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REPORT OF
THE PUBLIC DEFENDER
OF GEORGIA

The Situation of Human Rights and Freedoms in Georgia

2009
SECOND HALF

THE PUBLIC DEFENDER
OF GEORGIA

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Contents

SOCIAL AND ECONOMIC RIGHTS

Introduction

This document represents the Report of the Public Defender of Georgia on the situation of human rights and freedoms in the territory of Georgia for the second half of 2009 (1 July to 31 December). The Report is submitted to the Parliament of Georgia under Article 22, Para.1 of the Organic Law of Georgia on the Public Defender.

The Report provides an overview of the current human rights situation in Georgia and the level of protection of specific rights and freedoms. Over the reporting period the Public Defender's Office examined numerous facts of human rights violations. Within his competences, the Public Defender followed duly on each of these facts and addressed recommendations to the relevant authorities. The Report looks at the practices as found in certain bodies, provides an analysis of legislation and legal amendments having an impact on the status of human rights and freedoms in Georgia.

Notably, this Report covers a wide range of human rights and freedoms. In their everyday work the Public Defender and his Office are required to make legal assessments on a variety of issues. Hence, the Public Defender and his Office have to address public institutions and state bodies to uphold both civil and political rights, as well as social, economic and cultural rights.

The Report specifies state bodies with which the Public Defender confronts certain problems in terms of communication when exercising his powers.

Over the reporting period the Public Defender's Office, within the frames of the National Prevention Mechanism (NPM), conducted monitoring of all types of institutions where persons are deprived of their liberty or put under restraint. Results of the monitoring provided a basis for analysis of the situation in penal institutions, police custody cells, pre-trial detention facilities, military disciplinary cells, psychiatric institutions and childcare facilities. Monitoring findings clearly suggest that the penitentiary system continues to be one of the most problematic areas in Georgia. One of the major problems is to be seen in drastic overcrowding of penal institutions resulting from excessive numbers of inmates and highly inadequate infrastructure. At some institutions overcrowding results in unbearable living conditions that in some cases can be described as equivalent to inhuman and degrading treatment of prisoners. Another serious concern is inadequate accessibility of healthcare for prisoners. Medical facilities within the penitentiary system lack any capacity to provide adequate care and treatment to prisoners, which is confirmed not only by citizens' appeals addressed to the Public Defender's Office and the monitoring results, and but also by the judgments of the European Court of Human Rights. Monitoring results also served to analyze factors causing mortality in the penitentiary system over the reporting period.

It is to be noted that the reporting period showed an increase in the number of prisoners' complaints concerning ill-treatment by prison administration. Besides, one case of prisoner's suicide under suspicious circumstances was docu-

mented, with investigation into the case already launched. Investigation must be as effective and transparent as possible, so that the truth can be established.

NPM's monitoring of remand facilities under the Ministry of Internal Affairs exposed multiple problems related to poor and obsolete infrastructure and inadequate conditions. Another persistently acute problem is long-term placement of administrative detainees in remand facilities.

Monitoring of psychiatric institutions also revealed numerous violations of human rights. Daunting living conditions coupled with degrading environment can in no way support cure and resocialization of psychiatric patients.

Monitoring of childcare institutions exposed multiple violations of relevant standards and legal provisions. Poor living conditions, old and depreciated buildings represent only part of the problems, resulting in inadequate environment for children to live in. Some of the institutions show very poor sanitary conditions. No doubt, such situation has a highly negative impact on children's development. There are also problems related to inadequacies of pedagogical approaches and the treatment of children. Low qualifications of staff, improper management of documentation and legal deficiencies are all problems that call for special attention in the context of childcare institutions.

The Report dwells extensively on the problems found in the judiciary. In-depth analysis of criminal and administrative proceedings exposed some problematic issues that have to be tackled in order to strengthen the rule of law and promote fair justice in the country. Problematic issues include: inadequate reasoning of judgments, lack of effective exercise of the right to defence, use of templates for issuance of orders in administrative proceedings of courts, inadequate reflection of offences in court orders, superficiality of proceedings.

The Report provides a detailed overview of the work of the Ministry of Internal Affairs and the related issues. Special attention is given to problems related to the dragging out of investigation, lack of effective investigation, etc. that were described in the Public Defender's previous reports. Notably, these problems are not unique to the Ministry of Internal Affairs and persistently occur with investigative agencies of prosecutor's offices. Appeals addressed to the Public Defender point to cases of inhuman and degrading treatment by police in the process of apprehension, as well as procedural breaches during investigative actions. The Report describes facts of violation by police officers of their Code of Conduct.

The Report gives an overview of issues related to assemblies and manifestations over the reporting period. It looks into the possibility of effective exercise of the respective right on the one hand, and assesses the current law and legal initiatives on the other. Detailed analysis suggests that problems in this field remain.

Problems related to the conduct of professional work by journalists were found to be persistent in the later half of 2009, too.

The report examines the human rights situation of IDPs, persons with disabilities, persons who suffered occupational injuries, etc., as well as issues related to property rights and the right to adequate housing.

It is hoped that the state will take effective steps to remove violations, recover impaired rights and improve the situation in general, which is a prerequisite for establishing a state based on the rule of law.

The Public Defender of Georgia and His Office

Under Article 43, Para.1 of the Constitution of Georgia, "The protection of human rights and fundamental freedoms within the territory of Georgia shall be supervised by the Public Defender of Georgia who shall be elected for a term of five years by the majority of the total numbers of the members of the Parliament of Georgia".

In accordance with the Constitution of Georgia, on 31 July 2009 the supreme legislative body of Georgia elected George Tugushi as the Public Defender for a term of five years. George Tugushi assumed his duties of the Public Defender on 17 September 2009.

Under Article 26, Para 1 of the Organic Law of Georgia on the Public Defender, "In order to carry out the activities, set forth in this law, the Office of the Public Defender shall be established. The functional and structural organisation of the Office, staffing and procedures shall be prescribed by the Public Defender in the Statute of the Office."

Thus, in effective exercise of powers conferred on the Public Defender by the Constitution of Georgia and the Organic Law of Georgia on the Public Defender, the Public Defender is assisted by the Office of the Public Defender.

Considering the amendments[1] made in the Organic Law of Georgia on the Public Defender on 16 July 2009, and to ensure optimisation and better mobility of structural units of the Office, a new Statute of the Office of the Public Defender was approved by Order No 45 of the Public Defender dated 30 October 2009. On the basis of the new Statute of the Office, different structural units of the Public Defender's Office were abolished and reorganised, namely:

a) the Investigation and Monitoring Department with all its constituent structural units was abolished;
b) the Policy and Information Department with all its constituent structural units was abolished;
c) the Administration and Finance service was reorganized;
d) the Regional Department of the Public Defender in Western Georgia was abolished;
e) the Child's Rights Centre was reorganized.

Apart from that, the internal regulations of the Public Defender's Office were announced to be no longer valid, with the new regulations approved instead.

Thus, since 6 November 2009 the Office of the Public Defender operates within a new organizational structure.

[1] In accordance with the amendments made in the Organic Law of Georgia on the Public Defender on 16 July 2009, the Public Defender of Georgia carries out the functions of the National Preventive Mechanism provided for by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In accordance with the new Statute of the Office approved by Order No 45 of the Public Defender dated 30 October 2009, with a view to providing organizational, legal, documentary, analytical, information, financial and logistics support to the work of the Public Defender, the Office of the Public Defender now operates through the following structural units:

1. **Department of Citizens' Appeals;**
2. **Department of Justice[2];**
3. **Department of Prevention and Monitoring[3];**
4. **Department of Public Relations;**
5. **Administration and Finance Department;**
6. **Child and Woman's Rights Centre (specialized department);**
7. **Centre for Disability Rights (specialized department).**

Apart from the above structural units, the Office of the Public Defender operates the Public Defender's secretariat and the Deputy Public Defender's secretariat. Also, PDO operates under its auspices the Centre of Tolerance.

The work of the Public Defender's Office is organized by a staff of 66 public employees; of these, 35 are public servants, 26 are support staff, and 5 are non-staff employees.

In order to ensure efficient work of the Public Defender's Office within its new organizational structure, a computerized programme for integrated record keeping is currently being developed with the assistance of qualified professionals. Also, the work is underway to elaborate Rules and Regulations of the Office of the Public Defender. The document will define work modalities for PDO's employees and the procedure of integrated record keeping to be followed by all members of the Office of the Public Defender.

[2] After the Regional Department of the Public Defender in Western Georgia was abolished, the Department of Justice is in charge of PDO's regional offices (Office in Gori, Office in Zugdidi and Office in Batuni).

[3] The Department of Prevention and Monitoring of the Public Defender's Office carries out the functions of the Special Prevention Group.

Cooperation of Authorities with the Public Defender, Existing Problems

Under Article 43 of the Constitution of Georgia, "The creation of impediments to the activity of the Public Defender shall be punishable by law".

Article 23, Para.1 of the Organic Law of Georgia on the Public Defender makes it obligatory for every national or local authority, public official or legal person to fully cooperate with the Public Defender and to provide without delay all materials, documents and other information as may be required by the Public Defender. Besides, Article 18 of the Organic Law of Georgia on the Public Defender confers on the Public Defender certain rights entitling the Public Defender to receive different materials and information necessary for proper examination of a case.

Article 23 of the Organic Law defines the timeframe for furnishing the requested materials, documents and other information to the Public Defender. Under Article 24, "Within one month after receiving the Public Defender's recommendations or proposals, every authority, public official or legal person shall be obliged to review and inform the Public Defender in writing on the follow-up on the recommendations".

Under Article 22, Para.2 of the same Law, "The periodic report of the Public Defender shall include information about those national or local authorities, public officials and legal persons that were found to have violated human rights and freedoms and failed to act upon the Public Defender's recommendations concerning the measures of redress".

Neglect of Public Defender's letters and recommendations, delayed reply or action in response to recommendations, the need for the Public Defender to repeat correspondence with such authorities hinders effective work of the Public Defender's Office and impedes redress of impaired rights.

This section of the Report describes problems encountered by the Public Defender's Office in communicating with certain authorities. Analysis of the correspondence between the Public Defender's Office and various state bodies suggest that some authorities clearly avert fulfilling their obligations as stipulated by the Organic Law on the Public Defender of Georgia.

Over the reporting period, the Public Defender's Office encountered problems on the part of the Ministry of Refugees and Accommodation of Georgia whose officials often failed to provide timely response, or chose not to respond, to letters addressed to them by the Public Defender. This problem was encountered in respect of all documents sent to the Ministry.

Similar problems have been found to occur, though not systematically, with the Main Prosecutor's Office of the Ministry of Justice of Georgia. In some cases, the Main Prosecutor's Office fails to provide feedback concerning Public Defender's

recommendations, or provide adequate response to official communications addressed to it by the Public Defender. The problems identified in relation to the Main Prosecutor's Office include:

- Failure to provide/delay in provision of information on launching investigation on the facts;
- Failure to respond to the Public Defender's recommendations concerning re-opening of investigation.

Similar problems have been identified in relation to the Ministry of Internal Affairs. The Public Defender's Office has not received any feedback on appeals of 25 May and 3 December 2009 concerning items seized during the search of persons by officers of the Ministry of Internal Affairs.

Worthy of special notice are problems encountered in relation to Borjomi Registration Service of the National Public Registry Agency of the Ministry of Justice of Georgia. In the letter of 13 July 2009, the Office of the Public Defender requested information on reasons for refusal by the above service to provide an abstract from the Public Register to a certain citizen. The Public Defender's Office repeatedly addressed the state body (on 11 September and 16 November 2009, and 28 January 2010), with no response provided so far.

Proceeding from the above, the Public Defender invites the leadership of the above bodies to carry out relevant measures in the subordinated institutions to ensure fulfilment by them in due time of obligations stipulated in the law, as well as timely and proper response to correspondence from the Public Defender's Office.

General Situation in Penitentiary Establishments of Georgia

The present report covers the findings of the monitoring carried out in the Georgian penitentiary establishments, within the frames of the National Preventive Mechanism, by the monitoring team of the Prevention and Monitoring Department of the Public Defender's Office in the second half of 2009, with financial support of the European Union.

In the second half of 2009, 34 periodic and 112 *ad hoc* visits were paid to the penitentiary establishments and over 500 prisoners were interviewed.

In the reporting period, the Penitentiary Department was officially addressed to provide the PDO with the following information: number of prisoners (specifying different categories); number of prisoners nominated for early conditional release and number of actually released ones; statistics of encouragement and disciplinary/administrative measures applied (according to establishments); use of short-term leaves; statistics of replacing the remaining part of the sentence with less severe measures; number of convicts transferred to prison regime (specifying the establishments); statistics of referrals made by doctors concerning the quality of food (specifying the establishments) and etc.

Prior to starting the monitoring, special questionnaires were sent to the administrations of all the establishments in order to get information about the institutions. The questions were related to the function of the establishments, their infrastructure; provision of outdoor exercise, access to shower, telephone calls, right to visits, access to prison shops and parcels; information related to education, rehabilitation, employment and medical treatment programs provided at the establishments during the reporting period as well as the data related to special category prisoners (foreign citizens, religious minorities). Copies of internal rules of the establishments, agendas and other related documents were also requested from the administrations.

The filled questionnaires received back from the establishments were often incomplete. In some cases, the incompletely filled questionnaires were sent back to the establishments in order to further obtain or to clarify specific information. The requested documentation was not fully provided either.

In the reporting period, the periodic monitoring was carried out in November-December, 2009. All the 18 penitentiary establishments were visited during the monitoring. The monitoring team members held meetings and interviews with prisoners, representatives of prison administrations, personnel, and medical staff of the establishments.

In contrast to the monitoring carried out in July-August, representatives of the Public Defender did not face any problems while exercising their legal authority in any of the establishments. They enjoyed unimpeded access to all the establishments

and could freely move inside. They were able to select places for meetings and confidential interviews with prisoners without any presence of the prison personnel.

First, it has to be noted that an increase in the number of allegations to ill-treatment was observed compared to previous monitoring findings. The monitoring team received information on several cases of ill-treatment. Obtained materials and the prisoners' explanations were sent to the Investigation Department of the Ministry of Corrections and Legal Assistance of Georgia (hereinafter referred as MCLA) or/and the Prosecutor's Office of Georgia for follow-up. An investigation has been launched in each case, though not on the fact of torture, or inhuman treatment but on the abuse of official powers.

All cases of ill-treatment reported to the Public Defender were related to the General, Strict and Prison Regime Penitentiary Establishment No. 7 in Ksani or the Medical Establishment for Convicted and Indicted Persons.

On 12 December 2009, a prisoner committed a suicide by hanging himself in a disciplinary cell of the Establishment No. 2 in Kutaisi. The Western Georgia Investigation Department of the MCLA launched preliminary investigation in accordance with Article 115 of the Criminal Code of Georgia ("Bringing to the point of suicide") regardless of the fact that, according to the forensic conclusion, physical injuries had been inflicted before the suicide was committed[4]. This circumstance calls for a special attention on the part of the investigation authorities.

The Public Defender addresses the Chief Prosecutor of Georgia with a recommendation to exercise personal control over rapid and effective investigation of the facts occurred at penitentiary establishments.

In some of the penitentiary establishments, material and sanitary-hygienic conditions of prisoners are poor enough to amount to inhuman and degrading treatment. Although new penitentiary establishments have been constructed and are operational, the establishments that were recommended to be closed down by the Public Defender in his previous reports remain to be a problem. These establishments include Prison No.1 in Tbilisi, Prison No.3 in Batumi, Prison No.4 in Zugdidi, and the General and Strict Regime Establishment No.9 in Khoni. The situation is extremely poor also in the Establishment No.7 in Ksani where the infrastructure, material and hygienic conditions are still falling short to meet adequate standards. Solution to the mentioned problems as well as ensuring the adequate sanitary-hygienic conditions in the establishment cannot be reached unless major refurbishment works are carried out.

Deprivation of liberty shall be executed in the conditions that are necessary to ensure the respect for human dignity. One of the basic principles of the European Prison Rules[5] is that "*Prison conditions that infringe prisoners' human rights are not justified by lack of resources.*"[6] After being placed in a penitentiary establishment, the prisoners shall not lose the sense of human dignity regardless of the severity of crime they have committed.

On 20 October 2009, the European Court of Human Rights delivered its judgment in the case *Gorgiladze v. Georgia* in which the keeping of the applicant in an overcrowded cell with poor sanitary conditions where there was a lack of fresh air and lighting, was considered to amount to violation of Article 3 of the ECHR. The judgment relates to Prison No. 5, which has been closed down. The situation in terms of hygienic conditions and overcrowding is equally poor in the above-listed establishments.

> *"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"*[7].

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4 Conclusion of the Levan Samkharauli National Forensics Bureau, Western Georgia Regional Service, No. 407 dated 12.12.2009, completed on 12.01.2010, page 8: "injuries (4-5 day-old injuries inflicted when alive) are visible on the back part of the right shoulder, left thigh and right knee".

5 Recommendation (2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006.

6 Rule No. 4

7 Rule 18.1

"In all buildings where prisoners are required to live, work or congregate: a. 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; b. artificial light shall satisfy recognized technical standards; and c. there shall be an alarm system that enables prisoners to contact the staff without delay[8]*."*

The frequency of joint complaints from prisoners of the General, Strict and Prison Regime Establishment No. 7 in Ksani should be admitted. Among other issues, their complaints usually relate to material conditions, inadequate and untimely medical service and lack of hygiene items. As for positive developments, it should be outlined that toilets have been partitioned and ventilation have been installed inside the cells. However, the walls in the cells remain problematic, since they are covered with a thick, uneven layer of cement (so called "Shuba"). According to the inmates, it is impossible to stay in beds located close to the walls.

Some of the general and strict regime prisoners from the Ksani Establishment are accommodated in the former canteen building where the living areas are separated from each other with blue canvas and three-storey beds made by the inmates. The situation is similar in the so-called "central barrack". The sewage system of the common toilet located on the territory of the establishment needs refurbishment and therefore there is a specific smell throughout the entire area. Many inmates have to live in tents arranged in the yard in extremely poor sanitary-hygienic and material conditions. The situation is further aggravated by the fact that the general and strict regime part of the Ksani Establishment is overcrowded and the inmates have to sleep in turn.

General and Strict Regime Penitentiary Establishment No. 3 is located on the territory of the former Medical Establishment for Convicted and Indicted Persons. The establishment was built in 1952 and refurbished in 1975; the sanitary-hygienic conditions inside are very poor. Since the construction of abovementioned institution, some interior refurbishment works have been done only on the ground floor of the building where the offices of the administration and medical staff are located. The establishment mainly accommodates prisoners who have served most part of their sentences and elderly prisoners. During the monitoring period, there were 41 elderly inmates in the establishment. According to the Law of Georgia on Imprisonment, elderly prisoners shall be provided with improved material conditions and better food compared to other inmates. On 11 August 2009, the PDO addressed the Head of the Penitentiary Department with a letter requesting information on whether the elderly inmates were provided with improved conditions and, if so, what such conditions implied. However, the PDO did not receive any response to the mentioned letter and the monitoring team did not witness any improvement regarding the conditions provided specially for the elderly inmates.

The Public Defender addresses the Minister of Corrections and Legal Assistance of Georgia with a recommendation to ensure the provision of the elderly prisoners with improved material conditions and better food in accordance with the law.

In the course of the monitoring of buildings I, II, III and IV of the General, Strict and Prison Regime Establishment No. 2 in Rustavi, it was observed that sanitary-hygienic conditions in the cells were falling short to meet adequate standards and the cells required refurbishment. The above-mentioned buildings are provided with artificial lighting because the small size of windows does not ensure access to natural light. Ventilation is natural, though not sufficient. In some of the cells, the taps are out of order; in others, there are no light bulbs.

In General and Strict Regime Penitentiary Establishment No. 10 the building is of a barrack-type and requires refurbishment. There is no central heating there and inmates have to use electric heaters.

The Educational Establishment for Juveniles includes one building with 7 dormitories (25-27 beds in a room). The building requires interior refurbishment, and it does not provide access to ventilation. Living space for each juvenile fails to meet the standards laid down in the Law of Georgia on Imprisonment.

[8] Rule 18.2

Medical Establishment for Tubercular Convicts is a complex of 3 isolated buildings with 78 wards. The buildings require refurbishment and sanitary-hygienic conditions inside are very poor. Heating is provided by means of electric heaters. Gradual refurbishment works are planned to start in January 2010.

Prison No. 7 has 25 cells with satisfactory sanitary-hygienic conditions, though electricity is not supplied to toilets and the inmates have to use candles when using the toilets. Windows are too small and there is no access to natural ventilation. The central ventilation system is insufficient to ensure proper ventilation of the cells. Therefore, the cells are airless in summer. The cells have access only to artificial lighting, since the size of the windows cannot ensure adequate access to natural light. Based on all the above-mentioned, the prison needs refurbishment to meet the established standards.

The material and sanitary-hygienic conditions in the old-regime buildings of the General, Strict and Prison Regime Penitentiary Establishment No.6 are not satisfactory, since there is no access to ventilation, the walls are damp and the plaster is damaged; very weak light bulbs are used for lighting and the access to natural light is not adequate; the floor is concrete. Accordingly, renovation works need to be carried out.

The Public Defender addresses the Minister of Corrections and Legal Assistance of Georgia with a recommendation to close down the Prisons No. 1, 3, and 4 and the General and Strict Regime Penitentiary Establishment No. 9; to take measures required for creating and maintaining adequate material and sanitary-hygienic conditions in other penitentiary establishments including the Establishment No. 7 in Ksani.

On 11 August 2009, the Head of the Penitentiary Department was addressed to provide information about the construction-technical and sanitary-hygienic norms laid down in paragraph 1, Article 33 of the Law of Georgia on Imprisonment[9]; about legislative acts regulating the infrastructure of the living space for prisoners and/or information on the general regulations of infrastructure for the living space of inmates held in the general, strict and prison (separately) regime penitentiary establishments. The Office of Public Defender did not receive any response to these letters. This information is especially important since the new establishments are planned to become operational in the nearest future. There is no information regarding the norms used as guidelines in the designing and construction process of these establishments.

The monitoring team was also unable to obtain information about the refurbishment works carried out in the establishments and the number of staff (including medical), since these data are classified according to Chapter V of the "List of the Information considered as State Secret" approved by the Presidential Decree No. 42 dated 21 January 1997. Therefore, we consider that the Presidential Decree No. 42 contradicts the Law of Georgia on State Secret, which clearly specifies the categories of classifiable in its Article 7.

Overcrowding

Overcrowding still remains a problem in the penitentiary system. This problem is caused by the rapid increase in the number of prisoners and the lack of relevant infrastructure.

According to Article 33(2) of the Law of Georgia on Imprisonment, *"A living space in a penitentiary establishment per convict shall not be less than 2m*²".

Notwithstanding the said imperative requirement of the law, some of the penitentiary establishments do not comply with the standards stipulated in Georgian legislation (that is 4m2 less than the European standard) and furthermore, do not provide each inmate with at least a separate bed, which is a violation of the prisoner' rights. The monitoring team identified the problem of overcrowding in the following establishments: Prison No. 1 – 1209 prisoners[10] (official capacity – 750);

[9] "A residential space allocated to a convict in a penitentiary establishment shall conform to construction-technical and medical-hygienic norms and shall provide for the maintenance of convict's health."

[10] By 9 December 2009.

General and Strict Regime Penitentiary Establishment No. 8 – 2905 prisoners[11] (official capacity – 2500); Prison No. 4 – 578 prisoners[12] (official capacity – 305); General and Strict Regime Penitentiary Establishment No. 10 – 388 Prisoners[13] (official capacity – 370); General, Strict and Prison Regime Penitentiary Establishment No. 2 – 3082[14] (official capacity – 2744); Prison No. 8 – 3790 Prisoners[15] (official capacity – 3672); Medical Establishment for Tubercular Convicts – 733 Prisoners[16] (official capacity – 540); General, Strict and Prison Regime Penitentiary Establishment No. 7– 2731 prisoners[17] (official capacity – 1600).

The Public Defender has already stated in his previous report that the problem of overcrowding was directly related to the State's criminal justice policy of "zero tolerance" for any offence regardless of its level of threat for the society. The Public Defender made recommendation to relevant authorities and officials regarding this issue in his report covering the 1st half of 2009 but there has not been any changes in this regard so far.

The problem of overcrowding and its solution should not be associated only with providing each prisoner with an individual bed. Numerous other issues such as healthcare, provision of decent material conditions, elaboration of employment and educational programs and their successful implementation cannot be resolved because of extremely large number of prisoners. Therefore, in his every report, the Public Defender reiterates that only construction of new establishments could not be the solution to overcrowding and other directly related problems.

The Public Defender addresses the Parliament of Georgia with a proposal to make relevant amendments to the Criminal Code of Georgia for replacing the current collective principle of punishments with absorption principle of punishments.

The Public Defender addresses the Chief Prosecutor of Georgia with a recommendation to give priority, when defining a criminal prosecution policy, to using alternative, milder punishments over deprivation of liberty in case of crimes posing less dangerous threat to the public.

Contact with the outside world

"Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organizations and to receive visits from these persons"[18].

"The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible."[19]

According to the Law of Georgia on Imprisonment, "*Prisoner has the right to send and receive correspondence in unlimited quantity, to use telephone of common use according to the established rule and under control of the administration of the Penitentiary Establishment, if such technical resources are available inside the establishment* [20]*."*

According to the same Law, *"1. A convict shall be provided with the opportunity to familiarize himself with printed and other means of mass media.2. Radio and TV broadcasting in penitentiary establishments shall be provided within the limitations established by regimes.*

11 By 14 November 2009.
12 By 16 November 2009.
13 By 26 November 2009.
14 By 4 December 2009.
15 By 15 December 2009.
16 By 25 December 2009.
17 By 25 December 2009.
18 Rule 24.1
19 Rule 24.4
20 Article 50(1)

Convicts may have personal radio receivers, TV sets, video or audio players and typewriters, if their use does not violate internal procedure of the institution or does not disturb other convicts. Expenses generated by using the mentioned equipment (electricity costs and etc.) are paid by the convicts. 3. At their own expense, convicts can subscribe to scientific, popular-scientific, religious, fiction and poetry literature, newspapers and magazines."[21]

Visits

In its report to the Georgian Government prepared in 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) admitted the following: "*the arrangements in the visiting facilities at the establishments visited did not allow physical contact between prisoners and their relatives. Each establishment had a number of small booths (e.g. one at Prison No. 4 in Zugdidi, twelve at Penitentiary establishment No. 2 in Rustavi, thirteen at Prison No. 6 in Rustavi), in which prisoners and visitors were separated by a plexiglas screen and communicated via a telephone. The only exception to this rule was made in respect of* working *prisoners at Penitentiary establishment No. 2 in Rustavi who met their relatives in an ordinary room, sitting around the table.*

The CPT accepts that in certain cases it may be justified, for security-related reasons or to protect the legitimate interests of an investigation, to prevent physical contact between prisoners and their relatives. However, open visits should be the rule and closed visits the exception, for all legal categories of prisoners. The CPT recommends that conditions in the visiting facilities at the penitentiary establishments visited be reviewed so as to allow prisoners to receive visits under less restrictive conditions, based on an individual risk assessment. Further, the Committee recommends that steps be taken to increase the capacity of the visiting facilities at the prisons visited, especially at Prison No. 4 in Zugdidi."

Regardless of the above-presented recommendation, partitioning of the visiting rooms with Plexiglas screen has become more frequent. The following exceptions have been observed in this regard: the General and Strict Regime Penitentiary Establishment No. 10 (where the rooms were partitioned by screen but the visits used to take place face to face), the Educational Establishment for Juveniles, the General and Strict Regime Penitentiary Establishment No. 5 for Women and Juveniles, the General and Strict Regime Penitentiary Establishment No. 1 in Rustavi, and the Medical Establishment for Tubercular Convicts. In the prison of the General, Strict and Prison Regime Penitentiary Establishment No. 7 in Ksani, the visiting room is also partitioned by a glass but usually the administration allows the prisoners to see their family members face to face.

The heads of the establishments justify having these kinds of barriers by security considerations. It is clear that in some cases existence of barriers could be justified by different reasons but according to CPT, such measures should be applied based on an individual risk assessment and not as a general rule. The administration of an establishment can reduce potential risks stemming from the contact of prisoner with his/her family member by carrying out individual searches and visual monitoring. But, at the same time, it should be noted, that individual searches should not be conducted in a degrading manner.

The interviews with the prisoners showed that one of the major problems for them was the impossibility to have long-term visits.

Therefore, in his parliamentary report for the 1st half of 2009, the Public Defender addressed the Parliament of Georgia with a proposal to make amendments to the Law of Georgia on Imprisonment in order to entitle the convicts of all categories to long-term visits.

The Public Defender also addressed the Minister of Corrections and Legal Assistance of Georgia with a recommendation to ensure the provision of relevant facilities for long-term visits in the new penitentiary establishments.

The Public Defender addresses the Parliament of Georgia with a proposal to make the amendments to the Law of Georgia on Imprisonment to guarantee the right of all categories of convicts to long-term visits.

[21] Article 51

Inmates and their family members are frequently complaining to the Public Defender that they are unable to enjoy their right to visits because the inmates are held in the establishments that are located far away from their homes. Very often, the family members of prisoners cannot travel because of health or financial problems. The Public Defender hopes that the entry into force of a new Code on Imprisonment will resolve this issue, since the new Code explicitly stipulates that a convict must be sent to an establishment that is located near his living area. However, the exceptions envisaged by the legislation may adversely affect effectiveness of this stipulation in practice.

Access to telephone

Paragraph 94 of the 2007 CPT report outlines, that "*due to the lack of telephone lines at the establishments visited, prisoners had to apply to the director and wait for authorization for each individual call; many prisoners complained that they could make, at best, one call every 3 months*". Accordingly, CPT recommended the relevant Georgian authorities to take steps to improve sentenced prisoners' access to a telephone.

In the course of the monitoring during the reporting period, the monitoring team paid special attention to the issue whether the prisoners' right to phone calls was ensured. In this regard, the worst situation was observed in Prison No. 4 in Zugdidi where telephones had been installed a few months before but were not operational for unknown reasons. Telephones are also available at Prison No. 3 in Batumi but, according to the administration and the inmates, the connection goes out of order in a rainy weather (which is very common in Batumi) and it takes a few days to fix the line; at Prison No. 8 in Tbilisi, the prisoners have access to a telephone only 3 minutes per week.

According to the finding of the monitoring undertaken in the second half of 2008, the inmates had the possibility to contact their family members living abroad via phone, though, in 2009, for unknown reasons, phone calls could only be made within the territory of Georgia. Therefore, the prisoners whose family members are abroad cannot exercise their right to a phone call.

The Public Defender addresses the head of the Penitentiary Department under the MCLA with a recommendation to ensure that all prisoners can enjoy their right to use a telephone, including the right to call their relatives abroad.

Access to Press, TV and Radio

CPT also invited the Georgian Government to "allow the prisoners to have TV and radio sets". Absence of TV sets remains a problem in various penitentiary establishments.

At the meeting held on 29 December 2009, the Public Defender and the Minister of Corrections and Legal Assistance of Georgia discussed recommendations made by the Public Defender in his parliamentary report. Along with other relevant issues, they discussed access to TV broadcasting in the penitentiary establishments in general and, specifically, in the Prison No. 7 in Ksani. On 6 January 2010, the MCLA published the following information on its official web page (*www.mcla.gov.ge*): "*the Minister of Corrections and Legal Assistance of Georgia visited the General and Strict Regime Penitentiary Establishment No. 7 in Ksani, wished the convicts happy Christmas and presented 20 TV sets of the "Samsung" brand. The Public Defender's report of the first half of 2009 included the need for TV sets at the penitentiary establishments and George Tugushi addressed the Ministry with relevant recommendation."*

The Public Defender welcomes the implementation of the recommendation, however, the problem remains the same in the General, Strict and Prisoner Regime Penitentiary Establishment No. 6, in Rustavi (where only life-sentenced prisoners and employed prisoners have TV sets), in the Medical Establishment for Convicted and Indicted Persons (where some prisoners stay for years), and in Prison No. 8 (where sentenced and remand prisoners are held) where TV sets are available only to the employed prisoners. In the Prison and Strict Regime Establishment No. 2 in Kutaisi, TV sets are provided only to juvenile and female inmates.

Prison No. 7 in Tbilisi should be mentioned separately, since no TV channels are broadcasted there and DVDs with entertainment programs and movies are projected in a centralized manner instead.

In some penitentiary establishments, the administration decides which radio channels should be broadcasted. During the reporting period it was observed, that prisoners in the penitentiary establishment No. 7 in Ksani could only listen to radio channels "Patriarchy" and "Imedi"; the administration in Tbilisi Prison No. 7 also decides itself which TV channels can be broadcasted. The same problem was witnessed in the Penitentiary Establishment No. 6 in Rustavi.

This problem may be resolved following the entry into force of the new Imprisonment Code, since the Code directly prescribes the prisoners' right to have a TV set.

As a rule, printed media is provided to prisoners with parcels or can be bought in the shops of the establishments. Penitentiary Establishment No. 2 in Kutaisi is the only exception, since printed media can only be received there with parcels and the shop does not sell any newspapers or magazines.

The Public Defender addresses the Head of the Penitentiary Department of the MCLA with a recommendation to ensure access to the printed media in all the penitentiary establishments.

Right to Correspondence

Prisoners have the right to send and receive correspondence from their family members but in the establishments where phones are available on a regular basis, they rarely use this right.

Applications and Complaints

Paragraph 101 of the CPT 2007 Report[22] notes: "*Despite the above-mentioned improvement in monitoring, many prisoners interviewed by the delegation expressed scepticism about the operation of the complaints procedure. Most prisoners were not aware of the possibility to send confidential complaints and claimed that, in any case, it would be impossible to do so due to the lack of paper, pens and envelopes, and the fact that staff required prisoners to submit all complaints in an open form. The delegation noted the presence of complaints boxes in the corridors of the establishments visited; however, prisoners spoken to were either ignorant of their existence or were sceptical about the respect for the confidentiality of complaints. It was claimed that the establishments' administration withheld complaints and that staff threatened inmates with various forms of reprisal in order to prevent them from complaining in a confidential manner to an outside authority. In addition, allegations were received that complaints sent to outside bodies were not responded to in a timely manner.*"

"*The CPT recommends that the Georgian authorities take steps to ensure that the right of prisoners to lodge confidential complaints is fully respected, by guaranteeing in practice that complainants are not subject to reprisals.*"

The complaints boxes are present at almost all the Penitentiary establishments. The only exceptions are the Prison No. 8 in Tbilisi and the General and Strict Regime Establishment No. 9 in Khoni.

During the monitoring, prisoners pointed out that sometimes their complaints are either not accepted or not forwarded to the addressee. Namely, this is the case when the complaints relate to violation of the prisoners' rights by the prison staff

22 Report to the Government of Georgia on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 21 March to 2 April, 2007; Strasburg, 25 October 2007.

or the administration of the establishment. Quite often, the administration of the establishment sends the letters out but prisoners are not informed about the registration number assigned to their letters, which causes misunderstandings and once again confirms that the social service inside the penitentiary system does not function properly.

Very often, complaints of prisoners and convicts, forwarded to the PDO by the administration of penitentiary establishments, are opened and unsealed bearing the signature of a director of the establishment on the head page.

According to the Order of the Minister of Justice No. 620, "*It is prohibited for the administration to stop or check correspondence of convicts addressed to President, Chairman of Parliament, Member of Parliament, court, the European Court of Human Rights, international/ nongovernmental organizations created on the basis of international human rights treaties ratified by Georgia, Ministry of Justice, Penitentiary Department, the Public Defender, a lawyer or a prosecutor. The administration is obliged to send the correspondence to the addressee not later than within 3 days. These applications and complaints shall not be checked and shall be sent to the recipient according to the established rule.*"

In 2008, the Public Defender addressed the Penitentiary Department with his recommendation to resolve the above-mentioned issue. As a result, applications received from some of the penitentiary establishments no longer contain head pages bearing the signature of a director of the penitentiary establishment; however, the letters are not sealed in the presence of the prisoner. The only exception is the special envelopes provided by the Public Defender's monitoring team; letters in such envelopes are submitted to the administration already in a sealed form.

Informing the Prisoners about their rights and responsibilities

According to the part III, Article 21 of the Law of Georgia on Imprisonment, *"Convict shall be advised in written form of his/ her rights and rules of his/ her treatment by employees, of rules concerning obtaining information and lodging complaints, of disciplinary and other requirements*".

Paragraph No. 102 of the CPT report outlines, that "*Discussions with inmates at the establishments visited suggested that prisoners received very little or no information concerning their rights and the procedures applicable to them. At some of the establishments visited (e.g. Prison No. 6 in Rustavi), the delegation noted the presence of information posters in the corridors; however, the information contained in them was either not up-to-date or not sufficiently detailed.*" The CPT recommends that prisoners should be systematically supplied with written, up-to-date information on their rights and duties, the legal procedures applicable to them as well as the possibilities of early release. All types of information should be available in an appropriate range of languages.

Despite the above-mentioned recommendation, the prisoners are almost never informed about their rights. Information papers displayed in the cells of Prison No. 8 cover only the responsibilities of the prisoners'. Very often, prisoners ask for a meeting with the representatives of the Public Defender only to consult on their rights. As a rule, such consultations should be provided by the social service functioning at the establishments.

The Public Defender addresses the Minister of Corrections and Legal Assistance of Georgia with a recommendation to ensure the creation of independence guarantees for social workers and to support the improvement of their professional skills.

The Public Defender addresses directors of penitentiary establishments with a recommendation to ensure that prisoners be adequately informed about their rights and duties.

Re-socialization

According to paragraph 1, Article 39 of the Criminal Code of Georgia, the purpose of punishment is to restore justice, to prevent re-commission of crime and to promote re-socialization of an offender.

According to the European Prison Rules, "*Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community* "[23].

"*In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.*"[24]

"*This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.*"[25]

"*Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.*"[26]

"*Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.*"[27]

Providing the prisoners with adequate living conditions and bringing the infrastructure inside the penitentiary establishments in compliance with international standards are the prerequisites for further re-socialisation and reintegration process of prisoners into the society.

Re-socialization cannot be achieved unless the problems of overcrowding in penitentiary establishments, the lack of re-trained staff and the restrictions on contact with the outside world are resolved. It is further necessary to strengthen the social service at the penitentiary establishments and provide the staff with relevant training.

The conditions in penitentiary establishments should not serve to the aggravation of imprisonment experience for prisoners but assist them in maintaining their health condition and intellectual and social functioning. Prisoners should have access to work and education that will assist them to get integrated into the society upon their release and to feel themselves as full-fledged citizens.

Prisoners should not spend their time in leisure. This is important for their welfare and likewise for a normal management of penitentiary establishments. If prisoners are not engaged in certain activities, it is very likely that they will again become offenders and asocial. It should be noted that many prisoners serving the sentence at the penitentiary establishments are the ones who committed the crime because of poor social conditions. Some of them do not have relevant education; they lack the skills and knowledge they would use after their release.

Generating employment opportunities for prisoners serves a number of goals such as encouragement, possibility of self-realization, financial income and gained knowledge that can be used after release.

The report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) outlines, that "*the CPT encourages the Georgian authorities to step up their efforts to develop the programmes of activities for both sentenced and remand prisoners. The aim should be to ensure that both categories of prisoner 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. As regards in particular work, a major improvement in the employment situation in prisons will require a fundamental change in approach, based on the concept of prisoners' work being geared towards rehabilitation and resocialisation rather than financial profit.*"[28]

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23 Rule 107.1

24 Rule 107.2

25 Rule 107.3

26 Rule 107.4

27 Rule 107.5

28 Report to the Government of Georgia on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 21 March to 2 April 2007.

Education

We believe that ensuring the right to education shall become a priority for the penitentiary system, since it will facilitate the re-socialization process of prisoners.

According to the European Prison Rules, "*Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.*"[29]

"Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education."[30]

"Particular attention shall be paid to the education of young prisoners and those with special needs."[31]

"Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education."[32]

Educational programs available at some of the penitentiary establishments should be evaluated as positive development. For example, General and Strict Regime Establishment No. 8 provides computer courses (with 5 computers), in which 30 inmates were involved; Prison No. 4 provides computer courses for juveniles and 7 juvenile prisoners were involved in the training process. The Educational Establishment for Juveniles has an enamel workshop arranged by the GCRT where 25 juveniles are involved and a workshop for wood curving with 30 juvenile inmates employed. During the reporting period, the Rehabilitation Centre for Victims of Torture "Empathy" funded three training courses on clay work but the mentioned project has already finished. Juvenile inmates are educated according to a regular high school curriculum. Prison No. 3 is implementing training program entitled "Advocacy and Development" for juvenile inmates. Courses for hairstylists, tapestry, computer, thick felt, chef, massage specialist and make-up specialist are available at the General and Prison Regime Penitentiary Establishment for Women and Juveniles. Training program "Start your own Business" and design courses are attended by 4 juvenile females at the same establishment. In addition, there is a re-socialization and rehabilitation support-training program "Woman and Business" and the school is functioning for juvenile females. General, Strict and Prison Regime Penitentiary Establishment No. 2 offers computer courses. Computer classes are held 3 times a week at the General and Strict Regime Penitentiary Establishment No. 3 and 8 prisoners are trained there.

Based on the above mentioned, women and juveniles have some opportunities to receive general and professional education inside the penitentiary establishments but this is not the case when it comes to male prisoners; despite the several recommendations made by the Public Defender, the adult male inmates still have no access to education. Few programs provided randomly in the penitentiary establishments are not continuous and are only available for a limited number of inmates.

The Public Defender addressed the Minister of Corrections and Legal Assistance of Georgia and the Minister of Education and Science of Georgia with a recommendation to work jointly to the effect of elaborating and introducing distance learning programs for convicts.

"*Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other means.*"[33]

[29] Rule 28.1
[30] Rule 28.2
[31] Rule 28.3
[32] Rule 28.4
[33] Rule 28.5

"Wherever possible, the prison library should be organized in co-operation with community library services."[34]

According to Article 44 of the Law of Georgia on Imprisonment, *"An administration of a penitentiary establishment is obliged to provide the convicts with access to general and vocational education. An administration is obliged to arrange for a library in the establishment, which shall make available both educational literature and imprisonment legislation and European penitentiary rules written in a manner understandable for convicts. Convicts have the right to participate in groups of social adaptation, arrangement of which is obligatory for an administration of a penitentiary establishment."*

Although libraries exist in a majority of penitentiary establishments, the available literature does not meet minimum requirements. Very often books in the Russian language are of a higher literary value than the ones in the Georgian language. Books by Georgian and foreign classical authors are very rare, not to mention works of modern writers.

The Public Defender addresses the head of the Penitentiary Department of the MCLA with a recommendation to ensure the replenishment of libraries in penitentiary establishments in accordance with the law.

Work

Chapter XII of the Law of Georgia on Imprisonment envisages involvement of inmates in labour activities. Currently only a small number of inmates can exercise their right to work.

Pursuant to the European Prison Rules, *"Prison authorities shall strive to provide sufficient work of useful nature"*[35].

A bakery was opened at the General and Strict Regime Establishment No. 10 where one prisoner is employed and is getting respective remuneration. Deputy Director of the above-mentioned establishment told the monitoring team that one prisoner was working in the shop inside the establishment getting a monthly salary of 50 GEL; however, a manager of the Ltd "Megafood" declared during the interview that the inmate was not being paid. Three inmates are employed in the bakery of the General and Strict Regime Establishment No. 8 each of them receiving a monthly salary of 250 GEL. 2 Prisoners are employed in the bakery of Prison No. 3 with 250 GEL of monthly salary. 30 Prisoners are employed in the clothes factory inside the General and Prison Regime Penitentiary Establishment for Women and Juveniles earning, as the administration says, GEL 200-250 per month; though during the interviews with the inmates, it turned out that they were receiving only GEL 100 per month. 2 Inmates are employed in the bakery of the General, Strict and Prison Regime Penitentiary Establishment No. 2.

Accordingly, only 38 inmates are employed on paid jobs inside the penitentiary establishments; this is a very small number considering the fact that 20671 prisoners are serving their sentence in Georgia.[36]

It should be noted that full-fledged exercise of the rights of convicts to be employed is directly linked with attracting and raising the interest of private businesses. Therefore, in his report for the first half of 2009, the Public Defender proposed to the Parliament of Georgia to amend the Tax Code of Georgia with a view of granting tax benefits to entrepreneurs who provide inmates with employment opportunities.

The Public Defender proposes the Parliament of Georgia to make relevant changes and amendments to the Tax Code of Georgia establishing tax benefits for entrepreneurs who provide convicts with employment opportunities.

[34] Rule 28.6

[35] Rule 26.2

[36] According to the statistical data by 31 October 2009.

The Public Defender addresses the Minister of the Corrections and Legal Assistance of Georgia with a recommendation to elaborate a list of measures necessary to ensure the overall employment of convicts.

Staff of penitentiary establishments

"Prison administration authorities shall strive to carefully recruit the prison staff of all categories, since the effective functioning of a prison depends upon the honesty, humanity, competency and personal features of the staff."[37]

It is important that the staff of penitentiary establishments be recruited carefully. They should have a clear understanding that they are responsible for safety of prisoners and civilians; for protection of prisoners' rights; for enabling them to use positively the time spent in prison and to integrate in the society after their release. Achieving this goal requires professionalism and personal honesty.

Relevant remuneration and good working conditions are necessary preconditions for recruiting and maintaining highly qualified staff to work for the penitentiary establishments.

On the basis of the above-mentioned, recommendations made by the Public Defender in his Parliamentary report for the first half of 2009 also referred to social guarantees for the staff of penitentiary establishments and training needs for their professional development.

In response to these recommendations, the PDO received a letter from the Penitentiary and Probation Training Centre on 11 December 2009 stating that, since 8 November 2005, the Penitentiary and Probation Training Centre has trained 3350 penitentiary staff members and 370 officers from the non-custodial punishments and probation system. According to the information provided, the trainings are carried out based on 16 specialized programs.

The information and documents provided by the director of the training centre suggest that the training program is properly planned and result-oriented. However, the monitoring showed that, in many cases, the conducted training failed to achieve the set goals because of the following reasons: during the interviews, the staff members stated that they were attending the trainings during the daytime after having served in the night shift the previous night. This is particularly relevant to the penitentiary establishments located in the eastern Georgia. The high staff turnover is an additional reason causing inefficiency of the training program.

The Public Defender addresses the Minister of the Corrections and Legal Assistance of Georgia with a recommendation to ensure the recruitment of qualified staff in penitentiary establishments and to encourage the prison personnel with relevant professional skills with improved social and working guarantees.

Proposals to the Parliament of Georgia

- **to make relevant amendments to the Criminal Code of Georgia for the purpose of replacing the collective principle of punishments with absorption principle of punishments;**
- **To the amendments to the Law of Georgia on Imprisonment to guarantee the right of all categories of convicts to long-term visits;**
- **To make relevant changes and amendments to the Tax Code of Georgia establishing tax benefits for entrepreneurs who provide convicts with employment opportunities.**

[37] Standard Minimum Rules for the Treatment of Prisoners, Rule No. 42 (1).

RECOMMENDATIONS

To the Chief Prosecutor of Georgia:

- **To exercise personal control over rapid and effective investigation of the facts occurred at penitentiary establishments;**
- **To give priority, when defining a criminal prosecution policy, to using alternative, milder punishments over deprivation of liberty in case of crimes posing less dangerous threat to the public.**

Addressed to the Minister of Corrections and Legal Assistance of Georgia and the Minister of Education and Science of Georgia:

- **To work jointly to the effect of elaborating and introducing distance learning programs for convicts.**

To the Minister of Corrections and Legal Assistance of Georgia:

- **To ensure the provision of the elderly convicts with improved living conditions and better food in accordance with the law;**
- **To close down the Prisons No. 1, 3, and 4 and the General and Strict Regime Penitentiary Establishment No. 9; to take measures required for creating and maintaining adequate material and sanitary-hygienic conditions in other penitentiary establishments including the Establishment No. 7 in Ksani.**
- **To ensure the creation of independence guarantees for social workers and to support the improvement of their professional skills.**
- **To elaborate a list of measures necessary to ensure the overall employment of convicts;**
- **To ensure the recruitment of qualified staff in penitentiary establishments and to encourage the prison personnel with relevant professional skills with improved social and working guarantees.**

To the Head of the Penitentiary Department of the MCLA:

- **To ensure that all prisoners can enjoy their right to use a telephone, including the right to call their relatives abroad;**
- **To ensure the replenishment of libraries in penitentiary establishments in accordance with the law.**

To the directors of penitentiary establishments:

- **To ensure that prisoners be adequately informed about their rights and duties.**

Temporary Detention Isolators and Military Detention Facilities (Hauptvakhts)

Report on the Monitoring carried out at Temporary Detention Isolators under the Ministry of Internal Affairs of Georgia and at the Military Police Department Regional Units under the Ministry of Defence of Georgia

In October 2009, in the framework of the National Preventive Mechanism, the monitoring team of the Public Defender's Office carried out monitoring in temporary detention isolators under the jurisdiction of the Ministry of Internal Affairs of Georgia and in the regional units of the Military Police Department of the Ministry of Defence of Georgia. The following detention facilities were monitored: temporary detention isolators No. 1 and No. 2 in Tbilisi, temporary detention isolators in Rustavi, Gardabani, Marneuli, Bolnisi, Mtskheta, Dusheti, Kazbegi, Signagi, Kvareli, Sagarejo, Gurjaani, Telavi, Borjomi, Akhaltsikhe, Akhalkalaki, Gori, Kareli, Khashuri, Zestaponi, Kutaisi, Chiatura, Terjola, Tkibuli, Bagdati, Samtredia, Ambrolauri, Oni, Tsageri, Abasha, Senaki, Martvili, Chkhorotsku, Khobi, isolators No. 1 and No. 2 in Zugdidi, Poti, Ozurgeti, Chokhatauri, Lanchkhuti, Batumi and Kobuleti as well as military detention facilities (Hauptvakhts) in Vaziani, Akhaltsikhe, Gori, Senaki and Batumi.[38]

It should be mentioned that the monitoring team members did not encounter any problems in any of the temporary detention isolators or military detention facilities. Administrations of the establishments fully cooperated with the monitoring team.

Monitoring of the temporary detention isolators and military detention facilities was carried out based on the standards envisaged by the European Prison Rules[39] and CPT's recommendations.[40]

Temporary detention isolators

It should be noted that refurbishment of temporary detention isolators and construction of new ones started in 2003. However, technical conditions in a majority of isolators do not meet international standards.

On 24 September 2009, the PDO addressed the Main Unit for Human Rights Protection and Monitoring under the Ministry of Internal Affairs (MIA) of Georgia with a formal request to provide copies of all the legal acts regulating the conditions of persons held at temporary detention isolators. We have not received response to the mentioned letter. As it was observed during the onsite visits, the administrations of the isolators are guided by Order of the Minister of Internal

[38] See the situation according to the establishments in the annexes.

[39] Recommendation REC 2006(2) of the Council of Europe Committee of Ministers as of 11 January 2006.

[40] 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 18 to 28 November 2003 and from 7 to 14 may 2004, CPT/Inf (2005) 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 21 March to 2 April 2007, CPT/Inf (2007) 42.

Affairs of Georgia No. 117 on approving the "Instructions of operating temporary detention isolators for detained and arrested persons." However, this document says nothing about norms and standards the infrastructure of the isolators should comply with.

On 30 October 2009, we requested from the Main Unit for Human Rights Protection and Monitoring of the MIA to provide us with the following information for all the temporary detention isolators: number of persons placed in each temporary detention isolator for the last 6 months; number of persons detained pursuant to criminal and administrative rules specifying the number of women, men and juveniles; number of persons bearing the signs of physical injuries upon placement in the temporary detention isolators; number of persons having complaints in relation to the law enforcement bodies and number of cases forwarded to investigation authorities for further response; number of persons with self-inflicted injuries; and dates of the construction and the latest refurbishment of the buildings.

In its reply on 26 November 2009, the Main Unit for Human Rights Protection and Monitoring of the MIA provided the requested information only partially. Specifically, the response was presented in a chart form where the total number of detainees did not match a sum of the numbers of persons under administrative arrest, sentenced to administrative confinement and arrested under criminal law taken together. A total number of detainees in one of the temporary detention isolators was even less than the number of persons with body injuries.

The monitoring team members checked the custody registers as well as the primary medical examination registration journals for persons held in temporary detention isolators since 1 June 2009. The team examined the infrastructure, including cells, investigation rooms, inventory, and conditions of food storage. During the interviews, the administration provided information on the procedures of placing persons in the isolator as well as procedures and frequency of access to food, shower and outdoor exercise.

Ill-treatment

The monitoring team did not receive any allegations of inflicting physical injuries after the admission to the temporary detention isolators. On the other hand, the cases when physical injuries have been observed on persons upon admission to the isolator were very frequent; however, even when detainees claim that they received injuries during the apprehension process, they are unwilling to file a complaint against the law enforcement bodies.

It is hard to say whether the physical force used by the police against the detainees was adequate and proportional to the resistance encountered by the police while arresting the detainee. The fact is that, in the recent months, the number of cases when the detainees got injuries at the time of apprehension has increased.

It should be noted that all such cases are registered in the custody records of detainees, though administrations of some isolators forward a notification on injuries to the prosecutor only if the detainee advances claims on injuries sustained.

During the monitoring carried out at Zugdidi temporary detention isolator, we interviewed and examined one of the randomly selected detainees. When the detainee found out who we were, he asked us for help. According to his statement, he was beaten by the law enforcement representatives during both, apprehension and interrogation processes. Different types of injuries have been detected on his body. We drafted a report thereon and filled in the Form No. 5 describing the injuries observed. The Public Defender addressed the Chief Prosecutor's Office of Georgia for further legal action regarding the mentioned fact on 4 March 2010. According to the reply received from the Prosecutor's Office on 19 March 2010, preliminary investigation was launched on this case in accordance with paragraph (2)(b) of Article 144^1 (Torture) on the fact of torture committed by staff members of the Zugdidi regional office of the MIA during the detention process of the suspect.

Sanitary-Hygienic Conditions

Sanitary-hygienic conditions in a majority of temporary detention isolators are inconsistent with the existing standards. In most cases, the infrastructure is too outdated and it is impossible to keep the places clean. Even worse, in some cases toilets are not partitioned even in the newly constructed isolators. Potable water is often supplied through a pipe installed over the toilet.

In most cases, blankets are not washed; in other facilities, they do wash blankets but it is not done regularly enough to provide a clean blanket to each detainee. Hence, there is a risk of spreading of infections, dermatological and other types of diseases. The only exception is the Chokhatauri temporary detention isolator, where each detainee is provided with a clean blanket.

Material conditions

Material condition of persons placed in temporary detention isolators are not consistent with any standards either. In a majority of isolators, access to lighting and ventilation is poor; some of them do not even have windows or the windows are too small to ensure the proper ventilation and access to natural light. Many of the temporary detention isolators do not have heating and are not regularly cleaned. The only exception was the Chokhatauri temporary detention cell where living conditions are satisfactory and the isolators are clean.

Except for the isolators in Marneuli, Ambrolauri, Tbilisi Isolator No. 1 and some cells of the Batumi temporary detention isolator, the space provided per detainee does not comply with a $4m^2$ standard.

Detainees sleep on shared wooden boards or on two-storey metal beds. Mattresses were provided only in the Tbilisi No. 1 isolator. In other cases, the detainees were supplied only with blankets that can be assessed as a violation of a standard against those persons who are held in the temporary detention isolators for over 72 hours. Bed linen is not provided for the detainees/prisoners in any isolator.

It is also difficult to take care of personal hygiene in the temporary detention isolator conditions. Showers are not available in many of them. Often detainees are not supplied with the items of hygiene such as toothbrush and toothpaste, disposable razor, and towel. Therefore, it is impossible for detainees to comply with their duty to "observe sanitary-hygienic rules and to keep the cells permanently clean" envisaged by the Order of Minister of Internal Affairs No. 117.[41]

Access to outdoor exercise for the detainees is also problematic. A majority of isolators does not have an outdoor exercise yard. In others, where outdoor exercise yards exist, the detainees do not have access to them, which can also be considered as a serious violation of standards in case of administrative imprisonment lasting for a few months.

Doctor is available only at Tbilisi No.1 and No.2 temporary detention isolators. Doctor examines the detainees and provides medical treatment, though, in most cases, medical treatment provided is limited to simply giving painkillers to the detainees. Otherwise, if needed, the ambulance is called and such a case is recorded in special register. If necessary, the detainee is transferred to a medical institution.

In all the temporary detention isolators, detainees are provided with standard food: bread, tinned meat and powder soup. This food does not have sufficient nutritious value, especially if a person is kept for a few months in the temporary detention isolator. In this case, the only way of receiving nutritious food is the parcels sent to the detainees by their relatives.

[41] Chapter 4, 4.1

A vast majority of the isolators does not have tables and chairs. Some of them are equipped only with tables and even these tables are not suitable for having a meal in the acceptable conditions.

Recommendations addressed to the head of the Human Rights Protection and Monitoring Unit of the Ministry of Internal Affairs of Georgia

- **To notify the General Prosecutor's Office about every case when injuries are detected on persons as a result of apprehension or during the detention process;**
- **To make material conditions in all the temporary detention isolators compliant with the European Prison Rules; to ensure access to lighting, ventilation and heating;**
- **To partition toilets and to install washbasins;**
- **To provide each detainee and primarily the ones held for over 72 hours with a separate bed and clean bed linen;**
- **To provide each detainee with a space of 4m^2 area;**
- **To create conditions necessary for keeping the personal hygiene; in particular, detainees should have regular access to shower, should be provided with personal hygiene items and clean blankets;**
- **To ensure that the right to outdoor exercise is fully realized;**
- **To provide detainees with nutritious food;**
- **To equip cells with tables and chairs;**
- **Coming out of the fact that the temporary detention isolators do not provide adequate material and sanitary-hygienic conditions for a long-term stay, it is suggested to create special establishments at regional levels for persons subjected to administrative imprisonment.**

Military detention facilities (Hauptvakhts)

The fact that, in the course of monitoring the military detention facilities, the monitoring team has not come across any cases of body injuries and have not received any allegations on ill-treatment and complaints against the administration of the "Hauptvakhts" should be assessed positively.

On 24 October 2009, the PDO sent a letter to the Joint Staff of the Georgian Armed Forces requesting documentation on the local and international standards used by administrations of "Hauptvakhts" under the Military Police Department as guidance. According to the received response, *"Military Police Department is exercising short-term deprivation of liberty and administrative imprisonment of military servants of the MIA in accordance with the applicable law. Since its establishment, efforts have been made to align the conditions of short-term deprivation of liberty and relevant legislation with international standards. Primarily the old military detention facilities not compliant with the functions were completely taken down or in some cases refurbished"*. However, the observations made during the monitoring showed that this response did not reflect the reality as the infrastructure in the military detention facilities of Samtskhe-Javakheti, Shida Qartli and Achara regional units was too old and damaged making it impossible to bring the conditions there in compliance to any standards or norms.

The above-mentioned reply also contained information that operation of military detention facilities is regulated by a sole legal document entitled the Order of the Minister of Defense No. 147 on "the Functioning of Administrative Imprisonment Facilities ("Hauptvakhts") within the System of Georgian Ministry of Defence".[42] Besides, the Ministry of Defence stated in the letter, that they are applying intensive efforts to make the regulatory framework in this area consistent with international standards.

Taking into consideration the standards of CPT and the case law of the European Human Rights Court the Council of Europe Committee of Ministers has elaborated a recommendation to member states on European Prison Rules[43]; the

[42] Order of the Minister of Defence dated 2 May 2006.

[43] Rec(2006)2 of the Council of Europe Committee of Ministers dated 11 January 2006.

standards set in the European Prison Rules, are applicable to all the places of deprivation of liberty, including military detention facilities. According to the 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".*

The above-mentioned standards are not met in any of the military detention facilities except for the ones in Kakheti and Kvemo Kartli. More specifically, in the cells of "Hauptvakhts" in Samtskhe-Javakheti, Samegrelo-Zemo Svaneti and Achara, the small size of windows does not ensure the access to natural light and ventilation, and the cells in the "Hauptvakhts" in Shida Kartli do not have any windows at all. In addition, Kakheti-Kvemo Kartli military detention facilities are the only ones where a central heating is installed.

Article 15 of the Order of the Minister of Interior No. 147 articulates the rights of the persons in sentenced to administrative detention in "Hauptvakhts": *"prisoners held in the cells shall have underwear, working clothes and shoes. Other items are kept outside the cell according to the rule of the military detention facilities. At night, prisoners shall be provided with warm coats and shall be allowed to take off their shoes. If the temperature inside the cell is lower than +18 degrees, warm coats should be provided during the daytime as well".*

The above provision prescribes prisoners' rights in an environment, which itself is unacceptable according to current standards. It would be prudent if the decree defines a mandatory minimum temperature to be maintained in the cells instead of allowing the prisoners to have additional items to maintain their bodily temperature due to the administration's failure to provide normal conditions.

Pursuant to the European Prison Rules, the sanitary arrangements should be provided in a way that every prisoner should have access to sanitary facilities that are hygienic and respect privacy.

A majority of the military detention facilities does not comply with the above-mentioned requirement; toilets and taps for potable water are not installed in "Hauptvakht" cells in Samegrelo-Zemo Svaneti, Shida Kartli and Samtskhe Javakheti.

According to the European Prison Rules,[44] every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

Despite the mentioned requirements, the bedding is not provided to prisoners in any of the military detention facilities except for the Kakheti and Kvemo Kartli regional units. Even worse, in the military detention facilities of Samtskhe-Javakheti and Achara regional units, they provide prisoners at night with wooden boards instead of beds to sleep on; wooden platforms are provided in Shida Kartli military detention facilities. These facts are sufficient to conclude that the conditions provided in these "Hauptvakhts" are not adequate for normal stay of prisoners and are totally unacceptable.

RECOMMENDATIONS:

- **To close down the military detention facilities of the Samtskhe-Javakheti, Shida Kartli and Achara regional units;**
- **To ensure that conditions in the rest of the military detention facilities are brought into compliance with the standards established by the European Prison Rules considering the references presented in the report.**

[44] Rule 21

Healthcare in the places of confinement

Healthcare in the Penitentiary System

Provision of equivalent medical care[45]

According to Article 37 of the Law of Georgia on Imprisonment, "*Medical sections of the penitentiary establishments are part of the Georgian healthcare system. Material-technical base of a penitentiary establishment's medical section and qualifications of its personnel shall not be lower than the level of the general healthcare system*". Despite this requirement of the law, provision of equivalent medical care inside the Georgian Penitentiary System establishments still remains to be one of the most acute and unresolved problems.

There are numerous international documents concerning the necessity of making equivalent medical services available in penitentiary establishments. The following should be outlined in the first place:

1. *Recommendation 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 (adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies);
2. Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977)
3. Basic Principles for the Treatment of Prisoners – (adopted by the UN General Assembly Resolution No. 45/111 on 14 December 1990);
4. Third General Report, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf (93) 12.

In line with the above-listed documents, medical care in public and prison conditions shall be practiced in accordance with relevant ethical principles. Respect for the basic rights of prisoners involves providing them with preventive care and healthcare services equivalent to those provided to the general public. According to international standards, health policy in custody should be integrated into, and compatible with, the national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Doctors working in prisons shall provide each prisoner with medical service of the same standard as is provided to patients outside the prison. In its report, CPT pays particular attention and devotes a separate chapter to the equivalence of the medical service.

[45] i.e. adequate medical service corresponding to the general standards of medical service existing nationwide.

It can be concluded that all of the mentioned documents are requiring that the prisoners be provided with medical services at the same standards as are available in general in the given country, without discrimination.

Pursuant to Article 4(e) of the Law of Georgia on Healthcare, one of the principles of State health policy is *"protection of patients in pre-trial detention and penitentiary establishments from discrimination when providing medical care*". According to Article 6 of the same Law, "*Discrimination against a patient in a penitentiary establishment when providing medical care shall be impermissible."* According to Article 13 of the Law, *"medical care shall be provided to a person in pre-trial detention or penitentiary establishment …in accordance with the rules prescribed by this Law".* Considering these stipulations of the law, it is evident that the Georgian legislation in principle complies with international standards and requirements. Article 37 of the Law of Georgia on Imprisonment also envisages the requirement of equivalent medical care (material-technical base and qualification level of the medical staff in the penitentiary establishment shall not be lower than the general healthcare system level).

Despite the above-presented national and international standards, it is a fact that some bylaws obviously contradict the mentioned standards, infringing upon the right of imprisoned persons to healthcare and eventually creating a clear example of patients' discrimination in providing medical care on the ground that a patient is deprived of his/her liberty.

According to Article 45 of the Law of Georgia on Patients' Rights, *"accessibility to medical service for remand prisoners and sentenced prisoners shall be ensured by means of State medical programs".* Nevertheless, the latter requirement is being violated and the medical service is funded from the budget of the penitentiary system. According to the Order of the Minister of Labour, Health and Social Protection No. 119/n "on approval of the 2009 healthcare programs" dated 25 March 2009, the Ministry funds only the activities of a joint commission of the Ministry of Labour, Health and Social Affairs and the Ministry of Corrections and Legal Assistance. Incompliance with the said requirement causes inequality between the general national healthcare system and the penitentiary healthcare system thereby violating the principle of equivalence in healthcare.

Medical services available at local medical sections include various types of manipulations and procedures such as intravenous transfusions, injections, bandaging, minor surgical manipulations, dental manipulations, etc. However, even these minor services are provided unequally in different geographical areas, which should be considered as violation of right of relevant consumers to healthcare. More specifically, sometimes the operational capacities of local medical sections drastically differ from each other: services provided to prisoners in one establishment are completely unavailable in another; hence, we have a misbalance in geographical and operational availability of healthcare services. To some extent, this is the result of limited human resources and medical equipment; another reason is the limitations imposed on purchase of medications, which are introduced on some unknown grounds and are inconsistent with reality.

In fact, the medical sections in prisons are unable to provide comprehensive emergency services. A number of medical sections do own some medical equipment but they are virtually dysfunctional due to the lack of complete sets. For example, chief medical officers have stated that they have intubation pipes but not laryngoscopes; against this background, emergency service can be provided at minimum level only.

As for routine instrumental and laboratory tests, most of the establishments are benefiting from periodic visits of mobile groups equipped with portative x-ray equipment, echoscope and laboratory. The situation was improved in this regard during the reporting period. For example, in western region, relevant contracts were signed with the specialists assigned to provide such service to the patients.

Access to medical services[46]

There are 18 medical establishments within the Georgian penitentiary system. Two of them have the status of a medical facility; the 16 other establishments have medical sections and permanently employed medical staff. These 16 establish-

[46] Within the meaning that a prisoner has the right to an unlimited contact with a doctor

ments provide ambulatory medical care to prisoners. As for inpatient medical assistance, such services are not available at the following establishments:

- General and Strict Regime Penitentiary Establishment No. 1 in Rustavi
- Prison No. 7 in Tbilisi
- Prison No. 8 in Tbilisi
- Educational Establishment for Juveniles.

In the course of our interviews, the chief medical officer of Prison No. 8 in Tbilisi has stated that they had no need for inpatient medical services. The monitoring team disagrees with such view against the existing background and problems inside the establishment. On the other hand, according to paragraph 1, Article 40 of the Law of Georgia on Imprisonment, "A penitentiary establishment with over 100 inmates shall have an inpatient treatment facility providing 24-hour medical care". Accordingly, absence of an inpatient medical care unit in the abovementioned 4 establishments constitutes violation of law. Furthermore, in some penitentiary establishments (for example, Prison No. 4 in Zugdidi) inpatient care units are functioning only formally and are not operational in reality.

As a rule, all the penitentiary establishments are providing medical consultation or medical staff services round the clock. Availability of a medical officer on duty is ensured at all establishments; however a number of shortcomings were identified in several establishments in this regard. More specifically, there is only a nurse available at night or in off hours and, for some time, no medical personnel are present at all.

It should be noted that the staff of the medical units are not specialized in multiple areas. Some of the medical officers are of such medical profiles that are not even mentioned in the Order of the Minister of Labour, Health and Social Affairs No. 136 dated 18 April 2007 "on defining the list of doctor profiles, relative profiles and sub-profiles". In terms of dental care, the situation has considerably improved in the second half of 2009. A vast majority of penitentiary establishments received new dental equipment and materials. Despite this fact, the system is still experiencing a lack of dental specialists. This trend is mostly visible at the prisons in western Georgia where one dentist is serving several establishments and is unable, obviously, to visit all the establishments daily. According to one of the dentists, he cannot start comprehensive treatment in these conditions, since he is aware that he won't be able to visit the patients in subsequent days because of the tight work schedule.

In the previous reporting period, dental care involved only tooth extraction. The number of therapeutic dental manipulations has considerably increased in the current reporting period. The establishments were also equipped with dry temperature sterilizer relatively reducing the risk of spreading of infectious diseases.

Pharmacists are available in some establishments and their functions are performed by chief medical officers or nurses specially assigned to that effect. As for the medical staff, the situation in this regard was quite poor in some of the establishments (Tbilisi No. 7 Prison), though we were informed there have been some positive changes in this direction.

Other medical personnel (sanitary and technical personnel, lab assistants and others) are available only at the Medical Establishment for Convicted and Indicted Persons; an absolute majority of penitentiary establishments do not have such personnel.

The fact that psychiatrists or other personnel specializing in psychiatry are not available in penitentiary establishments is alarming. The penitentiary system has many prisoners with different mental disorders but employs only a few psychiatrists (5 in total, 3 of whom are working in the Medical Establishment for Convicted and Indicted Persons and one per eastern and western regions). The number of doctors of this profile is clearly inadequate with a result that the Georgian penitentiary system is experiencing a deep crisis in term of psychiatric care. The same is true about narcologists: only one independent medical practitioner of this profile is working for the Medical Establishment for Convicted and Indicted Persons. The situation has been partly improved by a relevant program functioning in the Prison No. 8 in Tbilisi and the measures taken in this direction in some of the establishments.

There are virtually no epidemiologists working in penitentiary establishments (save a single representative of the Medical Department), which makes it impossible and ineffective to establish control over transmittable diseases.

During the monitoring, chief doctors of local medical sections declared that, if needed, the medical units could invite outside specialists. Nevertheless, analysis of the current statistics suggests that the share of this type of medical service cannot remedy the actual shortcomings existing in the prison healthcare system. Up to present, allowing external specialists to enter and perform their job on the territory of establishments requires a lot of efforts on the part of prisoners and their family members and depends upon the goodwill of the Head of Penitentiary Department or the director of the establishments in spite of the fact that prisoners do have this right by law. The situation is further aggravated by the fact that some of the chief doctors do not realize the need for civil sector medical specialists visiting the prison at all. This is an improper attitude and should be changed. According to Article 38 of the Law of Georgia on Imprisonment, *"a convict undergoes medical examination on admission to the penitentiary establishment"*. Paragraph 2 of the same Article states that "*Health status of the convict is examined at least once a year. A sick convict is provided with an immediate treatment"*. The monitoring showed that, despite the said legal requirement, in reality prisoners are not examined by medical specialists once a year in a scheduled manner and examination of prisoners on admission to establishments is executed differently in different establishments, though some common tendencies can still be observed. In a majority of cases, examination of prisoners upon admission is just a formality. Except for visible injuries, doctors do not in fact carry out bodily examination. Collection of medical test results and focusing on healthcare needs are not done anywhere. The only exception is the Establishment for Women and Juveniles No. 5 where the situation is satisfactory in this regard.

