persons in 2013.[863] The negative practice of the local self-government bodies to give standard answers to the beneficiaries, despite the recommendations of the Public Defender on providing adequate housing, still continues; they cannot meet the accommodation needs due to the insufficiency of funds in their budget. Tbilisi City Hall, when the Public Defender's recommendation is given to them, usually confined their answer to standard pattern statements and offered families seeking accommodation to take part in the programme for "social accommodation in favourable surroundings" (the programme is for 24 families).

The involvement of homeless persons in the state programme for socially vulnerable families still remains a problem[864]. Due to the absence of individual accommodation, the homeless families cannot be given rating scores displaying their socio-economic situation and they cannot be registered in the unified database of socially vulnerable families. Therefore, they cannot use the social benefits provided for socially vulnerable families.[865] Moreover, they cannot meet the eligibility criteria of the programme "social accommodation in favourable surroundings" and their applications are not considered.

The above-mentioned problems are discussed in detail in the previous years' Parliamentary Reports of the Public Defender of Georgia. Therefore, they are not covered in the report of 2013. The recommendations concerning the right to housing remain the same.[866]

Under Resolution no. 454 of the Government of Georgia, dated 28 November 2012, on the Measures to be taken for Social Protection of the Families of Certain Category, some families meeting statutory requirements would receive GEL 200 per month for six months. The application of the Resolution was not extended in 2013.

863 Letter no. №04-02/85810 of the Ministry of Finance of Georgia, dated 7 November 2013.

864 See Resolution no. 126 of the Government of Georgia, dated 24 April 2010, on The Measures of Reduction of Poverty in the Country and Improving Social Security of Population.

865 See the Parliamentary Report of the Public Defender of Georgia on the State of Protection of Human Rights Freedoms in Georgia, 2012, Chapter – the right to social security, pp. 584-596.

866 Ibid., pp. 575-583. See also the Parliamentary Report of the Public Defender of Georgia, second half on the State of Protection of Human Rights Freedoms in Georgia, 2009, Chapter – Right to Adequate Housing, pp. 204-209.

It is important to make sure that in case of discontinuation of social benefits, the target groups' conditions are not deteriorated. The discontinuation of such programmes can be caused by the eradication of the problem or elaboration of an alternative action plan. In the light of the cases of collective eviction from state and private sector housings in 2013, it can be concluded that the issue at stake is still topical and there is a need for the state programmes providing social security for homeless persons. Therefore, the discontinuation of Resolution no. 454 of the Government of Georgia, dated 28 November 2012 on social allowances for vulnerable families should be evaluated negatively.

The present chapter will address the problems that emerged during the accommodation of beneficiaries within the programme "social accommodation in favourable surroundings"; the chapter will discuss the forceful evictions of homeless families from state and private properties.

PROGRAMME FOR HOMELESS PERSONS "SOCIAL ACCOMMODATION IN FAVOURABLE SURROUNDINGS"

The project is implemented with the support of the Swedish International Development Cooperation Agency. It aims at giving temporary residence to socially vulnerable families that have no place to live. The objective of the project is to provide sustainable accommodation, social assistance and protection to the socially isolated and homeless, and forcibly internally displaced local population. In 2013, the third phase of the project was implemented in Tbilisi, Batumi, Rustavi and Gori, as the result of which 24 homeless families were accommodated in each city.

In 2013, in Tbilisi, 287 beneficiary families were selected within the programme based on relevant criteria. They were checked and reviewed by mobile groups composed of representatives of three different agencies, viz., Tbilisi City Hall, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, and Association of Social Workers. Out of the 287 families, 45 families were recommended for social housing; 38 out of them were from local population and 7 being forcibly internally displaced families.

Due to the high demand for social accommodation, the commission composed of representatives of various agencies selected the beneficiaries in Tbilisi. 24 families were selected out of 43 potential beneficiaries, out of whom 18 were from local population and 6 were internally displaced families. In 2013, within Tbilisi City Hall and the 24 families selected within the programme, an individual contract was concluded regarding the temporary use of accommodation. However, prior to the handing over of these residences to the selected beneficiaries, some of these accommodations were occupied by other homeless and/or socially vulnerable persons/families. Therefore, some families selected within the programme have been unable to use their allotted social accommodation.

With the view of protecting the legal users of social accommodation, the Public Defender of Georgia referred a recommendation to Tbilisi City Hall. According to the information received from the administrative body, Tbilisi City Hall had applied to the territorial body of the Ministry of Internal Affairs; Tbilisi City Hall had requested taking the measures provided by Order no. 747 of the Minister of Internal Affairs, dated 24 May 2007, on Approving the Rules for Preventing Damage to the Objects in Private Property or Interfering with it Otherwise.

After looking into the matter, the law enforcement body concluded that among the culprits there were persons with disabilities and those categorised as socially vulnerable. Based on these considerations, the law enforcement body discontinued the statutory measures aimed at protecting an owner from unlawful interference.

Order no. 747 of the Minister of Internal Affairs of Georgia, dated 24 May 2007, determines the grounds for the suspension and discontinuation of the measures aimed at protecting an owner from unlawful interference. It is noteworthy that the establishment of the status of either social vulnerability or disability, unlike the status of an IDP, does not constitute a ground for the suspension and discontinuation of statutory measures. Therefore, the law enforcement body discontinued the measures aimed at protecting an owner from unlawful interference without a legal basis.

There are two interests at stake in this case. The interests of an owner and the legal interests of the homeless families selected within the social accommodation programme on the one hand and, on the other hand, the rights of the persons who probably are also in dire socio-economic situations. Therefore, it is necessary to examine the socio-economic conditions of the persons who arbitrarily occupied the residence facilities on individual basis and

meet the accommodation needs of those families who are homeless or give them alternative adequate assistance. After this, the facilities arbitrarily taken by them should be freed so that the selected beneficiaries of the programme "Social Accommodation in Favourable Surroundings" can use their residences temporarily.[867]

THE CASES OF ARBITRARY OCCUPATION OF STATE AND PRIVATE PROPERTIES BY SOCIALLY VULNERABLE POPULATION AND FORCEFUL EVICTIONS

In 2013, a high number of applications were lodged with the Public Defender of Georgia regarding the forceful evictions of homeless persons from state and private properties in Tbilisi by the territorial units of the Ministry of Internal Affairs.[868] The representatives of the Public Defender conducted the field monitoring in such cases.[869]

According to the outcomes of the monitoring by the Public Defender, both before and after arbitrary occupation of the properties, the persons concerned applied to Tbilisi City Hall and district Gamgeobas on numerous occasions. Their claims for accommodation could not be met in most cases due to the absence of residence resources.

According to the outcomes of the monitoring by the representatives of the Public Defender of Georgia, the arbitrarily occupied properties were usually dilapidated and could not be used as residential premises (e.g., a school, a university, a factory, etc.). Therefore, the families did not have access to minimum living standards (natural gas, drinking water, hygiene and sanitation, etc.) and lived in hazardous, extremely dire socio-economic conditions. This fact is confirmed, based on the places of arbitrary occupation, by the registration of these homeless families in the unified database of socially vulnerable persons by the territorial body of LEPL Agency of Social Services. Most of these families were given the threshold rating score and were provided with social benefits.

It was revealed as the result of the monitoring of the representatives of the Public Defender that usually there were no representatives of local authorities present during the evictions.[870] The local authorities are obliged to actively study the accommodation needs of those evicted or to be evicted; under the legislation those very local self-government authorities are responsible for providing shelters for the homeless[871].

The Committee on Economic, Social and Cultural Rights observes that appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions. "Especially where groups of people are involved, government officials or their representatives to be present during an eviction."[872] The Committee further observes:

> "Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."[873]

According to the monitoring results by the representatives of the Public Defender's Office, the bodies of local self-government in Tbilisi failed to provide shelter for the families who arbitrarily occupied two state properties. Therefore, the Ministry of Labour, Health Care and Social Security accommodated 16 families (in total 64 families had been evicted from the two state properties) in Kojori Children's House. [874] This facility is a branch of LEPL

867 Recommendation of the Public Defender of Georgia issued for the notice of the Head of the Office of Social Services and Culture, City Services of Tbilisi City Hall, dated 27 August 2013, at http://www.ombudsman.ge/ge/page/1884-saxalxo-damcvelis-rekomendacia-tavshesafrit-uzrunvelyofastan-dakavshirebit.

868 See Order no. 747 of the Minister of Internal Affairs, dated 24 May 2007, on Approving the Rules for Preventing Damage to the Object on Private Property or Interfering with it Otherwise.

869 The case of forceful evictions, on 29 July 2013, from former public school no. 13 located at Gogoberidze street no. 3, in Tbilisi; and on 9 August 2013 from school no. 142 named "Mermisi" located at Temka micro district 3, IV quarters.

870 See public statement made by the Public Defender of Georgia on 9 August 2013, at http://www.ombudsman.ge/ge/page/1873-gancxadeba-saxelmwifo-sakutrebashi-arsebuli-qonebidan-socialurad-daucveli-moqalaqeebis-gamosaxlebastan-dakavshirebit.

871 Law of Georgia no. 4289 on Social Benefits, dated 29 December 2006, Article 1.b).

872 General Comment no. 7 of the Committee on Economic, Social and Cultural Rights, 20 May 1997, para. 16.

873 Ibid., para. 17.

874 See public statement of the Public Defender of Georgia, dated 9 August 2013, at:

State Fund for Protection and Assistance of (Statutory) Victims of Human Trafficking.

As the result of the monitoring by the representatives of the Public Defender's Office, it was revealed that the families evicted from arbitrarily occupied facilities were not aware of the criteria based on which the families were selected to be accommodated with alternative residence, and based on which other families were turned down. This of course served as a cause for resentment and confrontation.[875]

The Office of the Public Defender studied the case of collective eviction, where the Ministry of Labour, Health Care and Social Security was not involved in the process and evicted persons were not offered alternative accommodation.[876] Regarding this case, the Public Defender issued a recommendation for the notice of the local Gamgeoba. The local authorities decided to provide the homeless and socially vulnerable families living in private properties with accommodation rent for a period of six months.

TEMPORARY SHELTERS OF THE HOMELESS

The Public Defender welcomes the setting up of temporary shelters by the Government of Georgia in 2013. Temporary accommodation was provided for the homeless in Tbilisi, Gori, Batumi and Kutaisi. This was the first effective step made by the authorities in the course of the years towards saving the lives of the homeless in the winter period.

On 12 December 2013, the Government of Georgia adopted Resolution no. 1946 on The Assistance Measures for the Homeless in the Winter Period of 2013-2014. Based on this sub-normative act, with the view of assisting and providing the homeless with several temporary shelters in the shortest time, an interagency commission to work on the problems of the homeless persons in the winter period of 2013-2014 was set up. The working group set up tents as temporary shelters in Tbilisi, Gori, Batumi and Kutaisi.

The representatives of the Office of the Public Defender of Georgia monitored the shelters in January 2014.[877] It was concluded that the residents were provided with shelter over night, food, first aid, and other services. In some cases, the shelters did not meet the hygiene and sanitary standards, which was due to the persons accommodated. Resolution no. 131 of the Government of Georgia, dated 7 February 2014, is noteworthy. The Resolution approves the minimum standards the temporary shelters must meet.

It is worth mentioning that the statutory regulations on accommodating the homeless are obviously insufficient and the state authorities, including, local self-government bodies should take appropriate measures in order to provide a long-term solution for the problem of those left without shelter.

REGIONS

The best situation in terms of accommodating homeless persons was registered in Zugdidi and Batumi. According to Zugdidi Gamgeoba, the Local self-government body does not have free accommodation resources. Therefore, the homeless persons are granted monetary allowances from the local budget to meet their accommodation needs. In 2013, 48 homeless families were assisted with accommodation rent.[878]

ttp://www.ombudsman.ge/ge/page/1873-gancxadeba-saxelmwifo-sakutrebashi-arsebuli-qonebidan-socialurad-daucveli-moqalaqeebis-gamosaxlebastan-dakavshirebit.

875 The Public Defender of Georgia issued a recommendation for the notice of the Minister of Labour, Health Care and Social Security of Georgia to ensure the transparency of the activities of all competent state agencies involved, including the ministry; the persons concerned should be aware of the criteria based on which the families evicted from the arbitrarily occupied properties are provided with alternative accommodation. Moreover, the citizens who fail to meet the criteria should be informed about the reasons. See public statement made by the Public Defender of Georgia on 9 August 2013, at:

http://www.ombudsman.ge/ge/page/1873-gancxadeba-saxelmwifo-sakutrebashi-arsebuli-qonebidan-socialurad-daucveli-moqalaqeebis-gamosaxlebastan-dakavshirebit.

876 The case of forceful eviction from the building at Ninua Street no. 3, Tbilisi.

877 The Public Defender of Georgia visited a shelter in Kutaisi on 10 January 2014, see http://www.ombudsman.ge/ge/page/saxalxo-damcveli-qutaisshi-miusafarta-tavshesafarshi-sheqmnil-vitarebas-exmaureba

878 Letter no. 10-1/2395 of Zugdidi Municipality Gamgeoba, dated 21 November 2013.

Order no. 402 of the President of the Government of the Autonomous Republic of Ajara, dated 16 November 2012, set up a government commission to study the cases of arbitrary occupation of state properties. In the first phase, the commission created a unified digital database, which was periodically sent to the relevant municipalities for updating the lists of registered persons. To date, 1,562 families are registered in the database. Out of this, 227 families live within the territory of the administrative Unit of Batumi City Hall. The local authorities inquired with LEPL National Agency of Public Registry to establish that these families were homeless. Inquiries were made based on the data of the place of birth.[879]

The Public Defender welcomes the project "Temporary Shelter" elaborated by Batumi City Hall in 2013. The project aims at providing 30 beneficiaries with shelter, two meals a day, clean set of clothing and, if needs be, medical service as well. According to Batumi City Hall, another project aimed at providing a temporary shelter (manoeuvre house) for 50 beneficiaries is also ready. The project will be implemented for socially vulnerable families (having 57 000 rating score), single mothers, families with more than 5 children, persons with acute disability, single pensioners, and families that have no accommodation or have to stay outdoors due to various force majeure situations, who, because of the lack of funds, are unable to repair their owned property or acquire a new one in a short period of time[880]

Recommendations:

To the Tbilisi City Hall

- **to take measures to enable all beneficiaries, revealed in 2013, of the programme "social accommodation in favourable surroundings" to avail social accommodation; to study the socio-economic situation of the population who arbitrarily occupied social accommodation and take adequate measures for their assistance.**

To the Government of Georgia

- **to ensure the elaboration of the special state programme and long-term action plan for the adequate realisation Georgia's citizens' right to housing.**

To the Local Self-Government Bodies

- **to take appropriate measures for surveying homeless persons and to provide the data to the Agency of Social Services in accordance with the Law of Georgia on Social Benefits;**
- **to amend the criteria of the programme of "social accommodation in favourable surroundings" to enable those homeless families to register, who due to the absence of a house are not eligible for the poverty reduction programme.**

To the Self-Government Bodies

- **to take into account the statutory obligations imposed on them under the Law of Georgia on "Social Benefits", and, when drafting the budget, consider expenditure for setting up housing resources and/or for the implementation of alternative projects, which will enable to give shelter to the homeless.**

To the Government of Georgia

- **to amend the rule of handing out social benefits and to contribute to the exercise of the right of the homeless persons to benefit from social allowances.**

879 Letter no. 05-1/9 of the Office of the Government of Autonomous Republic of Ajara dated 6 January 2014.

880 Letter no. 04-04/29908 of Batumi City Hall, dated 27 November 2013.

RIGHT TO SOCIAL SECURITY

The right to social security is recognised and safeguarded by numerous international instruments. Under the European Social Charter,[881] the states are obliged "to establish or maintain a system of social security"[882] and "to endeavour to raise progressively the system of social security to a higher level".[883]

Under the International Covenant on Economic, Social and Cultural Rights,[884] "the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."[885]

Under the Universal Declaration of Human Rights,

> "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."[886]

Furthermore, Article 25.1 of the Universal Declaration of Human Rights acknowledges the right to a standard of living adequate for the health and well-being which includes food, clothing, housing, medical care, necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, and old age or any other circumstances beyond an individual's control that result in the loss of adequate livelihood.

While, the aforementioned provisions are of general nature and do not indicate in express terms the adequate degree of social security, their analysis clarifies the obligations imposed on the state to create and maintain such a system of social security that the risks of unemployment, sickness, disability, widowhood, old age or other objective factors do not affect the possibility of an individual to have social security, maintain his/her dignity and to develop freely.

In the context of the right to social security, Convention no. 102 of International Labour Organisation is noteworthy. The Convention concerning Minimum Standards of Social Security[887] concerns nine particular spheres: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, disability benefit, and survivor's benefit.