As a rule, prisoners are not provided with information booklets or any other means of information to help in getting aware of available medical services and hygiene norms on admission; however, in some cases, patients are provided with some printed materials concerning the most prevalent diseases or other types of medical problems.

Transfer of prisoners to a hospital of relevant profile

Pursuant to the principles established by the Law on Imprisonment, in case it is impossible to provide a specific healthcare service package locally, such services should be provided by a civil healthcare institution based on a contract. According to our information, such contracts are concluded by the Penitentiary Department and quite often even chief doctors of penitentiary establishments are not aware of the types of services available under these contracts. Such outsource services are usually provided only once; then, it becomes practically impossible to benefit from the contracts due to various artificial delays and obstacles; such practice should be considered as an organizational defect. For example, during the reporting period in 2009, it was impossible to transfer imprisoned women to a psychiatric institution, even if where there was a pressing need to that effect. This situation of relevant beneficiaries should be considered as inhuman treatment.

As for the transfer of patients to the Medical Establishment for Convicted and Indicted Persons, Medical Establishment for Tubercular Convicts and public inpatient facilities, the nationwide practice is different. Analysis of the statistics of transferred patients was one of the tasks of the monitoring team.

Chapter IX of the Law of Georgia on Imprisonment to some extent regulates the transfer of prisoners to various establishments based on their health status. This issue was also regulated by the Order of the Minister of Justice of Georgia No. 717 dated 11 September 2006 "on transferring sick prisoners and convicts from the Penitentiary Department establishments to hospitals of general profile, the Medical Establishment for Tubercular Convicts and the Medical Establishment for Convicted and Indicted Persons." The Order was cancelled by the Order of the Minister of Justice No. 12 dated 01.12.2010. Instead, by the end of 2009 (on 29 December), the Minister of Corrections and Legal Assistance of Georgia issued a new Order No. 902 "on transferring sick prisoners and convicts from the Penitentiary Department establishments to hospitals of general profile, the Medical Establishment for Tubercular Convicts and the Medical Establishment for Convicted and Indicted Persons." We will come back to this issue in our next report.

As for the Order No. 717 effective in 2009, a number of comments and proposals were made in the previous parliamentary speech by the Public Defender concerning medical shortcomings calling for immediate resolution. Specifically, the

very first article of the Order states that "...for immediate diagnostic tests and care…transfer shall be carried out according to the plan." The same idea is reiterated in paragraph 2 that a planned transfer shall be carried out in case of immediate need. We addressed the Ministry of Justice several times explaining that, from a medical point of view, the idea enshrined in the Order was absurd and could become a reason for death or health disorder of a person, since a transfer of a person to a hospital shall be carried out urgently in urgent cases, and according to a plan when the health status allows so. Analysis of the files of dead prisoners who were transferred to the Medical Establishment for Convicted and Indicted Persons and to other medical institutions shows that, in certain cases, prisoners died on the first day or in a few hours following their transfer. The above-mentioned Order actually served as a ground for "justifying" this situation to some extent. Having regard to the existing reality, the Public Defender's Office welcomes the cancellation of the Order No. 717 and the adoption of a new Order No. 902 by the Minister of Corrections and Legal Assistance of Georgia, since latter adequately deals with the serious defect mentioned above.

Furthermore, the recently adopted Order (Article 2(3)) envisages the possibility of transferring prisoners for forensic medical and psychiatric examination, which has been regarded an unresolved problem in the past.

During the monitoring, the group scrupulously studied the cases of transfer of sick prisoners from penitentiary establishments to the Medical Establishment for Convicted and Indicted Persons, the Medical Establishment for Tubercular Convicts and civil hospitals. As for prisoners transferred to the Medical Establishment for Convicted and Indicted Persons, according to the chief doctor, no monthly- and nosology-specific statistical data are provided by penitentiary establishments on such prisoners; such records are not produced.

Most common diseases

Chief doctors of various penitentiary establishments named the following diseases as most-commonly identified:

- **TB;**
- **Viral hepatitis;**
- **Surgical pathologies (rupture, appendicitis);**
- **Self-inflicted injuries and various types of traumas;**
- **Fever of unknown aetiology and respiratory diseases (seasonal);**

During the monitoring undertaken in the reporting period, according to information provided by the Head of the Medical Service of the Penitentiary Department, a total of 28 patients were undergoing treatment against viral hepatitis using interferon. Some of the patients were being treated locally at different penitentiary establishments; others were taking the treatment course in the Medical Establishment for Convicted and Indicted Persons.

438 patients were involved in the "DOTS" program and 6 in the "DOTS+" treatment scheme. The program has been implemented with the financial support of the Global Foundation. A phthisiatrician carries out control over treatment of TB patients and monitoring of the after-treatment results by visiting the treatment locations and checking the data on the spot. The process is supervised by a TB team of the Penitentiary Department. The "DOTS+" treatment scheme is monitored by an infectious diseases specialist and commission members.

Qualification of the Medical Staff

As for the competence and professional level of the prison medical staff, analysis of the available medical documentation reveals serious problems in this regard. Primary reason is the single-profile approach (patients cannot use assistance of professionals specializing in the relevant medical area); other reasons are limited material resources (not all the required tests can be done and not all the required medications can be prescribed) and unavailability of continuous professional education. The monitoring has revealed that, during the reporting period, absolute majority of doctors working for the

penitentiary system have not taken any professional trainings (continuous medical education and professional development courses) approved by the professional development council of the Ministry of Labour, Health and Social Affairs, which is necessary to maintain medical qualifications at appropriate level. Apart from professional training, only few local medical staff members have taken any types of training on healthcare issues in prisons in general.

Furthermore, the monitoring revealed that a vast majority of doctors working at prisons are not familiar with applicable Georgian legislation or international documents related to healthcare. Most of them have no notion about the bylaws issued by the Minister of Labour, Health and Social Affairs, the Minister of Justice or the Minister of Corrections and Legal Assistance, related to them and regulating healthcare issues. Above-mentioned problems are apparently caused by separation of relevant authority from the State healthcare system and extremely low level of autonomy of doctors.

The Status of the Medical Establishment for Convicted and Indicted Persons

Uninterrupted functioning of the Medical Establishment for Convicted and Indicted Persons is crucial for the quality of medical services within the penitentiary system. **In our opinion, it is a fundamental problem that, for years, the above-mentioned establishment has not been licensed and formed as a legal entity for medical activities.**

In accordance with Article 53 of the Law of Georgia on Healthcare, a medical institution is *"a legal entity with the organizational-legal form prescribed by the Georgian legislation, which exercises medical activity according to the established rules and has the following functions: …ascertainment of the health status of a patient, prevention and/or treatment of a disease and/or rehabilitation of a patient and/or inpatient care"*. According to the same Article, *"A medical institution is obliged to observe the standards, rules and norms established by the legislation regulating medical and pharmaceutical activity"*. Pursuant to said legislative provision, the Medical Establishment for Convicted and Indicted Persons cannot in fact be considered a medical institution from the legal point of view, since it is not a legal entity and it is not a licensed institution. Accordingly, this Establishment contradicts the rules and national regulating norms defined by the Ministry of Labour, Health and Social Affairs of Georgia. **From the legal point of view, the Medical Institution for Convicted and Indicted Persons does not exist, since it is not organized as a legal entity at all.** The Public Defender has been raising this issue in his Parliamentary reports for the third year already.

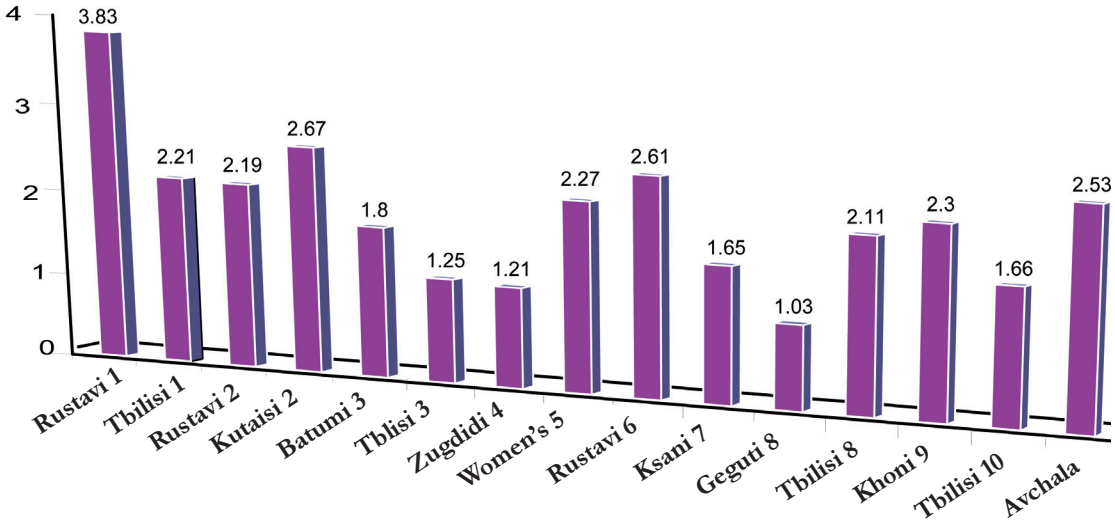
The Public Defender has issued a recommendation several times to review the status of the Medical Establishment for Convicted and Indicted Persons and to include it into the national healthcare system. Representatives of the Penitentiary Department, however, were referring to the Law on Licenses and Permits as of 25 June 2005, as amended on 25 May 2006. The amendment reinforced the formulation of Article 1(2) of the Law as follows: "*This Law does not apply to an activity or actions defined by this Law if such activity or actions are carried out by the Ministry or its subordinate sub-institution envisaged by the Law of Georgia "on the structure, authority and operation rules of the Government of Georgia"*. The logic used by the Penitentiary Department suggests that the said amendment allows activities such as surgery, appointing a course of treatment for patients, medical rehabilitation courses and other medical activity can be carried out not only by the Medical Establishment for Convicted and Indicted Persons, but also by other structures of the Penitentiary Department such as the Special Training Service, the Security Service or even the Joint Staff of the Georgian Armed Forces. Enactment of the said amendment to the Law on Licenses and Permits caused an inconsistency with the basic principles of the Law. Namely, the Law states that one of the fundamental objectives of the legislative regulation through licensing is to "ensure and protect the life and health of human beings"; however, the entry into force of the Law caused deactivation of State regulation of and cancellation of control over this specific establishment, thus causing a direct violation of the right to life and health. These circumstances have not been studied and properly paid attention to to-date.

In any case, it is evident that a clear-cut requirement of the Georgian Constitution prescribed in its Article 27(2) that *"the State shall control all the institutions of health protection"* was not taken into account in the course of drafting the said amendment to the Law on Licenses and Permits. Further, pursuant to Article 16(a) of the Law of Georgia on Healthcare, "licensing of medical institutions" is one of the basic mechanisms of State authority. Also, according to Article 56 of the same Law, "***it is prohibited for a medical institution to carry out medical activity without having obtained a relevant license".***

Finally, even if it is assumed that, according to the law, all the citizens of Georgia are receiving medical care in licensed medical institutions and only prisoners can be provided with medical services by unlicensed medical establishments, such *status quo* itself constitutes discrimination of patients on the ground of their status of prisoners. Such discriminative approach violates the international commitments undertaken by Georgia as well as national and international principles of law.

Supply of Penitentiary Establishments with medications

Penitentiary establishments were better supplied with medications in the first half of 2009 but the trend changed in the second half. Various penitentiary establishments were supplied with medications from Penitentiary Department. Each establishment had a fixed amount of monthly sum and Chief Doctor had to fit the requests for medications within this budget. The balance between the request and the supply of medications in the framework of the existing limits was maintained during the year, though the balance was broken during the recent months. It should be noted that the current budgetary quotas (in Georgian Lari) are vague and it is hard to understand on what basis they are determined. In connection to this, we identified some penitentiary establishments to be "privileged" compared with others in terms of supply of medications. The below presented table reflects the share of sum spent for medications per patient per month.



According to the table, the indicator is the highest in the General and Strict Regime Penitentiary Establishment No. 1 in Rustavi and the lowest indicator is in the General and Strict Regime Penitentiary Establishment No. 8 in Geguti. On average all the prisons spend around 2.08 GEL on medications each month per prisoner. However, in fact it makes no big difference whether the sum spent for one prisoner's medications is 1 or 3 GEL; medications bought on this money will clearly be insufficient for a patient. Due to shortage of funds allocated for the purchase of medications, prison doctors have to prescribe irrelevant medicines or, in some cases, they do not prescribe any medicines at all. Examination of the list of medications provided to the medical section shows that most of the medications purchased are very cheap. Use of such medications in the most difficult clinical cases, which are frequent enough in prisons, usually leads to either no result or even worsening of the health status of prisoners.

For example, widespread diseases such as pneumonia are very common both in general population and in the penitentiary sector. According to forensic conclusions, 20% of death cases in the second half of 2009 were caused by pneumonia. According to the standards applicable in Georgia,[47] recommended treatment of pneumonia in adults is considered to be

[47] See the Order of the Minister of Labour, Health and Social Protection No. 94/n dated 27 March 2007 "on creating and approving the Statute of the National Council for Elaboration, Evaluation and Implementation of National Recommendations on Clinical Practice and State Standards of Disease Management"

a combination of amoxicillin and macrolides. In more complicated cases, treatment shall be carried out with the help of wider spectre of beta-lactam antibiotics, or second-third generation cephalosporin together with macrolides. Considering the market prices of medications in Georgia, one week antibiotic therapy will cost about 50-100 GEL. Adding to that medications of other groups normally prescribed by doctors to patients with pneumonia as well as where a long term treatment and control of accompanying diseases is required, it becomes clear that costs only for medications are already quite expensive. Examination of medications available in pharmacies of the local medical sections readily leads to a judgment that such "expensive" antibiotics are either not available there at all or are quantitatively insufficient. It follows that the current supply of medications is not projected to satisfy medical needs in case of serious clinical cases. Because of this, the clinical cases either are aggravated or grow into chronic illness thus significantly worsening the general health status of the patient. It is a fact that a 2 GEL limit allocated per patient is insufficient and often adequate treatment of one or two patients may cost a total monthly sum allocated for medicines.

Against this background, some patients try to get medications from the outside sources (families), but bringing the medications inside the establishment is problematic. Except for the standard long-term procedures, getting the medications inside the establishments to some extent depends upon the goodwill of the establishment's administration. Consequently, it would be prudent to allow the patients to purchase (order) any tested medications needed for their adequate treatment and, where documented medical prescription[48] is available, to use the money on their credit cards.

In the course of the monitoring, we found out that each penitentiary establishment normally has two pharmacies. One of them is located outside the closed area (for example, in the administrative building) and the other is situated within the closed territory (as a rule, in the medical section). On a daily basis, medicaments are bought in the outer pharmacy and brought into the establishment. A local pharmacist (if available) and a chief doctor are jointly drawing up a list of medications to be sold in the local pharmacy. Establishments usually maintain special journals to keep track of medicaments stored and sold by the local pharmacies. Medicaments are purchased from the outer pharmacy every day. A prisoner can only keep a painkiller and other types of medicines according to the prescription.

As to the right of prisoners to keep medications themselves, the basic principle is that prisoners are not allowed to keep remedies in ampoules, psychotropic or similar medications. A prisoner cannot keep any medications in a big amount either. In addition, a strict control is established where there is a doubt that a prisoner tries to collect medications for other irregular purposes.

Patient's consent and confidentiality[49]

The monitoring team examined whether, in the course of provision of medical services, the patient's consent is obtained and rules of confidentiality and privacy are observed. These principles are very important and directly point to whether the patients' right to health is properly secured.

Primarily we should focus on whether medical examination or body examination of prisoners is carried out on admission to the establishment in outpatient conditions and when needed (urgent cases).

As we found out, the doctor does not examine an incoming prisoner alone and other prison staff is present in the room in the course of examination. In most cases, the examination process is attended by a prison official who is in charge of escorting the prisoner and sometimes by other prisoners as well. Accordingly, the initial medical examination is carried out in violation of all the international and national standards; the right to confidentiality is violated in terms of both, the interview and visibility. At the same time, a report on the examination of the prisoner is signed by not only the doctor, but

[48] i.e. a medical record made by an independent medical practitioner specialized in the relevant medical area in accor dance with the rule established in the Georgian legislation.

[49] Within the meaning of informed consent, of a patient or a person subject to examination, to any medical manipulation and full observance of confidentiality.

also the escorting prison official and other nonmedical staff of the recipient establishment such as the inspector on duty. Therefore, the torture prevention standards in terms of observing confidentiality in carrying out a medical examination and the purpose of the medical examination itself are violated already at the reception units of penitentiary establishments. Medical examination of a prisoner shall be carried out beyond the audibility and visibility of nonmedical persons unless otherwise requested by the doctor for the security reasons.[50]

The second contact of an imprisoned person with a doctor takes place in the presence of outside persons. In a majority of prisons, doctor-to-patient meetings are supervised by a duty officer or other prison staff. Chief doctors of some establishments considered our monitoring team's questions related to confidentiality to be very strange, since they cannot even imagine a contact with a patient face-to-face in the absence of outside supervisors. As some doctors stated, they were normally having face-to-face meetings with prisoners but the prisoners stated to the contrary in our interviews. In any event, this situation calls for special attention and prompt measures. Some prisons have an interesting method of planned consultations with a doctor. For example, in Prison No. 3 in Batumi, a prisoner wishing to meet with a doctor is required to submit a written request to the social service representative and only afterwards is it possible to contact the medical staff. Similar facts are very common in various establishments. In this regard, an example of best practices is the Establishment No. 5 for Women and Juveniles where the issue of confidentiality and medical secrecy is indeed respected. This good example is a result of proper attitude on the part of both the administration and the medical staff of the establishment.

According to the 3rd general report by CPT, *"Freedom of consent and respect for confidentiality are fundamental rights of the individual. They are also essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship, especially in prisons, where a prisoner cannot freely choose his own doctor."* As for the confidentiality, the same document states: *"Medical secrecy should be observed in prisons in the same way as in the community. Keeping patients' files should be the doctor's responsibility. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of prison officers. Further, prisoners should be examined on an individual basis, not in groups."*

On the bases of all the above mentioned, **the confidentiality standards are violated in a big majority of penitentiary system establishments.**

The monitoring team was also interested in whether the patients were sufficiently informed about the examinations and expected results as well as whether the patients were aware of their health status and the measures taken in relation to them. The study showed that quite a lot of prisoners have incomprehensive information about their own health status, but they are better informed about the examinations and medical measures that may be taken in relation to them. Sometimes they are informed by the doctor; in other cases, they are informed by their fellow inmates or persons visiting them (defence lawyer, family members). Though all the chief doctors are claiming that the prisoners are able to get familiar with their medical records, the monitoring team has to disagree with this statement. It takes a lot of effort for a prisoner to get access to own medical records. Quite often, this becomes possible after the intervention of a defence lawyer or a PDO representative. As for the chance to add own comments to medical records made by the prison doctors, this never happens in the penitentiary system despite the fact that the Law of Georgia on Patients' Rights (Chapter III) imposes no restriction to that effect; in particular, according to Article 46 of the Law, *"Prisoners on remand and sentenced prisoners shall have all the rights envisaged by this Law"*.

In most cases, the prisoners have little or no information about available medical treatment or means of alternative examination; we did not detect any medical document containing a prisoner's or his/her legal representative's comments.

As for obtaining prisoners' consent to medical manipulations, the situation in this regard is satisfactory only in the Medical Establishment for Convicted and Indicted Persons. Chief doctors of penitentiary establishments were even surprised about why we are asking them questions on this matter.

[50] CPT report to the Government of Georgia, 2001

According to information provided by a majority of the medical sections, a prisoner's medical information is disclosed only with the consent of the prisoner. In practice, personal information on the prisoner's health status is usually requested (in a written form) by defence lawyers, family members, PDO, investigative and forensic institutions. Medical records of prisoners are practically never requested following release. Practically, there is no regulatory framework governing the rules of storage of medical documentation. Medical documentation (if available) is normally stored in medical sections. When a prisoner is transferred or released, the penitentiary establishments often are not sure about what to do with such prisoner's medical files. Some chief doctors are keeping the archives for 5 years; others are forwarding the documentation to the administration or simply are not paying much attention to such documentation or join them to the prisoner's personal file. In any case, medical information becomes available also for the non-medical staff of the penitentiary establishment.

According to practice established in the Medical Establishment for Convicted and Indicted Persons, medical records of current diseases cannot be accessed in day offs and holidays. They justify such practice with the consideration that doctors are afraid that documents may get lost. This approach should be deemed improper, since patients' medical records should be kept by a doctor on duty to ensure the right to access to medical services round the clock when needed and in case of emergency. Furthermore, making medical records available round the clock would help track the health status of patients promptly regardless of night hours or day offs.

As for the keeping of inpatient prisoners' medical records by the Medical Establishment for Convicted and Indicted Persons, the chief doctor has stated to us that the establishment keeps the archives on the ground floor of the building. There is an archive clerk working on payroll in the archives section. The establishment staff is not familiar with the Order of the Minister of Labour, Health and Social Protection No. 198/m dated 17 July 2002 "on rules of keeping medical records in medical establishments"; hence, they are not managing medical documentation according to the mentioned rules. As we found out, the archive clerk is not authorized to release any information. If the Establishment receives a request to release copies of archived documents or information on old documentation, a response is prepared by the head of the relevant division (where the patient was treated). Hence, the function of the archive clerk is only to keep the documentation.

Preventive work[51]

As mentioned above, no records are produced to describe the health status of a prisoner on admission to an establishment. This is the case also when a prisoner is transferred to a new establishment or is returned back to the same establishment. Usually, penitentiary establishments are not keeping records of these procedures or, if they do so, the records are incomprehensive and, virtually, they cannot be used when needed. Nor do they make records about any physical injuries found on a prisoner's body or of a prisoner's statement to the prison doctor concerning any use of psychological pressure against him/her.

Our monitoring has showed that not all of establishments are recording facts of violence and the current practice in this regard varies from one establishment to another. Although a majority of establishments do have registration books designated for recording bodily injuries, in most cases they are kept only formally. Differentiation is almost never made in cases of self-injury, injuries inflicted upon other prisoners, daily-life injuries and injuries inflicted by other persons. The rules and conditions of keeping the registration book also differ according to the establishments. As a rule, comments of the person on whom the record is made are not included in the file. In some establishments, injuries are registered in the form of separate protocols and these protocols cannot be accessed by the medical staff afterwards. None of the doctors is keeping statistics of the types and nature of injuries. We came across an interesting practice of "annulling the book of injuries"; such practice is maintained in the General and Strict Regime Establishment No. 9 in Khoni. According to the local chief doctor, *"There used to be such a book but nothing was recorded inside and it was empty all the time. We really have not seen any*

[51] Within the meaning of the responsibility of medical staff for not only treatment, but also social and preventive assistance.

injuries". Later it turned out that, since no entries have ever been made into the book, finally it was annulled and returned back to the chancellery. By the end of the monitoring, the monitoring team addressed the chancellery with a request to show us the so-called "Book of Injuries". After a long search, they showed us a chancellery book with standard drawings, with numbered pages and a stripe.

The book was opened in 2007 but no records have been made since then. By the end of the year, there is one entry made concerning prolongation of the validity of the book for another year of 2008. No entries have been made in 2008 either. Finally it appears they have decided to take the book out of use and turn it in to the chancellery. It is important to note that the book of injuries is not kept in Prison No. 8 in Tbilisi. The administration avoided provision of such information to us several times.

According to the 3rd general report of the CPT, Prison health care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, if appropriate, the provision of general information to the relevant authorities. Information could also be forwarded on specific cases, though as a rule such action should only be undertaken with the consent of the prisoners concerned. Any signs of violence observed when a prisoner is medically screened on his admission to the establishment should be fully recorded, together with any relevant statements by the prisoner and the doctor's conclusions. Further, this information should be made available to the prisoner. The same approach should be followed whenever a prisoner is medically examined following a violent episode within the prison or on his readmission to prison after having been temporarily returned to police custody for the purposes of an investigation. The health care service could compile periodic statistics concerning injuries observed, for the attention of prison management, the Ministry of Justice, etc.

Our monitoring revealed violation of the standards for the prevention of torture, violence, and inhuman treatment; in particular, the "Istanbul Protocol" principles are not used in the documenting process, in violation of the requirement to that effect envisaged by Georgia's anti-torture plan.[52] The books of injuries normally do not provide clear information on who, where, why, by whom and in what circumstances was injured and what were the outcomes of the injury; furthermore, the books do not include professional conclusions concerning these injuries. In most cases, it is unclear whether the injuries were inflicted before arrival to the prison or afterwards; whether it is a self-injury or it was inflicted by another person. The medical staff is unaware of the meaning of the term "self-inflicted injuries"; in many cases, they consider a self-inflicted injury to be a result of some natural trauma rather than caused by a person to himself.

The monitoring undertaken in the second half of 2009 revealed that there have been suicide attempts by some prisoners. One of such cases was registered during the monitoring process as well (in the Establishment No. 2 in Kutaisi). The monitoring group was interested to find out about the practice of the medical staff in such cases and any preventive measures taken. The group came to a conclusion that in general the prison staff is not involved in any information sharing discussions and they are not trained in what should be done in such circumstances. If a prisoner cause serious injuries to self in the process of suicide attempt, he is transferred to the medical establishment; if as a result of follow-up observation it is determined that the prisoner's life is no longer under threat, the prisoner, in the best case, is transferred to the medical section of his establishment. There were 2 facts of suicide registered in 2009: one in the first half of the year and the other in the second half. Investigation has been launched but the results are still unknown.

Pursuant to the third general report of the CPT, Suicide prevention is another matter falling within the purview of a prison's health care service. It should ensure that there is an adequate awareness of this subject throughout the establishment, and that appropriate procedures are in place. Medical screening on arrival, and the reception process as a whole, has an important role to play in this context; performed properly, it could identify at least certain of those at risk and relieve some of the anxiety experienced by all newly-arrived prisoners. Further, prison staff, whatever their particular job, should be made aware of (which implies being trained in recognising) indications of suicidal risk. In this connection it should be noted that the periods immediately before and after trial and, in some cases, the pre-release period, involve an increased

[52] See Decree of the President No. 301 "on approval of the 2008-2009 action plan for the fight against torture, inhuman, cruel or degrading treatment in Georgia" dated 12 June 2008.

risk of suicide. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme. Further, such persons should not have easy access to means of killing themselves (cell window bars, broken glass, belts or ties, etc).

The monitoring team focused on sanitary-hygiene conditions in specific establishments and assessed whether the existing situation ensured respect for human dignity. Basic data on this matter is presented in the chapter on general monitoring. **When it comes to conditions inside the medical sections, the situation in some of the establishments is alarming. A brief description of the medical section in Prison No. 4 in Zugdidi is enough to illustrate the situation:** the so-called inpatient care unit of the medical section is located on the second floor of the prison building, quite far away from the office of the medical staff. There are two cells allocated for this purpose: "c1" and "c2". According to the doctor, one ward is designed for "bk(+)" and the other for the "bk(-)" patients. "Inpatient care" is just a symbolic name for these two "wards". It is impossible to believe that the patients can be provided with adequate treatment and care in these conditions. "Ward c1" is a typical ward housing two patients at the time of our monitoring. There are three two-storey beds in the ward. The ward needs refurbishment; it has one window covered with double grated metal that does not allow enough light in. The ventlight has not glass inside. The washbasin is out of order. There is a so-called lavatory, which in fact is a territory surrounded with a wall of about 1 meter high without a door or even a partition curtain. There is an unpleasant smell coming from the toilet. The wooden floor is damaged in some places. Both prisoners have stated that they were diseased with TB. Their bed linen was dirty. The cell was teeming with ants. There were cockroaches and rodents in the ward. Ward 'c2" was not used for diseased patients at the time of our monitoring in the second half of the year. There were 8 beds in the ward housing female inmates. According to the administration, the medical ward had been temporarily allocated for female prisoners. But the women were stating that they had been accommodated in the medical ward for over a year. There was one desk in the room used as a table. In the left corner of the ward, there was a toilet, which was not partitioned either. A window without a glass just on the opposite wall of the door served as the source of natural light and ventilation. According to the women, scorpions, cockroaches, mice and rats are very common in the cell. It is impossible to observe any sanitary standards in these conditions.

The situation is also alarming in the medical section of General and Strict Regime Penitentiary Establishment No. 9 in Khoni. Some areas of the floor inside the wards are damaged and they are covered with either wood or stone. Stones are sticking out from the damaged areas of the floor. Maintaining sanitary conditions inside the wards is actually impossible because of the extent of dilapidation. Windows along the left side of the corridor are relatively bigger and the rooms are lighter. There is no water supply or sanitary point inside the wards. Medical furniture is outdated and damaged. Washbasins and taps are not available not only inside the wards, but in the entire medical section, unless the toilet and the shower installed outside in the yard counts. There is a ward in the yard that has no doorframe and the wall is destroyed creating an impression of a "cave". Next to that, there is a toilet and the so-called "shower". A door in the yard leads to one another ward that has a window and a door, though there are considerably big holes that go out to open space. There is no water supply in the ward, the walls are partially grinded, the ceiling is not even; the window glasses do not fit the frames and the air is freely entering the room. In the described conditions, it is physically impossible to observe sanitary-hygiene norms. The space standard (national as well as international) of the cell-wards is insufficient for the inmates accommodated in there.

As we found out, the Penitentiary Department has signed a relevant contract with a private organization that is supposed to visit the establishments periodically and carry out sanitary activities. Different contractors are serving different establishments. The contractors are visiting the establishments approximately once a month to carry out disinfection and deratization activities, though according to directors of some establishments, they carry out disinfection on their own too. Contractors carry out the works in medical sections, prison areas, inside the cells and at sanitary points. A majority of establishments do not regard disinfection of the cells to be compulsory. Kitchen and corridors are subject to disinfection. Despite this, in some of the establishments the works are in fact ineffective because the buildings are too old and in a bad physical shape.

A majority of establishments provide prisoners with the primary hygiene items. These items can also be purchased in the shops inside the establishments. From the point of view of prisoners' hygiene, bed linen represents to be the biggest

problem, as they are not washed periodically; also, considering the frequency of taking shower by prisoners, the situation in most of the establishments is very poor. For example, through interviews with prisoners from the medical section of the General and Strict Retime Establishment No.8 in Geguti, we found out that even though they are placed in the medical section, they are not satisfied with the level medical services provided. In a number of wards, no bed linen is available for patients; in others, the beddings are so dirty that it is difficult to detect their natural colour. Barber's services are not available in any of the establishments; the administration deals with this problem by assigning one of the prisoners to perform this job.

Finally, we came to a conclusion that doctor of penitentiary establishments are not able or willing to control sanitary-hygiene conditions in the establishments. Some of the chief doctors are stating that this is beyond their competence.

As for the problems related to epidemiology, a majority of doctors avoided going into details, though we found out that there is a problem of air and water pollution in some establishments. There have also been cases when inmates were contracted an infection (such as itching) through food products. It is common in all the establishments that many prisoners are infested with lice. Bed bugs and other parasites are found almost everywhere to various extents directly depending on the physical conditions and overcrowding of the establishment. During the reporting period, the facts of infectious diseases such as measles and venereal diseases such as gonorrhoea and syphilis were recorded.

Penitentiary establishments do not pay much attention to psychological assistance. During our interviews with prisoners (especially those from high-risk groups), we found out prisoners do not have an opportunity to talk to doctors or other staff and receive their assistance and sympathy in case of emotional tension, depression, suicide attempt or self-injury. According to doctors, prisoners are not involved in any social therapy or prevention programs (except for a few exceptions). Penitentiary establishment do not have psychiatrists; a psychologist working for different establishments acts as a social service representative at the same time and does not have any contact with the medical staff.

All the chief doctors are declaring that they personally together with their medical staff are examining food properties three times a day (before their distribution) and the samples of food products are kept for a certain period. The doctor is obliged to confirm with his signature in a special book that food provided to prisoners is edible. As stated in an official letter received from the Penitentiary Department, during 2009, there has been no occurrence of finding the food or its components defective by prison doctors. All the chief doctors are saying the same and, as a result, there have been no referrals by prison doctors to the administrations of establishments on this matter. Chief doctors are communicating with the kitchen staff personally giving them recommendations that are followed. For example, recently a recommendation was made on reducing the amount of salt and fat in the food. In some of the establishments, the food control function is performed by a nurse systematically or irregularly.

There is a nutritionist working in the Medical Establishment for Convicted and Indicted Persons. Nutrition in this Establishment is also provided by the LLC "MEGAFOOD", contractor of the Penitentiary Department. According to the chief doctor of the establishment, the food quality is checked 3 times a day before the nutritionist distributes it to the prisoners. As for food deficiency, the chief doctor claims that there was one registered case and it was dealt with after the doctors' involvement. Since 2009, with the efforts of the chief doctor and local doctors, diet tables were introduced, which should be assessed very positively. This matter was practically unsolvable in the past, while it has been partially dealt with in the reporting period. Provision of patients with diet tables remains an unresolved problem in other penitentiary establishments.

While projecting and determining the functional status of the building of Medical Establishment for Convicted and Indicted Persons, apparently no one paid attention to the Order of the Minister of Labour, Health and Social Protection No. 298/m dated 16 August 2001 "on approval of sanitary rules of arranging and operating hospitals, maternity houses and other healthcare facilities." According to the mentioned normative act, it control over observance of sanitary rules and norms in the hospitals, maternity houses and other healthcare facilities under their competence shall be exercised pursuant to the same Order. **The Medical establishment is located near a landfill.** Domestic and other types of waste are regularly burnt down on the landfill and the generated smoke directly spreads over the establishment territory. During the

monitoring, the building was completely in smoke several times. Ventilation system is not installed in the so-called wards of the Medical Establishment. Therefore, the requirements related to "heating, ventilation, micro-climate and air environment" are violated, especially because the above-mentioned smoke makes it impossible to open the window and refresh the air in the room. Air ventilation is not managed rationally in the wards and facilities of the medical section either. No noise insulation is ensured inside the building. Locations of windows are inconsistent with hygiene norms and rules established for hospitals. From the hygiene point of view, the architectural planning and construction particularities of the building are not considered either. The X-ray room and surgery wards are not located according to standards. The requirements concerning the internal arrangement of hospitals are not complied with. Sanitary-technical, medical, technological and other equipment, furniture and inventory-related requirements are violated. Natural and artificial light norms as well as rules related to labour and living conditions of the medical staff, sanitary regime for warehouses, equipment and inventory are violated. Therefore, **the conditions in the Medical Establishment for Convicted and Indicted Persons are not compliant with the Georgian national sanitary-hygiene standards.**

In the third general report, the CPT points out the need for the medical staff to carry out preventive measures: "It lies with prison health care services - as appropriate acting in conjunction with other authorities - to supervise catering arrangements (quantity, quality, preparation and distribution of food) and conditions of hygiene (cleanliness of clothing and bedding; access to running water; sanitary installations) as well as the heating, lighting and ventilation of cells. Work and outdoor exercise arrangements should also be taken into consideration."

Concerning the spreading of transmittable diseases, it appears that prisoners and prison personnel are not informed about transmittable diseases and relevant preventive measures. Epidemiological control and analysis of the epidemiological status quite often is only a formality. Accurate statistics of the spread of transmittable diseases and analysis of their causes are not available but we tried to obtain these data in individual establishments. TB is very common penitentiary establishments. Despite the fact prisoners are screened on TB in a majority of establishments, the existing results suggest that these measures alone are ineffective and should be reinforced with additional activities. **As in the past years, in the reporting period in 2009, TB has been a major cause of death cases in prisons.**

When it comes to transmittable diseases, the increasing spread of viral hepatitis in Georgian prisons should be pointed out separately. According to information provided by chief doctors, they are not implementing any programs to ensure screening on hepatitis and therefore many cases of infection go undetected. The doctors have expressed a view that about 30-60% of patients are diseased with viral hepatitis. In the medical files, the doctors are entering only the diagnosis made on the basis of lab tests performed locally in the prison or other lab tests performed in the past and submitted by the prisoner (and being positive on hepatitis). Viral hepatitis C is the most common in prisons, though doctors have registered the cases of infection with B and B+C viral hepatitis as well. There are also few cases of A and B+C hepatitis. This matter is dealt with in more details in the chapter on prisoners' mortality.

As for the HIV infection, screen has proved to be more effective in this regard. If needed, the patients are provided with relevant care and medications. HIV test is voluntary. Stigmatization of those infected with HIV is further encouraged in Georgia. At first, we should note a discriminative provision contained in the Law of Georgia on Imprisonment. According to Article 22(2) of the Law, "*Convicts infected with AIDS and other uncontrollable infectious diseases shall be placed separately in the medical section of a penitentiary establishment*". Further, the recent practice shows that when a person infected with HIV/AIDS dies, no forensic examination of the body is carried out to determine the reason of death. In reality, prison administrations do not place convicts infected with HIV/AIDS separately unless the convicts themselves or their fellow convicts request the administration to do so. While monitoring the Establishment No. 2 in Rustavi, the monitoring team witnessed the prisoners strictly requesting to take their fellow inmate infected with HIV out of their cell and the prisoner in question could do nothing but ask to be isolated because of the attitude and pressure on the part of other inmates.

As chief doctors explain, prisoners are isolated if needed on the basis of a medical diagnosis. For example, if a patient appears to have the signs of jaundice, such patient is separated until he is diagnosed. The same is done if a prisoner is suspected to have contracted TB, unless separation is impossible due to overcrowding.

According to the general report No. 3 by the CPT, "*A prison health care service should ensure that information about transmittable diseases (in particular hepatitis, AIDS, tuberculosis, dermatological infections) is regularly circulated, both to prisoners and to prison staff. Where appropriate, medical control of those with whom a particular prisoner has regular contact (fellow prisoners, prison staff, frequent visitors) should be carried out. As regards more particularly AIDS, appropriate counselling should be provided both before and, if necessary, after any screening test. Prison staff should be provided with ongoing training in the preventive measures to be taken and the attitudes to be adopted regarding HIV-positivity and given appropriate instructions concerning non-discrimination and confidentiality. The CPT wishes to emphasise that there is no medical justification for the segregation of an HIV+ prisoner who is well.*"

Humanitarian assistance/Convicts of special category

The monitoring team paid attention to the treatment of **women prisoners** in penitentiary establishments. Women prisonsers are serving their sentence in the Establishment No. 5 for Women and Juveniles, General and Strict Regime Penitentiary Establishment No. 1 in Rustavi, Prison and Strict Regime Establishment No. 2 in Kutaisi, Prison No. 3 in Batumi and Prison 34 in Zugdidi. Cases of discrimination against women inmates have not been observed. Best prison conditions were found in the Establishment No. 5 for Women and Juveniles. The level of medical services provided complies with the established standards best of all in this establishment. According to the chief doctor, they send one doctor and one nurse to the General and Strict Regime Penitentiary Establishment No. 1 on the basis of an internal order, though they are considered as local staff. A majority of women inmates in the Establishment No. 1 in Rustavi have been placed in the Establishment following the incident on 19 April 2009. As for the most widespread diseases, the chief doctor says they are basically related to cardio-vascular and respiratory systems; cancer, urological diseases and orthopaedic pathologies are also common. Surgical problems (appendicitis) including self-inflicted injuries are frequent. Gynaecology service is guaranteed for women inmates.

Women inmates of the Establishment No. 1 in Rustavi are not provided with inpatient services locally. The inpatient care section of the Establishment was shut down in 2007 for refurbishment works and it has been closed this far.

The Prison and Strict Regime Establishment No. 2 in Rustavi is accommodating women prisoners. The establishment does not have gynaecologist specifically appointed as such. As for specific matters related to women's, the doctor says there have been no changes compared to the previous reporting year. None of the women has given birth to a child during this period; there are no breast–feeding mothers; none of the women has newborns and therefore there was no need for a pediatrician's services.

Prison No. 3 in Rustavi also has a population of women inmates. The establishment does not have a gynaecologist or even a consultant. If needed, women are transferred to a relevant institution in Batumi. The nutrition diet of women is the same as for men. Sanitary-epidemiology situation is considerably better compared with the general situation in the prison. In 2009, no gynaecology consultations were issued. They have not had any pregnant women during the reporting period. Women-specific hygiene matters are handled normally. A few patients are under psycho-neurological supervision.

As for the Prison No. 4 in Zugdidi, holding women in that facility amounts to inhuman treatment and disrespect for dignity. Needs of women are not properly handled, women-specific health issues are in fact ignored and the sanitary-hygiene conditions are unsatisfactory.

One women prisoner died in Establishment No. 1 in Rustavi during the reporting period. The death was caused by cervical blood circulation disorder. Women health issues require special attention since **the Medical Establishment for Convicted and Indicted Persons does not provide a separate section for women.** Considering the statistics of women referred from the Establishment No. 5 to the city inpatient care facilities, it can be said that the existing shortcoming is somewhat dealt with, but the same does not apply to the other 3 penitentiary establishments and especially the prisons in Zugdidi and Batumi.

The monitoring team also focused on **juvenile** prisoners in different penitentiary establishments. According to the existing data, adult prisoners are held in the Education Establishment for Juveniles in Avchala, Establishment No. 5 for Women

and Juveniles, Prison No. 3 in Batumi, Prison and Strict Regime Establishment No. 2 in Kutaisi and Prison No. 4 in Zugdidi.

The medical staff of the Educational Establishment for Juveniles is composed of 3 doctors and 3 nurses. One of the doctors is a chief doctor (specialized in internal medicine); the two other doctors are a neuropathology specialist and a dentist. No pediatrician is available in the establishment. Juveniles do not have access to inpatient medical care locally. If needed, they are transferred to the Medical Establishment for Convicted and Indicted Persons. The establishment does not have its own psychiatrist, but this gap is partially filled in with the assistance provided by the Rehabilitation Centre for Victims of Torture "Empathy". The Centre "Empathy" is implementing a special program in the establishment. Within the program, the Centre psychiatrists are visiting the establishment on a regular basis. According to the doctor, in the 2009 reporting period, there was no need for a narcologist's consultation. The chief doctor outlines that respiratory diseases (especially the seasonal ones), skin diseases (scabies, pyoderma, and dermatitis), dental diseases, simple neurological diseases and gastritis are the most commonly identified diseases. None of the prisoners was on the interferon treatment program either at the time of monitoring or during the reporting period. Neither "DOTS", nor "DOTS+" programs are implemented in the establishment. The establishment has a psychologist; however, the psychologist works for the regime division and is not related with the medical section. According to the doctor, juveniles do not have any age-specific medical or psychological problems.

Indicted juvenile are held in a separate building in the Establishment No. 5 for Women and Juveniles. An establishment for convicted and indicted female juveniles is officially functioning under the same establishment. At the time of monitoring, there were 4 convicts and 2 female juveniles on remand in the establishment. There following specific health problems are commonly observed in juveniles: bone-joint related pathologies: arthritis, broken bones; skins injuries; and respiratory diseases. During the reporting period, some cases of scabies among juveniles were registered. According to information provided by the doctor, there have 3 mentally disabled juveniles.

Not much attention is paid to juvenile health specifics in the Prison and Strict Regime Establishment No. 2 in Kutaisi. During the planned monitoring carried out in July 2009, 12 juveniles were interviewed by the monitoring team members who have been subjected to psycho-physical pressure on the part of prison staff and special forces. Three juveniles were transferred to the Establishment No. 5 for Women and Juveniles in Tbilisi some time before the monitoring. The juveniles were examined by a team of doctors specializing in different areas to determine their physical and psychological traumas. A majority of them had traces of general body injuries; some of them had brain concussion and closed brain traumas. The prison administration did not comment on these facts and the medical staff stated that they were not aware of such injuries; accordingly, nobody has visited or provided the juveniles with medical care. The injuries are not documented.

Chief doctor of the Prison No. 3 in Batumi has stated that a psychologist is visiting the juvenile prisoners every Thursday. Besides, a primary education program is carried out for juveniles. The juveniles have not been examined by a psychiatrist upon admission to the prison or later. According to the doctor, the juveniles go through periodic medical examinations. With the consent of juveniles, their health status is shared with their family members or legal representatives. According to the doctor, dental problems are particularly frequent among juvenile convicts and it is impossible to deal with them comprehensively. Living conditions of juveniles were assessed by the monitoring team as inadequate and unfit for this category of prisoners; however, the administration has not taken any steps to remedy the existing situation.

There is no age-specific approach towards juveniles in Prison No. 4 in Zugdidi. The juveniles have no access to a psychologist's consultation. The requirement of availability of a dentist at the establishment is violated. The juveniles are not involved in any special programs. During medical manipulations and tests, confidentiality is respected only in exceptional cases and only if possible. The doctor is claiming that "all the juvenile convicts are healthy". One of the convicts is deaf-and-dumb. During the monitoring, we paid special attention to **inmates having psychic problems.** Identification of such prisoners in penitentiary establishments does not happen in an organized manner and is limited because of unavailability of qualified psychiatric aid. Prisoners are not examined by a psychiatrist upon admission to the establishment. A psychiatrist's consultation is provided about once a month with the help of an invited consultant. Though the doctors were claiming that psychiatric consultation was provided in case of need, we could not find such entries in the existing registration books.

An absolute majority of establishments does not offer any special programs to support psychiatric health or rehabilitation programs providing social and psychological assistance measures. In general, the establishment regime, conditions and attitude towards prisoners with mental disorders are improper resulting in adverse impact on the prisoners' mental health. Therefore, holding the persons with mental disabilities in penitentiary establishments should be evaluated as inhuman treatment.

The rate of self-injuries and suicide attempts is far higher among prisoners with mental disorders. The situation in terms of conflicts with the prison staff and among themselves is also extremely bad. According to the chief doctors, no separate cells are allocated for such prisoners in any of the establishments. Statistical data on mental problems are not available, nor information about problems identified through consultations. Suicide risk groups are not detected. Statistics on self-injuries are not kept separately.

The monitoring shows that prison staff, including the medical personnel, are not aware of mental problems. Accordingly, no effective solutions are identified. During 2009, it was virtually impossible to transfer a patient to a civil psychiatric institution. Also, there was no mechanism to carry out psychiatric examination of convicts who became mentally sick in the course of serving their sentence. The amendment made to the Law of Georgia on Imprisonment in December 2009 should be evaluated as a positive step in this regard.

Prisoners having signs of insanity were transferred to the Medical Establishment for Convicted and Indicted Persons in the second half of 2009. The psychiatric division of the Establishment is managed by 3 doctors and is designed for 39 beds. It should be noted that only male prisoners and convicts are transferred to this Establishment. Psychiatric treatment is unavailable for female patients in the penitentiary system. According to the reports of the Medical Establishment for Convicted and Indicted Persons, 132 patients were received by the psychiatric division in 2009 (72 patients in the first half and 60 in the second half of the year). 141 patients were discharged (76 patients in the first half and 65 in the second half of the year). Mental nosologies detected are as follows:

- Organic disorders - 29 ;
- Psychic and behavioural disorders caused by psychoactive substances - 1 ;
- Schizophrenia, schizophrenic disorders - 10 ;
- Affective disorders - 26 ;
- Neurotic, stress-related and somatotrophic disorders - 7;
- Personal and behavioural disorders - 44;
- Mental dullness - 6;
- Epilepsy - 2;
- Reactive psychosis - 7.

During 2009, one person died in the psychiatric division (as a result of suicide).

Based on the analysis of the current situation in the Georgian penitentiary system made during the monitoring, the following issues require attention: **There are only 5 psychiatrists serving the whole system.** Three of them are employed by the Medical Establishment for Convicted and Indicted Persons, one works in the eastern Georgia and the other in the western Georgia. The latter two doctors are not staff members (they are contracted consultants). Penitentiary establishments do register persons with mental disorders according to own rules using journal run by a psychiatric consultant; however, external control or close monitoring of the registration process is impossible because no medical records are maintained in a proper manner and no clear registration standards are followed. We found a number of patients with psychological disorders and/or extreme disorder of behaviour or with a record of suicide attempts who required inpatient care or who should not be kept in prison, though they remain in prison conditions. As the doctor told us in an interview, problems exist also in relation to the Medical Establishment for Convicted and Indicted Persons, since according to the local doctors, such prisoners are sometimes transferred to the Medical Establishment's psychiatric section but are returned

back soon in the same health condition. As for individuals with other mental diseases, the penitentiary establishments do offer any rehabilitation programs or adequate care for them. It should further be noted that primary diagnostics and prompt and adequate follow-up measures are problematic also due to the currently applicable defective laws and bylaws related to psychic health, which requires separate analysis and monitoring. Dealing with these issues is beyond the competence of prison doctors. Hereby we present some statistics obtained from various prisons as an example: 2 persons with mental problems were accommodated in the inpatient section of the Establishment No. 2 in Kutaisi; we were unable to obtain information about other prisoners. To obtain these data, we looked into prescriptions for psychotropic medications kept with the chief nurse. Obtaining data on individual patients requires a great deal of efforts, in particular: The data on psychotropic medications packed and issued to individuals patients by a pharmacy should be compared with the recordings made by a psychiatrist in his consultations journal; then, according to the row number of consultations issued, data on the individual patient should be extracted. Certainly, it is impossible to carry out such an exercise during monitoring and requires a lot of time. Therefore, obtaining any type of statistical information about persons with mental problems seems to be impossible. According to the medical section of the Establishment No. 8 in Geguti, 22 prisoners are suffering from epilepsy and 73 from mental problems. The medical section of the establishment No. 9 in Khoni has registered 8 persons with mental problems caused basically by organic injuries. In the Prison No. 4 in Zugdidi, they are keeping a journal entitled "Registration book of prisoners with psychopathic and other mental deviations" with entries on 5 patients during 2009. At the same time, the terms used in this book are outdated and are not compatible with international standards. For example instead of the term "psychopathy" they are using the term "personality disorders", and "mental disorder" is used instead of "deviations". Data provided by the medical section of Prison No. 3 in Batumi shows that they have 7 prisoners with mental problems. These statistical data does not seem real considering the psychiatric problems of persons with epilepsy and drug addicts. According to international standards, an average statistical rate of persons with psychiatric problems, including drug addicts, in the European prisons equals 63%. Therefore, the number of such persons should be no less in our prisons against the background of the current legislation and the living conditions in prisons.

According to the third general report by the CPT, "*Among the patients of a prison health care service there is always a certain proportion of unbalanced, marginal individuals who have a history of family traumas, long-standing drug addiction, conflicts with authority or other social misfortunes. They may be violent, suicidal or characterised by unacceptable sexual behaviour, and are for most of the time incapable of controlling or caring for themselves. The needs of these prisoners are not truly medical, but the prison doctor can promote the development of socio-therapeutic programmes for them, in prison units which are organised along community lines and carefully supervised. Such units can reduce the prisoners' humiliation, self-contempt and hatred, give them a sense of responsibility and prepare them for reintegration. Another direct advantage of programmes of this type is that they involve the active participation and commitment of the prison staff.*"

The number of **drug addicts** in the penitentiary establishments is quite high. Prisoners addicted to alcohol, drugs and toxins belong to this category.

In cases of drug addiction, patients are not provided with relevant care and advice. During the second half of 2009, outside consultants have never been invited.

A methadone program is functioning for this type of prisoners in Prison No. 8 in Tbilisi. The program is carried out by specialists not related with the medical staff or the personnel of the Establishment.

The chief doctor is not aware of their activities, staff table or treatment methods. The program specialists are independently deciding on involvement of prisoners in their program.

The "Atlantis" program is implemented in Establishment No. 2 in Kutaisi and Establishment No. 6 in Rustavi. However, the said program is carried out without coordination with medical programs and therefore cannot ensure adequate treatment and rehabilitation of drug addicts.

A registry of drug addicts is not kept by medical sections of the establishments. The prison system does not provide for any drug replacement therapy programs. No records are made on consultations provided by outside public doctors; receipt of medications is not fully controlled.

As for incidents caused by drug addicts, doctors of all the establishments consider them of minor importance and do not pay much attention to that. No measures are taken to prevent such incidents. If the situation gets too tense, doctors are trying to resolve the matter on their own without involving a duty officer.

We studied information concerning prisoners suffering from **transmittable diseases and particularly dangerous infections** in all the establishments. This issue is dealt with in various chapters. We focused especially on HIV/AIDS, resistant forms of TB, virus hepatitis and other infections diseases. Agreed and planned measures to prevent such diseases are insignificant. According to our observations, the rate of venereal diseases is not too high and is manageable.

The monitoring team has observed that different penitentiary establishments are accommodating **persons who are unfit for long-term imprisonment.** This category of people primarily involves patients suffering from malignant diseases, TB resistant patients, patients with amputated extremities and anatomical deficiencies, patients with neurological signs and etc. As we found out, there were only 4 prisoners whose sentence was postponed due to severe or incurable diseases in 2009. Regardless of such diseases, the patients are still serving their sentence in the conditions that are incompatible with and humiliating the human dignity. They do not enjoy the service of a qualified assistant. Not all of them are provided with crutches and wheelchairs and thus they are unable to move independently. The absence of special care conditions creates serious problems for doctors and very often they are incapable to respond to the needs of patients of this category. In some establishments, we observed persons suffering from severe psychiatric diseases who cannot take care of themselves, cannot understand the situation, are behaving inadequately or are mentally disabled. The holding of such patients in penitentiary establishments, especially considering the available treatment, care and social adaptation conditions, amounts to inhuman treatment.

Of the specific needs of **remand prisoners,** the monitoring team focused on the following issues: we did not encounter even a single case of satisfying a remand prisoner's request for medical or psychiatric/psychological examination. Examination is either not prescribed or is carried out with delay. In case of delayed examination, evidences having crucial importance for the prisoner cannot be obtained. Usually, new prisoners find it difficult to adapt to prison conditions, but they are not provided with adequate medical care and their right to healthcare is not respected for. Prison No. 3 in Batumi is a good illustration of all the above described circumstances: we made an observation of the quarantine room where newly admitted prisoners are placed. **The room capacity is 6 beds, but actually it was accommodating 22 prisoners at the time of our visit.** It is obvious that the overcrowding of the quarantine room makes it difficult for prisoners to sleep in. According to the persons from prison staff accompanying us, about 7-8 prisoners are admitted daily. The average duration of stay in quarantine is about 10 days. Because of overcrowding, sometimes they have to terminate the quarantine regime earlier and transfer the prisoners to the cells. As for contacting a doctor, it is difficult to imagine that even minimum standards can be observed in these conditions. The situation in this regard is critical in the General and Strict Regime Establishment No. 9 in Khoni. The monitoring team was interested in studying the conditions and the environment in which the newly admitted prisoner has his first contact with the medical staff. The place itself represents to be the same area where lock-up cells are located. The narrow entrance door leads to the corridor of the old building. On the door-side of the wall there is a small ventlight. On the left side of the corridor, there is a room where a doctor meets newly admitted prisoners. There are 3 small windows in the room that do not provide adequate light or ventilation. There is an amateur-installed light bulb on the ceiling. The furniture of the room consists of a bed, a safe, a table and a chair. The floor is made of cement. The ceiling is damaged in some areas. There is a specific smell in the room. Next to this room, on the left of the entrance door, there is another, smaller room that does not have a door and most probably this room does not have any functions. The walls and the ceiling of the room are partially ruined. The room has a small window. On the right side of the entrance door, there is a relatively small room with wide windows in the front wall looking out into the corridor. According to persons who were escorting us, this room is used by a duty officer of the building to take a rest. There is a toilet on the same side of the corridor. The toilet is old and it is impossible to maintain any sanitary conditions in there. It is obvious that these conditions do not allow for the carrying out of comprehensive and adequate medical check-up of a newly admitted prisoner. The situation is worse against the fact that the check-up procedure is attended not only by the medical staff, but all the other persons who are on duty in the penitentiary establishment for the moment.

According to information obtained by the monitoring team, the rate of allowing a prisoner to invite a doctor of his own choice is extremely low. It is of crucial importance for a prisoner to be able to invite a doctor of own choice. Hence, the human right envisaged by the Law of Georgia on Healthcare is violated.

The monitoring team paid a great attention to studying the situation of prisoners suffering from epilepsy, diabetes mellitus, and bronchial asthma in penitentiary establishments. The study results are provided in a special report. The group observed the existence of serious problems remaining resolved for years.

Professional independence and competence of doctors, medical records

In its 3rd general report the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) clearly points out the need for competent prison doctors. In particular, the report notes: *"Prison doctors and nurses should possess specialist knowledge enabling them to deal with the particular forms of prison pathology and adapt their treatment methods to the conditions imposed by detention. In particular, professional attitudes designed to prevent violence - and, where appropriate, control it - should be developed."*

As for independence of medical staff, it is a basic principle of medical practice that medical profession must be independent and the State cannot unduly interfere with it. That concept is widely recognized in Georgian health legislation. According to Article 30 of the Law of Georgia on Healthcare "*…when carrying out medical practices, the medical personnel must… a) act only in the best interests of the patient; c) be free and independent when making professional decisions based on the patient's interests…*" According to Article 34 of the same Law, *"Medical profession is a free profession in its essence. It is inadmissible for the authorities or individuals to demand from doctors to act against ethical norms of medical profession and in violation of the abovementioned principles notwithstanding the official position and public reputation of the demander. Any action that prevents medical personnel from fulfilling their professional duties shall be prosecuted according to law".* The same idea is present in Article 6 of the Law of Georgia on Medical Practice: "*A person engaged in independent medical practices is free and independent in making professional judgments. It is forbidden to demand from an independent medical practitioner to act in violation of the principles envisaged by this Law and ethical norms of medical profession notwithstanding the official position, nationality, ethnicity, religion or social status of the demander".*

According to Article 4 of the Law of Georgia on Healthcare, one of the main principles of the State healthcare policy is *"recognition of independence of doctors and other medical personnel within the limits defined by Georgian legislation".*

The m*anual on effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment or punishment known as Istanbul Protocol provided by the United Nations High Commissioner for Refugees underlines the importance of independence and professional autonomy of doctors. The manual regards doctors as individuals having "dual obligations". According to the document: "Health professionals have dual obligations, in that they owe a primary duty to the patient to promote that person's best interests and a general duty to society to ensure that justice is done and violations of human rights prevented."* Dilemmas arising from these dual obligations are particularly acute for health professionals working for police, military, other security services or in the prison system. The interests of their employer and their non-medical colleagues may be in conflict with the best interests of the detainee patients. Whatever the circumstances of their employment, all health professionals owe a fundamental duty to care for the people they are asked to examine or treat. They cannot be obliged by contractual or other considerations to compromise their professional independence. They must make an unbiased assessment of the patient's health interests and act accordingly. For the first time in its history, the UN openly stated that prison doctors are "**Doctors in a Risk Zone**" due to their dual obligations and the factors discussed in the abovementioned extract.

Therefore, doctors in the risk zone must do their best to carry out their professional duties despite the environment where they work.

Ethical aspects of the aforementioned issue are regulated by the World Medical Association's Declaration of Madrid on Professional Autonomy and Self-Regulation[53].

Despite this, the monitoring results indicate that in some cases local medical personnel cannot deal with the existing problems; together with systemic problems, concrete factors are contributing to this. It should be noted that in 2009, after

[53] Adopted by the 39th World Medical Assembly, October 1987 (Madrid, Spain). Editorially revised in May 2005 at 170th Council Session, *Divonne-les-Bains.*

the insurance company Aldagi BCI left the penitentiary system, the medical personnel became subordinated to the Penitentiary Department. In accordance with the Order of the Minister of Corrections and Legal Assistance No. 60 dated 25 February 25 2009 "on approval of the Statute of the Penitentiary Department", a medical service was formed within the Penitentiary Department and the medical personnel became subordinated to the Department. Due to their subordination to the Penitentiary Department, prison doctors often fall under influence of their "bosses" (prison administration), which has an adverse impact on the state of health of patients. **In many cases, it is the Penitentiary Department officials (but not doctors) who decide on "what is needed" for the patients' health:** they make a decision on whether to transfer patients from one institution to another (including to medical institutions), they decide on allowing or denying civilian doctors to enter prisons, they allow or disallow provision of medicines to prisoner, they decide when and under what conditions forensic/psychiatric examination should be carried out, they study medical records, attend meetings between the doctors and patients, they decide who and to what extent should be informed about the state of health of patients, they make final decisions about moving the patients to prison hospitals etc. The role of doctors is the lowest against such background. Doctors left without functions silently agree with the decisions made by the administration in order to keep their jobs. The situation is further aggravated because the patients' rights are violated. In such cases, patients often file applications to the Office of the Public Defender of Georgia; the study and analysis of those applications provide further proofs of the existence of the above-mentioned vicious circle. Doctors are pressured not only by prison administrations but also their own colleagues who hold higher positions.

An incident that took place in Prison No. 7 in Tbilisi is a clear example thereof; in particular, the PDO monitoring team had nothing left but to stop its activities because the Chief Doctor refused to answer questions after, in the course of our monitoring, he was contacted by Head of Medical Service of the Penitentiary Department who ordered him to stop talking with us. The Public Defender included this incident in his Report covering the 1st half of 2009.[54]

Another evident example of lack of doctors' professional independence is the fact that independent medical practitioners are directly participating in the punishment of prisoners. Such practice is widespread in the penitentiary establishments. During the repeated monitoring visits, some chief doctors stated that they complied with the Public Defender's recommendations and stopped taking part in punishing the prisoners; however, in some institutions such practices are still in place. In particular, it refers to the placement of prisoners in disciplinary cells. We have found a template of the so-called certificate in a number of establishments with the following text:

"Convict _____ is physically healthy, capable and he/ she can be placed in a disciplinary cell".

Such certificates are signed only by prison doctors. By signing such a certificate, a doctor is practically sanctioning the placement of a prisoner in disciplinary cell based on a confirmation that the prisoner's health status is fit for such punishment.

In other establishments such forms are not used but the order on placing a prisoner in a disciplinary cell is signed also by a doctor. According to the doctors' explanations, their signatures are necessary to confirm that "*...the prisoner can physically survive in a disciplinary cell and that it is allowed to place him/ her in a disciplinary cell*". Such certificates or orders are attached to personal files of prisoners.

Such practice violates not only the universally acknowledged ethical norms of medicine, but also the domestic health legislation. In particular, according to Article 54 of the Law of Georgia on Medical Practice:

"Persons engaged in independent medical practice are forbidden to:
a) have direct or indirect connection with actions connected with… participation, complicity, instigation or attempted instigation of punishment as well as to attend the punishment process; b) have professional relations with detainees or prisoners unless the sole purpose of such relations is evaluation, protection or improvement of their physical and mental health and if such relations contradict the norms of medical practice; c) use professional knowledge and skills to assist in interrogation of inmates, detainees or prisoners if the methods of interrogation have an adverse

[54] Report of Public Defender of Georgia covering the first half of 2009 (p. 57 in Georgian)

impact on their physical or mental health or condition; e) take part in any action directed at restraining inmates, detainees or prisoners if such actions are not needed medically or are not necessary for the protection of inmates', detainees' and prisoners' physical and mental health or security of guards and if such actions endanger physical and mental health of inmates, detainees or prisoners. 2. the restrictions indicated in subparagraphs a, b, c, d, and e of paragraph 1 of this article apply also during a state of emergency, armed conflict and a period of civil unrest".

The abovementioned analysis shows that lack of doctors' competence and autonomy is an important reason for the current crisis in the healthcare system within the Penitentiary Department.

According to Article 43 of the Law of Georgia on Healthcare: *"Doctor and other medical personnel are obliged to: a) maintain medical records in accordance with existing regulations; when providing medical aid outside his/her place of work they shall record in written form and pass on information about the provided medical aid".* According to paragraph 2 of the same Article, *"rules of maintaining medical records are approved by the Ministry of Labour, Health and Social Protection of Georgia".* The obligation to maintain medical records is also mentioned in the Law of Georgia on Medical Practice; in particular, its Article 56, where appropriate, stipulates that *"medical records must adequately reflect all the details connected with medical service provided to the patient".* Based on the said provision of the law, templates of medical documents (including a patient's medical card: Form No. IV-001/a) were approved in order to maintain unified records and streamline their use in primary healthcare institutions as well as in order to ensure completeness and accuracy of records reflecting the work of the medical institutions (see Order of the Minister of Labour, Health and Social Protection of Georgia No. 224/n dated August 22 2006 "on approval of Forms and Rules of Use of and Filling in the Primary Medical Documentation in Primary Healthcare Institutions). Furthermore, rules of maintaining inpatient medical records in medical institutions were approved by the Order of the Minister of Labour, Health and Social Protection of Georgia No. 108/n dated 19 March 19 2009. The latter Order will enter into force on 1 January 2010 and will fully replace the inpatient medical cards currently used in the Georgian healthcare system.

The obligation to maintain medical records and to observe the rules of keeping such records is not just a formal obligation; it is possible to measure the quality of provided medical service and to ensure the continuity of medical service with the use of these records. Inaccuracies in medical records may result in substantial deterioration of a patient's state of health or even lead to a lethal result. Therefore, accurate record-keeping is of crucial importance in providing medical services.

The need for provision of equivalent medical services in the penitentiary system certainly implies also the need to use the same types of medical records in the penitentiary system as are used in all the medical institutions nationwide. According to Article 37 of the Law of Georgia on Imprisonment, "*Medical sections of the penitentiary establishments are part of the Georgian healthcare system*"; it follows that inpatient and outpatient medical cards must be maintained in penitentiary establishments in the same way as they are maintained in the Georgian healthcare system in general. That medical sections of penitentiary establishments must maintain medical records is a clear-cut requirement of international standards. For example, the 3rd General Report of CPT (CPT/inf (93) 12) provides as follows: "*A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment. Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise."*

The abovementioned standards could be fully observed if the Orders of the Minister of Labour, Health and Social Protection of Georgia were fully implemented. The standards were first violated at a legislative level when the Order of the Minister of Justice No. 486 dated 24 June 2002 was enacted; in particular, the Order approved temporary forms of medical documentation to be used specifically by medical departments of the Penitentiary Department (27 forms in total). Those forms are essentially different from the medical templates used in the Georgian healthcare system in general. The rules of filling in the templates and their keeping and maintaining procedures are also different. The fact that these templates were "temporary" seemed encouraging; however, they have not been revised and harmonized with the national healthcare system for the last 7 years.

At the current stage of the ongoing reforms in Georgia envisaging complete transformation of the medical service within the penitentiary system and change of the current working style, the Order of the Minister of Corrections and Legal

Assistance No. 771 dated 10 November 2009 should be particularly noted; in particular, the Order approved a template for a medical record to be used by the Medical Department of Ministry of Corrections and Legal Assistance of Georgia.

The said Order is another precedent of artificial segregation of the penitentiary healthcare system from the national healthcare system. All doctors practicing in Georgia are obliged to strictly adhere to legal and ethical standards of healthcare, while independent medical practitioners practicing in the penitentiary system are obligated by the said Order to maintain different medical records that have unclear structure and contents; and this is against the background that they are not maintaining even primary medical records required by the law. Besides, the Order of the Minister of Corrections and Legal Assistance of Georgia No. 771 dated 10 November 2009 is legally incorrect. The Order states, in its beginning, that the template of a medical record is approved on the basis of paragraph 2^1 of Article 1 of the Law of Georgia on Imprisonment. The referred paragraph reads as follows: "*Minister of Corrections and Legal Assistance of Georgia has the right to issue orders on the issues envisaged by this Law; such orders shall not contradict the stipulations of this Law*". As for the connection between the template of a medical record and the Law on Imprisonment, Article 37 of the Law states: *"Medical sections of the penitentiary establishments are part of the Georgian healthcare system."*; according to paragraph 2 of Article 43 of the Law of Georgia on Healthcare: *"Rules of maintaining medical records are approved by the Ministry of Labour, Health and Social Protection of Georgia"*. It's clear that medical file forms fall under the competence of Ministry of Labour, Health and Social Protection, but the Ministry of Corrections and Legal Assistance tries to overlap other ministry's area of competence and, in doing so, discriminates against patients deprived of their liberty.

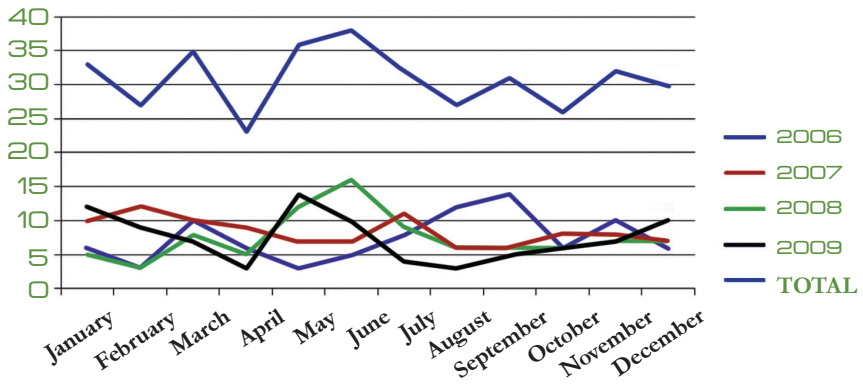
According to paragraph 1 of Article 13 of the Law of Georgia on Normative Acts: *"An order of a Georgian minister can be issued only within limits and in cases defined by a Georgian legislative act, decrees of President of Georgia and resolutions of the Georgian Government. An Order of a Georgian minister must indicate what normative act it is based on and what normative act it must fulfil"*. As we have already noted above, the law obliges the Ministry of Labour, Health and Social Protection to regulate and clarify issues concerning medical records. According to paragraph 9 of Article 25 of the Law of Georgia on Normative Acts: *"If a normative act concerns an issue, which, according to the Constitution, an organic law or a law of Georgia, falls within the competence of the State or local self-governance bodies (officials) or if that normative act is approved in violation of the requirements of this Law or if the procedures concerning approval (issuance) and enforcement of that normative act are violated such a normative act shall have no legal force"*.

Mortality rate and factors affecting mortality in the Georgian penitentiary establishments: second half of 2009

Office of the Public Defender has been studying mortality rate in the Georgian penitentiary establishments for the last few years. 370 prisoners died in 2006-2009. Averagely 90 inmates die every year. In order to demonstrate a general picture of mortality rate, we hereby publish the statistics of last few years according to months:

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
2006	6	3	10	6	3	5	8	12	14	6	10	6	89
2007	10	12	10	9	7	7	11	6	6	8	8	7	101
2008	5	3	8	5	12	16	9	6	6	6	7	7	90
2009	12	9	7	3	14	10	4	3	5	6	7	10	90
TOTAL	33	27	35	23	36	38	32	27	31	26	32	30	370

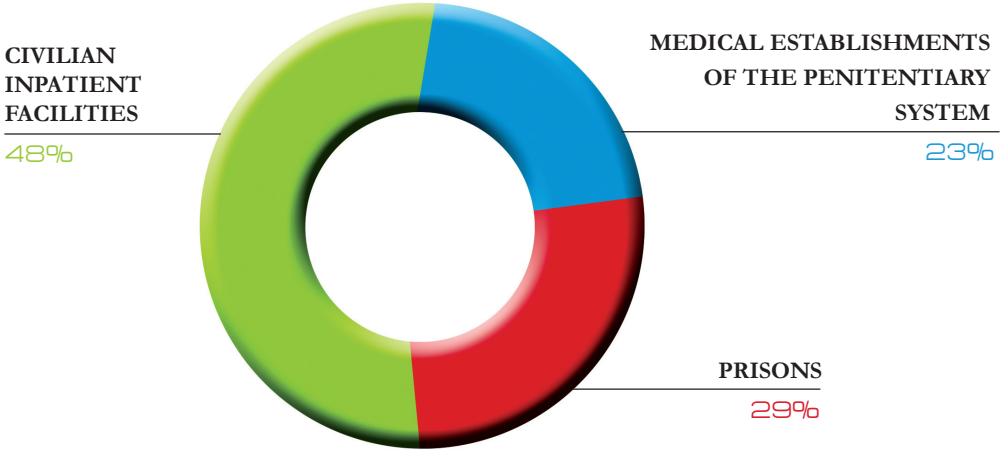
The above table is presented as a diagram below:



Based on various sources, PDO found out that 35 inmates died in the second half of 2009 in Georgian prisons (1 female and 34 males). If we take full data for 2009, the second half of 2009 accounts for 39% of total deaths for that year. The number of deaths according to months is as follows:

JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
4	3	5	6	7	10

As for the places of death, according to the data we processed, 22.85% of prisoners died in the Medical Establishment for Convicted and Indicted Persons and the Medical Establishment for Tubercular Convicts, 25.58% died in prisons and 48.75% died in civilian medical institutions. These data are presented in the following diagram:



As for the exact places of death, precise data indicating various establishments of the Penitentiary Department and civilian inpatient facilities are presented in the table below:

#	PLACE OF DEATH	NUMBER	%
1.	Medical Establishment for Convicted and Indicted Persons	5	14.28%
2.	Medical Establishment for Tubercular Convicts	3	8.57%
3.	General and Strict Regime Penitentiary Establishment No. 1 (in Rustavi)	1	2.86%
4.	General, Strict and Prison Regime Penitentiary Establishment No. 2 (in Rustavi)	3	8.57%
5.	General, Strict and Prison Regime Penitentiary Establishment No. 6 (in Rustavi)	1	2.86%
6.	General and Strict Regime Penitentiary Establishment No. 3 (in Tbilisi)	2	5.71%

2009

7.	General and Strict Regime Penitentiary Establishment No. 9 (in Khoni)	1	2.86%
8.	Prison and Strict Regime Penitentiary Establishment No. 2 (in Kutaisi)	2	5.71%
9.	National Centre for Tuberculosis and Lung Diseases	3	8.57%
10.	The "Hospi" Clinic	1	2.86%
11.	Centre of Infectious Pathology, AIDS and Clinical Immunology	1	2.86%
12.	Ghudushauri National Medical Centre	11	31.43%
13.	Neurosurgery Centre	1	2.86%
	TOTAL:	35	100%

Average age of dead prisoners equalled 46 ± 4. The following table reflects the age groups of deceased prisoners:

≤ 20	1	2.85	%
21 - 30	5	14.29	%
31 - 40	7	20.01	%
41 - 50	9	25.71	%
51 - 60	9	25.71	%
61 - 70	1	2.85	%
70 ≥	3	8.58	%

To identify the causes of prisoners' death in the second half of 2009, the Office of the Public Defender of Georgia conducted medical monitoring of all the 18 penitentiary establishments functioning on the territory of Georgia. Information concerning the deceased prisoners and causes of death was requested from Penitentiary Department of the Ministry of Corrections and Legal Assistance of Georgia. Results of forensic medical examination of the deceased prisoners were requested from the Levan Samkharauli National Forensics Bureau. These materials were summarized and analyzed.

As it turned out, the main cause of death is remains to be tuberculosis just like in previous reporting periods. 37% of prisoners who died in the second half of 2009 had lung tuberculosis. 60% of prisoners who died in the first half of 2009 had tuberculosis; in other words, this means that the number of deaths caused by tuberculosis decreased in the second half of 2009.

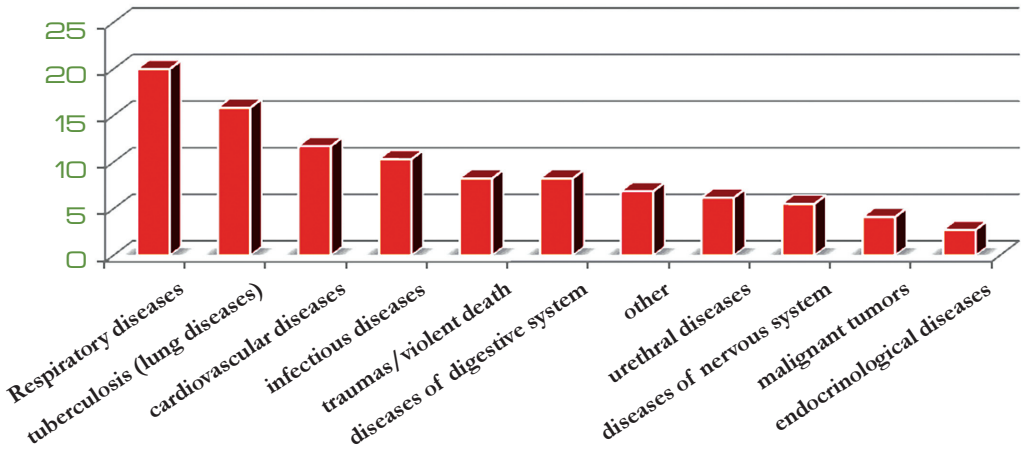
Viral hepatitis (especially hepatitis C virus) is among the most common diseases present in penitentiary facilities. 41% of prisoners who died in the first half of 2009 were diseased with viral hepatitis, while the same index in the second half of 2009 was only 34.2%; thus, there is a certain decrease in this regard as well.

The second half of 2009 was noted with an increased number of prisoners deceased from malignant cancer in penitentiary establishments; in particular, there was a 5%-increase in the number of deceased cancer patients in the second half of 2009.

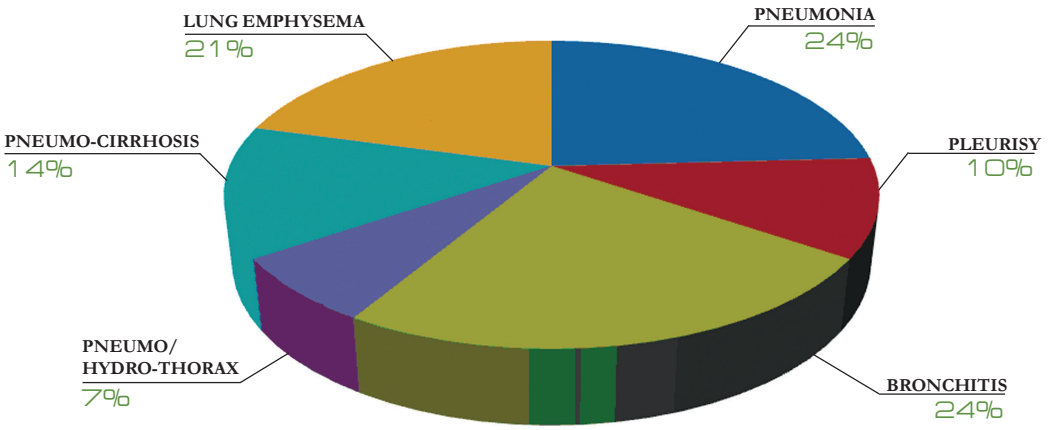
The table and the diagram below depict the causes of prisoners' death according to groups of diseases:

1.	Respiratory diseases	20.01 %	29
2.	TB (lung and extra-pulmonary)	15.86 %	23
3.	Cardiovascular diseases	11.74 %	17
4.	Infectious Diseases	10.34 %	15
5.	Traumas/violent death	8.27 %	12
6.	Diseases of digestive system	8.27 %	12
7.	Other	6.89 %	10

8.	Urethra diseases	6.2 %	9
9.	Diseases of nervous system	5.54 %	8
10.	Malignant Cancers	4.13 %	6
11.	Endocrinological diseases	2.75 %	4



As shown in the above diagram, the most frequent causes of death were respiratory diseases (except for lung tuberculosis). These diseases include pneumonia, pleurisy, bronchitis, pneumo/hydro-thorax, pneumo-cirrhosis and lung emphysema. Prevalence of each of these diseases is presented in the following diagram:



Pneumonia was often diagnosed by means of forensic medical examinations in previous reporting periods. It should be noted that, according to results of expert examinations and the patients' medical records, prison doctors often failed to detect pneumonia and such patients were left without proper medical attention. Pneumonia often involves both lungs and aggravates the patient's condition by causing breathing difficulties. Pneumonia is often contracted by patients who have to lie in beds during long periods of time due to inpatient treatment of various diseases. In such cases intoxication caused by pneumonia often becomes a direct cause of death. Because of these factors**, it is evident that pneumonia is one of the nosologies in the penitentiary establishments that can hardly be treated inside prisons.** Therefore, it is highly advisable, if a patient is diagnosed with pneumonia, to transfer the patient to a civilian medical institution. One of the main obstacles to treating pneumonia in penitentiary establishments is lack of medicines. In particular, due to very limited

funds allocated for procurement of medicines, the prison doctors have no means of procuring expensive antibacterial medications. The sum of money allocated for the procurement of medicines would be sufficient to treat only a few patients. Sometimes prisoners (or their families) are buying medicines and bringing them into prisons themselves but this happens rarely and it is very difficult to bring medications into a prison. Allowing the patients to procure required medicines (prescribed by a doctor) at least using the money on their plastic cards could be a temporary, transitional solution. This recommendation must be immediately fulfilled and, until a comprehensive solution is found, the patients should be guaranteed with the possibility of acquiring medicines themselves.

Pleurisy is also often revealed by forensic medical examination. In many cases, pleurisy accompanies pneumonia and most probably it constitutes one of the complications of pneumonia; pleurisy develops as a result of incorrect diagnosis and inadequate treatment of pneumonia. Pleurisies are characterised with extensive sweating severely aggravating the patient's condition (tubercular pleurisies are not meant in this case).

Pneumothorax was listed as a complication of pneumonia several times. Despite this, adequate steps to alleviate the patients' conditions were not taken. As for lung emphysemas, according to forensic medical examination of deceased patients, there were 6 such cases in the second half of 2009. Sometimes emphysema is nidal and it is often diagnosed together with exudative bronchitis. In one case, forensic experts found anthracosis. As for a morphological condition such as pneumo-cirrhosis, that disease was diagnosed in several instances and it is also a complication of inadequately treated lung diseases.

As for the spread of tuberculosis and its consequent role in mortality rate of patients, it should be noted that tuberculosis was found in 13 deceased patients out of 35. Six of those patients had multi-resistant form of tuberculosis. Recently increased number of extra-pulmonary tuberculosis cases is the direct result of inadequate treatment of tubercular infections. About 7% of deceased patients had liver, kidney, myocardium, pleura and nervous system tuberculosis in the second half of 2009, which was one of the main causes of death. Together with lung tuberculosis, patients often had caseous pneumonia, which means the patients were suffering from severe forms of pneumonia.

One of the reasons causing death of TB patients was hemorrhagic shock and severe anaemia, which in its turn was caused by haemorrhage from the diseased lung. It should be noted that even Ksani Medical Establishment for Tubercular Convicts has no means of providing its patients with phthisical-surgical services. Therefore, such patients are practically destined to die.

Tubercular infection is common to patients suffering from viral hepatitis and HIV. 3 patients who died in the second half of 2009 were infected with tuberculosis and HIV, whereas 6 dead patients had viral hepatitis and tuberculosis at the same time. That tendency is not unusual; these diseases are often diagnosed together all over the world. Therefore, special attention must be paid to vulnerable groups in order to avoid development of those diseases in the same persons.

During the reporting period, at least 47% of patients who died of tuberculosis had a multi-resistant form of that disease. 50% of them died in Ksani Medical Establishment for Tubercular Convicts; one of the patients was not even transferred from the establishment, the rest of them were transferred to National Centre of Tuberculosis and Lung Diseases and Ghudushauri National Medical Centre where they passed away. It is noteworthy that the number of patients who died due to multi-resistant form of tuberculosis has been much higher in the second half of 2009 than in the first half of that year; due to that fact, we think that the peculiarities and tendencies of DOTS+ program must be analyzed and leading specialists and institutions of the country should be actively involved in its implementation.

High prevalence of tuberculosis in prisons is not something new; it remains one of the most serious problems of penitentiary systems at the international level. Despite many projects that were implemented with the coordination by International Committee of the Red Cross in Georgian prisons in that regard, the problem is becoming even more serious instead of being resolved. The high percentage of prisoners who died of tuberculosis in 2009 is a clear indication to that effect. We think that this is resulted by directly importing standard anti-tuberculosis measures into Georgia without taking into account the local specifics and peculiarities. Risks associated with the spread of tuberculosis are not evaluated and analyzed; medical personnel require more training in that regard. Individual short-term trainings cannot resolve the problem

because the medical personnel has no knowledge of basic skills of treating tubercular infections and/or cannot use such skills due to their extremely low clinical autonomy and independence.

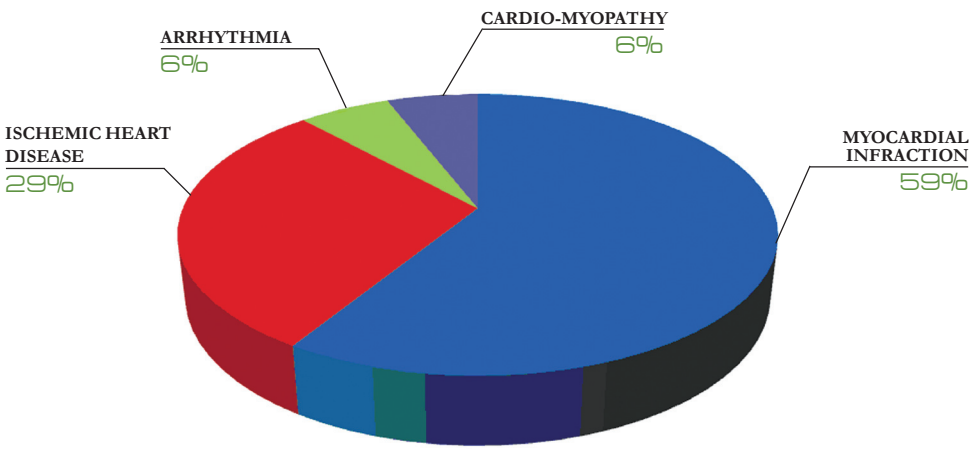
There are many organizational shortcomings in the process of management of tubercular infections. Forensic examination conducted on one of the deceased patients (A. C. No. 69) showed that the patient was diseased with a spread form of tuberculosis in Kutaisi No. 2 prison. When he was given the medicines normally used to treat that disease, his condition worsened. He developed heart and lung failures as well as other side effects and the treatment was stopped. Later it was found out that the patient was organically resistant to the medicines normally used in such conditions. The patient was recommended to be included in DOTS+ program. According to the records made by a local doctor, as the aforementioned program was not available in Kutaisi No. 2 Prison and the patient was not a convict, he could not be transferred to Ksani Medical Establishment for Tubercular Convicts. Afterwards, it was agreed with the coordinator to continue treatment with initially used medicines; eventually the patient developed extra-pulmonary forms of tuberculosis (liver, kidney and myocardium tuberculosis) and as a result he passed away. That example clearly point to the existing organizational defects. Why was not the patient transferred to Medical Establishment for Convicted and Indicted Persons where the DOTS+ program was available? Instead, the patient was still treated with primary medicines, which were ineffective right from the beginning of treatment; on the contrary, it was clear that these medicines would only aggravate his condition by developing side effects.

Sometimes tubercular infections are not detected at all. Prisoner M.T. from Rustavi No. 2 Prison died without being transferred to the Medical Establishment. Few hours before his death the following diagnosis was recorded in the local medical registry: "Cancer of respiratory tracts, a hole on the front of the throat, there is no larynx". In addition to the fact that such diagnosis is clearly incorrect, during the autopsy the experts found nidi containing a substance resembling curds (which is characteristic to tuberculosis); besides, similar nidi were found in the liver, which means the patient had both lung and extra-pulmonary tuberculosis and he had been left without adequate treatment for a long period of time.

Several patients died from tuberculosis of nervous system during 2009 (including the second half of 2009). Despite the fact that it is one of the worst forms of tuberculosis and it is hard to say whether the patient would have survived even if treated adequately, it is still evident that we are facing advanced and inadequately treated infectious case, whose prevention was perfectly possible.

The importance of aeration and lighting systems is not properly taken into account in newly constructed establishments, which is one of the biggest risk factors contributing to spreading tuberculosis. We believe that effective and "aggressive" steps need to be taken in order to combat tuberculosis if there is political will to decrease the tuberculosis and mortality rates.

Cardiovascular diseases hold the third place among the causes of death, they account for 11.7% of all deaths. Ischemic heart disease, myocardial infraction and cardio-myopathy were registered in the second half of 2009. Prevalence of those diseases is presented in a graphic form below:



2009

Various forms of ischemic heart disease were found in about 1/3 of deceased prisoners. The disease was reflected in the form of atherosclerosis of heart blood vessels, coronary sclerosis etc. Besides, in many cases there were drastic changes in myocardium as a result of ischemic heart disease. In several cases, according to the conclusions made by experts, post-infraction scars were found, which had not been detected while the patient was still alive and therefore were left without attention. As a result of those scars in some cases heart attacks occurred leading to death. Ischemic damage of myocardium occurred more frequently in the second half of 2009 than in the first half of the year. During the monitoring process, it became evident that there were no qualified doctors who could treat patients with heart problems. Patients are not screened, risk groups are not revealed and even if the diagnosis is beyond doubt, the patients are still not treated properly. Patients often decide themselves which medicines to take or continue taking the medicines that had been prescribed to them by their doctors before they were arrested. In such cases, no consideration is given to dosage and general usefulness of those medicines. At the same time, medical sections within the penitentiary establishment cannot offer them qualified medical services. Almost none of the prison medical sections (except for a few exceptions) have a cardiograph, not to speak about the possibility of diagnosing myocardium ischemia using modern laboratory methods (by means of enzymes).

Due to constant stress and existing substratum damages, the types of diseases characterized with high fatality rate are developed. The case of deceased 54-year-old patient B.K. is a clear example of lack of organized attitude and ineffectiveness. B.K. was transferred from Tbilisi Prison No. 8 to the Medical Establishment for Convicted and Indicted Persons and died within minutes of entering the hospital. According to the forensic conclusion, myocardium infraction of the back wall of the left ventricle was the cause of his death. Besides, numerous post-infraction scars were found on the left ventricle and partition and myocardium had other damages as well (cardio sclerosis); the latter evidence proves that the deceased patient was a serious heart patient who needed proper attention. It is highly probable that he was not given proper medical attention that led to his death. Certainly it is difficult to claim that he wouldn't have died if properly treated, but in that case he would have had much higher chances of survival.

Out of cardiac diseases, there was one case of dilated cardiomyopathy and one case of arrhythmia. Both patients died in the civilian medical institutions.

Inflectional diseases occupy the forth place in terms of frequency. Acute viral hepatitis and HIV fall under this group. As it was mentioned, 34% of the deceased prisoners had viral hepatitis and only 3 were infected with HIV.

According to the medical records, of the types of viral hepatitis, a majority of the deceased prisoners were had HCV infection and only one of them was infected with HBV. It should be mentioned that, after tubercular infection, acute viral hepatitis is the second most serious problem for the penitentiary establishments. Medical screening of hepatitis cases is not conducted on the site, and convicts have to put a lot of efforts to have their health status diagnosed (to have lab tests done). Results of medical examination are often delayed. It is also extremely difficult to have the treatment commenced. Only few patients are under etiotropic treatment. At best, patients are prescribed liver protection medicines. The situation is aggravated by absence of adequate nutrition in the entire penitentiary system, which has certain impact on treatment and prognosis of a disease. In the second half of 2009, one third of the deceased prisoners were infected with acute viral hepatitis. Another third had cirrhosis, portal hypertension, encephalopathy and consequent serious health problems.

The fact that acute viral hepatitis is one of the serious problems in the penitentiary system was confirmed by the joint Order of the Minister of Labour, Health and Social Protection and the Minister of Corrections and Legal Assistance No. 267-219/N dated 25 June 2009. The Order approved a Strategy for the provision of medical services in the penitentiary system for prisoners and convicts infected with hepatitis C. According to the Order, the MoLHSA and MoCLA are obliged to develop an action plan based on the said Strategy. Although this issue needs prompt regulation and solution, 10 months after the issuance of the Order, no action plan has been developed yet, and the situation in the penitentiary establishments remains alarming.

Another serious disease within the penitentiary system is **HIV /AIDS**. During the year of 2009, 5 prisoners infected with AIDS died in Georgian prisons. Three of them died in the second quarter. Although some progress has been made in

identifying and treating AIDS-infected patients, a number of problems remain, of which prevention of the spreading of the HIV infection is on the first place. Almost no steps have been taken in this direction, although prevalence of HIV infection is proportionate to the prisoners' current conditions and environment. In his reports to the Parliament of Georgia for the last three years consecutively, the Public Defender has been directly reiterating to stop discrimination of deceased prisoners infected with the HIV infection on ground of their illness with the said infection. As in the preceding years, forensic medical examination of prisoners deceased from the HIV infection has not been conducted during the reporting period too. Medical records of such prisoners directly state that the cause of death could not be identified. As an example, we bring a quotation from a forensic medical examination report on deceased prisoner M.R.: *"Due to the lack of safety guarantees required in relation to bodies of dead persons infected with AIDS,* ***autopsy of the body was not performed and, hence, the cause of death cannot be determined.*** *External visual examination showed that the body had two notches on the face which were caused 4 days before the death.*

The body of prisoner Ch.K who died at Gudushauri National Medical Centre, was not examined; L. Samkharauli National Forensics Bureau did not provide us with a forensic medical examination report.

Autopsy was performed on the body of prisoner Ch.A. who died in Penitentiary Establishment No. 2 in Kutaisi. Presumably, the forensic pathologist was unaware that the prisoner was infected with HIV.

In the first half of 2009 administration of the National Forensics Bureau informed us that autopsy of bodies of those infected with the above-mentioned diseases is not conducted. Compared to previous years, autopsy is not performed also of bodies infected with hepatitis C. Head of National Forensics Bureau confirmed this statement in a private conversation with us. Medical record of deceased prisoner N.M. says the following: *"Due to absence of relevant methodology and safety conditions, autopsy of the corpse infected with hepatitis C was not performed".*

Traumatic and violent death cases come next. 1 prisoner falls within this group whose death was caused by hanging himself on the noose. Two prisoners died due to craniocerebral injuries and chest traumas. 9 other deceased prisoners were classified within this group due to different types of injuries found on their bodies.

According to the official information, prisoner A.K. committed a suicide by hanging himself on 12 December 2009 in the Penitentiary Establishment No. 2 in Kutaisi. His medical record reads: "mechanical asphyxia developed by closure of the upper respiratory tracts caused by shrinkage of the noose." A forensic medical examination report says that the strangulation stripe dates back to when the prisoner was still alive. The body had notches (5-4 days old before the death) on the rear surface of the right shoulder, the left hip and in the right knee area. The report also mentions a diagnosis of pneumonia.

On 19 September 2009 prisoner G.U. died in Gudushauri National Medical Centre. No forensic medical examination report was produced. The National Medical Centre provided the following diagnosis: a closed craniocerebral injury, left traumatic subdural haemorrhage, intraventricular bleeding, cerebral intumescences, GCS 3B coma, cardiovascular collapse, respiratory and acute renal failure, II stage endobronchitis. The circumstances of the death of this prisoner require more attention and further examination.

Prisoner M.V. died in same Gudushauri hospital on 18 November 2009. As in the previous cases, no forensic medical examination report was produced on him. But the diagnosis provided by the hospital indicates the following: "*Closed chest injury, fracture of ribs nos. 7, 8, 9 and 10; bruises on soft tissues of both lower extremities with multiple excoriations, hemarthrosis of the articulation on the left knee, acute sepsis, multiple organ failure".* This case also needs further examination.

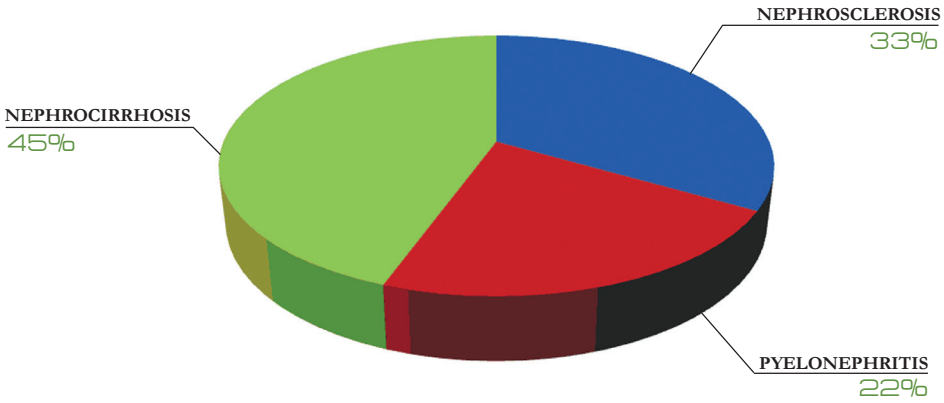
Frequency of digestive system diseases ranks on the 6th place. This group of diseases primarily includes cirrhosis, infection of biliary tracts and peptic ulceration. All patients having peptic ulceration died in public hospitals. Out of them, one patient had a gastroduodenal bleeding.

Infections categorized as "Other" occupy the 7th place. This group contains cases of haemorrhage and sepsis. Haemorrhage cases were described as a complication of lung tuberculosis (3 cases) in the previous part of the report. In 3 cases,

haemorrhage was developed in the upper part of the digestive tract and caused hypovolemic condition, which is one of the major reasons of mortality.

As for the four cases of sepsis, all patients with this disease died in Gudushauri National Medical Centre. National Forensic Bureau did not provide reports of forensic medical examination. Accordingly, this matter requires further examination in terms of obtaining and analyzing evidence.

Infections of the urinary system come next. In particular, a majority of such diseases is pyelonephritis, nephrosclerosis and nephrocirrhosis. Percentage share of these infections is presented on a pie chart below.



Above-mentioned pathologies based on histological evidences are the main reason causing lethality among the patients. It is very likely that these pathologies were ignored while the patients were still alive.

Diseases related to nervous system are on the 9th place in terms of frequency of occurrences. *This group unites acute cerebral circulation dysfunction, cerebral and meninx inflammatory diseases and polyradiculo-neuropathy.*

Acute cerebral circulation dysfunction is reflected in ischemic and hemorrhagic insult, cerebral aneurysm, also subdural and intraventricular extravasation caused by a closed cerebral injury. In most of the cases, death was caused by cerebral oedema, brain stem dislocation and incarceration as confirmed by forensic medical examination reports. Diagnosis of the deceased patients revealed cases of encephalitis and meningitis and one case of clinically confirmed polyradiculo-neuropathy.

As already mentioned, there has been a trend of growth in the cases of malignant cancer growth in the second half of 2009. Despite the growth trend, the frequency of occurrence of oncological diseases is occupies the 10th place and unites the following cancer categories: laryngeal, rectum, pancreatic, lung, cerebral and liver. According to medical records of the deceased prisoners, all of them (7 persons) had late, practically, terminal form of cancer. In all of the above cases, spread of the tumor was in its final stage. Prisoners were in grave conditions with expressed cachexia and signs of palliative care. Nevertheless, petition requesting suspension of a sentence or early release has not been submitted in favour of any prisoner. This can be deemed as inhumane treatment against the prisoners. A majority of these oncological patients died in Gudushauri National Medical Centre.

We have identified only a few cases of endocrinological system-related diseases: – 2 cases of diabetes and only one of thyroid gland (goiter). According to forensic medical examination reports, endocrinological pathology was not the direct reason of death; however, it worsened the patients' conditions and accelerated development of pathological process.

PROPOSALS AND RECOMMENDATIONS

Proposals to the Parliament of Georgia

- To amend Article 22 of the Law of Georgia on Imprisonment with a view of ensuring treatment of HIV/AIDS-infected prisoners in compliance with international standards (inadmissibility of segregation)
- To amend Article 1(2) of the Law of Georgia on Licenses and Permits with a view of subjecting medical institutions of penitentiary establishments to the licensing rules applicable to civilian medical institutions.

To the Government of Georgia:

- For the purpose of complying with requirements of Article 45 of the Law on Patient's Rights, the budget of the Ministry of Labour, Health and Social Affairs should envisage costs required for treatment of patients in penitentiary establishments.
- To drive the penitentiary institutions' healthcare system and human resources employed therein out from the penitentiary system's subordination and to reintegrate them within the system of Ministry of Labour, Health and Social Affairs as soon as possible.

To the Minister of Corrections and Legal Assistance and the Minister of Labour, Health and Social Affairs:

- To speed up elaboration and implementation of an action plan envisaged by Article of the joint Order of the Minister of Labour, Health and Social Affairs and the Minister of Corrections and Legal Assistance No. 267-219/N dated 25 June 2009 "on approval of a Strategy for the provision of medical services in the penitentiary system for prisoners and convicts infected with hepatitis C".
- To provide the doctors employed within the penitentiary establishment with the opportunity to be actively involved in continuous professional/medical education programs.
- To deliver regular trainings for doctors employed in the penitentiary establishments in order to ensure mandatory awareness of the existing healthcare legislation and relevant amendments thereto.

To the Minister of Corrections and Legal Assistance:

- In pursuance of Article 40(1) of the Law of Georgia on Imprisonment, to ensure opening of medical aid unit in the following penitentiary establishments:
  - Common and Strict Regime Penitentiary Establishment No. 1
  - Prison No. 7 in Tbilisi;
  - Prison No, 8 in Tbilisi;
  - Educational Establishment for Juveniles;
- To enact a bylaw regulating rules and conditions for allowing the entry of civil medical specialists into the penitentiary facilities;
- To conclude service contracts with public hospitals according to geographic locations;
- To provide remand prisoners with services equivalent to those available for convicts infected with tuberculosis;
- To revise, as soon as possible, the status of medical facilities currently subordinated to penitentiary establishments and to reorganize them into legal entities carrying out medical activities;
- To amend the Order of the Minister of Corrections and Legal Assistance No. 771 dated 10 November 2009 with a view to ensuring a unified system for processing and usage of medical documentation, harmonization with the on-going developments in civil healthcare system, their regulation and systemization.

To the Heads of the Medical Department and the Penitentiary Department of the Ministry of Corrections and Legal Assistance:

- In pursuance of Article 93 of the Law of Georgia on Medical Activity, to establish special and adequate work conditions for doctors working in risk zones; to provide them with appropriate remuneration, social and legal protection guarantees; to introduce benefits for independent medical practitioners working in risk zones; to establish strict control with a view of ensuring autonomy and independence in making medical decisions by doctors working in penitentiary establishments.

- In pursuance of Article 54 of the Law of Georgia on Medical Activity, to stop doctors' involvement or their compulsion to decide on punishment of persons deprived of liberty; to stop involving doctors in any activities the sole purpose of which is not evaluation, protection or improvement of prisoners' physical and mental health or which contradict medical ethics.

To the Head of the Medical Department of the Ministry of Corrections and Legal Assistance:

- In penitentiary establishments for female prisoners where gynaecological services are not provided: to ensure hiring of a gynaecologist with the status of a staff member of the establishment and to ensure that women-specific health issues are dealt with adequately;
- To ensure that each penitentiary establishment has a sufficient number of medical personnel; in particular, at least one doctor and one nurse should be available round the clock shifting every 4 days;
- To ensure that profiles of doctors working for penitentiary establishments are compliant with the list of doctoral specializations envisaged by the Order of the Minister of Labour, Health and Social Protection No. 136 dated 18 April 2007 "on defining the list of doctor profiles, relative profiles and sub-profiles";
- To hire at least one full-time dentist in every establishment;
- To reinforce the psychiatric division of the penitentiary system with human resources, equipment, medicines; to provide female prisoners suffering from mental problems with adequate in-patient psychiatric care;
- To establish control with a view of ensuring regular medical examination of convicts and documenting the results of examinations in medical records, as provided for by Article 38(2) of the Law of Georgia on Imprisonment;
- To supply medical sections of penitentiary establishments with fixed assets required for the provision of full-fledged urgent medical aid to convicts; to train the medical personnel of penitentiary establishments appropriately to this end;
- To implement national recommendations on clinical practice and national standards of disease management in the penitentiary medical system;
- In all penitentiary establishments: to ensure confidentiality of doctor/patient relations and protection of the principles of privacy and medical secrecy in accordance with the applicable Georgian legislation.
- To ensure medical examination by a psychiatrist in a mandatory manner of prisoners at risk of self-mutilation or suicide, as well as their preventive treatment and proper monitoring, as necessary;
- In pursuance of Article 42 of the Law of Georgia on Imprisonment, to allocate one responsible doctor in each aid station within the entire penitentiary system who will be properly trained and accountable for controlling epidemiological, hygienic and sanitary conditions.
- When prescribing diet food, ensure that heads of medical facilities of the penitentiary system comply with the requirements laid down by the Order of the Minister of Labour, Health and Social Protection No. 237/N dated 5 December 2000:
- In rendering medical services to sentenced prisoners and remand prisoners, to ensure equal geographical and economical access as well as equal quality in all penitentiary establishments;
- To create appropriate conditions for the prisoners in penitentiary establishments for women and juveniles;
- To increase (for a start, at least to double) the in-patient treatment component in penitentiary establishments for individuals suffering from mental disorders; to establish and intensify cooperation with public psychiatric institutions.
- To provide qualified narcological aid to drug addicted individuals; to this end, to implement and expand specific programs ongoing at penitentiary establishments for resolving narcological problems;
- To establish mechanisms for the prevention, recording, adequate treatment and management of contagious and highly dangerous infections; to ensure adequate epidemiological control and observance of all measures prescribed by the Law of Georgia on Public Health;
- To take adequate measures in relation to prisoners who are unable to stand long-term detention; in particular, when necessary, to carry out a forensic examination when heavy or incurable illness is confirmed with a view of soliciting for release of such persons from serving the rest of the sentence; to create suitable condi-

tions for them in penitentiary establishments; to provide them with additional means of movement and social adaptation; to provide them with a caregiver's services.

- **To analyze and evaluate the reasons of mortality in penitentiary establishments; to present own suggestions and views on the improvement of the current situation.**

To the Head of the Penitentiary Department of the Ministry of Corrections and Legal Assistance:

- **To consider in the Contract concluded between the Penitentiary Department and LLC "Megafood" the requirements of the Order of the Minister of Health, Labour and Social Affairs No. 258/N dated 17 September 2002 on approval of therapeutic diets.**

To the Head of the Levan Samkharauli National Forensics Bureau:

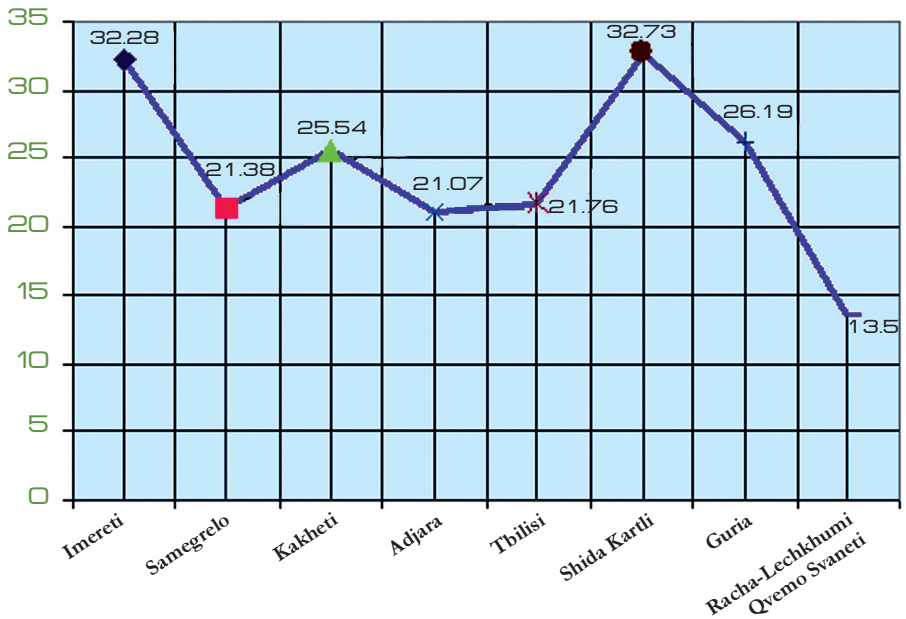
- **To ensure that forensic medical examination is carried of bodies of deceased prisoners who were infected with HIV/AIDS and reasons of their death are identified.**

To the State Medical Activity Regulatory Agency under the Ministry of Health, Labour and Social Affairs:

- **To conduct full monitoring of medical establishments and medical units in penitentiary establishments and to prepare a special report thereon.**

Medical Care of the Individuals Placed in the Temporary Detention Isolators

During monitoring the Temporary Detention Isolators (hereinafter, TDIs), we focused on health care and medical issues. Throughout the reporting period, about 24.3% of detainees placed in TDIs had different types of injuries. The below diagram indicates particularities of the monitoring results by regions:



According to detainee registration journals, 63.24% of the detainees placed in TDIs were injured before the detention and 8.34% were injured during the apprehension process. 0.23% claimed that they were injured after the detention. Based on the record book, 1.57% of the detainees do not remember when they were injured; 0.55% was unwilling to answer our question and in 26.15% cases, this information is not registered in the record books at all.

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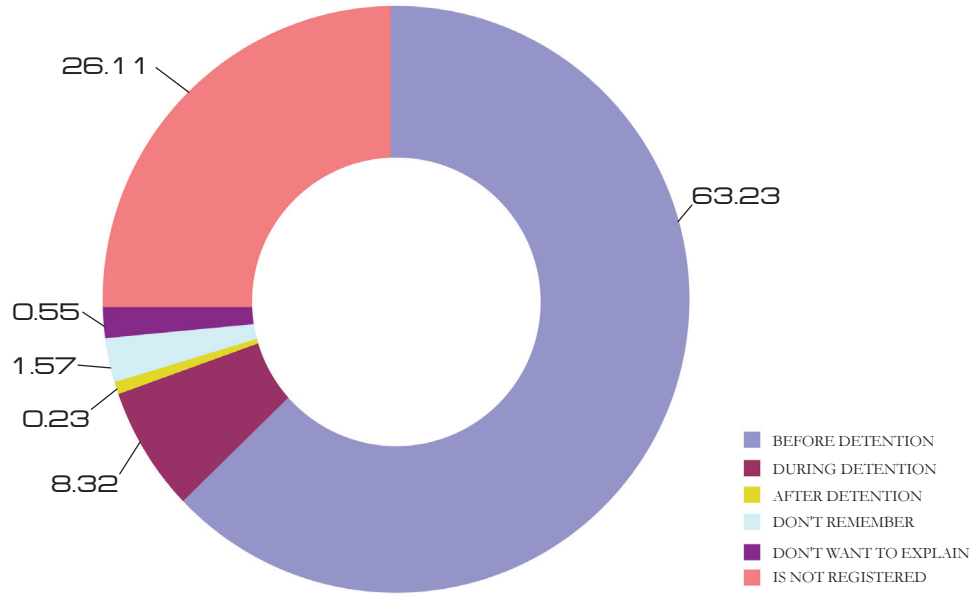
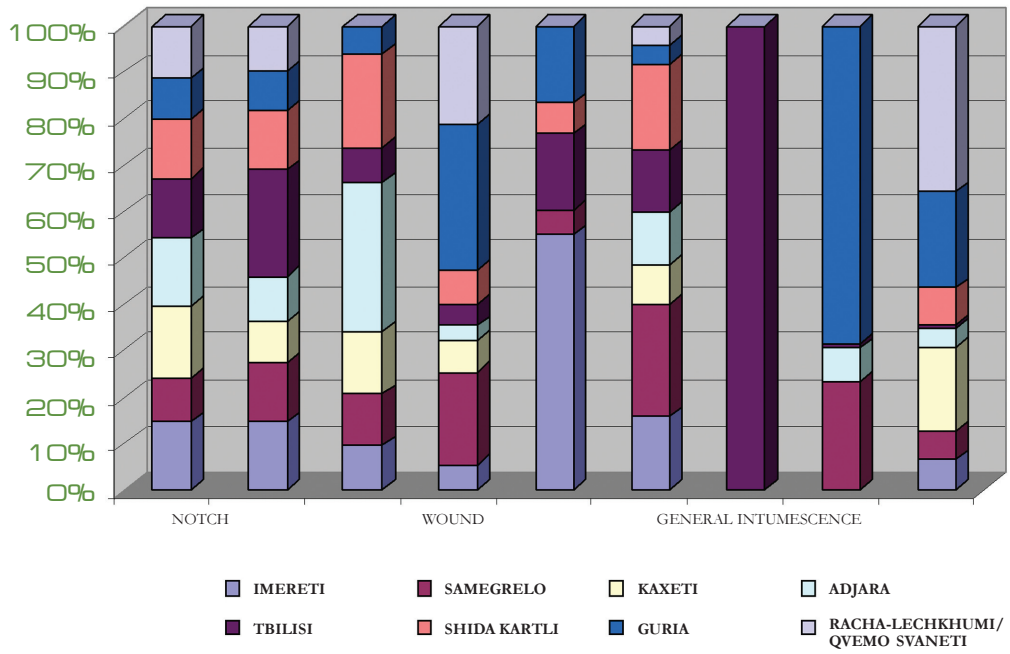
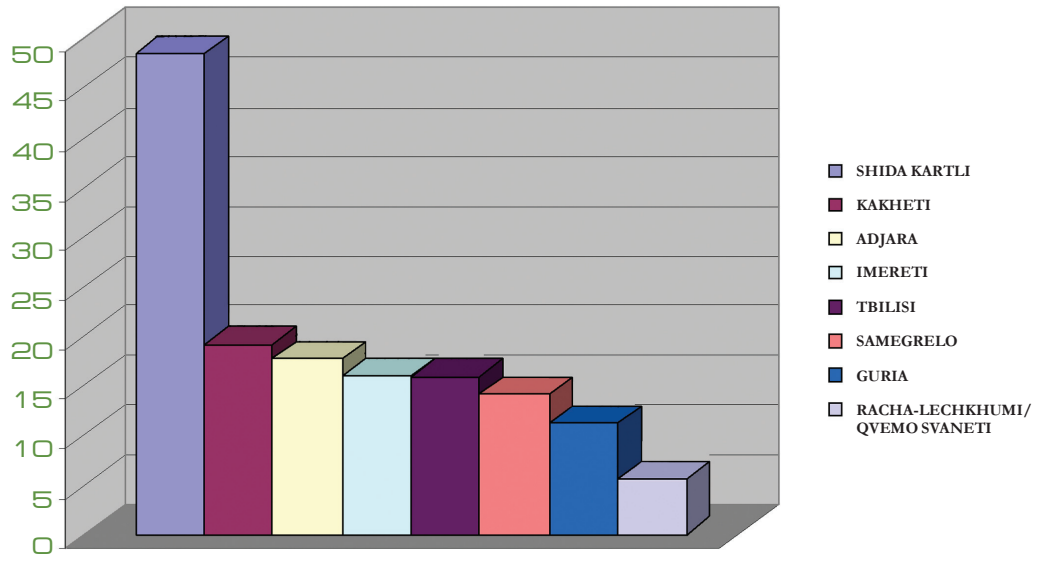


Regarding physical injuries, the most common type of injury is notch (48.11%). Second and third most frequent injuries are hemorrhages (15.19%) and wounds (14.62%), followed by hyperemia 8.15% (plethora) on different parts of the body and bruises (6.87%). Other injuries are less than 1% and they are the following: burns – 0.65%, general intumescences on the body – 0.41% and fractures – 0.19%. In 5.81% of cases, TDI officials do not specify the type of injury referring simply to "an injury".



The monitoring group also analyzed details of anatomic locations of injuries. Monitoring results showed that the most common injuries are usually located in the facial area (33.24%). Injuries of the upper extremities rank second (29.90%), followed by injuries of lower extremities (15.96%), back area (8.11%), neck (4.1%), abdomen (3.28%), calvaria (2.55), and chest area (2.37). Perineum or genital injuries have not been detected nationwide. In 0.53% of cases, TDI officials do not specify locations of injuries confining with simple statements such as that the detainee "has a bruise" or "has a wound in the upper body".

In the second half of 2009, in 18.6% of cases TDI officials called an ambulance. Most frequently, the ambulance has been called in Shida Qartli region; this indicator is minimal in Racha-Lechkhumi and Qvemo Svaneti regions.
The diagram below shows the statistics of calling ambulance, by regions:



Different picture was observed in TDI No. 2 in Tbilisi in terms of calling the ambulance. The reason is that only this establishment has a doctor who deals with health problems himself and calls "033" only in case of need.

Four most frequent diagnosis made by ambulance medics and Tbilisi TDI doctors are the following: narcological problems (25.12%), neurological problems (18.23%), syndromes of pain (15.77%) and *arterial* hypertension (11.9%). The list below shows other most frequent diseases:

5.	Traumatology/Orthopedy	5.06 %
6.	Surgical problems	5.06 %
7.	Neurocirculatory dystonia	4.69 %
8.	Respiratory system disease	4.17 %
9.	Neurosis Vegetativa	3.69 %
10.	Intestine diseases	3.69 %
11.	Dental diseases	2.76 %
12.	Infectious diseases	1.98 %
13.	Nephrology/urology	1.95 %
14.	Heart diseases	1.56 %

2009

15.	Mental problems	1.55 %
16.	Allergic diseases	1.40 %
17.	Endocrine diseases	1.34 %
18.	Otolaryngological diseases	0.84 %
19.	*Arterial hypotonia*	0.52 %
20.	Hyperthermia	0.29 %
21.	Vascular diseases	0.21 %
22.	Pregnancy	0.02 %

In TDIs, entries made in the medical care journal usually are not enumerated and a majority of pages in the journal are blank. This allows making additional entries in the journal if necessary. Numbering in one of the journals was done erroneously. According to the journal data, of the total of 189 calls, only in 23 cases a doctor recommended patients' hospitalization for further treatment, consultation and examination. In 17% of cases, doctor's recommendation was followed and in 21% of the cases final result is unknown. Doctor's recommendations were not followed in 62% of the cases. In a majority of the cases, ambulance doctors provided medical assistance on the spot. We think this is a significant problem, which should be eradicated.

According to records made by ambulance doctors, they rarely recommend further examination and hospitalization of patients. However, there are a lot of entries made on detainees brought after traffic accidents. In a situation where numerous injuries and bruises are observed on the body, it is expedient to provide at least a surgeon's consultation and routine instrumental examination. Otherwise, development of complications posing threat to life (especially closed abdomen, chest and cerebral injuries) is very likely. In most cases, entries made by ambulance doctors contain significant errors. Incompatible medical terminology is used and inadequate medical measures are taken. For example, according to one of such journal entries, a doctor says that "the patient complains about deformation of the left earlap", while his diagnosis is "earlap cyanosis"; the entry is signed by the doctor and a nurse. The same ambulance team has made another entry; in particular, in the descriptive part, the doctor notes that the patient has blood leakage in the right eye socket, which the doctor diagnosed to be "migraine". From the medical point of view, these entries are illogical and inconsistent!

Entries made by TDI officials describing the injury types of detainees are also unqualified and incompatible. Most often, it is impossible to understand what the police officers meant. The part of the body and the injury type are described incorrectly. Considering this, it is urgent to provide TDI personnel with relevant trainings and methodological recommendations in order to fill this gap and ensure that they describe injuries using a uniform approach. Recommendations of ambulance doctors to transfer a patient to a hospital are not followed. This fact is confirmed by a repeated entry in the journal made by another ambulance team called for the same patient.

In some of the TDIs, the number of surgical and traumatic problems is very high. These problems cannot be fixed on the spot. However, it happens very rarely that a patient is transferred to a hospital and a doctor's recommendation is followed. Threat to a person's life is higher when a detainee is diagnosed with closed traumas, cardiac ischemia, surgical pathologies (hernia, haemorrhage), etc. and such detainee is anyway not placed in a hospital or it is already too late to send him to a hospital.

We found several cases when journal entries had been "corrected". For example, in one of the journals, an entry with registration number 003225 used to state initially that "the detainee has no injuries on the body"; however, later the negative particle "no" was crossed out so that the entry now meant that the detainee *had* injuries on the body, though without providing details on the type of the injuries. It further becomes clear that an ambulance team was called in this specific case. Another example is entry No. 003260, which states that the detainee has a bruise and intumescences on the left eye as well as scratches on both knees that were caused during apprehension; in particular, he fell on the ground as he was resisting to arresting officers. Nevertheless, the journal entry says that the detainee is not injured. A further example is entry No. 003302: "injuries on the body are not observed; the detainee is not ill and there is no need for medical care"; this

phrase is then followed by a statement that "an accurate observation revealed small scratches in the neck area; the detainee does not remember how he got these scratches".

On 23 October 2009 a detainee was brought to a TDI in Gori. The ambulance team examined the detainee diagnosing him with a cerebral contusion and fracture of ribs. The ambulance team recommended that the detainee be transferred to a hospital. The same day, JSC "Gormedi" issued a health certificate N1241 signed by V. Savaneli, which reads as follows: "the certificate is given to Shida Qartli TDI, *certifying that patient Q.Kh. brought to JSC "Gormedi"* central hospital, City of Gori, does not need hospitalization due to health conditions". As we found out from subsequent entries, ambulance paid 4 visits to the same patient. The health certificate does neither provide a diagnosis nor describe any examination of the person. One of the entries says that the detainee was sent to a hospital where a doctor issued a health certificate. The certificate notes that detainee "has reddish-bluish blood leakage in the right eye socket." Further, it states that the patient "complains about vermilion-coloured haematemesis. The detainee is diseased with acute viral hepatitis "C" and cirrhosis." Despite this, the doctor thinks "at this stage there is no need to place the patient in a surgical unit". This entry speaks of the doctor's unprofessionalism and indifference. The registration journal contains a lot of certificates issued by hospitals. Such certificates should contain a description of health conditions of the detained persons, but their contents are incomplete and are not in accordance with the forms approved by the Ministry of Labour, Health and Social Affairs. A majority of such health certificates say that "no in-patient treatment is necessary" or "the detainee's health conditions are satisfactory and he can be remanded to the TDI". Furthermore, diagnosis and reasons for placing detainees in hospital are not indicated usually. Vast number of the abovementioned certificates is issued by JSC "Gormedi – Gori Central Hospital". According to the registration journal, one of the patients had *"a 4cm bleeding cut wound on the forehead"*. Concerning this fact, the registration journal contains a certificate issued by JSC "Gormedi" according to which the patient was placed in therapeutic unit. No diagnosis was made. The certificate further indicates that infusion therapy was conducted and the patient was returned to the TDI. It is unclear why a patient with a bleeding wound was placed in therapeutic unit. Another health certificate, which has no registration number and no indication of the name of the issuing hospital, says that on 23.09.2009 patient Z.Kh. was brought to Gori policlinic for extraction of two teeth but the patient refused. The examining doctor thus concluded in writing that "the patient can be placed in the TDI". Signature of the doctor is illegible. The certificate is stamped which hardly reads: "Gori private dental out-patient clinic". According to records made by ambulance doctors, they often carry out manipulations on the spot, which, in the existing conditions and considering their qualification, is forbidden.

According to one of the entries made in the journal of the Gori TDI, patient F. born in 19.., is registered at LLC "Pshycha" with a diagnosis of continuous delirium disorder. The patient was prescribed Triftazin, Ciclodol, Melepsin. The doctor is of the view that the patient does not need in-patient treatment. The health certificate is signed by the director of the establishment. The journal further provides that the patient was brought on 12 December for rendering resistance to police officers. He was sentenced to a 25-day administrative detention. He was released on 6 January 2010. The patient might have needed psychiatric care; instead he was detained and adequate medical care was not provided, which amounts to inhumane treatment of a person.

As the above examples show, both ambulance doctors and doctors of medical establishments tend to demonstrate indifference towards detainees. Instead of providing a complete description of patients' health conditions, diagnosing them and taking required medical measures, doctors are rubberstamping medical conclusions sanctioning the patients' detention. Such practices are a clear violation of medical ethics and of the Law of Georgia on Medical Activity, which prohibits a doctor from being involved in any action related to a person's punishment.[55] If such cases are repeated, we think it would be reasonable to raise the question of professional liability of such doctors in accordance with the procedure prescribed by the Georgian law.

Based on information entered into detention journals, it is impossible to identify how many times the emergency medical service "033" has been called. The rows in the journal are supposed to provide the following information: registration number, date, detainee's name and surname, types of medical complaints, injuries, diagnosis, medical care provided, medi-

[55] For more details, see the subchapter concerning medical service at penitentiary establishments

caments prescribed, and the name of the doctor/nurse. Nevertheless, in majority of cases, the rows in the journal are filled incompletely. Journals are numbered, as required, but often the registration numbers are "corrected" and the numbering is practically a mess. Entries about detainees' possible bodily injuries are probably made by doctors but examination of the entries showed no significant difference between entries made by doctors and those made by police officers (non-medical personnel). Information describing medical care provided to the patient by ambulance doctors is incomplete as well. This indicates superficial attitude of doctors towards producing appropriate medical records. In comparison to identical journals from other TDIs of Georgia (where in majority of cases entries are made by ambulance doctors), the Tbilisi TDI journal is maintained basically by the local TDI personnel. Information contained in the journal can be divided into two categories: the first category is the information regarding possible injuries of each detainee (if so) and the second category reflects the information about medical problems (diseases) which the detainees had at the time of admission to the TDI or thereafter. In the first part of the report, we have already presented classifications and complete analysis of common injuries; thus, we will mention only the major diseases and medical problems the TDI doctors have to deal with.

According to the journal of the TDI No. 5 in Tbilisi, it is very rare when a doctor recommends transfer of a patient to a hospital or any further medical examination. However, the journal has many entries informing that at the time of admission the detainee had serious health problems. When this is the case, namely when a detainee has numerous injuries and bruises on the body, it is prudent to provide him with a surgeon's consultation and routine instrumental examination at least. Otherwise, it is very likely that the detainee's conditions may deteriorate to an extent of posing threat to this life (especially in case of closed abdomen, chest and cerebral injuries). Doctors decide to hospitalize detainees only in very rare and exceptional cases. We evaluate such approach very negatively. As shown in the first part of the report, on average, every fifth detainee is injured. Of them, 56% have notches or wounds; in other words, the integrity of tissues is breached and bleeding of different intensity is present. Against this background, the situation in terms of antitetanic vaccination is alarming. Vaccination is done very rarely; in a majority of cases, patients are unable to receive such service. It should be noted that approximately a million cases of tetanus is registered in the world annually and mortality rate reaches 50%; i.e the risk of lethal result is high enough.

It seems to be a general trend that local doctors (who are surgeons) handle wounds locally, in the TDI conditions. In seven cases, relevant records inform that the doctor used "iodine, adhesive plaster, ethanol, cotton, bandage and brilliant green". We are of the view that wounds must not be handled in TDI local conditions. In this case, patients must have access to a safe and qualified surgical assistance. According to the records, a doctor who is unable even to identify the type of wound must not participate in and, moreover, must not handle the wound. Another entry of the journal states that a patient presumably has a wound that was handled first in a hospital in Kaspi and then in one of the hospitals in Tbilisi. The record further states that its authors cannot describe the wound (the injury) because it has a bandage on and are asking for an explanation from the surgeon who handled the wound in a Kaspi hospital. In another case, a journal entry informs that a wound was handled locally by a doctor who then covered the wound with bandage. The latter case points to insufficient level of medical services provided and reinforces our view that medical care in TDIs requires serious improvement and perfection. As regards detainees with mental problems, we have identified only a small number of such cases: According to a journal entry (Registration No. 374 G.G), the person is behaving *"inadequately and aggressively, yelling, waving his hands, having hallucinations, and inflicting injuries to self"*. The following entry on the same person states that "because of the existing situation, the ambulance "033" was called to hospitalize the patient". Further development of the patient's condition is unknown. In another case (Registration No. 622 N.M), patient's *"anamnesis informs that the patient is diseased with paranoiac schizophrenia and epilepsy; has a smell alcohol coming from the mouth; injuries are not observed"*; a further entry on the same person says: *"the escorting person has been warned by the detainee that the detainee is diseased with schizophrenia of a paranoiac type, that he is officially undergoing treatment and needs to be provided with prescribed medicine"*. Even in this case, no one thought about the need to provide the detainee with a psychiatrist's assistance, which should be regarded as provision of defective medical service. Patient M.S. (Registration No. 572) had an epileptic fainting in a TDI; he fell on the ground and got different types of injuries such as bleeding wounds in the area of nose and forehead and a notch on the tongue. The patient's wound was not handled adequately and the issue of antitetanic vaccination was not raised; a neuropathologist's consultation was not provided. According to the journal entry, the patient was given one pill of finlepsin which certainly cannot be considered as adequate handling of such condition.

In Samegrelo region, sometimes ambulance doctors make journal entries not in the official language and their scripts are practically unreadable (Registration No.262, 267) constituting a serious error and violation of the law. According to Article 56(a) of the Law of Georgia on Medical Activity, *"Medical records shall be made in the State language, in a clear and comprehensible manner"*. Medical records made by ambulance doctors are unclear; an example of such a record is the following: "General traumatic injury of the body, mainly craniocerebral injury". It is unclear from this phrase what the word "mainly" refers to or what the author of the record meant to say. In another example, a doctor did not indicate the diagnosis in the registration journal (No. 261) at all. A further example is a diagnosis of a female patient entered into a registration journal (No. 256 18.07.256 M.J.) by a doctor as follows: *"pain syndrome, pregnancy, gestational age 16 weeks"*; in particular, it is unclear what the words "pain syndrome" mean, and the medical record contains no information about health conditions of the mother or the foetus. The doctor did not recommend a consultation with a gynaecologist or any other additional medical involvement. Against such background, the risk of pregnancy failure is high and the health of the mother and foetus are jeopardized. Such negligence towards the patient's best interests can be evaluated as inhuman treatment. Another journal entry (registration journal No. 284, p. 72) reads that "the wound was handled on the spot"; the name and surname of the detainee are not indicated; "handling of the wound" on the spot is an improper and inadequate medical care considering the existing conditions. Mostly, TDI personnel either do not provide a description of injuries found on the detainee's body or do so incompletely. Two examples from the Zugdidi TDI can be brought for illustration purposes. In the first case (registration journal No. 001261), injuries on the rear side of the huckle and on the knees were described very superficially. We have examined this person (based on his consent) and identified absolutely different types of injures of wider dimensions. Apart from it, according to the journal entry made in the TDI, the detainee has caused these injuries himself by falling on the ground 2-3 times as he was playing football. Such explanation is not credible against the actual injuries we observed on the detainee's body and reflects unbelievable mechanism (Istanbul Protocol – credibility quality – "0"), especially considering the detainee's comments completely to the contrary.

During the monitoring conducted in the Zugdidi TDI, we randomly examined one of the detainees. When the detainee found out who we were, he asked us for a help. According to him, during detention and interrogation he was brutally beaten by law-enforcement officials. On his body, we observed severe injuries of different types and dimensions. We drafted a protocol thereon and filled in Form No5 describing injuries.

In the Ozurgeti TDI, we paid attention to an entry made in an ambulance journal on 27.09.2009. The entry refers to 49-year-old detainee V.J. The ambulance doctor indicates head ache, neurotic condition and hearing difficulty. According to the doctor's record, trauma was inflicted as a result of a hard strike in the left area of the ear. According to the registration journal (entry no. 000409), erythema is observed in the area of left ear, which became a reason for calling the ambulance. The record further mentions the detainee's complaints about his treatment by Ureki police officers. In the Ureki police unit, he was insulted physically and verbally. The detainee could identify one of the persons who ill-treated him. The detainee was released on 29.09.2009 01:40 A.M. (detention date 27.09.2009 11:10 A.M.) based on a resolution issued by an Ozurgeti district prosecutor. We were seized with this particular case because the described injury was caused using a widespread method of torture known as "Telefono". We insistently urge for detailed investigation of this case.

According to the Senaki TDI's registration journal, one of the patients (G.G) had bleeding from digestive tract and was also diagnosed with cavernous tuberculosis of lungs. Despite the doctor's request to hospitalize the patient, the detainee was not transferred to a hospital. Against this background, the ambulance medical team wrote: "*diffusive palpation of abdomen causes pain, haemorrhages are observed in the lower part of abdomen, haematemesis, bloody sputum and bloody urine*". Pursuant to the records, the patient was injected with Dicynon. Refusal of detainee's hospitalization is a serious mistake and should be assessed as inhuman treatment at least because the detainee's life and health was seriously jeopardized.

The above circumstances lead to a conclusion that it is necessary to pay proper attention to health matters of detainees in TDIs.

Recommendations to the Head of the Main Division for Human Rights Protection and Monitoring under the Ministry of Interior of Georgia:

- **To establish strict control over the numbering of entries made in registration journals on individuals placed in the TDIs;**

- **To establish strict control with a view of ensuring that registration journals are maintained in a uniform manner in terms of healthcare-related issues;**
- **To ensure that TDI officials strictly control and do not allow use of any language other than the official State language in filling in the journals, since opposite practices are a serious violation of Article 56 of the Law of Georgia on Medical Activity;**
- **To provide officials of TDIs with trainings and methodological recommendations with a view of ensuring that injuries are described in a qualified and uniform manner.**
- **To establish control with a view of ensuring that ambulance doctors or other doctors do not carry out on the spot the manipulations that are not allowed to be carried out locally considering existing conditions and qualifications of the medical personnel;**
- **In all circumstances, to provide qualified psychiatric assistance to detainees having psychiatric problems on admission to a TDI;**
- **To stop the application by doctors of practices forbidden by Article 54 of the Law of Georgia on Medical Activity and, when facts of such practices are detected, to hold perpetrating doctors professionally liable according to the Georgian law;**
- **To provide detainees admitted to TDIs with skin or mucous membrane injuries, bleeding wounds or whenever needed with mandatory antitetanus vaccination within 48 – 72 hours following admission, with due consideration to health conditions.**

Medical Care in Military Detention Facilities (Hauptvakhts)

The Vaziani Military Detention Facility ("Hauptvakht")

In the course of monitoring the Vaziani Hauptvakht, the monitoring group had meetings with medical personnel, administration, employees and detainees. The monitoring team inspected existing infrastructure and medical documentation. As we were informed, the military detention facility employs local doctors who work round-the-clock and shift every three days. Nurses are not available at the Hauptvakht. The medical office consists of two small rooms. The first is a patients' reception room and the other is a doctor's room. The reception room measures approximately 8m^2. The room has a window and is well lit with natural light. A sofa, a doctor's working table, a drawer, a rolling medical table and two chairs are located next to each other in a row in the room. In addition, there is a sink in the room. There is a bed, a safe, a chair, a wardrobe and an air fan in the doctor's room. According to the doctor, medicaments are kept in the safe.

We were presented with journals maintained by the medical section of the Hauptvakht. These journals are:

1. Registration Journal No. 28 on daily medical check of detained military servicemen admitted into the Hauptvakht;
2. Registration Journal No. 24 on outpatients undergoing treatment in the Hauptvakht;
3. Procedures Journal No. 27 of the Hauptvakht;
4. Registration Journal No. 45 on the bathing of military servicemen detained in the Hauptvakht;
5. Registration Journal No. 41 on daily inspection of food quality and sanitary conditions in dining facilities;
6. Registration Journal No. 44 on the release from physical activity;
7. Prevention Journal No. 40;
8. Daily cleaning journal No. 46;
9. Registration Journal No. 23 on daily use of medicaments and other disposable medical items;
10. Registration Journal No. 26 on medical equipment and inventory;
11. Registration Journal No. 43 on incoming medical documentation;
12. Registration Journal No. 42 on outgoing medical documentation;
13. Registration Journal No. 66 on incoming cases;
14. Registration Journal No. 65 on outgoing cases;
15. Registration Journal No. 48 on protocols and acts;
16. Shifts hand over journal No. 47.

There is no registration journal to register other injuries or injuries taking place in off hours. Consequently, such facts remain medically unregistered. As the doctor informed us, there are cases when detainees are brought to him bleeding or with notches. If injuries are serious, detainees are sent to the Gori military hospital.

According to the doctor, they are supplied with medicaments from the Military Police Department in coordination with the military doctor in charge. There are no specific limits set on the funds allocated for the purchase of medicaments. Medicaments are received quarterly, upon request. According to the doctor, in order to receive medicaments, the doctor submits to the coordinator a filled-in request and, based on the request, they are getting supplies from the warehouse. In the doctor's opinion, the balance between supply and request of medicaments is approximately 90%. The doctor then accounts for medicaments used to the Military Police Department.

In addition, the doctor stated that food quality is regularly checked on-the-spot. As the doctor said, there had been no case of finding food defective during the reporting period.

In regard to hygiene and sanitary conditions, as the doctor told us, a contract was signed (expired on 16 September) with company "Dr. Rodger Contracted Cleaning", which was responsible for the hygiene and sanitary measures. Pursuant to the contract, company was obliged to visit and provide cleaning service at the Hauptvakht once every three months. According to the relevant registration journals, only the cleaning company paid only two visits (January 23 and September 16). The company performed disinfection and disinsection based on its own plan and in line with the doctor's directives.

As to medical procedures undertaken at the time of admission of detainees, each detainee is admitted after the medical section issues health and nutrition certificates to the detainee. The detainee is then examined by a doctor and afterwards escorted to the court. The doctor sometimes releases detainees from physical activities on account of health status. The health certificate issued by the medical unit is taken into consideration to that effect. For the last 6 months, there has not been a need for placing a detainee in the Gori Hospital.

The medical unit offers small medical manipulations such as injection, transfusion, etc. Dental care is not provided on the spot and is limited only to giving a painkiller.

In the course of medical monitoring of detainees, ambulatory records are not produced in spite of the fact that the Hauptvakht provides only outpatient care. All the three doctors working for the Hauptvakht are specialized in "Internal Medicine"; one of them additionally holds a state certificate of a "Pediatrician".

According to the doctor, there have been no lethal cases during the reporting period. The doctor showed us medical reports (Form No.8/1) for the 3rd and 4th quarters. These reports detail the main medical problems the doctors had to deal with during the second half of 2009 (reporting period). According to the reports, a total of 1487 requests for medical assistance were received by the medical section. There has been only one case of trauma. Variety of diseases is presented in the chart below:

1.	Nervous system diseases	32.07	136
2.	Eye and its appendix diseases	2.84	12
3.	Blood circulation system diseases	0.47	2
4.	Respiratory organs diseases	27.35	116
5.	Digestive system diseases	24.52	104
6.	Skin and subcutaneous cell diseases	4.72	20
7.	Musculoskeletal system diseases	2.59	11
8.	Genitourinary apparatus diseases	0.47	2
9.	Traumas	0.23	1
10.	Other	4.74	20
	Total	100%	424

2009

The doctor expressed his wish for improvement of their working conditions, which is completely acceptable. Namely, the medical room space needs to be expanded and the doctoral shift should be fixed on every fourth day (as it is common in other medical establishments).

As in the Senaki Hauptvakht, in the course of our monitoring at the Vaziani Hauptvakht our attention was seized by the so-called "certificate" filled in by doctors. The "certificate" serves to confirming that a person has been medically examined in the section of [the name of the facility] and was diagnosed with the following: [normally, they write "practically healthy" in this graph]. The certificate concludes stating that, based on a recommendation of the issuing doctor, the person is "**fit for placement in the** Hauptvakht **and has no limitations**". The above practice is incompatible with the norms of medical ethics. In addition, it conflicts with Article 54 of the Law of Georgia on Medical Activity, according to which an independent medical practitioner shall not be "*directly or indirectly involved in actions that are related ... to taking part in the punishment*".

The Gori Military Detention Facility (hereinafter "the Gori Hauptvakht")

We monitoring the Gori Hauptvakht in the second half of 2009 for the purpose of assessment and analyzing the situation therein. During the visit, the monitoring team met with the doctor, the administration and the personnel of the Hauptvakht. The team also examined the existing infrastructure and the available medical documentation.

Only one doctor is employed at the Hauptvakht; no nurse is available. The doctor has to work daily except for Sundays. Medical services are provided to detainees in the doctor's consulting room. The doctor is never shifted. When needed, the doctor is called from home during non-working hours. For this reason the doctor has never had the chance to take a leave.

The Hauptvakht provides only outpatient care to detainees. Inpatient treatment is not available locally. According to the registration journal, in the second half of 2009, a total number of 94 detainees were admitted into the v. A majority of the incoming detainees had no serious injuries or other serious diseases and thus these persons were deemed as "Practically Healthy". In 5 cases, doctor made the following diagnosis:

- Right knee arthritis;
- Caries on the 6th tooth on the lower right jaw;
- Wound on the left knee (healing period);
- Asthmatic bronchitis;
- Arterial hypertension.

As in other military detention facilities, there is no registration journal of day-to-day and other injuries maintained in the Gori Hauptvakht; hence, information on such cases remains unrecorded and unidentified.

In the course of medical monitoring of detainees, ambulatory records are not produced, though the Hauptvakht provides only outpatient treatment. The doctor maintains the following journals:

- Journal on the medical examination of the personnel;
- Journal for the registration and issuance of medicaments;
- Inventory registration journal;
- Ambulatory journal.

Incoming detainees are accompanied with a certificate describing the detainee's health conditions issued by the medical section. Nevertheless, the doctor states that he examines each incoming detainee once more himself. During the stay of detainees in the Facility, doctor monitors their health conditions. The Facility has not had detainees with any serious health problems. The doctor maintains a detainees' medical examination journal. According to the journal, in the last

period there has been only one case of catarrhal angina and one case of cephalgia (headache). The journal does not contain any other entries.

According to the doctor, he can provide first aid, injection, transfusion, bandaging and handling of small traumas locally. During the reporting period, one detainee suffering from asthmatic bronchitis was hospitalized. No lethal cases have taken place during the reporting period.

According to the doctor, medicaments are supplied from the Military Police Department under the Ministry of Defence of Georgia. The doctor sends a request to the Department, which constitutes a legal basis for supplying medicaments. Information on the consumption of the medicaments is recorded in the doctor's monthly and quarterly reports. The Gori Hauptvakht has the following medical equipment: a blood pressure measuring device, **a** phonendoscope, a breathing bag, a digital thermometer and a tongue holder. There is a small surgical kit, bandage kit and splints in the medical room.

As in other military detention facilities, the current practice makes the doctors indirectly participate in the punishment of detainees by putting their signatures on the so-called "health certificates" and confirming that the detainee is fit for being placed in a detention facility. According to the doctor, when appropriate circumstances are present, he addresses to relevant officials with a recommendation to release a detainee from serving the sentence.

Among typical medical problems, the doctor mentions "feet peeling" in summer, angina, cystitis, sciatica and radiculitis as well as acute respiratory diseases (seasonal) and etc.

According to the doctor, food in the Hauptvakht is supplied from the military unit. The doctor inspects the food quality on the spot. During the reporting period, there has been no case of finding food defective.

According to the doctor's statement, hygiene and sanitary conditions have relatively improved lately. Bathing is available once a week and wastes are taken out regularly. Sanitary service has not visited the Hauptvakht yet. Disinfection of WC's is done using chlorinated lime diluted in water. Disinsection and deratization are not performed for special purposes.