Moreover, the effective realisation of the right to social security, apart from the above-mentioned international instruments, is possible through collective agreements imposing obligations on private companies and other parties. This is one more reason for which the state should enhance the realisation of the right to negotiate a collective agreement and honouring the international obligations undertaken in this regard.

881 Resolution no. 1876-RS of the Parliament of Georgia, dated 1 July 2005.

882 European Social Charter, Article 12.1.

883 Ibid. Article 12.3.

884 Resolution no. 400 of the Parliament of Georgia, dated 25 January 1994.

885 International Covenant on Economic, Social and Cultural Rights, Article 9.

886 Universal Declaration of Human Rights, Article 22.

887 Not ratified by Georgia.

Like previous years, the number of applications filed with the Public Defender of Georgia was high in 20013. The reports of the Public Defender of Georgia discuss in detail the major challenges related to the realisation of the right to social security. The reports, e.g., address the issue of the enforcement bureau seizing, based on an encashment order, the state pension of an individual, to enforce a court judgment even if the pension was the only source of income for the person concerned;[888] issues related to the social protection of the families below the poverty threshold, viz., discontinuation of the registration of a family in the database for three years due to the submission of inaccurate (falsified) information by the family representative;[889] the use of social benefits/allowances by homeless persons, and the problems of evaluation of the socio-economic situation of the families living in others' properties.[890] Therefore, these issues are not covered in the report of 2013 in detail, and the Public Defender's recommendations with regard to the right to social security published in the report of 2012 remain the same.

The Public Defender welcomes several changes made with regard to the socially vulnerable people in 2013.

On 27 July 2013, the Law of Georgia on State Compensation and State Academic Scholarship was amended, and the limitation on having two or more pensions for certain group of persons was abolished. Such limitations were introduced in 2005, as the result of a legislative amendment. On 23 December 2005, the Parliament of Georgia adopted the Law of Georgia on State Pension; under Article 6.4 of the Law "in case of being eligible for two types of pensions, a person shall choose one of the two pensions that he or she wishes to receive". On 27 December of the same year, the Law of Georgia on State Compensation and State Academic Scholarship was adopted. The Law provided for state compensation to be paid to the families whose members died fighting for the territorial integrity of Georgia. This implied that they were also restricted in receiving a pension based on another ground. Therefore, both acts contained provisions that restricted the citizens to receiving a benefit of only one kind. This amounted to the violation of the rights of the citizens since, prior to the adoption of 2005 amendments, they used to receive two kinds of benefits – one as survivors of the deceased soldiers and another as older persons based on their employment record.

As mentioned above, on 27 July 2013, the Law of Georgia on State Compensation and State Scholarship was amended and Paragraph 51 was added to Article 6. As the result of this change, the limitation on receiving two kinds of benefits does not apply to the persons receiving compensation under Article 5.2., sub-paragraphs l) and m)[891] of the Law of Georgia on the Participation of Georgia's Armed Forces in Peace-Keeping Operations, under which the family members of the soldiers of the Ministry of Defence of Georgia, who died or were injured in international operations or other peace-keeping activities, are eligible for compensation;[892] the law also includes the family members of those who died fighting for the territorial integrity of Georgia, its freedom and independence; those who died during the events of May 1998 or August 2008 or as the result of injuries sustained during these events.[893]

The amendment to Article 8 of the Law of Georgia on State Compensations and State Scholarship should also be positively evaluated. The amendment of 1 April 2013 recalculated and increased the compensation of reservists from military agencies and the Ministry of Internal Affairs, Intelligence Service, Special Service of State Protection, and also for the officers dismissed from the investigative unit of the Ministry of Finance of Georgia. It is also noteworthy that the Government of Georgia took into account the recommendation of the Public Defender in 2013, which resulted in the amendment made by the Parliament on 1 January 2014.As a result of the amendment, the recalculation of benefits was extended to the persons dismissed from the penitentiary system before 2010; based on Article 15 of the Law of Georgia on the Code of Imprisonment, dated of 22 July 1999, an officer of the penitentiary system, and his/her family member, would receive state compensation in accordance with the rule established by the Law of Georgia on Social Security of the Reservists of Military Agencies, the Ministry of Internal

888 Report of the Public Defender of Georgia, 2011 on the state of protection of the rights and freedoms, p. 155.

889 Ibid., p.151.

890 Report of the Public Defender of Georgia, 2010 on the state of protection of the rights and freedoms, p. 372.

891 On 28 January 2014, the Public Defender of Georgia, in accordance with Article 21.a) of the Organic Law of Georgia on Public Defender of Georgia, issued a proposal for the notice of the Parliament of Georgia and requested the amendment of Article 5.2 of the Law of Georgia on State Pensions, which contained the limitation similar to that of the law of Georgia on State Compensations and State Scholarship. The Parliament upheld the proposal of the Public Defender of Georgia.

892 The Law of Georgia on State Compensations and State Scholarship, Article 5.2.l).

893 Ibid. Article 5.2.m)

Affairs, and Special Service of State Protection and their Family Members.[894]

In the context of the present discussion, the social security of the victims of disruption of the peaceful demonstration on 9 April 1989 is noteworthy. The Public Defender of Georgia had discussed this issue back in 2008-2007. Unfortunately, neither in that period nor in 2013, the Government of Georgia took the recommendations of the Public Defender into account.[895]&[896]

Georgia undertook an obligation to recognise and adequately honour the contribution made by the victims of 9 April 1989 to the fight for the Georgian National Liberation Movement and the creation of an independent state. This obligation is manifested in the preamble of the Law of Georgia on Recognition and Social Safeguards of the Victims of Disruption of Peaceful Assembly Held for the Independence of Georgia on 9 April 1989. This obligation can be fulfilled through amending the legislation on awarding state compensation for the victims of the events of 9 April 1989 and their family members.

STATE SOCIAL SECURITY PROGRAMME FOR THE FAMILIES BELOW THE POVERTY THRESHOLD

Most of the applications filed with the Public Defender's Office in 2013 concerned the social security programme for the families below the poverty threshold. The problem often was awarding disproportionately high rating score to applicants' families by LEPL Agency of Social Services as the result of the study of their socio-economic situation. There was a considerable increase in the number of such applications filed in the reporting period. The citizens would mention that the data entered in their family declarations reflected the reality in their homes; however, the rating scores awarded did not correspond to the socio-economic situation of their families. It was revealed as the result of the case study that beneficiaries often put '0' in all the windows of the "family declaration", which indicates the dire socio-economic conditions of a family. However, in the end, often a family is awarded higher than the threshold rating score for the eligibility for social benefits and medical insurance (57 000 and 70 000 points). The case study mostly revealed such problems of the beneficiaries who had indicated the old age pension as the only source of income.

LEPL Agency of Social Services gives a standard answer to the Office of the Public Defender with regard to the referrals in such cases saying that "family declaration" is processed based on Resolution no. 93 of the Government of Georgia, dated 30 March 2010, on Approving Methodology for Assessing Socio-Economic Situation of Socially Vulnerable Families. According to the agency, the rating scores are given in accordance with this Resolution.

The number of the applications reaching the Office of the Public Defender is a clear indication that the problem at stake is of systemic nature and it may be linked with the methodology of the socio-economic assessment of family situation.

In terms of the methodology, the subjective data entered by a competent official of the agency raises certain concerns. When assessing the socio-economic situation of a socially vulnerable family, a competent official fills out the 'F' window of the "family declaration". This part of the declaration is entirely based on the personal opinions of the official. The agent generally observes the residence, the clothing of the family members, and their personal hygiene. The data entered in the "family declaration" section is based on visual observation and, without the agreement of the authorised representative of the family, grades the family status (extremely needy, needy, poor, of moderate means, rich). Therefore, it can be concluded that receiving subsistence benefit depends on the subjective opinions of a social worker. Therefore, in order to ensure that the obtained information describes objective reality by a social worker when assessing the socio-economic situation of a family, subjective opinions and viewpoints should be brought to a minimum.

In 2013, social security of homeless persons still remains a problem. As mentioned, the problem of accessibility of

894 See recommendation by the Public Defender of Georgia issued on 23 October 2013 for the notice of the Government of Georgia.

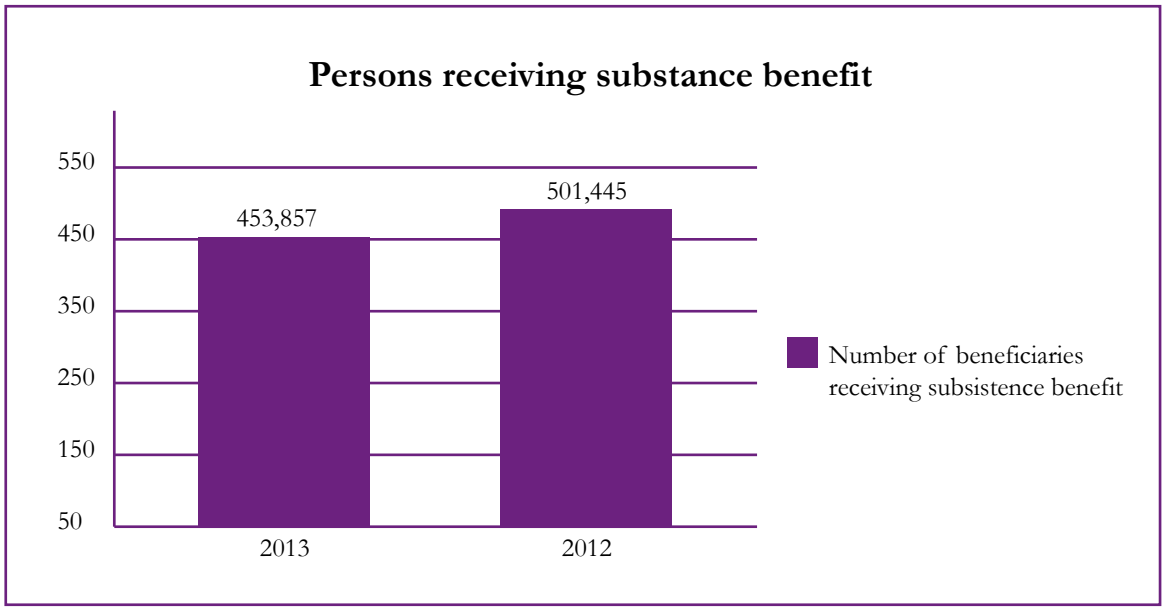
895 Idem., and the proposal issued for the notice of the Government of Georgia and the Parliament of Georgia. Also, see the statement issued on 29 October 2013 by the Public Defender of Georgia.

896 Letter of the Deputy Minister of Labour, Health Care and Social Security of Georgia, dated 3 December 2013; the communication on this issue is pending with the Parliament of Georgia.

the particularly vulnerable group of homeless people to the poverty reduction programme was discussed in detail in the 2012 report of the Public Defender of Georgia. The system existing to date[897] does not enable the involvement of the homeless in the programme. Under the law, an eligibility criterion for the beneficiary families is to have an independent accommodation space. Since the homeless cannot meet this criterion, they cannot participate in the state programme for families below the poverty threshold, and therefore cannot use the range of benefits and allowances. For the same reason, they cannot meet the primary criteria of social accommodation programme either. For the solution of this problem, the Public Defender of Georgia issued numerous recommendations in the previous years.

The Office of the Public Defender of Georgia has information that there are efforts being made to redeem the shortcomings in the poverty reduction programme. The Public Defender hopes that the social security programme for the families below poverty threshold will be amended and the homeless will be able to benefit from social allowances.

According to the information obtained from the website of LEPL Agency of Social Services, the number of beneficiaries receiving subsistence benefit has slightly decreased in 2013 compared to the previous years. The dynamics of 2012 has more or less been maintained.



Registration of Seizure of the benefits of the persons registered in the unified database of socially vulnerable families

In the reporting period, the Office of the Public Defender studied the applications of the persons registered in the unified database of socially vulnerable persons. These applications concerned the seizure of a state subsistence benefit by the enforcement bureau to secure a creditor's demand. In these cases, the Public Defender of Georgia demanded information from the enforcement bureau regarding the legal basis of such restrictions. According to the administrative agency, enforcement officers act on the basis of a creditor's application when registering the seizure of subsistence benefit.

Article 45 of the Law of Georgia on Enforcement Proceedings defines the list of the properties that cannot be impounded. Under Article 5.1.f) "property of the member of a family registered in the database of socially vulnerable families below poverty threshold, except for the property that was used to secure a loan." Thus, public interference in the property of socially vulnerable persons may only be allowed to secure a creditor's claim if the property has been registered as mortgaged.

897 Resolution no. 126 of the Government of Georgia, dated 24 April 2010, on the Poverty Reduction Measures in the Country and Improving Social Security of the Population, Article 2.b).

Apart from the above-mentioned, under Article 45 of the Law, the target allowance and income less than subsistence minimum cannot be seized along with the objects necessary for professional activities, lifestyle, and family maintenance.

By virtue of the exemption from seizure of property in enforcement proceedings provided in express terms, the legislation protects a debtor from being stripped of the means of subsistence when a creditor presents a claim. This protection standard stems from the principle of a welfare state. The principle of a welfare state is stipulated in the preamble of the Constitution as a state's ultimate objective. It however cannot be interpreted as only a declaratory principle that imposes no particular obligation in regards of either conditions or terms.[898]

The International Covenant on Economic, Social and Cultural Rights imposes on Georgia as a Contracting Party to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. Therefore, the above provision in the Law of Georgia on Enforcement Proceedings is an effective instrument for the social protection of citizens.

Stemming from the above-mentioned, the seizure of the subsistence benefit of a socially vulnerable person by an enforcement bureau in order to secure a creditor's demand fails to comply with the statutory requirements of the Law of Georgia on Enforcement Proceedings. In such cases, the social rights of a person are unduly restricted. It is impermissible that the officials of an enforcement bureau can take decisions on seizure arbitrarily and a debtor remains without the minimum means of subsistence.

It is worth mentioning that the 2012 report of the Public Defender of Georgia discussed the problem of registration of seizure of pension bank accounts based on Article 153 of the Criminal Procedure Code of Georgia. The Public Defender believes that this practice runs counter to the law and is an undue breach of the citizens' right to property.[899] It is a positive development that such a problem was not registered in 2013.

Recommendations:

To the Government of Georgia

- **to start preparatory works for the ratification of ILO convention no. 102 of 1952.**

To the Government of Georgia and Parliament of Georgia

- **to draft a legislative amendment with regard to granting state pension for the victims of the events of 9 April 1989 and their family members.**

To the Ministry of Labour, Health Care and Social Security

- **to elaborate and submit, to the Government of Georgia, the draft amendment concerning the methodology of the assessment of socio-economic situation of families, which will enable homeless and those families which find shelter in other persons' properties to be eligible for social benefits.**

To LEPL Agency of Social Services under the Ministry of Labour, Health Care and Social Security of Georgia

- **to elaborate different social security standards for minors and disabled persons in case of suspension of registration of the family for three years in the database.**

898 See the dissenting opinions of Ms Justice K. Eremadze and Mr Justice B. Zoidse to judgment no.№1/2/434 of the Constitutional Court of Georgia, dated 27 August 2009.

899 Report of the Public Defender of Georgia, 2012, p. 403.

THE STATE OF PROTECTION OF OLDER PERSONS' RIGHTS

Older persons are particularly vulnerable in Georgia and their socio-economic state is dire. Domestic violence is a particular vulnerability characteristic to the cases involving older persons. According to the statistics of the Agency of Social Services, 25% of those below the poverty threshold registered in the unified database of socially vulnerable families are older persons.[900]

Protection of the rights of older persons and awareness raising are the concerns on the world's agenda. In December 2010, the United Nations General Assembly established an open-ended working group for the purpose of strengthening the protection of the human rights of older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps, and how best to address them (Resolution A/RES/65/182).[901] United Nations Economic and Social Affairs Department is actively involved in the rights of older persons.[902]

Some older persons live with their families, some on their own and some live in institutions for older persons. The State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking manages the institutions in Kutaisi and Tbilisi. According to the Fund's data, in 2013, there were 107 beneficiaries at the Tbilisi home and 95 in the Kutaisi home.[903]

In the current year, the Office of the Public Defender of Georgia plans to undertake research regarding the state of the protection of older persons, the procedures for placing older persons in an institution and conditions therein.

There are number of problems the residents of the old people's institutions face. Some of these problems are the following: age discrimination, violence, indifference, lack of standards in establishing the environment closer to a biological family, lack of triage and care, lack of individual approach based on the skills, interests (religious beliefs, ethnicity) and faculties (intellectual, physical), lack of legislative regulation, and legal remedies for the protection of their rights.

According to the 2013 data of the Agency of Social Services, the number of persons receiving old age pension amounts to 685,358. According to National Service of Statistics, the number of persons receiving pension amounted to 682,886, among them, 478,980 are females and 203,906 are males.[904]

The majority of older persons find themselves below the poverty threshold. The number of persons receiving the subsistence allowance amounts to 453,857; among them 113, 507 are aged above 60 years. The majority of registered socially vulnerable persons are 70 years old and above. Among the number of receivers of social package, disabled persons aged above 59 years is 12,990.[905]

Despite the existence of social benefits programmes, the actual situation shows that the allowances received are

900 See <http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610> [last visited on 2.02.2014].

901 See <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/182> [last visited on 2.02.2014].

902 See <http://undesadspd.org/Ageing.aspx> [last visited on 5.02.2014].

903 See <http://www.atipfund.gov.ge/images/stories/pdf/xandazmultatavshesafrebi.pdf> [last visited on 2.02.2014].

904 See <http://www.geostat.ge/cms/site_images/_files/georgian/health/qali%20da%20kaci-2013.pdf> [last visited on 2.02.2014].

905 See <http://ssa.gov.ge/index.php?lang_id=GEO&sec_id=610> [last visited on 2.02.2014].

often not sufficient even for subsistence, let alone dignified life and social integration.

In November 2013, within the Madrid International Action Plan on Ageing, the working group on implementation started to shape up. There are governmental, non-governmental and international organisations represented in the group, as well as the Office of the Public Defender of Georgia. The starting of the working group is indeed a step forward made by the state. The working group launched its activities in December 2013. It aims at elaborating the governmental strategy and action plan. The Ministry of Labour, Health Care and Social Security is actively involved in the project of the United Nations Department of Economic and Social Affairs (DESA). The project is aimed at the economies in transition and implies the implementation of Madrid International Action Plan on Ageing and Regional Implementation of Strategy.[906]

It is a principle of the United Nations to improve the life of the older persons, and urges the states to give special attention to implementing the action programme appreciating the contribution that older persons make to their societies. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being, and share their knowledge and skills with younger generations.[907]

PLACING OLDER PERSONS IN AN INSTITUTION

Older persons should be able to use the services of support institutions providing protection, rehabilitation, social and psychological stimulation in humane and safe environment.

A senior citizen of Georgia, male above 65 years and female – above 60 years, may be placed in either Tbilisi or Kutaisi home for older persons. The placement is according to the waiting list.

The persons concerned should apply to the district unit of the Agency of Social Services, fill in a special application form and submit documentation determined by Order no. 52/N of the Minister of Labour, Health Care and Social Security on Placement or Dismissal of a Person in a Specialised Institution and the terms thereof.

The following are not eligible for placement in a home: those suffering from acute infectious diseases, acute TB, active syphilis, skin diseases, open herniation of either forebrain or brainstem, acute diseases of central nervous system, and those needing inpatient treatment.

The State Fund for Protection and Assistance of (statutory) Victims of Human Trafficking manages the institutions in Kutaisi and Tbilisi. However, there are homes for older people that are funded at the level of local municipalities (Rustavi, Batumi, and Bolnisi). There is also a community provision sub-programme.[908] It is co-funded by the state and NGOs. All these institutions are legal entities of private law.

- Union of Young Teachers – Ozurgeti;
- "Adamas" – Tbilisi;
- "Care-Free Old Age" – Signagi, the village of Bodbiskhevi;
- Home for the older persons and those with disabilities "My Family" – Tbilisi;
- "Beteli" – Signagi, Tsnori.

There are up to 200 beneficiaries receiving services in the above institutions. However, there are more who wish to be placed in a home. There has been no monitoring to date over these institutions. The Office of the Public Defender plans to monitor these establishments in the spring, current year.

The Office of the Public Defender is in the process of investigating the deaths of five beneficiaries in an institution for older persons located in Samtredia municipality. The institution is a legal entity of private law. On 12 February 2014, five beneficiaries in the institution were running high temperature and despite the first aid given by the nurse

906 See <http://undesadspd.org/Ageing/Resources/MadridInternationalPlanofActiononAgeing.aspx> [last visited on 5.02.2014];

907 See <http://www.un.org/documents/ga/res/46/a46r091.htm> [last visited on 2.02.2014].

908 See <https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1886531&lang=ge> [last visited on 5.02.2014].

on duty, all five persons died that day. According to the enquiry by the Office of the Public Defender, the administration either did not call for an ambulance or transferred the beneficiaries to a hospital. In the close future, the findings of the Public Defender's enquiry will be released.

DOMESTIC VIOLENCE

Older persons are risk groups of domestic violence. The Public Defender of Georgia pointed out in his report of 2012 the problems faced by older women in their relations with family members. The report also highlighted the significance of social services in the prevention of domestic violence, and offering protection and assistance in case of actual violence.

However, again in 2013, the problems of inter-agency coordination with regard to domestic violence inflicted on older persons were revealed. The significant part against domestic violence is played by the social workers of the Agency of Social Services. Likewise, it is important that they cooperate with the Ministry of Internal Affairs to establish legal approaches to the problem in question.

The case of G.A.

In 2013, 74 year old citizen, G.A. applied to the Public Defender of Georgia regarding the violence inflicted by the family members. According to G.A., daughter-in-law and son threw the applicant out of the house and as a result G.A. had been spending nights at different addresses for the past five years. In 2008, under a court order, G.A. was given the right to occupy one room of the family residence. However, the family members used physical force and prevented G.A. from living in the room. The Public Defender of Georgia applied to the Ministry of Internal Affairs regarding this case to enquire about alleged domestic violence. According to the Ministry, the dispute was a case of civil law and no signs of a crime were found. However, in the given case, domestic violence falls under the category of criminal law, as economic violence constitutes one of the elements of domestic violence. In this case, limiting the right to use a room, due to which the senior citizen was forced to live at different addresses, amounts to economic violence.

The case of E.M.

In 2013, citizen E.M. applied to the Public Defender of Georgia with the allegations of physical and psychological violence inflicted by family members. E.M. is a 73-year-old person with a disability. The Office of the Public Defender applied to the Ministry of Internal Affairs and the Centre for Social Services for a follow-up on the allegations. According to the Ministry of Internal Affairs, E.M. was visited in December and no evidence of violence was found. According to the Centre for Social Services, they visited E.M. in December and faced difficulty in entering the residence due to a family dispute. A social worker could only visit after E.M. called patrol police. Two different pieces of information about the same period of time were given by two agencies, which indicated a lack of coordination between the service providers. The Public Defender recommended further monitoring of compliance with the terms of the approved protective order issued on account of domestic violence.

Recommendations:

To the Government of Georgia

- **to elaborate governmental strategy and relevant action plan, taking into account the requirements of Madrid International Action Plan on Ageing;**
- **to ensure active participation of older persons in the elaboration, development and monitoring of policies, directly concerning them; and**
- **to amend legislation and elaborate new regulations for the protection of the rights of older persons.**

To the Ministry of Labour, Health Care and Social Security of Georgia

- **to determine the number of older persons on the waiting list for placement in an institution, their needs and, if need be, to provide for alternative services;**
- **to elaborate and develop such alternative services as homecare, day centre and community services for older persons;**
- **to ensure geographical accessibility of care for older persons in all regions;**
- **to elaborate care standards for older persons in residential institutions;**
- **to ensure training/re-training of service personnel according to the elaborated standards with the view of providing adequate care for older persons; and**
- **to ensure monitoring by competent social workers of LEPL Agency of Social Services over domestic violence against older person through informing the relevant authorities and involving them in the cases of alleged violations.**

HUMAN RIGHTS OF IDPS AND CONFLICT-AFFECTED PERSONS IN GEORGIA

Internally displaced persons (IDPs) have been high on Georgia's agenda for the past third decade now. There are hundreds of thousands of IDPs and refugees living in the country. Living conditions have not improved over the years for the majority of them and they are still in need of urgent State support.

Public Defender of Georgia annually examines the human rights of IDPs, both on the basis of individual appeals, as well as within the framework of the Support to PDO project on IDP issues. The project has been ongoing since 2010 with the financial support of the Council of Europe and UNHCR.

According to re-registration data of IDPs conducted in 2013, there are up to 250 000 IDPs residing in Georgia. The Public Defender's report reviews the issues which IDPs face and remain unresolved until the present day.

We welcome the policy of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia to cooperate with human rights institutions, which was expressed in the Ministry-initiated forming of the Commission to work on the new draft law. In the process of IDP re-registration the Ministry also successfully cooperated with the Public Defender's Office (PDO), as well as international and local NGOs.

As to the human rights of IDPs, for their great majority the problem of dire living conditions and lack of living space still remains central. There are IDP collective centres which not only fail to comply with the minimum living standards, but are even hazardous to health. Public Defender's Report for the year 2012 referred to such IDP collective centres, though in some of them the situation remains the same. Like in 2012 the process of privatization of the living space of IDPs, i.e. handing over the space in ownership to IDPS is still very slow. Undoubtedly, the problem is severe socio-economic condition in which the majority of IDP families still remain.

Lack of awareness among IDPs on the developments in terms of IDP rights still needs to be resolved. PDO is still being addressed by IDPs who signed privatisation agreements without being informed regarding rehabilitation standards. Inclusion of IDPs in the decision-making must be ensured, which greatly improves the level of awareness on various issues among IDP population.

Like in previous years, situation is complex in the villages adjacent to so called ABL (administrative border line), with the lack of employment opportunities, poor quality roads, heating problems in winter, selling agricultural produce – the main problems faced by the population of the villages along ABL. The village residents report that although irrigation channels were built in several villages, the majority faces shortage of irrigation water supply, which the Public Defender highlighted in his report for the year 2012.

NEW STATE POLICY DIRECTIONS ON IDP ISSUES

2013 was marked with many novelties in terms of human rights situation of IDPs. A draft law on the Internally Displaced Persons from the Occupied Territories of Georgia was prepared[909]; re-registration of IDPs was carried

909 The Parliament of Georgia adopted the Law on IDPs (Refugees) by third hearing on 6 February 2014. The draft law was prepared and submitted to the Parliament in 2013. .

out; provision of IDPs with the living space started as per the order №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia dated 18 December 2013, which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues. These novelties will be described in detail below.

In 2013 there has been no eviction of IDPs from the premises they are occupying arbitrarily. In his report for the year 2012 the Public Defender referred to the premises where IDPs were illegally residing after 2012 Parliamentary Elections, which covers 47 premises possessed by various state institutions and private owners. According to the information provided by the Ministry, by the end of 2013 there are 26 premises that remain illegitimately occupied by IDPs. [910] IDP families which left the premises and are in need of shelter before durable housing solution have been provided with a rent allowance.

In 2013, upon the initiative of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, a special commission working on the new draft law on IDPs was set up by the Minister's order №164 of 18 December 2012.

In addition to PDO, the Commission was represented by: UNHCR, Norwegian Refugee Council (NRC), Social Programs Foundation (SPF), Georgian Young Lawyers' Association (GYLA) and Danish Refugee Council (DRC). The Commission worked on the draft law for 6 months and presented it to the Parliament of Georgia in December 2013.

Re-registration of IDPs started on 1 August 2013 and ended on 27th December 2013. According to the data available to us, there were 246 549 IDPs re-registered this time, which is 25,000 less than the pre-registration figures. Along with the other organizations, Public Defender of Georgia was also conducting the monitoring of the registration process.

As already noted, provision of IDPs with the living space was conducted as per the order №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia dated 18 December 2013, which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues. The scoring system approved by the order[911] allows for fair distribution of the space between the IDPs. However, it should be noted that Public Defender is still being addressed by IDPs who believe that assigning of scores was conducted with some violations, due to which they did not receive their share of the living space.

We welcome the initiative of the Ministry which resulted in the amendments to the 2012-2014 Action Plan for the Implementation of the State Strategy on the Internal Displaced Persons (Refugees) from the Occupied Territories of Georgia, and during the last 5 years IDPs residing in Tbilisi were given the opportunity of a durable housing in Tbilisi. In 2012 they did not have such opportunity, as the Action Plan did not envisage durable housing solutions in Tbilisi.

In addition, the Ministry initiated setting up of a Commission for Developing the Draft Law on Eco-migration Processes Resulting from Natural Disasters, which, like the Commission on IDP issues is represented by Public Defender's Office and various international and local organizations. In 2013 one-time aid programmes were implemented, which included allocation of one-time allowance to IDPs for various immediate needs, and distribution of "winter allowance" in the amount of GEL 200. Such allowances ('vouchers') were issued to IDPs having received scored below 70 001, in total to 23 000 families. They were able to cover the costs of the consumed power and natural gas supply. [912]

Despite the progress described above, general socio-economic condition of IDPs remains grave. The issues which IDPs have been facing for years will be presented in the next chapters of this report.

910 Letter №05/02–12/53726 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia dated 20 December 2013.

911 Within the framework of the Ministry-announced resettlement process, an IDP fills in an application for a living space, based on which IDP family is assigned scores based on various criteria. The living space is allocated to the families receiving the highest scores.

912 2013 Activity Report, Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, 2013.

GEORGIA'S NEW IDP LAW

As already noted, the new draft law on IDPs was prepared in 2013. Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia took into consideration the majority of suggestions by the working group members developing the draft law, however on some issues agreement with the Ministry could not be reached. It can be states that the approved Law does not represent a consensus between Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia and working group members.

In June 2013 Public Defender organized a concluding meeting of the working group[913], which reviewed the draft law article by article and produced its final version. However, the version submitted to the Government and Parliament of Georgia was different that of proposed by the working group.

The key remarks by the Public Defender towards the draft law prepared by the Ministry referred to the definition of the IDP, as well as the issues of assigning IDP status to under-aged and IDP allowances.

The Public Defender of Georgia had been commenting over the years that the "Georgian Law on IDPs from Georgia's Occupied Territories" of 1996 did not correspond to International Standards[914], with the central issue being the definition of IDP status. According to the Law:

> "Internally displaced person – IDP is a citizen of Georgia or stateless person permanently residing in Georgia, who was forced to leave his place of permanent residency and seek asylum within the territory of Georgia due to the threat to his life, health and freedom or life, health and freedom of his family members, as a result of aggression of a foreign state, internal conflict of mass violation of human rights. "[915]

With such definition, IDP status could only be obtained by the persons who were forced to flee their homes as a result of armed occupation.

There is no internationally acknowledged mandatory document defining the concept of an IDP. However, 1998 UN Guideline Principles on Internal Displacement considers that IDP is not only the person who was forced to flee his/her home during armed conflict, but also due to mass atrocities, human rights violations, and man-made or natural disasters[916]. Although not mandatory, these principles are universally acknowledged and represent one of the key documents in the field of internal displacement. Hence, the States should take into consideration the key principles laid out in it, and use them in the development of the State policy and legislative acts.

Public Defender's reports also discussed rights of the persons who were displaced from the villages along the ABL. These persons were unable to receive IDP status, as according to the Law of Georgia on Occupied Territories, so called "villages along the ABL" do not fall under occupied territories and until 11 May 2013 there was no legal basis for assigning the status of an IDP from the persons displaced from these villages.

Significantly, by the decision of 11 May 2013 the Constitutional Court of Georgia deemed unconstitutional the wording of the Article 1 (definition of IDP), para 1 – "from Georgia's occupied territories", of the "law of Georgia on IDPs from the Occupied Territories of Georgia", based on Article 14 of the Constitution of Georgia[917].

The Court clarified, that as the contested norm assigned IDP status only to the persons displaced from the occupied territories defined by the Law of Georgia on Occupied Territories, they were the only recipients of the targeted State support and efforts. While, persons displaced from the territories not considered as occupied by the Law of Georgia on Occupied Territories were left without protection. At the same time, these people had no possibility of returning to their homes. Hence, according to the Court decision, the disputed norm caused unjustified differentiation of essentially equal persons, since it linked IDP status only to the displacement from the occupied

913 The meeting was attended by the representatives of Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, UNHCR in Georgia, DRC, NRC, GYLA and the Fund for Social Programmes.

914 Report on the Protection of Human Rights and Liberties in Georgia, Public Defender of Georgia, 2011. p.180.

915 LAW OF GEORGIA ON INTERNALLY DISPLACED PERSONS, Article 1, 1996.

916 UN Guideline Principles on Internal Displacement, 1998, Preamble, Article 2.

917 Judgment of the Constitutional Court of Georgia of 11 May 2013 on the case of citizen Tristan Mamagulashvili vs Parliament of Georgia.

territories defined by the Law of Georgia on Occupied Territories. [918]

The Law of Georgia on the Internally Displaced Persons from the Occupied Territories of Georgia adopted on 6 February 2014 has amended the definition of an IDP:

> "Internally displaced person – IDP is a citizen of Georgia or stateless person residing in Georgia, who was forced to leave his/her place of permanent residency due to the threat to his/her or that of his/her family members', health and freedom or life, as a result of occupation, aggression of a foreign state, armed conflict, mass violence and/or mass violation of human rights, and/or unable to return to permanent place of residency due to the above listed reasons. "[919]

Although the name of the law has not changed and the word occupation is still mentioned, according to the new version of the Law of Georgia on the Internally Displaced Persons from the Occupied Territories of Georgia, occupation is not the only reason for internal displacement, and such reason can also be a mass violation of human rights. Such formulation allows to issue IDP status to the population internally displaced from the villages along the ABL.