The Batumi Military Detention Facility (hereinafter "the Batumi Facility")

The monitoring group visited Batumi Hauptvakht in the second half of 2009 to assess and analyze the existing situation. During the visit to Batumi establishment, the monitoring team met with the Hauptvakht doctor, administration, detainees and personnel. The team also examined the existing infrastructure and medical documentation.

According to the local doctor, he is the only doctor employed by the facility; no nurse is available. The doctor works every day except Sundays, from 09:00 until 18:00. The doctor has lunch break between 13:00 and 14:00. In day offs, doctor has to work on calls.

Doctor's medical room is a small room where he receives patients. There is a sofa, a working table, a case for medicaments and chairs in the room. The source for lighting is a small window.

As in other military detention facilities, there is no registration journal of day-to-day and other injuries maintained in the Batumi Facility; hence, information on such cases remains unrecorded and unidentified.

According to the doctor, the Facility is supplied with medicaments from the Ministry of Defence. Funds for purchase of medicaments are not limited. Medicaments are received quarterly, upon request. As the doctor stated, in order to receive medicaments, he submits to the coordinator a filled request application form based on which supplies are made from the warehouse. Information on consumption of the medicaments is reported in the doctor's monthly and quarterly reports.

The facility has the following medical equipment: a blood pressure measuring device, a phonendoscope, M-18 medical bag, a laryngoscope, anatomic tweezers, a breathing bag, an intubation pipe, surgical scissors, shears, suture sets, a digital thermometer and an enema.

According to the doctor, the following medical services can be provided locally: first aid, injection, transfusion, bandaging and handling of small traumas. During the reporting period, one prisoner was hospitalized due to asthmatic bronchitis. As the doctor stated, there have been no lethal cases in the reporting period.

The doctor listed diseases complained of by patients as follows: caries and pulpitis, cephalgia (headache), mycosis (mostly on feet), and acute respiratory diseases (usually in cold seasons).

Small traumas are handled locally. Persons with psychic problems have not been identified unless some patients with claustrophobia and emotional tension count. These mental problems have intensified after the Russia-Georgia armed conflict in 2008.

The doctor presented the following journals forming medical documentation:

1. Detainees medical examination journal (each detainee is accompanied with a certificate issued by military unit doctor confirming that, in terms of health conditions, the detainee is fit for placement in the Hauptvakht);
2. Military servicemen's medical registration journal (containing records of first aid rendered);
3. Journal on the use of medicaments (registering the use of medicaments);
4. Journal for registration of medicaments (used to register incoming medicaments);
5. Bathing journal (the doctor mentioned access to shower is provided twice a week: Tuesdays and Fridays);
6. Journal on preventive measures carried out;
7. Incoming and outgoing medical documentation registration journal;
8. Inventory journal;
9. Journal on the release from physical activities;
10. Journal for registration of results of examination by a medical commission.

In the course of medical monitoring of detainees, ambulatory records are not produced in spite of the fact that the facility provides only outpatient care.

On the date of monitoring, 47 incoming detainee were registered in the journal. According to the journal, a majority of them is "Practically Healthy". One of the detainees was diagnosed with chronic gastritis.

According to the doctor, outpatient services are requested by not only the detainees, but also the staff of the Facility. In particular, the ratio of patients served by the doctor is the following: 20% staff / 80% detainees.

As for the hygiene and sanitary conditions, the doctor informed that disinfection measures have not been taken. No disinsection has been performed either. However, deratization measures were conducted on 10 September.

Inspection of the Hauptvakht showed that conditions in the cells are incompatible with human dignity. Placement in these cells may have extremely adverse effect on human health.

Doctor says that the Hauptvakht is supplied with food from the military unit. Because the food is not cooked on the spot, the doctor does not check whether the quality of the food supplied.

In summer, diarrhoea is the most common disease. Patients complain about diarrhoea, nausea and abdominal pains. The doctor has contacts with the medical section of the military unit. As for admission of detainees into the facility, the doctor notes that new prisoners come with health and nutrition certificates issued by the medical section of the military unit. The doctor examines an incoming prisoner and records his observations on the prisoner's health status. Depending on the

health status, the doctor sometimes releases prisoners from physical activities. In doing so, the doctor takes into consideration the health certificate issued by the medical section of the military unit.

As in other military detention facilities, based on the existing practice, the doctor indirectly participates in the punishment of detainees by confirming with his signature that the detainee's health conditions allow for his placement in a detention facility. According to the doctor, there has never been a precedent of replacing the measure of punishment of persons who were punished based on his recommendation.

The Senaki – Military Detention Facility (hereinafter "the Senaki Hauptvakht")

The monitoring team paid three visits to the Senaki Hauptvakht in the second half of 2009. The Facility is located in an isolated building. The Hauptvakht has a doctor who is available during working hours. According to the doctor, his working room is located in the same building. Patients are provided only with outpatient treatment. The monitoring team inspected the premises of the facility, detainees, cells, the courtyard and the staff working rooms. The monitoring team interviewed representatives of the administration, the doctor, and detainees. We checked the existing medical documentation as well. The doctor showed us 14 journals.

Procedural Journal has been opened and maintained since 5 January 2009. The journal provides information on the activities of the doctor, admission of patients (based on their requests) and procedures carried out. In the reporting period, 275 entries have been made in the journal. Our attention was seized by the following cases: an entry with registration No. 183 informs that the relevant patient was diagnosed with acute appendicitis, to which the doctor responded by requesting patient's examination in a hospital; in another entry (registration N198), the doctor's diagnosis was right side groin hernia, algetic syndrome; the last entry (registration N263) informs about the diagnosis of skin abscess on the lateral surface of the right palm; in the same place, the doctor's recording reads: "I have dissected the abscess, cleared the wound and put a bandage."

Bathing Registration Journal – Detainees are taken for taking a shower once a week. Bathing days are Mondays, Wednesdays, and Fridays. For example, during October-December 2009, 134 detainees were taken out for shower**,** approximately 4-6 persons each time**.**

Registration Journal on daily inspection of food quality and sanitary conditions in dining facilities informs that the doctor checks quality of breakfast, dinner and supper. The food is not prepared locally; it is cooked in the military unit and then brought to the Hauptvakht. Food samples are not stored on the spot. According to the doctor, there had been no case of finding food defective during the reporting period. Based on the journal entries, the food always tastes good its sanitary status is acceptable. It should be mentioned that food quality is not checked on weekends and day offs because of the doctor is not present in the facility at that time. Sometimes, food inspection is done by a duty officer instead of the doctor. According to the doctor, he has made several recommendations in regards to the food preparation process, particularly about the consistency of salt in the food.

Journal on the release from physical activity has 45 registered cases of the doctor recommending the release of detainees from physical activity. According to the journal, the grounds for such release can be a postoperative status, a previous history of trauma, current health condition etc. Such grounds are indicated in health certificates, which are then submitted to a military hospital.

Military servicemen's medical registration journal is filled in at the time of admission of detainees to the Hauptvakht. On admission, each detainee without exception is medically examined. During the reporting period, 305 military servants admitted to the Hauptvakht were registered. The journal specifies diagnosis on 10% of the admitted servicemen; others' health status is described simply with the words "Practically Healthy". As the doctor explained, initially they used to examine incoming detainees on Fridays, followed by entering relevant records. In 2009, they received an instruction to

carry out medical examination of each detainee immediately upon admission to the facility; hence, they started running a new journal since then.

Medical equipment and inventory registration journal informs that, in 2009, the medical section received the following medical equipment: sphygmomanometers – 1, digital thermometers – 2, rubber bands – 3, tables for medical instruments – 4, phonendoscope – 5, enemas – 6, tongue holders – 7, shears – 1, surgical scissors – 1, anatomic tweezers – 1, intubation pipes – 1, breathing bags – 1, laryngoscopes – 1, scalpel hafts – 1, M-18 medical bags – 1. No other medical inventories have been received till the end of the year.

Journal for registration of results of examination by a medical commission – was empty at each of the three monitoring visits we paid to the Hauptvakht; as the doctor explained, a medical commission had not visited them yet.

Outpatients' registration journal – included entries on 5 patients with diagnoses such as acute bronchitis, urethrocystitis and etc. The doctor explained that they register patients undergoing long-term medical treatment in the journal.

Journal for daily registration of medicaments and disposable medical assets is maintained to register medicaments used daily and to calculate the balance of medicaments in stock. Based on the rate of the use of medicaments, the doctor fills in a request form on supply of medicaments.

Registration journal of persons transferred to hospitals or subject to systematic medical observation is maintained to keep a record of detainees sent out for inpatient treatment because of their health status. According to the journal, there were only 5 such cases during the reporting period. Patient M.I. was diagnosed with an acute appendicitis and was sent to the National Guard Military Hospital in Poti where he underwent appendectomy operation. Patient K.K who was diagnosed with heart ischemic disease and second degree hypertension was transferred to the Kutaisi City Hospital. Patient V.D. was diagnosed with ischemic heart disease. Patient L.K was diagnosed with acute bronchitis and patient G.T. with acute cystitis. All three patients were sent to the field hospital of the military unit first; afterwards, the patient diagnosed with acute cystitis was returned to the Hauptvakht; the patient with cardiac problems was sent to the Kutaisi Hospital and the patient with acute bronchitis was transferred to the Poti hospital.

Registration journal on preventive sanitary measures carried out in and around the Hauptvakht informs that, during the year 2010, such measures were carried out 6 times; 3 times in the first half of 2009 and 3 times during the reporting period:

- 29.07.09 – disinfection, disinsection and deratization; the service was provided by a contractor company entitled Dr. Rodger Contracted Cleaning Ltd.
- 21.10.09 – disinfection was done and anti-mice substances were strewn on the territory adjacent to the administration building; these measures were carried out by a local doctor
- 14.12.09 – deratization was done by the local doctor).

Weekly medical examination journal provides a record of results of the planned medical examination held every Friday. Based on the journal entries, 358 persons were examined during the reporting period.

Registration journal on therapeutic agents and disposable medical materials is maintained in order to keep a record on the use of disposable materials. The journal also provides information on the names and number of medicaments used.

Incoming and outgoing medical documentation journal registers all documents bearing the doctor's signature such as a request form of medicaments, outgoing health certificates, requests for disinfection means, medical reports, other reports, notifications and etc.

The doctor also showed us the "Guidelines on the provision of the military units and medical facilities of the Georgian Armed Forces with therapeutic agents and medical goods". This document was approved by Order of the Chief of Joint Staff of the Armed Forces No. 66 dated 28 January 2008. According to the doctor, they are making use of these Guidelines.

Based on the documentation provided by the doctor, the monitoring team identified diseases common among the prisoners of the Facility. Apparently, common problems are neurocirculatory dystonia, respiratory system diseases, dental pathologies, intestinal diseases and otorhinolaryngologic problems. The whole spectre of diseases is presented in the below table:

1.	Neurocirculatory Dystonia	19.39	58
2.	Arterial Hypertension	2.67	8
3.	Pain Syndrome	12.04	36
4.	Pulmonology	15.05	45
5.	Gastroenterology	12.37	37
6.	Neurology	3.03	9
7.	Nephrology / Urology	2.34	7
8.	Traumatology / Orthopedy	2	6
9.	Allergology	4.34	13
10.	Otorhinolaryngology	9.36	28
11.	Infectious diseases	2.67	8
12.	Stomatology	12.74	38
13.	*Dermatovenerology*	1.34	4
14.	Ophthalmology	0.66	2
	Subtotal	100%	299

According to the doctor, apart from these journals, they are not maintaining patients' medical documentation. Nor do they use the inpatient medical documentation forms approved by the Order the Minister of Labour, Health and Social Affairs No. 224/N dated 22 August 2006. For this reason, requirements of the Georgian health legislation concerning uniform use of medical documentation, systematization of medical documents and accuracy of information on the activity of medical institutions are not complied with.

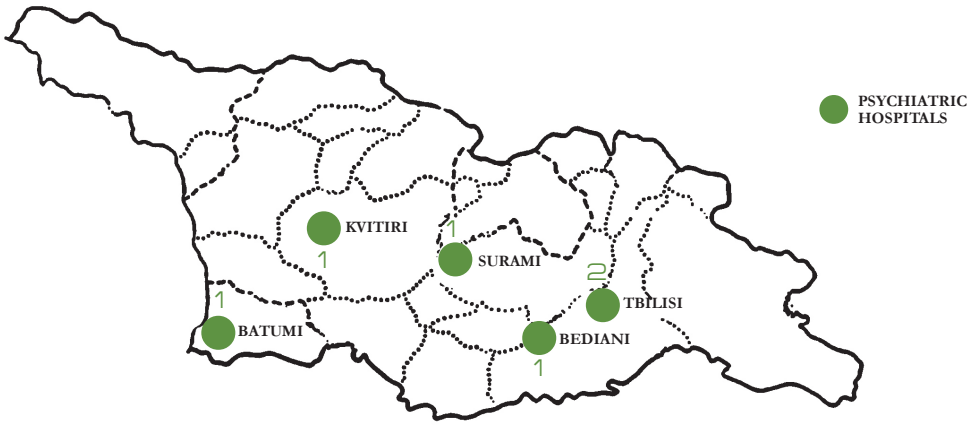
In the course of the monitoring, our attention was seized by the so-called "certificate" filled in by doctors. The "certificate" serves to confirming that a person has been medically examined in the section of [the name of the facility] and was diagnosed with the following: [normally, they write "practically healthy" in this graph]. The certificate concludes by stating that, based on a recommendation of the issuing doctor, the person is "**fit for placement in the Hauptvakht and has no limitations**". Such practice is incompatible with the norms of medical ethics. In addition, it conflicts with Article 54 of the Law of Georgia on Medical Activity, according to which an independent medical practitioner shall not be "*directly or indirectly involved in actions that are related ... to taking part in the punishment*". We are of the view that such practice must stop and doctors must not be signing any document that sanctions punishment.

Recommendations to the Head of the Military Police Department of the Ministry of Defence of Georgia:

- **To ensure that, in military detention facilities, medical documentation is maintained in compliance with by the Order the Minister of Labour, Health and Social Affairs No. 224/N dated 22 August 2006;**
- **To stop doctors' direct or indirect involvement in administering punishments.**

Monitoring of Psychiatric Institutions

Human Rights Situation in Georgian Psychiatric (in-patient) Institutions



The Venues and Dates of Monitoring Visits

The Public Defender's Office has been monitoring human rights situation in psychiatric institutions since 2006. On 8-28 January 2010, the PDO Special Preventive Group paid monitoring visits to 6 psychiatric institutions of Georgia within the framework of the National Preventive Mechanism:

1. The Tbilisi M. Asatiani Scientific Research Institute;
2. The Tbilisi A. Zurabishvili Mental Health Centre;
3. The Bediani Psychoneurological Hospital;
4. The Surami Al. Kajania Psychiatric Hospital;
5. The Qutiri National Centre for Mental Health;
6. The Batumi Psychoneurological Hospital;

Monitoring Results: General Overview

At the time of monitoring, the Tbilisi M. Asatiani Scientific Research Institute had 223 resident patients, the Tbilisi Mental Health Centre – 49 resident patients, the Surami Al. Kajania Psychiatric Hospital – 82 resident patients, the Bediani Psychoneurological Hospital – 102, the National Centre for Mental Health – 471, Batumi Psychoneurological Hospital – 86.

Systemic Issues

For 2010, the budget of the State Program for Psychiatric Aid increased up to GEL 10 257 900. For information, at the time the Public Defender started monitoring of the human rights situation in psychiatric institutions (2006), the budget was only GEL 4 950 000. Increased funding is welcomed but the results of monitoring show that the increase in funding did not have the proportional impact on the improvement of treatment conditions, care, psycho-social rehabilitation and living conditions of patients in hospitals; furthermore, the mechanism of allocation of funding to in-patient institutions is inaccurate and fails to meet the actual needs.

According to 2009-2010 data, the following components were added to the State Program for Psychiatric Aid:

- adolescent patient service;
- urgent in-patient service;
- in-patient treatment of mental and behavioural disorders caused by psychoactive substances;
- community-based mental health "methodology" component.

Adding these components to the Program is a positive step. Efforts should be made to actually implement them and to maintain the trend of increased funding.

Results of the monitoring suggest that the funding model has been modified and has become more flexible: – the in-patient facilities have been funded through a global budgetary system since May 2008. The change of the funding model (meaning replacement of the "patient/day funding" principle with the "global budgeting" principle) has reduced the cases of patient delays. Treatment has become more focused on discharge of patients but undeveloped services outside the hospital impede reintegration of patients into the society.

Due to undeveloped outside-the–hospital services, patients who do not need in-patient psychiatric aid have nothing left but to stay in psychiatric institutions and, for the same reason of lack of such services, a majority of discharged patients soon return to the hospital with the need for inpatient treatment. This is a somewhat vicious circle in psychiatry.

The institutions lack sufficient qualified personnel. This problem is especially evident at the medium- and low-level medical staff.

Living Conditions

A general problem in the institutions is their infrastructure conditions. Namely, the wards where patients spend a largest part of their time are in poor condition. Due to lack of sufficient ventilation, there is a heavy smell in the wards; lighting is not sufficient; heating is unsatisfactory. Heating is acceptable only in the Tbilisi Mental Health Centre and the Surami psychiatric hospital. In general, conditions in toilets and bathrooms are poor.

Moreover, a significant problem in hospitals is the lack of personal space. Patients do not have sufficient furniture inventory to keep their personal belongings; they have no personal clothing, private corner and possibility to stay alone. While

planning repair works, it is prudent to consider remaking the existing divisions and wards into smaller, differentiated units to allow the patients to be treated in a dignified, personified and therapeutic environment. Such approach would facilitate to effectiveness of psycho-social rehabilitation services too.

Personal hygiene is not managed appropriately. A majority of patients does not have hygienic items and materials. In some divisions, patients are unable even to wash hands after using a toilet. Women are not provided with hygienic pads; they use torn pieces of tissue instead. In bathrooms, patients share one bath sponge.

Nutrition remains a problem in some institutions. Generally, in none of the institutions (except the National Mental Health Centre) do the nutrition arrangements ensure proper, healthy, rational and balanced nutrition. Patients are not prescribed individual diets based on clinical laboratory tests.

Patients have limited access to an outdoor walk and time spent in the yards is not dedicated to any planned physical activity. Not every institution has a library. Furthermore, TV sets are not available in all of the institutions.

Treatment, Care and Rehabilitation

In general, the environment existing in psychiatric hospitals has a non-therapeutic, deteriorating and frustrating impact on patients' recovery. Needs of persons requiring psychiatric aid are not differentiated from needs of persons requiring accommodation and support services.

Psychiatric aid provided to patients is normally confined to pharmacotherapy. The share of psychosocial rehabilitation services offered in psychiatric institutions is minor despite the fact that a great number of patients need exactly such services. Treatment is not provided based on individual needs. Pharmacotherapy, psychotherapy, psychological assistance and rehabilitation programs are not provided to each patient in a coordinated manner. Psychotropic drugs are sufficiently supplied but modern psychotropic drugs are less used.

As observed by the monitoring team experts, pharmacotherapy overdosing does not occur.

The institutions were provided with National Clinical Practice Guidelines by the Ministry of Labour, Health and Social Affairs of Georgia. The interviewed personnel are of the view that these Guidelines cannot be complied with within the frames of current funds. Staff members also noted that they need training in how to use the Guidelines.

In general, the quantitative ratio of the personnel to patients in the institutions is acceptable but the number of mid and low level medical personnel is insufficient in divisions for long-term treatment. In addition, the number of clinical psychologists, psychotherapists and occupational therapists is insufficient who should be providing a combination of versatile measures in the course of treatment of patients.

Recreational activity of resident patients is extremely low. One ordinary day of long-term hospitalized patients in institutions is not properly organized and is mainly limited to feeding, taking of medications and sometimes the watching of the television. Access to out-door exercise is limited. Patients are not involved in any physical activity outside the building.

Compared to previous years (2006, 2007, 2008), urgent medical aid problem has been resolved. Since 2009, the psychiatric aid program covers also urgent in-patient service of patients having mental disorders.

Diagnostics and treatment of somatic diseases remain a problem. Although the institutions employ therapists and surgeons (consultants), adequate medical aid is still unavailable when it comes to somatic diseases. The reason is basically lack of a relevant funding mechanism. Dental service remains a problem too.

Death cases in psychiatric institutions deserve special attention. The records related to death cases indicate not diagnosis but clinical syndromes as reasons. Autopsies are not performed to establish the reasons of deaths.

Degrading Treatment

In general, a majority of interviewed patients is satisfied with their treatment by the staff. Patients deny verbal insults and rudeness on the part of the personnel.

The monitoring team has not received any complaints from patients about the facts of degrading or inhuman treatment; however, the below described circumstances call for attention.

It is noteworthy that patients who are undergoing treatment on a voluntary basis are not allowed to leave the institution at their own will. Patients undergoing voluntary treatment in clinical divisions are separated with locked doors from the outside world.

Psychiatric institutions normally use physical restraint and pharmacological intervention to curb extreme anxiety of patients. The monitoring team was approached with several complaints on the use of disproportionate force in the course of applying measures of physical restraint.

Medical personnel are not trained in using measures of physical restraint. It should also be mentioned that, compared to previous years, some of the staff members interviewed (in particular, those forming mid and low level medical personnel) are better informed on how to use restraint measures.

Results of the interviews with patients to whom measures of physical restraint or pharmacological injections had been used, suggest that these patients often consider the said measures as a punishment. Monitoring team believes that the staff should introduce the practice of post-crisis interviews and explanatory meetings with patients, which is not the case at present. This would improve relationship and cooperation between patients and medical personnel.

As the patients told us during the interviews, sometimes medical manipulations are conducted on them in the presence of other patients without their consent, which constitutes violation of their rights.[56]

In a majority of institutions, we identified facts of use of patients' labour; in particular, the patients were doing work falling within the personnel's duties.

Human Rights Protection Guarantees and Social Problems

The monitoring has showed, as a general assessment that in-patient psychiatric institutions normally do not demonstrate recognition of and respect for patients' dignity and personality.

The social service is not properly functional in a number of institutions; hence, the issues such as pensions, ID cards, private property, shelter and guardianship are not dealt with as needed. Part of the patients interviewed has difficulties with and complaints about their caregivers and their interests are not protected due to unavailability of social workers. There is a significant problem of unidentified persons placed in psychiatric hospitals whose ID cards cannot be renewed.

Interviews with patients demonstrated that they are not aware of their rights. Patients under voluntary treatment are not aware of their right to leave the institution if they wish so.

The obtaining of a patient's informed consent upon placement in the hospital is only a formal procedure. On the one hand, documents of informed consent to treatment signed by the patients are kept with the patients' medical records but on the other hand patients are restricted to move freely on the territory of the hospital. They are almost never permitted to go out in the yard and they are not allowed to leave the hospital if they wish to do so.

[56] See the Law of Georgia on the Patient's Rights, Article 30: "Rendering of a medical service may be attended only by the persons directly involved in it, unless the patient consents to or requires attendance of other persons".

Explanations received from the staff members of psychiatric institutions suggest the following: as soon as a patient requests to be discharged, the institution immediately addresses the court with the request to replace the voluntary treatment with a compulsory treatment.

In general, patients have a vague understanding of human rights protection mechanisms available within or outside the psychiatric institutions. They do not know who to apply to with a complaint, what the procedure of hearing the complaints is, etc. According to our information, a large part of patients undergoing compulsory treatment in psychiatric institutions who disagree with the decision of their compulsory treatment have no access to legal assistance.

We came across facts when patients were saying they wanted to leave the institution but were not allowed to do so regardless of the fact that they consented to treatment by signing relevant forms at their free will.

Separate attention should be paid to an objective social problem hindering the discharge of patients; in particular, patients to be discharged "discharged" either do not have a shelter or their relatives are refusing to accept them and their income does not allow them to live independently. Such patients are extremely depressed.

Not every institution provides patients with access to telephone. Usually it depends on the staff members' good will to allow patients to use telephone.

Doctors complain that police often bring individuals wrongly, even in the case of family conflicts where no exacerbation of any previous mental disease can be observed; in particular, if the person detained due to taking part in a conflict has a record of psychiatric disease, both the patrol police and ambulance teams deem this to be a sufficient ground to bring this person to a psychiatric hospital.

A positive example is the association "Apra" of parents of patients undergoing treatment in the Art Therapy Unit of the Tbilisi M. Asatiani Scientific Research Institute; members of the association participate in educational activities facilitated by psychiatrists and psychologists.

RECOMMENDATIONS

To the Minister of Labour, Health and Social Affairs:

- **To increase funding of the Psychiatric Aid Program with a view of raising the salaries of medical personnel and respectively the demand on qualified personnel;**
- **To improve the patients' living and treatment conditions; to develop psychosocial services; to develop community-based psychiatric service; to provide access to adequate medical service in the case of somatic diseases.**
- **To develop necessary qualification requirements and training courses for mid and low level medical personnel working in psychiatric institutions.**
- **To provide the patients with adequate living conditions; to renovate sanitation junctions; to reduced overcrowding in wards; to renovate and equip the wards with necessary inventory.**
- **To provide patients with appropriate heating conditions.**
- **To improve nutrition conditions; to ensure better conditions, sufficient space and inventory in dining rooms.**
- **To improve provision of patients with hygienic items and materials.**
- **To differentiate between needs of persons requiring psychiatric aid and the needs of persons requiring accommodation and support services.**
- **To provide adapted shelters where patients' care and supportive treatment are tailored to and focused on creating a patient-friendly environment aimed at provision of rehabilitation services and opportunities for their reintegration into the society.**

- To increase the share of non-pharmacotherapy methods in treatment courses; to introduce psychosocial rehabilitation activities so that to prevent the patients from losing motivation and elementary skills of life, relations, and social activity.
- To provide resident patients with adequate medical assistance for ensuring diagnostics and treatment of somatic diseases.

To the Directors of Psychiatric Institutions:

- To provide patients with minimum personal space; to make their living and medical treatment environment individual-oriented.
- In planning construction works, to consider remaking of the divisions and wards into smaller, differentiated units.
- After the use of physical restraint measures, to advise the patient on the necessity and purpose of the used measures so that the patient does not perceive them as punishment.
- To establish stricter control with a view of preventing any form of treatment that degrades or infringes on the dignity of patients.
- To introduce individual medical treatment schemes and a multi-discipline approach in the course of treatment.
- To involve patients in their own treatment process and to provide them with information about the treatment results, prognosis and side effects.
- To increase the share of non-pharmacological methods in treatment courses and to introduce psychosocial rehabilitation activities.
- To draft a new schedule of daily activities for patients, increasing the share of recreational activities and allowing for better exercise of the right to a walk and more use of alternative therapies and library resources.
- To raise the patients' awareness of their rights.
- To improve internal complaint mechanisms.
- To ensure that psychiatric institutions conclude contracts with relevant companies on opening a shop inside or near the institutions so that resident patients are able to purchase items they need.

Monitoring of Childcare Homes

Children in need of care accommodated in Institutions. Children's Welfare Reform and Deinstitutionalization

The Children's Welfare Reform has been implemented since 1999 after the Deinstitutionalization Pilot Program started in Georgia.

The Children's Welfare Program served to elaborating and implementing policies, standards and programs, which are focused on creating a social and family environment as being of paramount importance for a child's cognitive, social and emotional development.

Deinstitutionalization of children's homes has become a priority for the State since 2004. Several institutions were either closed or reorganized as a result of the reform.[57]

In general, the number of children in childcare institutions has been significantly decreased since 2004 to present (from 5200 to 1276 children, including 112 children with development difficulties). The number of State social workers responsible for assisting families, reintegration and matters of entrusted upbringing was increased from 51 (in 2006) to 200 (in 2010). Furthermore, the State increased funding of children on State financing; the number of alternative care forms (entrusted upbringing, daytime centres, and small family-type homes) has increased for children who are unable to live with their families.

State funds allocated to the Child Care Program increase yearly: in 2004, the funds allocated to that effect equalled 6.7 million GEL, while in 2009, it reached 15,743,436 GEL.

The deinstitutionalization process is a very important initiative for children living in childcare institutions. In Georgia, this is the first attempt to provide alternative, family-type care to children who either live in such institutions or are at risk of becoming their residents. The Subprogram of Children's Prevention and Deinstitutionalization has achieved important results and has been successfully progressing since its start to the present day.

While the abovementioned successful reforms are being implemented, the Public Defender pays particular attention to protection of children's rights, fighting against the use of ill- or degrading treatment or punishment against them, and inappropriate living and educational conditions of children.

[57] Evaluation of the Children Welfare Reform Process, UNICEF, Final Report, 2009.

The procedure and methodology of the monitoring carried out at childcare homes

Within the framework of the National Preventive Mechanism, the special preventive group of the Public Defender's Office monitored different types of childcare institutions. The team was comprised of childcare experts, psychologists, social workers, representatives of the prevention and monitoring department of the Public Defender's Office, and the Centre for the Protection of the Children's and Women's Rights. The team examined 21 institutions of children in need of care Georgia-wide, including 5 public boarding schools and 16 childcare educational institutions (subsidiaries of the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care").[58]

We developed special questionnaires to evaluate the institutions and the environment inside them, medical sections and dining facilities as well as questionnaires for the beneficiaries and the teachers. The questionnaires are based on the principles contained in the Convention on the Rights of the Child, the Law of Georgia "on General Education", the Law of Georgia "on Licensing of Childcare educational Institutions", the Law of Georgia "on Medical Activity", the basic guidelines envisaged by the State Childcare Program, and the Order of the Minister of Labour, Health and Social Affairs No. 281/n dated 26.08.2009 "on approving Childcare Standards".

Pursuant to the Convention on the Rights of the Child, "*the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision*.[59]

The objective of our monitoring was to evaluate observance of basic principles of the Convention on the Rights of the Child by the Georgian childcare educational institutions, to prevent violence against children and child abuse and ill-treatment, to identify facts of such ill-treatment to respond appropriately.

We examined and evaluated the following aspects on the spots:

1. Procedures of enrolment and admission of children to childcare educational institutions; suitability of the institutions in terms of the needs of their contingent;
2. Encouragement of the child's protection and development in childcare educations institutions; safety of environment within the institutions;
3. Access to medical services and emergency aid in childcare educational institutions, monitoring of health condition, early detection of diseases, implementation of adequate prevention, treatment and rehabilitation measures;
4. Provision of children with food that is safe and proper for normal development of a child;
5. Availability of environment and human resources focused on the development of the child and appropriate for educational and mentoring work;
6. Psychosocial environment oriented at child's development, protection and participation.

General overview of monitoring results

Monitoring revealed a whole set of systemic and individual violations and problems requiring special attention to the effect of enhancing children's protection in institutions and against the deinstitutionalization process.

Childcare educational institutions work round the clock but some of them offer only daytime services to their beneficiaries (Rustavi childcare educational institution – 41 children, Aspindza childcare educational institution – 9 children, Kutaisi public school No. 44 offering full board – 35 children). A total of 1240 children aged between 6 and 18 are enrolled in the institutions we monitored, of whom 20 children were without identity documentation (the reason is that sometimes even

[58] See the information on each branch in the Annex.

[59] Convention on the Rights of the Child, Article 3(3)

their parents have no ID cards or the child has none of the parents and it is impossible to establish the fact of birth under law. 40 children were of the age of 18.

In the course of monitoring the childcare educational institutions, the special preventive group paid attention to the following aspects:

- Raising the children's awareness of the Convention on the Rights of the Child and implementation of the principles of the Convention;
- Identification of and response to various forms of violence against children;
- Identification of and response to facts of children's forced labour;
- Evaluation of whether the overall environment in the childcare institutions contributes to children's emotional and social development;
- Identification of and response to facts of discrimination against children;
- Children's participation; consideration of and respect for their interests and opinions;
- Respect of confidentiality.

The UN Convention on the Rights of the Child of UN defines the duties of governments and individuals in terms of protection and enforcement of children's rights. Pursuant to Article 42 of the Convention, "*States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike*". Every domestic agency responsible for child care and supervision shall fulfil these obligations.

Interviews conducted within the monitoring with the beneficiaries showed that the children in childcare care institutions are not informed about the Convention on the Rights of the Child; those who are informed are unable to say at least one right they are entitled to and are often confusing rights and duties. They think their rights are "to obey the teachers", "to be polite", "not to upset the elders", etc, whereas the national Childcare Standards stipulate that "*Every child is aware, in conforming with his/her age, of the Convention on the Rights of the Child and principles envisaged by the applicable law on children's protection and is provided with this information in a form intelligible for him/her.*"[60]

According to the Convention on the Rights of the Child, every child has the right to be provided with a standard of living adequate for his/her physical, mental, spiritual, moral and social development. At the same time, responsibility for a child's development lies equally on both parents and teachers.[61] The role and responsibilities of teachers are even more important when a child is kept in an institutional facility.

Childcare educational institutions are obligated to ensure and to facilitate the formation of a child as personality. The child must not be limited in realizing his/her abilities. The child must be given the largest possible freedom to make own judgments based on information received. A child shall be free to freely express own views on all matters affecting him/her.[62]

Facts of ill-treatment in childcare educational institutions

As the classification adopted by the World Health Organization,[63] "*Violence and cruel treatment against children includes all forms of physical and/or emotional violence sexual abuse, neglect or negligent treatment or commercial or other exploitation resulting in actual or potential harm to the child's health, life, development or dignity, in a context of a relationship of responsibility, trust or power.*"

Physical violence against a child is defined to mean an intentional use of physical force resulting in (or is likely to result in) harming the child's health, life, development and dignity. Such violence includes striking, beating, kicking, shaking, biting, tying something around the neck. We found a stick used to punish children in one of the childcare educational institutions.

60 Childcare Standard No. 6: Emotional and social development.
61 The Convention on the Rights of the Child, Article 27(2)
62 The Convention on the Rights of the Child, Article 12(1)
63 WHO, 1999

Apart from physical violence, emotional and psychological violence is another serious concern; the latter can be exerted by both parents and other caregivers, as well as by their refusal to provide appropriate and suitable conditions for the child's development for a certain period. Such actions are likely to damage the child's mental and physical health and to impede his/her physical, mental, psychological, moral and social development.

According to the National Study on Violence against Children in Georgia, "In social care institutions, 71.1% of children were referring to physical violence and 61.5% – to psychological violence. Children in such institutions mentioned their fellows as those exerting such violence; however, teachers were sometimes resorting to evident physical and psychological punishment to establish discipline using methods capable of causing physical injuries to a child".[64]

During the visits of the Public Defender's monitoring team to childcare educational institutions, both directors and teachers were refusing any facts of violence against children in private interviews with us, but the actual status was different.

According to interviews with the beneficiaries and their psychological assessment, facts of use of various violent methods against children have been identified in almost all of the childcare educational institutions on the part of not only the teachers and caregivers, but also the support staff.

We would like to emphasize also the facts of violence among the children of the same age. Gibe, humiliation and beating are frequent (Kachreti school No. 2). It is worth noting that the administration is aware of this problem but "they cannot find solutions using their own resources".

The most widespread forms of abuse are verbal insults, ear tweaking, pulling of the hair, yelling, threatening, intimidating, humiliating, for instance, standing on one leg in the corner, forcing to stand on knees, squatting, press-ups, forced labour, locking in the room, isolation, refusal to giving food, not letting to satisfy natural needs.

The monitoring revealed numerous facts of ill-treatment against children some of which amount to inhuman and degrading treatment. We also became aware of several facts when children were witnessing the process of ill-treatment and punishment of their fellows.

This Report includes description of specific facts of inhuman treatment occurred in some of the childcare educational institutions.[65]

Dusheti Children's Boarding School

On 10 February 2010, when monitoring the Dusheti Children's Boarding School, the Public Defender's special prevention team learnt that, on 3 February, the Boarding School personnel called the police because of the loss of 100 GEL from one of the teacher's purse. Police officers pushed one child into their car beating and forcing him to tell where he took the money. Afterwards, they returned to the school and exerted pressure on other children as well. Teachers witnessed the above-mentioned actions of the police officers. Some of them confirmed to us that the facts happened as described above. One of the children stated that the police had acted similarly in the past too.

On 15 February 2010, the Public Defender sent the materials obtained by his prevention team to the Chief Prosecutor's Officer for response. In addition, the Public Defender approached the Psycho-Rehabilitation Centre for Victims of Torture "Empathy" with a request to carry out a medical and psychological examination of the children of the mentioned boarding school. On 18 February 2010, experts from the Centre "Empathy" carried out the children's psycho-medical monitoring but, as their conclusion says,[66] the administration of boarding-school did not allow them to talk to the children

[64] National Research on Violence against Children in Georgia, 2007-2008, implemented by Public Healthcare and Medical Development Fund with the support of the UNICEF (p. 10).

[65] See Annex for detailed description of these cases.

[66] Psycho-Social Rehabilitation Centre for Victims of Torture, Abuse and Expressed Stress "Empathy", expert's opinion No. 40–03/10.

alone. Nevertheless, the children confirmed the same what they stated to the Public Defender's monitoring team previously.

According to a letter from the Chief Prosecutor's Office dated 10 March 2010, the Investigation Division of the Shida – Kartli and Mtskheta – Mtianeti Regional Prosecution Office launched preliminary investigation in the case No. 082108006 on the fact of abuse of power against the children of the Dusheti childcare educational institution by an officer of the Dusheti Regional Police Department. The investigation started on the ground of presence of elements of crime envisaged by Article 333(1) of the Criminal Code of Georgia.

Kojori Childcare Educational Institution

As a result of monitoring carried out at Kojori Childcare Institution, the Public Defender's monitoring team identified facts of physical and psychological abuse against children by teachers and caregivers. As the children told us, physical punishment of children is an accepted practice at their institution. Some of the children had different injuries even at the time of monitoring.

The Public Defender addressed the Psycho-rehabilitation Centre "Empathy" with a request for expert assistance. At the time of a repeated visit of experts from "Empathy" and representatives of the Public Defender, in the presence of a teacher, one of the children rejected the fact of beating; however, the teacher told us later that, after the monitoring team left having given their phone numbers to the children, the children threatened the teachers with calling "them" (the monitoring team) should the teachers tried to use physical force. The wrestling trainer of the school partially confirmed in a conversation with us the practice of children's physical punishment at their institution.

On 12 February 2010, the Public Defender addressed the Public Law Entity "Social Service Agency" with a request to investigate and take measures concerning the improper practices existing at the Kojori Childcare Educational Institution. The Public Defender's letter also contained a request to transfer to another institution the children who told the Public Defender's about the facts of abuse, for the purpose of protecting them from any revenge attempts on account of disclosure of the facts of violence.

Tskneti child care educational institution

During the visits paid to the Tskneti Childcare Institution, we interviewed 11 children who disclosed facts of their permanent mistreatment on the part of both, the personnel and former inmate of the Institution – a certain Vakhtang K. In particular, beating, humiliation, physical and psychological pressure, lock-up and refusal to provide access to food are a common practice at the mentioned Institution.

The Public Defender's Office addressed the Psycho-Social Rehabilitation Centre for Victims of Torture, Abuse and Expressed Stress "Empathy" with a request to document the above-described facts and carry out a medical and psychological examination of children.

On 16 March, the Public Defender requested from the Chief Prosecutor's Office to take actions in response to facts of violence detected at the mentioned institution.

To summarize, the specific facts of abuse and inhuman treatment detected in childcare educational institutions are a violation of the fundamental rights of the child contradicting a series of international legal instruments, which are obligatory for Georgia.[67]

[67] UN Universal Declaration of Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Convention on Human Rights and Fundamental Freedoms, Convention on the Rights of the Child.

Protection of children from violence is envisaged also by the National Childcare Standards: "*The Service Provider shall detect facts or risks of child abuse occurring outside the framework of the service (such as in families, at school) and shall take response measures*".[68] Pursuant to the Implementation Indicator (b) of Standard No. 12, "If the Service Provider suspects or is informed about a case of child abuse, he/she shall immediately notify the police and the local authority for guardianship and care." Implementation Indicator (d) of the same Standard stipulates that "Every fact of violence or a report of violence as well as actions taken in response shall be registered in written form". Despite this requirement, none of the childcare educational institutions has such records. Pursuant to Implementation Indicator (k) of Standard No. 6, "The Service Provider shall ensure that the beneficiary is protected against the abuse and threat on the part of other children."

The Public Defender addresses the Ministry of Labour, Health and Social Protection and the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation to take the following measures:

- **To draft a Code of Conduct for Childcare Educational Institutions articulating rights and duties of the staff and the beneficiaries of the Institutions with a view of preventing improper treatment and violence;**
- **To develop and implement a unified system of monitoring of child care educational institutions aimed at prevention of violence and inhuman treatment;**
- **To ensure that the Subprogram on the Prevention of Child Abuse within the Childcare Program is focused on detecting facts of violence, analyzing reasons of violence and settlement of relations in childcare educational institutions; to amend the Childcare Standards and the statutes of childcare educational institutions with a view of enhancing the fight against violence;**
- **To raise the teachers' and the caregiver's awareness of the requirement that no form of violence against children is permissible; to develop a mechanism for detecting and preventing violence and to provide rehabilitation measures for victims of violence;**
- **To identify reasons and expressions of violence against children and to implement educational preventive measures in childcare educational institutions;**
- **To implement the practice of crisis management and a multidisciplinary approach in childcare educational institutions;**
- **To inform and educate children on the Convention on the Rights of the Child so that they are able to address competent authorities in case of violation of children's rights or occurrence of facts of violence.**

The right of the child to freely express views

Some institutions do not consider the child's opinion when selecting his/her clothes or shoes. In our confidential questionnaires, a number of children stated their view on this matter in the following words: "I don't protest against whatever shoes or clothes I'm given because that would be impolite."

Pursuant to the Convention on the Rights of the Child, "*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*".[69] According to Article 13 of the Convention, "*the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*"

In addition, pursuant to Standard No. 3 of the Childcare Standards, the Service Provider shall ensure conditions enabling the beneficiary to provide own views (feedback) about the service provided.

In childcare educational institutions, "sometimes the elders do not get interested in children's problems and never respond to them"; however, some institutions provide various forms and means for receiving feedback from children such as

[68] Childcare Standard No. 12: protection from violence.

[69] Article 12

boxes for questions and answers, letters, boards of wishes, trees of wishes, box ("Satnoeba", Saguramo); moreover, in some institutions children could freely inform their director about violation of their rights ("Satnoeba", Aspindza, Telavi, Samtredia).

Confidentiality

Pursuant to Childcare Standard No. 4 (protection of confidentiality), "*the general conditions and form of the service shall be such as to ensure inviolability of the beneficiary's private life (written and electronic communications, phone conversations and personal meetings)*". However, the monitoring team found out that, in a majority of institutions, no room was allocated for individual meetings. Few of the institutions were providing seperate room for this purpose; The Institution "Satnoeba" was in the process of renovating a meeting room. In Aspindza, there was a family-type comfortably equipped isolated room for meeting with parents.

Use of phone by beneficiaries was a problem. A majority of children indicated that they have no access to a telephone because there is no telephone available at the institution. In particular they stated that "you can call only using the director's cell phone" and "if I need, I use my friend's cell phone to make a call". One child from the Samtredia institution said to us: "I don't trust to the psychologist because he disclosed my secret". Due to absence of a telephone of common use, confidentiality of personal phone conversations cannot be ensured. On this matter, the caregivers' response was the following: "they have their own cell phones and are calling whenever and whoever they want."

Use of children's labour

Pursuant to the Convention on the Rights of the Child, "*a child shall be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*"[70]

Almost all of the childcare educational institutions employ the child's labour. Children are performing work of different types and difficulty: brooming and cleaning classrooms and bedrooms, cleaning toilets by turns, washing dishes, setting and clearing tables in the dining room, cleaning the kitchen floors and windows, tidying up and cleaning the corridors and stairs, hanging laundry, ironing linen, brushing own and others' clothes and shoes, bathing younger children, cleaning the yards, cutting the woods and carrying them to the classes.

Children stated that they do this work forcedly and involuntarily, at the teachers' assignment. The child cannot refuse to do the work despite his/her health conditions. Some of them are trying to avoid "their assigned obligations" by using weak and obedient children who comply with their say without protest. One of the elder children of the Kachreti children's home, a girl, performs different types of work on a permanent basis such as "washing in ice-cold water"; even at the time she was just recovering from lungs inflammation, she could not protest against performing the "assigned obligations". At the time of our visit, she was washing in cold water and her hands were almost blue.

Teachers' answers and explanations confirm the fact that children are actually doing these jobs but the teachers justify this with the phrase that "this way they learn the price of labour."

Educational activities

As per the Convention on the Rights of the Child, educational work in the institutions of children in need care is performed by chief teachers and heads of different children's study circles. The monitoring showed that, of the institutions involved in the implementation of the National Childcare Standards pilot program, only the Aspindza childcare

[70] Article 32

educational institution demonstrated readiness to put the national standards into practice and to create appropriate environment for child's development and safety.

According to the Order of the Minister of Labour, Health and Social Affairs No. 281/n dated 26.08.2009 "on approving Childcare Standards," Standard No. 5 (assessment, individual plan of service and situation management) will come into mandatory force on 1 January 2011, but some institutions have already started the work to implement the said standard (Aspindza, Samtredia, Telavi, Zugdidi, Kachreti).

The plan of the educational activities are submitted to the directors of the institutions monthly, quarterly or annually; however, in some cases these plans were outdated or requiring further elaboration of the substance and thematically or were not taking into account the requirements of mental development of children and often their mental abilities (Surami, "Satnoeba"). Educational plans were not available at all in Dusheti and Tashiskari.

In institutions monitored, the average correlation between children and teachers was 5 to 1. However, the State funds allocated are not positively reflected on child's development. Educational activities are limited only to ensuring physical safety of children and to monitoring the implementation of the daily agenda by them.

Almost all of the institutions were offering conditions for various study circles. Such study circles are provided with relevant technical arrangements such as provision with furniture and other materials both from the State funds and with the help of different projects and donors.

Entertainment rooms, especially in the regions (Kachreti, Kutaisi, Zugdidi, Public School No. 199), were equipped very poorly or were not equipped at all with appropriate inventory. Usually, entertainment rooms and rooms for study circles were closed and unheated. According to teachers' explanation, the heating is switched on only 2-3 times a week, when the study circles are gathered.

Almost in all of the institutions, library is a "demonstrative room" with sufficient number of books (Kojori, Tbilisi Child care educational institution, Tskneti). Libraries are not heated, which makes it doubtful whether they are functioning at all. We could not find a journal of incoming and outgoing books in libraries and interviews with the beneficiaries were not helpful in determining "which book they borrowed from the library recently". In some institutions, the library is located in the classroom or the computers room; the number of books is not sufficient ("Savane", Dusheti) and the library is not replenished. Computer classes were functioning in Tskneti and Tbilisi childcare educational institutions only within the project entitled "The Orphan."

The Public Defender addresses the Ministry of Labour, Health and Social Affairs and the Ministry of Education and Science with a recommendation:

- **For the purpose of improving the educational process in childcare institutions, to ensure by means of joint efforts training of teachers and to amend the educational plans with a view to considering the children's needs and abilities.**

Furthermore, the Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To ensure full-fledged functioning of libraries in childcare educational institutions and to replenish and renew the libraries on a regular basis.**

The results of interviews with teachers and caregivers

Interviews taken from teachers and caregivers showed that the monitoring *per se* was causing some tension making it to some extent difficult to assess the existing picture. As a rule, teachers deny existence of and try to conceal the problems in childcare educational institutions. They view recognition of problems as demonstration of weakness.

In the childcare educational institutions, teachers are focused at weaknesses rather than strengths of the child, while paragraph (f) of the Childcare Standard No. 6 stipulates that "*aimed at facilitating the development of the child, the service provided shall assist the child in understanding his/ her strengths, resources and abilities*"; further, Childcare Standard No. 11 states that *"positive forms of behaviour management such as encouragement, praise, reward, etc should be used toward the beneficiary*" but we could not detect the use of such methods in the course of our monitoring. However, we did find that a common practice widely accepted in childcare institutions is to reward and encourage the so-called "obedient children". As the children explained, "obedient children" are those who always comply with every request of the personnel and never express their opinions and protests, unlike other children, freely expressing their views and opinions. A majority of childcare institutions encourage the children based on the above-described principle and not on account of successes, achievements in the learning process, creativity, etc.

Caregivers do not plan any development activities (except for study circles) that would consider the children's interests and make rational use of free time.

It is a disturbing fact that teachers do not make difference between rights and responsibilities having a consequence that the children's rights are limited and replaced with duties that results, on its part, in suppression of the children's individuality and freedom.

Teachers are of the view that, instead of 2- or 3-day working meetings, which are periodic and unsystematic without having regard to their needs and opinions, they need fundamental, consecutive and modern-standard training, which would eventually help them improve their work with the children.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To revise the educational and teaching methods at childcare educational institutions; to adopt an individual approach; to develop human resources and to provide additional material and financial resources.**

Functioning of craftsmanship circles

We welcome the fact that almost every institution offers various craftsmanship circles helping the children acquire and develop new skills and decide on their professional future. We would like to admit that the craftsmanship activities were well-organized and developed in the childcare institutions visited:

Wood works – Tbilisi, Samtredia, Batumi childcare educational institutions;
Batik – "Home of Future",
Thick felt – Telavi, Dusheti, Kojori, "Home of Future", Tashiskari
Ceramics workshop – Telavi, Kojori, Rustavi
Enamel covering – Surami, Tashiskari
Cookery circle – Telavi, Aspindza
Sports circles – rugby (Aspindza, Saguramo); football (Telavi, Batumi, Tsalendjikha); Judo (Telavi);
Tapestry – Surami, kojori, Dusheti;
Singing circle – Dusheti, Aspindza, Tashiskari, Tskneti, Batumi, Lagodekhi;
Painting circle – Lagodeksi, Kojori;
Dance circle – Telavi;
English language circles – Rustavi, Aspindza, Telavi;
Sewing circle – Aspindza, "Home of Future";
Computer classes – Batumi, Kutaisi, Tbilisi childcare educational institutions; Tskneti, Aspindza, Kojori, Tsalendjikha, Tashiskari, Telavi, Zugdidi, Samtredia;
Literature circle – "Home of Future", Tashiskari;
Design studio – "Home of Future"

Psychological Aid

Accordinng to the statement of 12 directors and other personnel from 12 institutions, as a result of the staff optimization policy in 2009, the position of a psychologist was abolished, but restored afterwards in 2010.

The monitoring carried out by the Public Defender's special prevention group showed that, out of the 21 institutions, 5 institutions employ certified psychologists (Telavi, Aspindza, Rustavi, Dusheti, the Komarov Public Boarding School No. 199). The institution in Tashiskari has vacant position of a psychologist in its staff table; in 6 institutions, we could not talk to the psychologists, since they were not present at that time in 9 institutions a psychologist's position is occupied by people specialized in professions other than psychology, including former teachers of the English and Georgian languages, former librarians and former deputy directors. Some of them have passed short-term trainings in aggression, trafficking and etc. organized by the Ministry of Education; certainly, such trainings are insufficient to allow carrying out the psychological work in a qualified manner (in fact, unprofessional psychologists may even cause damage to the beneficiaries instead of benefiting them). Some of the institutions do not offer a psychologist's service at all for the simple reason that an unprofessional staff member cannot deal with this job even if he/she is eager to do it well. In one of these institutions, particularly in the Kachreti childcare institution, 3 persons were employed on the single position of a psychologist each getting a third part of the salary.

The monitoring showed that, in a majority of the childcare educational institutions, psychologists do not have:

- Own room with essential materials (such as psychological tests, equipment);
- A complete list of children and their biographic data;
- Descriptions of psycho-social status of the beneficiaries (weaknesses and strengths);
- A diary or a journal for observation data (behavioural analysis of the period of stay at the institution);
- Crisis records and situational reports as well as a list of preventive measures;

As a rule, psychologists are unaware of what is happening in the institutions and how to deal with the children's problems and child/teacher, child/institution and child/outside world relations; furthermore, the institutions do not have lists of children with asocial or deviational behaviour and those with academic retardation, not to speak about descriptions of the reasons and levels of retardation and response measures taken.

Beneficiaries of childcare institutions belong to a particularly vulnerable group for the reason having gone through hard life experiences such as physical and psychological abuse since their small age; most of the children are dysfunctional coming from incomplete and/or socially unprotected families; some them have no one in the world and have been living in the streets (so-called "street children"). Many of these children have witnessed different types of abuse in their families, facts of violence by one parent on another, or by parents on the child or by other persons on parents, etc. In addition, some of them have been victims of trafficking and inhuman and degrading treatment.

The monitoring showed that many beneficiaries are characterized with different types of deviational behaviour, asocial inclinations, different behavioural disturbances and emotional problems. Almost all of the institutions are very likely to have children with psycho-somatic problems (such as inorganic enuresis) and mentally retarded children (though not even a single diagnosis of this type has been registered). In addition, personnel-to-child and child-to-child violence and ill-treatment are a common practice in childcare institutions making the beneficiaries' already tense psycho-physical conditions worse.

It can be concluded that life in stressful environment, malnutrition and inadequate care from the early age coupled with adverse physical and psychological conditions and inhuman treatment in institutions are likely to cause that a child does not become a socially full-fledged personality.

"Psychological service" offered by the childcare institutions to children with the above-described status fails to provide them with proper and qualified service because:

- People employed as psychologists by the institutions hold professions other than psychology;

- Certified psychologists employed by the institutions do not have sufficient knowledge and experience to work with these specific groups;
- Situational management practice and multidisciplinary approach with the involvement of psychologists are not applied.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To select qualified and experienced staff to work for the childcare institutions on proper salaries;**
- **To introduce situational management practice and multidisciplinary approach with the involvement of psychologists in the institutions;**
- **To provide the institutions with material-technical resources (to equip the psychologists' rooms);**
- **To evaluate currently employed psychologists and to plan and implement institution-specific trainings.**

Neglect of child specifics at the time of enrolment in childcare institutions

Enrolment in and discharge from childcare educational institutions take place based on an internal order and are registered in the internal book of orders. Before 2009, first the Ministry of Education and Sciences and then the Educational Resource Centre was responsible for enrolment. From 2009 till 1 January 2010, according to the statutes of the childcare educational institutions, children were enrolled on the basis of a social worker's conclusion and a request from the Social Services Agency (the only exception in terms of enrolment procedures was the Public Boarding School No. 15 in Samtredia; pursuant to the latter's statute, a child could be enrolled therein only on the basis of a court decision) Since 2009, enrolments made by the Social Services Agency are accompanied only with social workers' recommendations. A majority of these recommendations are drawn up in an unqualified manner. For example, the recommendation issued by a social worker to child S.B. in the Aspindza childcare institution is very short and doesn't include the child's bio-psycho-social description, description of health status and information about the child's needs. The recommendation indicates that S.B. graduated from an elementary school in one of the villages and came to village Aspindza to continue studying. In view of the fact that he has no place to stay in Aspindza and there is nobody to take care of him, based on the District Council's decision, S.B. was enrolled in the Aspindza educational institution for children in need of care.

Some of the social workers (such as the social worker in Rustavi) are issuing template recommendations, which points to formal approach in drafting the recommendations.

The weakest and the most unqualified part of recommendations issued by social workers is the description of health status of the child. Social workers use terms like "weak health", which is not helpful to determine what exactly is mean in the given case; also we found descriptions such as "by visual observation, the child's physical development status seems to be within the norm". Recommendations are produced without any examination and medical records.

The children's personal files normally do not include the primary examination form and only in rare cases the child's bio-psycho-social evaluation is attached, which still does not include all important information. It should also be noted, that there is no unified approach to enrolment of children in childcare educational institutions. We came across with a situation when there was only one recommendation on three children coming from the same family and the recommendation was attached to only of these children's personal file. For example, the Rustavi Social Service issued one recommendation on 3 children from the same family; according to the recommendation, two of the children have disorder of speech; in relation to the third child, the recommendation says that "the health status of Sh. J. is extremely severe", without specifying what is exactly is mean under extremely severe health status or what is recommended to do. Nor does the recommendation specify to what extent the child's health is under risk and whether the child should be provided with emergency medical assistance.

Directors of childcare institutions recognize the privilege of small services to children or entrusted upbringing but are of the view that such measures are not coordinated with them.

We came across with cases when children are brought to the childcare institution from host families or from small family-type children's homes on the ground that the child has difficult behaviour; however, it is unclear how a large childcare institution is going to take a better care of the child.

Directors of some of the childcare institutions are forced to admit more children into their institutions than allowed by limit "at the request of senior officials" (School No. 2 in Kachreti; 75 children are in the list, while the limit is 70 children); this causes overcrowding in institutions and creates problems in terms nutrition expenses. In fact, children are provided with food at the expense of children who have temporarily left the institution.

We found a number of cases of children enrolled in childcare institutions based on incomplete documentation. Very often, Form No. IV-100/a about the child's health status is not attached to the child's personal file. Sometimes, these forms are attached to the personal files but they do not provide true information about the child's health conditions; hence, it happens that a specific institution is not suitable for the given child. Both the views of the doctors of childcare institutions and objective evaluation suggest the existence of medium and heavy forms of mental retardation among the children of some of the childcare educational institutions (Tskneti children's home – 8 children; Dusheti – 2 children; Kojori – 1 child). The mentioned diagnoses are not formally ascertained; these children cannot attend classes and they are not provided with individual development approaches.

The Public Defender is of the view that the admitted children's documentation must be regularly reviewed making it possible to detect improvement/complication of each child's conditions and social status of his/her family; this would further allow adjustment of the current approaches to the child for the purpose of facilitating his/her positive development.

Particular attention should be paid to Public School No. 15 in Samtredia, which accommodates children in conflict with law. It is a strictly closed-type institution where children aged above 11 are enrolled based on a court decision. Normally, children are enrolled in classes not according to their age but according to their individual, which causes the increase in the number of grown-up children in classes.

The Public Defender addresses the Ministry of Labour, Health and Social Affairs with a recommendation:

- **To increase the social workers' involvement in childcare educational institutions:**
- **To elaborate the child's bio-psycho-social evaluation criteria and standards for the use by social workers;**
- **To amend the Statute of the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a view of comprehensively articulating the rules of enrolment in and discharge from childcare educational institutions and ensuring that, at the time of enrolment, the children's data are evaluated in a uniform manner.**

Children's discharging from the child care educational institutions

Children are discharged from childcare institutions when it is intended to involve a child in a reintegration, entrusted upbringing or small family-type care project as well as at the parents' request.

The procedure of striking out the child from the list of the childcare institution is performed on the basis of a written notification from the Social Services Agency. The director of a childcare institution submits a list of children to be stricken out from the institution's list to the Social Services Agency. The agency investigates the matter and makes a decision. If the decision is positive, the child is discharged from the institution.

Sometimes it is difficult to return a child from the family back to the childcare institution if the child was temporarily taken out by a parent (on weekends or holidays) (childcare educational institution in Surami, School No. 2 in Kachreti). Sometimes parents do not bring their children back to the institution for months (Kachreti, V.B.); thus the child is unable to properly follow the learning process and is sometimes begging in the streets as the parent's request.

Internal Management of Documents

A majority of institutions does not maintain a journal to register accidents, contrary to the requirements of the Childcare Standards. As mentioned above, facts of abuse are not recorded; there is no uniform system of documents management; in addition, different types of medical documents are maintained using non-standard templates.

At the institutions, we were unable to find an information package about the services the institutions provide. The Telavi childcare educational institution was an exception in this regard.

Employment of Former Attendees of the Childcare Institutions

A common problem for all of the educational institutions is to prepare children for employment and independent life once they reach 18 (the age of majority). Pursuant to the Childcare Standards, "*The Service Provider shall assist in determining professional orientation of children who have reached the age of 14.*"[71] In this regard, almost every childcare educational institution offers various activities on wood, clay, thick felt, batik, needlework, designing and other handicraft (Tbilisi childcare educational institution, "Home of Future", School No. 15 in Samtredia, Dusheti and Telavi childcare educational institution).

It should be mentioned that the Aspindza childcare institution has a well-equipped sewing workshop. Items produced by the children are exhibited and sold both in and outside Georgia. The institution in Samtredia has bakery equipment; the children are learning how to bake and sell bread. The same institution also has a hairdressing room with appropriate equipment. In Tashiskari and Surami childcare educational institutions, they have study circles of thick felt and enamel covering. Elder children are actively involved in learning knitting and embroidering skills.

Pursuant to paragraph (f) of the education-related Childcare Standard, a childcare institution "*cooperates with employers for the purpose of providing the children with employment opportunities.*" Some institutions have positive experience in this regard. Within the project entitled "Prosecution Office for the Community" implemented by the Chief Prosecutor's Office, the regional prosecution office examined employment opportunities for 18-year-old adolescents (Aspindza childcare educational institution) and helped them in getting employed; in particular, 2 girls got jobs in a shop and 1 girl in a sausages factory.

The practice of helping 18-year old adolescents happened in some other childcare institutions too (Tbilisi childcare educational institution, "Home of Future", Public School No. 15 in Samtredia); however, these are only individual and rare cases and the matter requires much more efforts and assistance on the part of the State and the society.

The Public Defender addresses the Ministry of Labour, Health and Social Affairs with a recommendation:

- **To elaborate and take measures to the effect that childcare educational institutions assist children who have reached the age of 18 years in employment and educational opportunities considering their living conditions, skills and interests.**

Safe environment

According to Childcare Standard No. 13 (assuring safe environment) "*It is important to provide safe environment. The Service Provider shall take measures to avoid incidents and prevent causing damage to the Customer. The Customer's personal belongings shall be protected as well. The Customer is informed about the potential threat and dangers*".[72]

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[71] Standard 7, para. f.

[72] Child Care Standard 13.

Safety

It should be noted that the institutions monitored by the Public Defender's representatives do not have urgent contact information (such as the police, firefighting department, emergency medical assistance, gas suppliers, electricity suppliers and water suppliers as well as the local authority of guardianship and care) displayed at a visible location. In some institutions, the mentioned information is posted up, in an incomplete form though (Tbilisi childcare educational institution, Lagodekhi, Telavi, Kachreti, Aspindza, Zugdidi, Batumi childcare educational institutions, Public School No. 15 in Samtredia).

In most institution, telephone was not accessible for children. According to the directors, "children can use the phone in the director's office at any time". Telephones were not functional in many institutions due to outstanding phone bills.

The going to school and safety on the way to and back from schools is not properly dealt with in cases when the child has to walk a long distance. There was a car accident in 2008; in particular an 11-year-old pupil of the Surami childcare educational institution was hit by a car as he was trying to cross the central highway; the child died as a result.

A majority of childcare institutions does not have the fire safety corner arranged, which is a violation of paragraph (c) of the Childcare Standard No. 13; in institutions where such corners are arranged, the equipment therein are outdated and incomplete (Telavi, Lagodekhi, Aspindza).

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To ensure that the childcare educational institutions post up all the urgent contact information (such as the police, firefighting department, emergency medical assistance, gas suppliers, electricity suppliers and water suppliers as well as the local authority of guardianship and care, the Public Defender's offices, etc) at visible locations;**
- **To ensure that in all educational institutions children have access to telephone at any time and with full respect to confidentiality of private conversations;**
- **In cooperation with local self governance bodies, to ensure children's transportation from the childcare educational institutions to schools and back as well as transportation to the bus stations when children are independently travelling to their homes;**
- **To arrange and equip fire safety corners in the territory of childcare educational institutions and to raise the personnel's awareness of fire prevention and firefighting measures.**

Infrastructure

Yards of childcare institutions have no amenities, as a rule. Territories of the institutions are not protected and fenced (all institutions have watchmen in their staff tables). Playgrounds are not arranged as well, though some institutions had newly-renovated playgrounds with the help of various donor projects (Batumi, Tskneti, Tbilisi children's educational institution). Natural green area and space allotted to childcare educational institutions are sufficient in the regions. Sanitary-hygienic status in most of the institutions monitored is unsatisfactory. In some institutions, part of the premises needs to be repaired so that they are currently unusable (Kojori – 2nd floor of living building; Saguramo – 3rd floor; Dusheti – 3rd floor of the main building).

None of the childcare educational institutions' buildings have been rehabilitated completely. Some of the children's homes have been repaired fragmentarily (Telavi, Aspindza and Batumi children's homes, Public School No. 15 in Samtredia). Repair works are ongoing in some of the institutions such as the institution "Satnoeba" and Saguramo children's home. The building of the "Home of Future" as well as the medical sections' buildings in Tashiskari and Tskneti institutions are next to collapse (cannot be repaired).

Partial renovations (installation of metal-plastic windows and repair of water closets) have been made in some of the childcare educational institutions (Kojori, Batumi, Samtredia, Dusheti, Saguramo, the Komarov Public School No. 199). In some institutions, windows and doors are outdated and window glasses are broken (Tbilisi childcare educational institution, School No. 44 in Kutaisi).

Electrification; electric power and water supply; heating; disinfection measures

Electric wiring in some institutions was such as to put children's lives under threat; the wires with electricity running through were not isolated and placed in electro dividers (Tbilisi childcare educational institution, the Komarov Public Boarding School No.199, "Home of Future").

It should be noted that, in order to cut electricity expenses, some institutions use low-voltage light bulbs in classroms, which do not provide sufficient lighting (Surami, Dusheti, Lagodekhi, Tsalendjikha, Tashiskari). In some institutions, no light bulbs are installed in corridors, toilets, shower rooms (the Komarov Public Boarding School No.199, Tashiskari childcare educational institution).

A number of institutions have continuous water supply from the central watering system ("Home of Future", "Satnoeba", Tbilisi childcare educational institution, the Komarov Public Boarding School No.199, Saguramo). Some of the institutions are not provided with permanent water supply; they are supplied with water according to a schedule (Rustavi, Tskneti, Kojori, Kutaisi, Aspindza); water is collected in water tanks and distributed thereafter. Strangely, none of the directors of childcare educational institutions was able to clarify how often their institutions fully consume water and fill up the tanks or how often the tanks are cleaned.

Water is supplied from wells and boreholes to Dusheti, Zugdidi and Telavi childcare educational institutions; water is pumped into water tanks and distributed afterwards. We could not obtain any documentation on the water quality. We were told by the directors of the institutions in a simple way that "water quality is checked".

Some of the childcare institutions have central system heating (Kojori, Saguramo, Rustavi, "Home of Future", "Satnoeba", No44 school in Kutaisi, the Komarov Public Boarding School No.199, Aspindza, Public School No. 15 in Samtredia); other institutions use combinations of diversified sources for heating such as electric heating devices and closed system of natural gas heating (Tbilisi childcare educational institution, Tskneti, Dusheti). In the Tbilisi childcare educational institution, a number of heating devices were out of order and in Dusheti institution, there was a well sensible smell of gas in three classrooms on the first floor.

It should be noted that some institutions, for the purpose of saving money on gas and electricity expenses, are switching the heating on only in very cold weather and night hours (the Komarov Public Boarding School No.199).

In the regions, institutions use wood stoves to heat bedrooms and classrooms. In Tsalenjikha, wood stoves were not turned on in classrooms and bedrooms at the time of children's arrival from school.

Out of the institutions monitored, disinfection is performed only in some of them (Tbilisi childcare educational institution, Tskneti, Aspindza) based on contracts concluded with the relevant service providers. According to works handover certificates, which the administrations showed to us, disinfection works are performed without any schedule. Disinsection and deratization works are also performed in an unplanned manner, by calling up the relevant services in case of need.

The Public Defender addresses the Ministry of Labour, Health and Social Affairs with a recommendation:

- **To allocate funds for the step-by-step planning and improvement of material and technical resources of child care educational institutions.**

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To ensure proper functioning of utilities within and regular disinfection of childcare educational institutions.**

The child's hygiene; provision with items of personal use

Hot water is supplied from the central networks to "Satnoeba", "Home of Future" and Saguramo. Almost in every institution, hot water is supplied to showers and children have access to shower once in a week, though, in some institutions, the number of showers is insufficient against the number of children. In some institutions, showers are located in one open room so that the showers are not partitioned from each other; some of the showers are out of order (Kojori, the Komarov Public Boarding School No.199). In the Tskneti childcare home, the heat water for bathing on a gas stove on the first floor of the building taken the heated water then upstairs in the bathing room on the second floor where only one child could be bathed at a time. As the director of the Komarov Public Boarding School No.199 explained, in addition to the bathing day once a week, on other week days adolescents "somehow manage to deal with their own hygiene"; however, the director has never been interested in how exactly the children deal with their hygiene. The monitoring showed that children are taking care of their own hygiene by helping each other. Some of them had washing tubs under their beds and quick electric heaters in the wardrobes.

Toilets are both the Asian-type and those equipped with lavatory bowls. In most cases, they are out of order and are not supplied with water (in Tskneti, at the second floor of the building, none of the water closets are supplied with); toilets in the Kachreti childcare institution are also in an extremely poor condition.

As a rule, the number of washstands is insufficient; washstands are mostly damaged and dysfunctional (Tashiskari, Kutaisi, Surami, Tbilisi, Batumi, Tskneti).

In the Tbilisi childcare educational institution, there were no soaps in the toilets for the reason that "they would be stolen anyway". The children were keeping other hygienic materials (tooth brushes and tooth pastes) in their cabinets and wardrobes.

Bedrooms are large (to accommodate 10-12 children); in some institutions, bedrooms are overcrowded and the beds are located right next to each other (Tskneti, "Satnoeba", School No. 2 in Kachreti). In the Tskneti institution, some beds are too small and do not correspond to the children's age.

In some institutions, there is not space for cabinets and wardrobes in bedrooms ("Satnoeba", Tskneti); in others, wardrobes are out of order, they have no doors (the Komarov Public Boarding School No.199; the same institution does not have a sufficient number of cabinets and wardrobes and the parents purchased "plastic drawers" for personal belongings on their own).

The number of towels of personal use is sufficient in all of the institutions; however, underclothes and clothes are the same for different age groups ("Satnoeba", Tskneti). In some institutions there is a serious lack of hygienic materials (hygienic pads and others). Sometimes children have no shoes and cannot attend school for this reason (Tashiskari).

Equipment in classrooms, basically school inventory, is outdated. An exception is the institutions of Samtredia and Saguramo where there is a family environment and soft furniture.

In a majority of institutions, the existing physical environment does not facilitate to the child's development and protection. Toys are very few and old. Most of the soft toys are dirty (Tskneti childcare educational institution); new toys are locked in separate rooms or cabinets and are not accessible for children.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To properly equip bedrooms and ensure proper hygienic conditions in childcare educational institutions.**
- **To ensure that children are provided with sufficient number of clothes and shoes according to age groups and seasonal requirements as well as toys and other inventory with consideration of the children's wishes and views.**

2009

Medical Service

According to the Convention on the Rights of the Child, the State must assure the right to life to the child.[73] "*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 health care services.*[74]".

According to the Childcare Standard No. 9 (facilitation and protection of the health of the child), *"Vaccination and preventive medical examination is accessible for the customer…and in case of need, the customer will be provided with qualified medical service".*

During the monitoring, we assessed the medical service quality, resources and relevant documentation available in childcare educational institutions.

Qualifications and certification of medical personnel

Nearly every institution has the staff of medical personnel (except Tashiskari where they have no doctor and the nurse comes to work occasionally). The doctor of the Kachreti childcare institution did not have the required license and, hence, is not authorized to carry out independent medical practice.[75]

Doctors of the Surami and Dusheti childcare educational institutions were not licensed in the relevant medical area (paediatrician or family doctor) and did not hold a license in the adjacent medical profile.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To ensure that selection and appointment of doctors in childcare educational institutions is carried out in accordance with the requirements and procedures established by law.**

Medical rooms

In a majority of childcare educational institutions, medical rooms do not meet the standards. In some institutions, they have no medical isolator and water closets (Kojori, Tashiskari, "Home of Future", Dusheti, Rustavi). Mostly, the isolator for ill children is located near the medical room; the isolators are small-sized, unequipped and need refurbishment (Digomi, Tskneti, "Savane"). In some institutions where repair was ongoing or at least planned, areas were allocated for the purpose of arranging and equipping medical rooms (Saguramo, Dusheti childcare educational institution). In some cases, the isolator is located too far from the medical room (School No. 44 in Kutaisi, Lagodekhi childcare educational institution), which makes medical services virtually inaccessible.

Medical rooms are not equipped with necessary inventory (height measuring devices, scales, blood-pressure measuring devices, thermometers and etc), though they have inhalers (Tbilisi childcare educational institution, Kojori). None of the institutions has fully-equipped emergency medical cabinets. Some institutions have anti-shock remedies ("Home of Future", Zugdidi, Kojori, Batumi childcare educational institution).

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To ensure, within the Childcare Program, that appropriate space is allocated in childcare educational institutions for medical rooms; to equip the medical rooms according to the legal requirements and in with consideration to the beneficiaries' needs.**

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[73] Article 6

[74] Article 24 (1)

[75] Law of Georgian on Medical Activity, Article 19 (1)

Medical documentation

Almost none of the childcare institutions keep medical documentation in a complete manner. Medical activity is not performed in compliance with the requirements laid down in the Law on Medical Activity; the institutions do not use uniform templates approved by the Ministry of Health. In some institutions, they are not even aware of the existence of essential medical forms. Sometimes medical records are made in Russian (Saguramo, Kachreti), which contradicts to the Law on Medical Activity, which stipulates that *"Medical records shall be made in the State language, in a clear and comprehensible manner"*.[76]

Individual records describing the child's medical development are not kept at all in the Tashiskari institution; in the other institutions, they are filled in incompletely and do not provide an accurate statement of the child's actual health status (Kojori, "Satnoeba", Tskneti, Saguramo childcare educational institution, School No. 2 in Kachreti, School No. 44 in Kutaisi, Tsalendjikha childcare educational institution); these institutions do not keep record of health complications, traumas or other acute conditions.

The food control journals are not completely filled in. Such journals are not available at all in some institutions. Only in few institutions we found journals of sanitary inspection and pediculosis (lice control) journals that provide information on preventive measures taken. In some institutions, such journals are maintained only formally.

The provider of medical services should be controlling infections and keeping a journal to register infectious disease (Form 60/a), which we found only in two institutions (Tskneti, "Satnoeba"); in other institutions, such journals were kept as a sort of "a creative activity" or the staff was unaware of their obligation to keep the said journals.

The Public defender addresses the Ministry of Labour, Health and Social Affairs with a recommendation:

- **To ensure that, in childcare educational institutions, medical services are provided in accordance with the forms (templates) and quality envisaged by the Georgian law.**

Supply of medicaments

Almost every institution is supplied with medicines. Some of the institutions had large stocks of medicaments received as humanitarian aid (Kojori, Zugdidi child care educational institution, "Home of Future", though there were institutions with poor reserves of medicines (Surami, Tashiskari, Dusheti childcare educational institutions) or medicines with expired effective term (Batumi, Lagodekhi, Surami, Tbilisi childcare educational institutions, School No. 2 in Kachreti). Almost every institution maintains a journal for medicaments received and issued; however, the rules of keeping the journal are not uniform in different institutions.

Shortcomings in medical service

Almost every child care educational institution has the problem of availability of a person responsible for and authorized to provide elementary medical service at night. The only staff member responsible for issuing medicines and supervising the patents placed in isolators at night is a non-medical staff (the caregiver). Also, availability of medical personnel on duty on weekends remains a problem: because of the reduction in the number of staff, directors of childcare institutions cannot hire an additional nurse or solve this problem by internal regulation. In some institutions, directors have established creeping schedules so that a doctor or a nurse stay in the institutions by turns.

It is a problem for all of the childcare educational institutions that their insurance does not cover dental services, while dental diseases are frequent in this very age group of children. Infestation with intestinal worms (helminthosis) is also common in children. According to the doctors, the medical service voucher does not cover diagnostics and treatment of the mentioned disease.

[76] Law of Georgia on Medical Activity, Article 56.2(a).

Granting the disabled children the relevant status

The monitoring team observed that almost every educational institution has children with somatic diseases requiring additional medical examination and, where appropriate, the granting of the disability status. In some institutions (Saguramo, Kojori, Tbilisi childcare educational institution, "Home of Future"), children with visible signs of disability had been examined within the framework of preventive medical check-up (Children's Hospital No. 2, a group of specialists from the Saguramo hospital) and found to be healthy. Certainly, it can be concluded that disable persons are not identified and registered properly and the current statistics does not provide accurate information.

We should note that children belong to an especially vulnerable group and they happen to be in childcare educational institutions because of economic hardship and poverty. We deed it prudent that children who, having clinical expressions that could be a basis for granting the legal status of disabled persons, are placed in regular childcare institutions,, should be granted this status and, accordingly, should receive a State pension due to disability.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To staff childcare educational institutions with sufficient number of properly qualified medical personnel;**
- **To expand the coverage of medical services vouchers issued for the children of childcare institutions so that children can have access to, *inter alia*, dental services.**
- **To improve the children's health control system; to ensure that preventive medical examinations are carried out on a regular basis; to ensure that children are examined on disability realistically and, where this is the case, to facilitate the granting of disability legal status to them.**

Nutrition at childcare educational institutions

Pursuant to the Childcare Standards, "The *Service Provider shall provide the Customer with safe food, which meets the Customers' physiological need for food and energy.*"[77]

Within the monitoring, we examined amount and variety of food in menus, observance of sanitary and hygienic standards in the nourishment compartment and the dining room, and the technology and safety of food preparation. Almost in all of the childcare institutions, the sum allocated for nutrition equals 3 to 4 Lari per day per child per day; one institution was demanding the increase of this quota (Kojori). In some institutions, the administration was adding to the quota at the expense of the institution's budget, internal resources and humanitarian aid on holidays ("Satnoeba").

Nourishment compartments

In some childcare educational institutions, the nourishment compartment and the dining room is located in a separate building (Saguramo) or in a separate wing of the main building. The Tskneti childcare institution where each cottage has its own kitchen is an exception. The dining room is located in the main building only in the day-and-night centre in Rustavi. The fact that the kitchen is distanced from the dining room, where this is the case, creates an additional problem for the service personnel.

In a majority of childcare institutions, the nourishment compartment and the kitchen either need repairing or are in the process of repair (the kitchen in Kojori; Lagodekhi, Telavi, Surami, Tashiskari, Tsalendjikha; the dining room in Kutaisi is very small and needs renovation). Functioning air pumps are available on in few institutions (Tskneti, Salkhino, Dusheti); in other institutions, kitchens are ventilated only in natural way.

[77] Child care standard 10.

In a majority of institutions, nutrition compartments do not meet sanitary-hygienic standards (Kojori, Tbilisi childcare educational institution); in the Lagodekhi institution, we found signs of existence of rodents in the kitchen.

Kitchens are supplied with hot water using electric water heaters or water is boiled on gas stoves (Dusheti, Tskneti).

Kitchens are more or less equipped with mechanical and electric equipments. Only the "Home of Future" and the Zugdidi childcare educational institution have dishwashing machines; in other institutions, they wash dishes by hand.

Food menus; food distribution

As a rule, menus are made by doctors in agreement with the director and the accountant of the institution. However, the monitoring showed that some institutions compose menus without doctor's involvement (a cook and an accountant draft the menu in Surami and only a cook does that in Tashiskari).

Menus are not diversified; sometimes the menu is the same for several days (in Surami, the menu was the same for 5 days consecutively). Lack of fruits and vegetables is noticeable too.

The available menus speak of tendency of high consumption of carbohydrates. Often the share of carbohydrates is at maximum, exceeding caloric demands twice the allowed norm, which is caused by bread supply (each child gets 300-600 grams of bread on average). According to the menus, salt is provided also in excess. Milk products are provided insufficiently.

Childcare institutions do not have menus by age groups that would take into account the essential demands of the child's normal growth and development. In almost all institutions, menus written in a language understandable by children are posted up in dining rooms and are accessible to children. As regards to therapeutic nutrition, only the Tbilisi childcare educational institution offers a special menu for children diseased with diabetes and day-and-night institutions offer two types of menu: a round-the-clock and a daytime menu (Rustavi, Aspindza).

Safety food preparation

In some institutions (Dusheti, Aspindza, Telavi, Zugdidi), they take food samples and store them for 24 hours so that, in case of intoxication, it is possible to confirm and exclude intoxication of children by food; however, as a rule, the institutions do not keep relevant journals to register such measures. In a majority of institutions, they did not have food inspection journals and were not even aware of the necessity of having them (Surami, Dusheti).

According to the kitchen personnel and directors, hygienic standards of food preparation are adhered to but the fact that knives and boards are not marked in any of the institutions speak on the contrary (the institutions in Rustavi and Dusheti are an exception). The same boards and knives are used to slice raw meat and vegetables, which is a violation of safety standards of food preparation. In most cases, basins for washing meat, vegetables and dishes are not isolated from each other; where they are, they are either insufficient in quantity or are not supplied with hot and cold water (Public School No.199, Tbilisi childcare educational institution, Tskneti).

Bread is cut and stored in compliance with hygienic standards; bread is cut on boards specially designed for this purpose. However, bread is not stored in appropriate conditions in some institutions (in the Tbilisi childcare educational institution, bread is stored in a strange box, in violation of hygienic standards).

Almost in all childcare institutions, larders for vegetable and those for dry products were isolated from each other (Dusheti, Zugdidi, Salkhino, Telavi, Lagodekhi, Aspindza). In some institutions, there were no shelves in the larder (Tsalendjikha) and vegetables were scattered around disorderly on the floor; bags with flour were placed directly on stone tiles in a damp larder; anti-rodent substances were stored in the same storage room. (Tbilisi childcare educational institution, Tsalendjikha, Kutaisi). In the larder, we found an opened and uncovered tin of tomato paste in the refrigerator as well as spoiled

vegetables ("Satnoeba") but none of these were registered in the defective products journal. In fact, the person in charge of the nutrition compartment was unaware of the necessity of keeping such a journal.

In the kitchen, the trashcan was without a cover thus creating a threat of food contamination (Tskneti, Kojori, Surami, Kutaisi, Samtredia, Lagodekhi).

Food products are purchased from private entrepreneurs based on contracts.

Persons responsible for the nutrition compartment and menus stated that they need trainings in child and adolescent nutrition aspects, guidelines on daily norms of food ingredients and menu standards by age groups.

The Public Defender addresses the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a recommendation:

- **To raise awareness of and train the persons responsible for nutrition in childcare institutions; to elaborate standard menus by age groups for different types of childcare institutions.**
- **To supervise the observance of sanitary-hygienic standards in nutrition compartments and safety of food preparation.**

RECOMMENDATIONS

To the Ministry of Labour, Health and Social Affairs and the Ministry of Education and Sciences:

- **For the purpose of improving the educational process in childcare institutions, to ensure by means of joint efforts, training of teachers and to amend the educational plans with a view to considering the children's needs and abilities.**
- **To elaborate and take measures to the effect that childcare educational institutions assist children who have reached the age of 18 years in employment and educational opportunities considering their living conditions, skills and interests.**

To the Minister of Labour, Health and Social Affairs:

- **To draft a Code of Conduct for Childcare Educational Institutions articulating rights and duties of the staff and the beneficiaries of the Institutions with a view of preventing improper treatment and violence;**
- **To develop and implement a unified system of monitoring of child care educational institutions aimed at prevention of violence and inhuman treatment;**
- **To ensure that the Subprogram on the Prevention of Child Abuse within the Childcare Program is focused on detecting facts of violence, analyzing reasons of violence and settlement of relations in childcare educational institutions; to amend the Childcare Standards and the statutes of childcare educational institutions with a view of enhancing the fight against violence;**
- **To increase the social workers' involvement in childcare educational institutions:**
- **To elaborate the child's bio-psycho-social evaluation criteria and standards for the use by social workers;**
- **To amend the Statute of the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care" with a view of comprehensively articulating the rules of enrolment in and discharge from childcare educational institutions and ensuring that, at the time of enrolment, the children's data are evaluated in a uniform manner.**
- **To allocate funds for the step-by-step planning and improvement of material and technical resources of child care educational institutions**
- **To ensure that, in childcare educational institutions, medical services are provided in accordance with the forms (templates) and quality envisaged by the Georgian law.**

To the Head of the Public Law Entity "Service Agency for Disabled Persons, Elderly People and Children in Need of Care":

- **To raise the teachers' and the caregiver's awareness of the requirement that no form of violence against children is permissible; to develop a mechanism for detecting and preventing violence and to provide rehabilitation measures for victims of violence;**

- To identify reasons and expressions of violence against children and to implement educational preventive measures in childcare educational institutions;
- To implement the practice of crisis management and a multidisciplinary approach in childcare educational institutions;
- To inform and educate children on the Convention on the Rights of the Child so that they are able to address competent authorities in case of violation of children's rights or occurrence of facts of violence;
- To ensure full-fledged functioning of libraries in childcare educational institutions and to replenish and renew the libraries on a regular basis.; To revise the educational and teaching methods at childcare educational institutions; to adopt an individual approach; to develop human resources and to provide additional material and financial resources;
- To select qualified and experienced staff to work for the childcare institutions on proper salaries; To introduce situational management practice and multidisciplinary approach with the involvement of psychologists in the institutions; To provide the institutions with material-technical resources (to equip the psychologists' rooms); To evaluate currently employed psychologists and to plan and implement institution-specific trainings;
- To ensure that the childcare educational institutions post up all the urgent contact information (such as the police, firefighting department, emergency medical assistance, gas suppliers, electricity suppliers and water suppliers as well as the local authority of guardianship and care, the Public Defender's offices, etc) at visible locations;
- To tnsure that in all educational institutions children have access to telephone at any time and with full respect to confidentiality of private conversations;
- In cooperation with local self governance bodies, to ensure children's transportation from the childcare educational institutions to schools and back as well as transportation to the bus stations when children are independently travelling to their homes;
- To arrange and equip fire safety corners in the territory of childcare educational institutions and to raise the personnel's awareness of fire prevention and firefighting measures;
- To ensure proper functioning of utilities within and regular disinfection of childcare educational institutions;
- To properly equip bedrooms and ensure proper hygienic conditions in childcare educational institutions;
- To ensure that children are provided with sufficient number of clothes and shoes according to age groups and seasonal requirements as well as toys and other inventory with consideration of the children's wishes and views;
- To ensure that selection and appointment of doctors in childcare educational institutions is carried out in accordance with the requirements and procedures established by law.
- To ensure, within the Childcare Program, that appropriate space is allocated in childcare educational institutions for medical rooms; to equip the medical rooms according to the legal requirements and in with consideration to the beneficiaries' needs;
- To staff childcare educational institutions with sufficient number of properly qualified medical personnel;
- To expand the coverage of medical services vouchers issued for the children of childcare institutions so that children can have access to, *inter alia*, dental services;
- To improve the children's health control system; to ensure that preventive medical examinations are carried out on a regular basis; to ensure that children are examined on disability realistically and, where this is the case, to facilitate the granting of disability legal status to them;
- To raise awareness of and train the persons responsible for nutrition in childcare institutions; to elaborate standard menus by age groups for different types of childcare institutions.
- To supervise the observance of sanitary-hygienic standards in nutrition compartments and safety of food preparation.

2009

The Right to a Fair Trial

In accordance with Article 42, Para.1 of the Constitution of Georgia, "Everyone has the right to apply to a court for the protection of his/her rights and freedoms".

Article 6 of the European Convention on Human Rights guarantees the right to a fair hearing which implies examination of a case by an independent and impartial tribunal, the right to defence, and the possibility to examine and have examined witnesses on both sides under the same conditions. As stated by the Commission of Human Rights, in a democratic society the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of the Convention would be inadmissible.[78]

In order for every citizen of Georgia to be protected and be part of a fair society it is extremely important to ensure the right to a fair trial. However, upholding this right in theory alone will not bring about a desirable outcome. It is necessary to ensure that these rights are guaranteed in practice as well as in theory, and a person whose rights are impaired or who is victim of an offence could have a keen perception for justice to prevail. This in turn requires practical implementation of legal safeguards present in the law.

The past several years have seen significant changes in the judiciary: institutional reorganization of the system, increasing the number of judges, creating the system of in-service training of judges, etc. all required considerable funds. However, despite many achievements, appeals addressed to the Public Defender's Office as well as different organizations active in Georgia point to persistence of some problems, too. This is corroborated by the 2009 Report on Human Rights in Georgia published by Democracy, Human Rights and Labor Office of the US Department of State that points to pressure on the judiciary as one of the main problems.[79]

Despite the reform of the judiciary being one of the priorities for the state, there are cases clearly showing the problems existing in the judiciary. This can be exemplified by problems related to independence of the judiciary, testing of evidence, equality of arms principle, and reasoning of decisions taken at different stages of case examination. In response to a motion made by the defence party during the hearing of a criminal case on charges against R.Tsagareli, S.Beselia, R.Milorava and V.Kirvalidze, requesting to secure the presence of the victim as stipulated by Article 447 of the Criminal Procedure Code, the court stated: "To be honest, the provision of the law is very vague, it says the victim has to be interviewed, but it is not obligatory for the victim to appear before the court".[80]

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78 Delcourt v.Belgium, 17 January 1970, para.25

79 http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm#

80 Excerpt from the record of the proceedings on the criminal case against S.Beselia, R.Milorava and V.Kirvalidze

The main function of the court is to interpret the law. Hence, where a judge in the course of a hearing says that the law is vague, it is clear how important it is to carry on with reforming the judiciary.

The right to a fair trial has been a recurring theme in the Public Defender's reports. Concrete recommendations have been addressed to the High Council of Justice, too. Needless to say, the court shall be independent and no one shall be allowed to interfere with the administration of justice,[81] however it is important to bear in mind that the court must also be perceived by the public as being independent and impartial. In this context, the role of the Public Defender acquires special importance. The more so, as according to the European Court of Human Rights, control and oversight by ombudsperson of proceedings before the court in no way breaches the principle of independence of the judiciary.[82]

This section of the Report, similarly to previous reports by the Public Defender, looks into problematic issues identified over the reporting period in terms of exercise of the right to a fair trial. The work carried out by the Public Defender within his mandate should contribute to stronger and more effective system of justice, while recommendations and assessments made by the Public Defender should be used as a tool for enhancing the principle of judicial independence.

The Report considers also problems related to inadequate reasoning of court decisions at various stages of criminal proceedings on the one hand, and shortcomings in the examination by court of administrative offences, on the other.

Inadequate Reasoning of Court Decisions

The right to a fair trial implies examination of a case by an independent and impartial tribunal established by law.

Applications and complaints referred to the Public Defender's Office show that inadequate reasoning of interim and final decisions taken by court (order on imposing a restraint measure, dismissal of motion, judgment, etc.) represents one of the most problematic issues in the work of the judicial system. This problem is persistently present in many criminal proceedings, which suggests that inadequate reasoning of decision by courts has become a systemic problem.

Reasoning on imposition of detention as a restraint measure

Article 151 of the Criminal Procedure Code of Georgia defines the purpose and grounds for imposing detention as a measure of pre-trial restraint. When substantiating the order on imposition of detention as a restraint measure, court oftentimes limits itself to listing the grounds as they appear in the law and quoting the relevant CPC article.

To exemplify, orders often feature wordings like "there are reasonable grounds to suspect that the accused may try to abscond from preliminary investigation and appearing before the court", "carry on criminal activity", and "destroy evidence". Not infrequently, court orders list all of these grounds but nothing is said to explain as to what really warrants "the reasonable suspicion" that the accused person might abscond from preliminary investigation or threaten parties in the proceedings.

Also, there are cases where court points out in the order on imposition of detention on remand that "the offence committed by the accused falls within the category of grave crimes" for which reason the court considers imposition of detention to be an adequate restraint. In its order of 22 August 2009 on imposition of detention on remand the district court of Kobuleti stated: "In deciding on a specific measure of pre-trial restraint the court bears in mind that the accused is charged with a grave offence punishable only with deprivation of liberty" (*criminal case on charges against R.Tsagareli, S.Beselia, R.Milorava and V.Kirvalidze*). The cited example clearly demonstrates that the judge never assessed as to what specific circumstances did warrant imposition of detention as a preventive measure in this particular case. It is to be born in mind that gravity of offence as such cannot *per se* serve as sole grounds for imposition of detention.

[81] Article 82 of the Constitution of Georgia, Article 8 of the Criminal Procedure Code of Georgia

[82] Gasper v. Sweden, ECtHR, 6 July 1998

In the case *Patsuria v. Georgia*, the European Court of Human Rights stated that a practice of automatic remands in custody solely on a statutory presumption based on the gravity of the charges because of a hypothetical danger of absconding, re-offending or collusion is incompatible with Article 5, Para 3 of the Convention. The Court further explained that the authorities should have substantiated the reasonableness of the imposed restraint measure (detention on remand), Although the risk of absconding may be a relevant element in assessing the reasonableness of the deprivation of liberty, it cannot be established on the basis of abstract statements, unsupported by any arguments.[83]

Lack of reasoning on extension of remand as pre-trial restraint

Also, orders concerning extension of pre-trial restraint often lack reasoning. As a rule, orders on extension of detention on remand merely repeat the grounds and circumstances cited in the order on imposition of detention as a measure of pre-trial restraint. If investigative actions have to be conducted on the case, the court must assess the reasons for which those investigative actions were not performed within the initial term of remand and thus decide whether it is justified to extend the remand. Even if remand of the accused was found to be justified for certain reasons when imposed initially, it might be that these reasons are no longer valid.

In the case *Nikolova v. Bulgaria*, the Court found that the grounds that applied at the moment of arrest for imposing a measure of pre-trial restraint cannot be used always to extend such a measure.[84]

Court decisions should not rely on general formulations. In every single case the court order on imposition of detention as a measure of pre-trial restraint or extension of remand should specify particular circumstances justifying the decision. If prosecution's motion on pre-trial restraint is not substantiated, the court has to issue an order refusing imposition of pre-trial restraint.[85]

Lack of reasoning on dismissal of motions

Article 15, Para 1 of the Criminal Procedure Code of Georgia states that "*the criminal process shall be based on the principle of equality of arms, and respect the right to adversarial proceedings*". Also, under Para 3 of the same article: "*on the basis of equality of arms, each party to a proceeding shall have the right to present his case and adduce evidence, take part in examination of the evidence, file motions or objections and express his opinion in respect of any element of the criminal case*".

This implies that motions and submissions made by either party, i.e. the prosecution or the defence, concerning a certain investigative action, summoning a witness or testing the evidence, as the case might be, shall be examined by the court under the conditions equal for both parties, whereas decisions on dismissal of motions, in case the court chooses to decide against a motion made by a party, should be impartial and well-reasoned.

Under Article 232, Para 6 of the Criminal Procedure Code: "*In case a motion or submission is rejected, the body or the person to whom the motion was addressed shall issue a reasoned order (ruling) on dismissal of the motion*".

Unreasoned, or inadequately and vaguely reasoned, dismissal of a motion impairs the principle of equality of arms and adversarial proceedings, since it denies the possibility for the defence to have its evidence tested under equal conditions.

In the *Dombo Beheer case*[86], the European Court of Human Rights stated that everyone who is party to proceedings must have an opportunity of presenting his case to the court under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent.

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83 Patsuria v. Georgia, ECtHR Judgment of 6 November 2007 (no. 30779/04)

84 Nikolova v. Bulgaria, ECtHR Judgment of 30 December 2004 (no. 40896/98)

85 Article 140 of the Criminal Procedure Code of Georgia

86 Dombo Beheer BV v.the Netherlands, ECtHR Judgment of 9 September 1992 (no. 14448/88)

Not infrequently, the court fails to give any reasoning on dismissals of submissions filed by defence counsels during examination on merits, and only limits itself to stating that the motion by defence is unfounded, without giving any further arguments to support its opinion. This problem, too, seems to be systemic, and judging by applications and complaints referred to the Public Defender's Office, it is not unique to one court or one judge but appears to be endemic for courts across Georgia.

To give an example, during examination of appeals lodged by both parties, i.e. the defence and the prosecution, against the judgment made on a criminal case by Tskaltubo District Court on 4 October 2008, the defence counsel addressed the Chamber of Criminal Cases of Kutaisi Appellate Court considering the appeals with a motion, requiring conducting a phonoscopic expertise of a video footage showing defendants' personal search in order to establish whether the video was authentic or forged. The defence counsel also solicited for the prosecution to present to the court a shoe that was not introduced into the case as material evidence and in accordance with the case materials had allegedly been found to contain a narcotic substance put in a Marlboro pack.

According to the record of judicial proceedings, the court dismissed the motion made by the defence counsel. It might well be that the judge of the appellate court decided to dismiss the motion because the defence party had known about the contested evidence and it could have solicited for authenticity check of the video during the hearing of the case in the first instance court, which it failed to do, for which reason the appellate court chose not to grant the motion. However, from the record of the proceeding it follows that the only reason the court invoked to support the dismissal of the motion was its alleged groundlessness, failing to specify why it was not possible for the court to examine the footage present in the case in order to establish its authenticity. The more so, as in accordance with the records of arrest and personal search, the personal search of suspects was filmed on a CD, whereas during examination of the personal search footage by the first instance court it appeared that the search was filmed on a video cassette (*criminal case on charges against D. Abesadze and G.Bardavelidze*).

True, the judge is to evaluate evidence based on inner conviction, but any statement or decision he makes (including dismissal of a motion) has to be reasoned, particularly where a motion filed by a party has to do with finding a person guilty or not guilty.

The same problem is evidenced in the criminal case on charges against R.Tsagareli, S.Beselia, R.Milorava and V.Kirvalidze. During the examination of the case on merits by Batumi City Court, the defence party filed a motion requesting to conduct an investigative experiment in order to verify testimony given by a witness for the prosecution. Since the imputed act occurred in August, whereas the hearing of the case was conducted in November-December, the defence party requested to consider this fact when staging an investigative experiment and to conduct the experiment in conditions similar to the circumstances of the imputed act in order to establish some facts. The court refused to grant the motion arguing that it was not possible to create conditions comparable to conditions during the imputed act (the motion requested to conduct the investigative experiment with similar lighting and similar number of people present in order to establish whether the witness would be able to see certain things).

It is interesting to look at the comment made by the judge who said that as a judge he feared that the solicited investigative experiment could pose certain problems personally for him in taking a decision on the case. In its reasoning of the order on dismissal of the motion the court stated that the witness who, according to his testimony, had noticed certain circumstances might not be able to identify certain persons during the experiment. Interestingly, the defence solicited for an investigative experiment in order to verify that particular testimony. Thus, the court refused to satisfy the motion, though it stressed that it was interested in establishing the veracity of the testimony given by the witness.

Thus, the court refused to establish the truth concerning the circumstances that might have influenced its decision on the case. However, the court being the body for the administration of justice must be interested in establishing the truth. If a party files a motion that in the opinion of the court may influence in one way or the other the judicial decision, it must assist the parties in demonstrating the truth.

In some cases the court invokes invalid reasons for dismissal of a motion that are expressly irrelevant to the request solicited in the motion.

During the examination of B.Saginadze case, the convict's defence counsel solicited for considering the victim's testimony as inadmissible evidence, as the victim, contrary to the prohibition stipulated in the Criminal Procedure Code of Georgia, had been warned of the responsibility for false evidence or refusal to testify, as provided for in CPC. In the reasoning of dismissal of the motion the court acknowledged that the victim had been interviewed in violation of procedural rules effective at the time of the interview, stating at the same time that since the interview was attended by an interpreter, the victim was interviewed in conformity with the requirements of the Criminal Procedure Code.

It might be that the grounds for satisfying the motion are absent; however, any refusal to satisfy a motion should be reasoned and relevant to the content of a solicitation in the motion. In the above case dismissal of the motion by the judge is expressly unreasoned and in no way relevant to the request contained in the motion.

The defence counsel for the convict in the same case filed a motion before Tbilisi Appellate Court requesting interviewing the person, who had escorted the victim from Zugdidi to Tbilisi, as a witness. The motion pointed out that the victim's testimony would help to establish whether any pressure had been brought to bear on the victim when he was transported from Zugdidi to Tbilisi and whether he had been shown any photograph, as alleged by the victim and other escorting persons.

The court refused to satisfy the motion and stated that "…in what concerns an interview, requesting an interview in order to establish who left the room lacks any grounds" *(criminal case on charges against B.Saginadze)*. The motion solicited ascertaining completely different circumstances, whereas the court invoked such reasons to refuse the motion that were absolutely irrelevant to the motion.

Inadequate reasoning of final decisions

The problem of inadequate reasoning is evidenced not only in interim, but also in final decisions taken by courts.

According to Article 18, Para 2 of the Criminal Procedure Code of Georgia: "*Investigation of circumstances of the case shall be comprehensive, objective and full. It is necessary to exercise due diligence in establishing all circumstances – those incriminating and those exonerating a defendant, as well as circumstances aggravating or mitigating his responsibility.*"

Article 496, Para 1 of CPC states that: "*Judgment must be lawful, reasoned and fair*", and Para 3 states that: "*A judgment is reasoned if inferences are based on the totality of conclusive evidence investigated in the course of judicial proceedings, and the presented evidence is sufficient for establishing the truth on a criminal case. All inferences and decisions contained in the judgment shall be reasoned*".

There are cases where the court in its adjudication relies on one concrete piece of evidence while the case contains other pieces of evidence contradicting the former. For instance, where the case carries testimonies by several witnesses and one part of witnesses testify against, while the other part testify in favour, of the defendant, the judgement should explain why one piece of evidence has precedence over the remaining evidence while different pieces of evidence are not consistent with one another. In the criminal case against N. Nadaraia, Kutaisi City Court based its conviction on the testimony of Z.Makaridze, a victim in the case, which was clearly at variance with testimonies provided by other interviewed witnesses, and failed to evaluate those other testimonies.

It is to be noted that in some cases decisions delivered by the appellate court repeat verbatim the text of the decisions given by first instance courts, which per se is not a violation, but it is necessary for the appellate court to explain why it founds its decision on a certain evidence or argument referred to in the decision of a lower instance court (*case of N.Nadaraia*). Not infrequently rulings on dismissal of cassational appeals appear to be unreasoned. When considering cassational appeals, the Supreme Court usually points to lack of preconditions for examination of cassational appeals in the instant cases.

On 4 March 2009, the Supreme Court passed a ruling on dismissal of the cassational appeal of N.Nadaraia and his defence counsel referring to the absence of any essential violation of the criminal procedure law that would lead to revocation of the judgment.

It is important for the Supreme Court to consider circumstances present in a concrete case and base its decision on thorough examination of the case, so that rulings on dismissal of cassation appeals are perceived as reasoned and not automatic refusals.

Right to Defence

In conclusion it is important to note that reasoning of judicial decisions has a direct bearing on effective exercise of the right to defence, *per se* an important element of the right to a fair trial guaranteed by the Constitution of Georgia in Article 42, Para 3: "*The right to defence shall be guaranteed*".

Under Article 11, Para 1 of the Criminal Procedure Code of Georgia: "The court and the judiciary official administering the criminal proceedings shall provide the suspect, defendant and person at trial with the right to defence, explain to them their rights, afford an opportunity for them to defend themselves with all means allowed by the law, and ensure protection of their rights and freedoms". Filing motions requiring conduct of a certain investigative action or determination of a matter, and evaluation of evidence in equal conditions is one of the means at the disposal of the defence party to support its position. Where the court decides to dismiss a motion, its decision on dismissal must be reasoned.

Problems Related to Examination of Cases Concerning Administrative Offences

In parallel to criminal and civil proceedings, the principles of a fair trial also govern trying of cases concerning administrative offences. This report provides an overview of the problems found in respect of examination of cases concerning administrative offences.

With a view to examining the case law on adjudication of administrative offences, the Public Defender's Office obtained on request judicial decisions on cases concerning offences under Article 166 (Minor hooliganism), Article 173 (Insubordination to the lawful orders of representatives of the law enforcement bodies or military servants), and Article 1741(Violation of rules of organising and conducting an assemblage or a manifestation) of the Code of Georgia on Administrative Offences. Article 166 and Article 173, apart from being "working articles", deal with offences important from the perspective of their qualification, as is the offence stipulated by Article174[1].

Rules and different aspects of proceedings on cases concerning administrative offences are defined by the Code of Georgia on Administrative Proceedings from 15 December 1984. The underlying principles of trying of cases concerning administrative proceedings are as follows: "*The tasks in proceedings concerning administrative offences shall be timely, comprehensive, complete and unbiased clarification of the circumstances of each case, settlement of the cases in compliance with the law, ensuring execution of a decision rendered, elucidation of the reasons and conditions which led to the committing of administrative offences, prevention of administrative offences, educating citizens in the spirit of abiding with the law and strengthening the legality.*"[87]

A decision concerning imposition of an administrative penalty shall indicate: *the name of the body (official) which issued the ruling; the date of considering the case; data about the person in respect of whom the materials of the case have been considered; the circumstances established while considering materials of the case; the statutory act that stipulates the responsibility for a given administrative offence, and the decision taken on the basis of considering the case.*[88]

Analysis of the form and content of the decisions rendered by Tbilisi City Court shows clearly the problems and deficiencies attending examination of cases concerning administrative offences. This section of the report considers both the

[87] Article 230 of the Code of Georgia on Administrative Offences

[88] Article 266, Para 2 of the Code of Georgia on Administrative Offences

rules governing the proceedings on cases concerning administrative offences, and problems and deficiencies identified. Analysis of the decisions revealed the following problems.

Standard Template Form of Orders

Analysis of the form in which rulings and orders are structured shows that every judge has his/her own standard form (template), where only particulars are changed from one case to another. The template usually contains the name of the court rendering the order, the date of considering a case, the name of the person who committed an administrative offence, the name of the person who brought the offender before the court, the statutory act that stipulated responsibility for a given offence, the decision taken on the basis of considering a case, and the period allowed for appeal (review).

Elaboration of a template facilitating the process of work is not a violation in itself. However, the use of a template for a decision or ruling does pose a problem if the only variables present are names and family names. Most of the decisions analysed (including descriptive and substantive provisions) are overly general and uniform. Such rulings would easily fit with any case. On the other hand, lack of entries on specific circumstances lead to the problem of shortage of evidence and inadequate reasoning. Hence, it is difficult to prove that the decision was based on comprehensive and complete examination of circumstances. This is the main problem with the use of templates for judicial decisions. That decisions are rendered in a standard, template form is further proved by the fact that entries concerning the date of an administrative offence, the name of the person who committed an administrative offence and the name of the person who brought the latter before the court are shown in a different font and colour compared to the rest of the text.

Inadequate Presentation of Facts of an Offence in the Order

The use of a standard template form of order gives rise to another problem that can be described as shortage of information concerning the factual circumstances of an offence. One of the orders rendered by Tbilisi City Court reads: "*On 8 September A.A. was taken into administrative custody in the territory adjacent to Heydar Aliev Garden for insubordination to the lawful order of patrol police, and a record of the administrative offence was drawn up.*" The description given in the ruling leaves it completely unclear what exactly the lawful order of patrol police was about, what exactly the insubordination implied, what was the position of the person recognised as offender, etc.

Shortage of Evidence

Apart from shortage of information concerning the impugned administrative offence, the orders analysed by PDO suggest clear shortage of evidence. As stated above, the task in proceedings concerning administrative case is comprehensive, complete and unbiased clarification of the circumstances of a case. It is such clarification of the circumstances of the case that should underlie the decision of the court concerning imposition of an administrative penalty or dismissal of a case.

This notwithstanding, the part of a ruling that should describe the circumstances established during the consideration of a case, usually reads: "*Having considered the materials of the case and having heard explanations by the parties the court concludes that the materials of the case are evidence of committing by A.A. of the offence stipulated by Article 173 of the Code of Georgia on Administrative Offences, which leads to imposition of an administrative penalty within the limits of the sanction as stipulated in the said article of the Code on Administrative Offences*". Thus, the ruling leaves completely unclear as to what concrete pieces of evidence led to the decision of the court, how conclusive that evidence was, etc.

With respect to the case concerning the administrative offence, evidence means any facts that may serve as a ground for establishing the occurrence or absence of the administrative offence. These facts are established by *a record of the administrative offence, explanations of a person who is on trial in connection with the administrative offence, testimonies of the victim and of the witnesses, expert reports, results of alcohol, drug and psychotropic testing, video or audio recording, material evidence, record of seizure of items or documents, and by other documents.* The established practice demonstrates that the major evidence the court bases its decisions on are records of administrative offences. Explanations by law enforcers are identical to the content of records

of administrative offences. Any indications concerning the position of a person having committed an administrative offence are almost completely absent in court decisions. The orders analysed by PDO only indicate that the offender agrees or disagrees with the content of the record. This in itself points to procedural inadequacy and lack of proper defence for the offender.

Superficiality of Proceedings

Proceedings on cases concerning administrative offences are not as significant as proceedings on criminal and civil cases; however, they definitely prevail in terms of numbers. This cannot be invoked to justify the superficiality typical of the proceedings on cases concerning administrative offences. According to the Code, a decision rendered on a case concerning administrative offences shall contain an entry concerning seized items and documents as well as compensation of expenses for services rendered by an expert institution (expert) and an interpreters.[89]

None of 900 decisions obtained by PDO from Tbilisi City Court contains any indication of such information. Lack of the above entries in court decisions testifies to the shortage of evidence, superficiality of proceedings and inadequate guarantees of defence.

Inadequate guarantees of defence

As stated above, the judicial decisions obtained and examined by PDO rely almost exclusively on records of an administrative offence. The proceedings on cases concerning administrative offences rarely, if ever, involve any interviewing of witnesses, examination of evidence etc. Such practice, in addition to shortage of evidence, leads to inadequacy of guarantees of defence for persons on trial. The European Court of Human Rights holds that "*in conformity with the principle of equality of arms which is one of constituent elements of a broad concept of a fair trial, the courts are obliged to strike a fair balance between the parties; each party to proceedings must have a reasonable opportunity of presenting his case o the court under conditions which do not place him/her at a substantial disadvantage vis-à-vis his/her opponent*".[90]

With rare exceptions, decisions leave it unclear whether the offender admits and/or of the offence, what reasons or conditions led to the committing of the offence etc. All this is important in that it has a direct bearing on determination of the type and measure of penalty, since the Code on Administrative Offences, similarly to the Criminal Code, provides for circumstances mitigating or exacerbating the responsibility. This is yet another proof of the formalistic character of proceedings whose purpose, with only rare exceptions, is to 'legitimise' the text of the record of an administrative offence.

The Problem of Reasoning

In accordance with the Code of Georgia on Administrative Offences, penalties for administrative offences shall be imposed within the limits established in the statutory act stipulating the responsibility for an administrative offence. When imposing a penalty, consideration shall be given to the character of the committed offence, the personality of the offender, the measure of his guilt, his/her property status, circumstances mitigating or exacerbating the responsibility.[91]

Under Article 166 of the Code on Administrative Offences: "*Minor hooliganism i.e. use of abusive language in public places, derogatory treatment of citizens and other similar actions disturbing public order and peace of citizens shall lead to imposition of a penalty in the amount of GEL 100 or, if due to certain circumstances and considering the personality of an offender such penalty is not considered enough, administrative custody for up to 90 days*".

This provision leaves a broad leeway to the court to choose between penalties that substantially differ as to severity. Concurrently with allowing the court a free choice, the Code requires that *the court be guided by the law, evaluate evidence based on inner conviction, supported by comprehensive, complete and objective examination of evidence in its unity.* Hence, the freedom of the

[89] Article 266, Para 4 of the Code of Georgia on Administrative Offences

[90] Donadze v. Georgia, ECtHR Judgment of 6 March 2006 (no. 74644/01)

[91] Article 33 of the Code of Georgia on Administrative Offences

court to be guided by inner conviction in rendering a decision is confronted with the requirement for the court to reason and substantiate the decision. A reasoned decision must answer two questions: 1) what are the circumstances suggesting to the court that an offence did occur?; 2) what are the circumstances that guided the court in determination of a measure of penalty? To remind, *when imposing a penalty, the court should consider the character of the committed offence, the personality of the offender, the measure of his guilt, his/her property status, circumstances mitigating or exacerbating the responsibility.*[92]

Most of the decisions examined by PDO contain neither an indication of the reason that led the judge to impose for a particular administrative offence one or another penalty, or even a short comment of clarification.[93]

Listing of the principles of proceedings on cases concerning administrative offences can in no way help the problem of lack of reasoning. For instance it is entirely irrelevant to state that administrative custody cannot be imposed on underage persons where the offender is an adult. Well-reasoned decision implies exact qualification of an act and invocation of concrete provisions in respect of concrete circumstances.

Insubordination to the Lawful Orders of Representatives of the Law Enforcement Bodies

Examination of the decisions made available to PDO highlighted autonomous application of Article 173 of the Code on Administrative Offences. This article provides for a penalty in the event of gross insubordination to orders of representatives of law enforcement bodies and military servants performing their official duties.[94] In order to establish the respective *corpus delicti*, it is necessary for a case to feature a lawful order of a representative of a law enforcement body or a military servant (while performing his official duty) which the offender grossly refuses to obey. Where Article 173 is applied in conjunction with other provisions of the Code on Administrative Offences, the picture is relatively clear and raises no questions.

In cases where a person disobeys an order by patrol police to stop the car, take alcohol or drug testing or cease hooliganism, application of Article 173 in conjunction with other relevant norms appears to be absolutely legitimate.

However, it is completely unclear which lawful order of a law enforcer was disobeyed where the record of an administrative offence only invokes Article 173. Most of the court orders available to PDO fail to answer this question. Neither do court orders examined by PDO give any indication on whether the court has ever addressed this issue in is deliberations. This problem ensues others, namely, the incorrect qualification of an act, taking persons into custody without valid legal grounds, lack of court control, etc.

The problem of qualification is evident in respect of the act stipulated by Article 174^1 of the Code. This article imposes responsibility for violation of rules of organising and conducting an assemblage or a manifestation.[95] The rules of organising and conducting an assemblage or a manifestation are defined in a special law. The court must evaluate the circumstances based precisely on that law. Article 174^1 imposes responsibility for blockage of court building entrances, conducting an assemblage or a manifestation on the territory adjacent to the place of residence of a judge, or on the territory of common courts of Georgia, or within 20 metres from court buildings. Therefore, comprehensive, complete and unbiased clarification of the circumstances of the case acquired even greater significance.

A completely different picture is evidenced by the decisions available to PDO. ["*...while taking part in the action, disturbing public order and peace of citizens, he showed gross insubordination to the lawful order of police to respect order and leave the territory in front of the Parliament...*]. This excerpt of the ruling shows that the court instantly interpreted participation in the action as disturbing public order (according to the substantive part of the ruling the court imposed administrative custody as a penalty for offences under Articles 166 and 173). The Law of Georgia on Assemblages and Manifestations prohibits conducting assemblages and manifestation in front of certain buildings (and within 20 m from them).[96] Hence, in case of violation of the respective provisions of the law, the persons concerned should have been made responsible under Article

92 Article 33 of the Code of Georgia on Administrative Offences
93 Article 22 of the Code of Georgia on Administrative Offences
94 Article 173 of the Code of Georgia on Administrative Offences
95 Article 1741 of the Code of Georgia on Administrative Offences
96 Article 9 of the Law of Georgia on Assemblages and Manifestations

174[1] of the Code on Administrative Offences. This does not rule out imposition of a penalty under Article 166 and 173 of the Code.

In addition to the above problems, one has to mention inconsistencies persistently present almost in any court decision.

- The data indicated in the descriptive part are inconsistent with supposedly similar data indicated in the substantive part;
- The decision may feature two names of an offender, e.g. Soso and Ushangi, which is the best proof of a formalistic approach and use of templates;
- According to the descriptive part, the offender refused to admit the fact of an offence as documented in the record of an administrative offence. However, according to the substantive part, when imposing the penalty, the court based its decision on the confession of a guilt;
- The decision may state that the court's adjudication was based on Article 173 of the Code on Administrative Offences, whereas a penalty may be imposed on the basis on Article 166.

The above deficiencies may result from a mechanical error or technical inaccuracy. However, this cannot be an excuse where such deficiencies are systemic. In the case *Donadze v. Georgia* the European Court stated that *in the context of fairness of proceedings it attaches particular importance to the formal side and democratic countries are obliged to win credibility of the participants of proceedings.*[97]

An administrative offence in its essence and consequences is not at par with a criminal offence. Therefore, penalties imposed for administrative offences are less severe. However, the proceedings on cases concerning administrative offences are governed by the general principles of fair administration of justice.

Each of the above problems, when viewed of its own, does not jeopardise the principle of a fair trial, however, their synthesis does. The main deficiency of the analysed decisions lies in their formalistic character stemming from the use of standard template forms. Such an approach precludes comprehensive description of circumstances, the evidence and results of its examination, as well as the rationale behind the decision the court renders.

A person whose case concerning an administrative offence is considered is entitled to receiving a judicial decision based on comprehensive, complete and unbiased clarification of evidence.

Proceedings on cases concerning administrative offences are notable for their speediness. However, this can in no way excuse improper administration of justice. A proceeding that lasts mere 10-15 minutes and formalistic in its essence is not capable of securing the right to a fair trial. The European Court of Human Rights considers reasonable duration of a trial, as well as observance of formal principles and the treatment of applicants by the court to be attributes of a fair trial.[98]

The problems described above are best illustrated by the proceedings on the cases concerning administrative offences allegedly committed by J.Jishkariani, D.Tsaguria and I.Kordzaia. Again, the major problem is lack of reasoning by the court.

The Public Defender on his own motion, as provided for in the Organic Law on the Public Defender of Georgia, started examination of the case in respect of D.Tsaguria, J.Jishkariani and I.Kordzaia concerning suppression of a peaceful assemblage in front of the Parliament building on 23 November 2009 and detention of the above persons.

On 23 November 2009, law enforcers arrested in the Rustaveli Avenue citizens Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia, members of the "7th November Movement".

The records of administrative arrest say that the said persons were present within 25-30 meters from the Parliament entrance and violated provisions of the Law of Georgia on Assemblages and Manifestations. Namely, on demand of

97 Donadze v. Georgia, ECtHR Judgment of 6 March 2006 (no. 74644/01)

98 Donadze v. Georgia, ECtHR Judgment of 6 March 2006 (no. 74644/01)

patrol officers, they failed to present a respective permission from the Tbilisi Mayor's Office, disobeyed the lawful orders of representatives of the law enforcement bodies, and assaulted them both physically and verbally. The records of administrative arrest compiled in respect of the three persons look identical. According to the records, law enforcers interpreted the actions of the above persons to be violations under Articles 174[1] and 173 of the Code of Georgia on Administrative Offences.

On the same day the College of Administrative Cases of the Tbilisi City Court rendered rulings in respect of the above persons. The court found all the three to have committed offences under Articles 174[1] and 173 of the Code of Georgia on Administrative Offences.

Upon examination of the case, the Public Defender concludes that the rights of citizens D.Tsaguria, J.Jishkariani and I.Kordzaia guaranteed by the Constitution were violated.

As is known, the Georgian law does not require any prior permission from local authorities for holding assemblages and manifestations. Even assuming that representatives of the law enforcement bodies asked to present a copy of notification that organisers of an assemblage or a manifestations are required to submit to the local authorities, they should have been aware that participants of the action at that moment were under protection of Article 7 of the respective law, and hence, they were not obliged to have submitted a prior notification.

Article 25 of the Constitution guarantees that: "*Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission*".

Under Article 25, Para 2 of the Constitution, the necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare. The requirement concerning such notification is stipulated in Article 5, Para 1 of the Law on Assemblage and Manifestations, which says that if an assemblage or manifestation will be held in a public thoroughfare, in order to organise and hold it is necessary to submit a prior notification to a local government body according to the place of holding the planned action.

However, Article 7 of the same law provides an exemption, in which case the citizens are not under an obligation to send a prior notification to a relevant body: "*The rule of mandatory notification does not apply to regular citizens who would like to express their opinion by means of posters, slogans, banners, and other visible tools: however, they may not use entrances and stairs of buildings, block roads or hinder the movement of transport and pedestrians*".

Hence, Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia had full right to express publicly their opinion without any prior notification of a local government body. The argument that they failed to present to patrol inspectors the respective permission holds no legal ground. Moreover, the current law does not require any permission for holding actions or manifestations. In its decision of 5 November 2002 No 2/2/180-183 (Georgian Young Lawyers Association and Z.Tkeshelashvili, N,Tkeshelashvili, M.Sharikadze, N. Basishvili, V.Basishvili and L. Guramishvili v. the Parliament of Georgia), the Constitutional Court found the institution of "non-acceptance of a notification" to be unconstitutional, as it actually made participants of an action entirely dependent on availability of permission of local government bodies.

Both the Tbilisi City Court and the judge of the appellate court found Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia to be in violation of Article 7 of the Law on Assemblage and Manifestations.

According to the court, participants of the assemblage blocked the passage thus hindering the movement of pedestrians. The appellate court shared this opinion.

In this regard, the Constitutional Court clarified: "In Article 7 the legislator provided for the possibility to assemble, however it defined places where, under Article 25, Para 2 of the Constitution, an assembly in order to be held requires a prior notification".

This clarification implies that Article 7 protects the freedom to hold an assemblage without mandatory notification, but the following requirements are to be met:

1. entrances of buildings may not be used;
2. stairs of buildings may not be used;
3. the road passageway may not be blocked;
4. the movement of transport and pedestrians may not be hindered.

Article 25, Para 3 of the Constitution provides for the right of the authorities to break up a public assembly or manifestation only in case it assumes an illegal character. Such grounds are provided for in Article 13 of the Law on Assemblage and Manifestations: "*In case of a mass violation of Articles 4(2) and 11 of this Law, an assemblage or a manifestations shall be halted immediately at the request of an authorised representative of a local government body*".

However, Article 13 by its content concerns cases where an assemblage or a manifestation is held with a prior notification.

As to Article 7, as already stated above, the court took a different position. According to the substantive part of one of the rulings, according to the Law on Assemblage and Manifestations, Jaba Jishkariani did have the right to express publicly his opinion, but he should not have used the stairs in front the Parliament building and the passage way, as this led to hindering the movement of pedestrians.

During a manifestation a person does have the right to use the pedestrian's way, but he/she may not block the passage and hinder the movement of pedestrians. As to what "the hindering of the movement of people" implies is the matter of a value judgement. The record of proceedings shows that the court never discussed as to what can be considered as hindering the movement of people. Therefore, it is entirely unclear as to what led the judge to conclude that Jaba Jishkariani had hindered the movement of people.

According to the court ruling in respect of Irakli Kordzaia: "Together with other people of similar views, I.Kordzaia was holding an action in Rustaveli Avenue on the pedestrian way in front of the Parliament building, thus violating the norms of the law". This decision, too, leaves it unclear as to what constituted the violation of the norms.

Records of the proceedings show that according to patrol inspectors, at the time when D.Tsaguria, J.Jishkariani and I.Kordzaia stood on the pedestrian way, Rustaveli Avenue was blocked as Tbilisi City Improvement Service was carrying out special lighting-related works. According to patrol inspectors, there was no traffic movement in Rustaveli Avenue. Interestingly, they nevertheless concluded that the three persons standing on the pedestrian way seriously hindered the movement of pedestrians, thus violating the Law on Assemblage ad Manifestations. The court failed to consider this fact.

In the ruling delivered in respect of D.Tsaguria, factual circumstances or evidence are not even mentioned, as are evaluations by the judge. One can state that in terms of the content, the ruling does not contain any substantive part.

It is to be noted that during the examination of J.Jishkaruani's violation, his defence counsel G. Mosiahvili filed a motion requesting introducing in the case a video footage of the alleged incident and its demonstration in public. The judge dismissed the motion reasoning that its source was unknown. However, the petitioner explained that the video was filmed by journalists. The said video footage would have proved that D.Tsaguria, J.Jishkariani and I.Kordzaia had not committed any impugned violation.

The video footage available to PDO clearly shows that the movement of people was not hindered. The three persons were expressing their position. Besides, considering the location where they were arrested, one can safely state that the standing of three persons in about 30 metres from the Parliament building in the place with wide passage could in no way hinder the movement of people, the more so as the street was closed for transport.

The video clearly shows that the three persons did not block the pedestrian way; neither did they hinder the movement of people. Before they were arrested, they were sitting on stairs close to the pedestrian way and in now way hindered any movement.

In what concerns the stairs of the Parliament building, the video clearly shows that the three persons were sitting not on the stairs of the Parliament building, but on the stairs leading from the pedestrian way to the place in front of the Parliament building. This is further corroborated by court rulings, as two of them established that the participants of the action were staying in 25-30 metres from the Parliament building. Hence, it was simply not possible for them to violate the requirement of Article 7 of the Law on Assemblage and Manifestation that does not allow using stairs of building for assemblies and manifestations.

In what concerns the impugned violation under Article 173 of the Code of Administrative Offences, it is clear from the video that neither D. Tsaguria, nor his accompanying persons opposed or resisted the law enforcers. Incidentally, this was established later by the chairman of the appellate court. Hence, allegations of patrol officers concerning insubordination are not true.

This case demonstrates a host of problems encountered in the course of examination of cases concerning administrative violations by courts. Unreasoned decisions stem from superficiality of the proceedings. Every decision must be based on comprehensive, complete and unbiased examination of the case.

RECOMMENDATIONS:

To General Courts:

- **When examining cases, judges of general courts should consider judgments by the European Court of Human Rights (particularly, those passed on cases against Georgia) to prevent violations of human rights in future.**

To the Parliament of Georgia

- **The current Code on Administrative Offences is outdated both in terms of its content and systemically. It contains vague provisions concerning judicial proceedings, examination, the rights of the parties, etc. Despite several attempts by the Parliament to remedy these deficiencies through changes and amendments, it is virtually impossible to improve the Code. Often, impairment of the rights of citizens in proceedings on cases concerning administrative offences stems from the defects present in the law itself. Therefore, it is necessary to adopt a new Code on Administrative Offences.**
- **The Law of Georgia on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings must contain special provisions concerning failure by a judge to adequately reason judicial decisions (rulings, orders, judgements, decisions).**

Execution of Court Decisions

The obligatory nature of judicial decisions is provided by the supreme law – the Constitution of Georgia. Under Article 82 of the Constitution: "*Acts of courts shall be obligatory for all state bodies and persons throughout the whole territory of the country*".

In the later half of 2009, Public Defender was addressed by citizens, whose cases were decided by the court in their favour, with court decisions having taken effect, writs of execution issued, but enforcement proceedings either delayed or not initiated at all, contrary to the Law of Georgia on Enforcement Proceedings. Delay in enforcement proceedings was caused by failure of debtors to voluntarily execute the court decisions. Thereafter, the coercive enforcement procedure was started, but significantly delayed in time.

According to official data provided by the National Bureau of Enforcement – a legal entity of public law under the umbrella of the Ministry of Justice of Georgia, in the period between 1 July to 30 December 2009 enforcement bureaus – territorial units of the National Bureau of Enforcement, received in total 30 250 enforcement cases. The number of enforced cases for the same period stood at 21 758.

Enforced cases account for 71% of all cases referred for enforcement, which is 11% higher that the number of enforced cases for the same period of 2008.

PDO was informed that decisions of the European Court of Human Rights were not referred for enforcement to the National Bureau of Enforcement, thus no enforcement proceedings were performed in respect of this category.

Over the reporting period, the Public Defender's Office received applications concerning cases where debtors are public entities financed from the state budget that have indebtedness in respect to citizens or legal persons of private law in the form of unpaid wages, or are obligated by the court decisions to reinstate in office dismissed employees or issue new administrative enactments.

Since the Report of the Public Defender for the second half of 2008 provided detailed description of the problems involved in the payment of arrears by budget-supported organisations[99], attention in this report is drawn to lack of effective enforcement of court decisions that obligate a debtor public entity to issue a new administrative enactment in respect of a persons unlawfully dismissed from office. The process of enforcement of court decisions concerning reinstatement in office appears to be the most difficult one proceeding from its specifics. The problem arises where a debtor administrative body or an official fail to voluntarily execute a court decision that has taken effect and that obligates the debtor to issue an administrative enactment on reinstatement of the creditor in office.

[99] Report of the Public Defender for the second half of 2008, Chapter "Execution of Court Decisions"

In such cases court executors usually limit themselves to a written address requiring voluntary execution by public bodies or officials of the court decision and requirements put forth in the enforcement order. Court executors have no legal leverage at their disposal to demand from administrative bodies or respective officials that they issue an administrative enactment on reinstatement of the creditor.

It is to be noted that in such circumstances execution of the court decision depends on the official of the debtor administrative body who is mandated to issue a new individual administrative enactment. If the action cannot be performed by a third party, since the required action is dependent on the debtor's will alone, who would not perform the required action, under Article 87 of the Law on Enforcement Proceedings the debtor can be made subject to criminal liability.[100]

However, the respective norm of the law by its content is a penalty for a criminal offence and not a measure of coercive enforcement. Furthermore, this norm seems to be ineffective, since practice demonstrates that enforcement organs do not apply it. Therefore, in cases where a mandated official fails to voluntarily issue a new individual administrative enactment, as required by the court order, the court executive is left without any means to perform coercive enforcement, as the Law on Enforcement Proceedings has no provisions concerning such cases.

Difficulties involved in execution of court decisions falling within this category show that it is imperative to streamline legislation concerning enforcement of such decisions. Otherwise, creditors' rights will persistently be impaired and court decisions for redress will not be enforced.

RECOMMENDATION

- **It is necessary to introduce in the Law of Enforcement Proceedings a legal mechanism to enable the executor to perform effective coercive enforcement in case a debtor public body or other budget-supported organisation fail to voluntarily execute the court decision obligating them to issue a new individual administrative enactment.**

[100] Article 381 of the Criminal Code of Georgia

Constitutional Claims by Public Defender

Statistics

	I half of 2009	II half of 2009	Total in 2009
Cases deliberated by Constitutional Court	2	3	5
Decisions taken by Constitutional Court	2	2	4
Constitutional claims lodged by Public Defender	0	2	2
Claims taken into proceedings by Constitutional Court	1	2	3

In case of violation of human rights and liberties enshrined in Chapter 2 of Georgian Constitution by a Statutory Act or one of its provisions Public Defender is authorized to lodge constitutional claim with Constitutional Court. Public Defender shall enjoy similar authorization if, against the will of the voters a referendum is not convened or if Public Defender deems that holding referendum would be unconstitutional.

Public Defender is empowered with this right by Article 21 of the Law of Georgia "On Public Defender" as well as by Article 39 of Organic Law of Georgia "On Constitutional Court".

Public Defender actively exercises his legal right and appeals to Constitutional Court in order to assess constitutionality of different court rules.

According to Article 39 of Organic Law of Georgia "On Constitutional Court", a constitutional claim can be lodged if the rights and freedoms recognized by Chapter Two of the Constitution of Georgia are/might be infringed directly infringed upon. In other words specific facts of violation or direct threat are required in order to lodge the claim with Constitutional Court. In its decision of 5 November 2002 the Constitutional Court indicated that *...this Article shall rule out recourses to Constitutional Court on the basis of abstract control principle.*

The legislator and the court do not impose such restrictions to Public Defender. Public Defender in the capacity of a human rights institution can appeal to the Constitutional Court even if there is no specific fact of human rights violation.

During the period of June 1 to December 30 2009 the Constitutional Court of Georgia deliberated 3 constitutional claims by Public Defender.

- constitutionality of par. 2 of Article 22 of the Law of Georgia "On Social Assistance" with respect to Article 42 of the Constitution of Georgia;
- constitutionality of the words "if the disease was caused by violation of detainee's confinement regime" in part 2 of Article 165 of Criminal Procedure Code of Georgia with respect to par. 7 of Article 18 and par. 9 of Article 42 of the Constitution of Georgia;
- constitutionality of part 5 of Article 42 of the Criminal Code of Georgia with respect to Article 42 of the Constitution of Georgia;

Two of the deliberated claims have been satisfied and on the third one action was taken on the merits though the court has not passed the decision yet.

Below is more specifically on the decisions taken by Constitutional Court in second half of 2009:

Paragraph 2 of Article 22 of the Law of Georgia "On Social Assistance"

Constitutional Court of Georgia by its decision No. 1/2/434 of 27 August 2009 found par. 2 of Article 22 of the Law of Georgia "On Social Assistance" unconstitutional with respect to par. 1 of Article 42 of the Constitution of Georgia. The above provision of the Constitution provides for each individual's right to go to court and protect his/her rights and freedoms. According to arguable article, the socio-economic status assessment methodology, level established by the Government and the size of social allowances are inappealable.

Public Defender stated that the citizens' social protection is the obligation, not a good will of the State. The principle of welfare State creates an obligation of a State to solve the problems of the citizens of specific categories (personas affected by armed conflict, disabled, pensioners etc.) and provide social security to them.

It should be noted from the very beginning that the court was not unanimous in the motivational part of the decision. The positions of the judges divided evenly with regard to appealability of the rights to social welfare and social assistance, in particular whether it should be possible to lodge an appeal on issue the methodology, level and size provided by the Law of Georgia "On Social Assistance" in order to ensure these rights. Judges Q. Eremadze and B. Zoidze had divergences in this regard.

Special attention was paid to social and economic status assessment methodology both during the trial and in the constitutional claim.

The witness, invited to the trial (deputy director of social service agency) talked in detail about social and economic status assessment methodology, the level established by the Government and the size of social allowances. He stressed particularities of social and economic status assessment methodology. On the basis of this methodology the status of the families looking for living subsistence allowances is assessed. As a result their rating index is calculated and the allowance assigned. He also confirmed that the existing methodology is accurate for determining target groups but is not flexible for individual cases i.e. it can fix chronic poverty but cannot describe specific cases that are out of the context.

The methodology of assessing social and economic status evaluates beneficiaries on the bases of such data as sex, age, education, residence etc. Hence the court indicated that [… *cannot rule out differentiated approach and possibility of reasonable legal dispute with regard to the right to equal treatment]*. The Constitutional Court also explained that for specific cases the court of appropriate competence should decide whether the differentiated approach provided by the methodology satisfies the prohibition of discrimination. Constitutional Court showed the same approach to social and economic status level and social and economic situation in monetary terms.

The court found that the contested provision implies the threat of discrimination as it does not provide for the possibility of court appeal and specific assessments. Guided by International Pact on "Economic, Social and Cultural Rights" of 1966, the Court indicated that it is an independent right to enjoy social rights without discrimination.

The Court found that:

> ***Any act related to social protection, including the acts that determine social and economic status assessment methodology, amount of social allowance and the level, belong to acts governing the rights and should be appealable in the court in order to protect social security and assistance rights.***

Basic motivation which differs in the positions of judges is whether social security right should be recognized as the right. Discord opinion, attached to the Court decision reads:

> ***The contested norm, first of all influences social assistance and social security rights and creates the threat of their violation. That is what is crucial to recognize the norm unconstitutional. Also it is noteworthy that the claimant appealed to the Constitutional Court to solve the problem. According to existing legislation the court is obliged to take the decision (positive or negative) on all the issues raised in the claim and accepted for consideration on the merits of, regardless their complexity and difficulty.***

Taking into account that special emphasis in the appeal was put on the protection of the citizens' social rights, two problems are raised in the discord opinion:

a) Whether social assistance and social security are the rights provided by Georgian legislation;
b) Whether the contested norm is a threat to the protection of these rights.

Before answering the above questions the Court stressed so called "expensive character" of social rights and the caution that States show in the process of recognizing these rights. Within the framework of the given proceedings the Court did not discuss which are the rights recognized by the Constitution and which are not. The Court indicated that *[… the fact of recognition of social assistance and social security as rights by a range of international acts is sufficient formal basis for deeming them the rights and appropriate liabilities of the States. Hence, the Court finds that Georgia had recognized social assistance and social security the rights].*

In the same decision the Court indicated to the welfare State principle as described in the preamble of the Constitution of Georgia, which is not just declarative but creates liabilities of the State. *[…in general the welfare state principle serves first of all to preservation of security, human dignity and freedom. The essence of this principle is 1) creation of social security; 2) social justice; 3) minimum of subsistence; 4) general welfare of the society. Though, there is an international agreement on urgent measures and basic arrangements for the implementation of these principles, such as: 1) legal recognition of social rights; 2) providing basic subsistence (living) means in case of disability or poverty of an individual.*

As for the second problem raised by the Court, it is indicated in the decision that any inconsistency in the methodology, caused by error or dishonesty, may have an effect on the decision in favor or against the allowance for an individual on the verge of poverty. An individual, not deserving the allowance may happen to be among beneficiaries and vice versa, individuals, in need of assistance might be left out of the system. Proceeding from the above, the Court decided that the contested norm affects social assistance and social security rights.

Alongside with the liabilities of the State, the Court stressed that social rights, unlike political and personal rights, are not swiftly implementable. The State liability limits are also restricted. A *State does not have the liability to maintain people, to distribute material resources, all the more so to provide luxury to them. State liability is to create the environment that would promote self-realization of an individual. Additional commitments arise only in specific cases when an individual, due to circumstances beyond his control, cannot earn his living or his earnings are not subsistent* – explained the Court.

The same decision refers to the principle of separation of powers and the role of a court in this system.

As for the results following the decision, social and economic status assessment methodology has not been appealed. Though, the Agency for Social Services worked out a new system of assessment, envisaging certain changes. Social security rights chapter of this report will deal with the implemented changes.

the wording "if the disease was caused by violation of the detainee's confinement regime" in part 2 of Article 165 of the Code Criminal Procedure of Georgia

The Constitutional Court by its decision #2/3/423 of 7 December 2009 recognized the words *"if the disease was caused by violation of the detainee's confinement regime"* in part 2 of Article 165 of the Code Criminal Procedure of Georgia unconstitutional with respect to paragraph 7 of Article 18 and paragraph 9 of Article 42 of the Constitution of Georgia. The contested norm is not consistent with the constitutional principle of full compensation. According to the said norm illegally arrested individual would receive compensation for the damages therein only if it was caused by violation of the confinement regime.

The position of Public Defender is that an arrested person may be injured independently of the confinement violation; it may be caused by the fact of an individual being put into the jail. Unlawfully arrested individual may develop cardiovascular, neurological disorder or respiratory disease, or these diseases may exacerbate due to different factors, like stay in a confined space etc. The contested norm did not provide for compensation in such cases.

As a result of hearing on the merits, the Court decided that the damage should be fully compensated if a cause-and consequential link between the actions of public officials and the injury therein is established.

The Court indicated:

> *...the damage should be fully compensated. Such wording of a constitutional norm allows the legislator to narrow the space for free action, mainly to streamline procedural issues with constitutional requirements.*
>
> *Norms of the Constitution of Georgia shall not be interpreted so that the State fully or partly disavows when human rights are infringed and the victim is not effectively restored in his rights.*

The Court scrutinized the results of an arrest, especially of an illegal one:

> *Arrest is not something normal and routine for an individual. It is related with negative emotions and the stress, especially if the arrest is illegal or groundless. This may affect an individual's health, cause new disease or exacerbate the existing one. Physical injury may be caused just by stay in jail due to the situation there, confined space etc.* – reads the decision.

The Court found that the existing norm narrows range of the individuals, enjoying the right to compensation for injury as a result of illegal or groundless arrest. The principle of selection of who fall ill because of the violation of the confinement regime contradicts to the Constitution of Georgia. Paragraph 7 of Article 18 of the Constitution provides for the right to compensation for every arrested individual without exception. The contested norm also contradicts to paragraph 9 of Article 42 of the Georgian Constitution which clearly provides that everyone having sustained illegally damage by the state, self-government bodies and officials shall be guaranteed to receive complete compensation. This norm also rules out any exception with respect to subjects of the basic right.

The new Code of Criminal Procedure does not imply norms of similar content. According to the new Code the damage shall be compensated as provided by civil law. Still, the decision remains topical as it shall set the limits of compensation.

In addition to the above two decisions the Constitutional Court of Georgia approved a trial on two constitutional claims by Public Defender of Georgia:

- to recognize unconstitutional the words "licensee" in "s" sub-paragraph of Article 2, "aerial and orbital stations of satellite systems, cabling" in paragraph 4 of Article 38, also "with the use of areal stations or cabling of TV or radio broadcasting satellite systems" in paragraph 5 of Article 38, "licensee" in paragraph 3 of Article 75 and the first sentence in point 1 of Article 41 of the Law of Georgia "On Broadcasting" with respect to first and fourth points of Article 24 of the Constitution of Georgia;

Also,

- to recognize unconstitutional point 2, 'b' and 'c' sub-paragraphs of point 3 of Article 2, points 2 and 3, the first sentence of paragraph 4 of Article 3, points 1 and 11 of Article 5 of the Law of Georgia "On Military Reserve Service" with respect to Article 14 and paragraphs 1 and 3 of Article 19 of the Constitution of Georgia.

Besides the above-mentioned, Constitutional Court deliberated two Constitutional claims by Public Defender during the period under report:

- constitutionality of sentences 2, 3, 4, 5 and 6 in point 10 of Article 129^3 of the "Election Code of Georgia" with respect to Article 41 of the Constitution of Georgia;

and

- constitutionality of the words "living in Georgia" and "Georgian" (continued with "legal persons") in sub-point 'a' of point 1 of Article 39 of Organic Law of Georgia "On the Constitutional Court of Georgia" with respect to paragraph 1 of Article 42 of the Constitution of Georgia.

2009

Law Enforcement Bodies and Human Rights

Ministry of Interior

The main function of police is to ensure the citizens' security and orderliness. In compliance with the Georgian "Law on Police", police shall *"protect the legitimate rights of citizens while on duty"*.[101] Each citizen should be protected from illegal acts. Thus it is important that a police officer performs his duties properly. It is true that recently the trust in police has significantly raised, but Public Defender's reports raise the problems based on the complaints that reach the Public Defender's Office or on the correspondence received from Ministry of Interior.

During the period under report there have been instances of human rights violations on the side of law enforcement personnel while on duty.

The present chapter deals with protracted/inefficient investigation, inadequate response to the information on an offence, inhumane/degrading treatment of individuals during the arrest, as well as issues related to violation of procedural criminal legislation and code of ethics of the police by law enforcement personnel during the investigation. These are the issues permanently covered in Public Defender's report and second half of 2009 is not an exception.

Protracted/inefficient investigation

During the period under report citizens, in their complaints to Public Defender's Office, often indicated that investigative authorities deliberately protracted preliminary investigation on criminal cases, taking necessary investigative steps, initiating prosecution against concrete persons and their appearance in court. These issues have been raised in all Public Defender's reports but vast number of complaints on protracted investigation shows that it remains problematic in second half of 2009.

It should be noted that most of the applications on protracted investigation refer to the cases where timely and efficient investigation is the State's positive obligation (right to life, torture and inhumane treatment). There are other applications on protracting preliminary investigation on property right cases.

Article 271 of Code of Criminal Procedure of Georgia provides that "preliminary investigation shall be carried out within reasonable timeframe not to exceed the prosecution limitation set forth by criminal law for appropriate offence".