Despite the recommendations by the Public Defender and other organisations working on the draft law, the definition of IDPs in the new version of the Law does not include persons who were forced to flee their homes due to natural or man-made disasters. In these terms, the new version of the Law fails to comply with the UN Guideline Principles on internal displacement. [920]

Apart from the IDP status, the new edition of the Law introduces lot of novelties in the protection of human rights of IDPs. The Law introduces definitions of "IDP family", "adequate housing", "provision of durable housing to IDPs" and so on.

The new Law does not include the notions of "IDP collective settlement", "private settlement of IDPs" and "temporary residence". These changes are aimed at forming an equal approach to IDPs of various categories, which in itself is commendable. Division of IDPs according to their places of residence facilitated unequal treatment to IDPs and in some cases even left without attention the segment of IDPs which lived in so called 'private sector'.

According to the Law, equal allowance (of 45 GEL) will be issued to all persons having IDP status, whose monthly gross income is below 1,250 GEL. [921] The Public Defender of Georgia believes that institutionalizing such limits is the discretionary authority of the State. At the same time, such approach transforms IDP linked allowance into the allowance linked to IDP needs, which Public Defender of Georgia welcomes. However, it is unclear how the amount of 1,250 gross income has been defined as the basis for discontinuing IDP allowance. Furthermore, it is also unclear the frequency and form of data provision and processing on IDP income levels to/by the Ministry.

It is also noteworthy that this change might create problems at the initial stage in the former collective centres where individual metering system is not in place. Before the adoption of the new Law, IDPs living in the collective centres were receiving State supplement for covering the costs of consumed electricity (in Tbilisi not exceeding GEL 18.48, and in the regions – not exceeding GEL 12.98). The similar approach was used for other utility costs. Hence, the allowances issued to IDPs living in the collective centres and those living in the 'private sector' were different (in the collective centres - GEL 22, and Gel 28 in the 'private sector'). As already noted, according to the new Law, IDPs will receive GEL 45 allowance irrespective of their places of residence, and the State will stop supplementing their electricity and utility costs. Hence, in collective centres where individual meters have not been installed, IDPs might face problems related to utility costs. According to the data available to us, the Ministry is negotiating with the power supply companies. The Public Defender of Georgia will be observing how the problems with individual meters will be resolved in 2014.

918 Ibid, II, para. 32, 33.

919 LAW OF GEORGIA ON INTERNALLY DISPLACED PERSONS, Article 1, 1996.

920 UN Guideline Principles on Internal Displacement, 1998, Preamble, Article 2.

921 The Law of Georgia on the Internally Displaced Persons (Refugees) from the Occupied Territories of Georgia , Article 11.2.e;

It should also be noted that while working on the draft law, the position of the Ministry on the IDP allowance was based on linking allowance to IDP status and the final version of the draft law which the working group developed envisaged the allowanced linked to IDP status. However, according to the draft law submitted to the Parliament, Article 11.2.e, the basis for discontinuing IDP allowance could become IDP income which equals or exceeds 1,250 GEL confirmed by the data of the respectively authorized state agency. This is the version of the Law approved by the Parliament.

As to the other changes, the Law also reflects additional norms against discrimination, protection of family unity and defining rights to adequate housing and social protection. A separate chapter of the Law is dedicated to the guarantees for integration, reintegration and protection of rights of IDPs in the other parts of the country prior to their return to the permanent places of residence.

In addition, the Law envisages social protection guarantees for IDPs. Article 16 of the Law states that the Ministry and State institutions, within the competencies defined by Law, assist IDPs in employment, solve pension-related and social issues, provide initial aid during internal displacement and so on. The list is quite long, which, on one hand is remarkable, though on the other, it is unclear how State is going to fulfil some of the obligations envisaged by this article of the Law, in the circumstances when there are no specific obligations defined for various State institutions, and it is unclear whether they possess necessary resources for their implementation.

Importantly, according to Article 6.2 of the new version of the IDP Law adopted by the Parliament of Georgia, an under-aged is entitled to IDP status if one of the parents is a person having IDP status.[922]

Adoption of the new Law is indisputably a step-forward in the protection of the human rights of IDPs. The new Law is much closer to international standards than the preceding one. However, some gaps remain and 2014 will show how effective the implementation of the new Law will be in the existing realities.

RE-REGISTRATION OF IDPS

Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia started re-registration of IDPs on 1 August 2013 based on the Minister's order №287 dated 16 July 2013, lasting till 27 December 2013. The aim of IDP registration was to have access to renewed information on IDP population and their profiles, as well as their families. Registration data should be sued for identifying the circle of IDP families and individuals in order to discuss their specific needs and identify durable solutions to them.

The Ministry set up 12 commissions to carry out the registration process. Up to 100 members of the commissions underwent special trainings. An expert from UNHCR headquarters was supporting the Ministry is planning the registration process.

A special group was set up to monitor re-registration process, which was coordinated by UNHCR. The group was represented by the Public Defender of Georgia, DRC, NRC, GYLA, SPF, LPI and OFPH. It should be noted that cooperation between the Ministry and monitors proceeded successfully. Monitors had no problem accessing any of the registration sites and getting information. In the majority of cases the Ministry acted swiftly on the problems identified as a result of the monitoring.

Re-registration process monitoring aimed at:

- the assessment of re-registration process, namely, how Ministry complied with the set standards and procedures;
- the identification of problems related to IDP awareness;
- the provision of respective legal assistance to IDPs;
- informing the Ministry on the gaps identified during the re-registration process.

Registration of IDPs was conducted in local municipalities and various administrative buildings. All the monitoring organisations were filling in three monitoring forms. Each of them covered different types of information, namely: Form N1- information provided by the Chairman of the Commission, Form N2 – information obtained through conversations with the IDPs on site, and Form N3 – information regarding information campaign on IDP re-registration.

922 According to the Article 6 of the draft law submitted to the Parliament by the Ministry, the necessary pre-condition for issuing IDP status to the under-aged was IDP status of both parents. Working group member organisations believed that such change would entail violation of equality rights. In the end, the Ministry took into consideration the position of the working group members and adopted the old version of the article – according to the new Law, an under-aged is entitled to IDP status if one of the parents is an IDP.

IDP willing to go through re-registration process, could call a hotline, register in advance and avoid standing in the line, however, according to monitors' observations, the majority of IDPs did not use the hotline service, which often caused conflicts among IDPs. IPDs standing in the lines expressed dissatisfaction when those pre-registered through hotline were directed right to the registration desk.

IDP was eligible for registration if he/she was a citizen of Georgia and/or a permanently residing in Georgia without citizenship, registered as an IDP in the Ministry database and possessed ID and a document certifying IDP status. The couple in registered marriage was required to submit marriage certificate and in case of under-aged registration – his/her birth certificate.

It should be noted that re-registration of IDPs was conducted in organized and peaceful manner. Registration commission members acted promptly in the majority of cases. Positively should be assessed registration campaigns that took place in some of IDP settlements, like in Tserovani, Koda and Bazaleti. Opening registration commissions on site simplified re-registration process for IDPs. IDPs which had to be registered in Tbilisi, but were unable to cover transportation costs, were allowed to register in the regions. Mobile group of the registration commission made 3,300 visits to IDP residences for those who for the variety of reasons could not travel.

It should also be noted that various issues were identified as a result of the monitoring. At the initial stage, Registration Commission failed to respond to IDP questions thoroughly, though at a later stage this problem was solved. IDPs were not informed regarding the goals of the re-registration. Logistical issues came up as a result of monitoring, e.g. issues related to documentation. Part of the IDPs did not have documents in order (birth certificates were not submitted in the original, documents did not contain birth certificate number, in some cases, IDs were expired), which didn't allow them to register within the set term. In some of the registration centres there was no waiting room, potable water and toilet.

There were cases in August when IDPs with under-aged children were unable to submit original birth certificates, since they were kept at schools and kindergartens. Hence, their registration was hampered, or in some cases could not be completed in their places of registration.

There were cases when 14 year old IDPs did not have IDs, and were unable to register, since one of the documents required for registration was an ID. According to the Law of Georgia on the Registration of Foreign Nationals living in Georgia, and Rules of Issuing IDs (Residence Permits) and Georgian Passports, citizen of Georgia must have a personal ID from the age of 14. As quick procedure for obtaining ID entails financial expenses, in some cases IDPs could not register in the places of their registration. This problem was partially solved by allowing all the IDPs to register in Tbilisi or Zugdidi registration centres which operated till 27th December.

The key issue identified by the monitors during the registration process was the presence of external persons on registration sites who were not Commission Members. Prior to getting to the Commission desk, these persons asked various questions to IDPs regarding their places of residence, their origin and neighbours. According to the clarification provided by the Commission Members, these persons were from an international organisation of IDPs from Abkhazia. There were cases when after the conversation with such persons IDPs refused registration in writing stating that he/she was not an IDP. Questioning procedure by external persons has not been envisaged the Minister's order No 287.

The Ministry clarified that 10,000 IDPs stated during the registration process that they currently resided in Gali Region. Also, it should be noted that according to unofficial data, there are 50,000 returnees to Gali Region. The difference in these figures might be caused by two circumstances: due to various problems part of IDPs living in Gali Region were unable to cross ABL, while part of the IDPs avoided revealing their actual residence due to security concerns. The Minister stated that according to unofficial information, the great majority of IDPs living in Gali were registered, but they refrained from naming the actual place of residence. [923]

During the registration process there were instances when the persons who could not register in their places of registration were directed from Zugdidi to Tbilisi, or vice versa, which considerably complicated registration for IDPs and increased their expenses. Therefore, Monitoring Group members addressed the Ministry with the request to allow such IDPs register in the registration centres they had access to, however this request was not met.

Overall IDP registration process should be assessed positively. According to the data available to us, there were 246,549 IDPs registered, which is 25,000 less than pre-registration number of IDPs. The Ministry actively co-

923 Meeting of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia Board on IDP issues, 17 February 2014 .

operated with the Monitoring Group during the registration process. In the majority of cases, IDP needs were taken into consideration. IDP registration results will greatly assist the Ministry to plan future strategy and policy formulation.

DURABLE HOUSING PROCESS

In the Public Defender's Parliamentary Report for the year 2012, the reference was made to the construction of multi-story residential buildings for IDPs across the country. New settlement areas were Poti, Batumi and Tskhaltubo.

Prior to the return to the permanent places of residence, State priority is still provision of IDPs with durable housing and their socio-economic integration. As already noted, based on the Order No 320 of 9th August 2013 of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, the rules and criteria for durable housing to IDPs and the charter of a special commission on IDP issues was approved. This Order established the rules for the provision of durable housing to IDPs. Commission on IDP issues is responsible for the review of IDP applications and decision-making.

The Order spells out the procedures preceding the transfer of the living space to IDPs in ownership. The development of such rules is a significant step in the process of regulating the durable housing process and distribution for IDPs, in terms of observing the principle of impartiality.

The Order envisages several procedures for housing provision. At the initial stage the Ministry provides IDP families with the information on the living space available for distribution. This stage allows IDPs to submit the receptive application requesting the allocation of the living space.

At the following stage IDP family fills in an application form and a special questionnaire regarding the allocation of the living space. The Ministry reviews the applications based on the criteria and standards of the living space according to the rules defined by the Minister's Order. The review materials are then forwarded to the Commission for the approval or rejection of the request for living space allocation.

IDPs will be allocating specific living space according to floors and entrances based on ballot procedure. Taking into consideration the needs of persons with disabilities, the "Commission may allocate a living space to an IDP family without taking part in ballot procedure". [924]

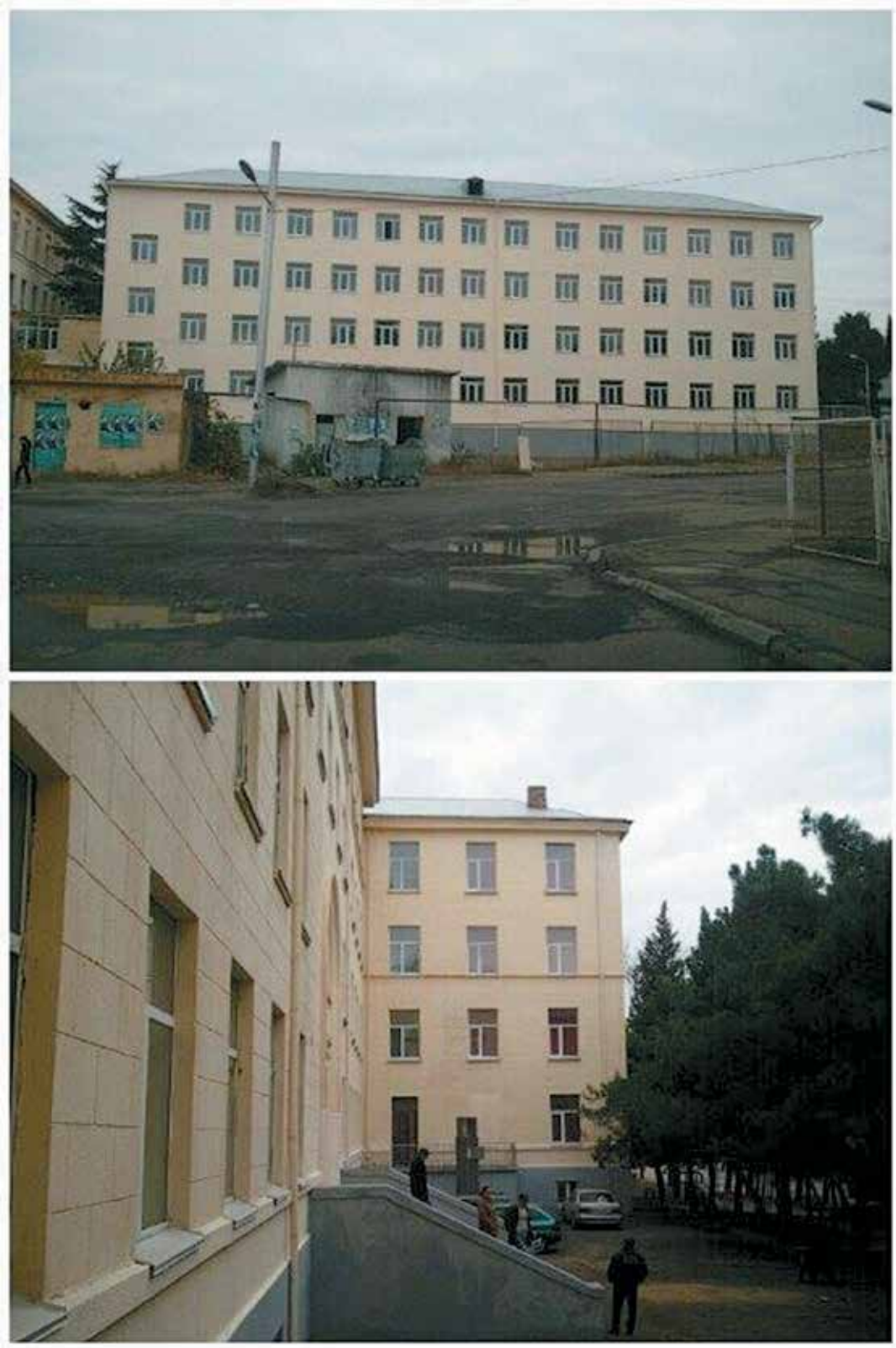
Regulation of the settlement rules based on such order is also connected with the partial eradication of one of the key problems, which is provision of housing for the IDPs living in 'private sector'. In his previous reports Public Defender always referred to the human rights of IDPs living in 'private sector'. Their appeals to PDO have especially increased in the recent years. The great majority of IDPs in the 'private sector' live in the gravest social conditions, paying rent for years and often, due to deteriorated financial standing, face the threat of staying homeless. Despite the acuteness of the problem, the provision of housing for the IDPs living in 'private sector' was envisaged only at the second stage of the Action Plan, following resettlement of the IDPs living in collective centres. Minister's Order N 320 allows IDPs in especially difficult conditions to receive the living space irrespective of their places of residence.

TBILISI

The Ministry, based on the authority defined by the mentioned Order, and according to the applications received and scoring conducted, allocating a living space for 85 IDP families in November 2013 in the premises of the building on 101 Kvareli Street in Tbilisi. PDO and its project conducted monitoring of these premises at 101 Kvareli Street in Tbilisi.

The monitoring revealed that the living conditions in this building are good and fully corresponding to the standards set by the Supervisory Board.

924 The order №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 2013, which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues, Article 3.13



101 Kvareli Street

Despite the fact that the Minister's Order N 320 considerably improves the process of the provision of IDPs with durable housing, PDO received appeals where IDPs dispute the scorings assigned based on the filled in forms and/or the decision for the rejection of the request for living space allocation. PDO continues exploring the cases,

though, the preliminary assessment revealed some shortcomings.

Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia published the list of the families resettled to the premises of the building at 101 Kvareli Street on its official web-page in November 2013. According to this list, the living space was allocated to the families which were assigned 3,2 and 1 score based on the applications filled in. Later this list was removed from the web-site, while the list provided to PDO based on its request differed from the list previously published on the Ministry website[925], and it did not contain the families with the scoring of 3,2, and 1. According to the clarification provided by the Ministry, the initial list published on the web-site was not final, and that is why it included the families with the low scoring.

AJARA

In terms of the durable housing process for IDPs with the housing in the regions of Georgia, in Tamari settlement of Batumi, so called new IDP quarters, there are commercial facilities on the ground floors of residential premises, which, by the decision of the Ministry were turned into living space. According to the Ministry statement, there were total of 195 applications requesting living space in these premises, and 48 IDP families from various regions of Georgia were finally selected. On 18 December 2013 46 IDP families received the living space through ballot procedure. During the space distribution one of the families refused to receive the space due to its small size, while one of the families did not turn up at the ballot. Prior to the distribution one living space was arbitrarily occupied by an IDP family.

In the residential buildings of Tamari settlement in Batumi, IDPs from "private sector", as well as Zugdidi, Kutaisi, Tskaltubo and other IDP collective centres were resettled. It is remarkable that the IDPs who were refused reallocation in 2012, among them single persons and PWDs (Public Defender described their situation in his Parliamentary Report of 2012[926]), where this time provided with the living space. However, several single elderly are still awaiting their turn.

Shortcoming of the re-settlement could be considered the fact that in the process of space handover, rehabilitation of premises had not been finalized and repair works were still ongoing. In addition, in the transfer documents (acceptance-delivery acts), size of the living space was not indicated. At the time of the handover IDPs were informed only on the number of rooms, while it was impossible to verify whether their size corresponded to standard ones without conducting special measurement works.

IMERETI

In 2013 based on the criteria for durable housing for IDPs, the Ministry resettled IDPs in the rehabilitated premises of Imereti Region, namely in Samtredia ,Tkibuli, Tskaltubo, Kutasisi, Vani and Terjola.

The Public Defender is his Parliamentary reports and recommendations always pointed to the fact that when reallocation of IDPs to new premises, the Ministry should take into account the condition of IDPs living in the collective centres, which are dilapidated and posing health and live threat to its inhabitants.

Based on the Order 320 , which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues, the Commission could give preference to the IDPs living in the collective centres posing most threat to their health hand lives and provide them with the living space without going through set criteria[927].

Monitoring in Vani identified that in the newly rehabilitated premises of the former vocational education school,

925 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, №05/02–12/55552, dated 31 December 2013.

926 Information is available on the web-page at: http://www.ombudsman.ge/uploads/other/0/86.pdf , [Last seen on 10 March 2014].

927 The order №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 2013, which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues, Article 3.3.

IDP families were relocated from "Argo" tourist base IDP collective centre (conditions in "Argo" were one of the gravest and has been on numerous counts reflect in PDO Parliamentary Reports), which in itself is a noteworthy fact.

In Imereti Region there are several collective centres in most dire conditions and unbearable living conditions, however IDP families residing there were assigned very low scores, and did not qualify for a space in the newly rehabilitated premises. Among them were IDPs living in the collapsing buildings of collective centres in Imereti Region, e.g.: Samtredia – IDPS living in so called "former policlinics premises', " construction company office", "geologists' apartments".

Tskaltubo – at the resettlement of IDPs to the rehabilitated premises it turned out that several collective centres were not appropriate for living: sanatoria "Megobroba" and " Imereti" (PDO Parliamentary Report of 2012 mentioned them), though neither IDPs living in these centres were given preference and part of them was not allocated with the new living space.

Kutaisi – IDP families from the collective centres with extremely poor living conditions: tourist base "Rioni" (10 families) and "Ateka -11" (3 families) have also filled in forms to request a new living space. The majority of IDPs living in these centres belongs to the category of socially vulnerable. Their gravest living conditions have on numerous occasions been reflected in the Parliamentary Reports of the Public Defender of Georgia for the years 2010-2012, and recommendations have been issued for their immediate reallocation. Nevertheless, IDPs living in these collective centres also received low scores and at this point have not received a living space in the newly rehabilitated premises.

SHIDA KARTLI

IDPs from sanatoria "Poladi" in Gori (Public Defender wrote about unbearable living conditions here in his Parliamentary Report of 2012) were provided with the durable housing solution in the premises of the rehabilitated former Khashuri Hospital. It is also remarkable that there is a residential building constructed for IDPs on the territory of the vocational education school in Kareli, which corresponds to the standards established by the Supervisory Board.

Surami damaged sanatorium premises are being closed down and IDP families residing there are being relocated to the newly repaired collective centres in Khashuri. The problem is created by the fact that IDPs were allocated space in Surami collective centres without having rehabilitation works conducted there, which is a violation of the Action Plan. [928]

Despite the fact that order N 320 is a significant step forward in the durable housing process for IDPs, it would be desirable to have a more transparent process of the allocation of the residential property to IDPs, in order to exclude some mistakes or violations. We would have welcomed inclusion of the Public Defender with the observer's status in the work of the Commission on IDP issues set up by the Order N 320. This would have ensured more transparency of the process for durable housing provision to IDPs.

REHABILITATION OF COLLECTIVE CENTRES

Public Defender's Parliamentary Report 2012 referred to poor quality of rehabilitation works. This issue remains for 2013 years as well. Monitoring conducted in the reporting period revealed that IDPs were dissatisfied with the repair works conducted in the premises handed over to them. IDP families were talking about damaged floor, uneven plaster cover on walls, paint peeling off, incorrectly installed taps, etc.

In the premises of the vocational education school of Oktomberi village, **Zugdidi** Region, where 70 IDP families reside, due to poor quality of rehabilitation works, parents have to move their children to their friends' houses because during heavy rain roof leaks nearly in all the rooms. Leaked water dampens the walls causing plaster to fall off. Power cables are not in order. Wall tiles fall off the walls in toilets and showers. There is no sewage well and

928 2012-2014 Action Plan for the implementation of the State Strategy on IDPs (refugees) from the occupied territories of Georgia, Article 2.2.

the water from pipes flows down to the basement which is full of water.

In Zugdidi Region Chkaduashi village, "Pioneer's Camp's" repair works have also been of poor quality. It was rehabilitated in 2010, though due to the poor quality of works roof leaks in IDP rooms.

Poor quality rehabilitation works have been conducted in **Imereti** Region as well. Monitoring in July 2013 revealed that repair works in the newly rehabilitated former hospital premises in **Samtredia** did not meet the standards. There is no gas pipes installed in the building, some of the flats do not have doors leading to other rooms, water supply does not reach second and third floors. During the rain the yard gets flooded and water flows into the ground floor rooms. There is an old hospital building nearby where old medical supplies and tools are left unattended, which might pose threat to the health of the children residing nearby.

Former Hospital Building, Samtredia

In September 2013 the Ministry reallocated IDPs to rehabilitated premises in Tskhaltubo, namely: former hospital buildings – 49 IDP families, and so called "Statistics Building" – 17 families.

The monitoring revealed that the former hospital building for 49 families had been rehabilitated by the Municipal Development Fund with the poor quality of repair works. Namely, flooring is uneven, bathroom from the top floor leaks, electricity cables are installed without observing safety rules, gas pipes are not installed, the yard is not taken care of and the rain water collects in it. In addition, the building is not equipped with sewage system, what will inevitable cause sanitation problems. It is necessary to immediately improve these conditions to avoid health threat to the population. Due to inadequate living conditions several IDP families refused to receive living space in this building.

As to so called "statistics building" for 17 families, it was rehabilitated by USAID with high quality of works. The rooms are equipped with household items: gas cooker, water and room heater, and a dryer. Gas pipes are installed in the building and children's playground is arranged in the yard.

Hence, in Tskhaltubo, neighbouring to each other there are two buildings, of which one has been rehabilitated through poor quality of works, while the other by meeting up to date standards. In both premises IDPs were allocated simultaneously, based on the scoring conducted according to the guidelines, criteria and procedures for the durable housing for IDPs. Such facts cause legitimate dissatisfaction among IDPs.

In Poti and Senaki, like in the rest of the country, rehabilitation of collective centres has been ongoing since 2009. In parallel construction of new residential buildings was also taking place. The new IDP settlement sprung up named "new district". In Poti, except one collective centre, rehabilitation works have been concluded in all residential buildings, though repair works had and still have some shortfalls.

Poti "Profteqnikumi" da "Technikumi" collective centres are worth noting separately. Repair works were of poor quality from the start. Sewage system remains the problem and water flowing form the pipes goes down to the yard and basement. The road leading to the building is not taken care of. Despite the fact that the local municipality

repaired pipes and dug wells, the problems cited above still remain unresolved to present day. Since the quality of repair works was poor, issues could not be resolved by simple repairs to correct the faults. During the rain unpaved road poses threat and creates problems to young children. More so, that they have to walk quite a long distance to reach the transport.

There have been no repair works carried out in several collective centres in Senaki. In addition, the Ministry's position on whether these centres will be subject to repairs or not is not known. Rehabilitated collective centres, like "Khalichebi", military settlement and "Railway Boarding School" have serious problems related to sewage pipes, and the water drains down directly to the basement.

In the collective centre located at 8 Mshvidoba Street in Poti repair works were funded by the German Bank of Reconstruction and Development. Next to the hotel, one four-storey residential building was constructed. Repair works started in 2011 and were due to finish last autumn, though the construction company could not meet the deadlines due to various reasons. Until the end of the construction works IDPs were distributed in various empty and damaged buildings. On 25 October 2013 IDPs were officially handed over the living space. It is significant that both new and rehabilitated premises were equipped with gas heaters, electric water heaters and other household items.

In Gori Region, like in other regions, the situation differs centre by centre. Though conducted rehabilitation works often fail to meet the standards. In this regard, the situation is especially grave in the former premises of blood transfusion centre, where IDP living conditions and size of the space allocated does not correspond the set standards. There is poor sanitation and water supply system is broken down. The similar conditions are in the former Gori policlinics premises, where the living conditions are also grave and require immediate State intervention. Striking examples of poor quality rehabilitation works are "No 1 Sabinao Tresti", "Goris Studbina" and former musical school premises.

In the process of the rehabilitation of IDP residential premises, it is necessary that the Ministry ensures observance of the set rehabilitation standards. The Ministry must carry out oversight over the rehabilitation works and request from the companies a compliance with the terms of the contract. Otherwise, the quality of rehabilitation works will be unsatisfactory.

PRIVATISATION OF THE LIVING SPACE

According to the Action Plan for the implementation of the State policy on IDPs, one of the significant forms of durable housing process of IDPs is the transfer of ownership over the space currently occupied by IDPs in the collective centres.

This process started by Presidential Order N 62 in 2009, and envisages transferring ownership of the living space currently occupied by IDPs for the symbolic price of 1 GEL. It should be noted that privatization process is voluntary and the transfer of ownership is carried out only with the consent of IDP family current residing in the premises. Apart from Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, there are many other agencies involved in privatisation process.

Privatisation process consists of several stages:

- taking decision on handing over the ownership of certain premises to IDPs;
- compiling the list of persons residing in the premises by the Ministry and issuing permission for carrying out measurement works in the building;
- sending the results of the measurement works to the National Agency of State Property Management;
- the latter is responsible for reviewing the respective individual administrative-legal acts issued by the President of Georgia and their further processing in the President's Administration;
- Following Presidential resolution on the handover of certain premises in the ownership of IDPs, privatisation agreement is drafted; once IDPs sign it, Public Registry Agency ensures registration of ownership rights.

Monitoring conducted in 2013 revealed that the process of transfer of ownership over the living space occupied by IDPs to IDP families is proceeding with delays, and creates problems to IDPs living in collective centres. According to 2013 data, there were 1399 collective centres registered in the database of Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

Within the framework of the project implemented in partnership with PDO, monitoring was conducted in numerous collective centres in Tbilisi, part of which is in the process of privatisation or has already been privatised. PDO requested the list of collective centres privatisation/rehabilitation of which was planned for 2013.

Monitoring of privatisation/rehabilitation process conducted in Tbilisi revealed number of problems. As a rule, IDPs agree to the Ministry offer irrespective of the fact whether they are satisfied with the size of the living space or conditions or not. The main reason for this is the lack of awareness regarding alternative residential options.

Another significant issue is unequal distribution of space. The monitoring showed that in some collective centres living space among IDPs is handed over not based on the number of persons living there, but according to the number of rooms actually occupied. In some of the centres, the size of the living space was defined according to the number of persons.

As already noted, one of the most pressing problems is lack of awareness among IDPs. It is precisely due to lack of awareness that the majority of IDPs signed privatisation agreements without even checking on the size of the premises. Regrettably, the majority of IDPs were not provided information from the Ministry on the standards of the residential premises.

Furthermore, the monitoring showed that the majority of collective centres is 'partially privatised'. According to IDP explanation, measurement works of the premises occupied by them had been conducted on numerous counts, though privatisation has not been completed.

The monitoring also revealed the issue of forming homeowners association by IDPs. In compliance with the Article 11 of the Law of Georgia on Homeowners Associations, the partnership is considered founded in the multi-flat premises, which is located on a single piece of land and where there are more than two flats in individual ownership. Despite this fact, the majority of IDPs are unable to form associations, as only some parts of the buildings are privatised, while lack of homeowners association creates serious problems for IDPs, since they could have carried out major construction works on the premises through co-financing arrangements.

In 2013 privatisation process started in the following premises: in **Tbilisi** – 25 km, Kakheti Highway (former Institute of Rock Mechanics), 3, Hero Student's ("Gmir Kursantta") Street (former premises of the Ministry of Internal Affairs); in Kutaisi – 57, Shervashidze Street (former Kindergarten No 30); in Samtredia – 2, Chavchavadze Ave (former "Samtredia" hotel); in Senaki – 5, Gvinjilia Street (former children's sanatorium). In addition, privatisation process continued in up to 50 centres in various regions of Georgia.

Privatisation process has not been completed in none of the centres in **Ajara, Poti and Senaki.** In Ajara only one collective centre has been privatized fully, with the new settlement in Tamari settlement – partially. In the list of centres planned for privatisation in 2013 provided by the Ministry[929], there are 4 more centres in Ajara, though verification on public registry website revealed that owner of these buildings is the State and not IDPs.

Due to un-privatised buildings IDPs are faced with numerous problems. Namely, in **Batumi,** in the collective centre located at 5 Kakhuli Street, sewage system is dysfunctional. The residents have addressed self-governing body of Batumi Municipality and Ajara Health and Social Protection Department for IDPs, though the problem cannot be resolved, as the property is registered under the ownership of the Georgian Ministry of Economy and Sustainable Development. Limited local budget does not allow for the provision of necessary funding; which also does not allow for the repair of Chakvi collective centre, which was damaged (cracks in the walls) as a result of earthquake.

In **Kutaisi** the Ministry privatised only part of the collective centres since 2009. Privatisation process has been delayed since April 2012 due to reasons unknown to IDPs. For example, in Kutaisi former Physics and Mathematics Boarding School and TB Sanatorium premises have been rehabilitated years ago, all the works related to privatisa-

929 Letter of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia №619-op, dated 3 May 2013.

tion process have been conducted: plan of the living space, measurement works and so on., however privatisation of the buildings has not been finalised till present day. The similar was the situation with regards to **Kutaisi** former Kindergarten No 30, which was privatised in August, 2013.

IDPs residing in ***Surami*** sanatorium in **Gori** state that privatisation was conducted speedily, they were signing privatisation agreements without ha ving adequate information on the standards of rehabilitation, size of the living space and other possible alternatives.

Considering all the above, it is necessary for the Ministry to have acceleration of privatisation process as one of its key priorities for the year 2014. At the same time, it is necessary to intensify work for raising IDP awareness so that they receive exhaustive information on the privatisation process.

IDP CENTRES IN THE WORST CONDITION

Public Defender of Georgia spoke about IDP centres in especially grave conditions in his Parliamentary report of 2012. In the majority of them the state of affairs has not changed and IDPs still continue living in the same situation.

Several centres are in especially grave conditions. Among them is a former **"Trikotazhi N3" premises at 3, Ninua St, in Tbilisi**. The roofing is damaged, water supply pipes, sewage system and drainage pipes are dysfunctional. The building is not suitable for living with the walls and ceilings being cracked.

Buildings of **Ltd "Kvari" located at 2, Dadiani Street** and premises at **13, Zhores Street in Tbilisi** are in especially poor conditions. They are practically collapsing. IDPs residing in these buildings are in need of immediate relocation to other living space, though even in this case it is not clear when the allocation of new living space for them is planned to take place.