Proceeding from capacious content of the above norm terms of investigation is not strictly limited but on the other hand it will not be possible to establish an objective truth, to stop crime and to restore order in society if criminal cases remain uninvestigated through years.

[101] Georgian "Law on Police", point 1 of Article 8

It should be noted that according to applications lodged with Public Defender's Office preliminary investigation on most criminal cases has been on for years (in some cases more than 10 years).

Proceeding from sub-point 'e' of Article 18 of Organic Low of Georgia "On Public Defender", Public Defender cannot view the case file until the end of preliminary investigation. So in order to respond to the citizens' complaints on protracted investigation Public Defender's Office can only request general information from investigatory body. The responses to such inquiries are stereotyped - a range of investigatory steps have been taken on a certain case, including different examinations and preliminary investigation is going on. (Sometimes, though seldom this information may be accompanied by general witnesses).

As the law does not allow Public Defender to view case files it is difficult to establish whether the protraction of investigation is caused by objective reasons or inefficient work of specific investigators.

For example applicant V. Tsertsvadze in his complaint submitted to the Public Defender's Office wrote that on 12 August 2006 Imereti main police headquarters of MoI Patrol Police Department initiated a preliminary investigation on the fact of his son's death resulting from traffic accident. According to him the investigation was unreasonably protracted. Prosecution was not initiated against the offender though there were enough evidences of his guilt.

European Human Rights Court in its decision on "Rantsev v. Cyprus and Russia" explained that the state is responsible for an efficient investigation. The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. For an investigation to be effective, the persons responsible for carrying it out must be independent from those implicated in the events. This requires not only hierarchical or institutional independence but also practical independence. The investigation must be capable of leading to the identification and punishment of those responsible. A requirement of promptness and reasonable expedition is implicit in the context of an effective investigation. After specific facts become known to investigative bodies they should initiate activities within their competence.[102]

Inadequate response to the information on a crime

There are the complaints to the Public Defender, alongside with those on protracted investigation, where the citizens complain on not initiating investigation on evident signs of a crime.

In one of the complaints, M. Levishvili's defense lawyer stated that his client had been permanently assaulted physically and verbally by her mother-in-law and sister-in-law on the basis of her ethnicity. The defender and his client applied to Tbilisi Gldani-Nadzaladevi 5th Police station to initiate preliminary investigation on the facts of persecution and physical assault on the basis of ethnicity. The applicant indicated in her complaint that she had been repeatedly assaulted by her husband's relatives on the bases of her ethnicity, which was also confirmed by her father-in-law's and family friends but the police did not initiate preliminary investigation. The police contented itself with verbal warning and the complainant was advised to sue her husband's relatives.

In compliance with article 261 of Criminal Procedure Code of Georgia *"An investigator or a prosecutor are obliged to initiate investigation within their competence upon receipt of information on an offence"*. The above norm obliges law enforcement bodies to initiate preliminary investigation on receipt of information about signs of a crime.

Pursuant to Georgian "Law on Police" one of the police tasks is "*to take appropriate measures to prevent and eliminate possible threat of crime or other offence, to reveal such acts, investigate, to detect and arrest the suspect or/ and the defendant as well as to work out the tactics and strategy of combating crime*".[103]

[102] Rantsev v. Cyprus and Russia. Decision # 25965/04 of 7 January 2010 of European Court of Human Rights

[103] Article 2 of Georgian "Law on Police"

It will be impossible to avoid or eliminate offence without efficient and appropriate investigation of criminal cases. Thus, appropriate and individual approach to each case is important.

Inhumane/degrading actions during the arrest of suspects

Pursuant to Article 17 of the Constitution of Georgia, *"Honour and dignity of an individual is inviolable. Torture, inhuman, cruel treatment and punishment or treatment and punishment infringing upon honour and dignity shall be impermissible. Physical or mental coercion of a person detained or otherwise restricted in his/her liberty is impermissible."*

European Convention on Human Rights and Liberties also provides for impermissibility of torture and inhuman and degrading treatment. According to Article 3 of the Convention *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*.

A police official while on duty should show respect to a person's dignity and honor, his fundamental rights and liberties. Paragraph 1 of Article 4 of Georgian "Law on Police" provides as follows: *"Police activities is based on the principles of legality, respect for dignity and honor of an individual, humanism and publicity"*.

The above legislative regulations guarantee that an individual shall be protected from torture, inhuman, cruel and other degrading treatment in all circumstances, including in the arrest.

Use of exceed power during the detention process was an issue about 5-6 years ago. The problem is not systematic today but is not totally eliminated. In order to prevent further violations it is important that all individual cases are elicited.

In the second half of 2009, Public Defender's office came across several facts of inhuman and degrading treatment of individuals during the detention process. The report for the first half of 2009 said about the increase of complaints on the exceeding of power by the police in West Georgia. The tend remains in second half of 2009.

Kutaisi #2 enforcement institution of Ministry of Corrections and Legal Assistance of Georgia informed Public Defender's Office that prisoner K.Ormotsadze entered the institution with various injuries.

On 7 August 2009 Public Defender representatives talked to K. Ormotsadze who communicated that on 10 July 2009 he was arrested by Kutaisi 4th police department officers. Throughout the night he was kept in 3 m2 cell of Kutaisi 4th police department duty room where he underwent physical and verbal coercion. As a result he needed urgent medical care which was provided at temporary detention isolator of Kutaisi later on.

Presently Kutaisi District Prosecutor's Office is conducting preliminary investigation into the torture of K. Ormotsadze on the grounds of sub-paragraphs "a", "b" and "e" of part 2 of Article 144[1] of the Criminal Code of Georgia.

The European Court for Human Rights in the case "Kolibaba v. Moldova" explains that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment. It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention.[104]

On 30 September 2009 Kutaisi Police arrested B. Ejibia. On 1 October Public Defender's representatives talked to the detainee, who communicated that he was arrested on 30 September 2009 by about 15 men dressed in civilian clothes. They used force during the detention and coerced him verbally and physically as a result of which the detainee lost consciousness.

[104] Case of Colibaba v. Moldova, the decision of 23 October 2007 of the European Court for Human Rights and Fundamental Freedoms, Application # 29089/06

Public Defender's representatives at the meeting with B. Ejibia noticed different injuries, in particular hemorrhage and scratches on the left side of his face, left and right eyebrows, and scratches on the right elbow, extensive damage on the left side of his abdomen, multiple lesions and redness in the lumbar area, injury of left knee. The detainee suffered of acute headache, also pains in the neck and the knee, his left side ached and it was hard for him to move around. According to the detainee he had nausea and dizziness before being put in temporary detention.

Later the detainee was put in Imereti regional hospital where he was diagnosed with traumatic brain injury, concussion, minor bruises on the face and left knee.

Pursuant to Article 11 of Georgian "Law on Police" *"a policeman is allowed to use force,… in order to ensure personal or/and the citizens' security, to prevent administrative or criminal offence, to arrest the offender or administrative law violator, if nonviolent actions do not ensure fulfillment of his obligations imposed by law."*

In our case there were no circumstances legally allowing the police to use force. The information provided by the detainee and the eye-witnesses also makes it obvious that there was no need of use of force or exceed power. According to available information B. Ejibia resisted only verbally. Use of force and exceed power can be also corroborated by medical records.

In "Gohan Ildirim v. Turkey" case European Court for Human Rights explains that, where an individual is taken into custody in good health but is found to be injured by the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused and to produce evidence casting doubt on the victim's allegations, particularly if those allegations were corroborated by medical reports. Failing which, a clear issue arises under Article 3 of the Convention.

In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". Where the events in issue lie wholly, or in large part, strong presumptions of fact will arise in respect of injuries occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[105]

On 15 December 2009, the Public Defender's representatives talked to the accused L. Magradze, who communicated that on 28 November 2009 he was detained by MoI Special Operations Department staff. The law enforcers put plastic bag on his head and took him in an unknown direction. According to the applicant, he had been beaten for 4 hours, tried to strangle strap, insulted verbally, threatened with torturing family members. They continued to beat L. Magradze in the MoI building. According to him he had injuries, mainly bruises on the throat, ear and near the eye and scratches in lumbar area resulted from the torture.

According to European Court for Human Rights case law the Convention, besides imposing negative obligations on the States not to deprive anyone of his life or not to subject anyone to torture, inhuman or degrading treatment or punishment it also imposes positive obligations to hold speedy and efficient investigation on possible facts of life threatening or/and torture or/and inhuman or degrading treatment and to take appropriate action against perpetrators.

The above facts illustrate that use of excess power by law enforcers continued to occur in second half of 2009. The force used by police during the arrest should be no more than absolutely necessary in order to affect a lawful arrest. It is important that Ministry of Interior undertake effective measures to suppress such facts.

It should be noted that Public Defender always contacts the appropriate authorities and recommends them to suppress human rights violations and start investigation on each specific case. It is important that appropriate authorities timely and adequately respond to these recommendations.

[105] Case of Gökhan Yildirim v. Turkey, the decision of 23 February 2010 of the European Court for Human Rights and Fundamental Freedoms, Application # 31950/05

Procedural violations identified during investigative actions

In their complaints submitted to Public Defender, citizens often indicate to violation of criminal law procedure by investigators of internal affairs while exercising official authority.

The violations might be mechanical error of an investigator but they question transparency and impartiality of the investigation.

In G. Gogichaishvili criminal case Public Defender found that a suspect appeared in two investigations at the same time.

G. Mtsariashvili was interrogated as a suspect in the above case on 11 November 2008 at Kareli district police building. He gave evidence of keeping at home mobile phones stolen from T. Ioramashvili's shop. At the same time the same investigator conducted a search in the house of G. Mtsariashivli in the presence of the latter.

The case file materials confirm that the interrogation of G. Mtsariashvili and the search at his house were conducted at the same time, though it is impossible that one person participates in two different investigative actions simultaneously.

Criminal procedure was violated on 15 December 2009 during the search in "Inclusive" foundation building.

According to search witnesses law enforcers found some indeterminate material during the search, but they did not seal it in the presence of witnesses. It should be noted that only witnesses signed the search protocol on the spot. They also signed the sealed paper during investigatory actions. According to P. Sabelashvili he had not signed any document in the office. He signed the protocols of investigative actions, as well as the sealed paper at the premises of Tbilisi 3rd police station. Search witnesses did not see how police officials sealed the seized during the search material.

Part 8 of Article 323 of Criminal Code of Georgia provides that "all the items or documents found during the search shall be presented to participating in the investigation individuals and be detailed in the search protocol, if possible wrapped and sealed prior to their seizure. Along with the seal the date of seizure is put on the wrapped items; signatures of participating in investigative actions persons should also be put".

Accordingly, Article 323 of Criminal Procedure Code of Georgia was violated when the items seized during the search at "Inclusive" foundation were not sealed in the presence of search witnesses.

It is noteworthy that the girls present at "Inclusive" foundation during the search underwent personal inspection. The Public Defender's personal representatives were told that the girls were taken to the toilet one by one and inspected there. In compliance with "d" sub-point of part 3 of Article 325 (in case there are sufficient grounds to consider that an individual present at the search is hiding the target item or document) police officials in this case were entitled to a personal inspection though the investigator should have passed appropriate decision on personal inspection and drafted appropriate protocol, which was not done.

Code of Ethics

In accordance with Georgian "Law on Police" police officials while on duty must *"strictly abide by professional ethics when communicating with citizens"*[106]

Code of Police Ethics provides for general principles regulating police officers' communication with citizens as well as with different organizations and institutions. The Code also provides liability for violation of the Code. Code of Police

[106] Article 8 of Georgian "Law on Police"

Ethics is the expression of the will of all police staff to observe the principles of legality, fairness and humaneness while on duty and after working hours and to behave tactfully.

In accordance with Code of Police Ethics "the police personnel shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination, ensure everyone's equality before the law irrespective of race, gender, language, religion, political or other views, nationality, ethnicity and social identity, education, property status or title, domicile or any other personal data."[107]

The Code enshrines that the policeman shall realize that official responsibility implies not only upholding the law and the Constitution but also the responsibility for observing moral, ethical and other values.[108]

The applicants in their complaints submitted to the Public Defender often indicate to cynical, humiliating and insulting behaviour of the police. Cases are frequent when police officers insult verbally the detainee, which is categorically impermissible. Honor and dignity shall be protected in all circumstances. It is first of all the police obligation to treat detainee humanly.

In the previous chapter we talked about the violation of criminal procedures by the police during the search at "Inclusive" foundation office. This chapter will deal with cynical and humiliating treatment of detainees in the issue case. As proceeds from T. Japaridze's and E. Agdgomelashvili's explanation police kept asking them about their sexual orientation. Their answers were usually followed by humiliating, homophobic and cynical comments.

According to Paata Sabelashvili he was convoyed by two guards from the court to prison #8. On the way one of the guards, in the presence of another convoyed detainee, was insulting him and scoffing at him because of his sexual orientation. Later, that another detainee disseminated the information about his activities and sexual orientation among other prisoners.

Police personnel, in carrying out their activities should respect the individual's fundamental rights and freedoms. Police personnel should act with integrity and respect towards the public, be calm and balanced.

It should be noted that the Public Defender referred the above fact to the Minister of Interior of Georgia for the response within his authority. On 21 January 2010 the Ministry of Interior advised us that "for the failure to comply with sub-paragraph "g" (*misbehavior discrediting the institution or its personnel, violation of moral and ethic norms whether on duty or after working hours*) and sub-paragraph "e" (*unbecoming a police officer action that undermines credibility of the system of internal affairs*) of Article 2 of "MoI Personnel Disciplinary Regulations" three police officers have been reprimanded" in compliance with sub-point "g" of Article 3 of "MoI Personnel Disciplinary Regulations".

The above example is a step forward on MoI side but more effective measures are needed. Police misbehavior should be given appropriate assessment timely and adequately in order to prevent further violations. This will strengthen public order and raise credibility of law enforcement bodies.

RECOMMENDATIONS:

To the Parliament of Georgia:

- **Introduce appropriate amendments to Criminal Procedure Code to shorten the term of pre-trial investigation.**

To Ministry of Interior of Georgia:

- **Ensure training of MoI personnel in order to eliminate excess power application towards detainees.**

[107] Article 3.3 of the Code of Police Ethics

[108] Article 2.4 of the Code of Police Ethics

Prosecutor's Office

The previous chapter dealt with the problems related to delaying investigation (inefficient investigation) on criminal cases by police investigators. It should be noted that it is not just MoI problem.

In compliance with Criminal Code and the Law of Georgia "On Prosecutor's Office" the Prosecutor's Office shall carry out prosecution. In order to ensure implementation of this function Prosecutor's Office shall carry out procedural guidance at pre-trial investigation stage.[109]

Hence the prosecutor should appropriately supervise the investigation process and provide guidance where necessary.

It should be noted that delaying investigation (inefficient investigation) is not just MoI problem but characterizes investigation department of Prosecutor's Office as well.

In compliance with Article 62 of Criminal Procedure Code of Georgia the offence committed by a police officer falls into the competence of investigation department of Prosecutor's Office.[110] Accordingly, it is Prosecutor's Office prerogative to launch investigation on the facts of excess power application by police officers.

The excess power application by public servants during the detention process was covered in the report of the Public Defender for the first half of 2009. As the facts continue to occur in second half of 2009 we deemed it appropriate to draw the attention to this problem in the present report too.

The previous chapter dealt with the examples of excess power application by police officers during the detention. Here we would like to talk about inefficient investigation of these facts.

The complainants to Public Defender's Office often indicate to physical coercions applied to them during the detention and inefficient investigation on the fact. It should be mentioned that in such cases identification and punishment of those responsible, their persecution and raising the problem of their liability usually is not initiated regardless the testimony of victims and witnesses.

European Court for Human Rights in the case "Bati and others v. Turkey" reiterates that a requirement of promptness and reasonable expedition is implicit in the context of inhuman treatment. A prompt response by the authorities in

[109] Code of Criminal Procedure, Article 55; Law of Georgia on "Prosecutor's Office", Article 3

[110] Code of Criminal Procedure, Article 62

investigating allegations of ill-treatment is essential in maintaining public confidence in law enforcers' adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.[111]

European Court for Human Rights, in the case "Garibashvili v. Georgia" found that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention (to secure to everyone within their jurisdiction the rights and freedoms defined in Part one of this Convention), requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment 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.

The Court considered that the applicant's allegations made before the domestic authorities contained enough specific information (the date, place and nature of the ill-treatment, the identity of the alleged perpetrators, the causality between the alleged beatings and the asserted health problems) to constitute an arguable claim in respect of which those authorities were under an obligation to conduct an effective investigation.[112]

Investigation on the facts of excess power application to the detainee is not usually launched, regardless enough evidence provided by the detainee to investigative body. Investigation on such cases is, as a rule, either unreasonably protracted in time or closed.

Identification of those responsible in such cases is essential in order to avoid them in the future.

The Public Defender not once applied to Prosecutor's Office demanding launching investigation on excess power application.

On 9 September 2009 the Public Defender requested the Prosecutor General of Georgia to resume preliminary investigation into the murder of Zurab Vazagashvili and Alexander Khubulov through excess power application by police officers on 2 May 2006 in Tbilisi, near tennis courts. Public Defender has not received any information on Prosecutor General's decision.

On 16 September 2009 the Public Defender requested the Prosecutor General of Georgia to cancel the decision of 13 November 2004 of Samegrelo-Zemo Svaneti regional Prosecutor's Office on failure to prosecute police officers participating in anti-criminal operation in Etseri village on 24 March 2004 and launch investigation into the murder of Evgeni and Omekhi Aprasidzes.

The information on the above issues was last requested by the Public Defender from the General Prosecutor's office of Ministry of Justice on 28 January 2010, the response, though, is still pending.

RECOMMENDATION:

- **Prosecutor General of Ministry of Justice should ensure appropriate activities to properly and effectively investigate into all the facts of excess power application during the arrest to prevent such incidents in the future.**

[111] Bati and others v. Turkey. The decision of 3 June 2004 of the European Court for Human Rights and Fundamental Freedoms. Application No. 57834/00

[112] Gharibashvili v. Georgia. The decision of 29 October 2008 of the European Court for Human Rights and Fundamental Freedoms. Application No. 11830/03

The Right of Assembly and Manifestations

The second half of 2009, as distinct from its first half, has not been an active period in terms of assemblies and manifestations rights. There were no massive or lengthy manifestations. Hence, in this context, the situation in the country was stable, and, in effect, Public Defender received practically no applications as regards this right. The only case examined by the Public Defender was the administrative detention of Dachi Tsanguria, Jaba Ioseliani and Irakli Kordzaia on 23 November 2009 for alleged breach of regulation on holding assemblies and manifestations.

The report period was quite prolific in terms of legislative changes. On 17 July 2009, amendments were introduced into the Law on Assembly and Manifestations, the Law on Police and the Code of Administrative Offences of Georgia. Public Defender's previous report provided detailed review of the changes introduced into the Law of Georgia on Assembly and Manifestations. At this stage, we deem it important to focus attention on legislation in general, with particular emphases on those norms, which, in our view, fail to comply with the International Law, Constitution of Georgia and established standards.

1. Acting legislation pertaining to the Right of Assembly and Manifestations

At the level of national legislation, the Constitution of Georgia, together with the Law on Assembly and Manifestations, governs relationships pertaining to the right of assembly and manifestations. Besides, some norms are contained in the Code of Administrative Offences and the Law on Police. As mentioned above, on 17 July 2009, a whole number of legislative changes were introduced into the acts related to assembly and manifestations. In parallel, the Parliament of Georgia requested the assistance of the Venice Commission in respect of recently adopted amendments. In due time, two members of the Commission, Ms. Finola Flanagan and Mr. Bogdan Aurescu, prepared comments regarding the Law on Assembly and Manifestations. These comments, once again, attested to certain shortcomings of the national legislation pertaining assembly and manifestations. Later, on 1 March 2010, Georgian authorities submitted a further set of draft amendments to the law of Georgia on Assembly and Manifestations to the Commission for assessment. On 12-13 March, the Commission adopted an interim opinion on the above draft amendments.[113]

1.1. Article 3, subparagraph a, of the Law of Georgia on Assembly and Manifestations provides the following definition of *assemblage* as "a gathering of a group of citizens indoors or outdoors or a public meeting to express solidarity or protest". *Manifestation*, according to subparagraph b of the same law is "public demonstration, mass public rally, or a march in the street to express solidarity or protest as well as a march with the use of posters, slogans, banners, and other visual tools";

[113] **CDL-AD(2010)009** Interim Opinion on the Draft Amendments to the Law on Assembly and Manifestations of Georgia adopted by the Venice Commission at its 82nd Plenary Session. Venice, 12-13 March 2010

Article 25 of the Constitution of Georgia guarantees the right to hold a public assembly and manifestation without prior permission to every individual (except those listed in Subparagraph 1.2). Hence, the Constitution does not make the exercise of this right conditional on any circumstance or a requirement (e.g., goal, motive, etc.). The Law, in contrast to the constitutional norm, establishes a special purpose for the assemblage – either solidarity or protest. Accordingly, any gathering that, in essence, is an assemblage or manifestation, but does not pursue the purpose of expressing solidarity of protest, will be left beyond protection.

In addition, it must be noted that the definitions of assemblage and manifestations are rather indistinct. They both contain synonymous words that are, in effect, identical. For instance, as already mentioned, the definition of manifestation reads:

a) demonstration of citizens;
b) mass public rally;
c) march in the street to express solidarity or protest;
d) march with the use of posters, slogans, banners, and other visual tools.

The above-applied terms are synonymous and are, in fact, impossible to distinguish from each other.

1.2 Pursuant to Paragraph 2 of Article 5 of the Law on Assembly and Manifestations of Georgia, "citizens under 18 years of age and persons who are not citizens of Georgia shall not have a right to act as such responsible persons".

According to Article 47 of the Constitution of Georgia, "Foreign citizens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law". As per Article 25 of the Constitution, everyone has the right to public assembly. This article allows no restriction by citizenship. As regards the exception provided in Article 47, it only imposes restriction on political activity of foreign citizens and stateless persons. In particular, Article 27 reads: "The state shall be entitled to impose restriction on the political activity of citizens of a foreign country and stateless persons".

This regulation shall not become an obstacle for foreign nationals and stateless persons residing in Georgia to express their position in response to the developments both in Georgia and in any other country.

In general, as already pointed out, Article 27, entitles the authorities to impose a restriction on the political activity of foreign nationals and stateless persons in Georgia. However, this restriction should be commensurate to its purpose.

According to the explanation by the Constitutional Court, "the legislator is entitled to restrict the enjoyment of the right to freedom of assembly only to secure protection of another legal good of equal value on the condition of strict adherence to the principle of proportionality."[114]

Article 14 of the Constitution of Georgia provides that *everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.*

Although Article 14 of the Constitution emphasizes the principle of equality irrespective of nationality, yet the Court deemed it necessary *to provide a rigorous explanation of this fundamental norm/principle to understand its essence. Not only does Article 14 of the Constitution of Georgia establish the fundamental principle of equality before the law, but it also recognizes the fundamental constitutional principle of equality vis a vis the law. It aims at securing equality before the law and prohibits the treatment of the essentially equal individual as unequal and vice versa. The listing of grounds of discrimination contained in this article, at a glance, may look exhaustive, at least grammatically. Nonetheless, the intent of this norm is of a much larger scale than just prohibiting discrimination by the limited list of grounds it contains.*[115]

[114] See Constituiontal Court decision of 05 Novemebr 2002;
[115] See decision of the Constitutional Court of 31 March 2008;

Organizing assemblies and manifestations differs distinctly from such political activities as participating in elections (through exercising active and/or passive election rights). Regardless of the political nature of an assembly or manifestation, a non-Georgian national has just as much right to plan and conduct assemblies and manifestations as Georgian national. Just arrangements in organizing an assemblage, even though politically motivated, may not possibly pose a threat to the state security, territorial integrity, etc. All the more so, when such an assemblage is not politically motivated.

In this connection, it will be worthwhile to cite here the opinion of the Venice Commission member, Mr. Bodgan Aurescu, who states that the law should provide for the possibility for non-citizens to be participants or among the organizers of assemblies and manifestations. In addition, according to the international standards on the matter, the Law may also include a reference to the possibility of children and persons without full legal capacity other than children to be among the organisers, under certain conditions (consent of the parents or legal guardians).[116]

1.3 Article 9 of the Law of Georgia on Assembly and Manifestations bans the holding of assemblies and manifestations in certain buildings and within a 20-meter radius of their entrance. The said Article provides the list of the buildings/institutions covered by this restriction.

Article 9 established a dual restriction. Firstly, it refers to the prohibition of assemblies and manifestations inside the listed buildings, and secondly, it bans the holding of assemblies and manifestations within a 20-meter radius of their entrance. As regards the first instance, the restriction serves the purpose of providing normal conditions for the operation of enterprises and institutions, and even more so of state authorities and, therefore, is legitimate. As regards the so-called "20-meter rule", in many instances, this strips any sense from holding a meeting or procession, inasmuch as observing such a condition in a densely spaced area will make the right practically inexercisable .

Subparagraph j of Article 9.1 of the same law, forbids holding an assemblage or manifestation inside and within 20 meters of "special operation safety regime enterprises, institutions and organizations or those having armed guards".

We deem it untenable to ban assemblies and manifestation at special operation safety regime enterprises, institutions and organizations. It may well be that the legislator's reasoning in imposing such a ban stems from the presence of armed guards and/or special regime. However, bearing in mind that the right to assembly and manifestation implies a public assembly without arms, such a reasoning will be precarious. Apart from this, guard services nowadays offer armed protection to any physical or legal person. Hence, such a restriction will encompass the majority of buildings. This, in effect, leads to a disproportional restriction of the right.

In respect to the 20-meter radius restriction, Bogdan Aurescu notes that this prohibition as excessive. Pursuant to OSCE / ODIHR Guidelines on Freedom of Peaceful Assembly (Para 83), the blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies.[117]

According to the Venice Commission rapporteur, Finola Flanagan, Article 9 of the Law of Georgia on Assembly and Manifestations represents a significant and blanket restriction on assemblies on those parts of the public thoroughfare most likely to be sought to be used by those wishing to demonstrate. This provision does not take in due consideration the circumstance that, in order to have a meaningful impact, demonstrations often need to be conducted in certain specific areas in order to attract attention.[118]

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116 Comments on the law on Assembly and Manifestations of the Republic of Georgia by Mr. Bogdan Aurescu, Opinion No. 547 / 2009, <*http://www.venice.coe.int/ docs/2009/CDL(2009)153-e.asp*>, para.15

117 Ibid, para. 6

118 Comments on the law on Assembly and Manifestations of the Republic of Georgia by Finola Flanagan, Opinion no. 547 / 2009, < *http://www.venice.coe.int/docs/2009/CDL(2009)152-e.pdf*>, para.23

As already noted, in March 2010, the Commission was requested to review the submitted draft amendments to the law of Georgia on Assembly and Manifestations. These latter introduce a novel formulation of Article 9, which no longer infers a blanket ban. And yet, the Article retains the list of those buildings near which – within 20 meters of the entrance - it is prohibited to hold an assembly or manifestation. The Venice Commission assessed these changes as positive and representing an important improvement of the law[119].

1.4 Paragraph 3 of Article 11 of the Law on Assembly and Manifestations bans the deliberate disruption of the movement of transport, while Paragraph 11.1 prohibits the blockage of thoroughfares by participants of assemblies, unless the block is an inevitable result on account of the number of participants.

According to Article 25 of the Constitution, "The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare". The above clearly indicates to the right of a group of individuals, upon notification of the authorities, as stipulated by the law, to hold an action on a public thoroughfare irrespective of their number. This constitutional provision does not only protect the right to hold a procession, but also the right to express one's protest by way of blocking the thoroughfare, without reference to the number of protesters.

The Venice Commission expert, Finola Flanagan, criticizes the above restriction. According to her, the use of public space by participants of public assemblies is as much legitimate as the use of these sites for routine purposes; and, hence, a balance must always be struck between the interests of citizens who wish to hold a meeting or procession and the interests of citizens whose right of passage is affected by that meeting or procession[120].

European Court of Human Rights in the case *Oya Ataman v. Turkey* observed that any demonstration in a public place might cause a certain level of disruption to ordinary life, including disruption to traffic. 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".[121]

In the above case, ECtHR, found no violation in the blockage of the road, even though the number of protesters was not sufficient to warrant the blocking of the road.

The Court held a similar position in regard to protest rallies held in pedestrian and vehicular parts of the road in the cases of *Balcik and Others v. Turkey* [122] and *Nurettin Aldemir and Others v. Turkey*[123].

According to the explanation provided by the Constitutional Court of Georgia ",[...] *interference with rights should not merely be justified by the pursuit of a certain purpose, but it should be conditioned necessary for a democratic society . [...]*"[124]

While imposing a restriction on a right, the legislator shall look into the extent to which the proposed restriction is necessary/proportional for the pursuit of a certain purpose/interest it intends to protect, and whether the legal goods placed opposite each other are counter-balanceable in value. In this case, two interests clash with one another: a) that of a group of individuals wishing to make their position heard by way of blocking a thoroughfare, and b) individuals that may have their routine way of life disrupted due to the event. Apparently, this latter cannot possibly be used as an excuse to restrict a right guaranteed by the Constitution. Those willing to use transport to get to their destination may take alternative routes. Even more so, that paragraph 5 of Article 111 of the Law on Assembly and Manifestations obliges the local government bodies to divert the route of transport movement, when required.

119 Interim Opinion On The Draft Amendments to the Law on Assembly and Manifestations of Georgia, Opinion no. 547/2009, < *http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.asp*>, para.17

120 Ibid: para.28

121 ***Oya Ataman v. Turkey*, no. 74552/01,** §§ 38-42, ECHR 2006

122 Case of BACIK AND OTHERS v. TURKEY Application no.25/02

123 Case of NURETTIN ALDEMIR AND OTHERS v. TURKEY 18 December 2007;

124 See Judgment of the Constitutional Court of 05 November 2002;

2009

Notably, Paragraph 1 of Article 111 contained in the package of amendments submitted to the Venice Commission for review, is no longer a blanket prohibition. Besides, the newly included Paragraph 3 is a novelty that introduces an individual approach principle. In particular, where the blockage of thoroughfares is not caused by the numbers, the local government – or in special cases, the Government of Georgia – takes decision on restoring the movement of transport on case-by-case basis, with due account of the existing circumstances and public interests[125].

Public Defender welcomes the above-proposed amendment and hopes that the formulation contained in the package of amendments will be duly transposed to the law.

1.5 Article 174[1] of the Code of Administrative Offences disallows the holding of manifestations and rallies in the territory adjacent to the place of residence of a judge or within 20 meters from it. This norm is obscure. In part:

a) What is the point from which to measure the distance from the judge's house to determine the area where an event cannot be held;
b) Does this article exclusively prohibit holding an event by a judge's place of residence, when the event in question is directed against this particular judge, or does it impose a ban on all events, including those where the venue, by coincidence, happens to be near a judge's place of residence. By the same token, the Article contains no specific purpose justifying why the interest of a judge should be placed above other individuals' right of assembly or manifestation or, merely, of their freedom of expression.

1.6 The 90-day long administrative imprisonment.

Judging by the information at Public Defender's disposal, the situation in a number of temporary detention isolators remains highly critical across the country. Correspondingly, the newly introduced amendment to Georgia's Administrative Code extending the maximum length of administrative imprisonment to 90 days is hardly tenable.

As pointed out many a time, the right to assembly and manifestations is not an absolute right and may be subject to restriction for the sake of attainment of certain purposes, and under certain circumstances. These certain purposes and certain circumstances are formulated based on the Constitution of Georgia, international agreements and court practice. Hence, it is essential that the existing restrictions should serve well and be proportional to the attainment of a concrete legitimate purpose. Not only is the State responsible for securing the holding of an event peacefully, but it shall refrain from an unreasonable intervention.

2. Based on Article 12 of the Organic Law of Georgia on the Public Defender, the Public Defender started an independent examination into the case concerning the halting of a peaceful assembly of citizens Dachi Tsaguria, Jaba Jishkariani and Irakkli Kordzaia in front of the Parliament building on 23 November 2009, and their detention. Notwithstanding the fact that this case has been the only one of its kind in respect of the entire report period, it deserves special mention. There are several important problems to be pointed out in this regard.

On 23 November 2009, law enforcement officers arrested members of the *7th of November Movement*, Dachi Tsaguria, Irakli Kordzaia and Jaba Jishkariani.

As indicated in the administrative detention protocols, the person in question stood at a distance of 25-30 meters from the Parliament entrance and, hence, violated the law on manifestations. He failed to produce a relevant authorization from Tbilisi Mayor's Office to hold an assembly, upon the patrol inspectors' legitimate requirement, and as these latter attempted to prevent this offence, the person in question assaulted them, both physically and verbally. The protocol also states that the person in question disrupted the pedestrian movement. The protocols drawn in respect of all three

[125] Draft Law on Amendments and Supplements to the Law on Assembly and Manifestations of Georgia, *<http://www.venice.coe.int/docs/2010/CDL(2010)026-e.pdf>*

persons are very similar in content. According to these protocols, the law enforcers regarded the protesters' conduct as violation of Articles 174[1] and 173 of the Administrative Code.

On the same day, the Collegium of Administrative Cases of Tbilisi City Court issued resolutions in respect of the above three persons. According to the resolutions, the Court found all three persons guilty of committing an offence contempaled by Articles 174[1] and 173 of the Administrative Code.

Having studied the above case, we believe that with regard to citizens Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia, there has been a breach of the right of assembly and manifestations, provided for by the Constitution. This case attests to the fact of an illegitimate interference of law-enforcement bodies into the exercise of a right guaranteed by the Constitution, together with a poor substantiation of the resolution by the Collegium of Administrative Cases of Tbilisi City Court.[126] Consequent court decisions provide analysis of the referred shortcomings, together with Chapter "*Fair Trial*" of the present report, which contains detailed criticism of the above court resolution. Therefore, we will not dwell on this matter here.

As far as the actions of the patrol inspectors are concerned, these attest to several material breaches of the law.

a. The very fact that the patrol inspectors required the protesters to produce an authorization/permission/application from the Mayor's Office is, in itself, a violation. As it is, the Georgian legislation contains no provision, which requires securing a permission from the local government to hold an assembly or manifestation. Even more so, if one assumes that in this particular case the law enforcers required the protesters to produce a copy of a notification that organizers routinely present in such cases to the self-government body, they should have been aware that the assembly participants had been under protection of Article 7 of the Law on Assembly and Manifestation.

Pursuant to Paragraph 1 Article 25 of the Constitution of Georgia: "Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission."

Paragraph 2 of Article 25 of the Constitution vests the legislator with the authority to establish by law the necessity of a notification if an assembly or manifestation is held on a public thoroughfare. Such a necessity is stipulated by Article 5.1 of the Law of Georgia on Assembly and Manifestations, providing that if an assembly or manifestation is to be held in a public thoroughfare, the organizers shall submit a prior notification to the local government body according to the place of holding of the intended action.

However, Article 7 of the same law points to the exception where submitting a prior notification to the respective authority is not required. In particular, it reads: "The rule of mandatory notification does not apply to regular citizens who would like to express their opinion by means of posters, slogans, banners, and other visible tools; however, they may not use entrances and stairs of buildings, block roads or hinder the movement of transport and pedestrians".

The Collegium of Administrative Cases of Tbilisi City Court did not contend the fact that the above individuals had been under protection of Article 7. Respectively, Dachi Tsaguria, Jaba Jishkariani and Irakli Kordzaia had an unchallengeable right to voice their views publicly and were under no obligation to submit a prior notification to the local self-government body. The argument that they failed to produce the respective permission to the patrol inspectors is devoid of any legal substance. Further along, the acting legislation contains no such notion as permission for holding an action or manifestation. The Constitutional Court, by its decision No. 2/2/180-183, recognized "non-acceptance of a notification" as unconstitutional on the motive that this would render participants dependent upon permission from the self-government bodies.

[126] See Public Defender's report of the second half of 2009 – Fair Trial.

b. According to the patrol inspectors, another reason for arresting Dachi Tsangaria, Jaba Jishkarian and Irakli Kordzaia had been obstruction of a pedestrian path. As a matter of fact, during whole time when Dachi Tsangaria, Jaba Jishkarian and Irakli Kordzaia stood on a pedestrian pavement, the Rustaveli Avenue was fully blocked by the Tbilisi municipal maintenance service, installing street illumination.

The patrol inspectors stated that at that moment there was no vehicular movement in Rustaveli Avenue. Notwithstanding this, the law enforcers reckoned the three persons standing on a pavement caused a serious obstruction to the pedestrian movement, enough to constitute a violation of the Law on Assembly and Manifestations.

The video recordings at our hand clearly show that there was no hindrance whatsoever to the movement of pedestrians. Apart form this, bearing in mind the exact location where the three individuals were arrested, one can safely state that three persons standing at about 30 meters from the Parliament could not have possibly hindered any pedestrian movement, the more so that the pedestrian area in question is quite spacious and, besides, Rustaveli Avenue had been closed for vehicular traffic.

c. Application of Article 173. In the said case, the patrol inspectors' claim that there has been an offence contemplated by Article 173 is entirely devoid of any substance. The available video recordings contain no evidence that either Dachi Tsaguria, or the other two accompanying persons offered any resistance whatsoever to the law enforcers. The filming only shows how these three individuals are put in the patrol car. The patrol inspectors noted that the disobedience took place prior to putting the three individuals into the patrol car. As seen from court protocols, none of the patrol inspectors claimed the detainees offered any resistance following their arrest or assaulted them in any way. Nonetheless, the patrol inspectors insisted they had been assaulted both verbally and physically. However, the available video footage shows otherwise.

In view of the above, one can conclude that it is essential that Georgia's legislation on assembly and manifestations is refined further and brought in conformity with the respective international standards, and that clear explanations and concretizations are provided in respect of the norms that remain obscure in the Law on Assembly of Manifestations. If the package of amendments submitted for review to the Venice Commission is indeed incorporated in the legislation, this will clearly take the heat off the problem. Besides, the intended introduction of the 'proportionality' notion into the above law will be a welcome development, together with including a clear indication that a restriction of the right can only be justified by the pursuit of a legitimate purpose established in Article 24.4 of the Constitution.

Freedom of Expression

Freedom of expression is a critical test of democracy for a State. According to the ENP Action Plan, Georgia has undertaken a commitment to promote the freedom of media, as an essential tool for the development of a democratic political system.[127]

To ensure the requisite degree of freedom of media, along with many other factors, it is essential that media professionals are fully protected form any possible pressure due to their professional activities. The State is obliged to react adequately and promptly to any such fact that may possibly occur.

Regrettably, the second half of 2009 offered ample examples where journalists were subject to such illegitimate pressure. In each instance, it was an action directed against provincial journalists and, according to their own account, committed by a representative of local authorities or law enforcement bodies.

The contents of journalists' applications submitted to the Public Defenders Office clearly indicate to the existing trend of interference with journalistic work. In practice, the interference takes varying forms, including physical assault and psychological pressure. Hence, our intent is to focus attention on such facts in this chapter.

Facts of Physical Assault on Journalists

Freedom of expression implies receiving and imparting information freely, without any pressure or attached directions. Apparently, the very fact of State authorities exerting pressure on journalists, compromises the existence of free media.

Access to information – which is the right of the journalist to obtain and impart information about public interest matters – is vital to journalists' professional work.

Article 24.2 of the Constitution reads: "Mass media shall be free". This means that journalists, being representatives of mass media, shall be free of any pressure, so that they can duly perform their duties the public has vested in them. One of the problems that featured during the report period was related to journalists being denied entry into the Gori municipality building. Sadly, this problem is pertinent not merely to the report period. The Public Defender is aware of similar facts also occurring in a prior period.[128]

[127] http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf – EU/Georgia Action Plan

[128] See Public Defender's report for the 2nd half of 2008.

For its part, freedom of expression largely depends upon the right of a person to obtain information within reasonable bounds. Article 41 of the Constitution recognizes the right of an interested individual to acquire information from official sources. Naturally, the place where one can get information from official sources is a public institution building. Therefore, it is important that journalists have an unencumbered access to such buildings, while public officials carry out their obligation to provide requisite support to journalists in performing their functions.

A correspondent of the "Human Rights Centre", Saba Tsitsikashvili, applied to the Public Defender just in respect of the above-described problem. The complainant claims that when he went to the Shida Kartli regional administration to pick up the public information he had requested earlier, the security guards assaulted him physically.

More specifically, when he entered the building, the Pass and Registration Office was closed and there were no security guards standing at the entrance. Therefore, he headed straight towards the staircase. Because of this, security guards assaulted him both verbally and physically. At first, they pushed him against the wall, then hurled down the stairs and threw out of the building.

A journalist, just like any citizen of Georgia, is entitled to request and receive public information, observing respective rules.[129] Proceeding from the above, the competent authorities should examine the case to determine whether there has been an interference with the exercise of the right to information by Saba Tsitsikashvili.

As regards the physical and verbal abuse by security guards, their conduct bears signs of an offence contemplated by the Criminal Code of Georgia.

In respect of the above fact, the Public Defender addressed the Chief Prosecutor's Office. The reply arrived on 15 February 2010, noting that the Gori regional division of the Ministry of Internal Affairs had launched an investigation to this effect, based on the signs of an offence contemplated by Article 118 of the Criminal Code of Georgia.

Covering concrete events and facts, journalists should be enabled to perform their professional activities in a supportive environment. Unfortunately, in the 2nd half of 2009, there were instances when journalists were not allowed to cover or film certain events and facts.

In Zugdidi, on 31 December 2009, on several occasions law enforcers stopped Illia Chachibaia and Nana Pazhava from filming an event, and seized Nana Pazhava's video camera. Interestingly, according to Ilia Chachibaia, there had been other journalists too, covering the same event, however, law enforcement officers vented aggression only against him.

The Public Defender addressed the Chief Prosecutor in writing regarding of the above fact. According to the official reply, criminal investigation into the case has been already started, based on the signs of offence contemplated in Section 2 of Article 154 of the Criminal Code of Georgia.

The Public Defender's previous reports contain numerous accounts pointing to an inadequate qualification of the criminal actions committed against journalists. Although the Criminal Code of Georgia contains a separate article specifically dedicated to cases of interference with the journalistic practice (Article 154 of the Criminal Code, *Illegal Interference into Professional Activity of Journalists),* yet, in the past, such actions often got investigated and qualified based on other articles.

The fact that such a problem has lost pertinence for the 2nd half of 2009 is a welcome development, pointing to a positive tendency.

[129] *General Administrative Code of Georgia*, Article 37: "Everyone may claim public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information".

Facts of Threats against Journalists

The 2nd half of 2009 witnessed facts of exerting psychological pressure upon journalists. The matter is further compounded by the fact that the threat used against the journalist had to do with a public disclosure of personal information.

More specifically, on 25 November 2009, the "Batumelebi" newspaper investigative team coordinator, Tedo Jorbenadze, was summoned to the building of the Interior Ministry Batumi Department by persons unknown to him. Tedo Jorbenadze was accompanied to this meeting by his co-workers. According to these latter, the strangers showed Tedo Jorbenadze black-and-white photos, allegedly, picturing his images, and demanded that he should meet them again the following day. Or else, they threatened, they would make public the photos, together with video materials, they claimed they had at hand.

Paragraph 1 of Article 20 of the Constitution provides that "Everyone's private life, place of personal activity, personal records, correspondence, communication by telephone or other technical means, as well as messages received through technical means shall be inviolable. Restriction of the aforementioned rights shall be permissible by a court decision or also without such decision in the case of the urgent necessity provided for by law". The Criminal Code of Georgia establishes criminal liability for obtaining such information through illegal means. Pursuant to Article 157.1, "illegal obtaining, keeping or spreading personal or family secrets shall be punishable by fine or by corrective labour for up to one year or by imprisonment similar in length."

Pursuant to Article 8 of the European Convention of Human Rights, "everyone has the right to respect for his private and family life, his home and his correspondence, and there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society." Subjecting media representatives to such pressures poses a significant threat to the freedom of media. And, the state of media mirrors directly the degree of democracy in a country.

The Public Defender sent all materials on this case he had at hand to the Chief Prosecutor, together with the request to launch an investigation in respect of this fact. In reply, we were informed on 15 March that the investigation on this fact had been started, on the basis of signs of offence contemplated by Article 333.1 of the Criminal Code of Georgia [130]. The investigation is been conducted by the investigation unit of the Prosecutor's Office of the Ajara Autonomous Republic.

The State has a positive obligation to ensure the right of journalists to perform their work freely. To this end, it shall foil any attempt intended to undermine this right. It is all the more unacceptable when such acts are committed by law enforcement bodies and public officials. It is necessary that every single identified fact of harassment against journalists or media representatives is investigated in an effective and transparent manner.

RECOMMENDATION

- **Law enforcement bodies shall ensure an effective investigation into the actions committed against Tedo Jorbenadze, coordinator of the journalistic investigative unit of the "Batumelebi" newspaper, as well as against Illia Chachibaia, Nana Pazhava and Saba Tsitsakashvili.**

[130] Article 333 od teh Criminal Code of Georgia – Exceeding Official Powers
1. Exceeding official powers by an officer equal thereto that has inflicted a substantial damage to the right of natural or legal person, legal public or state interest.

Freedom of Religion and Tolerance

Introduction

In terms of freedom of religion and supporting the culture of tolerance, the situation in the 2nd half of 2009 has not been much different from the previous half-year period.

Over years, there has been little progress with regard to the many persisting problem issues. So far, we have seen no restitution of the property confiscated from religious minorities during the Soviet period; the tax regime for non-dominant religion associations is different form that of the Orthodox Patriarchy; the so-called traditional religious associations are still against going through the process of official registration in adherence to the existing regulations, since they deem the legal person status unsuitable; public schools are still failing to comply with the requirements of the Law on General Education; law enforcers often fall short of abiding by the rule-of-law principle when it comes to offences motivated by religious intolerance, while the started investigations are being procrastinated; religious minority priests cannot enter into penitentiary institutions without permission from the Patriarchy to cater to the needs of prisoners of other faiths; mass media, including most of TV channels and printed media, offer no or very little coverage of religious minority issues.

At the same time, a fact deserving a special mention here is that over the report period state authority representatives underscored the importance of nurturing tolerant environment on numerous occasions. President of Georgia made several public statements in support of religious tolerance over the report period.

Facts of restricting the freedom of religion

Over the report period, there have been seven facts of persecution and assault motivated by religious discord that became known to the Public Defender. Six of these facts involved attacks against members of the Jehovah's Witnesses Association, and the remaining one case has a bearing to Georgia's Evangelistic-Protestant church. In three instances, these were assaults on a place of religious gathering, while the rest had to do with actions against religious missionaries. In one instance, the assaulter said he was a law-enforcer himself.

Legal proceedings have been instituted with respect to six, out of the seven cases: three of these investigations are based on Article 187.1 of the Criminal Code of Georgia (Damaging or Destruction of Object) ; two – based on Article 118.1 (Less Serious Damage to Health on Purpose) and Article 151 (Threatening), one – based on Article 118.1 and one – based on Article 155.1 (Illegal Interference into Performing Religious Rite). However, none of these investigations was concluded in the report period. Nobody incurred criminal liability. Besides, neither of the above investigations was initiated

based on a qualifying norm of an offence motivated by religious intolerance. This approach was typical of law enforcement bodies in the previous years, too. In 2006, the CoE European Commission Against Racism and Intolerance issued a recommendation on this issue. The same year, the Public Defender of Georgia addressed a similar recommendation to the investigation bodies, which was then acted upon. However, from 2008 onwards, offences committed on religious grounds are hardly ever given due qualification and are predominantly treated as crimes contemplated by the above indicated Articles.[131]

Notwithstanding the fact that according to the available data pertaining to the recent two years, such crimes have increased in number, it is most worrying that not a single person was brought to justice over the report period, while in the period of 2006-2007, 17 individuals were held legally liable, out of whom nine were sentenced to imprisonment.

On the one hand, punishing the perpetrators of religiously motivated crime contributes to the implementation and consolidation of the rule-of-law and equal rights principle but, on the other hand, this is an essential preventive measure helping to avoid a situation where impunity becomes a fillip to those individuals that are intolerant to other people's faiths and religious associations.

Tax Regime

Over years, issues related to tax regime remain unresolved.

Proper functioning of a religious organization largely depends on the tax regime existing in a country. It is worth noting here that Georgia's tax regime for non-profit (non-commercial) organizations is quite liberal, which also includes religious organizations, whose religious activities[132] are exempt of any taxes.

According to Article 6 of the Constitutional Agreement between the Government of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia ("...items and donations produced, imported or supplied for the purpose of conducting public liturgy, as well as non-commercial property and land, are exempt from tax"), the Tax Code shall establish additional, special tax regulations for the Orthodox Church of Georgia, that are distinct from other religious organizations. According to the Code: "Profit from the sale by the Patriarchy of crosses, candles, icons, books, and calendars used exclusively for religious purposes" is exempt from profit tax; besides, the Code provides a VAT exemption for the "supply by the Georgian Patriarchate of crosses, candles, icons, books, and calendars used exclusively for religious purposes; the construction, restoration and painting by order of the Georgian Patriarchate of cathedrals, monasteries, as well as reconstruction, restoration, conservation works and archaeological excavations provided by state programs for protection and revival of the historical and cultural monuments of Georgia included in the list of the treasury of world heritage (Article 230).

It is noteworthy that all these legal norms establish a regulation regime only for one concrete church, thereby putting other religious organizations at a disadvantage.

Education System

The Law of Georgia on General Education prohibits practicing proselytism, indoctrination and the use of religious symbols for non-academic purposes at public schools. However, over years, this law was largely ignored, and public schools have not been so far successful in drawing a clear line between the academic and religious sphere. By numerous accounts both from members of the Religious Council of the Ombudsman Office and pupils' parents, there are still ample examples demonstrating how requirements of the law are being neglected both by school administration and

[131] More specifically: Article 187.1 (Damaging and Destruction of Object), Article 118 (Less Serious Damage to Health on Purpose), and Article 151 (Threatening) – in two cases ; and Article 118.1 – in one case.

[132] Religious activity as set forth in Artcile 15 of the Tax Code of Georgia.

teaching staff. To this day, schools do not teach the history of religion, merely due to the fact that such a textbook is simply nonexistent.

Penitentiary System

According to Article 2 of the agreement concluded between the Ministry of Justice and the Patriarchy of the Georgian Orthodox Church, the Orthodox Church of Georgia will be seconding priests to penitentiary institutions and the Execution Committee of the Ministry of Justice for the purpose of conducting divine liturgy and other church rites. The Orthodox Church of Georgia undertakes to coordinate and ensure the visits of clergy of other confessions with a view to satisfying religious needs of those prisoners who belong to other faiths. The Agreement regulates the access of clergy of other religions to prisons, which, in effect, winds up to the Patriarchy issuing these latter a permission to enter a prison. In 2006, Religious Council of the Ombudsmen's Office and the Penitentiary Department signed a memorandum of understanding and cooperation, which simplified the access to prisons for clergy of other religions. However, in 2008, their access to prisons was restricted again, so much so that without Patriarchate's permission they could not practically get a right of access. Most of religious associations state they deem it unacceptable to apply to the Patriarchy for such a permission. On the other hand, the agreement between the Justice Ministry and Georgia's Patriarchy is, in itself, of discriminative nature. It puts the individuals practising different faiths in a dissimilar situation in terms of their religious rights and, hence, runs counter to the constitutional principle of prohibition of discrimination.

Historic Property Restitution

The issue of restitution of the religious property confiscated from religious associations (Armenian Apostolic Church, Catholic Church, Muslim Community, Jewish Community) during the Soviet time remains unresolved to this day. The Armenian Apostolic Church claims the State should return its six religious buildings/temples. The temples (five of them in Tbilisi) are not functional and are in a dire state. During the report period, the dome of one of the churches, known as Surb-Minas, gave way. Because these temples remain untended for so many years and because the State has so far failed to arrive at any definitive solution regarding the above matter, these buildings are now on the verge of collapse. There have been quite a few meetings between the Armenian Apostolic Church and the Orthodox Church of Georgia regarding this matter, but to no avail. Despite the fact that solution of this matter is the prerogative of the State, this latter is postponing its decision until the Georgian Patriarchy and the Armenian Apostolic Church arrive at a consensus, giving due regard to the repute of both of these Churches.

The situation is different with regard to the dispute between the Catholic and Georgian Orthodox Churches. In the 1990's, the State transferred ownership of five temples that had been Catholic churches in the pre-soviet period to the Orthodox church of Georgia. Currently, these temples are the property of the Patriarchy. Despite the setting up of a joint orthodox-catholic commission in 2004 to look into this matter, the dispute remains unresolved to this day.

The Muslim Community claims the return of two mosques from the State in the territory of Ajara (village Mukhaestatae of Kobuleti region, and at 100 Agmashenebeli Street, Kobuleti), together with the grant-of-use permission for five former mosque buildings in the Akhaltskikhe and Adigeni regions. The old mosques in the Adigeni and Akhaltskikhe regions were built in the 19th and 20th centuries by local Meskhs. Presently, these territories are populated by eco-migrants resettled from Ajara. For example, there are 15 repatriated families in the village of Abastumani of the Adigeni region. There is an abandoned mosque in the village, which was turned into a stable for cattle. So far, the Meskhs have not managed to reclaim the mosque.

At the current stage, not a single important step has been taken to address this problem; no commission has been established to determine the origin of the disputed historic monuments; and the State has developed no vision for resolving this matter.

Permission for the Construction of Religious Buildings and Structures

Over the report period, religious associations had to face numerous difficulties, including the red-tape, as they tried to acquire a building permit. In October 2009, in Zugdidi, Jehovah's Witnesses started construction of a building for religious assemblies, in full adherence with the relevant legislative requirements. However, the local population, together with the local Orthodox clergy, organized protests against the construction, including several assaults on the building site. As a result, Jehovah's Witnesses failed to complete construction during the report period. The local municipal service terminated the permit previously issued to Jehovah's Witnesses.

A Muslim community failed to obtain a permission to restore the historic mosque in the village of Talaveri, Bolnisi region. Besides, the process of transfer of a historic Catholic Church building to the catholic community in the Rabati area of Akhaltsikhe has been unreasonably delayed. Both Muslims and Catholics point to the fact that withholding of respective consents by the Orthodox Patriarchy's has been the main reason for procrastination. The relevant local (municipalities) and central authorities, quite unlawfully, require Patriarchy's consent or, alternatively, run their decision by the Patriarchy, which is a discriminative practice.

Media and Intolerance

Over the report period, just as before, the printed media and majority of TV and Radio channels gave insufficient coverage of religious minority issues. In this context, "The Liberal" journal sets a positive example: last year it published several objective articles specifically dedicated to the religious minority issues.

Public service TV provides little coverage of the topics featuring religious diversity, despite the fact that the Law on Broadcasting sets this forth as an obligation of the pubic broadcaster. There is one exception, however, – a radio program called "Our Georgia" regularly broadcast on public radio which gives full attention to ethnic and religious minority issues.

Another novelty is that religious intolerance-related topics now crop up ever so often on internet forums and social networks. Information concerning religious minorities is quite often posted on social networks and blogs. All this points to the growing attention that certain groups of population are now giving to such themes as religious diversity, tolerance, and freedom of religion.

Facts of Intolerance

On 16 September 2009, about 50-70 aggressively disposed orthodox devotees, headed by orthodox priests, together with "The Union of Orthodox Parents", arrived at village Talaveri of the Bolnisi region (whole population of the village is Muslims of Azerbaijani ethnicity). They demanded that the villagers should stop restoration of an old mosque in their village, resorting to xenophobic rhetoric against Azerbaijani Muslims and calling out, among other things, that they were nothing but guests in Georgia. As a result, the restoration works were stopped. According to the villagers, all they had was an oral consent for restoration of the mosque, but no respective administrative act or an official permit at hand obtained with full observance of the relevant procedures prescribed by the law, which would have served as legal grounds for any construction. Nonetheless, one has to note that stopping illegal construction is solely the prerogative of the State, and not of any religious group. Representatives of the aforementioned group started pickets in front of the mosque, which continued for the rest of the report period. The role of law-enforcement authorities was limited to preventing exacerbation of this situation. Eventually, the Muslim community did not manage to obtain the requisite permit for rebuilding the mosque.

On 10 December 2009, the *International Centre for Conflicts and Negotiation* organized an awareness-raising conference about Islam at the Illia Chavchavadze State University. Among those attending the conference were members of the Union of Orthodox Parents who behaved insolently, using hate words towards the participants and eventually disrupted the discussion part of the meeting.

Over the report period, the catholic congregation, too, found themselves on the receiving end of the Union of Orthodox Parents' show of intolerance. On 6-7 October 2009, about 80 individuals marched in a procession in villages Aral and Vale, where most of the population is catholic. These were an organized group from the Union of Orthodox Parents led by orthodox priests. They disseminated anti-catholic brochures full of hate words and allegations that catholic priests (naming concretely two catholic ministers working in Georgia) were paedophiles, involved in child abuse, and appealed to parents to ward off their children from them.

On 15 October 2009, a one-day manifestation was held in front of Vatican's Embassy in Tbilisi. The protesters held posters with insulting and xenophobic slogans.

On 17 October 2009, an Assyrian Cultural Centre was inaugurated in Tbilisi, also comprising an Assyrian catholic church. On the inauguration day, The Union of Orthodox Parents blocked the church entrance for a while, waving anti-catholic and xenophobic slogans. They obeyed the police order to clear the entrance only minutes prior to the start of the inauguration ceremony, to be attended by catholic clergy from several other countries, as well as the Patriarch of Assyrians and Chaldeans, and representatives of the diplomatic corps in Georgia. On the following day, a group from the Union of Orthodox Parents blocked the church entrance once more, but again, for a short while.

Such manifestations of intolerance are unacceptable for a liberal and pluralistic society which rests on a fundamental pillar of religious tolerance as an essential prerequisite for its survival and development.

Support of Tolerance

Notably, on numerous occasions during the report period, state authority representatives underscored the need for nurturing tolerant environment in Georgia and took part in many events serving this purpose. More specifically, on 15 September 2009, a synagogue of European Jews was inaugurated in the Leselidze street of Tbilisi. The inauguration ceremony was attended by the President of Georgia and the Mayor of Tbilisi. On 20 December 2009, the President of Georgia paid a visit to a mosque in Batumi, and spoke during the visit about the importance of fraternity, peaceful coexistence and collaboration between Muslims and Christians. On 25 December 2009, President of Georgia visited a Catholic church for the first time, and gave his best Christmas wishes to the Catholic community.

On 10 December 2009, the Religious Council of the Ombudsman's Office published the main theses of its social concept. These latter reflect the shared vision of all confessions comprising the Religious Council regarding the State, law, human rights, education, social responsibility and other issues. They also include assessment of the current situation. This document will serve the basis for further activities of the Religious Council which, first of all, presupposes elaboration of recommendations for various state authorities, media and the non-governmental sector.

On the initiative of the Public Defender, Georgia has been marking the International Tolerance Day (16 November), for a fifth time now. On 16 November 2009, at a special event dedicated to the Day of Tolerance, the Public Defender made a speech regarding the current situation as regards freedom of religion and protection of ethnic minorities rights. In addition, to mark the Tolerance Day, this year the Religious Council of the Ombudsman's Office introduced an annual award – conferring the title of "Champion of Tolerance'. By the decision of the Religious Council, this year's title of "Champion of Tolerance" went to a number of non-governmental organizations, as well as to outstanding representatives of civil society and clergy.

On 10 December 2009, the Tolerance Centre of the Ombudsman's Office hosted pupils from Tbilisi public schools to mark the Human Rights Day. The Public Defender met with twenty pupils from public schools and other educational institutions and talked to them about human rights and diversity. During the event, the pupils drew pictures on the topic of tolerance and diversity. Besides, senior pupils from several public schools of Tbilisi were invited to the Public Defender's Office to see a feature film devoted to the diversity and discrimination-related problems. The film show was followed by a discussion.

Protection of Ethnic Minority Rights and Social Integration

In the second half of 2009, Public Defender's Office received no single claim of discrimination on ethnic grounds. In fairness, it must be noted there had been very few such claims in previous years either.

It would be fair to say that one of the reasons why citizens file no such applications at the Public Defender' Office is a firm will of the authorities to eradicate discriminative approaches and practices, together with those important steps that have already been taken in this respect. However, quite a few tolerance and civic integration related problems are still awaiting solution.

In 2009, the Georgian government adopted the National Concept and Action Plan for Tolerance and Civic Integration. According to the report prepared by the State Minister's Office for Reintegration Issues, in the framework of the afore-mentioned Concept and Action Plan, various state authorities implemented numerous initiatives and programs in the field of education and culture; road and other infrastructure rehabilitation works have been carried out in regions compactly populated with ethnic minorities. Besides, non-governmental organizations and public organizations have implemented a number of programs oriented towards facilitation of civic integration, including educational, awareness-raising and sports events. All of this will contribute significantly to raising awareness of the population residing in areas compactly populated with ethnic minorities and will promote integration of the said regions.

It is worth mentioning, that in 2009 regional Public Defender's offices in Kvemo-Kartli and Samtskhe-Javakheti started functioning quite actively. Analysis of the applications filed at these regional offices indicate that the complaints do not relate to ethnic discrimination and, thematically, are no different from applications received form other regions of Georgia.

One of the major obstacles towards civic integration of national minorities still remains the insufficient knowledge or no knowledge at all, of the state language; ethnic minority representatives are barely involved in the country's public and political life or in the decision–making process; unemployment and regular provision of information to ethnic minorities still remains a problem.

Education of Ethnic Minorities

Teaching of Georgian Language at Schools

Over the report period, the quality of teaching of the state language at non-Georgian public schools continues to be a concern. In many such schools – particularly in villages, Georgian language lessons are merely treated as a formality, or not

held at all. Oftentimes, Georgian language teachers at non-Georgian schools are insufficiently competent. As a result, school leavers in the regions where ethnic minorities live in compact communities, have a very poor command of the Georgian language, even at a conversational level. To address the problem, the Ministry of Education seconded Georgian language teachers to several villages of Kvemo Kartli and Samtkhe Javakheti. However, so far it has not been possible to embrace all public schools in these regions.

Challenges related to school textbooks

In 2009, tens of textbooks were translated and published for non-Georgian schools, which, in itself, is a step forward. Although, these textbooks are not fully free of translation–related errors.

Both, school teachers and parents point to the fact that translation quality of some textbooks into the minority languages is quite poor, as well as inaccurate, often causing problems with text comprehension. For instance, by accounts of representatives of the Azerbaijani diaspora, the Azerbaijani translation of a 8th grade of history/geography textbook reads: "*Wahhabism is the so-called pure Islam*". The same textbook, talking about the Holy Prophet Mohammed, says: "*at the age of 40, Mohammed started fortune-telling*", and that Islam teaching says that if a man "*wishes to go to heaven, he must die at the hands of the enemy*". Despite the fact that the above-mentioned blunders are, probably, due to mere translation errors, Georgia's Muslim community consider this matter of great essence and require that such misrepresentations should be promptly taken care of. **The above example is by no means intended to criticise one concrete textbook or one concrete author, but rather to illustrate the problem and emphasize the need of identifying ways and means of solving such problems and preventing them from occurring in future**. As a matter of fact, quite a lot of teachers and parents express their dissatisfaction with the inaccuracies and ambiguities in the translation, particularly in the areas with compact ethnic communities, such as Kvemo-Kartli and Samtskhe-Javakheti.

In view of the above, we deem it necessary that the Ministry of Education should take proper care to avoid any such inaccuracies in the translation of school textbooks. It must co-opt competent translators and relevant specialists in various disciplines also having an adequate command of the respective minority language in order to ensure proper quality in the preparation and translation of textbooks for ethnic minority schools.

Higher Education

Over years, the access to higher education institutions has remained a concern for ethnic minorities. School leavers from such communities were expected to meet the same requirements at unified national exams as their Georgian peers, with no allowance made to the fact that in areas with compact ethnic minority settlements the Georgian language had not been taught at a suitable level, if at all. Hence, due to the language barrier, the majority of school leavers form ethnic communities wishing to continue their studies at Georgia's higher education institutions, stood no chance at all, because usually they failed the unified national exams.

On 17 November 2009, amendments were introduced to the Law of Georgia on Higher Education, laying down new HEI enrolment rules for Azebaijani-, Armenian-, Ossetian- and Abkhaz-speaking applicants. Under the amendments, they will be reqruired to pass the university entry examination in only one section - the general skills - in their native language. Then they will enrol in a special 1-year program of Georgian language. If they succeed, they will be allowed to choose a specialty and continue their studies at a university in the Georgian language.

Although, it would be fair to recall here that information about these legislative changes was communicated to Kvemo-Kartli and Samtskhe-Javakjeti, and particularly to the villages, with a considerable delay. As we found out at our meetings with local communities of these regions, in many instances, neither pupils, nor their parents had been aware of the aforementioned changes even as late as in February 2010. In other instances, they only had a very vague idea about the innovation.

The above amendments to the Law on Higher Education bear special significance in terms of fostering civic integration, as they aim towards helping ethnic minorities to study the state language and, accordingly, expanding their access to higher education. The innovation sparked a great interest among ethnic communities. Expectedly, 2010 will see a rise in the numbers of ethnic minority representatives enabled to continue their studies at HEIs.

Access to Information

Another problem issue pertinent to the report period has been securing a full-fledged outreach to the ethnic minority communities in terms of provision of information – through Georgia's information channels - on current events and developments in the country in a language they understand.

In the second half of 2009, the public service broadcaster launched a reorganization process, which envisaged introduction of information programs for ethnic minorities. However, there has been several months' intermission in the broadcasting of programs in ethnic minority languages. This drew attention of the Public Defender's Office, which made a respective query to the Public Broadcaster. According to the reply we received, following reorganization, there will be daily information programs for ethnic minorities, instead of weekly programs (previously, these were 25 minute-long weekly news programs in minority languages), on public TV Channel One and Channel Two, as well as regional TV channels in Kvemo-Kartli and Samtskhe-Javakheti. The indented change will facilitate the process of informing ethnic minorities on current developments in the country in a language they understand.

Notably, during the report period, the public broadcaster continued its weekly TV talk-shows, "Italian Yard", on Channel One, together with regular programs on the public service radio, called "Our Georgia". These programs are devoted to various important ethnic minority issues, related to culture, history, religion and other important matters.

Recognition of property right

On 11 July 2007, the Georgian Parliament adopted a law on "Property Rights on Land Plots under the Natural and Private Law Juridical Persons' Ownership (Usage)". The purpose of the law was to facilitate the use of land resources and promote land market development through recognition of property rights of natural persons, legal persons of private law, and other organized juridical entities to the land plots under their legitimate ownership or use, as well as to the state-owned land plots under unauthorized use.

Understandably, the above law does not provide for an unconditional transfer of all types of land, and sets out land categories that shall not be transferred to private ownership because of their significance in terms of public use or particular importance for the State[133].

In a consequent period, the *Law of Georgia on Property Rights on Land Plots under the Natural and Private Law Juridical Persons'* Ownership (Usage)" was amended through adoption of three bills, respectively on 31 July, 3 November and 25 December, 2009[134], introducing significant transformations aimed at perfecting the law and rectifying the existing shortfalls.

As a result of these changes, now the current edition of the above law contains the notion of '*land under unauthorised use*', together with the exact description of terms "*building*" and "*temporary structure*", incorporated through two additions to the law with a view to specifying the meaning of terms applied in the definition. Besides, the new edition introduces the notion of the '*interested person*'.

Also, an amendment was introduced to Article 4, and Article 5 was added which authorises the President of Georgia to decide on wavering the duty for the recognition of property rights to the land under unauthorised use.

In addition, a change has been introduced with respect to the actual size of the duty to be paid for the recognition of property rights to land plots under unauthorized use. The law now administers different amounts of duty payments for natural persons and legal persons of private law. There is now a much lower duty to be paid by natural persons for the recognition of their right to land, compared to legal persons. Notably, the previous edition of the law made no distinction between natural and legal persons in this respect. The only differential treatment it provided was with regard to the price of agricultural and non-agricultural land plots.

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133 Article 3.2 of the *Law of Georgia on Property Rights on Land Plots under the Natural and Private Law Juridical Persons' Ownership (Usage)*".

134 Bill of amendment to the *Law of Georgia on Property Rights on Land Plots under the Natural and Private Law Juridical Persons' Ownership (Usage)*" of 31 July 2009, #1565;Bill of amendment to the *Law of Georgia on Property Rights on Land Plots under the Natural and Private Law Juridical Persons' Ownership (Usage)*" of 03 November 2009, #1941; Bill of amendment to the *Law of Georgia on Property Rights on Land Plots under the Natural and Private Law Juridical Persons' Ownership (Usage)*" of 25 December 2009, #2463.

The Public Defender report for the first half of 2009 provides a detailed review of the problems related to the work of Property Recognition Commission, complete with the respective recommendations.

In the previous report, the Public Defender made recommendations to the Property Recognition Commission and local self-government bodies, suggesting that if an application was processed in violation of the relevant procedures or deadlines prescribed by the Administrative Procedure Law, the respective decision of the Commission should be declared null and void, pursuant to article 60^1 of the General Administrative Code.

Regrettably, such problems persisted in the second half of 2009. Attesting to this are the many property rights related applications filed with the Public Defender's Office. The report for the first half of 2009 contains a detailed account of the irregularities identified in the operation of the Property Recognition Commission, including its failure to abide by the requirements established by the law, as attested by the applications submitted to the Public Defender's Office. Therefore, we will not focus attention on this subject in the present report.

Applicants' participation in relevant administrative proceedings was still a concern during the second half of 2009. More specifically, in many cases, applicants were not notified about the holding of administrative proceedings in respect of their applications. Neither were they given a chance to present their own position at any stage during consideration of their application. Hence, we believe the aforementioned Commission tends to disregard the impetrative requirements established by the law (Article 8 of the General Administrative Code of Georgia).

Yet another important concern was that the Property Recognition Commission was found to delay consideration of applications for an unreasonably long time. Following Presidential Order No. 525, Article 14 now provides the maximum of two months for consideration of applications, which period may be further extended to six months by a well-reasoned decision of the Commission.

In some instances, Property Recognition Commission procrastinated consideration of applications for over a year without any stated reason or valid substantiation. In other cases, consideration of applications went on for as long as eight or nine months. This, as noted above, is a gross violation of the law.

In view of the fact that there has been no progress with regard to administrative proceedings by Property Recognition Commission as compared to the previous report period, the Public Defender's recommendations will remain the same.

Problem related to article 53^4 of the Law on Entrepreneurs

On 13 June 2006, a group of citizens, represented by Suliko Mishia, filed a collective application with the Public Defender's Office, claiming infringement of their property rights. Having examined the claim, we arrived at the conclusion that Article 53^4 of the Law on Entrepreneurs contradicted the Constitution and restricted the recognized property rights in cases where there was no imperative public need.

On 18 August 2006, we filed a constitutional claim to the Constitutional Court requesting recognition of Article 534 as unconstitutional because it contradicted Article 21 of the Constitution. On 30 October 2006, the Court suspended the action of the impugned norm, and on 18 May 2007, it declared Article 53^4 of the Law on Entrepreneurs unconstitutional and null and void.

In the above-referenced decision, the Court construed on 'the right to property' and held that "[…] for a democratic, rule-of-law and socially-oriented state, it is vital […] to accord **sufficient legal remedies** to a proprietor as a subject of law, together with provision of guarantees for his/her support and assurance. This is exactly the purpose pursued by Paragraph 1 of Article 21 which reads that property right shall be recognized and guaranteed. Not only does this provide legal

remedies for the protection of proprietors' rights, but also protects proprietor from any encroachment which does not fall within the frameworks established by Paragraph 2 […] of the same Article. In view of the foregoing, any norm contravening Paragraph 2 […] of Article 21, which is incompliant with the constitutional and legal standards pertaining to conditions of restricting property rights […] will naturally come into contradiction with Paragraph 2 of the same Article".[135]

> *The legislator shall formulate the norm regulating mandatory sale of shares so that a fair balance is struck between the parties, and any possibility of abusing economic predominance is ruled out. The minority shareholder has every right to know why his stocks are being transferred into the majority shareholder's ownership. He/she shall be enabled to state and uphold his/her position by means of a respective a legal remedy […] Mandatory sale of shares shall be allowed only in circumstances where this presents an imperative necessity for a normal functioning and development of the enterprise.*[136]

> *[…] Two points are to be taken into account – firstly, whether the decision about mandatory sale of shares, together with the respective enforcement procedures, have been executed with observance of the aforementioned requirements; and, secondly, whether procedure for pricing the shares is fair enough to provide for an equitable compensation of minority shareholders in cases of mandatory sale of shares. Without due regard to these two essentialities, even where there is a legitimate purpose substantiated by the public need, the means whereby this purpose is achieved will be inadequate and disproportional.*[137]

The 11 July 2007 additions have been incorporated into the Code of Civil Procedure of Georgia (Chapter XXXIV^{2}), while article 53^{4} of the Law on Entrepreneurs has been reformulated and enacted in its current form.

The following regulations have been defined: Article 534 has retained the term 'mandatory sale of shares' and provides that "A shareholder, who is the owner of more than 95 percent of the voting shares of a joint-stock company ("the buyer"), is entitled to buy out the shares of the other shareholders for a fair price" (Para 1)

Pursuant to Paragraph 2 of the same Article, the decision regarding the mandatory sale of shares is taken by the Court, while the rules for effecting such decisions have been specified in the Code of Civil Procedure of Georgia.

The same paragraph reads that the Court shall rule on two points: it shall establish (1) a fair price of shares sold mandatorily, and (2) the date of sale.

The same Article, in conjunction with Article 309^{9} of the Code of Civil Procedure, provides that the majority shareholder shall submit an application to the Court respecting the intended mandatory sale of shares; besides at least one month prior to applying to the court, he/she shall publish a notice on mandatory sale of shares.

Pursuant to Paragraph 3, the application shall comprise information on (1) the reasons, (2) terms and conditions, and (3) procedures of the buy-out.

Paragraph 4 prescribes those buy-out procedures that shall follow procedures envisioned in the Civil Procedure Code. Therefore, it would be appropriate first to look into the procedures provided for by the procedural legislation.

Paragraph 2 of Article 309^{9} lists the information to be included in the court application regarding the buy-out of shares:

- a) Name of the Court;
- b) Name of the buyer and the buyer's representative/s
- c) Request of the applicant;

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135 Judgement 2/1-370,382,390,402,405, Tbilisi, 18 May 2007 "Citizens of Georgia Zaur Elashvili, Suliko Mashia, Rusudan Gogia and others and the Public Defender of Georgia vs. the Parliament of Georgia", Part 2, N: 6;

136 Judgement 2/1-370,382,390,402,405, Tbilisi, 18 May 2007 "Citizens of Georgia Zaur Elashvili, Suliko Mashia, Rusudan Gogia and others and the Public Defender of Georgia vs. the Parliament of Georgia", Part 2, N: 26;

137 Judgement 2/1-370,382,390,402,405, Tbilisi, 18 May 2007 "Citizens of Georgia Zaur Elashvili, Suliko Mashia, Rusudan Gogia and others and the Public Defender of Georgia vs. the Parliament of Georgia", Part 2, N: 27;

- d) Proof of publication of the notice on mandatory sale of shares in an official gazette at least one month prior to filing the application with the court;
- e) Address of the registrar;
- f) Date (indicating the time of the working day) of the buy-out of shares from their current holders (the buy-out registration date).

Further, according to Article 309[11], within three days upon receipt of the application on mandatory sale of shares the Judge decides on its admissibility. The failure to provide the required information in full is considered as grounds for dismissing the application.

Upon admission of the application, pursuant to Paragraph 1 of Article 309[12], with a view to establishing a fair price of the shares in question, the Court appoints an independent expert or a brokerage company[138].

Commensurate with Paragraph 2 of 309[12], the brokerage company expert shall prepare a buy-our report comprising the following items:

- documented circumstances of the buy-out;
- description of the method used to identify the fair price of shares intended for the buy-out;
- the established price of the shares, based on the applied method;

Article 309[13] sets out the procedure for the consideration of the application on mandatory sale of shares (which is conducted as an oral hearing)[139] Pursuant to Paragraph 4 of the said Article, at the hearing the Court checks compliance of the applied mandatory sale procedures against requirements of the law.

According to Paragraph 1 of Article 309[14], in case that the Court establishes compatibility of the mandatory sale procedures with the requirements of the law, it shall deliver a decision on the mandatory sale of shares.[140]

Paragraph 2 of the same Article requires that the court decision regarding mandatory sale of shares shall include the indication of:

- the fair price of shares;
- the buy-out registration date [141]

By virtue of Paragraph 3, in order to establish the fair price of shares intended for mandatory sale, the Court shall take into account:

- a) market price of the shares;
- b) potential future revenues of the joint stock company;
- c) assets and liabilities of the joint stock company[142]

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138 The cost of hiring an indepenedent expert or a brokerage company are born by the Buyer. At selecting an independent expert or a bro kerage company, the court may take account of the suggestions of the parties. The parties are entitled to nominate the appointees. It is the Court's prerogiative to decide upon whom to entrust the preparation of the report. The parties may challenge the appointed expert or broker. In its ruling declaring the application admissible, the Court shall indicate the date of the oral hearing and shall immediately notify the parties of the time and place of the session. The shareholder whose shares are requested for the buy-out (hereinafter, the interested person) shall be sent, together with the above notification, copies of the application and materials attached therein, and shall be given a reasonable time period to present his/her observations.

139 Article 309[13]. Consideration of an Application regarding Mandatory Sale of Shares .
1. If there is more one than one interested person, they shall appoint a representative.
2. The Court shall consider the application and deliver a judgement no later than one month upon admission of the application.
3. The application shall be considered at a court hearing. The Court examines the compatibility of the mandatory sale procedure with the requirements of the law. Non-appearance of any party at the court session shall not delay consideration of the case.

140 In the contrary case, the court issues a ruling on the refusal to satify the application.

141 Date (time, corresponding to the end of the working day) when the buy-out of the shares will be effected (the buy-out registration date)

142 Inclusive of working balances, the image, experience, future prospects and business contacts of the enterprice.

Paragraph 4 of Article 53[4] specifies the buy-out procedures beyond the Court's competence. These procedures shall be performed by the registrar. In particular, the registrar shall:

- ü notify the buy-out registration date to all nominal shareholders no later than five days prior to such registration date established by the Court .[143]
- ü compile a registry of all official shareholders ("buy-out register") as of the buy-out registration date
- ü register all shares in the name of the buyer against submission of the documents certifying the performance by the buyer of the actions envisaged by Paragraph 1 of this Article.

After this, the majority shareholder shall place the sum of money sufficient to buy-out all of remaining shares on a special bank account opened in favour of all other shareholders, or at the central repository or a brokerage company, to whom the buyer hands the buy-out registry.

In general, it would be fair to say that the introduced additions and amendments helped to rectify certain problems indicated in the motivation part of the court judgement caused by the abrogated norm. However, this has been only a partial improvement, still leaving a few outstanding issues.

In its judgment of 18 May 2007, the Court pointed out two issues that still remain problematic even in the current edition of then above law. Each of these problem issues, individually, provides sufficient reasons to warrant recognition of the concerned norm unconstitutional.

The legislator shall formulate the norm regulating mandatory sale of shares so that a fair balance is struck between the parties, and any possibility of abusing economic predominance is ruled out.[144]

With a view to achieving the above, according to the Constitutional Court:

[1] Minority shareholders shall be afforded the respective legal remedy [...] to uphold their positions.

[2] Mandatory sale of shares shall be allowed only in circumstances where this presents an imperative necessity for a normal functioning and development of the enterprise.[145]

The Constitutional Court held that "as regards the mechanism for substantiating the imperative public necessity, in the view of the Collegium, this is related to the issue of affording the minority shareholder a respective legal remedy to uphold his/her position" *[...]*"[146] . This is why these two issues are considered in conjunction with each other.

According to the current edition of the Civil Procedure Code, Paragraph 2 of Article 309[14], in case of mandatory sale of shares the court delivers decision only on two points: (1) fair price of the shares to be bought-out, and (2) the date. As to the mechanism for determination whether the mandatory sale in particular cases is truly an imperative public need, the newly introduced changes and amendments are silent about this. This assertion is further corroborated by Paragraph 1 of the same Article, which reads: "*if the court establishes the compatibility of the mandatory sale procedures with the requirements of law, if delivers a decision in favour of mandatory sale of shares. Otherwise, it passes a ruling refusing to satisfy the application*". This norm, too, clearly illustrates that the court limits itself just to examining compliance of the concerned procedures. In addition, in terms of procedures, all that majority shareholder has to do is just ensure an advance publication of the information stating the reasons (i.e. the imperative public necessity) of the buy-out (Law on Entrepreneurs, para 3, Article 53[4]).

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143 From that moment on, for a certain period (from the buy-out registration date until the commencement of the buy-out procedures), all operations related to the shares are fully suspended, except those envisaged by the present article.

144 Judgment No. 2/1-370,382,390,402,405;II-26;

145 The said edition points to two outstanding problems, as regards the Court judgmement; although, all in all, there are three of such unaddressed issues: (1) the minority shareholder is informed of the reasons why his own shares are being transferred into the ownership of the majority shareholder. (2) He/she shall be enabled to state his own position, and (3) the procedure for establishing the fair price of the shares shall be put in place for cases of mandatory sale of shares.

146 Judgment #2/5/467, Batumi, 8 June 2009 „The Public Defender of Georgia vs. the Parliament of Georgia" , Part 2, para 5.

Notably, the law in its current form provides no procedural norm to enable the court to judge on the validity of reason/ reasons for effecting the mandatory sale of shares, and thus rule out any abuse of economic predominance by the majority shareholder, together with securing legal protection guarantees for minority shareholders. Apparently, the Court, being as one of the branches of power, cannot possibly 'unearth' the competencies that have not been accorded to it by the legislator.

In its first judgment, the Constitutional Court held that the impugned norm failed to secure the legal remedy for the minority shareholder,[147] which led to recognizing the-then existing norm as unconstitutional. I believe, the above disputed norms echo the unconstitutional portion of the norm already abrogated by the Constitutional Court.

[147] Judgment #2/3/460 Batumi, 5 May 2009 „Citizen of Georgia Suliko Mashia vs. The Parliament of Georgia" , Part 2, para 5.;

Right to Adequate Housing

Introduction

The right to adequate housing is guaranteed by the international documents to which Georgia is a party, as well as by the national legislation. More specifically, the right to adequate housing is one of the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights" of 1966[148], which comprises several components.

The UN Special Rapporetur of Adequate Housing Rights, Justice Rajindar Sachar, explained in his concluding report that housing rights must be seen and interpreted to imply the following:

(a) That once such obligations have been formally accepted, the State will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights;
(b) That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, inadequately housed or generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights; and
(c) That the State, directly upon assuming legal obligations, will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right in question.[149]

This, of course, does not imply that the State should build houses to all of the population, or is obliged to provide free housing to all who asks for it. Although, it is clear that the Government must elaborate a unified policy in regard to the above issue; is must ensure full access to the housing rights for all layers of population, through introduction of realistic assessment standards, and develop a robust housing strategy.

This chapter will focus on issues related to reducing the number of homeless people, and to the housing policy oriented towards all categories of the needy population.

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148 International Covenant on Economic, Social and Cultural Rights, para 1, Article 11: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

149 Final report of the former UN Special Rapporteur of Adequate Housing Rights, Justice Rajindar Sachar, 1995 UN doc. E/CN.4/Sub.2/1995/12, paragraph 12.

Inclusion of Homeless People in Social Programs

Social policy of the Georgian State is clearly manifested in the Law of Georgia on Social Aid. Subparagraph (i) of Article 4, provides that social aid is any monetary or non-monetary benefit accorded to a person with special needs, a needy family or a homeless person;

According to subparagraph (j) of the same Article, the social aid system is a set of measures financed, organized and/or organized under its oversight aimed at improving social-and-economic conditions of persons with special needs, needy families and homeless persons.

The above law provides definition of a homeless person as someone with no permanent place of residence who is registered with the local self-government body as homeless.

The most important ongoing social programs in Georgia is the State Program for Social Aid of Families Living Below the Poverty Line. This program uses a methodology involving criteria for assessing a person's living conditions in the place of his/her temporary of permanent residence.

A large number of regulatory acts pertaining to social aid programs, provide the definition of a family, eligible to their aid, as a unit of people, with or without kinship ties, living together in one home and commonly running the household.[150]

Accordingly, homeless people that have no place to live cannot, by definition, qualify for such an aid provided through the State Program for Social Aid of Families Living Below the Poverty Line.

In the meanwhile, almost all existing state benefits are directly linked to the above program. In particular:

- cash allowance – substance benefit;
- medical insurance of families living below the poverty line;
- a package of municipal privileges in the capital city of Tbilisi;
- Free legal counseling by the Ministry of Justice;
- Waiver of stamp duties – court expenses;
- Social service for persons with disabilities and children at risk
- Socially vulnerable families that have been registered in the unified database and whose rating points are below one hundred thousand (100,000), starting January 2010, will receive the land which they have been using without official authorization free of charge.[151]
- Various local and international organizations regularly use the data captured in the database;

Hence, it follows from that a homeless person will fall through the described welfare net.

No Database of Homeless Persons

Pursuant to Article 17, subparagraph (d) of the Law of Georgia on Social Aid, „the Agency (Social Service Agency) runs a unified registry of homeless persons that have been registered with local self-government ".

Article 28 of the same law prescribes that local self-government bodies shall provide shelter to the homeless and ensure that agencies have a ready access to the information about homeless persons.

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150 Ordinance #51 of the Georgian Government On promotion of measures aimed at poverty reduction and social welfare of the population, 17 March 2005; 2005. Order 120/n of the Minister of Labour, Health and Social Protection on the approval of the instruction 'On adoption, registration and processing of a social vulnerability form for the capture of data on socially vulnerable families in a unified database', 27 April 2005. Order #1-1/1024 of the Minsiter of Eoncomic Development "On the adoption of assessment rules for the registration of socially vulnerable families". 29 September 2005.

151 „Rules for recognition of property rights of a natural of legal person of private law to the land plots under their legitimate ownership (usage) and approval of the format of the property right recognition certificate, Decree of the President of Georgia of 15 September 2007 #525, Article 4.

Judging by the information provided by the Social Service Agency, despite the fact that four years have passed after adoption of the law, the Agency still has no unified registry of homeless persons. As of today, none of the self-government bodies has submitted any such information whatsoever. Furthermore, not a single normative has been adopted that determine the format in which the said information shall be submitted to the Social Service Agency or the particulars this information should include. Neither there are any procedures or criteria in place to assess the conditions of a family/person and 'diagnoze' them as homeless.

The Public Defender sent a query to three regions – Kutaisi, Zugdidi and Batumi on the number of submitted requests for shelter to the local government.

Replies arrived from the Kutaisi and Batumi self-government bodies on 11 March 2010. As it turns out, requests for shelter are quite numerous. According to Kutaisi Municipality, in 2009-2010, 390 citizens applied to the local self-government body requesting a shelter, while the corresponding number for Batumi, as we have been informed, was 150. The reply letter of 23 March 2010 from Zugdidi municipality points out that there have been 70 applications for shelter.

Clearly, the Social Service Agency possesses no such data, as they maintain no country-wide data base that would help capture the situation across the entire territory of Georgia in respect of the number of people in need of shelter.

Apparently, when the Government has no realistic picture of the existing need in a specific sphere, it would hardly be able to take adequate steps to eradicate the respective shortcomings and problems.

Of course, we are not talking here about one-off occasions of providing shelters to the population left homeless due to a natural disaster and other spontaneous events, or about the availability of the respective information

Municipal housing resources, special program for the provision of shelter to the homeless

Provision of shelter to the homeless, pursuant to Paragraph 1.a of Article 18 of the Law on Social Aid, is the prerogative of local governments.

The Public Defender of Georgia addressed numerous recommendations to the local authorities for provision of elementary shelter or a flat to concrete individuals. Although, to no avail. The local authorities, as a rule, use an excuse that they have no housing resources of their own to fulfil the recommendation.

As mentioned above, the Public Defender, requested information from three regions – Kutaisi, Zugdidi, and Batumi. In particular:

a. How many individuals applied of the local government requesting a shelter over one year;
b. Do they maintain a unified database containing information about such persons in need of shelter;
c. Does the local government body possess a municipal housing stock of its own, and how many blocks of flats is it comprised of;
d. How many individuals have been provided with a shelter over the recent year;
c. What eligibility criteria are applied for the allocation of shelter (housing);
d. What procedures do you follow for allocation of housing to a family;
e. What measures are being taken to address the aforementioned problem;

So far, we only have at hand replies from two municipalities; nonetheless, it is quite apparent that this is a highly critical problem.

According to the information provided by the Kutaisi Mayor's Office, in 2009-2010, as many as 390 citizens filed requests for shelter. Due to the absence of a municipal housing stock, not a single request has been satisfied. According to the

letter, currently the Service for Registration, Management and Monitoring of Housing Resources of the Kutaisi Mayor's Office, together with representatives of territorial bodies, are carrying out a survey of families that have applied for housing to local authorities. It is intended to provide cash aid to such applicants, within available possibilities. A similar reply arrived form Zugdidi municipality. In 2009-2010, they received 70 applications for housing, out of which none was satisfied due to the absence of a housing stock.

In the above cases, apart from non-existent housing resources, it is also unclear what eligibility criteria are to be used for the allocation of housing, if these resources were to come by. What kind of procedures will be applied in allocating housing to families – will this be through administrative proceedings, commission or other. It is also unclear what standards apply for the provision of cash aid. Hence, we believe the situation with the aforementioned issues at the legislative level remains unregulated and ambiguous.

As far as Batumi Mayor's Office is concerned, on 11 March 2010, we received a reply stating that in 2009 they had received 150 applications requesting housing. Currently a project is underway, called "Social Housing in Supportive Environment in Tbilisi, Batumi, Kutaisi, Zugdidi and Gori". The project presupposes construction of two-storey housing units. Within the framework of this project, two two-storied housing units have already been built.

According to the Memorandum of Understanding signed on 24 August 2009 between the Swiss Government, through the Swiss International Development Agency, Office of UN High Commissioner for Refugees, Ministry of Health and Social Protection of the Autonomous Republic of Adjara, and the Mayor's Office of Batumi, 60% of the beneficiaries of the project will be IDPs, while 40% – local population.

A similar project was implemented in Tbilisi in 2009. On 19 July 2009 Tbilisi Mayor's Office informed the Public Defender that in Varketili-3 District of Tbilisi, micro-region 2, within the framework of a joint project, "Social Housing in Supportive Environment", implemented by Swiss International Development Agency and Tbilisi Mayor's Office, four two-storied housing units were built, with 28 flats each. With a view to selecting beneficiaries of this project, a working group was established which designed special eligibility criteria. Based on these criteria, a list of potential beneficiary families was compiled (292). The list was further re-examined using a specially designed methodology elaborated by *the Social Workers' Association*, a non-governmental organization hired by SIDA specifically for this purpose. In the end, 28 families were chosen as beneficiaries and were moved to the newly-built 'social houses'.

On 11 November 2009, Tbilisi Mayor's Office informed us of the start of the next phase of the project. A special representative commission and a working group will be established to manage the selection process of future dwellers of the 'social houses'. Selection criteria elaborated by the working group will be made public prior to completion of the construction.

This project is, indeed, a step forward toward meeting the housing needs of homeless persons. However, there is one hurdle here: the project eligibility criteria require that a family must be on the Socially Vulnerable Families database, in order to become a beneficiary. Besides, the rating of the family shall not be in excess of 57001 points. The problem here is that homeless persons, due to the fact that they have no permanent place of residence and no possibility to reside at one address for relatively lengthy periods, do not qualify for inclusion into the State Program of Social Aid for Families Living Below the Poverty Line. Accordingly, this population category cannot automatically meet one of the eligibility criteria for the housing project.

The reason why the rating points are used as one of the selection criteria is quite apparent. No doubt, the above database for socially vulnerable families is the most accurate database as of today. However, we deem it necessary to set up a centralized database for homeless persons, as prescribed by the Law on Social Aid. This latter will serve an efficient tool to provide a more targeted help available through such projects.

Due to the absence of a centralized database for homeless persons, we have no way to know the exact number of such persons in the country. Besides, there are no criteria to indentify homeless persons, which is a concern, too. Theoretically,

homeless persons fall into several categories: persons left homeless due to a natural disaster or other calamity, persons left homeless due to material problems and now rent a flat or live with their friends or relatives, and the smallest category is persons who sleep in overnight shelters or on the streets. Currently, it is impossible to tell the number of those that fall in the last category. Hence, we cannot so much as know the dimensions of this problem in the country in order to accommodate this category into social aid programs or ongoing projects. Apparently, no matter what the number will be, it is imperative that nobody is left without his/her due social aid and benefits provided by the State.

RECOMMENDATIONS

- **Local self government bodies shall provide data pertaining to homeless persons to social aids agencies, as prescribed by the Law of Georgia on Social Aid;**
- **Respective measures shall be undertaken to identify at least an approximate number of persons who, due to various reasons, live on the streets or sleep at overnight shelters;**
- **In accordance with the obtained data, the State shall plan measures with a view to providing concrete and targeted help to the above group.**

Right to Social Security

Social assistance

Provision of care to socially vulnerable population and securing guarantees for their social protection is an obligation of the State spelled out both in the Constitution of Georgia and international law.

Right to social security is an important guarantee for those people who cannot care for their own health and welfare and that of their families'. This right is protected by Article 25 of the Universal Declaration of Human Rights[152] and Article 12 of the European Social Charter.[153]

In Georgia, all types of social aid and the basic principles of its allocation are determined by the Law on Social Aid of 29 December 2006, which also regulates all relations associated with receiving social assistance.

According to subparagraph (i) of Article 4 of the above law, "social aid is any monetary or non-monetary benefit accorded to a person with special needs, a needy family or a homeless person". On 20 September 2009, Georgia submitted a national progress report to the European Committee of Social Rights on the implementation of the country's commitments it undertook upon joining the European Social Charter.

Having examined the report, the Committee observed that the situation in Georgia is not in conformity with Article 12§1 of the Revised Charter on the ground that the minimum levels of old age, disability and survivors benefits are manifestly inadequate.[154]

As already mentioned, Georgia is currently running the State Program for Social Aid of Families Living Below the Poverty Line. The program is managed by the Social Service Agency, a legal entity of public law under the Ministry of Labour, Health and Social Protection

In general, it can be said that this program is quite efficient, of which there is ample evidence. According to the information provided by the Social Service Agency, as of 1 November 2009, within the framework of the above program, as many

[152] Universal Declaration of Human Rights (10 December, 1948, 25. 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

[153] European Social Charter (3 May 1996), Article 12 – With a view to ensuring the effective exercise of the right to social security, the Parties undertake: 1 – to establish or maintain a system of social security"

[154] European Committee of Social Rights-Conclusions 2009 (GEORGIA), January 2010

as 156,388 families in Georgia receive family subsistence benefits (431,518 persons), while 297,726 families (904 897 persons) have medical insurance. Besides, it must be noted that individuals covered by this program enjoy other benefits that are directly linked to participation in the program.

- Cash allowance – subsistence benefit;
- Medical insurance of population living below poverty line;
- Medical insurance of families living below the poverty line;
- A package of municipal privileges in the capital city of Tbilisi;
- Municipal social programs of cities Rustavi, Kutaisis, Gardabani, Zestafoni, Khobi, Kazbegi, Senaki;
- Free legal counselling by the Ministry of Justice;
- Waiver of stamp duties – court expenses;
- Social service for persons with disabilities and children at risk
- Socially vulnerable families that have been registered in the unified database and whose rating points are below one hundred thousand (100,000), starting January 2010, will receive the land which they have been using without official authorization free of charge.[155]
- Various local and international organizations regularly use the data captured in the database;

In his report for the first half of 2009, the Public Defender covered the details of the assessment system, inclusive of its complexity and other shortcomings.

Whether a family will be considered eligible to receive social aid/subsistence benefit is fully dependent upon the methodology for the assessment of its social-and-economic status. This methodology serves as a mechanism to calculate the household's welfare index, based on which rating points are assigned to a family and a respective decision is taken about granting or withholding subsistence allowance.

Taking into account the number of applications related to this issue, as well as the shortfalls of the system that came to light in the process of its application, the Public Defender addressed a recommendation to the Ministry of Labour, Health and Social Protection, suggesting that the methodology and administration of targeted social help system should be refined, together with introducing respective changes and amendments in relevant regulatory acts.

Special emphasis was made on the need to review Government Resolution #126 on Adoption of Methodology for the Assessment of Social and Economic Status of Socially Vulnerable Families (Households), of 4 August 2005.

In the second half of 2009, just as in previous years, Public Defender's Office received quite a few applications by those who were disgruntled over a change in the qualifying rating points, due to which their social aid had been stopped. In each case, the Public Defender's Office sought help form the Social Service Agency.

However, it would hardly be appropriate to analyse this problem in great detail, as the respective bodies have already taken a number of steps to rectify the above drawbacks. More precisely, according to the information provided by the Social Service Agency of the Ministry of Labour, Health and Social Protection, with a view to rectifying the drawbacks, they are currently looking into three possible options for the assessment of family's welfare. Two of these three options presuppose a certain modifications of the applied methodology formula, whereas the third option implies introduction of a totally new formula. Currently, these changes are in the process of piloting.

In addition, a package of legislative changes has been prepared and submitted to the Ministry of Labour, Health and Social Protection.

[155] „Rules for recognition of property rights of a natural of legal person of private law to the land plots under their legitimate ownership (usage) and approval of the format of the property right recognition certificate, Decree of the President of Georgia of 15 September 2007 #525, Article 4.

Apart from the above, certain changes are planned as regards the administration part of assessment methodology. This implies streamlining of procedures for registering families in the database, as well as re-calculating rating points, rather than going through a completely new assessment process in the event of a demographic change, etc.

These administrative changes aim at cutting time of family registration procedures, simplifying the process of recalculating the rating points and maximally promoting access to the information contained in the database.

It would be fair to say that the elaboration of draft changes to the administration mode and calculation methodology used for the assessment of family welfare status for granting social aid is, clearly, yet another step forward, taken by the Ministry of Labour, Health and Social Protection toward improvement of targeted social help. These changes aim to introduce a more flexible mechanism of social assistance and allow a pin-point identification of beneficiaries, both at an individual and group level.

We are hopeful that the intended changes will help eradicate the problems that were so prominent both over the first and second half of 2009.

Rights of the persons with Occupational Injuries

Quite a few applications filed with the Public Defender's Office come from individuals who have sustained an occupational injury or illness. They complain that their livelihood – particularly their property and rights situation – suffered substantially upon the repeal of Presidential decree No.48, "*Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*" of 09 February 1999.

In the light of the above, the present chapter will be fully dedicated to reviewing Decree No.48, and the consequent regulatory acts with similar contents that followed its abrogation, together with consideration of the ensuing impact upon the beneficiaries.

The overriding legislative act[156] declares null and void Presidential Decree No. 48, "*Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*" of 09 February 1999 (hereinafter Decree No.48). Instead, with a view to regulating such relations, the Government of Georgia adopted Resolution No.53, "*On the Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*" (hereinafter Resolution No.53). As regards beneficiaries' rights situation, comparative analysis of Decree No.48 and Resolution No.53, suggests the following:

According to both of the normative acts, the damage compensation obligation stems from the fact of inflicting damage to a person's health in the course of performing job duties. Decree No.48 is much more specific and states that the employer is materially responsible for the damage to employee's health in the event of an injury, or an occupational trauma sustained by the employee during performance of his/her job duties in or outside the organization's premises, as well as during travel to or from work in an employer-assigned vehicle. In contrast, provisions contained in Resolution No.53 are too generic, holing employers liable for compensating the damage incurred by an employee during this latter's performance of job duties through employer's faulty actions.

According to Decree No.48, the above *Rule was* the only normative act regulating such relations, stating, in particular, that "*… this Rule regulates legal grounds for compensation of harm sustained by an employee during performance of his/her job duties, due to an occupational injury, occupational disease or health damage at all enterprises, institutions and organizations (hereinafter, organizations) in the entire territory of Georgia*".

To compare, Resolution No.53 states that *the Rule* governs the compensation of health damage sustained by an employee at an enterprise, institution or organization (hereinafter, employer), irrespective of its organizational and legal form, but only in the cases stipulated in the Labour Code and Civil Code of Georgia. Besides, the Employer will be liable for damage

[156] See Decree of the President of Georgia #93 of 06 February 2007, On the Abrogation of Decree of the President of Georgia #48 of 09 Febraury 1999 on "*Rules respecting the Payment of Compensation for Health Damage Sustained at Work Place*"

compensation in the event if "*the Labour Code or the Civil Code contemplates compensation liability for such an action, provided that the established limitation period for submission of such a claim has not expired.*" This excerpt is indicative of an intent to turn employer's compensation liability for health damage into a contractual provision, affording greater flexibility to the Employer and rather limiting employees' legal guarantees.

According to the *Rule* endorsed by Decree No.48, the size and duration of disability allowance was to be linked directly to the extent of working capacity loss, as determined by a special medical-and-social expert examination commission. "*Alongside with establishing the percentage of working capacity loss, when appropriate, disability degree shall me assigned and additional benefits shall be granted. The individual who suffered health damage shall receive compensation on a monthly basis for a duration over which he/she will remain disabled, whether or not he has been assigned disability degree*", – read the Decree. In addition, the employer was to bear costs associated with the procurement of medicines, prosthetics, wheelchairs, special vehicles, as well as nursing, patient care, etc.

Resolution No. 48 provides no specifics as regards the extent of damage compensation. It merely points out: "*Employer is entitled – instead of paying out a monthly disability allowance, as required by Presidential Decree No. 48 'Rule respecting the payment of compensation for health damage sustained at work place' of 09 February 1999 – to make a one-off lump-sum compensation payment, in agreement with the beneficiary*".

Replacement of disability allowance with a lump-sum compensation payment is, in itself, an encroachment upon the rights of the affected individuals. The rationale behind disability allowance is compensating for the health damage incurred, together with securing minimum guarantees for survival. In the vent when the inflicted injury results in a life-time disability with no chances of regaining health, it is imperative to strike a fair balance when it comes to lump-sum compensation. The reason is that due to the incurred trauma, the living costs of the injured person keep rising, while his incomes melt down. Therefore, it is essential to elaborate certain standards that would help protect the injured from their employer's authoritarian decisions and abuse of power.

The major difference between Decree No.48 and Resolution No.53 lies in the way they approach the issue of legal succession. In the event of reorganization (merge, acquisition, division, severance, transformation), Decree No. 48 placed the damage compensation liability on the legal successor of the organization; in respect of joint-stock companies with 100% state ownership with no legal successor, the entity responsible for the registration of individuals who sustained occupational health damage, together with calculation of the size compensations and their payout was the State Social Insurance Fund. These latter payments were made out of the dedicated funds supported by the State budget.

As far as Resolution No. 53 is concerned, it provides that "…the employer or its successor is responsible for the payment of a disability allowance appointed in adherence to the requirements of Decree No. 48 of the President of Georgia on the "*Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*", … except specified cases." And, these 'specified cases' pertain to bankruptcy or liquidation of the employer organization (including ministry, subordinate entity, structural unit or a legal entity of public law), which, proceeding form the above Resolution, results in the annulment of employers' liability for the payment of disability allowance. In other words, pursuant to Resolution No. 53, employer's bankruptcy or liquidation will bring about termination of the monthly disability allowance. In contrast, Decree No. 48 transferred the obligation of disability allowance payments onto the State in such cases.

The above-described changes account for a discriminative regulation of the concerned relations by Resolution No. 53, depending upon the time they arose – before or after 01 March 2007.

With reference to the Resolution, the State Social Security Fund was instructed to recompense the arrears arising from valid compensation claims registered with the Fund as of 01 March 2007, and corroborated by the respective court decisions enacted as of the indicated date, based on Ordinance No. 429a of the Head of State "On Measures to Resolve the Current Situation at Coal Mines and Other Enterprises of the "Saknakhshiri" Department" dated 15 October 1995, and Paragraph 421 of Resolution No. 48 of the President of Georgia on the "*Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*" dated 09 February 1999.

The Public Defender had sent a query to the respective authorities, inquiring whether the above obligations have been eventually fulfilled by the State Social Insurance Fund, and in particular: how many individuals with occupational trauma had been registered with the Fund as of 02 March 2007, and how many of them had received compensation.

In its reply letter of 30 March 2010, the Social Service Agency notes that, starting from 01 March 2007, the Agency no longer administers allowances for individuals with occupational injuries or diseases sustained during their employment at state enterprises presently liquidated. Accordingly, within the requested deadline, it is unable to provide information regarding the numbers of individuals with occupational health damage as of the indicated date. However, as the Agency notes, it is prepared to go through relevant archive materials to put together the requested information within a reasonably short time and present it to us.

In effect, starting 01 March 2007, Resolution No. 53 stopped the practice of assignment of allowances previously allocated based on the provision of Decree No. 48 on "*Rule respecting the Payment of Compensation for Health Damage Sustained at Work Place*", dated 09 February 1999, which regulated grounds for the payout of allowances in the event of absence of a successor, irrespective of any pending court proceedings on this matter.

The above Resolution No.53, puts the individuals with similar circumstances under inequitable conditions. It points out that, irrespective of any pending court proceedings, no new allowances will be allotted on applications requesting compensation of health damage sustained as of 01 March 2007. Moreover, on one occasion, an aggrieved person had applied to the court referring to Decree No.48, reasonably expecting that he would be duly granted a disability allowance. However, by the time the court decided upon his case, Decree No.48 had already been repealed.

If one cares to look into the dates of adoption and enactment of Resolution No.53, he/she would clearly see that this Resolution carries a retroactive force and regulates relations that have emerged prior to its introduction. Meanwhile, the Civil Code prescribes that laws and normative acts may have a retroactive effect only when this is manifestly indicated. The formal component of Resolution #53 complies with the requirements of the law; however, this is hardly true of its content, which adds to the economic hardship of the beneficiaries.

The above matter, in essence, is very much akin to the issues addressed by the Constitutional Court of Georgia in its judgement of 18 April 2002. The applicants claimed that changes introduced to certain legal acts have caused deterioration of their proprietary standing[157]. Alongside with other international instruments regulating social rights, the Constitutional Court judgement makes a reference to Article 2 of the International Covenant of Economic, Social and Cultural Rights, which obliges State Parties "… *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 present Covenant by all appropriate means, including particularly the adoption of legislative measures*".

Having compared the newly adopted acts with the corresponding abrogated acts, the Court held that "… *reference to two legal acts as having equal force implies not formal equivalence in terms of legal force, but equivalence of their content.*" Through this explanation, the Court confirmed deterioration of claimants' proprietary standing and assessed the effected changes as negative.

Resolution No.53 fails to meet neither formal nor material requirements as set forth in the Court's explanation. Formally, this Government resolution supersedes Presidential decree, a legal act with a higher legal force. Materially, Resolution No. 53 does correspond to Decree No.48, in terms of the guarantees contained in this latter, which accounts for the ensuing deterioration of beneficiaries' livelihoods.

The above court judgement also touched upon the decisions taken by private companies aiming at the reduction of benefits to certain categories of citizens. In this respect, the Court held:

[157] See Judgment #1/1/126,129,158 of the Constitutional Court of Georgia.

"The State is not only obliged to safeguard its citizens' social rights in cases when the State itself acts as the provider of the referred services, but also in cases when provision of such services is in the hands of private entities. The formation of market-based economy, currently underway in this country, enhances even further its obligation to protect the claimants' interests and those of other individuals belonging to similar categories."

Meanwhile, Resolution No. 53 terminates liability for the payment of a monthly disability allowance which has been already assigned in the event of bankruptcy or liquidation of an employer organization (including ministry, subordinate entity, structural unit or a legal entity of public law).

This indicates to the following:

- The State has introduced a delineation between liquidated and functioning enterprises;
- Functional enterprises and organizations maintain their liability for payment of disability allowance;
- The State Social Security Fund (legal entity of public law) has been relieved of its liability for for payment of disability allowance;
- The State no longer maintains an obligation before persons who became disabled due to occupational health damage and, hence, cannot provide for themselves.

The existing situation, together with the applications filed with the Public Defender' Office, provide clear evidence that the majority of individuals claiming disability allowance had been employed in factories and plants founded back in the Soviet period. As a result of well-known events of 90's of last century, these factories and plants stopped functioning, and the State undertook the obligation for the payment of compensations to persons with occupational disability in minimum amounts.

To list the enterprises and organisations that were paying the so-called "regression pensions" is neat to impossible. Neither is it possible to establish the date of liquidation or the date of assigning a legal successor in respect of a great number of organizations. The liquidated organizations include: "Tbilgrvirabmsheni", The Civil Aviation of Georgia, Geology Department, Tkibuli coal mine, Marneuli bread factory, Kutaisi plant of reinforced concrete structures, furniture factory "Iveria", etc.

Tkibuli coal mine is among enterprises notoriously known for the number of employers that had been disabled while performing their jobs. Given the fact that it was the State that provided disability allowances to the individuals injured at the Mine, privatization of this enterprise exerted no effect upon the material condition of employees who had sustained an occupational health damage. Regrettably, the same does not apply to Resolution No. 53, which brought about a drastic decrease in the earnings of such persons.

Every such individual who applied to the Public Defender had sustained different kinds of health damage of varying severity. Almost all of them are currently disabled and are in no position to make their own living. Therefore, their material condition is desperate.

Notably, Resolution No.53 does not apply to military servants or to employees of Prosecutor's' Office, penitentiary institutions, Ministry of Defence, Ministry of Interior and the Finance Ministry's Revenue Service, whose occupational health damage compensation is regulated by a special law.

It is also worth noting that by ratifying *Mutual Recognition Agreement on Workers' Compensation for Injuries, Occupational Disease and Other Health Damage Related to the Performance of Job Duties,* the Georgian State has assumed respective commitments also pertaining to non-Georgian citizens. From 2004 onwards, upon the entry of the Agreement into force, the Georgian State bears liability for compensation of health damage to those individuals who had sustained the damage while in Georgia but presently reside in the territory of CIS. This accounts for the fact that Public Defender of Georgia receives requests for help from nationals of other countries, too.

Analysis of the applications also suggests that a great number of beneficiaries have been assigned lifetime allowances by the relevant court decisions. Respectively, each of them entertained reasonable expectations for receiving the allowance

permanently. While reasonable expectations *per se* are not enough to generate the State's liability, it may be appropriate here to draw an explanation by the Constitutional Court of Georgia on this subject.[158]

> *[...it is implied that it would be impertinent to speak about the State's liability for provision of social benefit or allowance in respect of persons who simply show insufficient effort to fully realize his/her potential and ability to earn living. The prerequisite for the entitlement to aforementioned rights is that the person, within his/her ability, has applied all reasonable endeavours, used his/her property and working abilities in the best possible way, in his/her view, to create conditions that would provide an appropriate standard of living. It is to be noted that the State bears no obligation to provide for citizens, hand out material goods to them or, more so, to secure luxury existence. However, it is obliged to secure an enabling environment for individuals' self-realization. The State's liability for provision of social help arises only in the event when an individual, due to reasons beyond his/her control, is incapable of making one's own living or, alternately, the resources he/she earns are insufficient for subsistence.]*

At assessing the impact of Resolution No.53, the prior and present practice should also be taken into account. Often, the payments of the so-called "regression pensions" tend to exact a rather heavy toll on enterprises. One may assume that the effected changes had been justified by entrepreneurs' interests. However, given the fact that Resolution No. 53 has been abrogated only partially and remains very much effective in respect of functioning enterprises, such an argument hardly holds water.

Among those who applied to the Public Defender were those who had their allowance suspended because their enterprise had been under the bankruptcy/insolvency procedure. For example, the *Iveria* furniture factory stopped paying a disability allowance on the motive of insolvency. According to the information provided by the Kutaisi court, the furniture factory's property had been put on an auction to exact tax arrears. On 2 March 2009, the case was terminated by a court ruling. Pursuant to the ruling, the selling of factory assets helped to cover only part of tax arrears, which rescinds obligation for any next order payments: in this case - health damage compensation allowance. This is yet another example to illustrate the important role the State plays in the provision of social security to individuals who sustained occupational trauma.

As noted above, Resolution No. 53 rescinds occupational trauma allowances assigned by prior court decisions. Besides, it permits a dissimilar treatment of individuals depending on the time of their referral to court. The Resolution forbids assignation of new allowances under those provisions of Order No. 48 which set out grounds for assignment of allowance in cases where there is no legal successor, regardless of any court proceedings that may be pending.

The above-described changes result in the following:

- Material conditions of individuals who have sustained occupational trauma have deteriorated, in as much as the State has relieved itself of its obligation to provide the relevant allowance;
- Court is no longer an effective mechanism for rights protection, in as much as the Resolution forbids assignment of new allowances despite any pending court proceedings;
- Execution of court judgments has been stalled. Resolution No. 53 is in conflict with the right to fair trial which – alongside with the right to an effective judiciary – also comprises the execution of adopted court decisions.

Finally, it is essential to assess the application practice of Resolution No. 53. And the practice indicates that, in the course of litigation, common courts rely quite heavily on relevant provisions of Resolution No. 53, irrespective of content. In this regard, it may be interesting to recall the ruling passed by the Supreme Court on a cassation claim lodged by the *Civil Aviation* employees. As many as fifty *Civil Aviation* workers had their health damage allowance payments terminated months prior to the adoption of Resolution No. 53. According to the documents presented to the court, the termination was due to the liquidation of *Civil Aviation* and non-existence of a successor. The Supreme Court did not contend the application of Resolution No. 53 by the lower court. It found legible grounds for recompensing to claimant the unpaid allowance accrued as of 1 March 2007. As for the ensuing period, the Court of Appeals instructed the lower court to deliberate on whether or not *Civil Aviation* had a legal successor and if the allowances previously assigned to the claimants are subject to repeal.

[158] See Constitutionnal Court Judgement of 27 August 2007.

Based on the above, it becomes clear that Resolution No. 53 exacts a heavy toll on the rights of individuals who have sustained occupational trauma, while the State is failing to fulfill adequately the commitments it has undertaken in respect of such category of people, both under national and international instruments.

In view of the above-described circumstances, we deem it expedient to make the following **recommendation**:

- **To prepare a new normative act with a view to enhancing social protection guarantees and improving rights situation of the individuals who have sustained occupational trauma.**

Rights of IDPs and Persons Affected by Conflict

One of the priorities in the Public Defender's activities has been the examination of internally displaced persons' legal status, considering the topicality of the issue. In the reports submitted to the Parliament, a separate chapter has always been devoted to the issues related to IDPs and the present report is no exception.

Today IDPs make 6 % of the total population of Georgia.[159]

In particular, according to available official data, 249,365 IDPs (87,962 families) are registered in Georgia.

As many as 233,453 (81,857 families) of them are IDPs as a result of 1990-1993 armed conflicts.

As a result of the Russian-Georgian armed conflict in August 2008, about 22,000 persons were forcedly displaced. 15,912 of them received the IDP status.

Internally displaced persons are settled all over Georgia; part of them live in collective centers, part – in new settlements, and most of them, according to the statistics, are accommodated in private sector.

The process of granting IDP status to persons displaced as a result of 2008 armed conflict is still going on. Thanks to the vast support of the Georgian Government and the international community, most of the displaced persons were provided with accommodation suitable for long-term usage. They are included in the national program for families below the poverty line, and benefit from the appropriate social package within the framework of the said program. Activities under the National Strategy[160] Action Plan[161] with regard to IDPs and refugees also continue. It comprises IDPs' housing rehabilitation and privatization process, which is accompanied with certain shortcomings.

Studies of international organizations and Georgian NGOs show that people affected by the conflict face different problems, including lack of information on their rights and privileges, anxiety with regard to the situation in the conflict zone, health related problems, and often paramount distress. There is still much be done for so called "new" IDPs' integration in the new residential space.

Study and assessment of the situation was not easy because of the large number of IDPs and diversity of the problems in this sphere. Large numbers of IDPs and diversity of the problems they face does not allow the Public Defender to undertake a full analysis of the situation and IDPs legal status. As a result of bilateral talks between the advisor to the Council of Europe Commissioner for Human Rights and the Public Defender it was decided to launch at the Public

159 Refugee Issues – general information: *http://www.mra.gov.ge/index.php?lang_id=GEO&sec_id=153*

160 Georgian Government Decree #47, February 2, 2007 "On Approving the State Strategy with regard to IDPs – Refugees"

161 Georgian Government Decree #403, May 26, 2009 "On Approving the Action Plan for Implementation State Strategy with regard to IDPs – Refugees in 2009-2012"

Defender's Office the project called *Support to Public Defender's (Ombudsman's) Office in Solving the Problems Related to IDPs and Persons Affected by Conflict.*

The project aims at strengthening the capacity of the Public Defender's Office to deal with problems related to IDPs and persons affected by conflict. Monitoring of the situation will be carried out within the framework of the project and recommendations will be drafted on how to cope with specific problems the IDPs face.

For the implementation of the project 6 new staff – 1 project coordinator and 5 monitors/consultants – were recruited on a competitive basis. Project monitors are represented at Public Defender's Gori, Zugdidi, Batumi, Kutaisi and Tbilisi offices. In order to improve the efficiency of PDO's response they conduct systematic monitoring of the situation with IDPs and persons affected by conflict, needs assessment and problems' identification, help the Public Defender's Office staff in their everyday work. Duration of the project at an early stage is 6 months (January – June 2010). Based on data provided by monitors and the expert analysis, detailed report will be compiled on human rights situation and legal status of IDPs and persons affected by conflict. The database will be created to describe individual and general problems, positive changes as well as the needs in this field.

In January 2010 the training was held for the project staff and territorial entities of Ministry of Refugees and Accommodation staff within the framework of the said project. Participants to the training reviewed Georgian legislation, identified urgent issues as well as positive steps taken by the government in order to improve IDPs' legal status.

Positive Trends

Regardless the diversity of problematic issues related to IDPs and persons affected by conflict, the situation in terms of IDPs' rights and legal status has somewhat improved. The government took several positive steps; besides, the support of international organizations and their active involvement in the development of state policy on IDPs makes the process rather transparent and balanced.

We would like to draw the attention to a number of improvements that took place in the second half of 2009.

1. Coordination Council was set up in order to monitor National Strategy Action Plan on IDPs. Along with public agencies members of the Council are international nongovernmental/governmental organizations. Another positive step is creation of a technical working group composed of agencies of appropriate profile, field of activity and qualification. This group provides the Ministry with recommendations on the implementation of different components of the Action Plan. This process increases involvement of the society in solving IDPs related problems;
2. Updating of Action Plan – Ministry of Refugees and Accommodation made a statement that the Action Plan would be continuously updated and amended based on cooperation with governmental structures, as well as with donor and international organizations. This process will help the Ministry to identify the ways to affectively address the tasks;
3. Standards of rehabilitation, reconstruction and building of collective centers were approved for IDPs' long-term settlement. This is a positive phenomenon and will help to establish a single standard. One of the recommendations in the Public Defender's report for the first half of 2009 was, exactly, the rehabilitation standards to be worked out.
4. Quite a number of projects aimed at social and economic integration of IDPs are being implemented with the help of the Ministry. According to the Ministry over 25 international organizations are involved in these projects where the Ministry is the lead coordinator;
5. Rehabilitation and privatization process of collective accommodation sites as scheduled in the Action Plan is continuing without difficulty.

Main problems

As already mentioned, regardless of positive steps taken by the government there is still a range of problems related to legal status of IDPs and persons affected by conflict.

1. Lack of information/communication

Lack of information remained one of the most topical problems in the second half of 2009. Lack of information and communication in general is not a problem unique for the second half of 2009 only. It has always been relevant and Public Defender's reports kept focusing on it.

1.1. In the second half of 2009 exchange of information between the Ministry of Refugees and Accommodation and international/nongovernmental organizations was no longer a problem. Though, it remains a problem and the quality is low when it comes to the exchange of information between the Ministry and IDPs.

It should be noted that during the reporting period the Ministry, with the support of international organizations, assumed the measures to eliminate the problem: a 24-hour hotline was established, special booklet on IDPs' rights and social assistance was published and distributed to IDPs. The situation has somewhat improved though the problem still persists. IDPs' frequent applications to Public Defender's Office requesting to explain certain issues warrant this conclusion. The number of complaints about the Ministry of Refugees and Accommodation not responding to the applications is also high. Lack of information is often accompanied by lack of communication. This, in a number of cases causes the Public Defender to automatically redirect such applications and to formally request the answer to the applications lodged with the Ministry. Communication problem emerges here as well – the Public Defender faces the problem of timely answers to his letters.

Because of the large number of IDPs and diversity of the problems the Ministry staff may, in some cases, also face difficulties to follow on each application in time. But, provided the Ministry of Refugees and Accommodation is the lead structure in developing IDPs national policy and taking decisions in their regard, it is of utmost importance that it provides the beneficiaries with accurate information about a specific problem.

1.2. One of the most acute problems, partly related to lack of information, is electricity fees. This problem is relevant in almost all new settlements. To our knowledge, electricity to the said settlements is supplied by a private company "Pro Georgia". The Ministry of Refugees and Accommodation subsidizes utility costs at compact settlement facilities and the new settlements. Electricity subsidy is 100 KW per month (per person). Gas allowance is 70-100 GEL per family.

After 2008 August conflict the government undertook to fully pay the IDPs' electricity and gas fees for a certain period of time.[162] In IDPs new settlements the problem arose in December 2009 – beginning of January, when IDPs received the bills. Debt on the bill was for three months – October, November and December. According to IDPs, they were not informed when exactly full state funding ended and so they were supposed to share in pay. They also explained that they did not know the volume of the designed aid. They only learned about it after having received the bills. Because of the said problems IDPs were not supplied with electricity for a certain period of time.

It should be noted that the Ministry of Refugees and Accommodation was involved in the negotiation process between the private company and IDPs. Finally the decision was taken that IDPs would cover electricity expenses within three months.

The Public Defender requested the information with regard to the above problem in letter #213/04-11 of 1 March 2010. Unfortunately the answer to our query never arrived and hence we are not able to examine the problem in detail.

The dissimilarity of information from settlement to settlement and a huge scale of the problem suggest that IDPs are not properly advised with regard to the above issue.

Our recommendation is that the Ministry continues the improvements and copes with the lack of information.

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[162] Disposal #840 of Georgian Government of 11 November 2009;
Disposal #771 of Georgian Government of 22 October 2009;
Disposal #784 of Georgian Government of 19 November 2008;

2. The Issue of Compensations

According to the Ministry of Refugees and Accommodation, 1,684 families (total of 4,333 people), who were forcedly displaced as a result of 2008 Russian-Georgian armed conflict, received compensations in the amount of $10,000 equivalent in GEL in exchange for provisional asylum. IDPs who asked for compensation instead of cottages applied to the Public Defender's Office. According to them they had not received the sum until now.

On March 1, 2010 the Public Defender sent official letter #213/04-11 to the Ministry of Refugees and Accommodation enquiring information about the number of people/families left without compensation and the terms of intended payments. Unfortunately the answer has not arrived yet and it does not allow us to assess the situation in this regard. While providing temporary housing to IDPs as a result of 2008 August conflict the authorities took the decision to make the process selective, i.e. let the IDPs make their informed choice in favour of cottages, as a temporary housing, or the compensation ($10,000 equivalent in GEL) in order to find the shelter on their own.

The opportunity has become meaningless now as 1.5 year after the conflict some of the IDPs have not received the compensation yet.

The abovementioned points rather to the problem of compliance of the State with its most important commitment of providing IDPs with temporary housing than to the shortcomings of informed choice.

Accordingly it is essential that the State/Ministry of Refugees and Accommodation give compensations to IDPs, who have made their choice in favour of compensation rather than a cottage.

3. Hygiene / Sanitation / Lack of Specific Medicines and Food

The Public Defender's report for the first half of 2009 detailed sanitation and hygiene problems at the new settlements.

According to our information the problem persists. In most of the new settlements, e.g. Sakasheti, Shavshvebi, Mokhisi, garbage collection does not take place regularly thus creating serious sanitary risks. In Sakasheti IDPs made a self-dug pit that serves as a landfill. Sewage problem is grave in the same village. In particular, bathrooms are located inside the cottages with no sewage system. The problem is magnified as summer approaches and the risk of infections and diseases increase.

The problem of providing adequate food, medicines, inventory and hygiene to persons in special need remained unchanged in the second half of 2009. In particular it is the problems of providing food/medicines to diabetics and nutrition/hygiene for infants.

IDPs do not have blood glucose meters. Inadequacy of food to diabetics' standards aggravates the problem – the food aid received by IDPs consists of white bread, sugar, pasta/rice, white flour, all with high content of glucose. IDPs cannot afford special food due to their financial status.

4. Legal Status of Persons Affected by Conflict

In the second half of 2009 the issue of safety and security of returnees to their domicile came to the fore. Principle 28 of the UN "Guiding Principles on Internal Displacement" provides that competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes.[163]

[163] Principle 28 "Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons".

One of the recommendations of 14 January 2009 Report[164] of the Representative of the Secretary-General on human rights of the internally displaced persons is the creation of necessary prerequisites for voluntary return of IDPs to their homes, in conditions of safety and with dignity.

Full destruction and grabbing of ethnic Georgians' property made it physically impossible for displaced persons to return to their homes. Besides, inefficient security regime in the conflict zones and around them create dangerous environment, individuals do not feel secure enough to return to their homes and to exercise freedom of movement.

The factor of conflict between the right to freedom of movement and exercising this right by individuals is also important. In 2009 several facts of captivating individuals living near Tskhinvali region on charges of illegal crossing of the border took place. In some cases de facto authorities arrested individuals visiting their relatives in Akhalgori and later tried them on different charges.

On several occasions, relatives of the captured individuals applied to the Public Defender with the request to assist in their release.

On November 4, 2009 four pupils of Tirdznisi public school: George Romelashvili (born in 1995), Aleko Tsibadze (born in 1995), Viktor Buchukuri (born in 1993) and Levan Khmiadashvili (born in 1992) were detained by representatives of de facto authorities of the so-called "South Ossetia". They were charged with illegal crossing of the border and arranging a terrorist act. On December 2, two of them were released, others were released later. In this connection Thomas Hammarberg, CoE High Commissioner for Human Rights visited Georgia several times. It was owing to his great efforts that the teens were released.

On 5 December 2009, head of justice department of the Public Defender's Office and Public Defender's representative in Gori met with George Archvadze's father and brothers who confirmed that George disappeared from Gori on 5 July 2009, when he was only 15 years old, and three weeks later he called the family to say he was in Tskhinvali. De facto authorities detained George Archvadze on charges of illegal crossing of the border.

The fact of George Archvadze's imprisonment was also confirmed by George Romelashvili and Aleko Tsibadze, who were released by Tskhinvali regime. According to Aleko Tsibadze they were put in one cell.

The Public Defender appealed to the Georgian Government demanding appropriate steps to release George Archvadze.

Subsequently, owing to the involvement of international organizations, George Archvadze was released.

On 22 November 2009 the law-enforcers of the so-called "South Ossetian" de facto regime detained Jemal Midelashvili born in 1948. On 9 December 2009 the detainee's wife Mary Midelashvili addressed an application to the Public Defender's Office in this regard. Jemal Midelashvili went to Akhalgori to visit his elderly parents. According to Mary Midelashvili her husband is disabled in 3rd group.

Jemal Midelashvili is still in jail. According to information at our disposal he is charged of unprecedented crime – participation in ethnic cleansing of Ossetian population.

On 11 December Public Defender sent the information at his disposal with regard to the above incident to the Georgian Ministry of Interior.

Another fact of kidnapping deserves to be noted. In particular, on 31 August 2009, 6 inhabitants of Lamiskana village were detained. They were charged with illegal crossing of the border. Their trial took place on 3 December, though no decision has been taken as yet and they are still under the arrest.

[164] Report of the Representative of the Secretary-General on human rights of the internally displaced persons, Walter Kalin -Follow-up to the report on the mission to Georgia (A/HRC/10/13/Add.2), 14 January, 2009

The Public Defender uses all available means to make international community and Human Rights organizations aware of the above facts.

It is evident, that the principles of return in safety are infringed and what is more, the population of villages adjacent to the zone of conflict is under permanent threat of unlawful acts.

Security is not the only problem of people affected by conflict. They are worried about different social and economic problems. It is true that social problems in Georgia concern not only this particular group of people, but still the government should take more efforts to improve the situation of the said people on account of their special status. It is important that appropriate arrangements are taken in different fields in order to solve the above problems.

RECOMMENDATIONS:

- **The Ministry of Refugees and Accommodation should take positive steps to raise awareness of IDPs on the decisions referring to them;**
- **The State/Ministry of Refugees and Accommodation should give compensations to the IDPs who choose monetary compensation in exchange of cottages;**
- **The Ministry of Refugees and Accommodation should, with the assistance of local authorities and self-governments eliminate problems related to garbage collection and other sanitary issues;**
- **The Georgian Government should, together with international community take efficient steps in order to ensure security in villages adjacent to the conflict zone.**

2009

Child's Rights

Introduction

Main tendency of violation of child rights in Georgia lies in perceiving a child as an object of care and in interpretation of the rights of children in generalized and declaratory manner.

Quite often measures targeted towards protection of rights of children, that are implemented by state bodies are permeated by outdated ideological vision and pathos similar to one, declared in such slogans as "the best for children", or "children are our future", which derogates correct perceiving of a child as social and political subject. Standpoint of a child may differ from what adults perceive as "the best decisions" for him.

Child's right to be heard and to participate in decision making is one of the most difficult facts to perceive, while this is the main precondition of proper understanding and acknowledging of a child as a person, bearing his rights.

Comprehension of "true interests of a child" requires not imposition of perceptions of adults in regard to interests of a child, but identification of his interests and in some cases restructuring of declared or implied expectations of adults.

We consider that improvement of state of affairs in the sphere of children's rights should start from supraliminal reading and interpretation of their rights.

Hidden violence at schools

Description of the problem

Major part of complaints, submitted to the public Defender's Office in the period under consideration is related to violation of child rights in educational institutions, namely public schools.

The complainants indicate to the facts of violence from school administration and teachers towards children. Namely: in the applications are described cases of psychological, verbal insult, degrading treatment, coercion of children into actions against their will.

World Health Organization defines psychological (emotional) violence as "humiliation, demeaning of dignity, groundless accusation, coercion, threat, derision and expression of other negative attitude in non-physical form"[165].

Expression of physical violence is often related to violence, expressed through non-verbal communication, which in its turn cannot be classified as either physical or verbal violence (such as mockery, degrading intonation, gesticulation and etc).

The applicants indicate to negative impact of such facts on academic progress, behavior and free development of children. This is confirmed by explanations, provided by children.

On the basis of the content of complaints we can state that strategy of school administrations, directed towards solving of problems, is causing some doubts, as it is mainly oriented not towards proper investigation and analysis of the problem, but towards temporary postponing of the issue and avoidance of responsibility. Namely, from the received complaints it becomes clear, that in some cases school director requires transfer of a child to another school, as in his school "the child has a bad reputation". In case of refusal of a child to transfer his documents to another school, the director threatens to involve district inspector.

Apart from the above mentioned it should be stated, that majority of complaints indicate to the problem of identification of violence directed towards children. Namely, unavailability of evidence on cases of psychological and emotional violence committed against a child becomes basis for recurrence of such actions. At the same time, the attitude of the society is that declaration of cases of violence is "shameful". Apart from this there is fear, that the violator shall remain unpunished. Another problem is generally low legal awareness, which promotes to existence of "hidden violence" in educational institutions.

International Standards

Results of the global survey on the issues of violence, conducted by expert Paulo Sergio Peniero, who was assigned to conduct this survey by the UN Secretary General on the basis of UN Resolution 57/90, adopted in 2005 and package of recommendations, elaborated on the basis of the above referred survey indicate to the need of response to **hidden forms of violence,** including violence in educational institutions.

„Societal acceptance of violence is an important factor, which promotes violence. Both children and perpetrators may accept physical, sexual and psychological violence as inevitable and normal. Discipline through physical and humiliating punishment, bullying and sexual harassment are frequently perceived as normal, particularly when no visible "physical" or lasting physical injury result... violence is also invisible, because there are no safe or trusted ways for children or adults to report it"[166].

One of the most important outcomes of the above referred survey is that it provided evidence to the UN Committee on Protection of Children's Rights on existence of so called "hidden or concealed forms of violence' against children, as well as promoted to considering of any form of violence, committed by adults against children, including so called "light" forms of violence as unacceptable and confirmed possibility of prevention of all forms of violence. Any compromise on the topic of violence against children, especially justification of violence by "cultural traditions" and "disciplinary measures" became unacceptable.

Equal perception of psychological and physical violence has been the practice, supported and introduced by UN Convention on Children's Rights, according to which "*any form of violence is conducive to promotion of other forms of violence. Physical violence against children occurs where children are insulted and restricted on daily basis. Acceptance of any form of violence hinders fighting with*

[165] Report of consultant working on the issues of violence against children, WHO, Geneva, March 29-31, 1999, page 15. http://whqlibdoc.who.int/hq/1999/aaa00302.pdf

[166] Address of the UN Secretary General: Report of the Independent Expert for the United Nations, Study on Violence against Children, 61 session of the General Assembly, 2006, August 29, p 8-9. http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf

other forms of violence"[167]. Long term impact of psychological violence is acknowledged as one of the main limitations for free development of a child.

According to article 19 of the Convention on the Rights of a Child ("Protection of children from all forms of violence") in the definition of the term "violence" is separately provided psychological violence against children, as well as rude treatment, ill-treatment and neglect. Article 19 of the Convention on the Rights of a Child goes beyond the cultural and often subjective definition of 'ill-treatment" of children, as well as 'cruel, inhuman and degrading treatment" (article 37) and stresses the need of protection of children against **all forms of violence** – physical, or psychological, by which it strengthens the acknowledgement of a child as the subject having his rights, dignity and promotes to perceiving of a child as a full-fledged person"[168].

Analysis of Legislation of Georgia

The Law of Georgia on "General Education" indicates to importance of inadmissibility of violence towards children and ensuring their safety (article 20), although it is important to state, that the response measures, provided for in paragraph 1 of the given article are limited to measures, focused towards prevention of verbal and physical violence. Thus the article states, that "*in the event of physical and/or verbal insult the school administration should immediately apply to adequate measures, as provided by the legislation of Georgia" (article 20).*

Apart from the above mentioned, another issue is clearly different definition of the concept of violence in the Law of Georgia on General Education from definition, provided in Article 19 of the Convention on the Rights of a Child. Given differences are becoming even more outstanding if we consider interpretation of the concept, as it is provided in the Law of Georgia on Prevention of Family Violence and Provision of Aid and Protection of the victims of Family Violence.

According to Article 3 of the above referred law "family violence implies violation by one member of the family of constitutional rights and freedoms of another member of the family through physical, psychological, economic, sexual violence or coercion". According to Article 4 of the same law psychological violence is defined as "insult, blackmailing, humiliation, intimidation or such actions, which insult dignity and self-esteem of a person".

Consequently, we can state, that in the law on General Education definition of violence does not comply with international definition.

It is noteworthy, how the Law on Prevention of Family Violence and Provision of Aid and Protection of the Victims of Family Violence defines one of the forms of violence – "coercion": "Physical and psychological coercion of a person into actions or inactivity, implementation of which or refraining from implementation of which represents his right, or impacting a person in some manner against his will" (Article 4).

Such detailed interpretation of violence in national legislation is extremely important for adequate reflection of child rights, provided by the Convention and promotion of introduction of high standards in the sphere of regulation of protection of children from violence.

The role of School and Ministry of Education

Another important problem is difficulty of identification of facts of violence at schools. Even in case of identification of such facts, it is difficulties to prove the fact of their occurrence.

Below we provide the mechanism of legal protection of children at schools and in front of the higher authority:

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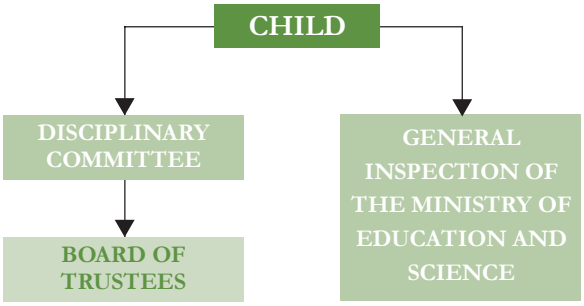
[167] 28 session of UN Committee on Children's Rights, Geneva, September 24- October 2, 2001, page 160. *http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/e57900848420e9dec1256b65003d987e/$FILE/G0146392.pdf*

[168] Guidelines on implementation of Convention on Child Rights, p 249.



According to paragraph 'k" of article 38 of the Law on General Education "...for the purpose of consideration of disciplinary violations the Board of Trustees appoints disciplinary committee in adherence to Regulations of the school, into composition of which are entered in equal proportion teachers, parents and pupils of secondary education level. The board of Trustees is authorized to consider complaints on decisions of the disciplinary committee or create a special committee".

On the basis of complaints, received in the accounting period we have identified problems of two types: quite often these committees don't function on permanent basis and they are established in some specific and especially complicated cases, which means that quite often it becomes necessary to invite special membership into their composition, which is in conflict with sub-paragraph "k", paragraph 1 of article 38 of the law on General Education, according to which "inviting of special members, such as representatives of the disciplinary committee or the appellate committee for the purpose of consideration of specific cases is not admissible".

Another problem is that existing disciplinary committees are not operating effectively. Namely, they cannot consider given issues adequately and often representatives of the disciplinary committee agree with the decision of school administration on compulsory transfer of a child to another school, without really taking into consideration interests of a problematic child.

According to Regulations of General Inspection of the Ministry of Education and Science (article 6, paragraph "b") General Inspection "identifies violations of the law, committed by employees of the Ministry of Education and Science within the limits of its competence".

Due to the above mentioned, part of complaints submitted to the Public Defender's Office were referred to the General Inspection of the Ministry of Education and Science and responses, received from the inspection are pretty identical, as usually they deny the facts of psychological or any other violence, committed towards children.

Despite a three-stage mechanism of appealing, in majority of cases it is impossible to establish, that the facts of violence had taken place, which is confirmed by the applications submitted to our office. On the basis of results of analysis of responses, received from General Inspection and according to the information, collected as a result of inspection of schools by the General Inspection, which was conducted during 2008-2009 in 2008 for *financial and administrative violations* 16 schools received warning notification in written form and 2 directors of public schools were dismissed from their position; in 2009 68 public schools received warning notification in written form, 15 directors were dismissed from their positions and cases of 20 pupils were referred to law enforcement bodies for their examination. Given statistics does not dwell upon cases of violence at schools, which allows us to assume, that General Inspection has not received any notifications on the issue of violence or it does not have capacity to respond adequately to such violations.

The UN Committee on Child Rights calls upon countries to identify and investigate cases of violence towards children through adoption of sensitive approach, which is focused on taking into consideration interests of children. At the same time the Committee states that in all cases of violence, committed against children the victims of violence need to undergo rehabilitation and relevant psychological and social measures need to be conducted.

To summarize all the above referred we can state, that facts of violence in public schools that have been described by parents and pupils in the complaints submitted to the Public Defender's Office indicate that this is a complex issue, which needs adequate examination and investigation. There are the following drawbacks, identified in the area of protection of children's rights:

- Incompliance of definition of violence and procedures for prevention of violence, provided in the legislative framework of Georgia with international standards; these drawbacks can be eliminated through improvement of legal framework and introduction of standard procedures of response;
- Inefficiency of the system of referral;
- Unavailability of facilities for rehabilitation of children, who became victims of violence;
- Low awareness of public in the sphere of identification and management of cases of violence.

RECOMMENDATIONS

Taking into consideration all the above mentioned, we consider, that for the purpose of dealing with hidden forms of violence within the system of education in a systemic manner the Ministry of Education and Science should take into consideration following recommendations:

- **Bring into compliance definition of the term "violence", provided in the Law of Georgia on General Education with the international definition;**
- **Elaborate and introduce effective referral system[169];**
- **Promote to increasing of public awareness on the need of elimination of all forms of violence against children and introduction of culture of notification;**
- **Define procedures for identification of cases of violence against children.**

Further Deterioration of Situation Related to Street Children

Description of the problem

In 2008 by joint initiative of international and local organizations in Georgia was conducted the first in-depth survey of situation with street children[170]. Within the framework of given survey conducted in 4 large cities of Georgia, namely Tbilisi, Kutaisi, Rustavi and Batumi around 1600 under age persons were identified, who due to heavy social conditions or other reasons have no shelter and spend most part of the day in the streets. It is noteworthy, that the state has not studied this problem. Consequently, as the state has not conducted survey in given area and the system of registration of such children is not in place, in given chapter we relied on the data, collected as a result of the above mentioned survey. It should also be stated, that given statistical data needs updating too, as provided by paragraph "c" of Article 17 of the Law of Georgia on Social Assistance, according to which "the Agency (under the Ministry of Health, Labor and Social Affairs) shall maintain unified data base on socially vulnerable households".

During recent years the term "street children" has been the subject of public debates in Georgia, as well as abroad. In the opinion of many persons this term is discriminatory and carries a certain stigma, while at the same time promotes to spreading of incorrect perceptions regarding street children.

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169 Referral system – for the purpose of identification and investigation of cases of violence against children there should be established a special network of services, which implies referring of such cases to the relevant agencies for further follow up and availability of relevant administrative procedures for such referrals. Under the relevant agencies are implied social service, educational institutions, healthcare agencies, law enforcement bodies and etc. (Guidelines for implementation of child rights, p 268).

170 The survey "Don't call me a street child" (2008), Federation Save the Children, UN Children's Fund, USAID, ACT – marketing surveys and consultancy. *http://www.unicef.org/georgia/Street_children_survey.eng(1).pdf*

Within the framework of the above mentioned survey three categories of so called "street children" were identified:

1. Street children, who have no contacts with their families and they live, work and sleep in the streets;
2. Street children, who all day work in the street, implement certain economic activities, while in the evening return to their families and share with them whatever income they managed to get during the day; Children of this category may attend schools too.
3. Street children, whose families live in the street.

As we see from the above listed categories, only the 1st group of street children is totally detached from their families and according to the survey they represent 35% of the total number of street children. The remaining two categories spend their time in the street due to heavy socio-economic conditions.