13, Zhores Street, Tbilisi

Especially grave are the conditions in former tourist base **"Sichabuke" in Tskhvarichamia.** Public Defender of Georgia has conducted number of monitoring visits there and revealed that there is no sewage system in the building. IDPs have no gas and water supply, roofing is damaged and the territory needs to be cleaned from house-

hold waste. Absence of sewage pipes and waste contributes to heavy sanitary conditions, which poses threat to the health of IDPs living in the centre. In addition, there is no secondary education facility in Tskhvarichamia. According to the letter №89091 of 2012 of the Ministry of Education and Science of Georgia, the nearest school is located in 10 km away in the village of Galavani. There is no shop and public transportation in the village.

Former tourist base "Sichabuke", Tskhvarichamia

According to United Nations Guideline Principles on Internal Displacement, apart from adequate housing, IDPs should have access to means of education. Respectively, even if the Ministry rehabilitates the building, long-term reallocation of IDPs in Tskhvarichamia would still be inexpedient.

The situation is extremely grave in the old building of **"Surami" sanatorium in Khashuri**, where IDPs from Abkhazia have been residing. The building is not fit even for rehabilitation. Similarly grave is the situation for IDPs living in the former necrology clinic premises. Their main problem is the absence of toilets and showers and limited living space. There is no partitioning in place and IDPs use corridor as a kitchen area.

IDPs settled in former sanatorium **"Kartli 96"** are also in difficult conditions. The building is extremely damaged and not subject to rehabilitation. Water collects in the basement which damages the building and causes sanitation problems.

There are number of collective centres in **Kutaisi,** where living conditions are practically unbearable requiring immediate rehabilitation. These are former premises of the **tourist base " Rioni", "ATEKA 11"**, **Gumati boarding school, "Ankomi" firm, Kindergarten No1, so called House for the Disabled, Young Tourists' House.**

So called "House for the Disabled", Kutaisi

17 IDPs, mainly elderly, reside on the top 4th and 5th floors of **Multidisciplinary Vocational School in Senaki.** Roof leaks and they use common toilet. These premises were mentioned in the 2012 Report of Public Defender of Georgia, though the situation remains unchanged till the present day.

Difficult living conditions have been recorded in the **part of Senaki Boarding School No3** were IDPs did not agree to rehabilitation due to the disputed distribution of the living space.

Grave is the situation in administrative building of **Zugdidi Region village of Orsantia,** where 10 IDPs reside. Sewage system is dysfunctional causing sanitation problems. Among residents are persons with disabilities, who are unable to move around independently. Plastering is falling off the walls, parquet flooring is damaged. Damaged plaster cover from the ceiling is falling down and poses threat to the health of the inhabitants, among them young children.

Orsantia Municipality Building

Extremely dire are conditions in **Shida Kartli former sanatoriums "Kartli 96" and "Surami".** These building are not subject to rehabilitation and IDPs are still awaiting reallocation.

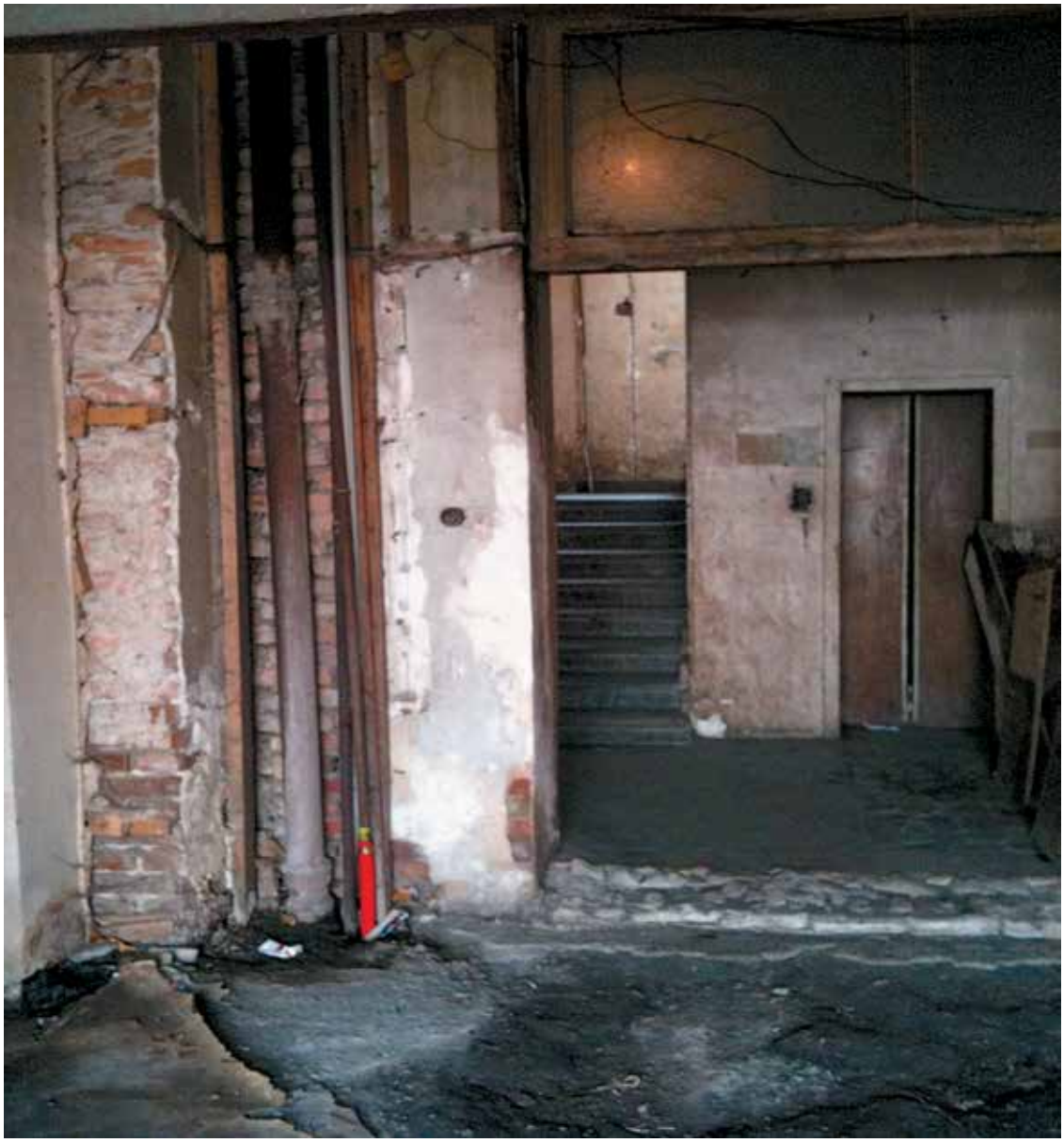
It is necessary that one of the priorities of the Ministry for the year 2014 becomes reallocation of IDPs to other facilities or rehabilitation of the existing ones. Delay in addressing the issue of IDP collective centres which are on the brink of collapse can result in sorrowful outcomes. Health and life of IDPs residing in such premises is under threat on daily basis.

SITUATION IN THE VILLAGES ALONG ABL

On the situation in the villages along ABL Public Defender of Georgia spoke in his report for 2012 as well. It is regrettable that the situation remains nearly unchanged there. Security issue is still highlighted. Detainment of Georgian citizens by Ossetian or Russian border guards is frequent, for the reason of crossing the so called Ossetian administrative border line. Socio-economic conditions of the population in these villages are complex. The majority of the village residents are unemployed. Due to the lack of irrigation water, population finds it difficult to carry out agricultural activities. After August war of 2008 the Ossetian side blocked an irrigation channel which was used by the villages along the ABL. The other major issue is selling the produce. Due to considerable costs local population is unable to transport the produce for sale, while the local factories offer minimal price.

In 2013 so called barbed wire installation process, as a result of which several villages were cut off from agricultural land and gardens, while several houses were left on the other side of the ABL.

Within the framework of the project ongoing with the Office of the Public Defender of Georgia, monitoring of the villages along ABL continued in 2013. Monitoring was conducted in the villages of **Ditsi, Kordi, Mereti, Gugutiaantkari, Kvemo Nikozi, Zemo Nikozi, Patara Mejvriskhevi, Jariasheni, Dvani and Kurvaleti.** In the majority of these villages the problem is the absence of irrigation channels, as well as no access to gas supply.



Former sanatorium "Kartli 96", Shida Kartli

In some villages the central gas pipes are installed, while the households are unable to cover the costs of individual pipes. Poor quality roads and issue of selling the agricultural produce are also among major problems faced by the locals.

Ditsi – there was an irrigation channel installed in 2012, however it does not cover the entire village, and hence, part of the village population is left without irrigation water. Central gas pipe is installed but the population cannot afford to install individual pipes.

Kordi – power supply system is old and damaged, the population was forced to cut fruit trees and destroy fruit gardens entirely due to no access to irrigation water. In 2013 hail damaged the local produce, though no State subsidies were allocated. There is no access to gas and water.

Mereti – there are problems with both irrigation water, as well as heating in winter. In the absence of access to natural gas, the population cannot even gather wood due to the proximity to the ABL. There is no hospital or ambulatory facility in the village.

Gugutiantkari – there is no hospital or ambulatory centre in the village. Power distribution system is old posing threat to one of the village resident's house, though despite numerous requests from the local population, dismantling of the high voltage cable pole is not carried out neither from the local self-governance nor the energy companies. The road leading to the village is in poor condition. There is a problem of potable water supply in the village, for which the works on digging the borehole have started.

Kvemo Nikozi and Zemo Nikozi – there is no problem of irrigation water in Kvemo Nikozi, since irrigation channels have been constructed, however due to poor economic conditions, the families cannot afford to pay the cost of installing individual gas pipes leading to homes and installation of individual meters. For Zemo Nikozi the major problem is access to irrigation water. Although irrigation channels have been constructed, it does not cover the entire village.

Jariasheni – according to locals, due to barbed wire installations, approximately 30 families were deprived of agricultural land, which is the main problem for the village. The road leading to the village is in poor condition, and power cable poles need to be replaced. Like other villages, there is a problem of access to irrigation water and installation of individual gas pipes.

Dvani – during the monitoring visit[930] conducted by the PDO project, gas pipes were installed in the village, which is remarkable, but the problems in this village are the same as those in the other villages along the ABL. According to the local population, barbed wire installations have moved the ABL inwards by 300 metres. They also state that vulnerability status was lifted from the majority of the families living in the village. There is no irrigation water supply system as well.

The monitoring revealed that there are several key problems which should be addressed within shortest period of time. These are: irrigation water supply, installation of individual gas pipes and selling of agricultural produce.

The majority of the population in the villages along the ABL face the problem of selling local produce. This problem especially exasperated after the armed conflict of August 2008, since the population is unable to transport fruits to the so called "South Ossetian" territory. For the majority of the villages the main source of income comes from selling fruits they produce. In some of the villages the population cuts fruit gardens and use trees for heating in winter season. It is necessary for the State to pay urgent attention to this problem and implement various socio-economic programmes. The villages along the ABL require State support the most, so that the villages are not deserted, which would be detrimental not only to the local population, but also to the State interests.

It is remarkable that by the Decision №257 of 4 October 2013 of the Government of Georgia a Temporary State Commission was set up to respond to the needs of the population residing in the villages along the ABL. The Commission is comprised of the representatives of the state agencies represented in the Government of Georgia. The Chairman of the Commission is the Minister of Regional Development and Infrastructure of Georgia.

The functions of the Commission include the assessment of the affected population of the villages along the ABL, and drafting respective conclusions, preparation of proposals for supporting the local population in these villages and submission to the Government of Georgia, coordination of programmes and projects to support the local affected population, coordination of interagency activities in support of the village residents along the ABL.

The representatives of the Public Defender of Georgia met with the Secretary of the Commission and learned that 11 440 village residents in 50 villages along the ABL were issued one time assistance in the amount of GEL 200 for so called "winter" season to purchase wood for heating purposes. Furthermore, by the decision of the Commission, 236 students from the villages along the ABL received full funding to cover the costs of 2013-2014 academic years for bachelor's and magistrates courses. Potable water wells were constructed in the villages of Koshki, Gegutiaantkari, Khurvaleti and Didi Khurvaleti. Rehabilitation of Saltvisi and Tiriponi village irrigation systems was carried out in 2013.

According to the Secretary of the Commission, in 2014 it is planned to finalize the process of installation of gas pipes in the village along the ABL. In addition, by the decision of the Commission, the cost of installing individual pipes will be covered by the State as well. In 2014 it is also planned to install 6 water pumps to solve the problems related to irrigation water supply. [931]

930 in December 2013.

931 Meeting at the Ministry of Regional Development and Infrastructure, 17 February, 2014.

Public Defender of Georgia is going to pay special attention to the human rights of the population of the villages along the ABL. With this purpose in Public Defender's office a chief advisor's post was created with the mandate of working on the issues of human rights in conflict regions. One of the key directions of our work in 2014 will be analysis and monitoring of human rights situation in the villages along the ABL.

CONCLUSIONS

As already noted, 2013 was filled with novelties in the field of IDP human rights in Georgia. New edition of the Law of Georgia on Internal Displaced Persons from the Occupied Territories of Georgia and The order №320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia of 2013, which refers to the Rules and Criteria for the Provision of IDPs with the Living Space, as well as Approval of the Charter of the Commission on IDP issues, will play a vital role in the protection of IDP rights in Georgia.

Despite the novelties, challenges remain in terms of the provision of durable housing solutions to IDPs, socio-economic issues, level of IDP awareness and others discussed in this report. In his report of 2012 Public Defender of Georgia noted that addressing these problems requires considerable financial resources and their appropriate utilisation. Hence, one of the State priorities should be protection of IDP human rights. It is necessary that the State provides necessary allocations and carries out various measures to address the problems faced by IDPs.

Considering the above-stated:

Public Defender of Georgia addresses the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia with the recommendation to

- **carry out additional study into the issues of IDPs who gave up their IDP status based on the interviews conducted with them by external persons at the site of the registration;**
- **treat as a priority reallocation of the IDPs from the centres which are not subject to rehabilitation due to high degree of damage, and poses threat to health and lives of their inhabitants;**
- **define legal status of the rehabilitated residential premises and ensure provision of IDPs with the documentation certifying their ownership of the property;**
- **carry out widespread information campaign so that IDPs are fully informed regarding privatisation process;**
- **with the aim of increased transparency of the durable housing process to involve Public Defender of Georgia in the work of the Commission on IDP issues set up based on the Order 320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.**

Public Defender of Georgia addresses with the recommendation Government of Georgia and local self-governance bodies to

- **repair internal roads connecting the village along the ABL;**
- **start and, in some cases, speed up the construction of irrigation channels in these villages;**
- **provide State support to the population of these villages in selling local produce;**
- **allocate necessary resources from the State budget for installing individual electricity meters in these villages.**

THE STATE OF PROTECTION OF THE RIGHTS OF FORCIBLY MOVED VICTIMS OF NATURAL CALAMITIES (ECO-MIGRANTS)

Numerous reports of the Public Defender of Georgia were dedicated to the problems of victims of natural calamities, who were forcibly moved from their homes or places of habitual residence (eco-migrants).[932] Furthermore, a special report of the Public Defender was drafted and published in 2013.[933]

It is a progressive development that, in January 2014, the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia started to work on the draft Law of Georgia on the Persons Forcibly Displaced due to Natural and Technological Events. We hope that with the involvement of the Public Defender, and local and international organisations, comprehensive legislative regulations will be drafted.[934]

However, the situation of eco-migrants has not considerably improved in the past few years, which is confirmed by the applications of eco-migrants filed with the Public Defender's Office. Due to this fact, it is important to point out the issues of forcibly moved victims of natural calamities. The problems of eco-migrants who fled Ajara region and resettled in Tsalka Municipality are particularly alarming.[935]

It is concluded from the study into the problems of eco-migrants that their human rights are violated numerously and systematically. Despite more than one recommendation issued by the Public Defender, there is still no legislation governing the rights of the victims of natural calamities; there are no guiding principles in place or prescriptive procedural rules that would confine the process in the field within the legal frames.

According to the data of LEPL Environment Protection Agency of the Ministry of Environment and Natural Resources Protection, Georgia is characterised by high indicators of natural calamities. In the last few years, the scales of natural disasters considerably increased and became more frequent. This, in turn, logically results in higher number of victims of natural calamities. Therefore, it is important that timely and adequate measures are taken.

932 Report of the Public Defender of Georgia on the state of protection of human rights and freedoms, 2010 p. 450; Report of the Public Defender of Georgia on the state of protection of human rights and freedoms, 2011, p.213; and Report of the Public Defender of Georgia on the state of protection of human rights and freedoms, 2012, p. 660.

933 Special Report of the Public Defender of Georgia on the sate of protection of the rights of the forcibly moved victims of natural calamities (eco-migrants), 2013.