As basis for NGOs, working on the problems of street children to apply to the Public Defender's Office served Resolution No118/n of the Ministry of Health, Labor and Social Affairs on "Approval of the state program on Child Care for the year 2009", adopted in March 23, 2009, on the basis of which amendments were entered into the funding of given state program, due to which street children have no opportunity of benefiting from social service, offered by the state.

As NGOs involved in implementation of the given program have explained to us, this resolution basically undermines their work of several years, during which with assistance of foreign donors in Georgia four daycare centers were established, oriented towards the needs of street children. During several years these NGOs were implementing their activities within the framework of the state program on child care, but as a result of amendments of 2009 the street children cannot benefit from these services any more, as majority of the families of these children have not been assigned the status of households under the poverty line. Reason for such exclusion of these families was lack of proper organization of the process of assigning of the status of vulnerable households, as well as the fact, that these families did not possess housing, due to which they were not included into the unified data base on socially vulnerable layer and consequently, could not benefit from the state program, focused on households under the poverty line (Given problem is described in detail in the chapter dedicated to the issue of the "Right to Housing").

According to information, provided by these NGOs as a result of all the above mentioned the street children are left without the services, rendered by the daycare centers, including the centers, which were designated to provide services to children of specifically this category. Today these daycare centers are providing their services to children of other categories. The only social service that street children can get presently is the twenty-four-hour shelter, designated for 40 children.

International standards

According to article 20 of the UN Convention on the Rights of the Child member states should ensure protection of rights of children devoid of parental care primarily through attempting of reintegration of such children into their families. In those cases, when this is not expedient taking into consideration interests of a child, the Convention requires from the state to offer to him/her alternative services of institutions, where the environment should be maximally approximated to the family environment. The most unacceptable version of such care is large institutions of residential type. It should be stated, that prior to arriving to decision on placement of children in institutions of given type the state should have exhausted the following means: placement of a child with biological relatives and provision of state assistance, foster care, adoption, small family type foster homes.

State Program

In the public scheme, oriented towards the street children and offered by the Ministry of Health, Labor and Social Affairs (Resolution No118/n of the Ministry of Health, Labor and Social Affairs on "Approval of the state program on Child Care for the year 2009", adopted in March 23, 2009) street children (homeless children) are referred to only once, namely in Chapter 16, under the title "Sub-program on provision of shelter to homeless children". There were no other social services envisaged (planned or implemented) for street children within the framework of the "Childcare program for the

year 2009". According to the above referred document, purpose of this program is "provision of temporary shelter to homeless children under 18", where food, education, vocational education, primary medical aid and in case of need in-patient and out-patient care shall be offered to them.

It is interesting to analyze the logic of the abovementioned program: provision of shelter implies very specific interpretation of the concept of a street child, as the connotation here is that the street child has no family, which is in conflict with the above provided statistics. Consequently, we should assume, that according to this program around 2/3 of these children shall leave their families and use services offered by a shelter. Given logic is in conflict with requirements of the UN Convention on the Rights of a Child, as well as basic principles of child welfare reforms, conducted in Georgia, as presently "main priority in the sphere of services, rendered for children under the care of the state is their deinstitutionalization. Deinstitutionalization is a process, which implies replacement of long-term care of institutions by alternative care. Priority of given process is acknowledged at the level of the state policy, as this is the basis of reforms conducted in the sphere of child welfare"[171].

The concept of "temporary shelter", stated in the objectives of the program is interesting to analyze too. Temporariness in regard to the children who have no families implies that later they shall be moved under the care of institutions of residential type. In the event, if these children have families, rehabilitation services do not envisage working with these families. Consequently this means, that these children shall be returned to streets. Taking into consideration all the above mentioned it is not clear what is the purpose of "temporary shelter", envisaged by the given program.

It is important to state, that during previous years street children had opportunity of being included into other programs. Namely, through efforts of NGOs they could benefit from daycare program, which in case if they had families, helped these children to receive informal education, vocational skills, minimal food, be socially integrated and etc. without cutting linkages with their families. Such daycare centers promoted to prevention of drug abuse, begging and other pathological behaviorist patterns.

Starting from 2009 and in accordance with paragraph 4 of Article 12 of the same Resolution "(in the process of receiving of services from the daycare center) in the event of equal conditions advantage shall be granted to members of those families, which are registered in the unified database for socially vulnerable families, whose rating score as of the date of issuing of voucher does not exceed 100 000".

Such amendments push street children and their families towards two negative alternatives; a) placement of children into residential institutions and basically artificial cutting of links between the child and his family, which is totally in conflict with requirement of the Convention. The UN Committee on Children's Rights clearly indicated, that "*member states are obliged to support reintegration of street children with their families/relatives or place these children under the care of alternative institutions taking into consideration desire and standpoint of a child*"[172] or, b) leave them in the street.

In current situation unfortunately both alternatives are taking place.

Apart from this it should be noted, that the UN Committee on Children's Rights states in the recommendations provided in the conclusive part of the third periodic report on assessment of situation in Georgia, that "presently the survey is being conducted on the state of affairs related to street children, but the Committee expresses its concern in regard to unavailability of strategic measures, which would improve conditions of children living or working in the streets. The committee is especially concerned because of grave conditions, that these children are presently in and the risks, especially the risk of trafficking, that they are subjected too".

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[171] Program for 2009 on Child Care, article 12, paragraph 2.

[172] Committee on Children's Rights, 25th session, September-October of 2000; *http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.RUS.CO.3.En?Opendocument*

RECOMMENDATIONS

The Committee recommends the state the following:

- **Establish rehabilitation and social reintegration services for street children in compliance with Article 12 of the Constitution and upon their own discretion; provide adequate, nutrition, housing, necessary medical care and opportunity of education to them;**
- **Conduct survey for the purpose of assessment of the number of street children and the nature, reasons and scope of the problem for the purpose of national strategy for prevention;**
- **Provide adequate number of shelters in Tbilisi, as well as other regions of the country;**
- **Elaborate strategy for reunification of families whenever possible taking into consideration best interests of the child...**[173]**.**

It is important to state, that as it becomes clear from the detailed protocol of the discussions, ensuing as a result of hearing of 3rd periodic report of Georgia by the Committee on Children's Rights, held on May 26, 2008 representative of the Ministry of Education and Science has undertaken commitment to develop alternative services for street children on the basis of above referred report[174], although as a result of analysis it was identified, that since then situation of street children has deteriorated even further, as new social services for street children were not developed and on the contrary, some of the previously available services became inaccessible for them. Statistical data on these children has not been collected or identification of their needs has not been conducted.

IV periodic report on Georgia shall be elaborated in two years, although we consider that current situation needs to be changed urgently and recommendations of the Committee should be implemented.

At the same time prior to that the state should undertake active measures towards entering relevant amendments into the state program on child welfare, which shall allow street children again to benefit from relevant social services.

Best Interests of a Child in the Process of Adoption and Foster Care

Introduction

According to Article 21 of the Convention on Rights of Child "State parties, that permit and/or recognize the system of adoption shall ensure, that the best interests of a child shall be the paramount consideration and they shall ensure, that adoption of a child is authorized only by competent authorities in accordance with applicable law and procedures and on the basis of all pertinent and reliable guarantees".

In given document we consider current practices of adoption and provide their analysis form the standpoint of safeguarding of best interests of a child.

Best Interests of a Child

Prior to consideration of given issue we considered it expedient to discuss the concept of "true interests of a child" and its definition in national and international legislation.

This issue is worthy of consideration especially in the light of final recommendations of the Committee of Children's Right, reflected in the 3rd periodic report on Georgia. Namely, it states the following;

[173] 48th session of the Committee on Children's Rights, consideration of periodic reports of member states, Final Recommendations, June 6, 2008; *http://www.justice.gov.ge/?sec_id=240&lang_id=GEO*

[174] 48th session of the Committee on Children's Rights, consideration of periodic reports of member states *http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.RUS.CO.3.En?Opendocument*

„The Committee expresses its concern in regard to the fact, that in the process of adoption of decisions and laws related to children there are no procedures in place for establishment of true interests of a child (article 3), especially in regard to the spheres of juvenile justice and **adoption".**

The Convention on the Child has complex approach towards definition of the concept of "true interests of a child", according to which child's interests should be considered in short-term (situational) as well as in the long-term perspective. Definition of given concept is ensuing from the overall content of the Convention, which assigns special importance to opinion and desires of a child, as the child is not only the object of protection, but subject, having civil and political rights as well"[175].

In the Final Recommendations, elaborated at 38th session of the Committee on Children's Rights the Committee stated in regard to Albania: "...it is unfortunate, that best interests of the child are established only by decisions of adults, which implies limited consultations with children themselves".

It is noteworthy, that in current practices of adoption and foster care that we have in Georgia there are major drawbacks from the standpoint of safeguarding of best interests of a child. They are the following:

Child's Consent in the Process of Adoption

For the purpose of establishment of best interests of a child promotion of expression of his standpoint by a child is of crucial importance. This standpoint should be taken into consideration in the process of adoption of any decisions related to a child.

Article 16 of the Law of Georgia on Adoption and Foster Care established some limitations to adoption. Namely, paragraph 1 of the article states, that "*adoption of children of 10 or over 10 years old without their consent is prohibited*". Consequently, social worker who is responsible for drafting of conclusion on a child to be adopted does not take into consideration opinion of a child if he is under 10 and what is most noteworthy, the child's opinion or desire is not of decisive importance. This is confirmed by official statistics, provided by the Social Services Agency of the ministry of Health, Labor and Social Affairs. Namely, during 2009 were adopted:

- 72 children from 0 to 5 years old;
- 20 children from 5 to 10 years old;
- 18 children from 10 to 18 years old;

Out of the above referred cases the opinion of children was taken into consideration in 11 cases and all of these children were over 10 years old.

Given data makes it clear, that in Georgia opinion of a child is actually not taken into consideration in the process of adoption.

Article 12 of the Convention on the Rights of a Child provides for the right of a child to "express his views in any matter, affecting him. The views of a child are given due weight in accordance with the age and maturity of a child. For this purpose the child shall in particular be provided with opportunity to be heard in any judicial or administrative proceedings..."

According to explanations of the UN Committee on Children's Rights 'The Convention does not establish the lower age limit of a child for realization of the right of expression of his will. It is clear, that children can form their opinion from a very early age and they do so. Consequently, the Convention does not support limitation of the right of expression of his opinion by a child on the bases of age thresholds "[176].

[175] Guidelines for implementation of child rights, p 160.

[176] Guidelines for implementation of the Convention on Rights of a Childs, p. 153

It is noteworthy, that according to the Convention "assigning of appropriate weight and importance to opinion of a child depends on two criteria: the age and maturity (level of development) of a child. Considering of the issue from the standpoint of only age is not admissible. Child rights do not provide for limiting of involvement of a child only due to the age criteria. As to maturity, this concept is not defined explicitly. Maturity implies capacity of a child to understand and assess the issue under consideration. This implies commitment of the person, authorized to arrive to decisions to provide sufficient information to a child"[177].

Taking into consideration all the above mentioned we can conclude, that restriction of involvement of a child in the process of adoption and fostering on the basis of age limit (10 years) represents violation of the principles promoted by the Convention of the Rights of a Child.

The Right of a Child "to be heard"

Within best interest of a child is to be protected from unlawful interference into his private life.

According to paragraph 7 of Article 21 of the Law of Georgia on Adoption of Foster Care "upon request of the adoptive parent and a child to be adopted (if he is 10 or more years old) court session can be open and information made publicly available". From provisions of article 21 of the Law of Georgia on Adoption of Foster Care it becomes clear, that in the process of adoption of children under 10 objective of the law is to allow the adoptive parent discretionary authority to make information on adoption public and require pen court session without obtaining consent of a child.

According to interpretation of the European Court on Human Rights[178], the rights of an underage person are conferred to his legitimate representatives – parents, but it should be noted, that in given case we cannot consider relationships between a child to be adopted and prospective adoptive parents as relationship between mother and child, as it is in the first case. The relationship is to be developed in future and at the time of conducting of court session these subjects do not have direct family links, as the adoptive parent is not this child's parent prior to reaching of the court decision. The European Court of Human Rights does not establish age limit for the purpose of protection of private life and consequently, given article is in violation with the right of a child to inviolability of his personal life, guaranteed by article 16 of the Convention, according to which "No child has to be subjected to arbitrary or unlawful interference with his or her privacy, family, ...nor to unlawful attacks on his or her honor and reputation. The child has the right to be protected by the law from such interference or attacks".

Taking into consideration the above mentioned we consider that existence of given norm and current practices are in violation with the right to personal life, guaranteed by the Convention.

Preservation of Identity of a Child

In the process of adoption or foster care upon requirement of the **adoptive parent** and with the motive of retention of confidentiality a child's name, last name, place of birth and in case of a valid reason, date of birth may be changed too.

Upon request of the **adoptive parent** in the act on registration of birth the adoptive parent shall be indicated as a parent of the child.

If a child to be adopted is 10 or more years old and in case of request on indication of adoptive parent in the act on registration of birth as a parent of the child the court takes into consideration opinion of the child.

[177] Guidelines for implementation of the Convention on Rights of a Childs, page 155

[178] Guidelines for implementation of the Convention on Rights of a Child, page 155

Given provision to a certain extent is in conflict with article 8 of the Convention on the Child Rights according to which "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by the law without unlawful interference"[179].

"Article 23 of the Law on Adoption and Fostering assigns authority of changing of identity (if the child is less than 10 years old) to the adoptive parent, thus safeguarding only his interests. The right of a child to preserve identity through retention of his name, last name and other data is disregarded.

The Committee on Children's Rights provided recommendations to New Zealand as a party to the Convention on bringing national legislation in compliance with requirements of the Convention, as national legislation provided for changes in the name, last name and other data, determining identity of a child and the Committee called upon the state to promote to retention of these data in case of adoption of a child"[180].

The Rights of Parents and Persons with Disabilities

Best interest of a child is to live with his parents in natural family environment.

Paragraph 2 of article 6 of the Law on Adoption and Foster Care provides listing of cases, when a child can be assigned the status of a child for adoption and can be adopted. In this listing the most noteworthy is sub-paragraph "a", which states, that "the status of a child to be adopted is assigned to a person, whose parent (parents) has been acknowledged by the court as disabled".

Purpose of given provision is simplification of the process, but simplification should not cause violations of the rights of apparent. In given regard two important issues need to be considered: firstly, how does the legislation of Georgia provide for acknowledgement of a person as disabled and what are consequences and secondly, can acknowledgment of a person as disabled serve as basis for limitation of his parental rights.

The Law of Georgia on 'Medical-social examination" differentiates 4 types of disability: light, moderate, substantial and severe. An adult person can be acknowledged as disable in case of all these categories, except for the light incapability[181]. The Committee in Disabilities, which is responsible for establishing of disabilities, is responsible to identify dynamics, structure and factors of incapacity of an adult. The Committee should establish linkages between limitation of capacity and the diagnose. The Committee should also define the period, upon expiration of which the assigned status shall be reconsidered[182]. The Committee is the organ, which is responsible for elaboration of individual programs of rehabilitation[183]. The status of a person should be reconsidered every year or once in two years, which is recommended depending on the category of incapability. In case of high level of incapability the status shall be reconsidered once in every two years. In some cases, when it is forecasted, that rehabilitation may happen successfully the status of disability may be assigned for a shorter period, such as 6 months[184]. Final decision on disability of a person is reached by a court.

According to legislation of Georgia acknowledgement of a person as disabled and adoption of a child causes breaking of legal relations between the parent and the child, as a result of which the child loses right of property and personal non-property rights and is released from responsibilities towards his biological parents and relatives (such as inheritance, responsibility of supporting of a parent and etc), in the same manner, as the parent is losing the right over his biological child.[185]

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179 Chapter 8 of the Convention on the Child Rights.

180 43 session of the Committee on Children's Rights, October 27, 2003. *http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/73f172e77b12c842c1256df20033829f/$FILE/G0344655.pdf*

181 The Law of Georgia on Medical-social examination, article 10.

182 The Law of Georgia on Medical-social examination, article 46.

183 The Law of Georgia on Medical-social examination, article 9.

184 The Law of Georgia on Medical-social examination, article 12.

185 The Law of Georgia on adoption and foster care, article 24.

According to official statistical data of the Social Services Agency of the Ministry of Health, Labor and Social Affairs in 2009 two underage children of persons, acknowledged as incapable were assigned the status of children for adoption and were adopted.

Article 8 of the Convention on Basic Human Rights and Freedoms guarantees inviolability of right to privacy and family. Given article provides for negative responsibility of the state not to interfere into private and family life and assigns positive responsibility of respecting private and family lives of persons. Similar rights and responsibilities are envisaged in regard to the right to marriage and creation of a family.

The law on Adoption and Fostering deprives of the right of parenthood the persons, who have been recognized as disabled. This is in conflict with the human rights standard, namely Article 23 of the Convention on Disabled provides detailed provisions on international agreement on different aspects of family life. According to paragraph 1 of the article "States parties to the Convention shall take effective measures to eliminate discrimination against persons with disabilities in all matters, related to marriage, family, parenthood and relationships...". According to paragraph 2"... states parties should ensure the rights and responsibilities of persons with disabilities with regard to implementation of their responsibilities in respect to upbringing of their children". According to paragraph 4 of the same article "states parties should ensure that a child shall not be separated from his or her parents against their will. 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".

Although it is true, that Georgia as a party to the Convention has not ratified given convention, but by becoming its signatory the state has expressed its will to accede to the provisions of the Convention. Taking into consideration the above mentioned we consider that the state should take into consideration high standards, introduced by the convention on Persons with Disabilities and should ensure harmonization of national legislation with its requirements. Consequently, it is inadmissible that disability of a person becomes basis for assigning to a child of such person the status of a child for adoption and gives him into adoption.

RECOMMENDATIONS:

- **The Ministry of Health, Labor and Social Affairs should elaborate specific regulations for establishment of best interests of a child;**
- **The Ministry of Health, Labor and Social Affairs and city courts, which are authorized to arrive to final decisions in regard to permitting adoption of a child take into consideration final recommendations, elaborated on the basis of 3rd periodic report of the Committee on Children's Rights, according to which 'the state should introduce the principle of protection of best interests of a child into all programs, strategies, judicial and administrative proceedings, including implementation of national action plans".**
- **The Parliament of Georgia should enter legislative amendments into the Law of Georgia on Adoption and Fostering and add article to the law, by which the organ authorized for the processes of adoption and foster care shall be assigned to ensure participation of a child in the process of his adoption taking into consideration his age and maturity.**
- **The Parliament of Georgia should bring into compliance with international norms national legislative framework on the rights of parents with disabilities.**

Situation of Children under Institutional Care

For the purpose of promotion of implementation of the function of national mechanism of prevention under the Public Defender's Office was established a special monitoring team, which in February 8-20 of 2009 conducted monitoring of 21 institutions for children under the care of the state (detailed report is provided in the relevant chapter).

As a result of monitoring were identified whole range of violations, which are related not only to specific institutions, but are characteristic to the overall system of child welfare.

In present report we consider preconditions of existence and operation of such institutions and main directions of the state policy in given area.

Unsystematic normative framework

In the process of monitoring was identified that current normative framework is unsystematic. Heads of institutions for children under the care of the state have major problems with normative justification of issues and problems, related to children. Unavailability of sound and systematic normative framework creates the problem of regulation in each specific case.

Information on cases of violence against children, deinstitutionalization, healthcare problems, and issues related to rights and responsibilities of children and parents, responsibilities of social services, rights and obligations of the directors and employees of institutions are not regulated by one normative document. Provisions regulating given areas are either dispersed in different laws and resolutions (for example, the Law of Georgia on Social Assistance, Resolutions of the Minister of Health, Labor and Social Affairs, the Civil Code of Georgia, the Criminal Code of Georgia, the law on General Education and etc), or some issues are not regulated at all (e.g. violence against children). Institutions do not have standard regulations, elaborated by the Ministry of Health, Labor and Social Affairs, which would regulate all issues, within the competence of child care institutions and provide detailed description of rights of the children and obligations of the administration and employees of such institutions, as well as regulate relationships of child care institutions with law enforcement bodies or public schools, where beneficiaries receive education.

Child care institutions have their own regulations, which regulate their activities in general manner. Consequently, persons involved in the child care can not arrive to well-substantiated decisions in regard to children, or quite often are not sufficiently informed, that settlement of certain issues is within their competence. There are some issues, which are not reflected in such Regulations at all, such as issues related to violence against children.

Unavailability of Proper Conditions for Implementation of Child Care Standards

By Resolution No281/n of the Minister of Health, Labor and Social Affairs, adopted in august 26 of 2009 for all child care institutions were approved the uniform standards for child care, implementation of which is mandatory for institutions notwithstanding their legal-organizational form or the type of ownership.

In the process of monitoring was identified, that situation in regard to implementation of these standards by relevant institutions is not satisfactory and children are receiving services of low quality. At the same time it is important for our analysis to identify, whether given institutions had opportunity of complying with the above mentioned standards in conditions of current funding and available human resources.

In May-June of 2008 within the framework of the EU funded project on "Assistance of reforms in the sphere of child welfare" was conducted a survey on "Piloting of child care standards". The survey was conducted by ACT Marketing Survey and Consultancy. Main objective of the survey was assessment of feasibility of implementation of child care standards by the service providers and perception of the text. Despite the fact, that overall trend of assessment of standards is positive; service managers stated in regard to feasibility of implementation of proposed standards, that they are hindered by limited material-technical basis, limited human resources, the need for professional development of the staff and etc.[186]

Taking into consideration the fact, that material-technical basis and human resource capacities have not been strengthened on the basis of results, obtained from the above mentioned survey, it is less likely that child care standards can be successfully implemented by the child care institutions.

[186] The survey on piloting of child care standards (2008), EU supported project on support of reforms in the child welfare sphere, ACT Marketing Surveys and Consulting.

In 2008 within the framework of the EU support funded project on "Assistance of reforms in the sphere of child welfare" was conducted a survey on "the survey of unit costs in the child care institutions", objective of which was to identify current status of funding and recommended minimal packages of funding for child care institutions. As becomes clear from the obtained data as of 2008 (funding for child care institutions has not been increased since then) unit cost, i.e. actual funding for child care institutions was 10,612 GEL per day per beneficiary. When within the framework of the survey this indicator was compared to the cost of similar services, offered by NGOs it was identified, that NGOs spend around 15,901 GEL per beneficiary, which is by 1.5 higher. Hence it is logical to conclude, that the state funding for given institutions is limited, which is another reason for impossibility of implementation of these standards.

Despite the fact, that the child welfare budget is increased on annual basis (in 2004 funding for the child care program was 6,7 million, while by 2009 this amount reached 17,58 million GEL) the resources are allocated in non-proportional manner. Due to the fact, that alternative services in the sphere of child care were proclaimed by the country as priority, attaining of adequate quality of care in relevant institutions became a secondary objective. Given trend was reflected in the governmental action plan for the child care sphere for 2008-2011.

Taking into consideration all the above mentioned it is not surprising, that problems were identified in the process of monitoring of child care institutions, which are mainly related to frequent violations of child care standards. Another major problem is failure of the executive branch of the government to ensure equal protection of rights of all children and assistance of children, who still remain in these institutions despite the process of deinstitutionalization.

Out of violations, identified as a result of monitoring we shall mainly focus on the most important aspects (detailed information is provided in the monitoring report):

Violence towards children – local result of systemic problem

Systemic problem is caused by the facts of violence against children that occur in child care institutions. It is noteworthy, that this is a quite widespread practice. Punishment of a child in case of his misbehavior is considered as one of acceptable methods of disciplining. Serious physical violence/punishment is mainly applicable to male beneficiaries; although girls also become victims of lighter or serious punishment (detailed information is provided in the monitoring report).

It should be stated, that within institutions (locally) as well as generally there is no systemic vision focused towards prevention of violence. There is no system in place for protection of rights of beneficiaries, subjected to violence and their rehabilitation.

It is noteworthy, that regulations of child care institutions contain only declaratory provision, that the child has the right to be protected from all forms of physical or psychological violence, but regulations do not state what specifically the head of such institution should do in case of identification of such violations. The issue is not so complicated, if the act of violence has physical expression and contains constituents of offence, but it is not clear what regulations are valid in cases, when violation by its character does not represent criminal offence. Such cases are beyond the scope of regulation of the law, which on one hand represents violation of universal right of a child to be protected against any forms of violence while on the other hand hinders the care-providers to protect child from violence.

Within the framework of specialized survey[187] conducted for the purpose of analyzing feasibility of introduction of child care standards[188] participants of the survey were assessing the standard for protection of children from violence as well. Given standard is assessed positively, although it needs certain specifying. Namely, on one hand it is difficult for partici-

[187] Resolution No281/n of the Minister of Health, Labor and Social Affairs on adoption of the child care standards, August 26, 2009.

[188] „Piloting of child care standards (2008). EU supported project on project on support of reforms in the child welfare sphere, ACT Marketing Surveys and Consulting

pant of the survey to identify cases of violence. Despite the fact, that implementation of this standard within the service providers is feasible; it still does not ensure full protection of beneficiaries form violence, as relevant structures are working in uncoordinated manner. As participants stated *"information is provided to relevant bodies but there is no follow up"*[189].

It also becomes clear from the survey, that the staff of these institutions need additional information on non-violent methods of management of behavior of beneficiaries. *"When a child does not abide to the rules of behavior, how do we manage his behavior, as it is especially difficult in our case. It is not clear how to ensure implementation of requirement "protection from intimidation", but it will be good if this kind of information is provided to us during the trainings".*

Provision of initial psycho-social and medical aid to beneficiary, who was subjected to violence, needs to be taught too, while in the meantime beneficiaries cannot get complete psycho-social rehabilitation due to limited resources.

Also, according to the standard service provider should notify relevant organs or authorized representative of the child regarding disappearance of a child "within reasonable time". Such wording does not allow the service manager to arrive to decisions independently in regard to such timeline. It should be noted, that participants of the survey commented, that this timeline needs to be specified, as they are not willing to take full responsibility of arriving to such decision upon themselves.

Violations of the Right of Education

There are cases of violation of right to education of beneficiaries in the institutions. Namely:

- Due to unavailability of clothes, shoes, or transportation to school children have no access to education. Beneficiaries also do not have isolated or properly equipped places, where they would be able to study.
- There are children, who are illiterate or have problems with reading and writing. There are no special classes for beneficiaries with such problems.
- In some institutions beneficiaries do not have equal access to education. Namely in Kakheti child care institution (Kachreti, Lagodekhi) the share of ethnically Azeri beneficiaries is quite high. Azeri beneficiaries that are under the care of both institutions do not know Georgian, although they live and study in totally Georgian environment. The caregivers, who have direct contact with such beneficiaries, do not know Azerbaijanian language. Unavailability of communication hinders development of a child and his education and integration, thus putting him into unequal conditions. Beneficiaries do not have text books and other educational materials in language that they understand. Beneficiaries with disabilities have no opportunity of education on their native language and moreover, they study school subjects in Georgian, i.e. the language that they don't know at all.

The Convention on the Rights of the Child provides for the rights of minorities and requires from the states to ensure equal access to education. Thus the states have obligations to provide access to representatives of ethnic minorities in their native language[190]. At the same time teaching of the state language should be promoted. In regard to given issue the UN Committee on Children's Rights elaborated recommendations for the following states: Morocco, Paraguay, England and Estonia and called upon these states to develop school materials and ensure safeguarding of the right to education of ethnic minorities.[191] The Committee also calls upon the states to introduce bilingual education in schools. Namely, such recommendation was provided to Panama. Teachers should be retrained for the purpose of establishing of communication with representatives of ethnic minorities (such recommendation was given to Finland in regard to children of this background).[192]

In Georgia issues related to conditions of children, belonging to ethnic minorities are beyond the scope of regulation of the law. It is noteworthy, that in the legislative framework of Georgia are not included special norms on ethnic minorities. In some

189 „Piloting of child care standards (2008). EU supported project on project on support of reforms in the child welfare sphere, ACT Marketing Surveys and Consulting.

190 Guidelines for Implementation of the Convention on Child Rights, page 464

191 Guidelines for Implementation of the Convention on Child Rights, page 464-465

192 Guidelines for Implementation of the Convention on Child Rights, page 427

laws there are declaratory provisions on prohibition of discrimination of ethnic minorities (the Constitution of Georgia, General Administrative Code, the Law on General Education).

The Convention on Protection of Ethnic Minorities obligates Georgia, as the signatory to the Convention "to ensure equal access to all levels of education for those persons, who belong to ethnic minorities"[193].

By Resolution No348, adopted on May 8, 2009 was approved the action plan for national conception on tolerance and integration with civil society, according to which "one of the major challenges in the sphere of integration with civil society is the fact, that ethnic minorities do not know the state language, which substantially impedes their full-fledged participation in political, economic and social life of the country. At initial level it is necessary to promote stimulation of ethnic minorities so that they study Georgian language and ensure implementation of support programs for students, who have special educational needs. The measures focused on ensuring of the above mentioned include promotion of access to secondary education of representatives of ethnic minorities. For the purpose of reaching of this objective the action plan lists activities/programs, for implementation of which shall be responsible the Ministry of Education and Science, National Center for Assessment and Curriculum and Professional Development Center for Teachers.

Despite existence of such action plan non-Georgian beneficiaries of Kakheti child care institutions have access to education only in Georgian language, which they don't know and are not involved in any support programs.

Inadequate Living Standard

In institutions children have to live in such environment, where they are daily subjected to certain risk factors. This implies dilapidated state of buildings, inadequate living conditions and unavailability of services (heating, power, sanitary-hygienic facilities, potable water, qualified medical services and etc), as well as other risks, related to specific individual threats.[194]

All necessary conditions for development of a child – assistance in education, toys, warmth and care, conditions maximally approximated to family environment, plans for phased development of a child (individual plans – assessment, recommendations, specific objectives, achievements, registration of problems, relevant indicators for development and etc) are not available and rare.

Another very important aspect is availability of books, corresponding to the age and interests of beneficiaries. Although it is true, that in some of the institutions there are libraries, the stock of books is outdated. No institution has sufficient number or variety of toys, which would be of adequate quality and suitable for the age of children.

Administration and care providers consider as adequate care only satisfaction of such elementary needs of beneficiaries, as food, clothes and school inventory, consequently all other above referred needs are not taken into consideration. In majority of these institutions teenage girls do not have elementary hygienic means (hygienic packages, other objects of personal hygiene), due to which they don't attend schools during several days in a week.

In majority of institutions opinion of children is not taken into consideration. Opinion, expressed by those children, who despite such attitude still try to make themselves heard is ignored and such behavior is considered as "scheming" and impudent, disrespectful towards the adults, aggressive and etc. consequently, children's opinion is ignored. Beneficiaries don't trust caregivers and administration of institutions and in majority of cases they try to solve their problems themselves or ask their friends and family members (if they have such) to help them. There is no practice of promotion of declaration of opinion, proposals or complaints by children (internal mechanism, when beneficiaries can anonymously apply to the administration or staff of the institution in regard to any issue). Issues of protection and respect of personal

[193] Convention on Protection of Ethnic Minorities, article 12.

[194] Beneficiaries of Surami child care institution go to school, located in the adjacent village and consequently, they have to cross the central highway (Tbilisi-Kutaisi-Batumi) at least twice a day. In 2009 one of the beneficiaries of this institution dies in traffic accident on this road.

information of a child are problematic too. Quite often if the staff has access to such information (entries on a child, oral information and etc) or beneficiary upon his own will share with personal information with the staff, it is not kept secret and is made public. There are no restrictive factors and mechanisms, which would protect a child from such disrespect and carelessness. All these promotes to farther alienation between the children and caregivers and consequently, the latter have no idea regarding the worries of a child, his pain or things that make him happy, which in its turn undermines the process of upbringing and makes it ineffective.

There is no proper environment or facilities for resting and entertainment. Beneficiaries are taken to cultural and social event extremely rarely (at best it happens once or twice a year). In almost all institutions there are established study circles, but quite often beneficiaries are made to participate in them without taking into consideration their true interests or talents. Activities within such study or hobby circles are quite often not adequately planned and the environment there is not conducive to learning or development. Weekends and holidays are also unplanned and spontaneous. Given time resource (when children don't attend schools) is not assigned for sports competitions, intellectual games or some other internal activities. Majority of institutions don't have indoors sports halls, but even the outdoors sport grounds are not equipped or maintained.

Article 25 of the convention by its content is relevant for the situation of children under the care of these institutions, as it provides for the safeguard mechanism in the form of the state monitoring, which implies the following: Monitoring of child care institutions and services, assessment of individual progress of a child and etc. It is important to note, that up to now regular monitoring over implementation of standards by child care institutions is not in place.

Facts identified as a result of monitoring, conducted by the representatives of the Public Defender's Office confirm incompliance of child care institutions with the requirements of the convention and the state has to apply to urgent measures to rectify this situation.

RECOMMENDATIONS:

- **Unification of all laws and normative acts regulating given sphere into one act (law), which may be named as the Regulations or the Law on Child Care Institutions, which shall ensure systematization of national legislation and in parallel elaborate provisions, that would regulate issues, which presently are beyond the scope of regulation of legislative framework. As a result of these efforts child care institutions shall be better informed on their rights and responsibilities in regard to specific areas.**
- **The Ministry of Health, Care and Social Affairs should ensure objective preconditions for implementation of child care standards. Adequate monitoring over implementation of the standards should be in place too.**
- **The Ministry of Health, Care and Social Affairs in cooperation with the ministry of Education should ensure provision of proper living conditions and education for children, who are representatives of ethnic minority groups and devoid of parental care and support their integration with the society.**
- **The executive branch of the power should make use of results of conducted surveys and plan activities on the basis of adoption of evidence-based approach. Another comprehensive survey of practical value should be conducted.**

Rights of the Persons with Disabilities

The rights of persons with disabilities and their support are important not only for the persons with disabilities themselves, but also for the society as a whole in order to allow the exercise by everyone of the right to equality and life in dignity.

Quite high frequency and large number of applications/complaints of persons with disabilities to the Public Defender's Office during the reporting period[195] allows making the conclusion on their high confidence in the Public Defender and his mandate under the Georgian Law.

In the period under review the Georgian authorities took some important steps with regard to the rights of persons with disabilities, one of them being the approval by the Georgian government of "2010-2012 Government Action Plan for Social Integration of Persons with Disabilities" and creation of the advisory body to the Georgian Government called the "National Coordination Council on Issues of Persons with Disabilities". Still, the situation with the rights of persons with disabilities' is not up to the mark, partly owing to the fact, that changes introduced by the Georgian government in this field are not based on human rights perspective and situation analysis. Low interest of the society in the process of changes, and, often, disregard of public opinion adds to it.

At the same time it should be noted that the Public Defender's parliamentary report for the first half of 2009 focused on the shortcomings of draft governmental "Action Plan for social integration of persons with disabilities". On 15 December 2009 "2010-2012 Government Action Plan for Social Integration of Persons with Disabilities" was approved by the Government Decree #978. No essential positive changes based on the recommendations of the Public Defender's report had been introduced to the Action Plan final version. Hence the problems indicated in Public Defender's report for the first half of 2009 remain topical.

Present report reviews the situation of persons with disabilities for the period from July 2009 to 1 January 2010. The Public Defender's recommendations and proposals are aimed at improvement of the situation with the rights of persons with disabilities. The Report covers the following issues:

- Problems of persons with disabilities in Georgia's regions;
- National programs for social integration of persons with disabilities;
- Georgian legislation in the field of the rights of persons with disabilities;
- Ratification Process of the UN Convention of 2006 13 December on the rights of persons with disabilities;

[195] 35 applications on the rights of persons with disabilities signed by total of 150 people arrived in Public Defender's office in the period under report

1. Specific problems of persons with disabilities in the regions

140125 disabled pensioners are registered in Georgia.[196] Vast majority of them live in the regions[197] of Georgia.

In order to scrutinize the problems that disabled persons in the regions face, the Center for the rights of persons with disabilities at the Public Defender's Office arranged, within the UNDP project "Enhancement of Public Defender's Office" and EU financial support a series of round tables in Georgian regions on "The Rights of Persons with Disabilities and their Social Integration". They took place in 6 Georgian towns (Kutaisi, Zugdidi, Batumi, Akhalkalaki, Gori and Telavi). These meetings revealed general and systemic as well as individual problems to be focused on below[198].

1.1 Absence of coordination between municipalities and civil sector

During the meetings within the Round Table, both local authorities and civil society stressed that most of the municipalities' budget planning and its social component are not based on the study of the needs of persons with disabilities. Hence these programs are not aimed at real and/or priority needs of target groups. Civil society is not involved in monitoring processes of budget planning and programs drafting. The programs are often being implemented without proper monitoring and the shortcomings automatically move to the next year program.

Besides, the arrangements undertaken by local authorities for persons with disabilities are often one-time and do not serve to achieving specific long-term objectives or target.

1.2 Inclusive education, teachers' qualification

The Georgian Ministry of Education and Science continued implementation of inclusive education in the period under report. Along with Tbilisi, the above mentioned process covers nine schools of nine regions of Georgia[199]. It is the most effective arrangement in the field of the rights of persons with disabilities undertaken in recent years. But both the parents and the teachers of children with disabilities mentioned the problems that persist in this sphere during the above Round Tables in the regions. Qualification of teachers employed in inclusive education is low and they need special education and training.

1.3 Awareness of persons with disabilities about social programs

In the regions, where the Public Defender's Office held Round Tables the awareness of persons with disabilities about the services offered by the government is very low. They have scanty information about existing health and social programs. The problem is particularly acute in the regions densely populated with ethnic minorities. Lack of information here is aggravated by the language barrier which makes availability of information for persons with disabilities even more problematic.

1.4 Problems of establishing the status of persons with disabilities

The problem of establishing the status of persons with disabilities persists. According to the information provided by the Georgian Ministry of Health, Labor and Social Security[200] present material and human resources in Georgian towns (Kutaisi, Zugdidi, Batumi, Akhalkalaki, Gori and Telavi) allow to hold any medical-social examination, including the

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196 The data taken from SSA social services agency website (http://www.ssa.gov.ge/index.php?id=860&lang=1);

197 By regions: highest number of persons with disabilities is registered in Imereti region (30063) and in Tbilisi, the lowest number is in Guria region (5150), Racha-Lechkhumi region (2090) and Mtskheta-Mtianeti region (3103). Statistics for other regions is as follows: Kakheti – 11621, Samegrelo-Zemo Svaneti – 15557, Samtskhe-Javakheti 5721, Kvemo Kartli – 10093, Shida Kartli – 13060, Achara – 15020.

198 Besides the problems dealt with in this sub-chapter, the problem environment availability for people with disabilities emerged. See chapter 5 in this regard

199 *http://inclusion.ge/Read_More.aspx?NewsID=39* inclusive education implementation project for 10 public schools in Tbilisi

200 Letter #01-10/04/2281 of 19 February 2010 of Georgian Ministry of Health, Labour and Social Security

psychiatric one.[201] Still participants to the meeting in Akhalkalaki declared that medical and psychiatric facilities abstain from medical-social examination of psychiatric patients. The latter have to apply to Tbilisi-based medical facilities causing additional expenses and other complications.

2. National programs of social integration for persons with disabilities

2.1 Day-care Centers

Ministerial order No. 118/n of 23 March 2009 of Ministry of Labour, Health and Social Security ("On the Approval of 2009 Child Care Program") provides for Day-care Centers' sub-program.[202] As a result of changes therein[203] the sub-program setup is as follows:[204] the program is aimed at the "Support of individual development and inclusion in social activities of persons with disabilities living in family environment". Total of 828 persons enjoy this service.

Starting from 2010 additional criterion – the family's social and economic status rating grade[205] – has been introduced alongside with the status of a person with disabilities in order to enjoy the Day-care Center service. "Selection of beneficiaries is carried out based on the conclusion of social workers. Regional councils of Social Service Agency (Legal Entity of Public Law subordinated to Ministry of Labour, Health and Social Affairs) study the situation of potential beneficiaries and select the persons with disabilities who require Day-care Center services. After that the beneficiaries are given appropriate voucher to receive the service".

Para 1 of Article 24 of the Law of Georgia "On Social Security of Persons with Disabilities" provides that "Persons with disabilities enjoy social benefits both financial /pensions, allowances etc/ and technical or other, *inter alia* vehicles, wheelchairs, orthopedic products, printed products with special characters, hearing aid and signalization, as well as medical, social and professional rehabilitation and general services".

When a state declares the right of a person to social rehabilitation its actions should be efficient. If as a result of the actions undertaken by the state nothing changes in the life of the person concerned, his right remains unimplemented. Day-care Center programs have shortcomings in these terms to be dwelled on in detail below.

Particular attention is paid to poverty margin, as one of the unconditional criterion for selecting beneficiaries to staff daycare centers. The need for providing specific service to persons with disabilities should be determined not by the fact of one's being below the poverty line but by the specificity and degree of one's disability and real needs based on them.

Besides, accommodation capacity under day-care centers sub-program is not enough, though it is designed for 828 persons with disabilities (children and adults altogether). Taking into account total number of persons with disabilities (today over 140 000 persons with disabilities are registered in Georgia) it may be concluded that the number of beneficiaries is not adequate.

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201 Letter #01-10/04/2281 of 19 February 2010 of Georgian Ministry of Health, Labour and Social Security

202 Day-care Centre sub-program is aimed at supporting individual development and involvement in social activities of persons with disabilities living in family environment. Day-care Centres' activities include: preparation of individual habilitation/rehabilitation programs; support to domestic and professional skills development; ensuring participation in educational, cultural and fitness activities inside as well as outside the centers provided beneficiaries' health conditions allow for it; organization of outpatient medical and psychological treatment if needed. As a result of these services the beneficiaries will acquire domestic, labour and social skills that will facilitate their better adaptation to the environment and social integration.

203 On 16 November and 30 December Amendments had been introduced to Ministerial order No. 118/n of 23 March 2009 of Ministry of Labour, Health and Social Security ("On the Approval of 2009 Child Care Program") regarding Day-care Centres sub-programs. Later, on 27 January 2010 Government Regulation #22 approved "Rules and Conditions of financing (co-financing) of placement in a special facility" which finally clarified the issue.

204 The data hereinafter is based on Governmental Regulation # 22 of 27 January2010 and Ministry of Labour, Health and Social Security letters #01-10/04/15097 of 18 December 2009 and #01-10/04/372 of 15 January 2010.

Day-care Centers sub-program **does not fully cover the regions geographically**. Only 12 out of 70 self-governing cities and municipalities have day-care center type service. The rest do not provide such service which puts the beneficiaries, living there in an unequal. In order to cope with this problem the State should secure such services on the whole territory of the country.

It should also be noted that 650 beneficiaries enjoyed day-care center services free in 2009. After the changes introduced therein 490 individuals continued to enjoy financing and 160 moved to co-financing which deteriorated their situation. Human rights principles oblige the State not to deteriorate an individual's situation by its actions. In our case it means that an individual should continue to fully enjoy the benefit provided by the State that he/she gained in good faith. This expectation is protected by the right to property.[206]

The Ministry of Labour, Health and Social Affairs, namely its Social Security Department, as the service provider and financing body will carry out **Day-care Centers' monitoring**. This will imply assessment of the services provided by day-care centers, procedural and organizational moments, analyzing the results and drafting recommendations. Still, the ministry makes emphasis on competition and states, that "the freedom given to beneficiaries in choosing service organizations is the best precondition for the competition between day-care centers and, accordingly for the improvement of their service". It should be stressed that a competition alone cannot guarantee the service quality, because in many municipalities (Telavi, Gori, Gurjaani, Zestafoni, Ozurgeti, Kareli, Terjola and Samtredia) only one day-care center operates.

It should be noted that one of the Ministry's justifications is maximum protection of the interests of persons with disabilities below poverty margin. But the Ministry does not have exact data about the number of persons with disabilities below poverty margin in need of day-care center services. It is essential that the State, before introducing the changes, study the situation and take the measures accordingly. Otherwise there is high probability of the changes and the needs coming in dissonance, as it already happened in the above case.

4.1. Provision of means of transportation[207]

According to Para 1 of Article 24 of the Law of Georgia on "Social Security of Persons with Disabilities" "Persons with disabilities shall be provided with wheelchairs by […]". There are two types of wheelchairs – standard and electronic. Some people cannot use standard wheelchairs due to their individual requirements. Accordingly, certain individuals should be provided with electric wheelchairs.

Ministerial Order #442/n of 30 December 2009 of the Ministry of Labour, Health and Social Security approves "2010 National Program to support social rehabilitation of persons with disabilities, elderly people and children deprived of family care". "Provision of aids component" (article 23) of the Program envisages procurement of standard wheelchairs (not electronic) only, it does not envisage procurement of electronic wheelchairs[208].

The program is aimed at facilitating social integration of persons with disabilities. In reality it can facilitate social reintegration of only those individuals, who can move in standard wheelchairs. Individuals in need of special, adapted to their needs wheelchairs are practically excluded from social integration by the State. But the needs of the two groups are identical; they need the wheelchair for similar purposes and so, in order for the equality principle to be observed, it is important that the State take efficient steps in order to equip each person with disability with a wheelchair of their need, including the electronic one.

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206 "Principles, provided in article one of first supplementary protocol (property right), is also relevant when it comes to social welfare benefits". *Moskal v. Poland, Application no. 10373/05, 15 September 2009 General principles on the applicability of Article 1 of Protocol No. 1,§§ 38-40*

207 This issue was reviewed in the Public Defender's report for the first half of 2008. Part of the problems have been settled in favour of beneficiaries, but some problems persist and we talk about them here due to their topicality

208 All the data hereinafter is based on Ministerial Order #442/n of 30 December 2009 of Ministry of Labour, Health and Social Security approves "2010 National Program to support social rehabilitation of people with disabilities, elderly people and children deprived of family care" and the letter #04/1-57 of 13 January 2010 of the Ministry of Labour, Health and Social Security of Georgia.

5. Accessible environment

One of the guiding principles of the rights of persons with disabilities' is accessibility to the environment.

Only 28 of all traffic-lights in Tbilisi are equipped with loudspeaker device for blind and semi-blind people. All of them were installed before 2008. As for 32 traffic-lights, installed in Tbilisi within infrastructure development project in 2008-2009 none is adapted to the needs of persons with disabilities. Elevated bridges for pedestrians are not equipped with appropriate lifts for persons with disabilities. "Safety islands" are the only spot accessible for someone in a wheelchair.[209]

As representatives of local authorities and civil society stated during Round Tables[210] in Georgian regions (Kutaisi, Zugdidi, Batumi, Akhalkalaki, Gori and Telavi) the problem of accessibility to physical environment is acute in the regions. There is no infrastructure for persons with disabilities; there are no traffic-lights with loudspeakers, public transport is not adapted, pavements have no special paths and only some pavilions of public buildings are accessible for them.

We inquired whether the requirements of persons with disabilities were considered in infrastructure development projects, like rehabilitation of footpaths and roads, installation of traffic-lights etc. with local authorities of five self-governing entities (Kutaisi, Zugdidi, Batumi, Akhalkalaki, Gori and Telavi). We are still waiting for their answer in order to be able to analyze the situation and give appropriate recommendations to local authorities.

It is important for persons with disabilities to be able to lead an independent life and participate fully in all spheres of life. The State should make sure persons with disabilities have equal access to the physical environment, transport and other public facilities.

Staircases, pavements, edges, street signs and traffic-lights represent particular obstacles for persons with disabilities and make their movement dependent on other people.

The Council of Europe Committee of Ministers' recommendation REC (2006)5 obliges participating states "to promote the use of assistive devices and technological innovations in order to improve the accessibility of the built environment and give persons with disabilities equal opportunities to participate in community life. Such practices should be applied to new constructions and progressively extended to existing buildings"[211]. The UN General Assembly resolution 48/98 on "Standard Rules on the Equalization of Opportunities for Persons with Disabilities" recommends that Accessibility requirements should be included in the design and construction of physical environment from the beginning of the designing process.[212]

According to Article 8 of the Law of Georgia "On Social Security of Persons with Disabilities" "*it is impermissible to design or plan residential areas, to take project decisions, to build or rehabilitate buildings […] if they are not adapted to the needs and requirements of persons with disabilities*".

But the above pledges are not properly met by the State. One of the conditions for persons with disabilities' to live in dignity would be creation of accessible physical environment without obstacles that would enable their independence and active inclusion in public life. At the same time it should be noted that "2010-2012 Governmental Action Plan on Social Integration of persons with disabilities" provides for creation of accessible and well-ordered environment which should improve legal status of persons with disabilities.

[209] The data are based on Tbilisi Mayor's Office letters #06/167-1 and #06/11112-1

[210] See first subchapter: Specific problems of people with disabilities living in the regions

[211] Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015

[212] UN General Assembly resolution 48/96 "Standard Rules on the Equalization of Opportunities for Persons with Disabilities", 20 October 1993;

6. Legislation

6.1. Law of Georgia "On General Education"

The Law of Georgia "On General Education" regulates the terms of general education activities in Georgia, the principles of management and financing of general education. The same Law regulates the schooling of persons with special educational needs (including children with disabilities). But thorough analysis of the Law enables to conclude that it needs further perfection from the viewpoint of its adjustment to the needs of persons with disabilities.

First of all it should be noted that the Law of Georgia "On General Education" is based on medical approach to the problem. In particular, the definitions, used in the Law, as "the patient" "compensatory schooling" etc. (paragraph "e" of Article 30 and paragraph 2 of Article 9 of the Law of Georgia "On General Education") do not fit with the State policy on persons with disabilities[213], which stresses social, rather than medical approach to the issue.

Besides, the expressions used in the Law and their interpretation are often outdated or need to be changed as they do not reveal the essence of inclusive education (e.g. sub-paragraph "a[1]" of Para 7 of Article 21[1], paragraph "u" of Article 2, etc). The law fails to take into account some important issues (e.g. the definition of "a child in need of special education", individual curriculum etc.).

The Law does not sufficiently regulate increased voucher financing system. Article 7 of the Law "On General Education" (accessibility of general education) provides for a pupil's right to be educated at the school nearest to his/her residence in national or native language. When and where standard voucher cannot cover the implementation of this right, the increased voucher is used. Increased voucher is normally used at public schools with small number of pupils, special, corrective, linguistic minority schools or classes. There are several shortcomings in these regulations. The most conspicuous is that the Law makes accessibility conditional on only the geographic location and native language, whereas the problem of accessibility to education derives from several other factors, *inter alia* disability factor. Unfortunately, these factors are not reflected in the Law. The Law does not provide for responsibility of schools to ensure equal educational opportunities for children with disabilities and consideration of their individual needs. The Law allows no possibility of use of support services (sign language, Braille, etc) designed to meet the needs of persons with different disabilities at public schools.

All the above complicates full implementation of the right to education of pupils in need of special education. According to the General Comment (#9) of the UN Committee for the Rights of Children, a child with disabilities has an equal right to education and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention. For this purpose, effective access for children with disabilities to education has to be ensured in order to promote the development of the child's personality, talents and mental and physical abilities to their fullest potential.[214] The Convention recognizes the need for modification of school practices and training ordinary teachers for teaching children with divergent abilities.

Early education of children with special educational needs is important, as it is in these institutions that their special needs can be revealed. There should be no barriers at schools to impede accessibility to education for a child with restricted movement abilities. Many children need personal help in order to fully enjoy their right to education. The State should, within its capabilities, make the education of persons with disabilities an integral part of national educational planning, curriculum development and school organization.

6.2 Tax Code

Tax allowances are provided in the Georgian Law "Tax Code" for persons with disabilities. In particular according to 'a' item of Paragraph 2 of Article 168 tax exemption is provided for:

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213 See the 2 December 2008 Georgian Parliament Decree #604-IIs, chapter one

214 Article 28, 29 of the Convention on the Rights of the Child; the Committee's general comment (2001) on the aims of education.

- invalids since childhood;
- invalids in blindness groups I and II

provided their income during calendar year does not exceed 3000 GEL.

And according to Paragraph 3 of the same Article, income of persons with disabilities in groups I and II is not taxable up to GEL 1,500 during calendar year.

6.2.1. Terminology

According to the Law "On Medical and Social Examination" terms for the status of persons with disabilities have changed from "I, II, II group disability" to *"easy disability", "moderate disability", "significant disability" and "pronounced disability"* as provided by Para 2 of Article 10 of the said Law.

Terms in Tax Code should be modified accordingly in order to align them with existing standards.

6.2.2. Discriminatory Benefits

The list of discrimination evidences in Georgian Constitution is not precise[215] and it implies prohibition of discrimination on the basis of disability.

Violation of equality principle is evident when the legislature enfranchises not all individuals, falling in one category, but picks out a certain circle and turns down the rights of others. *Equality principle is violated when there is no reasonable and objective justification for unequal treatment*[216].

Article 168 of the Tax Code categorizes tax allowances as follows:

(1) On the one hand, it differentiates individuals by the time, when disability occurred i.e. those who have disabilities since childhood (regardless of the disability degree) and those whose disability occurred when they were adults. (In this case only disabled since childhood enjoy the allowances).

(2) On the other hand, it differentiates individuals by disability forms i.e. those who are disabled in blindness and those whose disability is due to other reasons.

Such an approach places persons with disabilities in unequal position, as in both cases we have equal parties and incommensurate differentiation. For the implementation of equality principle, neither the reason nor the age of disability matters. It is vague what essential, reasonable and objective motivations these regulations are based on.

6.2.3. Amount of allowances

The Tax Code of Georgia provides the following allowances for persons with disabilities: disabled since childhood and disabled in blindness of I and II group are tax exempt if their income does not exceed 3000 GEL during calendar year. Other disabled in I and II group are tax exempt if their income during calendar year does not exceed 1500 GEL.

Taking into consideration that nominal wages of those employed in public administration of Georgia, according to 2009 I, II, III quarter data[217], range from 857 to 874 GEL, the allowances for persons with disabilities provided by the Georgian

[215] See: Georgian Constitutional Court, second Board sitting, decision #2/1-392 Shota Beridze and other 67 claimants versus Parliament of Georgia, p.2;

[216] ECHR, CASE "RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM" v. BELGIUM, *Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64,* 23 July, 1968, § 10; Also the decision of second board sitting of Constitutional Court of Georgia "Citizen of Georgia Shota Beridze and others versus Parliament of Georgia", No.2/1-392, 31 March 2008, §2; also the decision of second board sitting of Constitutional Court of Georgia "Jano Janeldze, Nino Uberi, Eleonora Lagvilava and Murtaz Todria versus Parliament of Georgia", No.2/7/219, 7 November 2003; Also the decision of the first board sitting of Constitutional Court of Georgia "Citizens of Georgia Uta Liparteliani, George Khmelidze, Eliso Janashia and Gocha Ghadua versus Parliament of Georgia" No.1/2/213,243, 16 February 2005;

[217] The data is based on the information provided by Georgian National Statistic Service in an official letter #281-of of 15 March 2010.

Tax Code are not enough. The allowances should be increased at least to the limit not below maximum margin of the income accrued during the year under the terms of average monthly income in Georgia.

6.2.4. Tax incentives employers

The Tax Code does not provide for tax incentives for employers recruiting persons with disabilities, as employment is one of the prerequisites for social integration of persons with disabilities. *Labour, on the one hand is the means of tangible security and on the other – the means for a person's self-fulfillment and development.*[218]

The problem of unemployment is especially tangible in case of persons with disabilities as they come across difficulties in their everyday contacts with physical environment. Most of the persons with disabilities are unemployed, and those who work get inadequate compensation or are employed informally and have almost no social security guarantees. Such a situation prevents persons with disabilities from living independent life in conformity with proper standards.[219]

Para 1 of Article 30 of the Georgian Constitution guarantees the right "*to be protected from unemployment*"[220] and Article 32 provides that "*The state shall promote the unemployed citizen of Georgia to be employed*". Constitutional and legal recognition of the right to employment stresses the Georgian State's social nature, whose main task is to ensure decent living of a person. And the preamble of the Georgian Constitution declares one of the main tasks to be *to establish a democratic social order.*

According to the UN Committee for Economic, Social and Cultural Rights General Comment, the States should actively support integration of persons with disabilities in open employment.[221]

According to Standard Rules on the Equalization of Opportunities for Persons with Disabilities, […] States should actively support the integration of persons with disabilities into open employment. This active support could occur through a variety of measures, such as […] tax concessions, […] to enterprises employing workers with disabilities.[222]

At labour market persons with disabilities are significantly unequal with others. That is why it is important that the State considers provisional positive mechanisms (until essential equality between groups is achieved) that would promote employment of persons with disabilities. If in some cases the State does not intervene positively and does not ensure that persons with disabilities can enjoy their essential rights, general guarantees by the Law may lose their practical meaning.

6.3. The definition of persons with disabilities

On 10 July 2009 the Georgian Government signed the Convention on the Rights of Persons with Disabilities. Accordingly, it is important that the Georgian legislation is in conformity with the standards provided in the Convention. In this regard it is of utmost importance that the definition of persons with disabilities is correctly worded.

According to the Convention on the Rights of Persons with Disabilities: *Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*

The Georgian Parliament concept on social integration of persons with disabilities approved by Parliament Resolution #604-IIs on 2 December 2008 shares the approach of the UN Convention.

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218 The decision of second board sitting of Constitutional court of Georgia "Citizen Maya Natadze and others versus Parliament of Georgia and the President of Georgia", No.2/2-389, 26 October, 2007, §20;

219 Disabilities, Handbook for Parliamentarians, #14-2007, pp. 85-86;

220 Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th Plenary Meeting 20 December 1993. Rule 7

221 Committee on the Rights of the Child, Forty-third session, General comment #9, §5, 2006

222 Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th Plenary Meeting 20 December 1993. Rule 7

Still, Article 2 of Georgian Law "On Social Security of Persons with Disabilities" provides, "*Persons with disabilities include those whose vital functions are disturbed as a result of a disease, a trauma, mental or physical impairment, causing full or partial loss of operability or significant deterioration of life".* This definition stresses a person's failings while the vector of international standards is directed to physical environment.

6.3.3. The expression "Invalid"

The Georgian legislation, in general, recognizes the expression "a person with disabilities". Still, in some parts of the Georgian legislation persons with disabilities are referred to as "invalid".

It is extremely important to have proper definition for persons with disabilities so that the attitude to them is not compassionate, but they be perceived as fully fledged members of society.

General Comment of the Committee on the Rights of the Child to the Convention on the Rights of the Child provides that the barrier is not disability itself but rather a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives[223]. Proceeding from the above the problem is not the persons' disability but the environment which is not adapted to their needs. That is why it is not correct to stress the abilities of a person.

According to the UN standard regulations the expression "invalid" was withdrawn from use to avoid misinterpretation of the term to imply that the individual cannot be a legal entity.[224]

Accordingly it is important that the Georgian legislation and the Tax Code in particular, are aligned with international standards.

6.3.4. Stigma

In some cases the context in legislation is stigmatizing. From this point of view Article 20 of the Georgian Law "On Social Security of Persons with Disabilities" is notable:

"Education, professional training and retraining are carried out […] according to curriculum for invalids […]".

As already mentioned above, the problem is not the aptitude of persons with disabilities but the environment they have to live in. That is why specific educational or other programs should be oriented towards a person's individual requirements and here the expression "curriculum for invalids" does not fit in.

According to Paragraph 1 of Article 3 of the Georgian Law "On Social Security of Persons with Disabilities": "The State guarantees social security of persons with disabilities and creates necessary conditions for **development suitable for invalids**, realization of their creativity and skills".

The expression **"suitable for invalids**" used in the Law not only distorts the idea of free development but is stigmatizing. "**Suitable for invalids"** may be perceived as ensuring for persons with disabilities to develop their capacities not along with other people but as a person with the status of disabled.

6.4. Code of Administrative Offences

According to Article 178[1] of the Code of Administrative Offences of Georgia: *avoidance to create necessary conditions for persons with disabilities on exercise of their rights to residential, public and industrial buildings, transport and transport communications, communica-*

[223] Committee on the Rights of the Child, Forty-third session, General comment #9, §5, 2006;

[224] Report of the Committee on Economic, Social and Cultural Rights, General Comment #5, §4

tion and information means, as well as the right to free movement shall be fined from 300 to 500 GEL. Article 178[2] of the same Law provides for the fine from 500 to 800 GEL *if requirements of persons with disabilities are ignored in the construction project.*

Georgian legislation provides for accessibility of the environment for persons with disabilities. The Code of Administrative Offences provides for responsibility in case of restriction of these rights but to date this mechanism of protection of rights is not operational. In particular, item 45 of Article 239 of the Law Code of Administrative Offences indicates that the record on violations provided in articles 178[1]-179[2] shall be drafted by **appropriate** bodies of the Ministry of Labour, Health and Social Security. Though, there is no document regulating which particular body of the Ministry shall have the relevant authority. This is the reason why legal guarantee of accessibility to the environment for persons with disabilities is not operational.

7. Convention on the Rights of Persons with Disabilities

UN Convention on the Rights of Persons with Disabilities and its optional protocol which Georgia signed on 10 July 2009 is one of the most important international documents in the field of rights of persons with disabilities. By signing the Convention Georgia expressed its will to join it. According to the Georgian legislation it needs to be ratified by the Georgian Parliament. But the Convention has not yet been presented for ratification to the Parliament. "Consultations on the issue are being held with the Georgian Parliament and the Government. Consultations include a detailed examination of all its requirements as they may entail legislative and budget changes in future" – reads the letter sent to PDO by the President's Administration[225].

Besides, the Public Defender's Office requested the information from the President's Administration and Government Chancellery on the activities undertaken so far in terms of ratification of the Convention.

As it became clear from the reply of the Government Chancellery PDO's letter had been redirected to the Ministry of Labour, Health and Social Security.[226] The Ministry of Labour, Health and Social Security informed PDO: "According to our information the Convention on the Rights of Persons with Disabilities was in the approval procedure with different ministries concerned and now is being prepared to be presented for ratification by the President's Administration"[227].Unfortunately the President's Administration also failed to give PDO any conclusive answer. We hope Georgian authorities will spare no effort and will undertake all necessary activities to ratify the Convention on the Rights of Persons with Disabilities and its optional protocol.

RECOMMENDATIONS:

To the Parliament of Georgia

- **Introduce in the legislation unified approach to ranging disabilities;**
- **Range tax allowances by objective and reasonable criteria rather than by causes and time when disability occurred;**
- **Raise present tax allowances for persons with disabilities to adequate amount;**
- **Consider tax concessions for the employers of persons with disabilities;**
- **Align the definition for "a person with disabilities" existing in the Georgian legislation with international standards;**
- **Replace stigmatizing and unworthy expressions in Georgian legal acts with updated and neutral equivalents;**
- **Ensure changes and amendments to the Law on General Education taking into account the comments above.**

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225 Letter of the President's Administration #2/4

226 Letter of the Government Chancellery #19/69

227 Letter of Ministry of Labour, Health and Social Security #01-10/04/2842

To the Georgian Government

- **Taking into account the existing problems[228] rethink "2010-2012 Government Action Plan on Social Integration of Persons with disabilities" and ensure participation of civil society in this process; draft action plans for each year of 2010-2012.**
- **Based on the study of the number and the needs of beneficiaries review the contents of Day-care centres sub-programs, in particular:**
- **Allow persons with disabilities in the whole territory of Georgia enjoy the services of day-care centres;**
- **Reflect the number of beneficiaries in day-care centres sub-programs adequately;**
- **Everyone who enjoyed of day-care centre services in 2009 shall be included in the sub-program unconditionally and with full financing (at the same time it should not affect the total number of beneficiaries);**
- **Specify the rule of selection of beneficiaries and the role of councils in this process;**
- **Ensure inclusion of beneficiaries and their representatives when introducing changes to the programs;**
- **Fix appropriate monitoring system for day-care centres.**
- **Ensure inclusion of civil society in the process of introducing changes to the program;**

To the Ministry of Labour, Health and Social Affairs

- **Ensure creation of efficient mechanisms to raise awareness of the population on existing national programs in health and social security spheres. Consider problems ethnic minorities face in this matter.**
- **Ensure creation of efficient mechanism of establishing the status of a person with disabilities at the local level.**
- **Introduce changes in "2010 National Program for social rehabilitation of persons with disabilities, elderly people and children deprived of family care" so that provision of electronic wheelchairs to certain persons is envisaged.**
- **In accordance with Paragraph 45 of Article 239 of the Law of Georgia "The Code of Administrative Offences" set up a body with the Ministry of Labour, or empower any existing one with the authority of drafting protocol about offences as provided by articles 178^1-179^2 of the above Code.**

To the Ministry of Education and Science:

- **Ensure training and retraining of school teachers for children with special educational needs;**
- **Make inclusive education accessible over all territory of the country.**

To Municipalities of Local Governments

- **Start stepwise adaptation of physical environment. Consider needs and requirements of persons with disabilities when planning infrastructural works;**
- **Local self-government bodies should cooperate with civil society when planning the social line of the local budget. Keep in mind the results of monitoring and studies carried out by civil society when planning social component of local budget. Plan the social budget for the achievement of specific tasks and goals.**

2009

[228] Problems and recommendations in full can be found in Public Defender's report for the first half of 2009.

The State of Affairs in the Sphere of Protection of Rights of the Repressed Persons

In the report for the first half of 2007 the Public Defender overviewed the detail problems in the sphere of social protection of victims of political repressions and drawbacks, existing in the legislation, although up to now there have been no positive changes in given area. Presently in Georgia is effective the law on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons", adopted in December 11, 1997, which entered into force on January 1, 1998. This law is the main normative act, which provides for and regulates benefits for victims of political repressions and contains guarantees for their social protection. From the standpoint of protection of the rights of the repressed is relevant decision of the European Court of Human rights adopted in February 2, 2010 in regard to the case *Klaus and Yuri Kiladze versus Georgia*.[229]

1. Social Guarantees for the Victims of Political Repressions

Paragraph 1 of Article 12 of the Law of Georgia on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons" provides for following social guarantees for the victims of political repressions and members of their families:

a. Monthly state pension;
b. 50% discount for the costs of utility services if these services are provided by state facility; As to the expenses for electricity in the law was specified, that victims of political repressions and members of their families shall receive only 30kw/h energy for free (45kw/h if there are two or more members of the family who are entitled to this benefits);
c. Other social benefits provided by legislation of Georgia.

As of today utility benefits, provided by the law are not valid any more. Namely, according to article 13 of Law of Georgia on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons" the term of validity of such benefits was set as prior to enforcement of the Law on Social Aid, which entered into force in December 29 of 2009.

Consequently, the law provides for state pension and other social benefits for the repressed persons.

According to paragraph "c" of article 22 of the law of Georgia on State Pensions *"The amount of pensions for persons, acknowledged as victims of political repressions in accordance with the law of Georgia on "Recognition of Citizens of Georgia as Victims of*

[229] *Klaus and Yuri Kiladze versus Georgia*, application #7975/06, ruling of European Court on Human Rights of February 2, 2010. (Unofficial translation).

Political Repressions and Social Protection of Repressed Persons" shall be 50 GEL. In the event of death of a person due to political repressions the child of such person (under 18) and incapacitated spouse, parent or a child (adopted child) shall receive pension in the amount of 45 GEL".

As to social assistance, social benefits applicable throughout Georgia and provided by the law are not related to the status of a victim of political repressions. These benefits are applicable to all citizens of Georgia and the provision of the laws are not focused only on the victims of political repressions.

Paragraph 'j" of article 4 of the regulations on "rules of assigning of utility subsidies and the principles of issuance of subsidies", adopted by Resolution of the Government of Georgia on Monetization of Social Subsidies, dated by January 11 of 2007 provides for monthly benefit for persons, acknowledged as victims of political repressions and members of their families in the amount of 7 GEL.

2. Failure to implement commitments, prescribed by the law

Articles 8 and 9 of the Law of Georgia on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons" state, that issues related to reinstatement of property rights of victims of political repressions and issuance of monetary compensations shall be the sphere of separate regulation by relevant law. Namely, according to paragraph 3 of Article 8 "*Rules of reinstatement of property rights of rehabilitated persons shall be defined by separate law",* while Article 9 establishes, that *"persons, who were subjected to repressions trough compulsory and unlawful placement in penitentiary institutions, exile, displacement to specialized settlements, psychiatric institution or persons, who dies as a result of political repressions and are acknowledged as victims of political repressions, as well as their heir of the first stem shall be entitled to monetary benefits, the amount and rules of issuance of which shall be regulated by the law".*

Despite the fact that the above mentioned law entered into force in 1998 no measures were undertaken up to now for the purpose of adoption of the law, referred to in paragraph 3 of Article 8 and Article 9. 12 years for adoption of the law can be considered as unreasonably long period. It is clear, that fulfillment of rights of repressed and rehabilitated persons, provided by articles 8 and 9 require substantial material resources and these issues are linked to political and economic processes. Provisions of article 8 are especially noteworthy, as they contain general and vague definitions. The method of reinstatement of property rights of rehabilitated persons is not defined.

It is problematic, that the state has not conducted any effective measures in given direction during all this time. Given issue became the subject of consideration by the European Court of Human Rights in regard to the case *Klaus and Yuri Kiladzes' versus Georgia.*

In its decision of February 2, 2010 the European Court of Human Rights has established with 6 votes versus one that on the basis of article 9 of the Law of Georgia on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons" and 1 article of Optional Protocol that violation of human rights has occurred[230].

In its decision the court has considered the issue, whether the applicants, being children of persecuted parents and victims of repressions were entitled to the rights, provided by paragraph 3 of article 8 and article 9 of the law on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons" and in the event of positive answer to this question they could make use of this right.[231]

The Court ruled that failure of adoption of legislation on the amount of compensation of moral damages and rules of payment of compensation prevents implementation of the property rights, provided by article 1 of the Optional Protocol.[232]

[230] Optional Protocol of the Convention on Human Rights and Freedoms, article 1: 'Protection of property: All natural and legal persons are entitled to the right of their property in unrestricted manner. No person has the right to misappropriate property of another person excluding those cases, when this is required by public interests upon conditions, provided by the law and general principles of international law".

[231] „Klaus and Yuri Kiladze's versus Georgia, paragraph 42.

[232] Ibid, paragraph 71;

The Government of Georgia has opted for ensuring compensation of moral and financial damage, caused to repressed population during the soviet regime, consequently after entering of the First Optional Protocol into force for Georgia the state had to at least conduct active analytical work for the purpose of avoidance of keeping of applicants in uncertainty for indefinite period of time, against which they did not have any legal mechanism of protecting themselves.[233]

The Court concluded that total inactivity of the state during many years cannot be justified by public interests[234].

Consequently, the court arrived to decision, that execution of the decision requires conducting of relevant measures on national level on urgent basis for the purpose of ensuring that persons, to whom article 9 of the law of December 11, 1997 is applicable, can effectively enjoy the rights, guaranteed by given disposition[235]. The state was given the period of 6 months for the purpose of implementation of relevant general measures.

Consequently we consider that the state should conduct specific and effective measures for elaboration of procedures, related to ensuring use of rights, provided by the above referred law. In opposite case the European Court of Human Rights shall arrive to decision in favor of repressed persons, which shall have dire consequences for the country.

RECOMMENDATION

- **The Parliament of Georgia should ensure timely elaboration and adoption of draft laws, envisaged by article 8, paragraph 3 and Article 9 of the Law of Georgia on "Recognition of Citizens of Georgia as Victims of Political Repressions and Social Protection of Repressed Persons".**

[233] Ibid, paragraph 75;
[234] Ibid, paragraph 76;
[235] Ibid, paragraph 85;

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