934 With the view of drafting a package of amendments, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia set up a commission. A representative of the Public Defender of Georgia is the member of the Commission on Approving Procedure for Setting up and Activity of the Working Group for Elaboration of Legislation Governing the Management of Eco-Migration Processes caused by National Calamities in Georgia". This Commission was created on 6 June 2013, based on Order no. 123 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia.

935 The forcibly moved victims of natural calamities residing in Tsalka Municipalities held a demonstration on 13 May 2013 at the administrative building of the Government of the Autonomous Republic of Ajara. Later such demonstrations became permanent.

THE LEGISLATION ON ECO-MIGRANTS

The international and national acts on eco-migrants are discussed in detail in the Report of the Public Defender of Georgia of 2010.[936] Therefore, the present chapter only highlights those provisions, which should be provided for by the Georgian legislation, in the first place. First and foremost, the eligibility criteria for the status of an eco-migrant should be addressed.

The International Organisation for Migration proposes the following definition for environmental migrants:

> "Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad."

Under the Guiding Principles on Internal Displacement of the United Nations,

> "For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border."[937]

Stemming from the above, it is obvious that the definition of an eco-migrant implies that the national legislation should incorporate those persons, or group of persons, that were forced due to natural or human-made calamities, the sudden or increasing changes affecting their lives or living conditions to flee or had to chose to leave their permanent pace of residence either permanently or temporarily and have not crossed the internationally recognised state borders. To date, the legislation still does not separate and expressly define the obligations and competences of central and local agencies.

To date there has only been one important document in the legislation of Georgia referring to the state's positive obligations regarding the protection of the forcibly moved victims of natural calamities. This is Resolution no. 34 of the Government of Georgia, dated 22 February 2008, on Approving the Statute of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia. This document provides for the social and legal obligation of protection of people forcibly displaced due to natural calamities, the control of their migration and their resettlement by the executive authorities. Under Article 2.b of the Resolution, the functions of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, considering the political, socio-economic and demographic situation, are as follows: to regulate the migration of IDPs, asylum seekers, those having a refugee or a humanitarian status, repatriations caused by emergency, (natural calamities, epidemics, etc.), to manage their temporary or permanent resettlement; and to create the conditions for their adaptation, integration, and social protection.

Article 7.m) of the Resolution specifies the list of activities to be carried out for the protection of eco-migrants. Under the said provisions, the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia has the following obligations:

> "Forecasting possible migration from calamity prone regions; implementing the programmes for the resettlement of eco-migrants; managing eco-migrants' resettlement; elaboration of programmes for adaptation and integration of eco-migrants at new residences; facilitation of implementation of these programmes; and the creation of eco-migrants' database."

Under Article 42.4.f) of the Law of Georgia on Local Self-Government, a Rtsmunebuli is obligated to periodically submit, in accordance with the rule approved by law, the information concerning the number of eco-migrants settled in the administrative unit and about providing them with living conditions to the Gamgebeli. The law, however, does not specify the objective of this information. Neither does it provide for a particular competence of the territorial body regarding the measures to be taken after the receipt of this information.

In 2007, the Law of Georgia on Protecting Population and Territory from Natural and Technology Generated

936 Report of the Public Defender of Georgia on the state of protection of human rights and freedoms, 2010, p. 450.

937 United Nations, Guiding Principles on Internal Displacement, preamble, para. 2.

Emergencies was adopted. This act governs general organisational and legal procedures for the protection of the citizens of Georgia, aliens, and stateless persons, legal entities, and also the objects of industrial and social purposes within the land (underground), aerial and water boundaries of Georgia as well as the environment from natural and technology generated emergencies. It also regulates the legal relations among the national authorities, local self-government bodies of the regional authorities of the autonomous republics of Abkhazia and Ajara, and individuals and legal entities during the solution of the challenges concerning the protection of population and territories from emergencies.[938]

The Law of Georgia on Protecting Population and Territory from Natural and Technology-Generated Emergencies[939] provides for the tasks of the unified system of preventing emergencies and eliminating the emergency ramifications. The stipulation of one of the tasks is limited to the reference to the obligation of state authorities in implementing humanitarian and social activities for the assistance of the victims of emergencies; the Law does not contain a detailed list of these activities and the respective obligations of the state authorities in terms of humanitarian and social assistance.

Another significant lacuna in the legislation is related to the absence of a legal format and procedure for the transfer of residential houses to the victims of natural calamities.

As mentioned above, under the statute of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia,[940] one of the obligations of the ministry is to implement the resettlement programmes for eco-migrants and resettle eco-migrants. The ministry is authorised to purchase residential houses and to transfer them for the use of the persons internally displaced due to natural calamities.

To date, there is no normative act determining the procedure for the distribution of residential houses and the criteria thereof.[941] The legislation also does not provide for the legal procedure for transferring the residential houses to the eco-migrants. This causes considerable practical problems. E.g., there has been a problem for the eco-migrants resettled in Tsalka Municipality. The eco-migrants forcibly displaced from the Ajara regions are mainly settled in the residential houses owned by the Georgian citizens of Greek ethnicity in Tsalka Municipality. The state had purchased only 571 houses from these citizens. None of these properties are registered in the name of the eco-migrants. Due to the fact that in recent times more and more citizens of Greek ethnicity are returning to Georgia, the eco-migrants resettled in their houses lose accommodation.[942]

Moreover, there have been cases, where houses the transferred to the eco-migrants were not fit for living.[943]

The obligation to provide with adequate housing is stipulated in Article 11 of the International Covenant on Economic, Social and Cultural Rights.[944] According to the report of the UN Committee on Economic Social and Cultural Rights,[945] "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity." Adequate housing must be habitable in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.

Despite this obligation of the state, when the Public Defender issued a recommendation for the notice of the Gamgeoba of Lagodekhi Municipality and requested adequate accommodation for eco-migrant Genadi Kh., there has been no follow-up to this recommendation.[946]

938 Law of Georgia on Protecting Population and Territory from Natural and Technology Generated Emergencies, Article 2.

939 Ibid., Article 6.1.i).

940 Resolution no. 34 of the Government of Georgia, dated 28 February 2008, on Approving the Statute of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia.

941 Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2011 p. 219.

942 Regarding other practical legal problems, see the Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2010, pp 454-458; the report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2011, pp. 216-217.

943 Case no. 1362/1.

944 Ratified by Resolution no. 400 of the Parliament, dated 25 January 1994.

945 General Comment no. 4 of the UN Committee on Economic, Social and Cultural Rights 4 (sixth session, 1991, UN doc. E/1992/23), pp.114-120.

946 Recommendation no. 04-09/1896 of the Public Defender of Georgia, dated 16 October 2013.

THE PROGRAMMES OF ADAPTATION AND INTEGRATION

The Public Defender of Georgia pointed out numerous times the problems of adaptation and integration of the eco-migrants.[947] It is our intention to address this issue one more time since there were no positive activities carried out in 2013.

This problem was particularly acute in 2013[948] for the persons resettled in Tetritskaro Municipality. It was revealed by the representatives of the Public Defender of Georgia on the spot that there are eco-migrants' resettlements in the village of Alekseevka of Tetritskaro Municipality. The only source of income for the eco-migrants population is livestock. There are plots of lands adjacent to the village of Alekseevka, which are used by them for cutting grass and grazing. In the past few years and especially in 2013, the population was not allowed to use the plots of land concerned, since this territory belongs to the Apostolic Autocephalous Orthodox Church of Georgia. This issue of ownership has been checked and confirmed by the Office of the Public Defender of Georgia.[949] With the view of finding a solution for this problem, the Public Defender of Georgia issued a recommendation for the notice of the Government of Georgia.[950] However, there was no follow-up to the recommendation. This once again proved that the absence of express delimitation of obligations and competences between state agencies is bound to give rise to problems.[951]

The analysis of the existing challenges indicate that the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, due to the absence of the funds necessary for the solution of the problem, is unable to adequately elaborate further programmes for the accommodation of eco-migrants. The provision determining the competence of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia[952], which says, "... elaboration of the programmes for the facilitation of their adaptation and integration at the new places of residence…," is of general nature and lacks the necessary regulations for the realisation of this right. The cases studied by the Office of the Public Defender of Georgia indicate that after the resettlement of eco-migrants, they are assisted by local self-government bodies within their resources and competences.

FINANCIAL PROVISION

It is evident that without the necessary budgetary funds, it is impossible to resolve the problem of eco-migrants. According to the data released by the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, only meagre funding has been allocated in this direction since 2009.[953] Such an approach renders it impossible to effectively plan policies and to implement adequate activities.

According to the Ministry of Finance,[954] under the draft state budget of 2014, the budgetary assignment of the

947 Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2010, p. 457; Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2011, p. 220; and the Special Report of the Public Defender of Georgia on the state of the rights of the victims of natural calamities/eco-migrants, 2013, pp. 28-31.

948 In this context, see Report of the Public Defender on the state of protection of human rights and fundamental freedoms, 2011, p. 221.

949 LEPL National Agency of Public Registry under the Ministry of Justice of Georgia, letter no.№147401 of 19 August 2013.

950 Recommendation no.№04-11/1522 of the Public Defender of Georgia, dated 26 September 2013.

951 The Government of Georgia forwarded Recommendation no. 04-11/1522 of the Public Defender of Georgia, dated 26 September 2013, to the Ministry of Economy and Sustainable Development of Georgia and to the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia for follow-up by letter no. 32279, dated 10 October 2013. The Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia motioned (by letter no. 04/02-09/49818, dated 11 November 2013) with the Gamgeoba of Tetritskaro Municipality to consider the requests of eco-migrants resettled in the village of Alekseevka. In the same letter the Ministry expressed its readiness to be actively involved in the solution of the problem within its competence. In their letter no. 91/12, dated 9 January 2014, the Gamgeoba of Tetritskaro Municipality advised the Public Defender of Georgia to address the Ministry of Economy and Sustainable Development of Georgia for the solution of the problem at stake since this Ministry managed and disposed of the state land.

952 Resolution no. 34 of the Government of Georgia, dated 22 February 2008, Article 7.3.m).

953 Report of the Public Defender of Georgia on the state of protection of human rights and freedoms in Georgia, 2011, p. 218 and the Special Report of the Public Defender of Georgia on the state of the rights of the victims of natural calamities/eco-migrants, 2013, pp. 23-25.

954 Ministry of Finance of Georgia, letter no. 08-02/84189, dated 31 October 2013.

Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia within the programme of management of eco-migrants' migration amounts to one million Georgian Lari.

According to the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia,[955] within the budgetary assignment of 2013, it is planned to purchase up to 35 residential houses for the long-term accommodation of victims of natural calamities. Moreover, it is planned, starting from 2014, to continue purchasing residential houses in less calamity prone municipalities for eco-migrants with the funds in budgetary assignments and funding allocated based on the agreement concluded with SIDA.

Under these conditions, where, according to the official data,[956] 35,204 families are registered, the 1,062 houses purchased in 2004-2010,[957] including 35 residential houses in the reporting period, by the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia are not enough for resolving the problem.

It is also noteworthy that there is no funding allocated for the implementation of the programmes for the resettlement and local integration of eco-migrants. Moreover, the funding should be assigned both for prevention of calamities and elimination of their effects.

PREVENTION

It was mentioned above that under the Statute of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, the ministry is obliged to forecast and prevent possible migration from calamity prone regions. The Ministry is not the only body to be in charge of these issues.

LEPL Agency of Environment Protection was created on 29 August 2008, under the Ministry of Protection of Environment of Georgia. It monitors geological processes. Though the agency is independent from the state, it carries out its activities under the state control.

Under the statute of the agency,[958] one of its significant functions is to conduct annual geological monitoring of natural geological processes at various levels; in case of extreme activation of these processes, the agency promptly evaluates the situation and plans mitigating activities. The agency also determines the necessity of displacing the population from hydrologically, meteorologically and geologically active zones, and establishes and evaluates the scope of resettlement of eco-migrants.

One of the purposes of the Law of Georgia on Protecting Population and Territory from Natural and Technology Generated Emergencies is the prevention and containment of emergency situations. Under the law, "preventive measures shall be carried out for preventing emergency situations and reducing the potential damages as much as possible."[959] However, the Law fails to provide for the detailed list of the activities and to determine the relevant obligations of the state authorities.

One more document referring to the protection of environment is the State Strategy on Regional Development of Georgia in 2010-2017.[960] Article 5.3 of this document reads as follows:

"1. It shall be necessary to introduce the systems of monitoring and early notifications, to elaborate action plans in case of emergency situations caused by natural calamities, and to plan and implement the relevant preventive activities in the risk zones; and

2. It shall be necessary to evaluate and consider the risks caused by extreme natural events (drought, hailstorms, high speed winds, etc.) and by natural calamities (floods, landslides, mudslides, etc.); to evaluate their effect on the

955 Letter no.№04/02-09/53457 of the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia, dated 12 December 2013.

956 See the Special Report of the Public Defender of Georgia on the sate of protection of the rights of the natural calamities victims and IDPs/eco-migrants, 2013, p. 6.

957 Ibid., p. 23.

958 Order no. 7 of the Minister of Protection of Environment, dated 13 April 2011, on Approving the Statute of LEPL National Agency of Environment.

959 The Law of Georgia on Protecting Population and Territory from Natural and Technology-Generated Emergencies, Article 5.1.

960 Resolution no. 172 of the Government of Georgia, dated 25 June 2010.

economy and on the social life of the respective regions, and to take this information into account when elaborating sustainable development strategies and action plans for the regions."

Recommendations:

- **to lay down the statutory definition of an eco-migrant and the group of persons eligible for this status;**
- **to elaborate and determine a statutory strategy and procedures for the adaptation, integration and resettlement of eco-migrants for the purpose of protection of the rights of the victims of natural calamities ;**
- **to provide statutory criteria for the evaluation of the damage to the residential houses and of the financial allowances to be provided to the respective families; as well as criteria to be met by the accommodations offered to eco-migrants;**
- **to provide for statutory procedures and guidelines for the resettlement of the victims of natural calamities (allocation of accommodation, legal procedures for handing over residential premises to eco-migrants, etc.);**
- **to provide for the statutory obligation of the state to bear the necessary expenses for the resettlement of eco-migrants and to allocate appropriate funds for the implementation of this obligation;**
- **to be ensure the formation of a digital database of the forcibly moved victims of natural calamities from occupied territories by the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia;**
- **to provide for statutory obligation for particular activities such as forecasting and preventing possible natural calamities;**
- **to be ensure the elaboration of the appropriate financial policies, calculation of the expenditure and progressive allocation of funds in the budget for forecasting and preventing possible natural calamities, by the Government of Georgia;**
- **to promptly take measures for accommodating the victims of natural calamities and IDPs (eco-migrants) living in Tsalka Municipality and for solving their other problems; and**
- **to take prompt measures for legalising the use of land by the victims of natural calamities and IDPs from occupied territories living in Tetritskaro municipality, the village of Alekseevka, and/or to find alternative means for the solution of this problem.**

ABOUT REPATRIATION OF PERSONS FORCIBLY REMOVED FROM THE SSR OF GEORGIA IN THE 1940S BY THE FORMER SOVIET UNION

Upon joining the Council of Europe in 1999, Georgia undertook the obligation to repatriate the population deported from their homeland in southwest Georgia. Before taking up this obligation, the repatriation issue had been topical for years both in Georgia and among the various groups of deported population. This issue has been capturing public attention and has often been subjected to robust discussions.

Even during the Soviet regime, the state facilitated the return of tens of families to Georgia. To date, 557 Meskhetian families live in Georgia. They are concentrated in the village of Ianeti in Imereti region (168 individuals – 30 families), and in the village of Nasakirali in Guria region (139 individuals – 28 families). At the same time, tens of families have returned to Georgia with their own funds and resettled in Tbilisi (approximately 100 Meskhetians) and other cities.[961]

The repatriation process was renewed a few years ago. To date, approximately 150 families are resettled in Samtskhe-Javakheti, mostly in Akhaltsikhe and Abastumani. These families are mostly from Azerbaijan.

The issues of repatriation, integration and protection of repatriated population's rights are topical in Georgia.

With the purpose of establishing standards for restoring historical justice, dignified and voluntary repatriation, and legal regulation of the repatriation process, the Parliament of Georgia, in 2007, adopted the Law on Repatriation of Persons Forcibly Removed from the SSR of Georgia in the 1940s by the Former Soviet Union.

The Law defined the category of persons eligible for repatriation, the list of documents to be submitted by those willing to repatriate, and the procedure and terms for the examination of applications of those willing to repatriate. Later, the Government of Georgia adopted several legal acts for the facilitation and regulation of the repatriation process.[962]These acts mostly determine the status of repatriation and technical details for the simplified procedure of naturalisation.

Based on the legislation in force, Georgia started receiving applications from those willing to repatriate. According to the official data, 5, 841 applications were received for the repatriation of 9, 350 individuals from eight countries. Most of the applications (5, 389) are received from Azerbaijan. The status of repatriated was granted to 1, 254 individuals.

Despite the existence of the relevant legislation and the fact that the state is aware of the necessity of repatriation, there are certain difficulties in various spheres, which necessitate a complex approach. Considering the scales, the needs and the resources of repatriation for Georgia, it is important to have a state action plan in place which would set out measures aimed at the facilitation of both repatriation and subsequent integration.

961 There is no accurate statistical data about the total number of repatriated Meskhetians in Georgia.

962 Resolution no.276 of the Government of Georgia, dated 17 December 2007, on Additional Criteria for Eligibility for a Status of Repatriated; Resolution no. 299 of the Government of Georgia, dated 28 December 2007, on Approval of the Forms of Income and Financial State for the Seekers of the Status of Repatriated; Resolution no. 87 of the Government of Georgia, dated 30 March 2010, on Simplified Procedure for the Nationalisation of those having the Status of Repatriated.

EDUCATION AND LEARNING THE STATE LANGUAGE

Those who have repatriated and those who are willing to repatriate, especially those living abroad, do not have the command of the Georgian language. This is an obstacle to their further integration and full participation in the society. Therefore, it is important that attention is paid to the learning of Georgian by the repatriated and those willing to repatriate. In this regard, relevant programmes can be used by the Ministry of Education and Science of Georgia in those places that are densely populated by the repatriated.

Due attention should be afforded to the realisation of the right to education within the secondary education system. Considering the fact that most of the repatriated do not have the command of Georgian, professional and higher education will be less accessible for the repatriated population. Therefore, it is desirable to implement relevant programmes to facilitate professional and higher education for the repatriated population.

INCLUSION OF THE REPATRIATED IN STATE PROGRAMMES

Information about state services should be available for the repatriated. This concerns the programmes in health care, social security, education, insurance, agriculture, economy and other spheres. To this end, it is necessary to improve coordination between government agencies to ensure effective involvement of the repatriated in the state-run programmes. It is important to establish an effective system of informing the repatriated population about these services and the possibilities of enrolment in the projects.

Majority of the repatriated population traditionally are engaged in agriculture. It is therefore important to create appropriate conditions for them in this sphere. It could be manifested in imparting accurate information about agricultural resources in various regions and about particular target programmes.

It is noteworthy in this context that some of the repatriated population do not have Georgian citizenship. For this reason, they are unable to benefit from the privilege sand rights on par with the Georgian citizens. This prevents them from becoming full members of the society and effectively realise their rights under international and national law.

ERADICATION OF NEGATIVE PERCEPTIONS AND STEREOTYPES

There have been negative perceptions and stereotypes prevailing about the population deported from southwest Georgia in the '40s of the last century. In the opinion of some, repatriation would entail escalation of tensions between ethnicities in the Samtskhe-Javakheti region. Such fears and lack of trust are in the way of successful repatriation. There are no programmes so far in Georgia that would impart objective information to either the repatriated and those awaiting repatriation or the local population about each other's culture, tradition, lifestyle and other particularities.

It is important that there are special programmes planned for both the repatriated and local population in order to introduce tolerant attitudes and raise awareness so that negative perceptions do not affect repatriation and integration.

Recommendations:

To the Government of Georgia

- **with the view of facilitating the repatriation of the population forcibly deported in the '40s of the 20th century, to elaborate and approve special state programme/action plan that would describe special measures in various fields aimed at both repatriation and subsequent integration.**

To the Ministry of Education and Science of Georgia

- **to introduce Georgian learning programmes for the repatriated and those willing to repatriate to Georgia;**

- **to implement programmes targeted at the repatriated population to increase accessibility to professional and higher education.**

To the Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia

- **to set up an information system in various fields (health care, social security, education, insurance, agriculture, economic projects, etc.) for the repatriated population.**
- **to create a database containing information about the repatriated (including both the citizens and non-citizens), the socio-economic state of their families, education, professional experience, knowledge of the state language, etc. This will facilitate the formulation of relevant policies and planning effective measures for support.**
- **to eradicate negative stereotypes, set up special educational and informational programme that will enhance tolerance between the repatriated, those awaiting repatriate , and the local population. The target groups should be given objective information about each others' culture, tradition, lifestyle and other particularities.**

To the Ministry of Justice of Georgia

- **to speed up the process of naturalisation of those having the status of repatriated.**

THE STATE OF PROTECTION OF RIGHTS OF PERSONS HAVING A REFUGEE/HUMANITARIAN STATUS AND ASYLUM SEEKERS

To date, there are 284 persons having a refugee status and 34 persons having a humanitarian status in Georgia. Most of these persons, i.e., 249 refugees who fled from Russia in 1999-2001, have been residing in Pankisi Gorge.[963]

Similar to the previous years, the number of asylum seekers applying to the Office of the Public Defender of Georgia was not high in 2013. However, the Public Defender is aware of the problems existing in the field of protection of the rights of asylum seekers, persons having refugee or humanitarian status.

It is evident from the reports of international organisations that there are many problems in this area and their solution necessitates immediate and efficient involvement of the authorities. One such problem is the low rate of granting refugee and humanitarian status.[964] There are also problems regarding suspension of status, and naturalisation of refugees.

LEGISLATION

The Report of the Public Defender of Georgia of 2011 discussed the Law of Georgia on Refugee and Humanitarian Status, which came into force on 18 March 2012. Though the adoption of the law is a progressive step, it has certain shortcomings that were pointed out by the Public Defender of Georgia in the Report of 2011 and they have not been addressed yet.[965]

In particular, the preliminary study into the application of an asylum seeker takes up to ten days in accordance with the Law of Georgia on Refugee and Humanitarian Status. During this period, the application for asylum can be rejected. Due to the fact that the procedure for the establishment of refugee status necessitates study and analysis of many complex aspects by the state, the said ten-day term cannot be considered to be reasonable for the thorough study of factual and legal circumstances. Such stipulation of a term makes room for arbitrariness on the part of the state with regard to those seeking either refugee or humanitarian status. One of the recommendations of the Public Defender of Georgia was to remove the ten-day term from the law, which has not been followed so far.[966]

Furthermore, the recommendation of the Public Defender to specify the 24-hour term provided for by Article 11.2 of the Law of Georgia on Refugee and Humanitarian Status was not followed. Under this provision, in the case of illegal crossing of the Georgian border, a person is responsible to report within 24 hours to the very first state agency that they encounter. This wording may raise considerable problems in practice since a person crossing the Georgian border illegally with the view of seeking asylum may not know about this provision. Moreover, the procedure for granting refugee status is rather lengthy and may take six to nine months. If a person is granted the status after the expiry of this period, he/she will be required to live in Georgia for another five years in order to

963 "To become a Part of the Society: local integration of refugees in Pankisi", UNHCR, Georgia, 2013.

964 "Human Rights Report – Georgia", US Department of State, 2013.

965 Report on the State of Protection of Human Rights and Freedoms in Georgia, Public Defender of Georgia, 2011, p. 207.

966 Ibid. p. 206.

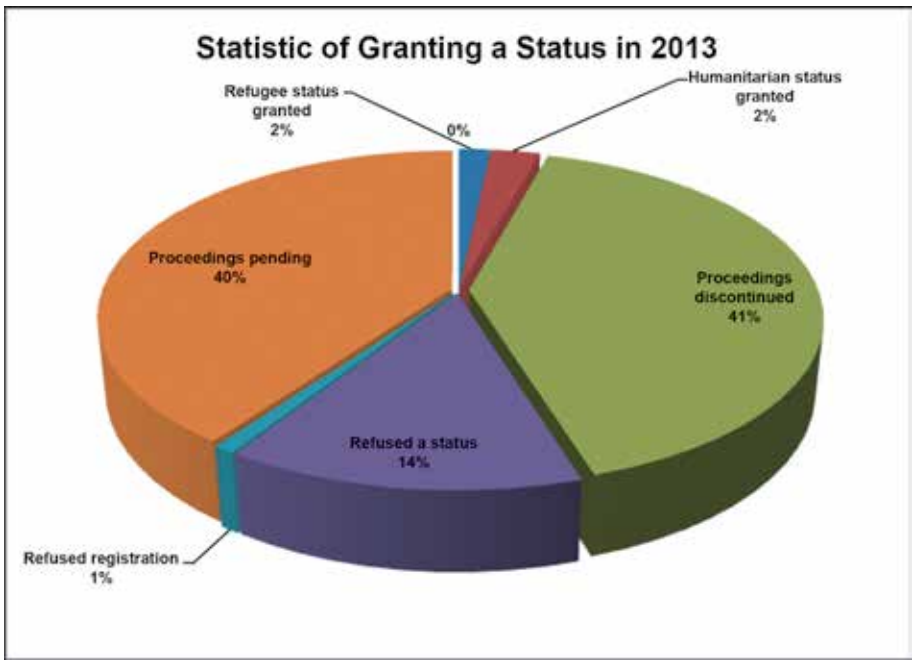
be eligible for Georgian citizenship. The entire period of granting the status and the obligatory term of residence exceed five years, which is not in compliance with the best practice standard. Under the best practice standard, the naturalisation period should not exceed five years.

Furthermore, in case either humanitarian or refugee status is granted, that person is only given temporary residence permit. Under the Georgian legislation, one of the preconditions for granting Georgian citizenship is continued residence for five years in the territory of Georgia.[967]

Under the Administrative Procedure Code of Georgia, a person may appeal in a court within a month after the adoption of an administrative act.[968] However, under the same Code, an asylum seeker, a person having either refugee or humanitarian status, is only afforded ten days to appeal the refusal. Introduction of a lower standard with regard to asylum seekers constitutes a discriminatory approach. Moreover, given the presumption that asylum seekers do not have the command of the Georgian language, it will be rather difficult for them to appeal the refusal within such a short period. This may amount to the violation of their rights.

STATISTICS ON SEEKING ASYLUM IN 2013

In 2013, 717 aliens applied to Georgia seeking an asylum, out of which only 12 were given refugee status and 19 were given humanitarian status. Out of the 717 applications, 293 were struck out (proceedings discontinued) and 100 were denied either refugee or humanitarian status. 6 applicants were denied registration and 287 applications are pending.[969]



As the statistics show, despite the number of applications, the number of those granted refugee/humanitarian status is very low. Moreover, according to our information, most of the applications come from the countries classified as conflict areas and/or suffer from mass violations of human rights. Most of the applicants are from Iraq, Iran and Syria. From Iraq alone there have been 478 applications and there have been 60 applications from Syria.[970]

According to the UNHCR Report of 2013, the indicator for granting a status to asylum seekers from Syria, Iraq,

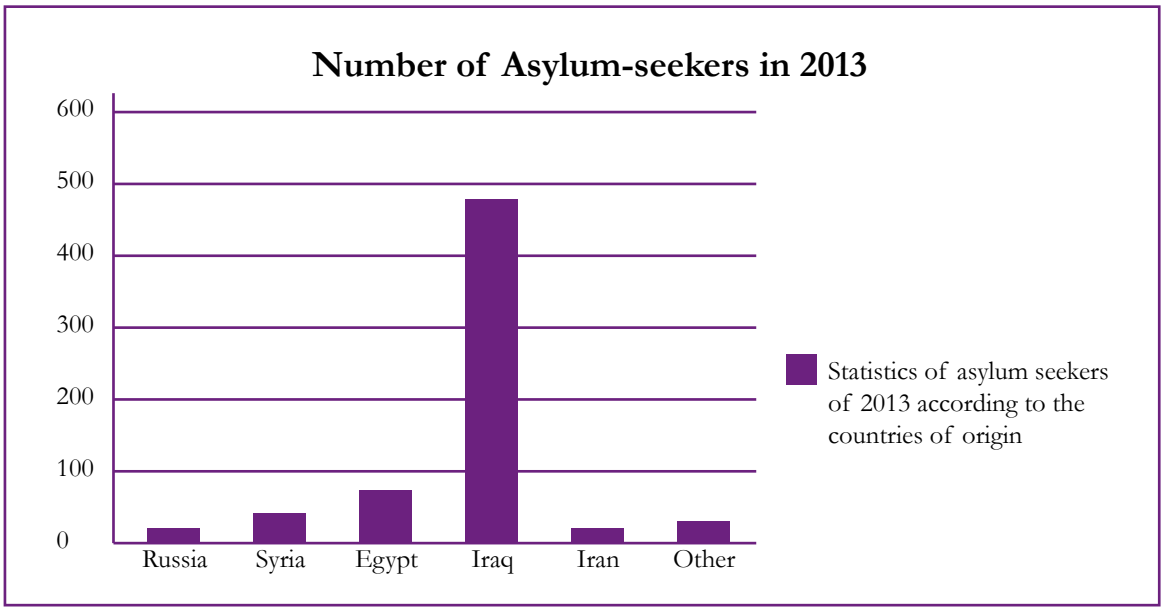
967 The Organic Law of Georgia on Citizenship of Georgia, Article 26.a).

968 Administrative Procedures Code of Georgia, Article 23.4.

969 Letter no. 04/01-09/4562 of the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia dated 31 December 2013.

970 Ibid.

Somalia, and Afghanistan is from 62% to 95%,[971] which is considerably higher than the Georgian indicator.



REFUGEES RESIDING IN PANKISI

Most of the refugees residing in Georgia live in the Pankisi Gorge. Ethnic Chechen refugees relocated from the Russian Federation to Georgia in 1999-2000 and were granted refugee status. In 2009–2012, 53 refugees of Chechen ethnicity were granted Georgian citizenship, which is a progressive development. However, there are Chechen refugees still in the Pankisi Gorge that were denied naturalisation by the state.[972]

According to our information, in 2013, 54 refugees from 19 families applied for citizenship. These families have been reviewed by the UNHCR. Most of them – 34 persons – are minors, 14 – females and 6 – adult males.[973] These applicants were denied Georgian citizenship without any reasons given.

In 2013, certain number of refugee statuses was revoked on the account of a family member acquiring Georgian citizenship. According to the letter from the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia,[974] a minor called T.M.'s refugee status was revoked due to the naturalisation of her mother, A.M. For the same reason, the refugee status of minor A.G. was also discontinued.

Article 15 of the Law of Georgia on Refugee and Humanitarian Status, provides for the ground for revoking refugee and humanitarian status. This Article does not refer to the naturalisation of a family member as a ground for revoking the status. Under Article 15.3,

> "If the family of the person falls apart due to divorce, separation or death of family members, these individuals maintain their refugee or humanitarian status granted as a result of family reunification, unless requirements stipulated in this article apply."

As it is evident from this provision, refugee status is not linked to family and even after collapse of a family, the status must be maintained. It is therefore unclear why the status of the persons mentioned above was revoked on the account of a parent's naturalisation.

Under the OHCHR standard operative procedures, the grant necessary for a person's integration, the so-called

971 Asylum Trends, UNHCR, 2013, see http://www.unhcr.org/532afe986.html, [last visited 25.03.2014].

972 "To become a Part of the Society: local integration of refugees in Pankisi", UNHCR, Georgia, 2013.

973 Background Note on Naturalization, UNHCR, 2013.

974 Letter no. 04/01-09/4562 of the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia dated 31 December 2013.

"resettlement grant", were afforded only to the naturalised refugees. Therefore, those persons that were denied naturalisation in 2013 would not be eligible for this programme.

Problems were also created for the children attending schools without the status of a pupil. Due to a relevant status not being granted, they will not be awarded secondary education certificate. The refugees will be disadvantaged in terms of higher education as well. While, the Law of Georgia on Refugee and Humanitarian Status affords rights equal to those of Georgian citizens in terms of education, there is often non-compliance in practice, where state programmes request Georgian citizenship as an eligibility criterion.[975]

The local integration of refugees is likewise difficult. The state is passively involved in this issue. Most of the integration measures accomplished to date have been due to the initiatives of international organisations. Despite the small number of asylum seekers, persons having refugee/humanitarian status, the state is still unable to protect their rights adequately. It is impermissible to ignore their rights since they are one of the most vulnerable categories, having fled their homes by force or due to threats to their lives or health.

Recommendations:

To the Parliament of Georgia

- **to review the Law of Georgia on Refugee and Humanitarian Status with the view of fulfilling the recommendations contained in the Report of the Public Defender of Georgia of 2011.**

To the Ministry of IDPS from the Occupied Territories, Accommodation and Refugees of Georgia

- **to restore refugee status to those whose status was suspended due to their family members acquiring citizenship of Georgia.**

To the Parliament of Georgia, and to the Government of Georgia

- **to make various state programmes available for those having refugee or humanitarian status.**

To the Government of Georgia

- **to implement adequate measures for the social integration of those having refugee or humanitarian status.**

975 "To become a Part of the Society: local integration of refugees in Pankisi", UNHCR, Georgia, 2013.

EUROPEAN UNION

PUBLIC DEFENDER OF GEORGIA